Business law
UNIT I

Indian Contract Act, 1872

The Indian Contract Act, 1872 is the law relating to Contracts in India. It came into force on September 1, 1872 and is extended to the whole of India except to the state of Jammu and Kashmir.

Contract Definition

The term 'Contract' has been defined in Section 2(h) of the Indian Contract Act, 1872. It defines the Contract as an agreement enforceable by law.
An agreement cannot become a contract unless it can be enforceable by law. To be enforceable by law, a contract must contain all the essential elements of a valid contract as defined in Section 10.
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, with a lawful object and are From the above definition it could be seen that the definition of contract consists two elements-
1. An agreement
2. Its enforceability by law.
An agreement is defined u/s 2 (e) as ‘ every promise and every set of promises, forming consideration for each other. When a proposal is accepted it becomes a promise. Thus an agreement is an accepted proposal. Therefore, in order to form an agreement there must be a proposal or an offer by one party and its acceptance by other party.
In short Agreement is Proposal + Acceptance.
The second part of the definition deals with enforceability by law. An agreement is enforceable u/s 10 if it is made by competent parties, out of their free consent and for lawful object and consideration. Therefore, a Contract = Agreement + Enforceability by law.
Thus all contracts are agreements but all agreements are not necessarily contracts.
In short the contract includes the following:
- two or more parties
- an agreement on the ground of free consent
- exchange of promise by meeting the minds
- enforceable by law.

Essential Elements of a Contract

Essential Elements of a Contract as defined in Section 10 of the Indian Contract Act 1872

1. Agreement - Offer and Acceptance
2. Consideration
3. Legal relationship
4. Free Consent
5. Meeting of minds
6. Competent (capable) parties
7. Lawful object
8. Certainty
9. Not declared to be void
10. Possibility of performance

All contracts are agreements, but not all agreements are contracts. Explain
1) Offer and Acceptance: There must be an agreement between two parties to create a contract. The agreement involves a valid offer by one party and valid acceptance of the offer by other party. Therefore the journey of contract always starts with offer and acceptance.
2) Consideration: Consideration means something in return. It has motivation power to fulfill the promise. The agreement born when contracting parties are giving and getting something in return. It is not necessary to be cash or kind, it may be a promise to do or not to do something. But it must be real and lawful, which may be in past, present and future.

3) Legal Relationship: At the time of entering into an agreement the parties should have the intention to create legal relationship between them to avoid all types of conflicts. This types of legal relationship helps victim party to have legal remedy in case of failure of either party. Agreement without legal relation can not be enforced. For example: The relationship between a loaner and borrower can not attract the law of contract. The father promise his son to get a cycle if he passed the exam. Son passed the exam, The son claims for his prize. In such matter , father not bound to take cycle for his son, because they had no such intention to create legal relationship while making the promises. To be fallen in contract law the agreements parties must have the intention to establish legal relationship between them.
4) Free Consent: When the parties of contract agrees upon same thing in the same sense, their consent must be free from oppression, under influence, mispresentation, fraud and mistake of law. The consent must be made with knowingly and freely. If the consent is not free the parties can avoid the contract.
5) Meeting of Minds: To be a contract, two or more than two persons must agree upon same thing in the same sense. If 'A' want to purchase 'X' but B want to sell 'Y' than there is no contract raised between 'A' and 'B' because there is no meeting of minds.
6) Competent (Capable) parties: the parties who are involved in the agreement must be competent to contract. If incompetent parties are in a contract, it is not valid. The parties not capable to contract are minor person of unsound mind and legally disqualified person.
7) Lawful Objectives: The objectives of agreement must be lawful to be a valid contract. If the subject matter of agreement are not lawful (illegal, immoral and oppose to public policy) are not contract, and the agreement having this types of objectives are not enforced by law.
8) Not declared to be void: Those agreements which are expressly declared void (void means not valid) by the contract and other law force are not the contract. Agreement to kill the life of other or agreement to steal goods are illegal and void.
9) Certainty: The objectives of an agreement must be certain and clear and practical. The contract which is uncertain due to lack of providing reasonable meaning is void. For example: A agrees B that he will purchase another car if the first car becomes lucky to him. Such agreement can not enforce against A, and B can not claim for another purchase by A. Because the term ' lucky' does not have any certain and clear meaning in practical life.
10) Possibility of performance: The objectives or the action to complete the agreement must be possible to perform. Any act which can not be done or is non- performable does not create legal obligation to the contracting parties.

OFFER

The term offer is also called proposal. It is defined under Indian Contract Act, 1872 Section 2(a), “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.”

Define Offer:

To offer means to present something so that it may be accepted or rejected. Offer is the proposal of the first party to another parties.
" An offer is a proposal presented by one person to another with the intention of obtaining his assent for performing any work" And this types of proposal creates a legal obligation if it is accepted by the acceptance parties. A valid offer may be expressed or implied.

Acceptance

Acceptance means the expression of assent to whom the proposal is made in a Contract. Acceptance may be expressed either by conduct or by implied circumstances. However, silence cannot be prescribed as a mode of acceptance.

Acceptance is defined under section 2(b) of Contract Act, 1872 i.e. when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

Capacity Of Parties

The third element is the capacity of the parties to make a valid contract. Capacity or incapacity of a person could be decided only after calculating various factors. Section 11 of the Indian Contract Act,1872 elaborates on the issue by providing that a person who
(a) has not attained the age of majority,
(b) is of unsound mind, and
(c) is disqualified from entering into a contract by any law to which he is subject,
should be considered as not competent to enter into any contract. Therefore, law prohibits (a) Minors (b) persons of unsound mind and (c) person who are otherwise disqualified like an alien enemy, insolvents, convicts etc from entering into any contract.

Consideration

Section 10 of the Indian Contract Act states Consideration as one of the essential elements to constitute a contract.

Consideration means 'something in return'. According to section 2(d) of the Indian Contract Act, "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promisee."

Free Consent

'Consent' means 'knowledge and approval' of the parties concerned. A contract is made when one person makes an offer while another person accepts the offer. This acceptance of the offer should be made without any force or threat. It means that a consent given should be free and genuine. Example: A has two cars- one black and the other white. He offers to sell one of his cars to B. A intends to sell the black one while B accepts the offer believing that it is for the white car. Here, A and B are not thinking in the same sense of a particular thing. In this situation, there is a mistake, so it cannot be said to be a free consent.

Legality Of Object And Consideration

The word 'Legality' means 'the state of being legal' 'Object' means 'purpose' and 'Consideration' means 'reason'.
So the meaning of legality of object and consideration is the state of being any reason or purpose legal.
Traditionally
1. An agreement will not be enforced by the court if its object or the consideration is unlawful. By the expression "Object of an Agreement" is meant its purpose on design. The object and the consideration must both be lawful, otherwise the agreement is void.
2. The object or consideration of an agreement must be lawful. In order to make the agreement, a valid contract, for, Section 10 lays down that all agreements are contracts if made for lawful consideration and with a lawful object. Section 23 declares what kinds of consideration and objects are not lawful. If the object or consideration is unlawful for one or the other of the reasons mentioned in Section 23, the agreement is illegal and therefore void (Section 23).

In the following cases the consideration or object has been considered to be unlawful by Section 23:

1. It is forbidden by law
2. It would defeat the provisions of any law.
3. It is fraudulent
4. It involves or implies injury to the person or property of another
5. The court regards it as immoral or
6. The court regards it as opposed to public policy

Agreements Opposed To Public Policy

Certain types of agreements are harmful to Society. Such agreements are called agreements opposed to public policy. Such agreements are declared as Void by Status. The following are the agreements opposed to public policy.
Agreements in Restraint of Trade

Agreements in Restraint of Marriage
Agreements in Restraint of Personal Freedom
Agreements in Restraint of Parental Rights
Agreements with regard to Compromise of offence
Agreements with regard to sale of Public Offices and Titles
Agreements with Alien Enemy
Agreements based on Bribes
Agreements to form Monopoly
Agreement to Commit a Crime
Agreements to defraud Creditors
Agreements to defraud Government

1. Agreements in Restraint of Trade: The agreements which restrict trade business or Profession are called agreements in restraint of trade. One citizen cannot restrict lawful business of the other.
2. Agreements in Restraint of Marriage: The agreements which create restriction on marriage are called agreements in restraint of marriage. One person cannot restrict the other from getting married.
3. Agreements in Restraint of Personal Freedom: The agreements which restrict Personal Freedom are opposed to public policy.
4. Agreements in Restraint of Parental Rights: The agreements which restrict rights of Parents on their Children are called agreements in restraint of Parental Rights. By Virtue of an agreement, Parents cannot waive up their rights. Such agreements are harmful to Children.
5. Agreements with regard to Compromise of Offence: The agreements which are outcomes of Compromise with regards to an offence are opposed to public policy.
6. Agreements with regard to sale of Public Offices and Titles: Titles and positions in Government will be given basing on personal talent. That person who has obtained them cannot transfer them to some other person by means of an agreement.
7. Agreements with Alien Enemy(alien means foreigner): Agreements with aliens are Valid so long as there are good relations between two Countries. When War breaks out between the Countries that Contract becomes opposed to public policy and hence void.
8. Agreements based on Bribes: When ever there is involvement of Crime or Corruption, Such agreement is said to be opposed to public policy.
9. Agreements to form Monopoly: Monopoly is Suitable to several unfair trade practices and to exploit public. So an agreement to create monopoly is harmful to Society.
10. Agreement to Commit a Crime: In case where objective of the agreement is to conduct a Crime like murder etc, it becomes opposed to public policy.
11. Agreements to Defraud Creditors: If debtors form an agreement to defraud their Creditors, Such agreement is opposed to public policy.
12. Agreements to Defraud Government: Agreements to evade taxes etc create loss to government they are opposed to public policy.

Void Agreement

Section 2 (g) of the Indian Contract Act, states “that a void agreement is one which is not enforceable by law. A void agreement does not create rights, obligations or duties. It does not give rise to any legal consequences”. The courts can only enforce those agreements that according to Section 10 fulfil the conditions of the Indian Contract Act.
The following agreements are expressly declared as void by the Indian Contract Act:
Agreement by a minor or a person of unsound mind.[Sec(11)]
Agreement of which the consideration or object is unlawful[Sec(23)]
Agreement made under a bilateral mistake of fact material to the agreement[Sec(20)]

Agreement of which the consideration or object is unlawful in part and the illegal part cannot be separated from the legal part [Sec(24)]
Agreement made without consideration.[Sec(25)]
Agreement in restraint of marriage [Sec(26)]
Agreement in restraint of trade [Sec(27)]
Agreement in restraint of legal proceedings[Sec(28)]
Agreement the meaning of which is uncertain [Sec(29)]
Agreement by way of wager [Sec(30)]
Agreement contingent on impossible events [Sec(36)]
Agreement to do impossible acts [Sec(56)]

Contingent Contracts

Basing on the presence or absence of Conditions, Contracts can be classified into two groups namely;

1. Absolute Contracts
2. Contingent Contracts

In case where there is <u>no condition</u>, it is called Absolute Contract. As there is no condition, absolute contract is to be performed under all circumstances.
In case where there is <u>condition</u>, then such contract is called Contingent Contract. Therefore Contingent Contract means Conditional Contract. When imposed and condition is fulfilled, the Contingent Contract becomes valid and then parties have to perform their obligations. If imposed and Condition is not fulfilled, the Contingent Contract become Void and then it need not be performed. So Contingent Contract is to be performed under some circumstances only.
<u>Example:</u>
◆A contracts to pay B Rs.10,000 if B's house is burnt. This is a contingent contract.

<u>Rules Regarding Contingent Contracts</u>
◆Contingent contracts dependent on happening of an uncertain future event cannot be enforced until the event has happened.(Sec 32)
◆Where a contingent contracts is to be performed if a particular event does not happen, its performance can be enforced when the happening of that event becomes impossible.(Sec 33)
◆If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.(Sec 34)
◆Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced if the event does not happen or its happening becomes impossible before the expiry of that time.(Sec 35)
◆Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether or not the fact is known to the parties. (Sec 36)

Performance Of A Contract

"Performance of contract" means fulfilling of their respective legal obligations created under the contract by both the promisor and the promise. When a contract is duly performed by both the parties, the contract comes to a happy ending and nothing more remains. Performance by all the parties of the respective obligations is the normal ad natural mode of discharging or terminating a contract.

Discharge Of A Contract

Discharge of a contract suggests termination of contractual obligations. This is because when the parties originally entered into the contract, the rights and duties in terms of contractual obligations were set up. Consequently when those rights and duties are put out then the contract is said to have been discharged. Once a contract stands discharged, parties to it are no more liable even though the obligations under the contract remain incomplete. The contract may be discharged in the following six modes discussed as follows:

ωDISCHARGE BY PERFORMANCE
ωDISCHARGE BY AGREEMENT OR CONSENT
ωDISCHARGE BY IMPOSSIBILITY OF PERFORMANCE
ωDISCHARGE BY LAPSE OF TIME
ωDISCHARGE BY OPERATION OF LAW
ωDISHARGE BY BREACH OF CONTRACT

DISCHARGE BY PERFORMANCE

ACTUAL PERFORMANCE: When both parties perform their promises & there is nothing remaining to perform

ATTEMPTED PERFORMANCE : When the promisor offers to perform his obligation, but promisee refuses to accept the performance. It is also known as tender.

DISCHARGE BY AGREEMENT OR CONSENT

- NOVATION (Sec 62): *New contract substituted for old contract with the same or different parties*
- RESCISSION (Sec 62) : *When some or all terms of a contract are cancelled*
- ALTERATION (Sec 62): *When one or more terms of a contract is/are altered by the mutual consent of the parties to the contract*
- REMISSION (Sec 63) : *Acceptance of a lesser fulfillment of the promise made.*
- MERGER : *When an inferior right accruing to a party to contract merges into a superior right accruing to the same party*

DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

- KNOWN TO PARTIES
- UNKNOWN TO PARTIES
- SUBSEQUENT IMPOSSIBILITY
- SUPERVENNING IMPOSSIBILITY (Sec 56)
  - Destruction of subject matter
  - Non-existance of state of things
  - Death or incapacity of personal services
  - Change of law
  - Outbreak of war

DISCHARGE BY LAPSE OF TIME

- THE LIMITATION ACT 1963, CLEARLY STATES THAT A CONTRACT SHOULD BE PERFORMED WITHIN A SPECIFIED TIME CALLED PERIOD OF LIMITATION

- IF IT IS NOT PERFORMED AND IF THE PROMISEE TAKES NO ACTION WITHIN THE LIMITATION TIME, THEN HE IS DEPRIVED OF HIS REMEDY AT LAW

DISCHARGE BY OPERATION OF LAW

- DEATH
- MERGER
- INSOLVENCY
- UNAUTHORISED ALTERATION OF THE TERMS OF A WRITTEN AGREEMENT
- RIGHTS & LIABILITIES VESTING IN THE SAME PERSON

DISCHARGE BY BREACH OF CONTRACT

- *ACTUAL BREACH :*
  - At the time of performance
  - During the performance

- *ANTICIPATORY BREACH*
  - By the act of promisor

(implied repudation)

- By renunciation of obligation
  (express repudation)

What Is a Breach of Contract?

A contract is a legally enforceable agreement between two parties. Each party to a contract promises to perform a certain duty or pay a specified amount.

A breach of contract means one party to the contract fails to fulfill her contractual obligations. A breach can occur if a party fails to perform within the time frame specified in the contract, does not perform in accordance with the terms of the agreement, or fails to perform whatsoever. If one party fails to perform while the other party fulfills her duties under the contract, the performing party is entitled to legal remedies for breach of contract.

Remedies for Breach of Contract

Whenever contract is breached by one of the Party in a contract, the other party comes across some suffering. Therefore, contract act has given certain rights to such suffering party. Those rights are called remedies for breach of contract. Those are given below:

What are the remedies for breach of contract

- Right to sue for Damages.
- Rights to sue for Specific Performance.
- Rights to sue for Injunction Order.
- Rights to sue for Quantum Meruit.
- Rights to sue for Recession of Parties.

Rights to sue for Damages

Damages in legal terms called Compensation. Whenever one of the party in the Contract comes across breach of Contract, the other party rights to sue for damages.

Rights to sue for Specific Performance

At times the suffering party may file a suit claiming specific performance form the party which has breached the contract. But this type of suit very rarely becomes successful. The following are some circumstances where suit for specific performance will not be taken into consideration.

- Example 1: When performance depends upon personal talent and the party has list Such talent.
- Example 2: When court thinks that it is just and equitable to arrange for compensation.

Rights to sue for Injunction Order

The order issued by court restrict in a person from doing a particular thing is called injunction order. Upon breach of contract the suffering party may proceed legally for injunction order.

- A case on this point is Barner Bros.Vs Nelson. In this case a contract gets formed between A and B according to which B has to conduct his dance programs at A`s theater only for certain period. But B breaches the contract and arranges his programs at other theaters also before expiry of agreed period. A`s sues for injunction order. Then court issues injunction order saying that B should not conduct his programs at other theaters before expiry of agreed period.

Rights to sue for Quantum Meruit

Whenever a party performs the contract partially and then the other party breaches the contract, Suit can be filed claiming proportionate remuneration. It is called suit for quantum meruit.

- A case on this point is Flanch Vs Karlbarn. In this case A is editor of a magazine and B is a writer. According to their contract B has to supply story to A`s magazine for certain number of weeks for a particular consideration. B supplies story for some weeks and there after A closes down his magazine. B sue`s for proportionate remuneration and it is allowed by court.

Rights to sue for Recession of Parties

At times, the suffering party may sue for recession for contract.

- Example: A contract has got formed between A and B on 1st January. According to their contract A has to supply 100 pairs of ready made dresses to B, on 1st April on 28th March strike by transport companies is announced which will be called off on 3rd April. It should be noted that A cannot supply on 1st April. But B is in need of those dresses only on 1st April. Hence B can sue for recession on contract.

Quasi Contracts
The contract which is not created by proposal and acceptance but imposed by law based on the principle of equity.
In case of Quasi Contract, there will be no offer and no acceptance either on express base or on implied base. But under certain circumstances Court creates contract between the parties artificially and thus binds over the parties. Such contracts which are created by virtue of law are called Quasi Contracts.
Cases of Quasi-contract
Sections 68 to 72 of the Contract Act describe the cases which are involve in Quasi contracts.
1. Claim for necessaries supplied to a person incapable of Contracting or on his account(Sec.68) : If a person, incapable of entering into a contract, or any one whom he is legally bound to support is supplied by another person with necessaries suited to his condition in life, the person who furnished such supplies is entitled to be reimbursed from the property of such incapable person.
Example:

- A supplies B, an unsound mind, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.
- A, who supplies the wife and children of B, an unsound mind, with necessaries suitable to their conditions in life, is entitled to be reimbursed from B's property.

2. When expenses of one person are paid by the other (Sec 69) - :
A person who is interested in the payment of money which another is bound by law to pay, and who, therefore, pays it, is entitled to be reimbursed by the other.

Example:

- In this case B purchases A`s agricultural land. On that land money is in arrears for a longer period which are actually to be cleared by A, But B pays that amount. Here Court creates a quasi contract between them.

3. **When one party is benefited by the activity of another party (sec 70):** When one party Conducts an activity and its benefit is attained by another party, then also Court can create a quasi Contract.
Example :

- A pizza boy delivers a pizza at your door step by mistake instead of your neighbour who ordered it. You eat it having knowledge that it was ordered by your neighbour. You are required to pay for the same.

4. **In case of finder of lost goods (sec 71):**
Court can create a quasi contract in case of finder of lost goods.

Example : "A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee."

- In this case B finds a diamond at A`s shop and hands it over to A, requesting A to send the diamond to true owner. True owner is not found. When true owner is not found. Finder gets the title. No one can claim share in it. Here court creates a bailment contract between B and A and thus capacitates B to get diamond back.

5. **When payment is made by mistake (Sec 72):** Whenever payment is made by mistake or goods are delivered by mistake , Court can create a quasi Contract.

Example:

- A case on this point is Khaniyalal Vs Sales Tax Officer of the Banaras. In this case Mr. A pays Sales tax by mistake though he is need to pay. Here Court creates a quasi Contract and capacitates A to recover that amount.
- A and B jointly owe Rs 100 to C. A pays the amount to C, and B, not knowing this fact, also pays Rs 100 to C. C is bound to repay Rs 100 to B.

Indemnity And Guarantee

Contract of Indemnity and Guarantee are the special types of contracts given under sections 124 to 147 of the Indian Contract Act,1872. The term Indemnity literally means "Security against loss". It also means "contract of guarantee"

Indemnity Contract

Definition of Indemnity: **A form of contingent contract, whereby one party promises to the other party that he will compensate the loss or damages occurred to him by the conduct of the first party or any other person, it is known as the contract of indemnity. The number of parties in the contract is two, one who promises to indemnify the other party is indemnifier while the other one whose loss is compensated is known as indemnified.**

In terms of Section 124 of the Act, 'a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or the conduct of any person is called a "contract of indemnity". This is also a known as typical form of contingent contract.

Example:

- Example of indemnity is the insurance contract where the insurance company promises to pay for the damages suffered by the policyholder, against the premiums.
- A may contract to indemnify B against the consequences of any proceedings which C may take against B in respect of a sum of Rs. 5000/- advanced by C to B. In consequence, when B who is called upon to pay the sum of money to C fails to do so, C would be able to recover the amount from A.

Guarantee

Definition of Guarantee: **When one person signifies to perform the contract or discharge the liability incurred by the third party, on behalf of the second party, in case he fails, then there is a contract of guarantee. In this type of contract, there are three parties, i.e. The person to whom the guarantee is given is Creditor, Principal Debtor is the person on whose default the guarantee is given, and the person who gives a guarantee is Surety.**

A contract of guarantee is a contract to perform the promise made or discharge liability incurred by a third person in case of his default (Section 126). There are three parties in a contract of guarantee. Surety- person who gives the guarantee, Principal debtor- person in respect of whose default the guarantee is given, Creditor person to whom the guarantee is given.

Example:

- Sagar requests Chetan to lend Rs 500 to Paresh and guarantees that if Paresh fails to pay the amount, he will pay. This is a contract of guarantee. Sagar, in this case, is the surety, Chetan, the creditor and Paresh, the principal debtor.
- Where 'A' obtains housing loan from LIC Housing and if 'B' promises to pay LIC Housing in the event of 'A' failing to repay, it is a contract of guarantee.

Difference between Indemnity and Gurantee

BASIS FOR COMPARISON	INDEMNITY	GUARANTEE
Meaning	A contract in which one party promises to another that he will compensate him for any loss suffered by him by the act of the promisor or the third party.	A contract in which a party promises to another party that he will perform the contract or compensate the loss, in case of the default of a their person, it is the contract of guarantee.
Defined in	Section 124 of Indian Contract Act, 1872	Section 126 of Indian Contract Act, 1872
Parties	Two, i.e. indemnifier and indemnified	Three, i.e. creditor, principal debtor and surety

BASIS FOR COMPARISON	INDEMNITY	GUARANTEE
Number of Contracts	One	Three
Degree of liability of the promisor	Primary	Secondary
Purpose	To compensate for the loss	To give assurance to the promisee
Maturity of Liability	When the contingency occurs.	Liability already exists.

Bailment And Pledge

Definition of Bailment

A contract in which the goods are handed over by one party to another party for a specific reason, which is expressed or implied for a short period. The person who delivers the goods is termed as bailor whereas the receiver of the goods is termed as bailee.

When the purpose of delivering the goods is accomplished, the bailee should return the goods to its actual owner. Here the word goods may include all the movable items, but property and money do not come under the definition of goods. While the transfer of goods the ownership of goods remain with the bailor only the possession of goods transfers for a limited period.

The receiver of the goods should take good care of the goods as he takes care of his own goods as well as he should not use the goods without the permission of its owner except for the purpose specified. It is the duty of the bailor to tell the faults in the goods.
Example: Clothes given in laundry for cleaning are an example of bailment.

Definition of Pledge

The pledge is a variety of bailment in which goods are transferred from one party to another party as security for the payment against debts owed by him. The person who delivers the goods is known as Pawnor whereas the receiver of goods is known as Pawnee.

When the objective of the transferring the goods is completed or say when the payment for debt for which goods are pledged, is met, then the receiver shall return the goods to its real owner. However, if he fails to redeem the goods within a reasonable time, then the receiver has the right to sell the goods after giving a proper notice to its owner.

It is the duty of the Pawnee to take good care of the goods, as he takes care of his own goods as well as he should not use the goods without the permission of its owner. Moreover, the pawnor must tell the all the defects in the goods.

Example: Money taken as debt from the money lender by pledging gold as security against it is an example of Pledge.

Difference between Bailment and Pledge

BASIS FOR COMPARISON	BAILMENT	PLEDGE

BASIS FOR COMPARISON	BAILMENT	PLEDGE
Meaning	When the goods are temporarily handed over from one person to another person for a specific purpose, it is known as bailment.	When the goods are delivered to act as security against the debt owed by one person to another person, it is known as the pledge.
Defined in	Section 148 of the Indian Contract Act, 1872.	Section 172 of the Indian Contract Act, 1872.
Parties	The person who delivers the goods is known as the Bailor while the person to whom the goods are delivered is known as Bailee.	The person who delivers the goods is known as Pawnor while the person to whom the goods are delivered is known as Pawnee.
Consideration	May or may not be present.	Always present.
Right to sell the goods	The party whom goods are being delivered has no right to sell the goods.	The party whom goods are being delivered as security has the right to sell the goods if the party who delivers the goods fails to pay the debt.
Use of Goods	The party whom goods are being delivered can use the goods only, for the specified purpose.	The party whom goods are being delivered has no right to use the goods.
Purpose	Safe keeping or repairs, etc.	As security against payment of debt.

CONTRACT OF AGENCY

Meaning

When a person employs another person to do any act for himself or to represent him in dealing with third persons, it is called a *'Contract of Agency'*. The person who is so represented is called the 'principal' and the representative so employed is called the 'agent (Sec. 182). The duty of the agent is to enter into legal relations on behalf of the principal with third parties. But, by doing so he himself does not become a party to the contract to the contract not does he incur any liability under that contract. Principal shall be responsible for all the acts of his agent provided they are not outside the scope of his authority.

Essential elements of Agency are given below:

1. Agreement between Principal and Agent: It is important that there be an agreement as agency depends on agreement and not necessarily on contract. A contract cannot be formed with a minor because an agreement with a minor is void, but an agreement of agency with a minor is possible because between the principal and the third person any person may be appointed as an agent whether it be a minor or a person of unsound mind.

Example: Rustam a shoe manufacturer appointed Kapil as his agent to sell shoes. Kapil was just fifteen years old. Therefore the agreement between Kapil and Rustam is a void agreement and cannot become a contract. However the agreement between them can be treated as a contract of agency because in an agency the agent can be a minor.

2. **Intention of the Agent to Act on Behalf of The Principal:** For an agency to arise, it is important that the person (agent) intends to act on behalf of another (principal).

Example: Prabhu a builder appointed Suraj as his agent to sell houses. The agreement between them can become a contract of agency only when Suraj gives his consent to Prabhu to become his agent.

3. **Whatever the Principal can do Personally he/she can do through his/her Agent:**The agent can perform all those activities which the principal is liable to perform. However the agent cannot perform acts which are personal in character.

Example: Ramlal was going to get married, so he appointed Shambhu, his cousin as his agent to look after his business and all other personal and business affairs. Shambhu had the right to run the business on behalf of Ramlal but he did not have the right to marry on behalf of Ramlal.

4. **He who does an act through another does it by himself/ herself:** The acts of an agent are the acts of the principal. The principal is liable to the third party for the acts done by the agent.

Example: Radheylal a creditor appointed Ramu as his agent to recover payments from his debtors. Ramu was sent by Radheylal to recover rupees fifty thousand from, Sangeeta a debtor. Ramu took rupees fifty thousand from Sangeeta and ran away with it. Hence Radheylal cannot ask Sangeeta to pay the money again. However if Ramu is a major, then Radheylal can take legal action against him.

5. **No Consideration Required for Agency:** According to section 185 of the Indian Contract Act no consideration is necessary to create an agency. The fact that the principal has agreed to be represented by the agent is a sufficient detriment to the principal to support the contract of agency.
   Example: Sangeeta had a headache so she asked her son to go to the market and get a tablet of disprin. In this case the relation between the mother and son is that of a principal and agent and for the service of getting a tablet of disprin Sangeeta gave nothing in cash or kind to her son. Thus there is a contract of agency without any consideration.

UNIT- II

THE SALE OF GOODS ACT, 1930

Definition

According to [section 4 (1)] of the Sale of Goods Act 1930, "a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for price". It is applicable all over India, except Jammu and Kashmir. The goods are sold from owner to buyer for a certain price and at a given period of time. The name Indian is removed from the act with effect from 23rd September 1963 hence the act name is now Sale of Goods act 1930

Contract Of Sale

A contract of sale is a legal contract. It is a contract for the exchange of goods, services or property that are the subject of exchange from seller (or vendor) to buyer (or purchaser) for an agreed upon value in money (or money equivalent) paid or the promise to pay same.

Essentials of a Contract of Sale of goods

A valid contract of sale must consist of the following essentials:

(1) **Two parties**: There must be two parties viz., buyer and seller to constitute the contract. So where a personbuys his own goods through some agent, there is no contract. In this context the word 'buyer' means any person who buys or agrees to buy the goods and the word 'seller"' means any person who sells or agrees to sell the goods.

(2) **Goods**: The subject-matter of the contract of sale of goods must be some goods the purpose of this contract is to transfer the property in these goods from the seller to the buyer. And the goods forming the subject-matter of contract should be movable. The regulation of transfer of immovable property does not come within the purview of sale of Goods act.

(3) Price-the consideration : In a contract of sale the consideration is price. The price must be money when the goods are sold in exchange for goods, this is not sale but only a barter. But price or consideration may by partly in money and partly in goods.

(4) General property : In a contract of sale the object is to transfer general property, from the seller to the buyer, in the goods. General property in the goods in different from special property in the goods. If a person has the ownership of the goods, it means, he has the general property in the goods. If the owners of the goods pledges these goods with a money-lender, the moneylender has special property in the goods.

(5) In a contract of sale all the essential elements of a valid contract must be present, namely, agreement, intention to create legal relationship, capacity to make contract, free consent, lawful consideration, lawful object, etc.

Difference Between Sale and Agreement to sell
Sales: when there is an actual sale of goods, it is known as **Sale.**
Agreement to sell: if there is an intention to sell the goods at a certain time in future or some conditions are satisfied, it is called an **Agreement to sell**.

BASIS FOR COMPARISON	SALE	AGREEMENT TO SELL
Meaning	When in a contract of sale, the exchange of goods for money consideration takes place immediately, it is known as Sale.	When in a contract of sale the parties to contract agree to exchange the goods for a price at a future specified date is known as an Agreement to Sell.
Nature	Absolute	Conditional
Type of Contract	Executed Contract	Executory Contract
Transfer of risk	Yes	No
Title	In sale, the title of goods transfers to the buyer with the transfer of goods.	In an agreement to sell, the title of goods remains with the seller as there is no transfer of goods.
Right to sell	Buyer	Seller
Consequences of subsequent loss or damage to the goods	Responsibility of buyer	Responsibility of seller
Tax	GST is charged at the time of sale.	No tax is levied.
Suit for breach of contract by the seller	The buyer can claim damages from the seller and proprietary remedy from the party to whom the goods are sold.	Here the buyer has the right to claim damages only.
Right of unpaid seller	Right to sue for the price.	Right to sue for damages.

GOODS
Definition
According to section 2 (7) of the sales of goods Act, 1930, “ Goods means every kind of movable property other than actionable claims and money, and includes stock and shares, growing crops, grass and things attached to or forming part of land which are agreed to be served before sales or under the contract of sales”.

Examples: Shares, debentures, growing crops, and grass, goodwill, patents trademark, water, gas, electricity, grass, wood etc.

Types of Goods

The goods are the subject matter of any contract. They can be classified as follows:

1 *Existing Goods*

These may be of three types:

A Specific Goods

B Ascertained Goods

C Unascertained Goods

2 *Future Goods*

3 *Contingent Goods*

1**)** **Existing Goods**: When the goods are in possession of the seller at the time the contract is entered into, they are called existing goods. This means that the goods to be sold are in the control of the seller (Section 6(1) has stated: " The goods which form the subject matter of a contract of sale may be either existing goods, owned or possessed by the seller; or future goods." The existing goods may be Specific, Ascertained or Unascertained.

Specific goods: According to Section 2(14) "Specific goods means goods identified and agreed upon at the time the contract of sale is made."

Example: *A contract to sell a Nokia cell phone of a particular model is a contract to sell a specific good. In this case, the sale is for a specific good, as the phone has been identified.*

Ascertained goods: Ascertained goods are a part of the goods that are available in bulk are specially meant for sale.

Example: *Sheela owns 20 Maruti Cars. Uma enters into a contract with Sheela to buy one car out of those 20 cars. After the contract one car is given to Uma and this car will then be an ascertained good.*

Unascertained goods: Unascertained goods are the goods that are not specifically agreed upon at the time of entering into the contract.

Example: *100 leather jackets are lying in the godown out of this lot of 100 jackets 10 jackets are to be bought by Bhawana, this is a contract for sale of unascertained goods made by the leather jacket manufacturer.*

2)**Future Goods**: Section 2(6) has defined future goods as "Future Goods means goods to be manufactured or produced or acquired by the seller after the making of the contract of the sale" Future goods therefore are neither in existence nor in possession of the seller at the time when the contract of sale is entered into.

Example: *Rama agrees to sell to Urmilla the entire crop of sugarcane to be grown at her farm in Uttar Pradesh for an amount of Rs.2,00,000. Such type of agreement is not a sale but an agreement to sell future goods.*

3) **Contingent Goods**: Section 6(2) has defined 'contingent goods' as the goods "the acquisition of which by the seller depends upon a contingency which may or may not happen". Such goods are therefore dependent upon an event or an occurrence which may or may not happen.

Example: *Ravi agreed to sell 100 cotton shirts he was importing from China provided his ship arrived safely in time. In this example, the cotton shirts are contingent goods as their sale is dependent upon the safe and timely arrival of the ship.*

Price

Definition

According to Section 2(10) of sale of goods Act, 1930, " Price means the money consideration for a sale of goods".

The price is the consideration for the contract of sale of goods. If goods are offered as the consideration for goods, it will not amount to sale. It will be barter. If there is no consideration, it will be called gift. But where the goods are sold for definite sum and the price is paid partly in kind and partly in cash, the transaction is a sale. Consideration is an essential for a valid contract as per the Indian Contract Act, 1872. It is the duty of a buyer who has received and appropriated the goods to pay a reasonable price.

Section 9 lays down how the price may be fixed in a contract of sale:

a) It can be fixed by the contract itself; or

b) It can be fixed in a manner provided by the contract, such as appointment of a valuer; or

c) It can be determined by the course of dealings between the parties; or

d) If the price is not capable of being fixed in any of the ways mentioned above, the buyer is bound to pay reasonable price.

Condition And Warranties

Definition of Condition [section 12 (2)]

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

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

Example: *Ram consulted the car dealer, and told him that he wanted to purchase a car for the purpose of touring. The Car dealer, Mr. Mahesh suggested that a Maruati car would be fit for the purpose. Ram bought the car as he believed the car dealer. However, the car was found to be unsuitable for touring purposes. The Court ruled that the suitability of the car for the purpose of touring was a Condition because that was the very purpose for which Ram has purchased it. Thus, Ram could return the car to the dealer and receive the refund for the same.*

Definition of Warranty [section 12 (3)]

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

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

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

Example: *Malti goes to a cosmetic shop to buy an eyeliner. The shopkeeper states that the eyeliner was waterproof and would not get washed off, unless it was removed with cotton. However, later on when Malti used the eyeliner she found that it was not waterproof. Here a breach of warranty took place and Malti is entitled to claim damages only.*

Difference between Condition and Warranty

BASIS FOR COMPARISON	CONDITION	WARRANTY

BASIS FOR COMPARISON	CONDITION	WARRANTY
Meaning	A requirement or event that should be performed before the completion of another action, is known as Condition.	A warranty is an assurance given by the seller to the buyer about the state of the product, that the prescribed facts are genuine.
Defined in	Section 12 (2) of Indian Sale of Goods Act, 1930.	Section 12 (3) of Indian Sale of Goods Act, 1930.
What is it?	It is directly associated with the objective of the contract.	It is a subsidiary provision related to the object of the contract.
Result of breach	Termination of contract.	Claim damages for the breach.
Violation (breaking)	Violation of condition can be regarded as a violation of the warranty.	Violation of warranty does not affect the condition.
Remedy available to the party on breach	A person can reject the contract as well as claim damages.	Claim damages only.

What is Caveat Emptor?

The maxim Caveat Emptor means "**let the buyer beware**". In other words, the buyer must take care of his own interest while purchasing the goods.

Buyer in a contract of sale of specific goods will purchase them at his own risk with regard to the quality or fitness of the goods except in case of fraud or where a condition to that effect is laid down in the contract itself.

Buyer cannot hold the seller liable if the goods turn out to be defective or do not suit his purpose or if the buyer makes a mistake in assessing the quality of the goods. It is for the buyer to ensure at the time of purchase that the goods conform to his requirements.

When a person buys some goods, it is his duty to examine them thoroughly. Generally, goods are purchased when the buyer is satisfied with its quality and need. Hence, the goods is purchased by the buyer at his own risk and to his best judgement. If the goods do not suit the purpose, he cannot blame anybody except himself. The buyer has to bear the consequences of his wrong selection of goods.

Example to Doctrine of Caveat Emptor

Cases

Priest Vs Laste - In this case, B purchases a bottle from A. At the time of purchasing the bottle the buyer says that it should be qualified for storage of hot water. Thus here purpose is mentioned but the seller sells such a bottle which is not qualified for storage of hot water. As a consequence buyer's wife gets injured. Court decides that buyer can claim compensation.

Ward Vs Hobbs - In this case a contract of sale gets formed between A and B according to the terms of which A has to sell an animal from his farm to B. Negligently B selects an animal which has been suffering from some sickness. That sickness is characterized by propagation from one animal to the other and the ultimate effect is death of the animal. The sickness of the animal was externally visible. B, negligently selects such animal and as a result all animals present in B`s farm comes across death. B sues A. Court decides that B is negligent, he cannot blame the seller for his own negligence and therefore B cannot claim any compensation.

Exceptions to the Doctrine of Caveat Emptor

The following are some of the exemptions to doctrine of Caveat Emptor.

1. When the purpose of buying is in seller's notice [section 16(1)] – Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose

2. When goods are sold under brand name [section 16(1)] – In case the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose.

3. When goods are sold under description [section 15] – Where the goods are sold by description there is an implied condition that the goods shall correspond with the description.

4. Merchantable quality of goods [Section 16 (2)] – Where the goods are brought 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. The rule of caveat emptor shall not apply. But where the buyer has examined the goods this rule will apply if the defects were such which ought to have not been revealed by ordinary examination.

5. When the goods are brought by sample [section 17] - Where the goods are brought by sample, the caveat emptor rule will not apply if the bulk does not correspond with the sample.

6. When the goods are brought by sample as well as description [section 15] – In case the goods do not correspond with both the sample and description or either of the condition, rule of caveat emptor will not apply.

7. Implied warranty or condition as to fitness or quality – When the seller is aware of the purpose for which the buyer requires the product and when the buyer relies on the judgement and skill of the seller, there is an implied condition that the product purchased serves the purpose for which it was bought.

8. Fraud or misrepresentation – When the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defects in the goods so that the same could not be discovered by the buyer on a reasonable examination, the rule of caveat emptor will not apply.

Transfer Of Property

Meaning

The transfer of ownership or property is important as it determines who owns the goods at a particular point during the contract. The sole purpose of a sale is the transfer of ownership of the goods from seller to buyer. On passing of property from the seller to the buyer, the buyer becomes the owner of the goods and acquires all the rights held by the seller in respect of the goods sold. The term transfer of property implies transfer of ownership and not physical possession of goods. The person who is the owner of goods may or may not have the possession of goods or the person having the possession may or may not be owner of goods.

Rules Regarding Transfer Of Property

The time when the ownership passes from the seller to the buyer will depend upon the category of goods that are being dealt with. In this context, the goods can be classified as follows:

1. Specific or Ascertained goods.
2. Goods that are not ascertained Or unascertained goods.
3. Goods sent on approval or on return basis.

1 Transfer of ownership of specific goods- Sections 20-22

In case of the sale of specific goods, the rules relating to the transfer of ownership are contained in Sections 20-22 of the Sales of Goods Act which may be discussed as under:

i) Ownership is transferred at the time of making contract

The ownership is transferred immediately at the time of making the contract if all the following conditions are satisfied:

a) The contract is for the specific goods.

b) The goods are in deliverable state.

c) The goods are not required to be weight or measured for determining price.

Example: A sold to B, 100 bales of cotton lying in his warehouse. Before the bales could be identified and separated, all the bales were destroyed on the fire. Here, the seller is liable for damage because the ownership is not transferred.

ii) Ownership is transferred when goods are put in deliverable state

If the goods are not ready in the deliverable state at the time of making the contract of sale, the ownership of goods is transferred after the formation of the contract of sale when the following conditions are satisfied:

a) The contract is for the specific goods.

b) The goods are put in deliverable state by the seller.

c) The fact that the goods are put into a deliverable state has come to the knowledge of the buyer.

Example: A certain quantity of oil was purchased by A. The oil was to be filled in tins. B filled up some of the tins and informed A to take the delivery. In the meantime, a fire destroyed the entire quantity of oil. Held, A will bear the loss of the oil which was filled in the tins and the seller must bear the loss of the balance.

iii) Ownership is transferred when goods in deliverable state put to weighted or measured to ascertained price

If the goods are not weighted or measured at the time of making a contract of sale, the ownership of the goods is transferred after the formation of the contract of sale when the following conditions are satisfied:

a) The contract is for the specific goods.

b) At the time of formation, the price is not determined. It is determined later by the weight or measurement.

c) The goods are put in deliverable state by the seller.

Examples :

A bought from B 200 bottles of hair oil. When B had filled all the bottles and had got them re ady for deliveryand, A, the buyer came to know of the fact, the ownership passed to A, and the goods at that stage were in adeliverable state.

d) The fact that goods have been weighted or measured in order to determine the price has come to the knowledge of the buyer.

Example: A sold 10 Kg of sugar. The sugar was to be weighted. Before the sugar was weighted, it was carried away by the flood. Held, the ownership of the sugar was left with the seller and it did not pass to the buyer.

2. Transfer of property in the case of unascertained goods- Section 18 and 23
In the case of unascertained goods, when both the parties came to know which particular goods shall be delivered, the ownership is transferred. Following conditions must be satisfied to transfer the ownership:
a) Ascertainment is the first step in the transfer of ownership. It means the process of identification and setting aside of the goods from a huge mass of goods.
b) Generally, it is made by the seller.
c) The contract to sell unascertained goods is not a complete sell. It is the agreement to sell.
Example: 20 bags of sugar out of a bulk were agreed to be sold. 4 bags of sugar were filed up and taken away by the buyer. Subsequently, the seller filled up 16 bags and informed the buyer. The buyer replied that he will take the delivery as soon as possible. However, before the buyer could take their delivery, the goods were lost. Held, the buyer was responsible as the ownership has passed to the buyer.
3. Transfer of ownership in the case of goods sale on approval or on sale or return basis - Section 24
The term 'sale on approval' basis may be defined as the sale in which the buyer may return the goods within a reasonable time. This is also known as 'sale on return' basis. It means the buyer has the option either to return or retain the goods. Here, the property in goods does not pass from the seller to the buyer:
Example: A certain jewellery was delivered to a buyer on sale or return basis. The buyer pledged the jewellery. Held, the buyer had adopted the transaction and as such the property has passed and the seller could not recover the jewellery from the Pawnee.
Example: A gives a diamond to B on sale or return. B gives the same to C on similar terms and C delivers the same to D on sale or return. The diamond was lost from the custody of D. As B cannot return the diamond to A, his act in giving the diamond to C is considered as to adopting the transaction. Similarly if the buyer on sale or return pledges the goods to a third party the act of pledge shall be taken to be an act adopting the transaction.

Delivery of Goods
Delivery means voluntary transfer of possession of goods from one person to another [sec. 2(2)]. Apart from the transfer of property in the goods from the seller to the buyer, a contract of sale of goods includes two other important events, the delivery of the goods to the buyer and the payment of the price to the seller. The delivery of the goods and payment of the price must be done in accordance with the terms of the contract. If there are no terms in the contract, then the delivery of goods and payment of price must take place at the same time, for instance, goods purchased for cash over a shop counter.
Modes of delivery (Section 33)
Delivery of goods may be made in any of the following three ways:
1. Actual delivery: The term 'actual delivery' may be defined as the delivery where the goods are handed over by the seller to the buyer or his authorised agent. In other words, when the goods are physically put in possession of the buyer, the delivery is said to be actual.
Example: Amar sold 10 tins of oil to Akbar and delivered the same to him. In this case, there is an actual delivery of oil from Amar to Akbar.
2 Constructive delivery or delivery by attornment: Where a third person (e.g., a bailee) who is in possession of the goods of the seller at the time of the sale acknowledges to the buyer that he holds the goods on his behalf, there takes place a delivery by attornment or constructive delivery [sec.36(3)].
Example: A sells to B 10 bags of wheat lying in C's godown. A gives an order to C, asking him to transfer the goods to B. C agrees to such order and transfer the goods in his books to B. this is a delivery by attornment.

3 Symbolic delivery: Where the goods are bulky and incapable of actual delivery, e.g. Handing over of the key of a warehouse to the buyer is symbolic delivery of the goods to the buyer and is as effective as actual delivery, even though there is no change in the possession of the goods.

Unpaid Seller

Meaning

The seller to whom the full price of the goods sold has not been paid the price is known as an unpaid seller. A seller of goods is deemed to be unpaid in the following cases:

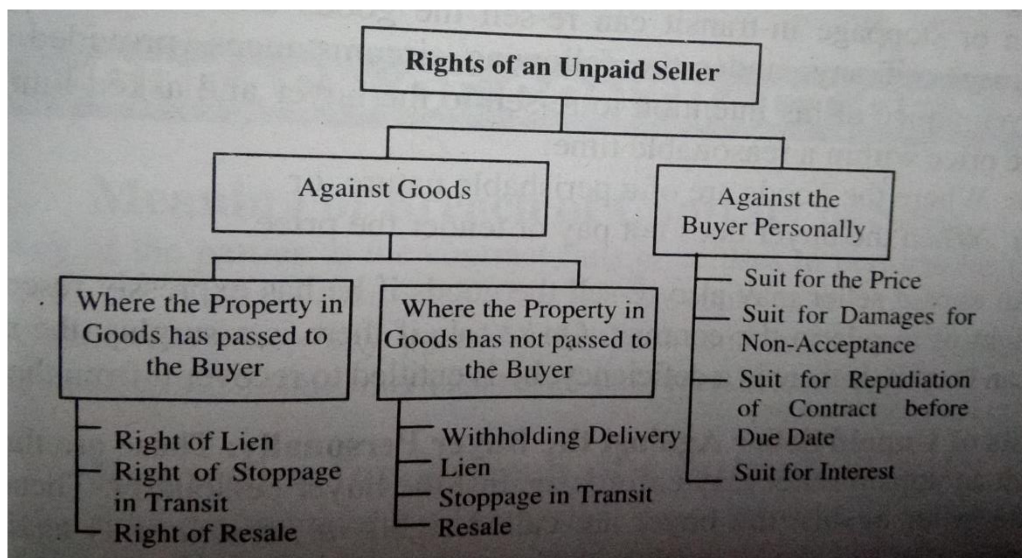
1. The price must be due but not paid
2. A negotiable instrument like cheque and bill of exchange was received but the same has been dishonoured.
3. The seller who has obtained a decree for the price of the goods will also be an unpaid seller if the decree has not been satisfied.
4. When the seller has been paid a large amount but small portion of the payment remains to be paid.
5. When the price has been paid but some other expenses which were payable to the seller has not been paid
6. The seller must have an immediate right of action for the price.

However the seller is not an unpaid seller if the buyer has tendered the price and the seller has refused to accept it.

Example: A sells goods worth Rs 1,00,000 to B on credit of six months. After six months, B did not pay the price. A shall be regarded as an unpaid seller.

Rights of Unpaid Seller

An unpaid seller has the right against the goods as well as against the buyer.



1. Rights of an unpaid seller against the goods

In some cases after the sale of goods the seller continues to have possession of the sold goods. At such times, an unpaid seller has certain rights against the goods. These can be further studied under two heads;

a) Rights of unpaid seller against the goods when ownership is transferred

When the ownership of goods is transferred to the buyer, there are three rights of an unpaid seller. These are:

1. Right of Lien- Sections 47-49
2. Right of stoppage in transit- Sections 50-52
3. Right of Re-sale

b) Rights of unpaid seller against the goods when ownership is not transferred

Where the ownership is not transferred to the buyer, the seller has the right to withhold the delivery of goods.

2. Rights of unpaid seller against the buyer

An unpaid seller has the following rights against the defaulting buyer:

1. He may sue for the price- Section 55
2. He may sue for the damages for the non-acceptance of goods- Section 56
3. He may sue for the damages for the repudiation of the contract before the due date of the delivery of goods- Section 60
4. He has the right of interest for the delayed payment- Section 61
5. He may sue the damages for the wrongful refusal to take the delivery.

Right of Lien - Sections 47-49

The Right of Lien means, the right to retain the possession of the goods until the charges or the full price has been paid. This right is available to the unpaid seller where the goods have been transferred to the buyer. This is because lien depends on possession. Even if the seller has handed over the documents of title to the buyer, the lien is not affected. "According to Section 47, the unpaid seller can exercise lien, only when the following conditions are satisfied:

- Where the goods have been sold without stipulation as to credit; or
- Where the goods have been sold on credit but the term of credit has expired; or
- When the buyer has become insolvent."

This Section implies that the unpaid seller can exercise his lien over the goods, even if he is in possession of such goods only as an agent for the buyer. It is to be noted that the right of lien will be only for the price of the goods and not for any other charges.

Right of Stoppage in Transit - Sections 50-52

The right of stoppage in transit is an extension of the right of lien. The right of lien is a right to retain the possession, whereas the right of stoppage in transit is a right to regain the possession. The right of stoppage in transit can be exercised if the goods are in transit and the buyer has become insolvent in the meantime. The right of stoppage in transit can be exercised by the unpaid seller where he has lost his right of lien. The goods in transit can be stopped for the price. The unpaid seller has made a part delivery of the goods; he may exercise his right of stoppage in transit on the remaining part of the goods for the price.

Lien And Stoppage In Transit Distinguished

31.0 DISTINCTION BETWEEN RIGHT OF LIEN AND RIGHT OF STOPPAGE IN TRANSIT

Basis of Distinction	Right of Lien	Right of Stoppage in transit
1. Possession of goods	The goods must be in actual possession of the seller.	The goods must be in the possession of a carrier or other bailee who is acting as an independent person.
2. Solvency	The right can be exercised even when the buyer is solvent but refuses to pay the price.	This right can be exercised only when the buyer has become insolvent.
3. End vs. Commencement on delivery to carrier	This right comes to an end when the seller delivers the goods to a carrier.	This right commences only when the seller delivers the goods to a carrier.
4. Purpose	The goods must be in actual possession of the seller.	The goods must be in the possession of a carrier or other bailee who is acting as an independent person.
5. Mode of exercising the right	The right can be exercised even when the buyer is solvent but refuses to pay the price. This right comes to an end when the seller delivers the goods to a carrier.	This right can be exercised only when the buyer has become insolvent. This right commences only when the seller delivers the goods to a carrier.

Right of Resale
Section 54 indicates that "the unpaid seller has the right of resale." When the seller uses his right of lien or stoppage in transit, the contract continues to remain in force and the buyer can claim delivery of goods by paying for the goods. The seller is not expected to wait indefinitely for the buyer to make the payment. However, just because the seller is unpaid, the property in the goods cannot pass to the unpaid seller again. The buyer has the right to the property, and he has the option to pay the price and take the delivery of goods at any time. Thus, under section 54, the seller has been given a limited right to resell the goods in certain circumstances.
The seller has the right to resell the goods under the following circumstances.

- Where the goods are of perishable and will lose value in a short time: When the goods are of perishable nature, the unpaid seller can resell the goods, in such a situation where buyer fails to pay the price within a reasonable time. In case of perishable goods, the unpaid seller need not give any notice of resale.
- Where the unpaid seller has used his right of lien or of stoppage in transit and gives notice to the buyer of his decision to resell the goods: Where the unpaid seller who has exercised right of lien or stoppage in transit gives notice to the buyer of his intention to resell, the unpaid seller may, if the buyer does not pay or tender the price within a reasonable time, resell the goods.

Rights Of Seller And Buyers,
Buyer's Right against the Seller or Remedies against Seller - Sections 55-61
The buyer has the following remedies against the seller:
1 Suit for damages for non-delivery: When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
2 Suit for price: Where the buyer has paid the price and the goods are not delivered to him, he can recover the amount paid.
3 Suit for specific performance: When the goods are specific or ascertained, a buyer may sue the seller for specific performance of the contract and compel him to deliver the same goods. The court orders for specific performance only when the goods are specific or ascertained and an order for damages would not be an adequate remedy. Specific performance is generally allowed where the goods are of special significance or value e.g. a rare paining, a unique piece of jewellery, etc.
4 Suit for breach of warranty: Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat the breach of condition as breach of warranty, the buyer cannot reject the goods. The buyer may, (a) set up the breach of warranty in extinction or diminution of the price payable by him, or (b) sue the seller for damages for breach of warranty.
5 Suit for interest: The buyer may recover such interest or special damages, as may be recoverable by law. He may also recover the money paid where the consideration for the payment of it has failed.
Auction Sale
It means public sale. The seller invites the interested parties by advertisement to offer the price (i.e. bid). The seller may hire the service of the auctioneer. An auctioneer is an agent of the seller. The advertisement of the auction sale is not an offer but an invitation to make an offer and therefore if an auction sale is not held on the appointed day, the bidder cannot sue the auctioneer.
In the case of sale by auction:
1. where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;
2. the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

3. a right to bid may be reserved expressly by or on behalf of the seller.
4. where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;
5. the sale may be notified to be subject to a reserved or upset price;
6. if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

THE INFORMATION TECHNOLOGY ACT, 2000 :-

Meaning:

Information technology is one of the important law relating to Indian cyber laws. It had passed in Indian parliament in 2000. This act is helpful to promote business with the help of internet. It also set of rules and regulations which apply on any electronic business transaction.
Due to increasing crime in cyber space, Govt. of India understood the problems of internet user and for safeguarding the interest of internet users, this act was made.

Objectives:

The following are its main objectives and scope:-

1. It is objective of I.T. Act 2000 to give legal recognition to any transaction which is done by electronic way or use of internet.
2. To give legal recognition to digital signature for accepting any agreement via computer.
3. To provide facility of filling document online relating to school admission or registration in employment exchange.
4. According to I.T. Act 2000, any company can store their data in electronic storage.
5. To stop computer crime and protect privacy of internet users.
6. To give legal recognition for keeping books of accounts by bankers and other companies in electronic form.
7. To make more power to IPO, RBI and Indian Evidence act for restricting electronic crime.

Scope

Every electronic information is under the scope of I.T. Act 2000 but following electronic transaction is not under I.T. Act 2000

1. Information technology act 2000 is not applicable on the attestation for creating trust via electronic way. Physical attestation is must.
2. I.T. Act 2000 is not applicable on the attestation for making will of any body. Physical attestation by two witnesses is must.
3. A contract of sale of any immovable property(eg land, building)
4. Attestation for giving power of attorney of property is not possible via electronic record.

Scheme of I.T Act

The following points define the scheme of the I.T. Act −

- The I.T. Act contains **13 chapters** and **90 sections**.
- The last four sections namely sections 91 to 94 in the I.T. Act 2000 deals with the amendments to the Indian Penal Code 1860, The Indian Evidence Act 1872, The Bankers' Books Evidence Act 1891 and the Reserve Bank of India Act 1934.
- It commences with Preliminary aspect in Chapter 1, which deals with the short, title, extent, commencement and application of the Act in Section 1. Section 2 provides Definition.
- Chapter 2 deals with the authentication of electronic records, digital signatures, electronic signatures, etc.
- Chapter 11 deals with offences and penalties. A series of offences have been provided along with punishment in this part of The Act.

- Thereafter the provisions and role of intermediaries and some miscellaneous provisions are been stated.

Electronic Signature

The traditional signatures are hand written and are uniquely representative of one's identity. The use of signature is mandatory in law in certain cases and holds an important legal position in the document as it signify two things, the identity of the person and its intent to it. The Signature is one's identity on a document and is used in day to day transaction and in case of illiterate persons its fingerprint is considered as his signature. The online transaction requires unique and strong protection which is served by electronic signature.
The concept of digital signature was introduced through Information Technology Act 2000 in India. The object and purpose of electronic signature are similar to that of traditional signature.In cyber world electronic signature ensures that the electronic records are authentic and legitimate as electronic signature are safer and is convenient as the sender himself does not have to be present personally at the place to contract to sign the document. For example a person can sign a contract in India and send it to any part of the world to complete the transaction.

Sec 2 (ta) of Information Technology Act 2000 had defines electronic signature as
"Authentication of any electronic record by a subscriber by means of the electronic technique specified in the second schedule and includes digital signature."

The definition of electronic signature includes digital signature and other electronic technique which may be specified in the second schedule of the Act, thus an electronic signature means authentication of an electronic record by a subscriber by means of electronic techniques.
UNIT- III
THE INDIAN PARTNERSHIP ACT, 1932:
Meaning
Definition
Section 4 of the Partnership Act defines Partnership as "the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all".
Essential elements of partnership :
(i) Association two or more persons : Minimum two persons are required to form a partnership and maximum no. of members is ten in case of banking business and twenty in case of other business.
(ii) Agreement : There must be an agreement entered into by all such persons. Partnership can only arise as a result of agreements express or implicit, between two or more persons.
(iii) Sharing of profit : Basically, the word, 'partnership' is derived from the word, 'To Part' means 'To Divide 'Thus division of profit is one of the most important feature of partnership Section 4 only says about the sharing of profit and is silent about the sharing of losses. It means a person may become a partner with clear understanding that he shall not be liable to share the losses.
(iv) Existence of a business : The object of the agreement or contract is to carry on business and the business which the partners carry on must be legal. However the mere fact that several persons own something in common which produces returns and that such persons divide those returns according to their respective interest does not make them partners. For Example : 'A' and 'B' are co-owners of a house net rent between themselves. A and B are not partners because receiving the rent of house let at a tenant is not a business. Business may be temporary or permanent but it must be in existence.
(v) Mutual Agency : "The business must be carried on by all the partners or any one of them acting for all ". This shows that the persons or the group who conduct the business do so as agent for all the persons in the group and are therefore liable to account to all.
Kinds of Partners

1. Active or managing partner: A person who actively participate in day to day activities of a business is called as active partner. He takes active interest in the conduct and management of the business of the firm is known as active or managing partner.He carries on business on behalf of the other partners. If he wants to retire, he has to give a public notice of his retirement; otherwise he will continue to be liable for the acts of the firm.
2. Sleeping or dormant partner: A sleeping partner is a partner who 'sleeps', that is, he does not take active part in the management of the business. Such a partner only contributes to the share capital of the firm, is bound by the activities of other partners, and shares the profits and losses of the business. A sleeping partner, unlike an active partner, is not required to give a public notice of his retirement. As such, he will not be liable to third parties for the acts done after his retirement.
3. Nominal partner: A nominal partner is one who does not have any real interest in the business but lends his name to the firm, without any capital contributions, and doesn't share the profits of the business. He also does not usually have a voice in the management of the business of the firm, but he is liable to outsiders as an actual partner.
4. Partner by estoppel or holding out: If a person, by his words or conduct, holds out to another that he is a partner, he will be stopped from denying that he is not a partner. The person who thus becomes liable to third parties to pay the debts of the firm is known as a holding out partner.
There are two essential conditions for the principle of holding out : (a) the person to be held out must have made the representation, by words written or spoken or by conduct, that he was a partner ; and (6) the other party must prove that he had knowledge of the representation and acted on it, for instance, gave the credit.
5. Partner in profits only: When a partner agrees with the others that he would only share the profits of the firm and would not be liable for its losses, he is known as partner in profits only.
6. Minor as a partner:
A partnership is created by an agreement. And if a partner is incapable of entering into a contract, he cannot become a partner. Thus, at the time of creation of a firm a minor (i.e., a person who has not attained the age of 18 years) cannot be one of the parties to the contract. But under section 30 of the Indian Partnership Act, 1932, a minor 'can be admitted to the benefits of partnership', with the consent of all partners. A minor partner is entitled to his share of profits and to have access to the accounts of the firm for purposes of inspection and copy. He, however, cannot file a suit against the partners of the firm for his share of profit and property as long as he remains with the firm. His liability in the firm will be limited to the extent of his share in the firm, and his private property cannot be attached by creditors.
7. Other partners: In partnership firms, several other types of partners are also found, namely, secret partner who does not want to disclose his relationship with the firm to the general public. Outgoing partner, who retires voluntarily without causing dissolution of the firm, limited partner who is liable only up to the value of his capital contributions in the firm, and the like. However, the moment public comes to know of it he becomes liable to them for meeting debts of the firm. Usually, an outgoing partner is liable for all debts and obligations as are incurred before his retirement. A limited partner is found in limited partnership only and not in general partnership.

Partnership Deed

Partnership is an agreement between persons to carry on a business. The agreement may be oral or written. But, it is always desirable to have a written agreement so as to avoid misunderstandings and unnecessary problems in future. When the agreement is in written form,

it is called 'Partnership Deed.' It must be duly signed by the partners, stamped and registered.

Any alteration in partnership deed can be made with the mutual consent of all the partners.

Contents
1. Name of the firm.
2. Nature of the business.
3. Names of partners.
4. Place of the business.
5. Amount of capital to be contributed by each partner.
6. Profit sharing ratio between the partners.
7. Loans and advances from the partners and the rate of interest thereon.
8. Drawings allowed to the partners and the rate of interest thereon.
9. Amount of salary and commission, if any, payable to the partners.
10. Duties, powers and obligations of partners.
11. Maintenance of accounts and arrangement for their audit.
12. Mode of valuation of goodwill in the event of admission, retirement and death of a partner.
13. Settlement of accounts in the case of dissolution of the firm.
14. Arbitration in case of disputes among the partners.
15. Arrangements in case a partner becomes insolvent.

Registration of Partnership Firm

Partnership firms in India are governed by the Indian Partnership Act, 1932. While it is not compulsory to register your partnership firm as there are no penalties for non-registration, it is advisable since the following rights are denied to an unregistered firm:

- A partner cannot file a suit in any court against the firm or other partners for the enforcement of any right arising from a contract or right conferred by the Partnership Act
- A right arising from a contract cannot be enforced in any Court by or on behalf of your firm against any third party
- Further, the firm or any of its partners cannot claim a set off (i.e. mutual adjustment of debts owned by the disputant parties to one another) or other proceedings in a dispute with a third party.

Rights and Duties of Partners

The mutual right & duties of partners of a firm may be determined by contract between the parties. In the absence of express contract between the partners, the relation between partners are governed by section 9 to 16 & 25 of the act.

Right of a Partners :

(1) To take part in the business : Every partner has a right to take part in the conduct & management of the business, subject to any contract between the partners.

(2) To share the Profit : In the absence of any agreement the partner has a right to share equally in the profits of the business earned & are liable to contribute equally to the losses sustained by the firm.

(3) To have access to the accounts : Every partner has a right to have access to & to inspect & copy any of the books of the firm.

(4) To be indemnified : Every partner has a right to be indemnified by the firm in respect of payment made & liabilities incurred in the ordinary conduct of business or doing any act in emergency.

(5) To be Consulted : Every partner has a right to be heard & to be consulted if the matter's differences of opinion & also has a right to express his opinion.

(6) To interest on Capital : The partnership agreement may contain a clause to the right of the partners to claim interest on capital at a certain rate such interest subject to contract between the partners is payable only out of profit, if any, earned in the firm.

(7) To retire : A partner has a right to retire according to the nature of partnership.

(8) To use Partnership property : The property of the firm shall be held & used by the partners exclusively for the purpose of business. No partner has a right to treat it as his individual property.

(9) To have business wound up after dissolution : On the dissolution of a firm every partner or his representative, to have the property of firm applied in payment of the debts & liabilities of firm & to have the surplus distributed among the partners or representatives.
(10) Right to interest on advances : Where a partner makes for the purposes of the business of the firm any advances beyond the amount of capital he is entitled to interest on each advance at the rate of 6% P.A. such interest is not only payable out of the profit of the business but also act the assets of the firm.

Duties of a Partner

i. To carry on the business to the greatest common advantage:

Every partner is bound to carry on the business of the firm to the greatest common advantage. In other words, the partner must use his knowledge and skill in the conduct of business to secure maximum benefits for the firm.

ii. To be just and faithful to each other:

Every partner must be just and faithful to other partners of the firm. Every partner must observe utmost good faith and fairness towards other partners in business activity.

iii. To render true accounts:

Every partner must render true and proper accounts to his co-partners. Each and every entry in the books must be supported by vouchers and give correct explanations if demanded by other partners.

iv. To provide full information:

Every partner must provide full information of all activities affecting the firm to the other co-partners. No information should be kept secret.

v. To attend diligently to his duties:

Every partner is bound to attend diligently to duties in the conduct of the business of the firm.

vi. To work without remuneration:

A partner is not entitled to receive any kind remuneration for taking part in the conduct of the business. But in practice, the working partners are generally paid remuneration as per agreement, and also commission in some case.

vii. To indemnify for loss caused by fraud or wilful neglect:

If any loss is caused to the firm because of a partner's wilful neglect in the conduct of the business or fraud commit by him against a third party then such partner must indemnify the firm for the loss.

viii. To hold and use partnership property exclusively for the firm:

The partners must hold and use the partnership property exclusively for the purpose of business of the firm not for their personal benefit.

ix. To account for personal profits:

If a partner derives any personal profit from partnership transactions or from the use of the property of the firm or business connection the firm or the firm's name, he must account for such profit and pay it to the firm.

x. Not to carry on any competing business:

A partner must not carry on competing business to that of the firm. If he carries on and earns any profit then he must account for the profit made and pay it to the firm.

xi. To share losses:

It is the duty of the partners to bear the losses of the firm. Partners share the losses equally when there is no agreement or as per their profit share ratio.

xii. To act within authority:

Every partner is bound to act within the scope of authority. If he exceeds his authority and the firm suffers from any loss, he shall have compensated the firm for such loss.
xiii. Duty to be liable jointly and severally:

Every partner is jointly and individual liable to the third parties for all acts of the firm done while he is a partner.
xiv. Duty not to assign his interest:

A partner cannot assign or transfer his partner interest to an outsider so as to make him the partner of the firm without the consent of other partners. However, he can assign his share of the profit and his share in the assets the firm where the assignee shall not be entitled to interfere in the conduct of the business
Relation Of Partners With Third Parties
A partner is both the principal and on agent. The partner exercises his authority expressly or implicitly. An express authority of one, which a partner has a right to enjoy under the deed of partnership. In the absence an express authority, the partner may do any act in the firms name in the usual course in the conduct of the business, it is called implied authority . Such authority is not required to be stated in the partnership deed.

For the purpose of the implied authority business are divided in to two categories
(a) When a partner has implied authority : Implied authority in commercial or Trading Business. On this case a partner may carry on behalf of the firm usual commercial activities like
(1) Buying & selling the goods.
(2) Receiving & giving payments.
(3) Employing persons for the firm.
(4) Repay the loans on behalf of the firm.
(5) He may draw, make, sign endorse, accept, transfer, negotiable instrument in the name of firm.
(b) When a partner has no implied authority :
Following limitations as regards implied authority of a partner which will not bind the firm, they are as follows :
(1) To open a bank A/c in his own name on behalf of the firm.
(2) To compromise or relinquish any right or claim of the firm.
(3) To withdraw a suit or proceeding
(Section 30) Minor's Position in Partnership :
According to section II of contract Act & the principles laid down in the case of Mohribibi V/s DharmadasGhosh, a minor is incompetent to contract & a contract by a minor is void. Since partnership is a contract, therefore minor's entry in a partnership firm, as a rule has been barred. But the second part of section 30 opens the door for the person who is a minor to become a partner in a firm. A minor may admitted only to the profit or benefit of the partnership with consent of all the partners of the firm. Moreover, a partnership firm cannot be formed with only minor persons as partners, so at least two major partners should be there.
Right of a Minor:
(a) To share profit
(b) To inspect the books of A/c
(c) To file suit for A/c's of profit against other partner.
(d) To elect to become a partner - on attaining majority.
(e) To elect not to become partner - on attaining majority.
Liabilities of Minor:
(a) Minors share is liable for the act of the firm.
(b) On attaining majority if he elects to be a partner, he becomes personally liable.
(c) Within 6 month of his attaining majority, he must give public notice offer his election to become a partner or he has elected not become a partner of the firm. If minor fails to give public

notice, it is presumed that he has elected to become a partner & held liable for personally for all losses & liabilities form the date of admission.

Reconstitution Of Firms

In a partnership firm with three partners, one partner wants to retire and another person wants to join. A single deed of 'Relinquishment and Reconstitution' is to be executed for effectng retirement of a retiring memeber as well as induction of a new member.

Reconstitution of Partnership

Meaning of Reconstitution:

Any change in agreement of partnershipis called reconstitution of partnership firm. In following circumstances a partnership firm may be reconstituted:

1. Change in Profit Sharing Ratio

2. Admission of a partner

3. Retirement/Death of a partner

Change in profit sharing ratio among the existing partners

Meaning:

When all the partners of a firm agree to change their profit sharing ratio, the ratio may be changed. In this case one profit is purchasing a share of partner from another one. In other words, share of one partner may increase and share of another partner may decrease.

Accounting treatment of goodwill: In case of change in profit sharing ratio, the gaining partner must compensate the sacrificing partner by paying the proportionate amount of goodwill.

DISSOLUTION OF A FIRM

Meaning :

Dissolution of a firm means a firm ceases to exist. The relationship existing between the partner discontinues. The dissolution of partnership between all the partners of a firm is called the dissolution of the firm. Dissolution of a firm is different from dissolution of partnership. Dissolution of a firm involves total breakdown or, relation of partnership between all the partners comes to an end. On dissolution of partnership relation of partnership between a few partners comes to an end.

Mode of Dissolution:

Section 40 to 44 lays down various modes of dissolution of a firm, which can be classified as follows :

1. By an act of the Parties :

(a) By Agreement : A firm can be dissolved as per the mutual agreement between the parties or expressed terms in the partnership deed.

(b) By Consent : A firm may be dissolved at any time with the consent of all partners. This applies to all cases, whether firm is for a fixed period or otherwise.

(c) By Notice : In case of “partnership at will” the firm may be dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm. A notice once given cannot be withdraw with at consent of all the partners.

2. By Operation of Law :

(a) Compulsory dissolution

(b) On happening of certain contingencies.

(a) Compulsory dissolution :
(i) Insolvency of partner : When all the partners or all the partner except one, are adjudicated insolvent, the firm is compulsory dissolved.
(ii) When some event making partnership business unlawful : When some event happens, which makes it unlawful for the business to be carried on in partnership.
E.g. A wine shop carrying on the business of selling liquor is valid when business started, but new legislation comes into force which prohibits the sale of liquor, it would become an unlawful business. Where business is declared as unlawful, the firm must be compulsorily dissolved.
(iii) Illegal Partnerships : Where two partners in a firm are carrying on business & one of the partner is a foreigner & there was a outbreak of war between the country, foreign countries declare as an enemy country the partnership between the two partner become an illegal partnership & firm has to be compulsory dissolved.
(B) On happening of certain contingencies :
(i) By expire of term : Where a partnership has been constituted for a fixed period, the firm is automatically dissolved on the expire of such fixed period .
(ii) By completion of undertaking : Where a partnership has been constituted to carry out one or more adventures or undertaking the firm is automatically dissolved on completion of such adventure or undertaking.
(iii) By Death of a partners : Where a partner in a firm dies, the firm is automatically dissolved on the death of the partner.
(iv) By insolvency of a Partner : In the absence of where a partner is declared insolvent by a court he ceases to be a partner forthwith & the firm is dissolved.
3. By Intervention of the Court :
(a) By insanity of a partner : When a partner becomes a lunatic, either his relative or friend or any other partner can file a suit for dissolution this is because a contract by a lunatic is void & so business cannot be carried on with such person.
(b) Permanent incapacity of Partner : Where a partner becomes permanently incapable of performing his duties as a partner, on suit being filed by other partner, the court may order a dissolution of firm.
(c) By mis-conduct of a partner : If a partner is guilty of conduct which is likely to affect prejudicially the business of the firm, any other partner can sue for dissolution of the firm E.g. Mis appropriation of customer money.
(d) By persistent breach of agreement : Where a partner wilfully or continuously commits breach of partnership agreement, relating to the management of the affairs, of the firm or the conduct of the business, any partner can file a suit for dissolution.
(e) By transfer of interest :
(i) When one partner has transferred the whole of his interest in the firm to a third party.
(ii) allowed his interest to be charged in execution of a decree against him
(iii) He has allowed his share to be in recovery of arrears of land revenue. Any other partner can sue for dissolution .
(f) Business Running at loss : When the business of the firm can not be carried on except at the loss then the firm can be dissolved. The object of partnership is to earn profit & if it cannot be fulfilled then the firm cannot exist.
(g) Just & Equitable ground : When on any other ground the court finds it just & equitable to dissolve a firm, it can order so. E.g. dead lock in the management.

Settlement Of Accounts

In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital,

and, lastly if necessary, by the partners individually in the proportions in which they were entitled to share profits,

(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:–

(i) in paying the debts of the firm to third parties;

(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(iii) in paying to each partner rateably what in due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Procedure for settlement of accounts on the dissolution of a partnership firm

---

When a partnership firm is dissolved, its assets are disposed of and the proceeds there from are utilised in paying the creditors.

If the amount realised by sale of assets is not sufficient to discharge the claims of the creditors in full, the deficiency can be recovered proportionately from the personal properties of the partners.

If any partner becomes insolvent, the remaining solvent partners will bear the loss in their capital ratio.

In case the assets of the firm are more than sufficient to meet the liabilities in full, then the surplus may be utilised to pay off the loans and capitals contributed by the partners.

Section 48 of the Partnership Act, 1932 lays down the following procedure for the settlement of accounts between partners after the dissolution of the firm:

1. Losses including deficiencies of capital should be made good

(a) First out of profits,

(b) Then out of capital, and

(c) If needed out of personal contributions of partners in their profit-sharing ratio.

2. The assets of the firm including any sum contributed by partners to make up deficiencies of capital will be applied for settling the debts of the firm, in the following order, subject to any agreement to the contrary:
(a) First, in paying off the debts of the firm due to third parties;
(b) Then in paying to each partner ratably any advances or loans given by him in addition to or apart from his capital contribution;
(c) If any surplus is available after discharging the above liabilities, the capital contributed by the partners may be returned, if possible, in full or otherwise ratably;
(d) The surplus, if any, shall be divided among the partners in their profit-sharing ratios.

Public Notice under Partnership Act.

Section 72 lays down the manner and the cases in which the public notice of certain matters relating to partnership firm is to be given. According to it, public notice must be given in the following cases:

- On retirement or expulsion of a partner from a registered firm.
- On the dissolution of a registered firm.
- On the election of a minor to become or not to become a partner on attaining majority.

The *modes* in which the public notice relating to the above matter is to be given are as follows :

1. By notice to the Registrar of firm under Section 63.
2. By, publication in the Official Gazette.
3. By publication in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

Consequences where public notice is not given

1. If a minor admitted to benefits of partnership fails to give public notice within six months of his attaining majority or of his coming to know about his admission to the benefits of partnership, whichever date is later, of his elected to become or not to become a partner, he becomes a partner in the firm on the expiry of the said period and shall be liable as a partner.
2. If a partner does not give a public notice of the retirement, he and the other partners shall continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before retirement.
3. If in case of expulsion of a partner, a public notice is not given, the expelled partner and other partners shall continue to be liable to third parties dealing with the firm as in the case of a retired partner.
4. If on dissolution of a registered firm a public notice is not given, the partners shall continue to be liable to third persons for any act done by any of them which would have been an act of the firm done before dissolution.

Types Of Partnership On The Basis Of Duration

(i) Partnership at will:This type ofpartnership exists at the will of thepartners. It can continue as long asthe partners want and is terminatedwhen any partner gives a notice ofwithdrawal from partnership to thefirm.
(ii) Particular partnership: Partnership formed for the accomplishment ofa particular project say constructionof a building or an activity to be carriedon for a specified time period is calledparticular partnership. It dissolvesautomatically when the purpose forwhich it was formed is fulfilled or whenthe time duration expires.

Co Ownership

Definition: A generic legal term that refers to various forms of ownership over one asset by more than one person.
In the common law, co-ownership refers to that conglomerate of property rights in one asset, generally in real property, in which there are more than one owner.
"Co-ownership is ownership of the same property, jointly and at the same time, by several persons each of whom is privately vested with a share of the right of ownership.
"The co-ownership agreement includes its essential components: it regulates the enjoyment of property rights of each individual in regards to their respective exclusive area and his (her) share ownership of the common areas."

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (LLP):-
Meaning

A Limited Liability Partnership, popularly known as LLP combines the advantages of both the Company and Partnership into a single form of organization. Limited Liability Partnership (LLP) is a new corporate form that enables professional knowledge and entrepreneurial skill to combine, organize and operate in an innovative and proficient manner.

It provides an alternative to the traditional partnership firm with unlimited liability. By incorporating an LLP, its members can avail the benefit of limited liability and the flexibility of organizing their internal management on the basis of a mutually-arrived agreement, as is the case in a partnership firm.

Features/ Characteristics of an LLP:

1. LLP is governed by the Limited Liability Partnership Act 2008, which has come into force with effect from April 1, 2009. The Indian Partnership Act, 1932 is not applicable to LLP.

2. LLP is a body incorporate and a legal entity separate from its partners having perpetual succession, can own assets in its name, sue and be sued.

3. The partners have the right to manage the business directly, unlike corporate shareholders.

4. One partner is not responsible or liable for another partner's, misconduct or negligence.

5. Minimum of 2 partners and no maximum limit.

6. Should be 'for profit' business.

7. The rights and duties of partners in an LLP, will be governed by the agreement between partners and the partners have the flexibility to devise the agreement as per their choice. The duties and obligations of Designated Partners shall be as provided in the law.

8. Limited liability of the partners to the extent of their contributions in the LLP. No exposure of personal assets of the partner, except in cases of fraud.

9. LLP shall maintain annual accounts. However, audit of the accounts is required only if the contribution exceeds Rs. 25 lakh or annual turnover exceeds Rs. 40 lakh. A statement of accounts and solvency shall be filed by every LLP with the Registrar of Companies (ROC) every year.

Comparison Between Existing Partnership & LLP

BASIS FOR COMPARISON	PARTNERSHIP	LIMITED LIABILITY PARTNERSHIP (LLP)
Meaning	Partnership refers to an arrangement wherein two or more person agree to carry on a business and share profits & losses mutually.	Limited Liability Partnership is a form of business operation which combines the features of a partnership and a body corporate.
Governed By	Indian Partnership Act, 1932	Limited Liability Partnership Act, 2008
Registration	Optional	Mandatory
Charter document	Partnership deed	LLP Agreement
Liability	Unlimited	Limited to capital contribution, except

BASIS FOR COMPARISON	PARTNERSHIP	LIMITED LIABILITY PARTNERSHIP (LLP)
		in case of fraud.
Contractual capacity	It cannot enter into contract in its name.	It can sue and be sued in its name.
Legal Status	Partners are collectively known as firm, so there is no separate legal entity.	It has a separate legal status.
Name of firm	Any name	Name containing LLP as suffix
Maximum partners	100 partners	No limit
Property	Cannot be held in the name of firm.	Can be held in the name of the LLP.
Perpetual Succession	No	Yes
Audit of accounts	Not mandatory	Mandatory, only if turnover and capital contribution overreaches 40 lakhs and 25 lakhs respectively.
Relationship	Partners are agents of firm and other partners as well.	Partners are agents of LLP only.

Difference between/among a Company, Partnership firm and an LLP:

Features	Company	Partnership firm	LLP
Registration	Compulsory registration with the ROC. Certificate of Incorporation is conclusive evidence.	Not compulsory. Unregistered Partnership Firm won't have the ability to sue.	Compulsory registration required with the ROC

Name	At the end of the name word "limited" of the name of a public company, and "private limited" with a private company.	No guidelines.	Name to end with "LLP" Limited Liability Partnership"
Capital contribution	Private company should have a minimum paid up capital of lakh and Rs. 5 lakhs for a public company	Not specified	Not specified
Legal entity	A separate legal entity	Not a separate legal entity	A separate legal entity
Liability	Limited to the extent of unpaid capital.	Unlimited, can extend to the personal assets of the partners	Limited to the extent of the contribution to the LLP.
No. ofshareholders / Partners	Minimum of 2. In a private company, maximum of 50 shareholders	2- 20 partners	Minimum of 2. No maximum.
Foreign Nationals as shareholder / Partner	Foreign nationals can be shareholders.	Foreign nationals cannot form partnership firm.	Foreign nationals can be partners.
Meetings	Quarterly Board of Directors meeting, annual shareholding meeting is mandatory	Not required	Not required.
Annual Return	Annual Accounts and Annual Return to be filed with ROC	No returns to be filed with the Registrar of Firms	Annual statement of accounts and solvency & Annual Return has to be filed with ROC
Audit	Compulsory, irrespective of share capital and turnover	Compulsory	Required, if the contribution is above ? 25 lakhs or if annual turnover is above ? 40 lakhs.
How do the bankers	High creditworthiness, due to stringent compliances	Creditworthiness depends on	Perception is higher compared to that of a

view	and disclosures required	goodwill and credit worthiness of the partners	partnership but lesser than a company.
Dissolution	Very procedural. Voluntary or by Order of National Company Law Tribunal	By agreement of the partners, insolvency or by Court Order	Less procedural compared to company. Voluntary or by Order of National Company Law Tribunal
Whistle blowing	No such provision	No such provision	Protection provided to employees and partners who provide useful information during the investigation process.

How an LLP is formed?

For forming an LLP, some of the important steps and matters are given below:

Partner:

There should be at least 2 persons (natural or artificial) to form an LLP. In case any Body Corporate is a partner, then he will be required to nominate any person (natural) as its nominee for the purpose of the LLP. Following entities and/or persons can become a partner in the LLP:

(a) Company incorporated in and outside India

(b) LLP incorporated in and outside India

(c) Individuals resident in and outside India.

Designated Partners:

Every limited liability partnership shall have at least two designated partners to do all acts under the law who are individuals and at least one of them shall be a resident in India. 'Designated Partner' 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.

In case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

LLP Name:

Ideally the name of the LLP should be such which represents the business or activity intended to be carried on by the LLP. LLP should not select similar name or prohibited words.

LLP Agreement:

For forming an LLP, there should be agreement between/among the partners. The said Agreement contains name of LLP, Name of Partners and Designated Partners, Form of Contribution, Profit Sharing Ratio, and Rights and Duties of Partners.

In case no agreement is entered into, the rights and duties as prescribed under Schedule I to the LLP Act shall be applicable. It is possible to amend the LLP Agreement but every change made in the said agreement must be intimated to the Registrar of Companies.

Registered Office:

The Registered office of the LLP is the place where all correspondence related with the LLP would take place, though the LLP can also prescribe any other for the same. A registered office is required for maintaining the statutory records and books of Account of LLP. At the time of incorporation, it is necessary to submit proof of ownership or right to use the office as its registered office with the Registrar of LLP.

Incorporation Document

According to section 11 (1) of the Limited Liability Partnership Act, 2008, for a limited liability partnership to be incorporated

1. Two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
2. The incorporation document shall be filed in such manner and with such fees, as may be prescribed with the registrar of the state in which the registered office of the limited liability partnership is to be situated; and
3. a statement in the prescribed form shall be filed along with the incorporation document, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the limited liability partnership and by anyone who subscribed his name to the incorporation document, that all the requirements of this Act.

The incorporation document shall be in form 2 as per rule 11

1. State the name of the LLP;
2. State the proposed business of the LLP;
3. State the address of the registered office of the LLP;

4. State the name and address of each of the persons who are to be partners of the LLP on incorporation;
5. State the name and address of the persons who are to be designated partners of the LLP on incorporation;
6. Contain such other information concerning the proposed LLP as may be prescribed.

Name of LLP- Sections 11- 21

According to section 15(1), every limited liability partnership shall have either the words “limited liability partnership” or “LLP” as the last words of its name. Section 15 (2) prohibits registration of a LLP with a name that is either undesirable in the opinion of the Central Government or that is identical with or that which too nearly resembles to the name of any existing partnership firm or a LLP or a body corporate or a trade mark registered or pending registration under the Trade Marks Act, 1999.

Rule 18 (1) of the LLP Rules, 2009 provides that the name of the limited liability partnership shall not be one prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950. Further, Rule 20 (1) provides that the limited liability partnership may change its name by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide such procedure, consent of all partners shall be required for changing the name of the limited liability partnership.

Partners of LLP

Every partner of an LLP is an agent of LLP for the purpose of the business of LLP but the partner is not an agent of other partner of LLP. LLP being a separate legal entity shall be liable to the full extent of its assets whereas the liability of the partners of LLP shall be limited to their agreed contribution in the LLP. LLP is not bound by the act of a partner in dealing with a person if

- The partner, in fact, has no authority to act for the LLP in doing a particular act; and
- The person knows that he has no authority or does not know or believe him to be a partner of the LLP.

Extent Of Liability Of LLP

The LLP is liable if a partner of the LLP is liable to any person for wrongful act or omission on his part in the course of business of LLP if the said act is within his authority. Obligation of LLP, whether arising in contract or otherwise, shall solely be the obligation of LLP. Liabilities of the

LLP shall be met out of properties of LLP. A partner is not personally liable for the obligations of LLP solely by reason of being a partner of LLP.

No partner is liable for the wrongful act or omission of any other partner of LLP, but the partner will be personally liable for his own wrongful act or omission. The liability of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP .

Whistle Blowing - Section 31

The phrase 'whistle blower' means a person who informs people in authority or the public that the company or firm they work for is doing something wrong or illegal. In the present context, it means that partners or employees of the LLP shall be enabled to report to the management about actual or suspected dishonesty, fraud or unethical practice. Consequently, the LLP Act has given adequate protection to the whistle blower. Section 31 provides that the court or Tribunal may reduce or waive penalty leviable against any partner or employee of an LLP in case such partner or employee has provided useful information during investigation of such LLP for finding out the offence. No such partner or employee shall be discharged, demoted, suspended, threaded, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information to the court or Tribunal. A whistle blower who helps in the conviction of the guilty will thus be protected.

Contribution by Partner - Sections 32- 33

A contribution of a partner may consist of

- Form of contribution.

> 32. (1) A contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.
>
> (2) The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.

- Obligation to contribute.

33. (1) The obligation of a partner to contribute money or other property or other benefit or to perform services for a limited liability partnership shall be as per the limited liability partnership agreement.

(2) A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.

Accounts & Audit

An LLP shall be under obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A "Statement of Accounts and Solvency" in prescribed form shall be filed by every LLP with the Registrar every year.

The accounts of every LLP shall be audited in accordance with Rule 24 of LLP, Rules 2009.

Such rules, inter-alia, provides that any LLP, whose turnover does not exceed, in any financial year, forty lakh rupees, or whose contribution does not exceed twenty five lakh rupees, is not required to get its accounts audited. However, if the partners of such limited liability partnership decide to get the accounts of such LLP audited, the accounts shall be audited only in accordance with such rule.

Every LLP would be required to file annual return in Form 11 with ROC within 60days of closer of financial year. The annual return will be available for public inspection on payment of prescribed fees to Registrar.

Taxation of LLP

Since the taxation related matters in India are provided under Tax Laws, the taxation of LLPs has not been provided in the LLP Act. The Finance Bill, 2009 has made provisions in this regard, pursuant to which the taxation scheme of LLPs has been proposed to be introduced in the Income Tax Act. The Finance Bill, 2009 has proposed following regarding taxation of LLPs:-

(a) LLPs to be taxed on the lines similar to general partnerships under Indian Partnership Act, 1932, i.e. taxation in the hands of the entity and exemption from tax in the hands of its partners.

(b) changes to be made in the Income-tax Act, 1961 like (i) the word 'partner' to include within its meaning a partner of a limited liability partnership, (ii) the word 'firm' to include within its meaning a limited liability partnership and (iii) the word 'partnership' to include within its meaning a limited liability partnership.

(c) The designated partner shall sign the income tax return of an LLP, or, where, for any unavoidable reason such designated partner is not able to sign the return or where there is no designated partner as such, any partner shall sign the return.

(d) In case of liquidation of an LLP, every partner will be jointly and severally liable for payment of tax.

(e) As an LLP and a general partnership is being treated as equivalent (except for recovery purposes) in the Income-tax Act, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion.

(f) If there is a violation of these conditions, the provisions of section 45 of Income-tax Act shall apply.

LLP Form 11 Annual Return

Limited Liability Partnership (LLP) registered in India under the LLP Act, 2008 must mandatorily file LLP Form 11 Annual Return each year. Filing of LLP Form 11 is a mandatory annual compliance for all LLPs. In this article, we look at how to file LLP Form 11 annual return.

LLP Form 11 – Annual Return

LLP Form 11 is Annual Return of Limited Liability Partnership (LLP). The return must be e-filed each year with the Ministry of Corporate Affairs to maintain compliance and avoid penalty. LLP annual return must be filed electronically and taken on record. It is important to ensure that all the information filed in the Form is correct as there is no provision for resubmission of LLP Form 11 Annual Return.

Filing of LLP Form 11 will not be allowed in case there is any eForm 4 (Notice of appointment, cessation and change in designation of a designated partner or partner) pending for payment of fee or any eForm 4 is under processing with the MCA. Therefore, it is important to file any eForm 4 well ahead of the time of due date for LLP Annual Return.

LLP Form 11 Due Date

LLP Form 11 is due within 60 days of financial year end. Since, all LLPs have 31st March as the closure of financial year, LLP Annual Return Form 11 is due on the 31st of May of each year.

LLP Form 11 Late Filing Penalty

If LLP Form 11 Annual Return is not filed on or before the due date of 31st May, then a penalty of Rs.100 per day until the non-compliance continues will be applicable. As there is no cap on the penalty, the amount would increase over time. Hence, it is important to file the on time to avoid heavy penalty.

Information & Document Required to File LLP Form 11

The following information and documents are required for filing LLP Annual Return:

1. LLP Identification Number
2. Name of the LLP
3. Registered office address of the LLP
4. Business Classification of the LLP (Business, Profession, Service, Occupation, Others)
5. Principal business activities of the LLP
6. Details of Designated Partners and Partners of the LLP
7. Total obligation of contribution of partners of the LLP
8. Total contribution received by all partners of the LLP
9. Summary of Designated Partners and Partners
10. Particulars of penalties imposed on the LLP, if any
11. Particulars of compounding offenses, if any
12. Details of LLP and or company in which Partner/Designated Partner are a Director/Partner (It is mandatory to attach this detail in case any Partner/Designated Partner is a partner in any LLP and/or Director in any company)

It is important to note that once the LLP Annual Return is filed, it cannot be resubmitted. Further, the total contribution received by all Partners of the LLP mentioned in LLP Form 11 Annual Return must match LLP Form 8 Statement of Accounts & Solvency to be filed on or before 30th October. Therefore, it is important to get professional help while preparing and filing LLP Annual Return.

Signing of LLP Form 11

The LLP Form 11 must be digital signed with the digital signature of one of the Designated Partners of the LLP. In case total obligation of contribution of partners of the LLP exceeds Rs. 50 lakhs or turnover of LLP exceeds Rs. 5 crores, then LLP Form 11 needs to be certified by a Company Secretary in whole time practice.

Conversion of Partnership firm of Private Company or Unlisted Public Company Into LLP

Sections 55- 58

The following forms of businesses can be converted into LLP by complying with the provision of conversion under LLP Act.

- a partnership firm into LLP.
- a private limited company into LLP.
- an unlisted public company into LLP.

The second, third and fourth schedules in the LLP Act contain provisions relating to conversion of a partnership firm into LLP, a private limited company into LLP and unlisted company into LLP respectively.

Eligibility for conversion

Firm into LLP: A firm can be converted into LLP if all the partners of the firm become partner of the LLP and no one else.

Company into LLP: Private limited company and unlisted public company can be converted if and only if:

- there is no security interest in its assets subsisting or in force at the tie of application for conversion; and
- All shareholders of the company become partners of LLP and no one else.

Procedures and effect of conversion

For conversion of firm or private limited company or unlisted public company into LLP, the partners of the firm or shareholders of the company are required to file a statements and incorporation documents in the prescribed form with the ROC.

On receiving the documents for the conversion, the ROC shall register the documents and issue a certificate of registration specifying the date of registration as LLP . Upon registration by ROC, the LLP shall intimate Registrar of Firm or Registrar of Companies, as the case may be, about conversion within 15 days of registration.

On and from the date specified in the certificate of registration issued by ROC:

- All property (tangible, intangible, moveable and immoveable property), liabilities, interest, obligations etc, relating to the firm or private limited company or unlisted public company and the whole of the undertaking of the firm or the private limited company or unlisted public company, shall be transferred to and shall best in the LLP without furthers assurance act deed.
- The firm or private limited company or unlisted public company shall be deemed to be dissolve and removed from the records of the registrar of firm or registrar companies as the case may be.
- If any property or rights etc. of the partnership firm and private limited companies or unlisted public company is registered with any authority, the LLP shall take steps to notify the authority or the conversion. Upon conversion, following things/ events in favour of or against the firm or private limited company or unlisted public company on the date of registration may be continued, completed and in force by or against the LLP.
- All proceedings, conviction, ruling, order or judgment of any court, tribunal or other authority pending in any court or tribunal or before any authority on date of registration.
- Every agreement irrespective of whether or not the rights and reliabilities there under could be assigned.

Conversion of Partnership Firm into Limited Liability Partnership

- The Partnership Firm should be registered under the Indian partnership Act 1932.
- All the partners of existing firm should become the partners of LLP
- Minimum 2 partners as Designated Partners and one of them should be Resident in India
- Digital Signature Certificate for one of the Designated Partners
- LLP (Limited Liability Partnership) Name
- LLP (Limited Liability Partnership) Agreement
- Registered Office for the existing partnership firm

Procedure of Conversion with Company Law Compliances:

- Approved DPIN (Designated Partner Identification Number) is a pre requisite for incorporation process. However if the partner is already holding a DIN, the same can be used for the purpose of DPIN;
- Application for name approval is to be made by filling Form 1. Consent of each of the partners of the firm for conversion of the firm into LLP shall be attached to Form;
- File e form 2 (Incorporation documents, statement of partners, registered office etc.);
- File e form 4 and form 9, wherein consent of each partner to become a partner of Liability Partnership and appointment of designated partner is to be provided;
- File application for conversion in Form 17 together with the statement of partners and required documents;
- File E â€" Form 3 (LLP Agreement) â€" this can be filed within thirty days from the date of registration;
- After verification, registrar will register all documents and issue Certificate of registration;

Upon registration of LLP, an intimation to be filed to the Registrar of Firms stating the fact that the firm is converted into LLP. **Taxmantra.com will assist you in all Business Incorporation and Business Maintenance issues including maintenance of books by specified and non specified professionals and other individuals, audit requirements, ROC Compliances and others.**

Conversion of Company in LLP

Limited Liability Partnership (LLP) was introduced in India through the LLP Act, 2008 to help entrepreneurs enjoy benefits similar to that of a Private Limited Company while being easy to maintain. Many LLPs have since been incorporated and LLP as a business entity has been well adopted by the Indian business community. In this article we look at the process and procedure for conversion of a company into a LLP:

Procedure for Conversion of Company into LLP

Prior to starting the process for conversion, Digital Signature Certificate (DSC) and Director Identification Number (DIN) must be obtained for all the shareholder of the Company. In a Private Limited Company, usually those appointed as Directors have DIN; shareholders are not required to have DIN. So once DIN is obtained for all the shareholders, to convert a company into LLP, Form 18 for conversion of company into LLP must be filed with the Registrar along with the prescribed documents. Some of the document or information required during the incorporation process could include

- Consent of each of the shareholder for conversion of company into LLP
- Incorporation Documents
- No objection certificate from tax authorities
- Financial statements of the company
- List of creditors and their consent for conversion of company into LLP

If the Registrar is satisfied with the application, the Registrar shall issue a certificate of incorporation of LLP. On conversion of the company into LLP, the private limited company is deemed to be dissolved. All the properties, assets, liabilities, interests, rights and privileges of the Private Limited Company is considered to be transferred to the LLP.

Conversion of Private Limited / Unlisted Public Company into LLP
1. One of the most important reasons for the conversion of a Company into a Limited Liability Partnership is derived from the Income Tax Act. The Income Tax Act, 1961 provides for Minimum Alternate Tax and payment of Dividend Distribution Tax by the Company, but a Limited Liability Partnership (i.e. LLP) would not liable to pay Dividend Distribution Tax.2. There is no limit on number of partners in the LLP.

3. Minimal compliance with the ROC (i.e. Registrar of Company) and lower cost.

4. **No Stamp Duty:** There is no stamp duty on all movable and immovable properties of the company; on conversion of a private limited company into LLP as such properties automatically vest in the LLP. No instrument required to be executed and hence no stamp duty is required to be paid.

5. **No Capital Gain Tax:** No Capital gain tax shall be charged on transfer of property from the company to LLP, if the conditions stipulated in the Section 47(xiiib) of the Income Tax Act 1961, are fulfilled.

6. Carry forward and set off losses and unabsorbed depreciation of the company is deemed to be loss/depreciation of successor LLP the previous year in which conversion was effected, thus such loss can be carried for further 8 years in the hands of the successor LLP.

How to Convert a Private Limited Company/Unlisted Public Company in Limited Liability Partnership. These are following process mentioned below:

1. **Obtain DPIN (Designated Partner Identification Number):** Apply for DPIN with in e-form DIR-3 with ROC.2. **Call for Board Meeting:** Pass Special Resolution for the conversion of the company into LLP.

3. Application for Name Applicability with e-form1 with ROC.

4. Incorporation documents & Subscriber's Statement e-form-2 with ROC.

5. Application and Statement for conversion of a Private Limited Company/Unlisted Public Company into LLP e-form-18 with ROC:

- Statement of Shareholder
- Incorporation documents & Subscriber's Statement e-form-2
- Statement of Assets and Liabilities of the company duly certified as true and fair by the Statutory Auditor.
- List of the entire secured creditors along with their consent to the conversion.
- NOC from income tax authorities and copy of latest acknowledgement of income tax return.

After all formalities and filings would be compiled with by the applicants, the ROC will issue a certificate of incorporation as conclusive evidence.

6. **File LLP Agreement:**
After incorporation of LLP on initial LLP Agreement is to be filed within 30 days of incorporation of LLP. The user has to file the information in form-3 (information with regard to LLP Agreement and changes if and made therein.)

How to Close a LLP – Winding Up of LLP

LLP or Limited Liability Partnership is a new form of business entity introduced in India through the LLP Act, 2008. LLP enjoys audit exemption, if the annual turnover of the LLP is less than Rs.40 lakhs and/or the capital contribution is less than Rs.25 lakhs. This feature has made LLP popular amongst many entrepreneurs. However, due to a number of reasons, it may be necessary to close a LLP or windup a LLP. In this article, we cover the procedure for voluntary wingding up of LLP in India.

LLP Winding up Overview

A LLP winding up can be initiated voluntarily or by a Tribunal. If a LLP is to initiate winding up voluntarily, then the LLP must pass a resolution to wind up the LLP with approval of at least three-fourths of the total number of Partners. If the LLP has lenders, secured or unsecured, then the approval of the lenders would also be required for winding up of the LLP.

Winding up of LLP by Tribunal

Winding up of LLP can be initiated by a Tribunal for the following reasons:

1. The LLP wants to be wound up.
2. There are less than two Partners in the LLP for a period of more than 6 months.
3. The LLP is not in a position to pay its debts.
4. The LLP has acted against the interests of the sovereignty and integrity of India, the security of State or public order.
5. The LLP has not filed with the Registrar Statement of Accounts and Solvency or LLP Annual Returns for any five consecutive financial years.
6. The Tribunal is of the opinion that it is just and equitable that the LLP should be wound up.

LLP Winding Up Procedure

To begin the process for winding up of LLP, a resolution for winding up of LLP must be passed and filed with the Registrar within 30 days of passing of the resolution. On the date of passing of resolution of winding up of LLP, the voluntary winding up shall be deemed to commence.

Once, the resolution for winding up of LLP is filed with the Registrar, the majority of Partners (not less than two) shall make a declaration verified by an Affidavit to the effect that the LLP has no debt or that it will be in a position to pay its debts in full within a period, as mentioned in the declaration, but not exceeding one year from the date of commencement of winding up of LLP. Along with the Affidavit signed by the majority Partners, the following documents must be filed with the Registrar within 15 days of passing of the resolution for winding up of LLP:

- Statement of assets and liabilities for the period from last accounts closure to date of winding up of LLP attested by atleast two Partners

- Report of valuation of the assets of the LLP prepared by a valuer, if there are any assets in the LLP.

Winding up of LLP with Creditors

If a LLP under winding up has any secured or unsecured creditors, then before taking any action for winding up of LLP, the approval for winding up of LLP must be requested from the creditors. Creditors are required to provide their opinion on winding up of LLP within 30 days of receipt of request for approval for winding up. If it is in the interest of all partners and all creditors that the LLP be wound up, then the LLP can proceed with voluntary winding up procedure.

Appointment of LLP Liquidator

A LLP Liquidator must be appointed within thirty days of passing of resolution of voluntary winding up through a resolution. In case there are any creditors, then the appointment of LLP Liquidator shall be valid only if it is approved by two thirds of the creditors in value of the LLP.

It is then the duty of the LLP Liquidator to perform the functions and duties for winding up of LLP. The LLP Liquidator would settle the creditors and adjust the rights of the partners, as the case may be. While discharging his duties, the LLP Liquidator is required to maintain proper books of accounts pertaining to the winding up of the LLP.

Filing of Winding Up Report by LLP Liquidator

Once, the affairs of the LLP is fully wound up, the LLP Liquidator would prepare a report stating the manner in which the winding up of LLP has been conducted and property of the LLP has been disposed off. If two thirds of the number of Partners and Creditors in value are satisfied with the winding up report prepared by the LLP Liquidator, then a resolution for winding up of accounts and explanation for dissolution must be passed by the Partners.

The LLP Liquidator must then send the LLP winding up report along with the resolution to the Registrar and file an application with the Tribunal.

Dissolution of the LLP

If the Tribunal is satisfied that procedures have been followed in winding up of the LLP, then the Tribunal would pass an order that the LLP shall stand dissolved. The LLP Liquidator is required to file the copy of the order from the Tribunal with the Registrar for winding up of LLP. The Registrar on receiving the copy of the order passed by the Tribunal for winding up of LLP would publish a notice in the Official Gazette that the LLP stands dissolved.

For more information about Private Limited Company Registration, LLP Registration or LLP Winding Up, visit IndiaFilings.com or talk to an IndiaFilings Business Advisor.

Winding Up Of LLP, compulsory winding up, commencement of winding up by tribunal, voluntary winding up of a LLP.

Winding up of Limited Liability Partnership:

Limited Liability Partnership or LLP is a new form of business entity introduced in India through with the passing of the Limited Liability Partnership Act 2008. As a company, an LLP enjoys the feature of Limited Liability and is also a Body Corporate. However, there may be a number of reasons which may lead to *"Winding up of an LLP"*.

"Winding up of an LLP" means to bring to an end the affairs and the operations of an LLP. In this process, a Liquidator is appointed who takes charge of the LLP, that is, its assets and debts. Completion of the process of winding up entails removal of the name of the LLP from the records of the Register of LLP.

Section 63 of the Limited Liability Partnership Act prescribes 2 modes for winding up of LLP

1. Winding up by the Tribunal.
2. Voluntary Winding up.

Section 64 of the Limited Liability Partnership Act mentions the circumstances wherein an LLP may be wound up by the Tribunal:

1. if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
2. if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;

- if the limited liability partnership is unable to pay its debts;

1. if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
2. if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
3. if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

Voluntary Winding Up of LLP

The process of Voluntary Winding up of LLP commences with the passing of a resolution to initiate the winding up of the LLP having the approval of at least three-fourths of the total number of Partners. If the LLP has creditors – both secured and unsecured, then the approval of the creditors is mandatory for winding up of the LLP.

Comparison – Which is Easier

The circumstances responsible for winding up of Limited Liability Partnership and Company are remarkably similar.

As distinguished from a Public Limited Company, typically the process is almost the same when it comes to winding up a Private Limited Company and Limited Liability Partnership. In both of the aforementioned cases:

1. **Voluntary Winding up** – In the case of Private Limited Company, the winding up of a Company would require resolution to be passed by the Shareholders and in the case of LLP, the approval of at least three-fourths of the total number of Partners would be a requirement as per the agreement between the partners.
2. **Winding up by the Tribunal** – In the case of Private Limited Company as well as LLP, the Tribunal could pass an order for winding up of the Private Limited Company or the LLP as the case may be.

The procedure for winding up in case of Public Limited Companies is rather **complex and time-consuming**, since apart from the resolution to be passed by the Shareholders in accordance with the Articles of Association in the case of Voluntary Winding up or Winding up of a Public Limited Company by a Tribunal:

1. Regulatory approvals such as approvals from Stock Exchange, SEBI, RBI and Registrar of Companies would be required to wind up the Public Limited Company.
2. Approval from the Ministry of Corporate Affairs – Government of India in addition to the above approvals.

As distinguished from the above, the Limited Liability Partnership performs all the business functions on the basis of a Partnership deed which is an agreement between the partners. The Deed contains the specifications regarding the procedure to be followed on winding up of the LLP.

Hence, it can be safely concluded that the Winding up of a Limited Liability Partnership is easier and less time consuming than a Public Limited Company.

• Explain the whistle blowing •. Is the partner's interest in the LLP transferable? • Can foreigners incorporate LLP?

§ Deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements. § Every contract of employment. § Appointment in any role or capacity. § Any approval, permit or license issued under any other Act. etc.

In case of firm, every partner of a firm which is converted into an LLP shall continue to be personally liable (jointly and severally with the LLP), for the liabilities and obligation of the firm incurred prior to the conversion or which arose from any contract entered into prior to the conversion. In case any such partner discharges any such liability or obligation he shall be entitled (subject to any agreement with the LLP through the contrary) to the fully indemnified by the LLP in respective of such liability or obligation.

For a period of 12 months commencing on or before 14 days from the date of registration, the LLP shall insured that every official correspondence of the LLP bears the following: § A statement that it was, as from the date of registration. converted from a firm or private limited company or unlisted public company into a LLP; and § the name and registration number. If applicable, of the firm or private limited company or unlisted public company from which it was converted.

18.21 **Steps for Conversion of Partnership into LLP**

To convert an existing partnership in to LLP, the following steps should be taken:

18.21.1 Step I- Deciding the partners and designated partners

A Partnership which desires to convert its status to LLP Form shall foremost decide the designated Partners of the proposed LLP, as only the partners of the partnership firm can be the Partners of the converted LLP and no one else and of these partners of the partnership Firm at least two Partners would be the Designated Partners.

Parameters for deciding the Partners and Designated Partners:

1. At least Two Partners; Individuals or Body Corporate through individual nominees.

2. Minimum of Two Individuals as Designated Partners, of total no. of Partners.

3. At least One Designated Partner to be Resident Indian.

A person 'Resident in India' means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one year. (Explanation to Section-7) 'Designated Partner' means a partner who is designated as such in the incorporation documents or who become a designated partner by and in accordance with the Limited Liability Partnership Agreement.

UNIT- IV

THE NEGOTIABLE INSTRUMENTS ACT,1881 (Part I)

Negotiable Instruments

Meaning

A Negotiable Instrument is that document that includes a 'promise to pay' a certain amount of money to the bearer of the document. It is a mode of transferring a debt from one person to another. Negotiable Instruments are always in written form.

Examples of Negotiable instruments are a cheque, a promissory note, a bill of exchange.

The best thing about Negotiable instruments is that they are easily transferrable, negotiable and a good and easy substitute for money.

Negotiable instruments are widely used for trade/business.

Types of Negotiable Instruments

- **PROMISSORY NOTE-** A promissory note is that written document by way of which a written promise to pay a certain amount of money taken/levied from the payee is made.

The person who makes the promissory note and who lends the money from another is known as the 'Maker' and the person from whom such amount is lended/levied is known as the 'Payee'.
A promissory note should always be made with that person who has the ability to repay the money. A promissory note requires two parties to come into existence.

A promissory note must always be signed by the Maker, should always be in writing, it must contain an undertaking to pay and should also bear a sufficient stamp as required under the Indian Stamp Act.

- **BILL OF EXCHANGE-**

Section 5 of the Act provides that a bill of exchange is that instrument which is in writing consisting of an unconditional order, which is signed by the maker in order to pay a certain amount of money to a certain person at a predetermined future date.
A bill of exchange is made between three parties namely the- drawer, drawee and payee.

A person who makes the bill of exchange is known as the drawer. A person on whom the bill is drawn is called a drawee and to whom the amount mentioned in the bill of exchange is payble is known as payee.

3.**CHEQUE-**

A cheque in general is that document that orders a payment of money from a bank account. But as per Section-6 of the Negotiable Instruments Act provides that- A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and the cheque in the electronic form.

A cheque is always payable by the banker only on demand and must fullfill all the requirements of a bill of exchange and can be drawn for a certain sum of money.

The person who writes the check is known as the ‘drawer’. The drawer writes the date on the cheque, writes the amount of money payable, signs it ordering his bank which is known as the ‘drawee’ to pay the amount of money stated in the cheque to such person, in the favour of whom the cheque has been signed.

A cheque is always drawn on the funds of the drawer and it does not requires any stamping.

BASIS FOR COMPARISON	BILL OF EXCHANGE	PROMISSORY NOTE
Meaning	Bill of Exchange is an instrument in writing showing the indebtedness of a buyer towards the seller of goods.	A promissory note is a written promise made by the debtor to pay a certain sum of money to the creditor at a future specified date.
Defined in	Section 5 of Negotiable Instrument Act, 1881.	Section 4 of Negotiable Instrument Act, 1881.
Parties	Three parties, i.e. drawer, drawee and payee.	Two parties, i.e. drawer and payee.
Drawn by	Creditor	Debtor
Liability of Maker	Secondary and conditional	Secondary and conditional
Can maker and payee be the same person?	Yes	No
Copies	Bill can be drawn in copies.	Promissory Note cannot be drawn in copies.
Dishonor	Notice is necessary to be given to all the parties involved.	Notice is not necessary to be given to the maker.

DIFFERENTITATIONS

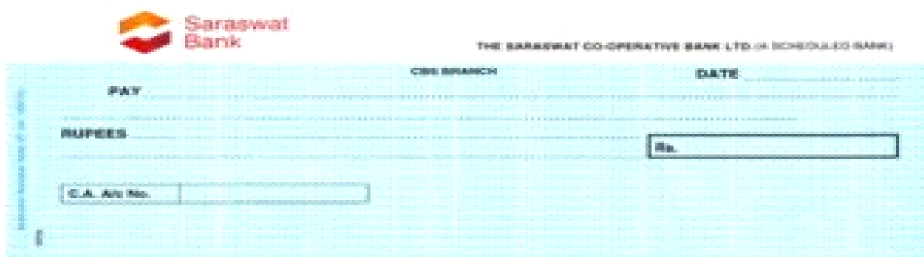
I.

Promissory Note	Bill of Exchange
1. It contains an unconditional promise.	1. It contains an unconditional order.
2. There are two parties – · the maker and · the payee.	2. There are three parties – · the drawer, · the drawee and · the payee.
3. It is made by the debtor.	3. It is made by the creditor.
4. Acceptance is not required	4. Acceptance by the drawee is a must
5. The liability of drawer is primary and absolute as well.	5. The liability of the maker/drawer is secondary. Also, it is conditional upon non-payment by the drawee.

II.

Cheque	Bill of Exchange
1. It is drawn on a banker.	1. It can be drawn on anybody including a banker.
2. The amount is always payable on demand only.	2. The amount is payable on demand or even after a specified period.
3. It can be crossed to end its negotiability.	3. It cannot be crossed.

4. Acceptance is not required.	4. Acceptance is a must.



SPECIMEN OF BILL OF EXCHANGE

Rs 5,000

Hyderabad - 500002
January - 29 - 2017

Six months after date pay to Ms. Pooja or order/ bearer the sum of Five Thousand rupees only for the value recieved.

To Ms. Pooja
Address...............

(Signed)
Mr. Poorna.
Stamp

CHEQUE	BILL OF EXCHANGE
The Cheque is the document which contains an order to the bank to pay a certain amount of money from the account of the customer.	The Bill of Exchange is the document which contains an order to drawee to pay a certain amount to the payee on demand or after certain time period.
Defined In	
The cheque is defined in section 6 of the Negotiable Instruments Act, 1881.	Bill of Exchange is defined in Section 5 of the Negotiable Instruments Act, 1881.
Obligation to Pay	
The amount which is mentioned in the cheque is always payable on demand.	The amount which is mentioned in the bill of exchange may be payable on demand or after a certain time period.
Days of Grace	
The cheque is not allowed to have any days of grace after the cheque is presented for payment to the bank.	The Bill of Exchange is allowed to have three days of grace period for payment.
Acceptance	
The Cheque does not need any acceptance from the parties before it is presented for payment.	The Bill of Exchange needs acceptance from the drawee to pay the amount.
Crossing Of document	
The cheques can be crossed to ensure the safety against theft or loss of cheques.	There is no such feature as the crossing of Bill of Exchange.
Dishonour	
Notice of dishonor is not necessary in the case of dishonor.	Notice of dishonor is necessary in the case of dishonor.
Liability	
The parties remain liable to pay even notice of dishonor is not given.	The parties who does not receive a notice of dishonor can escape the liability to pay.

Validity	
The cheque is only valid for three months from the date it is issued.	There is no such thing as validity in the case of a bill of exchange.
Stamp	
The cheque is not required to duly stamped by the authority.	The Bill of Exchange must be duly stamped as per Indian Stamp Act.

What is Crossing of Cheque ?

A cheque is a negotiable instrument. During the process of circulation, a cheque may be lost, stolen or the signature of payee may be done by some other person for endorsing it. Under these circumstances the cheque may go into wrong hands.

Crossing is a popular device for protecting the drawer and payee of a cheque. Both bearer and order cheques can be crossed. Crossing prevents fraud and wrong payments. Crossing of a cheque means "Drawing Two Parallel Lines" across the face of the cheque. Thus, crossing is necessary in order to have safety. Crossed cheques must be presented through the bank only because they are not paid at the counter.

Bouncing or Dishonor cheque

Bouncing of cheques is a serious offence under section 138 to 142 of the amended Banking, Public Financial Institutions and Negotiable Instruments Laws Act, 1988. This amendment was brought about to make the drawer of the cheque consider that a promise to pay a cheque is serious business. If the amount on it is not paid by the banker due to insufficiency of funds in the drawer's account, he would be penalized. This offence is punishable with imprisonment of one year and/or a fine or both extending to more than one year and up to a maximum two years with a fine of twice the amount of the cheque. Therefore when a person draws a cheque, he should keep sufficient amounts for clearing the cheque to avoid being penalized.

Definition of Holder

As per Negotiable Instrument Act, 1881, a holder is a party who is entitled in his own name and has legally obtained the possession of the negotiable instrument, i.e. bill, note or cheque, from a party.

Definition of Holder in Due Course (HDC)

Holder in Due Course is defined as a holder who acquires the negotiable instrument in good faith for consideration before it becomes due for payment and without any idea of a defective title of the party who transfers the instrument to him. Therefore, a holder in due course.

When the instrument is payable to bearer, HDC refers to any person who becomes its possessor for value, before the amount becomes overdue. On the other hand, when the instrument is payable to order, HDC may mean any person who became endorsee or payee of the negotiable instrument, before it matures. Further, in both the cases, the holder in both the cases he must acquire the instrument, without any notice to believe that there is a defect in the title of the person who negotiated it.

Difference Between Holder and Holder in Due Course (HDC)

COMPARISON HOLDER AND HOLDER IN DUE COURSE (HDC)

	Holder	**Holder in Due Course (HDC)**
Meaning	A holder is a person who legally obtains the negotiable instrument, with his name entitled on it, to receive the payment from the parties liable.	A holder in due course (HDC) is a person who acquires the negotiable instrument bonafide for some consideration, whose payment is still due.
Consideration	Not necessary	Necessary
Right to sue	A holder cannot sue all prior parties.	A holder in due course can sue

		all prior parties.
Good faith	The instrument may or may not be obtained in good faith.	The instrument must be obtained in good faith.
Privileges	Comparatively less	More
Maturity	A person can become holder, before or after the maturity of the negotiable instrument.	A person can become holder in due course, only before the maturity of negotiable instrument.

Negotiation and Assignment

Definition of Negotiation

Negotiation can be described as the process in which the transfer of negotiable instrument, is made to any person, in order to make that person, the holder of the negotiable instrument. Therefore the negotiable instrument aims at transferring the title of the instrument to the transferee.

Definition of Assignment

By the term assignment we mean, the transfer of contractual rights, ownership of property or interest, by a person, in order to realise the debt.

An assignment is a written transfer of rights or property, in which the assignor transfers the instrument to assignee with the aim of conferring the right on the assignee, by signing an agreement called assignment deed. Thus, the assignee is entitled to receive the amount due on the negotiable instrument, from the liable parties.

Difference between Negotiation and Assignment

	Negotiation	**Assignment**
Meaning	Negotiation refers to the transfer of the negotiable instrument, by a person to another to make that person the holder of it.	Assignment implies the transfer of rights, by a person to another, for the purpose of receiving the debt payment.
Governing Act	Negotiable Instrument Act, 1881	Transfer of Property Act, 1882
Effected by	Mere delivery in case of bearer instrument and, endorsement and delivery in case of order instrument.	A written document duly signed by the transferor.
Consideration	It is presumed	It is proved
Title	Transferee gets the right of holder in due course.	Assignee's title is subject to the title of Assignor.
Transfer notice	Not required	Must be served by assignee on his debtor.
Right to sue	The transferee has the right to sue the third party, in his/her own name.	The assignee has no right to sue the third party in his/her own name.

Endorsement

Definition of Endorsement

According to Section 15 of the Negotiable Instrument Act, “Endorsement is the signing by the holder of his /her name on a negotiable instrument for the purpose of its negotiation to another person.” The holder signs on the back of the instrument, or may choose to sign on the face of the instrument, or signs on a slip of paper which is then attached to the negotiable instrument.
There are two parties to an endorsement:
1 Endorser
2 Endorsee
The Endorser is the person who signs the instrument and the endorsee is the person to whom the instrument is transferred. The endorsement is complete only after the instrument is delivered to the endorsee.

Material Alteration

The term ‘material alteration‘ indicates alteration or change in the material parts of the instrument. It may be defined as any change, which alters the very nature of the instrument. Thus, it is the alteration, which changes and destroys the legal identity of the original instrument and causes it to speak a different language in legal effect from that which it originally spoke.
A material alteration makes the instrument void, i.e., inoperative and affects the rights and obligations of the parties to the instrument.

Example of Material Alteration

A drew a cheque of Rs 500 in favour of B, who altered the figure 500 into 5,000 without taking the consent of the maker. The instrument appeared to be drawn for Rs 5,000 on the face of it. The drawee banker paid Rs 5,000 to B on the presentment of cheque for payment. The banker did so according to the apparent tenor of the instrument and in good faith. In this case, since the banker acted bona fide and without negligence, it is entitled to debit A with Rs 5,000.

The following are considered as material alteration.

1. Alteration of the date of the instrument
2. Alteration of the amount payable
3. Alteration in time of payment
4. Alteration of the place of payment
5. Alteration of rate of interest or any change of party thereto, if any
6. Tearing of the material part of the instrument

The Negotiable Instruments Act 1881 (Part II)

Negotiable instruments, it is seen have a great significance over the modern business world. It has to be noted that these instruments have gained significant prominence as the principle instruments for paying and discharging business obligation.
This Negotiable Instruments Act, does not in specific define what a negotiable instrument is, it merely states that a negotiable instrument means “a promissory note, bill of exchange or cheque payable either to the bearer." [1]

Liabilities Of Partie

Liability of the Parties

- **Maker and Acceptor:** The maker of the promissory note and the acceptor of a bill of exchange are primarily responsible for the payment due. ---------**Sec 32**
- **Drawer:** The drawer of a bill of exchange or cheque , case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by the drawer.**----------Sec.30**
- **Drawee of a Cheque:** The drawee of a cheque having sufficient funds of the drawer, in his hands, properly applicable to the payment of such cheque must pay the cheque when duly rquired to do so, and, in default of such payment, must compensate the drawer for any loss or damaged caused by such default.**----- Sec. 31**
- **Indorser:** He is liable to all subsequent parties in case of dishonour of the instrument provided due notice of dishonour has been given to him.**-----------Sec. 35 contd……………**