UNIT 1
Introduction to Business Law

*** What is Business Law?**

Meaning of Business law:

Business law, also called Commercial or Mercantile law, is the branch legal system, which regulates business activities. It is that branch of law, which governs and regulates the trade & commerce. It is that portion of law which deals with the rights and obligations arising out of mercantile transaction between mercantile persons.

Definition:

1. "Business Law is that portion of the legal system which guarantees an orderly conduct of business affairs and the settlement of legitimate disputes in a just manner."
2. "Business Law establishes a set of rules and prescribes conduct that enables us to avoid misunderstandings and injury in our business relationships."

Scope of Business Law:

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

Scope of business law is indeed vast. It usually deals with the topics of

a) Licenses – monopolies – contracts
b) Issue of securities – large houses
c) Property – agency – negotiable instruments
d) Foreign exchange regulations – partnership
e) Companies – insurance- sales- bailment
f) Guarantees- labor- surety ship
g) Bankruptcy/ insolvency- Business crimes
h) Raising loans from financial institutions
i) Obtaining electricity- custom clearance
j) Import of capital goods
k) Monopolies and restrictive trade practices
l) Environmental protection
m) Consumer protection.

Scope of Business Law The following legislation enacted by Indian Legislature from time to time is covered in the Indian Business Laws:

a) The Indian Contract Act, 1872.
b) The Negotiable Instruments Act, 1881.
c) The Sale of Goods Act, 1930.
d) The Indian Partnership Act, 1932.
e) The Insurance Act, 1972. f) The Arbitration & Conciliation Act, 1996.
g) The Law of Insolvency.
h) Law Relating to Carriage of Goods.

Sources of Indian Business Law

The business law in India is mainly based upon the English Mercantile law. However necessary modifications have been made to provide for the local wages and trade.

It is important to note that in the absence of any specific law or custom or usage on a particular point, the rules of the English common law are still applied by the courts in India

The important sources of business law may be discussed under the following heads:

1. English Mercantile Law:-

The English Mercantile Law is the important source of the Indian mercantile law. For instance, India's Sale of Goods Act, Companies Act have been directly adopted from the English Law.

So, in order to trace the origin of legal principles governing commercial transactions in India, it is necessary to know the sources of English Law.

These sources are:

a. English Common Law: The Term 'common law' is used to denote the case law based upon English customs , usages or traditions, which were developed over centuries by the English courts. A particular Act, usage practiced by a group of people for a longer period, which is 'unwritten' law becomes a custom.
b. Principles of Equity (Natural Justice): Law based on the principles of equity, justice and good conscience, which is also an 'unwritten law'. For the relief which the common law courts couldn't give, the people had to petition to the chancellor and then to organized courts known as 'Courts of Equity'. And relief was granted by these courts on the principles of justice, equity and good conscience. It may be noted that the law based on equity was flexible as compared to commonlaw.
c. Law Merchant/ LexMercatoria : The Laws which were based on customs and usages prevalent among merchants and traders is known as LexMercatoria. The law of merchant was developed in order to obtain quick relief and to protect them against lawlessness among traders and merchants. The Traders established their own tribunals consisting mainly of the merchants themselves. The rules pronounced by these tribunals became the law, popul;arly known as LexMercatoria.
d. British Statute Law/ Acts of British legistlature : It is the source of law which is lacunae in Acts passed by the legistlature/Parliament . It is the writtenlaw , most efficient and usual source of law.

2. Precedents/ Past judicial decisions/Caselaw :-

The past judicial decisions of courts are generally followed by the courts in deciding similar cases before them. In India, the Supreme Court is the highest court, and its decisions have binding force on all its courts sub-ordinate to it - High Courts, District Courts. It is based on the principle that what has been decided in the earlier case is binding in a similar case unless there is a change in the circumstance of this case.

3. Indian Statute Law/ Acts of India Legislature :-
   The Acts passed by Indian legislature are the main sources. In India the Central and State legislature posses law making powers. The important Acts passed by the Indian legislature are the Indian Contract Act – 1872, The Negotiable Instruments Act – 1881, The Sale of Goods Act – 1930, The Indian Partnership Act – 932, The Companies Act – 1956, MRTP Act – 1969, Consumer Protection Act – 1986, Environment Protection Act – 1986, IT Act – 2000

4. Local Customs and Usages :-
   Custom means a usage or practice common to many or to a particular place. It is a long established practice considered 'unwritten law'. A particular Act, usage or conduct practiced by a group of people for a long period becomes a custom. Customs to become binding on the parties, must satisfy certain requirements

a. Definite and certain
b. Reasonable
c. Consistent with the law
d. Uniformly accepted in ordinary courts of business
e. Not to be opposed to any legislature enactment

When a custom is accepted by a court it is incorporated in a judicial decision, it becomes a legally recognized custom.

Objectives of Business Law

1. Define the Rules of the Business activities within which it should be carried on :
2. Enable enforcement of rights:
   Businessmen like other citizens have rights – rights which are judicially enforceable. Thus the businessmen may turn to High court or Supreme court to enforce his claims against debtors, patent or copyright infringement and so on.

3. Facilitate Industrial Growth :
   By selectively issuing licenses to deserving enterprises, by ensuring cordial relations and by providing other needed facilities , business law contributes considerably to the growth of industries.

4. Achieve Social Justice :

Business law has social objectives too, It seeks to check exploitation of Child Labor and discrimination in Employment and/or remuneration on the basis of sex, caste or religion. Reckless exploitation of resources – Business Law prohibits practices which are harmful to public interest.

5. Fix priority of wants :
   Individuals and groups have an affinity of wants that they seek to satisfy. Obviously not all these wants can be wholly satisfied. So the legal rules of Business Law , decides the priority among unlimited wants.

Classification of Fundamental rights

Constitution provided for seven Fundamental Rights viz.

1. Right to equality (Article 14-18)
2. Right to freedom (Article 19-22)
3. Right against exploitation (Article 23-24)
4. Right to freedom of religion (Articles 25-28)
5. Cultural & educational rights (Articles 29-30)
6. Right to Property (Article 31)
7. Right to constitutional remedies (Article 32).

But, Right to property was removed from the list of the Fundamental Rights by the 44thConstitution Amendment Act, 1978 and after amendment, it was made legal right under Article 300-A in part-12 of the constitution.
At present there are only six Fundamental rights, six fundamental rights are described below in brief.

Right to Equality (Articles 14-18):
Article 14 (Equality before law):

- Article 14 says that state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Art. 14 is available to any person including legal persons viz. statutory corporation, companies, etc.
- Art. 14 is taken from the concept of equal protection of laws has been taken from the constitution of USA.
- The concept of the rule of law is a negative concept while the concept of equal protection of laws is a positive concept.
- The concept of equality before the law is equivalent to the second element of the concept of the 'rule of law' propounded by A.D. dicey, the British jurist. But certain exceptions to it are, the president of India, state governors, Public servants, Judges, Foreign diplomats, etc., who enjoy immunities, protections, and special privileges.

Article 15 (Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth):

- Article 15 says that the state shall not discriminate against only of religion, race, sex, place of birth or any of them.
- Under Article 15 (3) & (4), the government can make special provisions for women & children and for a group of citizens who are economically and socially backward.

Article 16 (Equality of opportunities in matters of publicemployment):

- Article 16 says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

Article 17 (Abolition of Untouchability): Article 17 says that Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offense punishable by law.

Article 18 (Abolition of titles):

- Article 18 says that no title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any foreign state.
- The awards, Bharat Ratna, Padma Vibhushan, Padma Bhusan and Padma Shri, called as The National Awards would not amount to title within the meaning of Article 18(i).

Right to Freedom (Articles 19-22):

Article 19 (Protection of certain rights regarding freedom of speech, etc.):

Article 19 says that all citizens shall have the right

1. to freedom of speech and expression.
2. To assemble peacefully and without arms.
3. To form associations or unions.
4. To move freely throughout the territory of India.
5. To practice any profession or to carry on any occupation, trade or business.

*Article 20 (*Protectionin respect of conviction for offenses*):*
Article 20 says that state can impose reasonable restrictions on the groups of security of the state, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation, etc.

Article21 deals with Protection of life and personal liberty:

Article 21A states that that state shall provide free and compulsory education to all children of the age
Of6-14 years.

Article 22 deals with protection against arrest and detention in certain cases.

Right Against Exploitation (Articles 23-24):

Article 23 deals with the prohibition of traffic in human beings and forced labour.

Article 24 deals with prohibition of employment of children in factories, etc.

Right to Freedom of Religion (Articles 25-28):

Article 25 deals with freedom of conscience and free profession, practice, and propagation of religion.

Article 26 deals with freedom to manage religious affairs.

Article 27 deals with freedom as to payment of taxes for promotion of any particular religion.

Article 28 deals with freedom as to attendance at religious instructions or religious worship in certain educational institutions.

Cultural and Educational Rights (Articles 29-30):

Article 29 deals with the protection of language, script, and culture of minorities.

Article 30 deals with the right of minorities to establish and administer educational institutions.

Right to Constitutional Remedies (Article 32):
Article 32 deals with the right to move to the supreme court for the enforcement of Fundamental Rights including the Writs of

(i) Habeas corpus
(ii) Mandamus,
(iii) Prohibition,
(iv) Certiorari and
(v) Quo warranto.

The Directive Principles

Polity
Constitutiden Indian Polity
Part IV, Articles 36-51 of the Indian constitution constitutes the Directive Principles of State Policy which contain the broad directives or guidelines to be followed by the State while establishing policies and laws. The legislative and executive powers of the state are to be exercised under the purview of the Directive Principles of the Indian Constitution.

However, the Directive Principles cannot be enforced in a court of law and the State cannot be sued for non-compliance of the same. This indeed makes the Directive Principles a very interesting and enchanting part of the Constitution because while it does stand for the ideals of the nation, these ideals have not been made mandatory.

Categories

The Directive Principles are divided into the following three categories:

Socialistic Directives: This part contains the directives for securing the welfare of the people of India, equal distribution of the material resources of the country protection of the fundamental rights of the children and youth, equal pay for equal work, education etc.

Gandhian Directives: Under these directives are the guidelines for organising village Panchayat, prohibition of intoxicating drinks and cow-slaughter, secure living wage, decent standard of life, and to promote cottage industries, to provide free and compulsory education to all children up to 14 years of age etc.

Liberal Intellectual Directives: In this section there are guidelines for uniform civil code throughout the country and the legislatures to follow in issuing orders or making laws.

Features

In a nutshell, the Directive Principles consist of the following guidelines for the States:

- The State should strive to promote the welfare of the people.
- Maintain social order through social, economic and political justice.
- The State should strive towards removing economic inequality.
- Removal of inequality in status and opportunities.
- To secure adequate means of livelihood for the citizens.
- Equal work opportunity for both men and women.
- Prevent concentration of wealth in specific pockets through uniform distribution of the material resources amongst all the strata of the society.
- Prevention of child abuse and exploitation of workers.
- Protection of children against moral and material abandonment.
- Free legal advice for equal opportunities to avail of justice by the economically weaker section.
- Organization of Village Panchayat which will work as an autonomous body working towards giving justice.
- Assistance to the needy includes the unemployed, sick, disabled and old people.
- Ensure proper working conditions and a living wage.
- Promotion of cottage industries in rural areas.
- The state should endeavor towards a uniform civil code for all the citizens of India.
- Free and compulsory education for children below the age of 14years.
- Economic and educational upliftment of the SC and ST and other weaker sections of the society.
- Prohibition of alcoholic drinks, recreational drugs, and cow slaughter.
- Preservation of the environment by safeguarding the forests and the wild life.
- Protection of monuments, places and objects of historic and artistic interest and national importance against destruction and damage.
- Promotion and maintenance of international peace and security, just and honourable relations between nations, respect for international law and treaty obligations, as well as settlement of international disputes by arbitration.

UNIT 2

CONTRACT LAWS

THE INDIAN CONTRACT ACT, 1872

In India, the law relating to contracts is contained in the INDIAN CONTRACT ACT, 1872. The Act came into force on the 1st day of September 1872, and it applies to the whole of India except the State of Jammu and Kashmir. The act does not deal with all the branches of law of contracts. The contracts relating to Partnership, Sale of Goods Act and Negotiable Instruments Act are outside the scope of the Indian Contract Act. The Indian Contract Act deals with:

1. The general principles applicable to all contracts;
2. The conditions, which are essential for making a valid contract;
3. The principles applicable to quasi contracts;
4. The principles, which are applicable to a few special contracts, namely,
    a) The contracts of indemnity,
    b) The contracts of guarantee,
    c) The contracts of bailment and agency,
    d) The contracts of agency.

The law of contracts deals with agreements, which can be enforced through law courts. Law of contracts is the most important branch of mercantile law. It affects every person in one way or the other, as all of us enter into some kind of contract every day.

The object of the law of contracts is to introduce definiteness in commercial and other transactions, and to ensure the realization of reasonable expectation of the parties, who enter into a contract. CONTRACT The word contract is derived from the Latin word “contractum” which means “drawn together”. It denotes a drawing together the minds of two or more persons to form a common intention giving rise to an agreement. A contract is an agreement enforceable by law, which offers personal rights and imposes personal obligations, which the law protects and enforces against the parties to the agreement.

DEFINITION

Section 2 (h) of the Indian Contract Act defines a contract as “an agreement enforceable by law”. Therefore, a contract essentially consists of two elements: 1. Agreement: Section 2 (e) defines an agreement as, “every promise and every set of promises forming the consideration for each other”. In other words, an agreement is formed where one party makes the proposal and the other party accepts it.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

The following are the essential elements of a contract, arrived at on the basis of a combined reading of Section 2(h) and Section 10 of the Indian Contract Act:

1. **Offer and Acceptance**: There must be a 'lawful offer' and 'lawful acceptance' of the offer, thus resulting in an agreement.
   For example: If X offers to sell his Maruti Car to Y for Rs. 2,25,000 and Y agrees to pay X Rs. 2,25,000 for the Maruti Car. Here X is called the offeror or promisor and Y is the offeree or promise.
2. **Consensus ad idem**: For a valid agreement, there must be a complete identity of minds between the contracting parties.
   For example: A has two buffaloes but B is aware of only one of these. B proposes to buy the buffalo of which he is aware. A's Consents to sell the other buffalo. Since there is confusion in the minds of the parties, there is no consensus and hence no agreement follows.
3. **Free Consent:** The contracting parties must give their consent freely. It must not be given due to coercion, undue influence, fraud, misrepresentation or mistake. The absence of free consent would affect the legal enforceability of a contract.
   For example: An illiterate woman executes a deed of gift under the impression that she is executing a deed authorizing her nephew to manage her agricultural land. The deed is not read or explained to her. Here, there is no consent, therefore no contract.
4. **Capacity of the parties**: The parties making the contract must be legally competent in the sense that each must be of the age of majority, of a sound mind, and not expressly disqualified from contracting (Section 11). An agreement by incompetent parties shall be a legal nullity.
   For example: A, a minor, borrows Rs. 5,000 from B and executes a promissory note in B's favour. After attaining majority A executes a fresh promissory note in favour of B for this amount. B cannot sue on this promissory note as the agreement is void for lack of consideration.
5. **Lawful Consideration**: An agreement to be enforceable by law must be supported by consideration. Without consideration, a contract is regarded as a nudum pactum. Each of the contracting parties must give as well as get something. Moreover, the consideration must be lawful.
   For example: X lets his house for being used as a gambling den. The agreement is illegal as the object of agreement is unlawful.
6. **Lawful object**: The object of the agreement must be lawful. It is considered unlawful if it is (i) illegal (ii) immoral, (iii) fraudulent, (iv) of a nature that, if permitted, it would defeat the provisions of any law, (v) causes injury to the person or property of another, or (vi) opposed to public policy.
   For example: A promises to obtain a job for B in government service in consideration of Rs. 50,000. The agreement is void because it is forbidden by law.
7. **Not expressly declared void**: The agreement must not have been declared void by any law in force in India. The Act has itself declared void certain types of agreements such as those in restraint of marriage, or trade, or legal proceedings as well as wagering agreements.
8. **Intention to create legal relations**: There must be an intention among the parties that the agreement should be attached by legal consequences and create legalobligations. For example: A

wife withdraws a complaint against her husband under an agreement that husband will pay her allowance. Court held it as a binding contract.

9. **Certainty of meaning**: The terms of the agreement must be certain and unambiguous. Section 29 of the Act, "agreements the meaning of which is not certain or capable of being made certain are void". For example: A agrees to sell a car to B out of his 5 cars. There is nothing whatever to show which car was intended. The agreement is void for uncertainty.
10. **Legal formalities**: The agreement must comply with the necessary formalities as to writing, registration, stamping etc. if any required in order to make it enforceable by law.

CLASSIFICATION OF CONTRACTS

Section of the Act, which is called the 'interpretation clause', besides defining a contract in clause (h), also provides the basis for the classification of contracts.

Contracts may be classified as follows:

1. On the basis of Enforceability

a) **Valid Contract**: A contract which satisfies all the legal requirements laid down in Section 10 of the Act is a valid contract. Such a contract creates rights in persona and is legally enforceable.

b) **Void Agreement**: Section 2(g) defines it as, "an agreement not enforceable by law is said to be void". Such agreements are void ab initio which means that they are unenforceable right from the time they are made. For example: X agrees with Y, in consideration of Rs. 100, to draw twoparallel lines in such a way as to cross each other. The agreement is impossible to perform and, therefore void.

c) **Void Contract**: Section 2(j) provides that "a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable." Following are the examples of such circumstances which render a contract void:

(i) Supervening impossibility or illegality as described in Section 56.

(ii) In the case of a voidable contract when the party whose consent is not free, repudiates the contract.

(iii) A contingent contract to do or not to do something on the happening of an event becomes void when the event becomes impossible (Section 32). For Example: A agrees to sell 1000 tonnes of wheat to B @ Rs. 500 per tonne in case his ship reaches the port safely by 15th February. The ship fails to reach by the stipulated date. The contract between A and B is void.

d) **Voidable Contract**: According to Section 2(i), "An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, is a voidable contract." In a voidable contract, a right or option is open to the aggrieved party i.e., the party whose consent is not free that either to repudiate the contract or to abide by it. Thus, a voidable contract continues to be valid and enforceable till it is repudiated by the aggrieved party.

For example: A threatens to kill B if he does not give him a loan of Rs. 50,000 for 25 yearsB gives the loan. This is a voidable contract as consent of B is obtained by coercion.

e) **Illegal agreement**: An agreement which is either prohibited by law or otherwise against the policy of law is an illegal agreement. Such an agreement is a nullity and is void abintio. f) Unenforceable Contract: An unenforceable contract is that which is valid and enforceable, butfor

certain technical defects such as want of proof, expiry of the period within which enforceable, absence of writing, registration and attestation, insufficient stamp etc., it becomes unenforceable. For example: If a document embodying a contract is understamped, the contract is unenforceable, but if the requisite stamp is affixed (if allowed), the contract becomes enforceable.

2. On the basis of mode of creation

a**) Express Contract**: An express contract is that which is made in writing or by the words of mouth. For example: A writes to B, 'I am prepared to sell my horse for a sum of Rs. 500. B accepts A's offer by a telegram. The contract will be termed as express contract. b**) Implied Contract**: An implied contract is one which arises out of acts or conduct of the parties or out of the dealings between them.

For example: A takes a seat in a bus. There is an implied contract that he will pay the prescribed fare for taking him to his destination.

c**) Quasi Contract**: Under certain circumstances, law itself creates legal rights and obligations against the parties. These obligations are known as quasi contracts.

For example: A supplies B, a lunatic with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

3. On the basis of execution

a) **Executed Contract**: When a contract has been completely performed, it is termed as executed contract, i.e., it is a contract where, under the terms of a contract, nothing remains to be done by either party.

For example: X sells a radio set to Y for Rs. 300. Y pays the price. Both the parties have performed their respective obligations, and therefore, it is an executed contract.

b) **Executory Contract**: Where one or both the parties to the contract have still to perform their obligations in future, the contract is termed as executory contract.

For example: A agrees to paint a picture for B and B in consideration promises to pay A a sum of rupees one hundred. The contract is executor.

c) **Unilateral Contract**: A unilateral contract is one sided contract in which only one party has to perform his promise or obligation to do or forebear.

For example: A, a coolie, puts B's luggage in the carriage. The contract comes into existence as soon as the luggage is put. It is now for B to perform his obligation by paying the charges to the coolie.

d) **Bilateral Contract**: A bilateral contract is one in which both the parties have to perform their respective promises or obligations to do or forbear.

For example: A promises to sell his car to B after 15 day. B promises to pay the price on the delivery of the car. The contract is bilateral as obligations of both the parties are outstanding at the time of the formation of the contract.

OFFER AND ACCEPTANCE

It is an established principle that an agreement arises only when an offer is made by one person and is accepted by the other person, to whom it is made. Thus, an offer and its acceptance is the starting point in the making of an agreement.

According to Section 2 (a) of the Indian Contract Act, 1872 defines a proposal as follows: "When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal". The person making the proposal is called the 'promisor or offeror'. The person to whom the proposal is made is called the 'promisee or offeree'.

Example: X says to Y, "I want to sell my car to you for Rs. 1, 00,000". Here, "to sell car" is an offer or proposal. X who has made the offer is called offeror or promisor. Y to whom the offer has been made is called the offeree or promisee.

ESSENTIALS CHARACTERISTICS OF A VALID OFFER

1. **The offer must be capable of creating legal relations**: An offer must intend to create legal relationship among the parties. If the parties have agreed that the breach of the agreement would not confer any right on either party to go to the court of law for enforcing the agreement, it will not be a valid offer.

2. **The offer must be certain, definite and not vague**: The terms of the offer must be certain and unambiguous and not vague. If the terms of the offer are vague, no contract can be entered into because it is not clear as to what exactly the parties intended to do. 3. **The offer must be communicated to the other party**: The offer must be communicated to the person to whom it is made. Thus, an offer accepted without its knowledge, does not confer any legal rights on the acceptor.

4. **The offer must be made with a view to obtaining the consent of the offeree**: If a person merely makes a statement without any intention to be bound by it, then it is not a valid offer. Merely making an enquiry does not constitute an offer.

5. **The offer must be distinguished from an answer to a question**: The terms of an offer should be clear so that there is no confusion whether it is a valid offer or an answer to a question. An answer to a question cannot be taken as an offer.

6. **Invitation to an offer is not an offer**: Price lists, catalogues, display of goods in a show window, tenders, advertisements, prospectus of a company, an auctioneer's request for bids, etc., are instances of invitation to offer. In case of an invitation for an offer, there is no intention on the part of the person sending out the invitation to obtain the assent of the other persons to such an invitation.

7. **The offer must be distinguished from mere statement of intention**: The terms of an offershould be clear so that there is no confusion whether it is a valid offer or a mere statement of intention. Such statement or declaration merely indicates that an offer may be made or invited in future.

8. **Special conditions attached to an offer must also be communicated**: In such cases the ruleis that the party shall not be bound by the conditions unless conditions printed are properly communicated.

9. **The offer may be positive or negative**: An offer to do something is a positive offer. And an offer not to do something is a negative offer.

10. **The offer may be express or implied**: An offer which is expressed by words, written or spoken, is called an express offer. The offer which is expressed by conduct, it is called an impliedoffer.

11. **The offer may be specific or general**: When an offer is addressed to a specific individual or a group of individuals, called it as specific offer. When an offer is addressed to an unascertained body of individuals or to the public at large, it is said to be a generaloffer.

12. **The offer should not contain a term the non-compliance of which would amount to acceptance**: One cannot say while making the offer that if the offer is not accepted by a certain time, it will be presumed to have been accepted.

DIFFERENT KINDS OF OFFERS

1. **Express offer**: An express offer is one which is made by words spoken or written.
2. **Implied offer**: An implied offer is one which is made otherwise than in words. In other words, it is inferred from the conduct of the person or the circumstance of the particular case.
3. **Specific offer**: A specific offer can be accepted only by that definite person or that particular group of persons to whom it has made.
4. **General offer**: A general offer is one which is made to the world at large or public in general.
5. **Standing or Open or Continuing offer**: An offer for a continuous supply of certain goods and services in any quantity ata certain price as and when required it will be termed as a standing or open offer.
6. **Counter offer**: A Counter offer is rejecting the original offer and making a new offer. The new offer is the counter offer.
7. **Cross offer**: Where identical offers are made by parties in ignorance of each other, the offers are said to be cross offers.

Lapses of offer

[When does an offer come to an end] Section 6 of the Act deals with the various modes of revocation of an offer. Accordingly, an offer may come to an end in any of the following ways:

1. **By communication of notice of revocation by the proposer**: The proposer can revoke or withdraw his offer atany time before the acceptor posts his letters of acceptance. A notice of revocation to be effective must be communicated to the acceptor.
2. **By lapse of prescribed time**: An offer lapses if acceptance is not communicated within the time prescribed in the offer, or if no time is prescribed, within a reasonable time.
3. **By non-fulfillment of a condition by acceptor**: A proposal comes to an end when the acceptor fails to fulfill a condition precedent to the acceptance of the proposal.
4. **By the death or insanity of the offeror**: A proposal comes to an end by the death or insanity of the offeror if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

ACCEPTANCE

An acceptance is the manifestation by the offeree of his willingness to be bound by the terms of the offer. According to Section 2 (b) of the Act, "When the person to whom the offer is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise".

Example: X offers to sell his car to Y for Rs. 1,00,000. Y agrees to buy the car for Rs. 1,00,000. Y's act is an acceptance of X's offer.

ESSENTIAL AND LEGAL RULES FOR A VALID ACCEPTANCE

1. **The acceptance must be communicated:** An acceptance to be valid must be communicated to the proposer. If the person to whom the proposal is made remains silent and does nothing to show that he has accepted the proposal, no contract is formed.
2. **Acceptance must be absolute or unqualified**: Acceptance, in order to be binding, must correspond with all the terms of the offer. Offer must be accepted in toto. A qualified and conditional acceptance amounts to marking of a counter offer which puts an end to the original offer and it cannot be revived by subsequent acceptance.
3. **Acceptance may be express or implied**: Acceptance given by words is known as express acceptance. But an acceptance given by conduct is said to be implied.

Implied acceptance may arise from

(a) doing of a particular act as prescribed in the offer, and

(b) by accepting a benefit offered by the offeror.

4. **The acceptance must be given in some usual and reasonable manner**: It is another important legal rule of an acceptance that where no mode is prescribed, acceptance must be given in some usual and reasonable manner.
5. **The acceptance must be given before the lapse of offer**: A valid contract can arise only when the acceptance is given before the offer has elapsed or withdrawn.
6. **The acceptance cannot be implied from silence**: The offeror does not have the legal rights to say that if no answer is received within a certain time, the offer shall be deemed to have been accepted.
7. **Acceptance means acceptance of all the terms of the offer**: When an offer is accepted, it would mean acceptance of all the terms of offer. The acceptance of offer cannot be partial at all.
8. **If acceptance has been given conditional there will be no contract**: When an acceptance by a person is made conditional i.e., 'subject to a formal contract' or 'subject to approval by certain person – such as solicitors etc', no contract will arise till a formal contract is entered into or consent of such persons is obtained.

CONSIDERATION

The consideration is one of the essential elements of a valid contract. The term 'consideration' may be defined as the price of the promise. This term is used in the sense of quid pro quo (i.e.,

something in return). Accordingly, an agreement which is not supported by consideration is a nudum pactum (a nude or a bare agreement), and the effect of a nude agreement is expressed in the legal maxim, ex nudo pacto non orilur actio meaning no cause of action arises from a bare agreement. The most popular definition of consideration is given by Lush J. in Currie vs. Misa. According to him, “A valuable consideration, in the sense of the law, may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other”.

Definition

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

ESSENTIALS OF CONSIDERATION

1. **Consideration must move at the desire of the promisor**: The act or abstinence of the promisee or any other person must be done at the desire or request of the third party or voluntary acts would not constitute a valid consideration. The desire of the promisor may be express or implied from the conduct of the parties.
2. **Consideration may move from the promisee or any other person**: It is not necessary that the consideration should proceed only from the promisee. Consideration furnished by a third party will also be valid if it has been done at the desire of the promisor. This is termed as ‘Doctrine of Constructive Consideration”.
3. **Consideration may be past, present or future**: The words, has done or abstained from doing, does or abstains from doing, or promises to do or to abstain from doing; indicate that the consideration may be past, present or future.

a) Past consideration: When the present promise is based on the consideration already taken place (i.e., before the date of the promise), it is termed as consideration.

b) Present consideration: When the promisor receives consideration simultaneously with his promise, it is termed as present consideration.

c) Future consideration: When the consideration for a promise is rendered in future it is termed as future or executory consideration.

4. **Consideration need not be adequate**: The consideration need not be adequate to the promise but it must be of some value in the eye of the law. According to explanation 2 to Section 25, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.
5. **Consideration must be real and not illusory**: Consideration must be real and be of some value in the eyes of law. Consideration of the following type are not real:

(a) Physical impossibility: For instance As promising to put life into B's dead wife should B pay him Rs. 500, is void for lack of physical possibility.

(b) Legal impossibility: If consideration consists of something illegal, the agreement will be void.

(c) Uncertain consideration: An uncertain or vague consideration will make the agreement void.
(d) Illusory consideration: It consists of a promise to do something which a person is already bound to do by law or contract. It must be something more than what a promisee is already bound to do.
6**. Consideration must be lawful**: Section 23 of the Act which says that "every agreement of which the consideration is unlawful, is void". It means that an agreement must be supported by lawful consideration.
7**. Consideration must not be illegal, immoral or opposed to public policy**: The consideration of an agreement is unlawful if:
a) it is forbidden by law; or
b) it is of such a nature that if permitted it would defeat the provisions of any law; or
c) it is fraudulent; or
d) it involves or implies injury to the person or property of another; or
e) the court regard it as immoral or opposed to public policy.

Exceptions to the General Rule of "No Consideration, No Contract"

The following circumstances under which the agreement is valid and enforceable even if it is made without consideration:
1. **Agreements made on account of natural love and affection [Sec. 25 (1)]:** This clause lays down four essential requirements for the validity of an agreement made without consideration. They are
a) The agreement must be in writing;
b) It is registered under the law;
c) It is made on account of natural love and affection; and
d) It is between parties standing in a near relation to each other.
Example: A, for natural love and affection, promised to give Rs. 1,000 to his son B. A put his promise to B in writing and registered it. This is valid contract.
2. **Promise to compensate for past voluntary services [Sec. 25 (2)]:** Such promise made without consideration is valid:
a) If the act was done voluntarily;
b) For the promisor or something which the promisor was legally bound to do;
c) The promisor must be in existence at the time when the act was done; and
d) The promisor must agree now to compensate the promise.
Example: X finds Y's purse and gives it to him. Y promises to give Rs. 500 to X. This is a valid contract even though the consideration did not move at the desire of Y, the promisor.
3. **Promise to pay time-barred debt [Sec. 25 (3)]:** When a debtor makes a written and registered promise, under signature of his own or that of his agent, to pay a time-barred debt, no fresh consideration is needed. The following conditions must be satisfied for the application of this exception:
a) The promise to pay must be definite and express;
b) The promise must be in writing;
c) The promise must be signed by the promisor or his authorized agent;

d) The debt must be time-barred, i.e., the limitation period for the recovery of the debt, must be expired. Example: X owed Rs. 2,000 to Y. This debt was barred by Limitation Act i.e., the limitation period for the recovery of debt has already expired. X signed a written promise to pay Rs. 1,000 to Y on account of this debt. This is a valid contract.

4. **Completed gift [Explanation 1 to Sec. 25**]: The gifts actually made by a donor and accepted by the done are valid even without consideration. Thus, a completed gift needs no consideration.

5. **Contracts of agency** [Sec. 185]: No consideration is necessary to create an agency. 6. Remission [Sec. 63]: No consideration is required for an agreement to receive less than what is actually due.

CAPACITY TO CONTRACT

One of the essential conditions for the enforceability of an agreement is that the concerned parties must be competent to enter into an agreement. The 'capacity to contract' means the competence (i.e., capability) of the parties to enter into a valid contract. According to Sec. 11 of the Contract Act, "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of a sound mind, and is not- disqualified from contracting by any law to which he is subject".

PERSONS NOT COMPETENT TO CONTRACT As per the statement of Section 11 of the Indian Contract Act, the following persons are not competent to contract, i.e., they are incapable of entering into a valid contract.

(i) Minors;

(ii) Persons of unsound mind; and

(iii) Persons disqualified for contracting by any other law. (i) MINORS According to Section 3 of the Indian Majority Act, 1875, a person who has not completed his age of 18 years (majority), is considered to be a minor. In the following two cases, a person becomes major on completing the age of 21 years:

a) Where a guardian of a minor's person or property has been appointed under the Guardians and Wards Act, 1890; and

b) Where the superintendence of minor's property is assumed by a Court of Wards.

Rules Regarding Minor's Agreements The law protects minor's rights because they are not mature and may not possess the capacity to judge what is good and what is bad for them. The position of a minor as regards his agreements may be stated as under:

1. **An agreement with or by a minor is void ab initio**: An agreement with a minor has been held to be void ab initio. It is not only void, but is absolutely void.

2. **A minor can be a promisee or a beneficiary**: A promissory note executed in favour of the minor can be enforced. He can draw, negotiate or endorse a negotiable instrument so as not to incur any liability upon himself.

3. **No ratification**: Since a contract with or by a minor is altogether void, he cannot ratify contracts entered into by him during his minority, even after attaining the majority. There can be no ratification of a contract void abintio.

4. **No restitution**: Sometimes, the minor receives some property or money by falsely representing his age. In such cases, the minor can be asked to restore such property or money so long as the same is traceable in his possession.

5. **The liability of Minor's parents or guardian**: A contract made by the minor's parents or guardian or manager of his estate can be specifically enforced by or against the minorprovided:

(a) the contract is within the scope of authority of the parent, etc., and

(b) it is for the benefit of the minor

6. **No Estoppel**: Where a minor represents fraudulently or otherwise that he is of age and thereby induces another to enter into contract with him, he in an action founded on the contract, is not estopped from setting up infancy.

7. **Minor's property liable for necessaries**: Sometimes, a person supplies necessaries to a minor. In such cases, the supplier of necessaries can claim reimbursement from the property of minor.

8. **Minor's liability for tort**: A minor is liable for negligently causing any injury or damage, or for converting property that does not belong to him. But, he is not liable for a tort directly connected with a contract which as an infant he would be entitled to avoid. In other words, a person cannot convert a contract into a tort to enable him to sue an infant.

9. **Minor as an agent:** Minor can act as an agent and bind his principal by his acts without incurring any personal liability.

10. **Minor as a partner**: A minor cannot be a partner in a firm. But under Section 30 of the Partnership Act, he can be admitted to the benefits of partnership with the consent of all the members.

11. **Minor as an insolvent**: A minor cannot be declared insolvent because he is not competent to contract.

PERSONS OF UNSOUND MIND

According to Section 12 of the Indian Contract Act, defines the term 'Sound Mind' as follows:

"A person is said to be sound mind for the purpose of making a contract if at the time when he makes it, he is capable of understanding it, and of forming a rational judgement as to its effects upon his interests". Thus, if a person is not capable of both, he is said to have suffered from unsoundness of mind. Section 11 of the Act also specifically declares that persons of unsound mind are incompetent to enter into an agreement.

The following persons are also considered to be the persons of unsound mind.

1**. Idiot:** An idiot is a person who has completely lost his mental faculties of thinking for rational judgement. All agreements, other than those for necessities of life, with idiots are absolutely void.

2**. Lunatics**: A lunatic is a person who is mentally deranged (disordered) due to some mental strain or other personal experience but who has some lucid intervals of sound mind.

3. **Drunken or intoxicated person**: A drunken or intoxicated person is a sane person who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgement as to its effect on his interest.

PERSONS DISQUALIFIED BY ANY LAW

1. **Alien enemy**: "Alien" means a person who is not a citizen of India. During the continuance of war with the country to which an alien belongs, he becomes an alien enemy. In that situation, he can neither contract with an Indian subject nor can he file a suit in an Indian court. He can do so only after obtaining the permission of the Central Government. Contracts made before war may either be suspended or dissolved. They are dissolved if found to be against public policy or of benefit to the enemy.
2. **Insolvent**: When a person is declared as an insolvent, his property vests in the Official Receiver or Assignee. And the insolvent is deprived of his power to deal with the property, and sue and be sued on his behalf.
3. **Foreign Sovereigns, their Diplomatic Staff and Accredited representatives of Foreign States:** Such persons can enter into valid contracts and can enforce them in Indian courts. However, a suit cannot be filed again them, in the Indian courts, without the prior sanction of the central government.
4. **Joint Stock Company and Corporations incorporated under Special Acts**: A corporation or company, being an artificial person, and having a separate legal entity, can hold property; can purchase or sell property; and can sue or be sued in the Courts of Law. But it cannot enter into contracts which are strictly of personal nature.
5. **Felons or Convicts**: A convict cannot enter into a contract while he is undergoing imprisonment. This inability comes to an end on the expiration of the period of imprisonment or if he has been pardoned.

FREE CONSENT

In order to create a valid contract, there should be perfect identity of mind, i.e., “consensus ad idem” between the contracting parties regarding the subject matter of the contract. Section 10 of the Indian Contract Act laid down in clear terms free consent is one of the essentials of a valid contract.

CONSENT

According to Section 13 of the Act has defined consent as “two or more persons are said to consent when they agree upon the same thing in the same sense”. According to this section which has laid down the basic principle of consensus ad idem on which the law of contract is based, the parties to an agreement should have identity of minds regarding the subject matter of the agreement.

FREE CONSENT If the consent is there but it is not free or real, then the contract will be voidable at the option of the contracting parties whose consent is not free. The word “free consent” is defined in Section 14 of the Contract Act as follows – “Consent is said to be free when it is not caused by

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

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake”. COERCION [SEC. 15]

Coercion means compelling or forcing a person to enter into a contract under a pressure or threat. Section 15 of the Indian Contract Act defines coercion as "the committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatsoever, with the intention of causing any person to enter into an agreement". Example: X beats Y and compels him to sell his car for Rs. 50,000. Here, Y's consent has been obtained by coercion because beating someone is an offence under the Indian Penal Code.

ESSENTIALS CHARACTERISTICS OF COERCION

(a) **The committing of any act forbidden by Indian Penal Code**: When the consent of a person is obtained by committing any act which is forbidden by the Indian Penal Code, the consent is said to be obtained by coercion.

(b) **The threatening to commit any act forbidden by Indian Penal Code**: If a person attempts to commit an act which is punishable under the Indian Penal Code, it leads to coercion, e.g., consent obtained at the pistol point, or by threatening to cause death or by intimidation.

(c) **The unlawful detaining of any property**: If a person unlawfully detains the property of another person and forces him to enter into a contract, the consent is said to be induced by coercion.

(d) **The threatening to detain any property unlawfully**: If a threat is given to detain any property of another person, this amount to coercion.

(e) **The act of coercion**: It must be done with the object of inducing or compelling any person to enter into an agreement.

EFFECTS OF COERCION

According to Section 19 states that, 'when the consent of a party to an agreement is obtained by coercion, the contract becomes voidable at the option of the party, i.e., such party can put an end to the contract if he so chooses'. According to Section 72 of the Act, which is based on the principle of equitable restitution, a person to whom anything has been delivered or money paid under coercion must return or repay it.

UNDUE INFLUENCE [SEC. 16]

When a party enters into a contract under any kind of mental pressure, unfair influence or persuasion by the superior party, the undue influence is said to be employed. According to Section 16 (1) of the Act, a contract is said to be induced by undue influence, "where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other". Presumption of undue influence Section 16 (2), a person is deemed to be in a position to dominate the will of the other is the following cases:

a) **Real or apparent authority**: Where he holds a real or apparent authority over the other, e.g., master and the servant, parent and child, Income Tax officer and assessee, etc.

b) **Fiduciary relationship**: Fiduciary relation means a relation of mutual trust and confidence, e.g., guardian and the ward, solicitor and client, doctor and patient, guru and disciple, trustees and beneficiaries, etc.

c) **Mental distress**: Where he contracts with a person whose mental capacity is temporarilyor permanently affected by reason of age, illness, or mental or bodilydistress.

BURDEN OF PROOF [SEC. 16 (3)]

Where a person who is in a position to dominate the will of another, makes a contract and the transaction appears to be unconscionable, the burden of proving that the contract has not been induced by undue influence shall lie on the person who is in a position to dominate the will of the other.

Distinction between Coercion and Undue Influence Basis of Distinction Coercion Undue Influence 1. Nature of force 2. Relationship 3. Consent 4. Who can exercise 5. Presumption 6. Restoration of benefit 7. Criminal element 8. Place of use It involves physical force. Parties to a contract may or may not be related to each other. Consent is obtained by giving a threat of an offence or committing an offence. It can be exercised even by a stranger to the contract. Coercion has to be proved by the aggrieved party alleging it in. It is not presumed by the law. The aggrieved party who is rescinding the contract has to return the benefit received to the other party. It entails criminal liability. The act or the threat amounting to coercion may be committed even outside India. It involves moral pressure. Parties to a contract are related to each other under some sort of relationship. Consent is obtained by dominating the will. It can be exercised only by a party to a contract and not by a stranger. There is a presumption of undue influence in the case of certain relationship. The aggrieved party may or may not be required to return the benefit in whole or in part as per Court's direction. It doesn't involve any criminal liability. It must have been exercised in India.

Distinction between Coercoin and Undue Influence

Basis of Distinction	Coercion	Undue Influence
1. Nature of force	It involves physical force.	It involves moral pressure.
2. Relationship	Parties to a contract may or may not be related to each other.	Parties to a contract are related to each other under some sort of relationship.
3. Consent	Consent is obtained by giving a threat of an offence or committing an offence.	Consent is obtained by dominating the will.
4. Who can exercise	It can be exercised even by a stranger to the contract.	It can be exercised only by a party to a contract and not by a stranger.
5. Presumption	Coercion has to be proved by the aggrieved party alleging it in. It is not presumed by the law.	There is a presumption of undue influence in the case of certain relationship.
6. Restoration of benefit	The aggrieved party who is rescinding the contract has to return the benefit received to the other party.	The aggrieved party may or may not be required to return the benefit in whole or in part as per Court's direction.
7. Criminal element	It entails criminal liability.	It doesn't involve any criminal liability.
8. Place of use	The act or the threat amounting to coercion may be committed even outside India.	It must have been exercised in India.

FRAUD [Sec. 17]

The term 'fraud' may be defined as an intentional, deliberate or wilful misstatement of facts, which are material for the formation of a contract. According to Section 17, "fraud means and includes any of the following acts committed by a party to a contract or with his connivance or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

(a) the suggestion, as to a fact, of that which is not true, by one who does not believe it to be true;

(b) the active concealment of a fact by one having knowledge or belief of the fact; (c) a promise made without any intention of performing it;

(d) any other act fitted to deceive;

(e) any such act or omission as the law specially declares to be fraudulent".

ELEMENTS OF FRAUD

On the basis of aforesaid definition of fraud, the essential elements of fraud are as follows:

1. **The act must have been committed by a party to the contract**: The fraud must be committed by a party to a contract or by anyone with his connivance or by his agent. Thus, the fraud by a stranger to the contract does not affect the validity of the contract.

2. **Acts committed may be of the following nature**:

a) Suggestion of an untrue fact: If a person knowingly states an untrue fact or fact which he does not believe to be true, it will be taken as a fraud on his part.

b) Active concealment of a fact: An active concealment is considered as a fraud when

(i) there is a concealment of fact, and

(ii) the concealment is active (i.e., all efforts are made to conceal fact), and

(iii) the concealment is made by a party who has the knowledge of it.

c) A promise made without any intention of performing it: If a party while entering into a contract has no intention to perform his promise, it will be taken as a fraud on his part.

d) Any other act fitted to deceive: The expression 'act fitted to deceive' means any act which is done with the obvious intention of committing fraud. Thus, this clause covers all tricks and unfair ways which are used by cunning and clever people to cheat others.

e) Any such act or omission which the law specially declares to be fraudulent: Under the Transfer of Property Act, any transfer of immovable property with the intention of defrauding the creditors, is taken as a fraud.

3. **The act must have been committed with the intention of inducing the deceived party to act upon it**: It implies that the assertion should be such that it would necessarily influence and induce the other party to act.

4. **The act must have in fact deceived the other party**: If a person has committed a fraudulent act to deceive the other party, but the other party has not been actually deceived by his act, it will not be taken as a fraud on his part.

5. **Plaintiff must have suffered**: There is no fraud without damages, and therefore, to constitute fraud it is necessary that the plaintiff must have suffered some loss of money or money's worth or some other tangible detriment capable of assessment.

Mere silence is not a fraud

According to explanation to Section 17, "mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud". Example: A sells, by auction, to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud by A.

Exceptions

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

contracts of insurance; contracts for the sale of immovable properties; contracts of marriage; contracts for the purchase of shares; family contracts, etc.

b) Contracts of partnership: Under the Partnership Act, partners are required to observe absolute good faith and to be just and faithful to each other

c) Contracts of guarantee: The creditor must disclose all material facts about the debtor to the surety.

d) Where the parties stand in fiduciary relationship to each other.

e) Contracts to marry.

2. **Where silence is equivalent to speech**: For instance, B says to A, "If you do not deny it, I shall presume that the horse is sound". A says nothing. Here A's silence is equivalent to speech. If the horse turns out to be vicious A can be held liable for fraud

3. **Change of circumstances**: Sometimes a statement may be true when it is made but due to change in circumstances, it may become false subsequently. In such a case, it is the duty of the person to communicate the change in circumstances.

Effect of Fraud

1. **Right to rescind the contract**: The party whose consent was caused by fraud can rescind (cancel) the contract but he cannot do so in the following cases:

a) where silence amounts to fraud, the aggrieved party cannot rescind the contract if he had the means of discovering the truth with ordinary diligence;

b) where the party gave the consent in ignorance of fraud;

c) where the party after becoming aware of the fraud takes a benefit under the contract;

d) where an innocent third party before the contract is rescinded acquires for consideration some interest in the property passing under the contract;

e) where the parties cannot be restored to their original position

2. **Right to insist upon performance**: The party whose consent was caused by fraud may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true.

3. **Right to claim damages**: The party whose consent was caused by fraud, can claim damage if he suffers some loss.

MISREPRESENTATION [Sec. 18]

The term 'Misrepresentation' means a false representation of fact made innocently or non-disclosure of a material fact without any intention to deceive the other party. A false representation made by a person may be either:

1. Innocent or unintentional, i.e., without any intention of deceiving the party.

2. Intentional or wilful or deliberate, i.e., with the intention of deceiving the party. According to Section 18 defines the term 'misrepresentation' as follows: "Misrepresentation" means and includes –

i) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

ii) any breach of duty which, without any intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; iii) Causing, however innocently,

iii) Causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Essentials of Misrepresentation

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

Acts Which Constitute Misrepresentation.

Thus misrepresentation may be committed in any of the following ways:

1. **Unwarranted Statements**: If a person makes a statement of fact which is not warranted by his information, he is said to make a misrepresentation.

2. **Breach of Duty**: When a person commits a breachof duty without any intention to deceive the other party and thereby gains something while the other party loses, it will be termed as misrepresentation.

3. **Inducing Mistake about Subject Matter**: If a party to an agreement induces the other party, although innocently to commit a mistake as to the nature or quality of the subject matter of the agreement, he becomes guilty of misrepresentation. Effects of Misrepresentation The effect of misrepresentation is that it makes the contract voidable the option of the party whose consent is so obtained. And such party may put an end to the contract if he so chooses.

Exceptions

1. Where the other party had the means of discovering the truth with ordinary diligence: The party cannot complain of misrepresentation if he had the means of discovering the truth with ordinary means.

2. Where the misrepresentation does not induce the other party to enter into contract, the contract is not voidable: If the consent is given independently in spite of misrepresentation, the contract is not voidable.

Difference between Fraud and Misrepresentation

Fraud	Misrepresentation
1. There is misstatement of concealment of fact, deliberately made with the intention to deceive the others party or to induce him to enter into a contract.	1. The misstatement of fact is made innocently without any bad intention.
2. The fraud is intentional or wilful wrong. The person making an untrue statement knows that it is not true.	2. The misrepresentation is an innocent wrong. The person making the false statement believes it to be true.
3. In case of active fraud, the aggrieved party has a right to rescind the contract.	3. The aggrieved party cannot rescind the contract if it was possible for him with ordinary diligence to discover the truth.
4. A fraud is a criminal act too.	4. It is not a criminal act.
5. Not only is the contract voidable but it also gives rise to an independent action in tort for damages.	5. It makes the contract voidable at the option of the party misrepresented.
6. The aggrieved party in addition to the normal remedies can claim also damages.	6. The aggrieved party cannot claim to damages.

MISTAKE

A mistake is said to have occurred where the parties intending to do one thing by error do something else. Mistake is an erroneous belief concerning something. Example: X engages Y as a teacher for his son appearing for IAS Preliminary. Y agrees to come daily 7. X think 7 a.m. but Y means 7 p.m. This is a bilateral mistake of fact but not essential and can be rectified. Therefore the agreement is valid.

Kinds of Mistake Mistake may be of two kinds:

(I) Mistake of Law; and

(II) Mistake of Fact.

(I**) Mistake of Law**: It may be of the following types: a) Mistake of law of the country: It does not render the agreement void. Section 21 lays down that "a contract is not voidable because it was caused by a mistake as to any law in force in India".

b) **Mistake of foreign law**: The mistake of the foreign law has the same effect as a mistake of fact. Therefore, it renders the agreement void. Section 21 lays down that "a mistake as to a law not in force in India has the same effect as a mistake of fact". **(II) Mistake of Fact**:

Mistake of fact may be of two types –

(1) Bilateral mistake; and

(2) Unilateral mistake.

(1) **Bilateral mistake**: Where both the parties to an agreement are under a mistake as to matter of fact essential to the agreement, the agreement is void. An agreement shall be void if the following conditions are satisfied:

(i) **Both the parties must be under a mistake**: This means the mistake must be mutual or common.

(ii) **Mistake must relate to an essential fact**: It is necessary that the mistake must relate to a matter of fact which is essential to the agreement.

Types of Bilateral Mistake

The following types of bilateral mistake, which render the agreement void, are important from the subject point of view

a) Mistake as to subject matterWhere both the parties working under a mistake relating to the subject matter of contract, the contract is void. It may be of the following types:

(i) Mistake regarding existence of the subject matter: Where both the parties are under a mistake regarding the existence of the subject matter, the contract is void. (ii) Mistake regarding identity of the subject matter: If both, the parties are mistaken about the identity of subject matter, the contract shall be void.

(iii) Regarding the title to the subject matter: If a person buys some property which neither party knew that it already belonged to the buyer, the contract will be void. (iv) Regarding the quantity of the subject matter: Where the quantity purchased is fundamentally, different from the quantity intended to be sold, there occurs mutual mistake which prevents the formation of an enforceable contract.

(v) Regarding the quality of the subject matter: It occurs, where the subject matter is entirely different from that contemplated by the parties.

(vi) Regarding the price of the subject matter: Where a seller while writing the price of the goods intending to write Rs. 2,250 by mistake writes Rs. 1250, the agreement is void.

b) Mistake as to the possibility of performance Where the parties to an agreement believe that the agreement is capable of performance, while in fact it is not so, the agreement is treated as void. The impossibility may either be physical or legal.

(2)**Unilateral mistake**The term unilateral mistake means where only one party to the agreement is under a mistake. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to matter of fact. Types of Unilateral Mistake

1. **Mistake about the identity of the parties to an agreement**: If there is a mistake regarding the identity of the person contracted with, even if the mistake is caused by fraud or misrepresentation of another party, the contract will be void.
2. **Mistake about the nature of the agreement**: If a party does not disclose the true nature of the document but fraudulently induces the other party to sign it who believes that he is signing some other document, in such a case there is no real agreement.

LEGALITY OF CONSIDERATION AND OBJECT

For a valid contract it is essential that the object or consideration of the agreement must be lawful. According to Sec. 23 of the Indian Contract Act, the objects and the consideration of an agreement shall be unlawful in the following cases:

1. **Where it is forbidden by law**: As a matter of fact, an act is forbidden by law, when it is punishable by criminal law of the country, or when it is prohibited by special legislation or by the regulations made by a competent authority under power derived from the legislature.

2. **Where it defeats the provision of any law**: It is of such nature that, if permitted, it would defeat the provisions of law, e.g., purchase of land being sold for arrears of land revenue by the defaulter, or an agreement by a debtor not to raise the plea of limitation in a suit by the creditor.

3. **Where it is fraudulent**: If the two parties agree to practice a fraud on third party, then the agreement between the parties is unlawful and void.

4. **Where it is injurious either to the person or his property**: It involves or implies injury to the person or property of another, e.g., an agreement to indemnify a person against the consequences of publication of a libel.

5. **Where it is regarded as immoral**: The term 'immoral' depends upon the standard of 'morality' prevailing at a particular place and time. If the consideration for the agreement is an act of sexual immorality, for example, illicit co-habitation and prostitution, the agreement is illegal.

6. **Where it is opposed to public policy**: The agreements that are injurious to the public or which are against the public good or public welfare are void.

AGREEMENTS OPPOSED TO PUBLIC POLICY

Public policy is that principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public. An agreement is said to be opposed to public policy when it is injurious to the welfare of the society or it tends to prejudice the welfare of the society. Following agreements have been declared by the Courts as opposed to public policy and they are as follows:

1. Trading with an alien enemy: All agreements made with an alien enemy are illegal on the ground of public policy.

2. Agreement for stifling prosecution: An agreement which seeks to absolve an offender of criminal liability or excuse him from prosecution or to withdraw a criminal case pending against him is known as an agreement stifling prosecution.

3. Maintenance and Champerty: Any agreement which improperly promotes litigation is opposed to public policy. Such agreements may be either maintenance or Champerty.

4. Agreement for sale of public offices and titles: The agreements for the sale or trafficking in public offices or to obtain public title like Padma Shree etc., are illegal on the ground of being opposed to public policy

5. Marriage brokerage agreements: Agreements to procure marriages for reward, or agreement to pay money to the parent or guardian of a minor in consideration of his consenting to give the child in marriage, are void.

6. Agreement in restraint of personal liberty: An agreement which unduly restricts the personal liberty of any person is void on the ground of being opposed to public policy.

7. Agreement in restraint of parental rights: An agreement which is inconsistent with the duties arising out of such guardianship is void as being opposed to public policy.

8. Agreements tending to create interest opposed to duty: An agreement with a public servant which obliges him to do something which is inconsistent with his official duty, shall be void as being opposed to public policy.

9. Agreements interfering with marital duties: Any agreement which interferes with the performance of marital duties, it is void. For example, an agreement that the husband shall always live at the wife's house was held to be void.

10. Agreements to vary the period of limitation: Agreements, the object of which is to curtail or extend the period of limitation prescribed by the law of limitation, are void.

11. Agreements to defraud creditors or revenue authorities: The agreements, the object of which is to defraud the creditors or revenue authorities are void as being opposed to public policy.

12. Agreement tending to create monopoly: An agreement, the object of which is to create monopoly is illegal and void as being opposed to public policy.

13. Agreement to commit a crime: An agreement to indemnify a person against consequences of his criminal act is void as opposed to public policy. These act may be grouped under the following heads:

a) Agreements in restraint of marriage [Section 26].

b) Agreements in restraint of trade [Section 27].

c) Agreements in restraint of legal proceedings [Section 28].

All these agreements will be discussed in detail in the next chapter on "Void Agreement".

VOID AGREEMENTS

According to Section 2 (g) of the Indian Contract Act, 1872, a void agreement is an agreement which is not enforceable by law. A void agreement does not create any legal rights and obligations. It is void-ab-initio (i.e., void from the very beginning) and without any legal effect. Agreements, which possess all the essential elements of a valid contract laid down in Section 10, must not have been expressly declares as void by any law in force in any country. The following agreements have been expressly declared as void by the Indian Contract Act:

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

QUASI CONTRACTS

Under the Law of Contracts, the contractual obligations are voluntarily undertaken by the contracting parties. However, under certain circumstances, a person may receive a benefit to which the law regards another person as better entitled or for which the law considers he should pay to the other person, even though there is no contract between the parties. Such relationships are called quasi-contracts, because, although there is no contract or agreement between the parties, they are put in the same position as if there were a contract between them.

Definition Quasi contract is defined as “an obligation to pay a sum of money, whether liquidated or unliquidated, which arises independently of any contract, on the ground that in the circumstances of the case, it is considered by the law to be just debt”. It is a debt or obligation constituted by the act of the law apart from any consent or intention of the parties or any privity of contract. These relationships are termed as quasi-contracts or constructive contracts under the English Law and “certain relations resembling those created by contracts” under the Indian Law. A quasi-contract

rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another. That is why the law of quasi-contracts is known as the law of restitution. Strictly speaking, a quasi-contract is not a contract at all. A contract is intentionally entered into. A quasi-contract, on the other hand, is created by law.

BASIS OF QUASI CONTRACTS The quasi contracts are based on the maxim of 'nemodebetlocuplatari ex lienajustua', i.e., no man must grow rich out of another person's costs. In other words, these are based on the equitable principle that a person shall not be allowed to enrich himself at the expense of another.

FEATURES OF QUASI-CONTRACTS The salient features of a quasi-contract are as under:

a) It is imposed by law and does not arise from any agreement.

b) The duty of a party and not the promise of any party is the basis of such contract.

c) The right under it is always a right to money and generally, though not always, to a liquidated sum of money

d) The right under it is available against specific person(s) and not against the world.

e) A suit for its breach may be filed in the same way as in case of a complete contract.

KINDS OF QUASI CONTRACTS

The quasi contractual obligations are contained in Sections 68 to 72 of the Contract Act, 1872. These have been described below:

1. **Supply of necessaries to persons incompetent to contract** [Section 68]: The person who has supplied the necessaries to a person who is incompetent to contract or anyone who is dependent on such incompetent person, is entitled to claim their price from the property of such incapable person.
   Example: A supplies B, a lunatic, some necessaries suitable to the maintenance of his life. A is entitled to be reimbursed from B's property.
   The following conditions are necessary for the applicability of the provisions of Section 68:
   a) There must be the supply of necessaries to a person who is incompetent to contract such as a minor or a person of unsound mind or dependents of such incompetent person.
   b) The term 'necessaries' shall be construed in accordance with the situation in life of the incompetent person, the nature of goods, the extent of supplies, etc.
   c) The supplier can claim only reasonable value for the supplies made.
   d) The reimbursement of the price of goods supplied can be obtained from the property of the incompetent person who cannot be held personally liable. 2. Payment by an interested person [Section 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: X is bound by law to make a certain payment. Y is interested in such a payment, and he makes it, there will be a quasi contractual obligation of X to reimburse Y. In order to make Section 69 applicable, the following conditions must be satisfied:

a) The plaintiff should be interested in making the payment in order to protect his own interest and the payment should not be voluntary one.

b) The payment must be such as the other party was bound by law to pay.

c) The payment must not be such as the plaintiff himself was bound to pay.

3. Liability to pay non-gratuitous acts [Section 70]: Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefits thereof, the latter is bound to make compensation to the former in respect of, or to restore, the things so done or delivered.

Example: A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them. A claim under this Section can be made only when the following conditions are satisfied:

a) The thing must have been done or delivered lawfully;

b) The person who has done or delivered the thing, must not have intended to do so gratuitously; and

c) The person for whom the act is done/to whom thing is delivered must have enjoyed the benefit of the act done/thing delivered.

4. **Responsibility of a finder of goods [Section 71]:** A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee. Example: X, a guest found a diamond ring at a birthday party of Y. X told Y and other guests about it. He has performed his duty to find the owner. If he is not able to find the owner he can retain the ring as bailee.

5. Payment by mistake or under coercion: A person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it. Example: A paid some money to B by mistake which was in fact due to C. In this case, B must repay the money to C as it had been paid under a bonafide mistake.

DISCHARGE OF CONTRACT

Discharge of contract means termination of the contractual relations between the parties to a contract. A contract is said to be discharged when the rights and obligations of the contracting parties are extinguished and their relationship comes to an end.

VARIOUS MODES OF DISCHARGE

A contract may be discharged in the following ways:

- ♣ By performance of contract.
- ♣ By agreement.
- ♣ By lapse of time.
- ♣ By operation of law.
- ♣ By impossibility of performance.
- ♣ By committing breach of contract.

(1) **DISCHARGE BY PERFORMANCE OF CONTRACT** Performance of a contract is one of the most usual ways of discharge of a contract when the parties to the contract fulfill their obligations under a contract, the contract is said to have been performed and the contract comes to an end. Performance of contract may be classified as:

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

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

(2) **DISCHARGE BY AGREEMENT** As contract emerges from an agreement of both parties, it may also be terminated by another agreement or consent of both parties. A contract can be discharged by mutual agreement in any of the following ways:

a) By novation (Substitution of a new contract): Novation means substituting a new contract for the existing one, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract. The novation may be of the following two types i.e.,

(i) novation involving change of parties, but the contract remaining the same

(ii) novation involving substitution of a new contract, but parties remaining the same.

b) By alteration: Alteration means change in one or more of the terms of a contract with the consent of all the parties. If any material alterations are made in the contract, the original contract will come to an end and in its place a new contract in an altered form comes into existence. c) By rescission: Rescission means cancellation of the contract. A contract may be rescinded by agreement between the parties at any time before it is discharged by performance or in some other way.

d) By remission: The term 'remission' may be defined as the acceptance of lesser fulfillment of the terms of the promise, e.g., acceptance of a less sum of money where more is due.

e) By waiver: When both the parties, by mutual consent, agree of abandon their respective rights, the contract need not be performed and the same is discharged. It is called waiver. To constitute a waiver, neither an agreement nor consideration is necessary.

f) By merger: It takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract, e.g., a tenant buying the house in which he is a tenant.

(3) **DISCHARGE BY LAPSE OF TIME** The Limitations Act, 1963 provides that a contract must be performed within the period of limitation. If the contract is not performed and the promisee fails to take any action within the period of limitation, then the contract is terminated or discharged by lapse of time.

(4) **DISCHARGE BY OPERATION OF LAW** A contract may be discharged by operation of law in the following cases:

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

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

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

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

(5) **DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE** A contract will be discharged when the performance of contract becomes impossible. The effects of impossibility of performance may be of the two types, namely, a) Initial impossibility: It is the impossibility which exists at the time of formation of contract. It makes the contract void ab initio, i.e., void from the very beginning.

b) Subsequent or supervening impossibility: Supervening impossibility means impossibility which does not exist at the time of making the contract but which arises subsequently after the formation of the contract and which makes the performance of the contract impossible or illegal. Supervening impossibility is an excuse for the non-performance of the contract in the following cases:

(i) Destruction of subject matter: If the subject-matter of a contract is destroyed after making the contract, without the default of either party, the contract is discharged.

(ii) Death or personal incapacity: The contract is discharged on the death or incapacity or illness of a person if the performance of a contract depends on his personal skill or ability.

(iii) Change of law: The contract is discharged if the performance of the contract becomes impossible or unlawful due to change in law after the formation of the contract.

(iv) Non-occurrence or non-existence of particular state of thing: Where a contract is made on the basis of continued existence or occurrence of a particular state of things, the contract comes to an end if the state of things ceases to exist or changes.

(v) Outbreak of war: The pending contracts at the time of declaration of war are either suspended or declared as void.

(6) **DISCHARGE BY BREACH OF CONTRACT** A contract is said to be discharged by breach of contract if any party to the contract refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. Breach of contract is of two kinds, namely,

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

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

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

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

FRUSTRATION

Frustration may be defined as the pre-mature termination of the contract owing to the change of circumstances which are entirely beyond the control of the parties.

REMEDIES FOR BREACH OF CONTRACT A breach of contract occurs if any party refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract.

A breach of contract may arise in two ways,

(a) anticipatory breach and

(b) actual breach. A remedy is the course of action available to an aggrieved party (i.e., the party not at default) for the enforcement of a right under a contract. The various remedies available to an aggrieved party are as follows

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

I. **RESCISSION OF THE CONTRACT** Recession of a contract means annulment of it. When all or some of the terms of the contract are cancelled, rescission of a contract takes place. When there is a breach of contract by one party, the aggrieved party may rescind the contract and need not perform his part of the contract. The aggrieved party has to file a suit for rescission. When rescission is granted, the aggrieved party is absolved form all his obligations under the contract.

The court grants rescission in the following cases:

a) Where the contract is voidable at the option of the plaintiff.

b) Where the contract, is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff. The court, may, however, refuse to grant rescission, in the following cases:

a) Where the plaintiff has expressly or impliedly ratified the contract; or

b) Where owing to change in the circumstances of the contract, the parties cannot be restored to their original position; or

c) Where the third parties have, during the subsistence of the contract, acquired right's in the contract in good faith and for value; or

d) Where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

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

Types of Damages

a) General or ordinary damages: These are the damages which are payable for the loss arising naturally and directly, in the usual course, from the breach of contract. In a contract for the sale of goods, the measure of ordinary damages is the difference between the contract price and the market price of such goods on the date of breach.

b) Special damages: These are the damages which are payable for the loss arising due to some special or unusual circumstances.

c) Exemplary or punitive or vindictive damages: These are the damages which are in the nature of punishment. The court may award these damages in case of:

i) Breach of contract to marry.

ii) Wrongful dishonour of cheque by a banker in violation of Section 31 of the Negotiable Instruments Act. The damages are estimated on the basis of loss of prestige and goodwill of the customer. The rule applied in this case is that smaller the amount of cheque, the higher shall be the damages.

d) Nominal damages: These are the damages which are very small in amount. Such damages are awarded simply to establish the right of the party to claim damages for the breach of contract even though the party has suffered no loss.

III. SUIT FOR SPECIFIC PERFORMANCE

This means demanding the court's direction to the defaulting party to carry out the promise according to the terms of the contract. Specific performance of the contract may be directed by the court in the following circumstances:

(i) Where actual damages arising from breach are not measurable.

(ii) Where monetary compensation is not an adequate remedy. Specific performance of an agreement will not be granted –

a) Where the damages are considered as an adequate remedy;

b) Where the contract is of personal nature, e.g. contract to marry;

c) Where the contract is made by a company beyond its powers as laid down in its Memorandum of Association;

d) Where the court cannot supervise the performance of the contract;

e) Where one of the parties is a minor;

f) Where the contract is inequitable to either party.

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

V. **SUIT UPON QUANTUM MERUIT:-** The word 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done". When a person has begun the work and before he could complete it, if the other party terminates the contract or does something which makes it impossible for the other party to complete the contract, he can claim for the work done under the contract.

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

UNIT 2

THE SALE OF GOODS ACT 1930

The law relating to the sale of goods or movables in India is contained in the Sale of Goods Act, 1930 which came into force on 1st July, 1930. Prior to the enactment of the Sale of Goods Act, 1930, the law of sale of goods was contained in Chapter VII of the Indian Contract Act 1872. The Act contains sixty-six sections and extends to the whole of India, except the State of Jammu and Kashmir.

Contract of sale Under Section 4 (1) of the Sale of Goods Act, 1930, the contract of sale of goods is defined as follows: "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price."

A contract of sale may provide for:

a) **Sale**: A contract of sale may be absolute or conditional. Where the right of ownership in the goods is transferred from the seller to the buyer, the contract is sale.

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

Essentials of a Valid Contract of Sale

1) **Contract**:
   All the essential elements of a contract must be present in a contract of sale.
2) **Two parties**:
   There must be two parties to constitute a contract of sale namely; a buyer and a seller. The same person cannot both be a seller and a buyer.
3) **Goods**:
   The subject matter of a contract of sale will always be goods. The goods may be either existing goods, future goods or contingent goods.
4) **Transfer of property**:
   In a contract of sale, the seller must transfer or agree to transfer property in the goods to the buyer.
5) **Price**:
   The consideration for a contract of sale must be money called the price.

Distinction between Sale and Agreement to Sell

Basis	Sale	Agreement to Sell
1. Transfer of property	The property or ownership in the goods immediately passes from seller to buyer.	The property in goods transfers on some future date or subject to fulfillment of some conditions. The seller continues to be the owner of goods.
2. Kinds of goods	Sale is always of existing, specific or ascertained goods.	An agreement to sell may relate to existing goods, unascertained goods and mostly to future or contingent goods.
3. Type of contract	Sale is an executed contract.	It is an executor or future contract.
4. Risk	The goods belong to the buyer even if they remain in the possession of seller. In case of loss or damage, the buyer will suffer the loss.	The goods belong to the seller and he will suffer the loss if goods are destroyed, even if these are in the possession of the buyer.
5. Remedy for breach of contract	If the buyer fails to pay the price, the seller can sue him for price, but cannot resell the goods.	The seller can recover the goods, can sue for damages and can resell the goods, but cannot sue the intended buyer for recovery of price.
6. Insolvency of buyer	If buyer gets insolvent before he pays the price, the seller cannot retain the goods. He must return the goods to the buyer's Official Receiver and shall be entitled only to a reteable dividend.	The seller can recover the goods, can sue for damages and can resell the goods, but cannot sue the intended buyer for recovery of price.
7. Insolvency of seller	If seller gets insolvent, the buyer can recover goods from seller's Official Receiver.	If the buyer has already paid the price, buyer cannot recover the goods. He can only claim reteable dividend.

CONDITIONS AND WARRANTIES

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

Meaning of Conditions and Warranties

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

For example: B wanted to purchase a car, suitable for touring purpose and M suggested him a 'Burgatti' car. B purchased the car from M, a car dealer. After some use, car was found unfit for the touring purpose. Held there was a breach of condition.

Warranty:

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

For example: *X purchased a car from a dealer with assured gifts and discount schemes*. *Dealer defaulted in delivery of these schemes as intended*. There is a breach of warranty. ***Express and Implied Conditions and Warranties***

The conditions and warranties may be express or implied. 'Express' conditions and warranties are those, which have been expressly agreed upon by the parties at the time of the contract of sale. 'Implied conditions and warranties are those, which the law incorporates into the contract unless the parties stipulate to the contrary. They may be cancelled, or varied by an express agreement or by the course of dealing or by usage and custom.

Implied Conditions

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

a) In case of sale, the seller has a right to sell the goods, and

b) In case of an agreement to sell, the seller will have the right to sell at the time when the ownership is to pass from the seller to the buyer.

Example: If the goods can be sold only by infringing the trademark, the seller shall be deemed to have broken the condition that he has a right to sell the goods. [Niblett vs. Confectioners Materials Co. Ltd (1921) 3KB 387]

2) **Sale by description [Sec. 15]**: Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans."

The term 'sale by description' includes the following:

a) Where the buyer has never seen the goods and buys them on the basis of the description given by the seller.

b) Where the buyer has seen the goods but he relies not on what he has seen but what was stated to him and the deviation of the goods from the description is not apparent. c) Packing of goods may sometimes be a part of description.

d) Brand may also form part of the description.

For example: A sold B 'a new Maruti 800 car'. On delivery, the buyer finds that it is an old car. The buyer may reject the sale.

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

a) that the goods must correspond with the sample in quality;

b) that the buyer must have reasonable opportunity of comparing the bulk with the sample. School of Distance Education

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

For example: A seller undertakes to supply 100 tonnes of Java sugar warranted to be equal to the sample. The sugar when supplied corresponds to the sample but is not Java sugar. The buyer can repudiate the contract.

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

5) **Condition as to quality or fitness [Sec. 16 (1)]:** Usually in a contract of sale, there is no implied condition as to quality or fitness of the articles for any particular purpose. It is the duty of the buyer to see and satisfy himself whether the article will be suitable for the purpose for which he requires them (Caveat Emptor). Section 16 constitutes an exception to the rule of caveat emptor in the following circumstances:

(i) the buyer makes the seller know, whether expressly or by implication, the purpose for which the goods are required,

(ii) the buyer relies on the skill and judgment of the seller, and

(iii) it is the business of the seller to supply goods of that kind in the ordinary course of his business. For example: A contracts to make and deliver a set of false teeth to B. The false teeth did not fit in the mouth of B. B is entitled to reject the goods.

6) **Condition as to merchantability [Sec. 16 (2)**]: Where the goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

For example: A agreed to sell B some motor horns. Goods were to be delivered by instalments. The first instalment was accepted but the second contained a substantial quantity of horns which were damaged owing to bad packing. Held, the buyer was entitled to reject the whole installment, as the goods were not of a merchantable quantity.

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

For example: X purchased milk from Y, a milk dealer. The milk contained typhoid germs. X's wife, on taking the milk, got infection and died. Held, X was entitled to get damages. ***Implied Warranties***

1. **Warranty of quiet possession [Sec. 14 (b)]:** Under the circumstances are such as to show a different intention there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. The buyer, therefore, will be entitled to recover compensation for breach of both, a condition as well as a warranty.

   For example: Anil purchased a secondhand typewriter from Rahul. Anil spent some money on its repairs was dispossessed of it after six months by the true owner. It was held that Anil was entitled to recover from Rahul not only the price paid but also *the cost of repair*.

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

   For example: A borrowed Rs. 500 from B and hypothecated his radio with B as security. Later on A sold this radio to C who bought in good faith. Here, C can claim damages from A because his possession is distributed by B having a charge.

3. **Warranty implied by usage of trade [Sec. 16 (3)]:**
   An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
   For example: There was a sale of drugs by auction. It was a trade usage to declare any sea damage in such cases. It was held that it could be implied that drugs so sold without any such declaration were free from sea damage.
4. **Warranty to disclose dangerous nature of goods**:
   Where the goods are dangerous to the knowledge of the seller and the buyer is ignorant of the same, there is an implied warranty that the seller should warn the buyer about the probable danger.
   For example: X sold a tin of disinfectant powder to Y, X knew that the tin was to be opened with special care otherwise it might prove dangerous. He also knew that Y was ignorant about it. He did not warn Y. C opened the tin and his eyes were injured by the powder. It was held that A was liable as he should have warned Y of the probable danger.

Doctrine of Caveat Emptor

The term 'caveat emptor' is a Latin word which means 'let the buyer beware' i.e., a buyer purchases the goods at his own risk. The doctrine of caveat emptor means that the seller is not bound to disclose the defects in the goods, which he is selling. It is the duty of the buyer to satisfy him before buying the goods that the goods will serve the purpose for which they are being bought.

Section 16 of the Sale of Goods Act has enunciated the rule of caveat emptor as follows: "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

Exceptions to the Doctrine of Caveat Emptor

The doctrine of caveat emptor is, however, subject to the following exceptions:

1) Fitness for buyer's purpose [Section 16(1)]:
   Where buyer lets the seller know the particular purpose and depends on the seller's skill and judgement who deals in goods of that kind, the condition is that the goods must be fit for that purpose.
2) *Goods purchased under patent or brand name*:
   In case where 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) Condition as to merchantability [Section 16(2)]:

This condition applies

(i) where goods are sold by description,

(ii) the seller deals in those goods, and

(iii) the buyer has no opportunity to examine the goods being bought.

4) Good sold by sample as well as description [Section 15(1)]:

Where the goods are sold by sample as well as by description, the doctrine does not apply if the bulk of the goods supplied do not correspond with the sample and the description.

5) Goods sold by sample [Section 17]:

Where the goods are bought by sample the doctrine does not apply if the bulk does not correspond with the sample.

6) *Condition implied by usage or custom of trade*: Where trade usage attaches an implied condition or warranty regarding the quality of fitness of goods for a particular purpose, the doctrine of caveat emptor does not apply.

7) *Goods sold by Misrepresentation*: Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or where the seller knowingly conceals defects not discoverable on reasonable examination, then the rule of caveat emptor will notapply.

DISTINCTION BETWEEN A CONDITION AND WARRANTY

Basis of distinction	Condition	Warranty
1. Purpose	It is a stipulation which is essential to the main purpose of the contract	It is a stipulation which is only collateral to the main purpose of the contract
2. Right in case of breach	The aggrieved party can terminate the contract.	The aggrieved party can claim damages but cannot terminate the contract
3. Treatment	A breach of condition can be treated as a breach of warranty	A breach of warranty cannot be treated as a breach of condition
4. Effect on breach of contract	Breach of condition will affect the legality of the contract.	Breach of warranty will not affect the legality of the contract.

DELIVERY

Modes of Delivery

Delivery of goods may be made in any of the following ways:

a) Actual delivery: Where the goods are physically handed over by the seller to the buyer, the delivery is said to be actual.

b) Symbolic delivery: Where the goods are bulky and incapable of actual delivery, there are other means of obtaining possession of goods are delivered by the seller to the buyer.

c) Constructive delivery : Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf."

Rules Regarding Effective Delivery of Goods

1) Delivery and payment are concurrent conditions [Sec. 32]:

The seller shall be ready and willing to give possession of goods to the buyer in exchange for the price and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

2) Delivery may be either actual, symbolic or constructive [Sec. 33]:

The delivery of goods must have the effect of putting the goods in the possession of buyer or his authorized agent.

3) Effect of part delivery [Sec. 34]:

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

4) Buyer should apply for delivery [See. 35]:

Apart from any express contract the seller is not bound to make delivery until the buyer applies for delivery.

5) Place of delivery [Sec. 36 (I)]:

The goods must be delivered at the specified place during the business hours and on a working day. But where no place is specified in the contract, the following rules contained in Section 36(1) shall apply:

(a) In case of sale, the goods sold are to be delivered at the place where they are, at the time of sale;

(b) In case of an agreement to sell, the goods are to be delivered at the place where they are, at the time of agreement to sell;

(c) If at the time of agreement to sell, the goods are not in existence they are to be delivered at a place where they are manufactured or produced.

6) Time for delivery of goods [Sec. 36(2)]:

Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within the reasonable time. Demand for and the making of delivery must be done at reasonable hours [Sec. 36(4)].

7) Effect of goods in possession of a third party [Sec. 36(3)]:

Where the goods at the time of sale are in the possession of a third person, effective delivery takes place when such person acknowledges to the buyer that he holds the goods on his behalf. However, if goods are sold by transfer of documents to title, the consent of third person having possession of the goods is not required.

8) Expenses of delivery [Sec, 36(5)]:

Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

9) Delivery of wrong quantity [Sec. 37]:

"Wrong quantity" may include short or excess delivery of goods than the agreed quantity, and also the delivery of agreed quality mixed with another quality.

Section 37 deals with the following three cases:

a) *Short delivery [Sec. 37(1)]:* If the seller delivers a quantity less than he has contracted to sell, the buyer may reject them. But if he accepts the goods so delivered, he shall pay for them at the contract price.

b) *Excess delivery [Sec. 37(2)]:* If the seller delivers a larger quantity than he contracted to sell, the buyer has the option of accepting the quantity as per the contract and reject the rest or he may reject the whole. It he accepts the entire quantity, he has to pay for the excess at the contract price.

c) *Mixed delivery [Sec. 37(3*)]: If the seller delivers the goods mixed with the goods of a different description, the buyer may accept the contracted goods or reject the whole quantity of goods.

10) Instalment deliveries [Sec. 38(1)]: Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

11) Delivery to carrier or wharfinger [Sec. 39]:

Where, in pursuance of a contract of sale, goods are delivery to a carrier for the purpose of transmission to the buyer or to a wharfinger for safe custody, delivery of goods to them is prima facie deemed to be a delivery of the goods to the buyer.

12) Deterioration of goods during transit [Sec. 40]:

Where the seller agrees to deliver the goods at his own risk at a place different from that where they were at the time of sale, the buyer shall bear the risk of deterioration of goods incidental to the course of transit.

UNPAID SELLER

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

(a) When the whole of the price has not been paid or tendered;

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

Rights of an Unpaid Seller

An unpaid seller has two-fold rights, :

I. Right of an Unpaid Seller against the goods; and

II. Rights of an Unpaid Seller against the buyer personally.

I. Right of an Unpaid Seller against the goods

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

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

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

Lien is the right of an unpaid seller to retain the goods in his possession and refuse to deliver them to the buyer until the full payment of the price is made to him, or the price is offered to him. The unpaid seller can exercise lien only in the following cases:

a) Where the goods have been sold without stipulation as to credit;

b) Where the goods have been sold on credit but the term of credit has expired;

c) Where the buyer becomes insolvent even though the period of credit may not have yet expired;

d) Where the unpaid seller has delivered a part of the goods, he may exercise his lien on the remaining part of the goods.

Termination of Lien or Loss of Lien

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

(i) **By delivery to the carrier**: When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.

(ii) **By delivery to the buyer**: When the buyer or his agent lawfully obtains possession of goods, unpaid seller losses his right of lien.

(iii) **By waiver**: When the seller expressly or impliedly waives his right of lien, the right of lien is terminated. (iv)By tender of price: Where the buyer tenders price for the goods purchased by him, seller's lien is lost.

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

The right of stoppage in transit means the right of stopping further transit of the goods while they are with a carrier for the purpose of transmission to the buyer, resuming possession of them and retaining possession until payment or tender of the price. The right of stoppage can be exercised only when the following conditions are satisfied:

a) The seller should be an unpaid seller;

b) The buyer must have become insolvent;

c) The seller must have parted with the possession of the goods; and

d) The goods must be in the course of transit.

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

The transit comes to an end in the following cases:

(i) Delivery to the buyer: When the buyer or his agent obtains delivery of the goods before their arrival at the appointed destination.

(ii) Interception by the buyer: When the buyer or his agent takes delivery after the goods have reached destination.

(iii) Acknowledgement to the buyer: When the goods have arrived at their destination and the carrier acknowledges to the buyer or his agent that he holds the goods on his behalf.

(iv) Goods delivered to buyer's carrier: When the goods are delivered to a carrier, who acting as an agent of the buyer, the transit ends as soon as the goods are delivered to the carrier.

(v) Wrongful refusal to deliver: When the carrier wrongfully refuses to deliver the goods to the buyer or his agent.

(vi) Part delivery of goods: When part delivery of the goods has been made to the buyer with an intention of delivering the whole of the goods, transit will be at an end for the remainder of the goods also which are yet in the course of the transit.

3) Right of Resale [Sec. 54]

If the buyer fails to pay or offer the price within a reasonable time, the unpaid seller has the right to resell the goods in the following circumstances:

a) Where the goods are of a perishable nature;

b) Where the unpaid seller has exercised his right of lien or of stoppage in transit and gives notice to the buyer of his intention to resell the goods;

c) Where the seller expressly reserve his right of resale.

II. Rights of an Unpaid Seller

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

1) Suit for price [Sec. 55]:

When the property has passed to the buyer, and the buyer wrongly neglects or refuses to pay, the seller can sue him for the price.

2) Suit for damages [Sec. 56]:

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

3) Suit for repudiation [Sec. 60]:

The repudiation of the contract of sale by the seller before the date of delivery entitles the buyer to treat the contract as rescinded and sue the seller for damages for the breach.

4) Suit for interest [Sec. 61(2)]:

In case of breach of contract on the part of the buyer, while filing a suit for the price, the seller may sue the buyer for interest from the date of the tender of the goods or from the date on which the price was payable.

UNIT 3

Information laws and RTE

Jurisdiction of RTI Act- 2005

Section-1(2): It extends to the whole of India except the State of Jammu and Kashmir.

Definition

Section- 2 (a): "Appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly:

(i) By the Central Government or the Union territory administration, the Central Government;

(ii) By the State Government, the State Government.

Section- 2 (c): "Central Public Information Officer" means the Central Public Information Officer designated under sub-section

(1) and includes a Central Assistant Public Information Officer designated as such under sub-section

(2) of section 5.

Section- 2 (e): "Competent Authority" means:

(i) The Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;

(ii) The Chief Justice of India in the case of the Supreme Court;

(iii) The Chief Justice of the High Court in the case of a High Court;

(iv) The President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;

(v) The administrator appointed under article 239 of the Constitution;

Section- 2 (f): "Information" means any material in any form, including Records, Documents, Memos, e-mails, Opinions, Advices, Press releases, Circulars, Orders, Logbooks, Contracts, Reports, Papers, Samples, Models, Data material held in any electronic form and information relating to any private body which can be accessed by a Public Authority under any other law for the time being in force.

Section- 2 (h): "Public Authority" means any authority or body or institution of self government established or constituted:

a. By or under the Constitution,

b. By any other law made by Parliament;

c. By any other law made by State Legislature;

d. By notification issued or order made by the appropriate Government

It also includes any:
(i) Body owned, controlled or substantially financed;
(ii) Non-Government Organization substantially financed directly or indirectly by funds provided by the appropriate Government.

Section- 2 (i): "Record" includes:
a) Any document, manuscript and file;
(b) Any microfilm, microfiche and facsimile copy of a document;
(c) Any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
(d) Any other material produced by a computer or any other device.

Section- 2(j): "Right to Information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to:

(i) Inspection of work, Documents, Records;
(ii) Taking notes, Extracts or Certified copies of documents or records;
(iii) Taking certified samples of material;
(iv) Obtaining information in the form of Diskettes, Floppies, Tapes, Video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

Section- 2(n): "Third Party" means a person other than the citizen making a request for information and includes a Public Authority.

Objective of the RTI Act

The Right to Information Act 2005 (RTI) is an Act of the parliament of India "to provide for setting out the practical regime of right to information for citizens"
The Objective of the Act is to provide for

1. Setting out the practical regime of right to information for citizens
2. To secure access to information under the control of public authorities
3. In order to promote transparency and accountability and in the working of every public authority

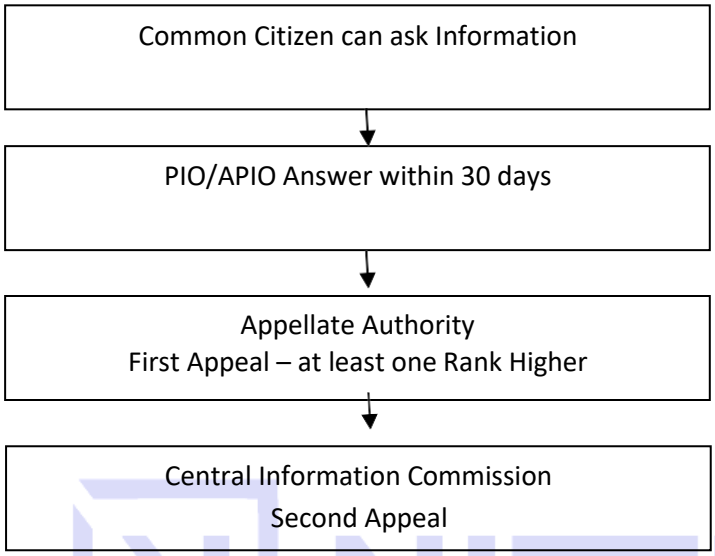
Scope of the RTI Act

The Act applies to all States and Union Territories of India except the State of jammu and Kashmir. Jammu and Kashmir has its own act called Jammu and Kashmir Right to Information Act , 2009 is in force.

Method of Seeking Information

Any citizen who desires to obtain any information under the RTI may seek information. The following is the procedure for seeking information under RTI, Act 2005.

1. *Make an Application*: A citizen, who desires to obtain any information under the Act, should make an application to the Public Information Officer of the concerned public authority in writing in English, Hindi or in the official language of the area in which the application is made (Section 6(1)). The application should be precise and specific.
2.



3. *Format of Application*: There is no prescribed format of application for seeking information. He application can be made on plain paper. The application should, however , have the name and complete postal address of the applicant. Even in case where information is sought electronically, the application should contain name and postal address of the applicant.
4. *Mode of Sending Application:* The applicant can send the application by post or through electronic means or can deliver it personally in the office of the public authority.
5. *Pay/Send Application fee:* The applicant , along with the application , should send/pay application fee to the Public Information Officer as prescribed in the Fee Rules. In case of Government of India prescribed application fee is 10/- which can be paid through a demand draft or a banker's cheque or an Indian Postal order payable to the accounts officer of the public authority.
6. *Quantum of seeking Information:* The applicant may also be required to pay further fee towards the cost of providing information, details of which shall be intimated to the applicant by the Public Information Officer. The fee so demanded can be paid the same way as the application fee.
7. *Pay Additional fee/cost of Providing Information:* In case it is decided to provide the information, the applicant shall be informed of the additional fees required to be deposited by him/her for information sought and information shall be furnished after the deposit of the fee by the requester, as per the act.

At present the applicable rates, which are subject to change from time to time, are given as under:

- Rupees two for each page (in A4 or A3 size paper) created or copied
- Actual charge or cost price of a copy in larger size paper
- Actual cost or price for samples or models
- 50 Rupees per diskette or floppy
- For information provided in printed form at the price fixed for such publication or 2 Rupees per page of photocopy for extracts from the publication
- For inspection of records , no fee for the first hour; and a fee of rupees 5 for each subsequent hour (or fraction thereof)

8. *Rejection to provide Information:* In case information is rejected , applicant/requester will be intimated about: The reason for the rejection, the period within which an appeal against such rejection may be made to the appellate authority and the particulars of the Appellate authority.
9. *Filing of Appeal with the First Appellate Authority:* An applicant can file appeal to the first appellate authority if information is not supplied to him within the prescribed time of thirty days or 48 hours, as the case of may be, or is not satisfied with the information furnished to him/her. Such an appeal should be filed within a period of thirty days. The appellate authority of the public authority shall dispose of the appeal within a period of thirty days or in exceptional cases within 45 days of the receipt of the appeal.
10. *Filing of appeal with Information Commission:* If the appellate authority fails to pass an order on the appeal within the prescribed period or if the appellant is not satisfied with the order of the first appellate authority , he may prefer a second appeal with the Information Commission within ninety days from the date on which the decision should have been made by the first appellate authority or was actually received by the applicant.

Time Taken to Provide the Requested Information:

The Act specifies time limits for replying to the request

- If the request has been made to the PIO , the reply is to be given within 30 days ofreceipt
- If the request has been made to an APIO, the reply is to be given within 35 days ofreceipt
- If the PIO transfers the request to another public authority (better concerned with the information requested). The time allowed to reply is 30 days byt computed from the day after it is received by the PIO of the transferee authority
- Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the second schedule to the Act) is to be provided within 45 days but with the prior approval of the Central Information Commission.
- However , if life or liberty of any person is involved, the PIOis expected to reply within 48 hours.

Authorities under the Act:

There are two Information commissions: The Central Information Commission and The State Information Commission

1. The Central Information Commission [CIC] :

The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the commendation of a committee consisting of :

(i) the Prime Minister, who shall be the Chairperson of the committee;
(ii) the Leader of Opposition in the Lok Sabha; and
(iii) a Union cabinet minister to be nominated by the Prime Minister (S. 12(3)).

Every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years , whichever is earlier , and shall not be eligible for re-appointment as such Information Commissioner(S. 12 (5)).

Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance (S.12 (5)).

The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may , with previous approval of the central government , establish offices at other places in India (S.12 (7)).

2. The State Information Commission (SIC)

The State Information Commission shall consist of

(a) the State Chief Information Commissioner, and

(b) such number of State Information Commissioners, not exceeding ten , as may be deemed necessary (S.15 (2)).

The State Chief Information commissioner and the State Information Commissioners shall be appointed by the Governor on the commendation of a committee consisting of

(i) the Chief Minister – who shall be the chairperson of the committee

(ii)the Leader of Opposition in the Legislative Assembly; and

(iii) a cabinet Minister to be nominated by the Chief Minister(S.15 (3)).

Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years , whichever is earlier , and shall not be eligible for re-appointment as such Information Commissioner(S. 16 (2)).

The State chief Information Commissioner and State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance (S. 15 (5)).

The headquarters of the Central Information Commission shall be at such place in the state as the State government may, by notification in the official gazette specify and the State Information Commission may , with the previous approval of the State government , establish offices at other places in the state (S.15 (7)).

POWER AND FUNCTIONS OF INFORMATION COMMISSION

1. Subject to the provisions of this Act, it shall be the duty of the central information Commission or State Information Commission , to receive and inquire into a complaint from any person.
2. Conducting enquiry
3. Summoning and enforcing the attendance of persons and compel them to give oral and written evidence
4. Requiring the discovery and inspection of documents
5. Receiving evidence on affidavit
6. Requisitioning any public record or copies from any court or office
7. Any other matter which may be prescribed.

QUANTUM OF PUNISHMENT

The law provided for imposition of penalty of Rs 250/- each day till application or information is furnished. However, the total amount of penalty imposed should not exceed Rs 25,000/-.

Who is P.I.O?

PIO is Public Information Officer. PIO's are officers designated by the public authorities in all administrative units or offices under it to provide information to the citizens request for information under the Right To Information Act

1. Who is PIO? What are the Duties and Powers of Information Officer PIO?

PIO is Public Information Officer. PIO's are officers designated by the public authorities in all administrative units or offices under it to provide information to the citizens request for information under the Right To Information Act.

Duties/Functions of Information Officer/Commission, RTI Act 2005 [Section 18]:

The Central Information Commission/State Information Commission has a duty receive complaints from any person.

1. Who has not been unable to submit an information request because a PIO has not been appointed.

2. Who has been received no response to his to his/her information request within the specified time limits.

3. Who has been refused access to any information requested under this Act.

4. Who thinks the fee charged are unreasonable.

5. Who thinks information given is incomplete, false or misleading under this Act.

6. Any other matter relating to obtaining information under this Act.

UNIT 3

RIGHT TO EDUCATION ACT, 2009

The Right of Children to Free and Compulsory Education Act, 2009, popularly known as the Right to Education Act (RTE Act), is a Central legislation that details the aspects of the right of children of age six to fourteen years to free and compulsory elementary education (Classes I to VIII). This is now a Fundamental Right under India's Constitution (Article 21A).

Important provisions of the RTE Act (and, for completeness, of some of the Model Rules circulated by the Central Government for adoption by States) are:

1. **Right to free & compulsory education** No school fees, capitation fees, charges or expenses are to be
   - Paid by a child to get elementary education. The child or his parents are not to be subjected to any screening
   - Procedure for admission to school. When a child of above six years has not been admitted to any
   - School or, if admitted, is unable to continue studies, that child shall be admitted to a class appropriate to his age. He will be also given special training (minimum of 3 months; maximum 2 years) to bring him at par with his class. He can continue beyond 14 years in order to complete receiving elementary education. If a school does not provide facility to complete elementary
   - Education then a child of that school can take a transfer to any other government (govt.) or government-aided school. Each child is also entitled to free text books, writing material and• uniform.

2. **Duties of Appropriate Govt., Local Authority & Parents** The RTE Act defines"appropriate government" as –

   i. the Central government, for schools owned or controlled by the Central government ora Union Territory (UT) Administration without legislature; and

   ii. the State and UT government with legislature, for schools established in the territory of that State/UT.

   - The appropriate govt. or the local authority (meaning a• municipal corporation or municipal council or equivalent body in urban areas or a Panchayati Raj Institution – PRI – in rural areas) has to providei.

     i. a school within 1 km walking distance for children in classes I to Vand

     ii. within 3 kms for those in classes VI to VIII.

     iii. In densely populated areas, depending on the number of children between the ages of 6 to 12, more than one school may be necessary. iv. For remote areas, where distances are more than the prescribed kms, facility should be provided for free transportation or residence as required. Such a school is termed a 'neighbourhood school'.

     - The appropriate govt. or local authority has to undertake school

• mapping to determine the locations of neighborhood schools. The location of each school has to be made known to the

• community it is meant to serve. All private schools (those that do not seek any govt. grants to impart education) in a neighborhood are required to enroll 25% students from the weaker and disadvantaged sections of society and providefree education to them. These schools can thenclaim reimbursement from the govt. for the expenditure incurred, provided that, per child expenditure does not exceed the amount a govt. school spends to educate a child.

- The Central and State govt.'s have concurrent responsibility to provide funds for execution of the RTE Act.
- The Central govt., apart from carrying out the mandated functions of the appropriate govt. in respect of schools owned/controlled by it, is also responsible for
  - i. preparation of the National Academic Curriculum,
  - ii. developing and enforcing standards for teachers' training, and
  - iii. providing technical support to the State govt.'s for promoting innovations, research, planning and capacity building.
- The State govt. or local authority has to
  - i. prescribe curriculum and courses for study for elementary education,
  - ii. ensure admission, attendance and completion of elementary education ofthe children and maintain records of children up to the age of 14 years,
  - iii. provide infrastructure including school buildings, teaching staff and learning equipment,
  - iv. see that children from the weaker and marginalized sections of the society are not discriminated against in school,
  - v. provide special training facility for children not admitted to any school or those who have not completed elementary education,
  - vi. provide training to teachers and ensure each school follows the academiccalendar,
  - vii. ensure good quality elementary education according the specified standards and norms (see Heading 5 below) and
  - viii. ensure that no new school is either started or allowed to function withoutobtaining a certificate of recognition form a designated authority and schools, already existing before the RTE Act came into effect, obtain such certificate within 3 years of the Act's commencement

It is the duty of every parent to admit their children or ward to school and ensure that they receive elementary education. The appropriate govt. has to make necessary arrangements to provide one year of free pre-school training for children.

3. School Management Committees

- Each govt. and govt.-aided school is mandated to set up a School Management Committee (SMC).
- 75% of the SMC members have to be from among parents and guardians of the students of the school.
- Proportionate representation has to be given to parents/guardians of disadvantaged students or students from weaker sections of society.
- Of the remaining 25% members, one third will be from among the elected representatives of the local authority, one third from among the teachers of the school and remaining one third from among local educationists/children of the school.
- 50% of the SMC members should be women.

Salient Features of RTE Act:

1. Every Child in age group of 6-14 has Right to Free and Compulsory Education.

2. Private Schools will have to take 25% of their class strength from weaker section.

3. No seats in this Quota can be left vacant.

4. All schools will have to prescribe to norms and standards laid out in the Act.

5. All Private Schools will have to apply for recognition, if fails penalty as fine upto Rupees One Lakh and if still continues fine of Rs.10,000 per day.

6. Norms and Standards of teacher qualification and training are also laid down by an Academic Authority. Teachers in all schools will have to subscribe to these Norms within 5 years.

7. No Donation and Capitation Fee is allowed.

8. No Admission Test or Interview either for Child or Parents.

9. No Child can be held back, expelled and required to pass the Board Examination till the completion of Elementary Education.

10. There is Provision for establishment of Commissions to supervise the implementation of the Act.

11. A Fixed Student and Teacher ratio is to be maintained.

12. All schools have to adhere to Rules and Regulations laid down in this Act, failing which the school will not be allowed to function. Three years Moratorium period has been provided to school to implement all that required of them.

13. Norms and Teachers training and qualifications are also clearly mentioned in the Act.

14. All Schools except Private Unaided Schools are to be managed by School

UNIT 4

THE CONSUMER PROTECTION ACT, 1986

Objects of the Act

The Preamble to the Consumer Protection Act, 1986 reads as under:

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

The rights given to the consumers under the Act are based on the basic rights as defined by the International Organization of Consumers (IOCU) i.e., the Rights to Safety, Information, Choice, Redressal Hearing, Education and Healthy environment.

Scope and Applicability

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

It applies to all types of goods and services, public utilities and public sector undertakings. Complaints of all types whether relating to goods, services or unfair trade practices have been brought within the purview of the Act.

The provisions of the Act are in addition to and not in derogation of provision of any law for the time being in force (Sec. 3).

The Act may be regarded as a highly progressive social welfare legislation which provides more effective protection to the consumers than any corresponding legislations.

Definition of Terms Complainant [Sec. 2 (l) (b)]

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

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

The persons falling within the ambit of Section 2 (l) (b) are considered complainants and have a locus standi to file" a complaint under the Act. A public cause can be taken up by an association in the form of public interest litigation.

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

It means a written allegation by a complainant that:

i. An "unfair trade practice or a "restrictive trade practice" has been provided by any trader or service provider,

ii. The goods bought by him or agreed to be bought by him, suffer from one or more 'defects'.

iii. The services hired or availed or agreed to be hired or availed of by him suffer from "deficiency in any respect;

iv. A trader or the service provider has charged for the goods or for the service mentioned in the complaint, a "price in excess" of the price:

a) fixed by or under any law for the time being in force

b) displayed on the goods or any package containing such goods;

c) displayed on the price list established by him or under any Jaw for the time being in force;

d) agreed between the parties;

v. Goods which will be 'hazardous to life and safety' when used, are being offered for sale to the public:

a) in contravention of any standards relating to safety of such goods as required to be complied with by or under any law for the time being in force;

b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

vi. Services which are hazardous or are likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety.

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

A consumer means:

(i) Any person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any person who uses such goods with the approval of the buyer. It does not include a person who buys goods for resale or for any commercial purpose; or

(ii) Any person who hires or avails any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any person who is a beneficiary of such services with the approval of the hirer. It does not include a person who avails of such services for any commercial purpose.

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

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

The allegations referred to may relate to any unfair trade practices adopted by a trader, or any defects in goods or any deficiency in services or against charging exorbitant price.

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

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

Imperfection or shortcoming as claimed by the trader is to be determined with reference to the warranties or guarantees expressly given by a trader.

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

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

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

Goods means “every kinds of movable property other than actionable claim and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale”.

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

Service means “service of any description which is made available its potential users and includes but not limited to the provision of facilities in-connection with banking, financing, insurance, transport processing supply of electrical or other energy, board or lodging or both, housing construction, entertainment, or the purveying of news or other information but does not include the rendering of any service free of charge or under a contract of personal service”.

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

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

deceptive practice. The following six categories of such practices have been declared as unfair trade practices:

False Representation and Misleading Advertisements [Sec. 2 (1) (r) (1)]:

a) False representation as to standards, etc., of goods: It consists of a written, oral or visible representation which falsely represents the goods to be of particular standard, quality, quantity, grade, composition, style or model.

b) False representation as to standard, etc., of services: It consists of making false representation as to standard, quality or grade of service such as an assertion about professional qualifications which one does not possess. [R vs. Breeze (1973) It may also consist of falsely representing any rebuilt, second-hand, renovated or reconditioned goods as new.

c) Making false representation as to sponsorship, approval, performance, characteristics, accessories, users or benefits of such goods or services.

d) Misleading representation concerning the need for usefulness, etc., of any goods or services: It may consist of giving the public any warranty or guarantee of performance, etc., of any goods that is not based on adequate or proper test; or misleading promise to replace, maintain or repair an article, etc.,

e) Misrepresentation as to price.

f) Disparagement of goods, services or trade of others.

Restrictive Trade Practices [Sec. 2 (1) (nn)]

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

a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the prices.

b) any trade practice which requires a consumer to buy, hire or avail or any goods or services as a condition precedent to buying, hiring or availing of other goods or services. Rights of Consumers According to Section 6 of the Consumer Protection Act, the following rights are available to consumers.

1) Right to be protected or right to safety: Every consumer has the right to be protected against the marketing of goods and services which are spurious or hazardous to life and property.

2) Right to be informed: The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services as the case may be, so as to protect the consumers against unfair trade practices.
3) Right to be assured/choose: Every consumer has a right to be assured, wherever possible, access to a variety of goods and services at competitive prices.
4) Right to be heard: The right to be heard and to be assured that consumers interest will receive due consideration at appropriate forums.
5) Right to seek redressal: The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers.
6) Right to consumer education: The responsibility of creating awareness amongst the consumers has been assigned to the Central Consumer Protection Council.
7) Right to Basic Needs: The basic needs mean those goods and services which are necessary for a dignified living of people. It includes adequate food, clothing, shelter, energy, sanitation, health care, education and transportation. All the consumers have the right fulfil these basic needs.
8) Right to healthy environment or quality of life: This right provides the consumers, protection against environmental pollution so that the quality of life is enhanced. Not only this, it also stresses the need to protect the environment for the future generations as well. Consumer Protection Councils

The Consumer Protection Councils

Are established at Central Level, State Level and District Level. These councils work towards the promotion and protection of the rights of the consumers. They give publicity to the matters concerning consumer interests; take necessary steps for consumer education and protecting consumers from exploitation.

Central Consumer Protection Councils Section 4 provides that:

(1) The Central Government shall, by notification, establish a council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).
(2) The Central Council shall consist of the following members, namely:

a) the Minister-in-charge of Consumer Affairs in the Central Government, who shall beits Chairman, and
b) such number of other official or non-official members representing such interests as may be prescribed. State Consumer Protection Councils Section 7 provides that:

i. The State Government shall, by notification, establish a council to be known as the State Consumer Protection Council (hereinafter referred to as the State Council).
ii. The State Council shall consist of the following members, namely:
    1. the Minister-in-charge of Consumer Affairs in the State Government, who shall be its Chairman, and

2. such number of other official or non-official members representing such interests as may be prescribed by the State Government.
3. such number of other official or non-official members, not exceeding 10, as may be nominated by the Central Government.

iii. The State Council shall meet as and when necessary but not less than 2 meetings shall be held every year.

iv. The procedure to be observed in regard to the transaction of its business at such meetings shall prescribed by the State Government. District Consumer Protection Council Section 8-A provides that:

1. The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council (hereinafter referred to as the District Council).
2. The District Council shall consist of the following members, namely:
   a. the Collector of the District (by whatever name called), who shall be its chairman; and
   b. such number of other official or non-official members representing such interests as may be prescribed by the State Government.
3. The District Council shall meet as and when necessary but not lessthan 2 meetings shall be held every year.
4. The procedure to be observed in regard to the transaction of its business at such meetings shall prescribed by the StateGovernment.

Consumer Disputes Redressal Agencies

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

According to Section 9, there shall be established for the purpose of the Act, the following agencies, namely: ¬ Consumer Disputes Redressal Forum to be known as the “District Forum”.

The State Government shall establish a District Forum ach district of the state. However, more than one District Forum may be established strict if it is deemed fit. ¬ State Consumer Disputes Redressal Commission (SCDRC) to be known as “State Commission”. This is also to be established by the State Government in the state by notification. ¬ National Consumer Disputes Redressal Commission (NCDRC) to be known as “National Commission”.
This is to be established by the Central Government by notification.

District Forum

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

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

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

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

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

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

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

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

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

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

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

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

Jurisdiction

The State Commission shall have the jurisdiction:

(i) to entertain: complaints where the value of the goods or services and compensation, if any claimed exceeds rupees 20 Lakhs but does not exceed rupees one crore; and

(ii) appeals against the orders of any District Forum within the State; and

(iii) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity. National Commission The National Commission shall have jurisdiction for complaints and claims of the value exceeding Rs. 1 Crore.

Composition of National Commission

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

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

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

Jurisdiction: The National Commission shall have the jurisdiction:

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

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

The following may file a complaint before the District Forum:

(a) the consumer to whom the goods are sold or delivered, or agreed to be sold or delivered, or the service has been provided, or agreed to be provided

(b) any recognized consumer association, regardless of whether the consumer is a member of such association or not,

(c) one or more consumers, where there are numerous consumers having the same interest with the permission of the District Forum on behalf of or for the benefit of all consumers so interested,

(d) The Central or State Government, either in its individual capacity or as a representative of the interests of consumers in general.

Every complaint shall be accompanied with such amount of fee and payable in such manner as may be prescribed. The District Forum may, on receipt of the complaint, allow it to be proceeded with or rejected. However, the complaint shall not be rejected unless an opportunity of being heard has been given to the complainant. The admissibility of the complaint shall ordinarily be decided within 21 days of its receipt. On its admission, the complaint shall not be transferred to any other court or tribunal or any other authority. In case a consumer cannot file the complaint due to ignorance, illiteracy or poverty, any recognized consumer association may be file a complaint.

Procedure on Receipt of Complaint [Sec 13] [A]

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

(i) Referring a copy of complaint to the opposite party: Within 21 days of admission of complaint, a copy thereof shall be referred to the opposite party mentioned in the complaint, directing him to file his version of the case within 30 days or such extended period not exceeding School of Distance Education Business Regulations Page 93 15 days. If the opposite partly admits the allegations contained in the complaint, the matter will be decided on the basis of materials on the record.

(ii) Denial of allegations or failure to take action to represent the case by the opposite party: Where the opposite party denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the specified time, the dispute will be settled as follows:

a) Reference of sample to appropriate laboratory: Where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, a sample of the goods shall be obtained from the complainant, sealed, and authenticated in the prescribed manner. The sample shall be referred to appropriate laboratory for analysis or test. The report of the appropriate laboratory shall be sent to the referring authority (District Forum or State Commission) within 45 days of receipt of reference or within the extended period prescribed by the District Forum.

b) Deposit of fees by complainant for payment to appropriate laboratory: The complainant shall deposit the fee to the credit of District Forum. The amount so deposited shall be remitted to the appropriate laboratory.

c) Forwarding of report of analysis or test to the opposite partly.

d) Objections to the laboratory/test report: If any of the parties disputes the correctness of the methods of analysis/ test adopted by the appropriate

laboratory, the concerned partly will be required to file his objections in writing in regard thereto.

e) Providing reasonable opportunity of hearing to the parties: Both the parties shall be provided with a reasonable opportunity of being heard as to correctness or otherwise of the report made by the appropriate laboratory and the objections made in relation thereto.

After such hearing, appropriate orders shall be made under Section 14. [B] Complaints relating to services, i.e., where laboratory testing is not possible or required [Sec. 13(2)]

(i) Reference of complaint to opposite party: The opposite party is directed to give his version within 30 days or an extended period of 15 days.

(ii) Denial or disputing of allegation or failure of opposite party to take action to represent his case: In such a case, the District Forum shall proceed to settle the consumer dispute as under:

a. on the basis of evidence brought to its notice by the parties to the dispute; or
b. decide the matter ex parte on the basis of evidence brought to its notice by the complainant;
c. on failure of complainant to appear on the date of hearing, either to dismiss the complaint for default or decide it on merits. A proceeding complying with the above procedure cannot be called in question on the ground that principles of natural justice have not been complied with.

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

In case the goods complained against suffer from any defect specified in the complaint, or any of the allegations contained in the complaint about the services are proved the District Forum/State Commission/National Commission may pass one or more or the following orders:

(1) to remove the defects pointed out by the appropriate laboratory from all the goods in question;

(2) to replace the goods with new goods of similar description which shall be free from any defect

(3) to return to the complainant the price or the charges paid by him;

(4) to pay such amount, may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

(5) to remove the defects m goods or deficiencies m the services in question;

(6) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

(7) not to offer the hazardous goods for sale;

(8) to withdraw the hazardous goods from being offered for sale;

(9) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(10) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of opposite party responsible for issuing such misleading advertisement; to provide for adequate costs to the parties.

UNIT 4

COMPETITION ACT, 2002

SECTION-A

1. What do you understand by the term CCI?

Competition Commission of India (CCI) was established under the provisions of Competition Act 2002. The Commission is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property. The commission consists of a Chairman and not less than 2 and not more than 10 members.

2. What is Cartel?

According to Competition Act 2002, Section 2 (c), Cartel includes an association of producers, sellers, distributors, sale or price of, or trade in goods or provision of services.

3. What is Predatory Price?

According to Competition Act 2002, Section 4 (2), Predatory Price means the sale of goods or provision of services, at a price which is below the cost as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

4. What do you mean by Combination According to the Competition Act?

According to Competition Act 2002, Section 5, The Acquisition of one or more enterprise by one or more persons or acquiring of control or merger or amalgamation of enterprises under certain circumstances specified in Section 5 shall be construed as Combination.

5. State the Composition of CCI.

Composition of CCI [Section 8]:

a) Chairperson

Appointed by Central Government.

b) Number

Not less than 2 and not more than 10 members appointed by Central Government.

c) Qualification (Chairman and other Members)

Person of Ability, Integrity, and Standing and has special knowledge of and such Professional Experience of at least 15 Years in, International Trade, Economics, Business, Commerce, Law, Finance, Accountancy, Management, Industry, Public Affairs or Competition matters, including Competition Law and Policy, which in the opinion of Central Government, may be useful to the Commission.

d) Term

5 years or up to 65 years of age, eligible for Re-Appointment and Chairman and other members are Whole-time Members

6. What is Competition Advocacy?

Competition Advocacy creates a culture of competition. The commission will assume the role of competition advocate, acting pro-actively to bring about Government Policies that lower barriers to entry, that promote deregulation and trade liberalization and that promote competition in the market place.

7. What is Acquisition?

According to Competition Act 2002, Section 2 (a), Acquisition means directly or indirectly, acquiring or agreeing to acquire

a) Shares, Voting Rights or Assets of any Enterprise or

b) Control over Management or Control over Assets of any Enterprise

SECTION-B

1. List out the Objectives of Competition Act.

Objectives of Competition Act 2002:

1. To ensure fair competition in India by prohibiting trade practices which cause appreciable adverse effect on competition in markets in India by establishing a Commission.

2. To Promote and Sustain Competition in Markets

3. To Protect the Interests of Consumers

4. To Ensure Freedom of Trade carried on by other Participants in markets

2. Discuss in detail the Practices that are obtained by the CCI.

Practices that are obtained by the Competition Commission of India (CCI):

- Appointment of Director General
- Duties of Director General
- Appointment of Registrar and Officers and other Employees of Commission
- Duties, Powers and Functions of Commission
- Penalties, contravention of Orders of commission and contravention by Companies

3. What is Dominant Position? What is said to be abused.

According to Competition Act 2002, Section 4, Dominant Position means a position of strength, enjoyed by an Enterprise, in the relevant market in India, which enables it to

a) Operate Independently of competitive forces prevailing in the relevant market or

b) Affect its competitors or consumers or the relevant market in its favor.

Section 4 (2) defines Abuse of Dominant Position. No Enterprise shall abuse its Dominant Position. There shall be an Abuse of Dominant Position if an Enterprise

1. Directly or indirectly, imposes Unfair or Discriminatory

a) Condition in Purchase or Sale of Goods or Service or

b) Price in Purchase or Sale (including Predatory Price) of goods or services or

2. Limits or Restricts

a) Production of Goods or Provision of Services or Market therefore or

b) Technical or Scientific Development relating to goods or services to the prejudice consumers or

3. Indulges in Practice or Practices resulting in denial of market access or

4. Makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with subject of such contracts or

5. Uses its Dominant Position in one relevant market to enter into, or protect, other relevant market

SECTION-C

1. Discuss the Salient Features of Competition Act.

Objectives of Competition Act 2002:

1. To ensure fair competition in India by prohibiting trade practices which cause appreciable adverse effect on competition in markets in India by establishing a Commission.

2. To Promote and Sustain Competition in Markets

3. To Protect the Interests of Consumers

4. To Ensure Freedom of Trade carried on by other Participants in markets

Salient Features of Competition Act 2002:

1. Prohibition of Anti-Competitive Agreements

2. Prohibition of Abuse of Dominant Position

3. Regulation of Combinations

4. Establishments of Competition Commission of India

5. Penalties for Contravention and non-Compliance

6. Competition Advocacy

2. List out the Offences and Penalties under the Competition Act.

Offences and Penalties under the Competition Act 2002:

1. Contravention Orders of Commission [Section 42]

If a person, without any reasonable cause fails to comply with Orders or Directions of Commission issued under Section 27, 28, 31, 32, 33, 42A and 43A of the Act- Punishable with fine upto 1 Lakh for each day during which such non-compliance occurs, subject to a maximum of Rupees Ten Crore as commission may determine.
If a person does not comply with the Orders or Directions issued, or fails to pay fine –Imprisonment upto 3 years or fine upto Rupees TWENTY FIVE CRORES or both.

2. Compensation in case Contravention of Order of Commission [Section 42A]

3. Penalty for Failure to comply with Directions of Commission and Director General [Section 43]

Fine up to 1 lakh for each day during which such failure continues subject to a maximum of Rupees 1 crore as may be determined by Commission

4. Power to Impose Penalty for Non-Furnishing of Information on Combinations [Section 43A]

Penalty extends to 1% of the Total Turnover of Enterprise or Assets whichever is higher, of such a combination.

5. Penalty for making False Statement or Omission to Furnish material Information [Section 44]

Penalty not less than Rupees 50 Lakhs which may extent to Rupees 1 Crore

6. Penalty for Offences in Relation to Furnishing of Information [Section 45]

Fine extend to Rupees 1 Crore

7. Power to Impose Less Penalty [Section 46]

8. Contravention by Companies [Section 48]

3. State the Provisions of Competition Act relating to the Regulation of Combinations.

Regulation of Combinations under Competition Act 2002 [Section 6]:

1. Combination that cause or likely to cause appreciable adverse impact on competition within the relevant market in India are void [Section 6(1)]

2. Any person or Enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within thirty days of

a) Approval of the proposal relating to merger or amalgamation, by the Board of Directors of the enterprises concerned with such Merger or Amalgamation, as the case may be

b) Execution of any Agreement or other document for acquisition or acquiring of control referred to Section 5 [Section 6(2)]

3. The Commission shall, after receipt of notice deal with such notice in accordance with the provisions contained in Sections 29, 30 and 31 [Section 6(3)]

4. The Provisions of this Section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.

5. The Public Financial Institution, Foreign Institutional Investor, bank or venture capital fund shall, within seven days from the date of acquisition, file, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control,

the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

4. Discuss the Duties, Powers and Functions of CCI.

Duties of Competition Commission of India (CCI) 2002 [Section 18]:

1. To Eliminate practices having adverse effect on competition

2. To Promote and sustain competition

3. To Protect the interests of consumers

4. To Ensure freedom of Trades carried by other participants, in markets in India.

Functions of Competition Commission of India (CCI) 2002:

- Inquiring into Certain Agreements [Section 19]
- Inquiring into whether an Enterprise enjoys a Dominant Position [Section 19]
- Inquiring into Acquisition, Control and Combination [Section 20]
- Inquiry on Complaints [Section 26]
- Inquiry into Disclosures [Section 30]

Power of Competition Commission of India (CCI) 2002:

- Power to Grant Interim Relief [Section 33]
- Power to Award Compensation [Section 34]
- Power to Regulate its own Procedures [Section 36]
- Power to Review of Orders [Section 37]
- Power to Rectification of orders [Section 38]
- Power to Execution of Orders [Section 39]

UNIT 5

FOREIGN EXCHANGE MANAGMENT ACT (FEMA) 1999

SECTION-A

1. State the Objectives of FEMA.

Objectives of FEMA:

1. Facilitate External Trade and Payments

2. Promote the Orderly development and Maintenance of Foreign Exchange Trade

3. To restrict Current Account Transactions by the Centre in consultation with RBI

4. On the Capital Account, to follow foreign exchange and flow only for transactions that are permitted.

2. Define Authorised Person under FEMA.

According to Foreign Exchange Management Act (FEMA) 1999, Section 2 (c), Authorised Person means an authorised dealer, money changer, off share banking unit or any other person for the time being authorised under sub-section (1) of Section 10 to deal in foreign exchange or foreign section securities.

3. What is a Capital Account Transaction?

According to Foreign Exchange Management Act (FEMA) 1999, Section 2 (e), Capital Account Transaction means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India and includes transactions referred to in sub-section (3) of Section 6.

4. What is a Current Account Transaction?

According to Foreign Exchange Management Act (FEMA) 1999, Section 2 (j), Current Account Transaction means a transaction other than a Capital Account Transaction and without prejudice to the generality of the foregoing such transaction includes

a) Payments due in connection with Foreign Trade, other current liabilities, services and short term banking and credit facilities in the ordinary course of business

b) Payments due as interest on loans and as net income from investments

c) Remittance for living expenses of parents, spouse and children residing abroad

d) Expenses in connection with foreign travel, education and medical care of parents, spouse and children

5. What is Foreign Exchange?

According to Foreign Exchange Management Act (FEMA) 1999, Section 2 (n), Foreign Exchange means Foreign Currency and includes

a) Deposits, Credits and Balances Payable in any Foreign Currency

b) Drafts, Travellers, Cheques, Letters of Credit or Bills of Exchange, expressed or drawn in Indian Currency but payable in any Foreign Currency

c) Drafts, Travellers Cheques, letters of Credit or Bills of Exchange drawn by Banks, Institutions or persons outside India, but payable in Indian Currency.

6. What is Foreign Security?

According to Foreign Exchange Management Act (FEMA) 1999, Section 2 (0), Foreign Security means any security in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian Currency.

7. What do you understand by Repatriate to India?

According to Foreign Exchange Management Act (FEMA) 1999, Section 2 (y), Repatriate to India means bringing into India the realized Foreign Exchange and

a) The selling of such Foreign Exchange to an Authorised Person in India in exchange for Rupees or

b) The Holding or realized amount in an account with an Authorised Person in India to the extent notified by the Reserve Bank

And includes use of the Realised Amount for discharge of a debt or liability denominated in foreign exchange and the expression "Repatriation" shall be constructed accordingly

SECTION-B

1. List out the Penalties imposed by FEMA for Contravention of FEMA.

Penalties imposed by FEMA for Contravention of FEMA [Section 13]:

1. If any person contravenes any provisions of FEMA-he shall be liable to a penalty up to "THRICE" the sum involved in such contravention where such amount is quantifiable.

2. Up to Two Lakhs where the amount is not quantifiable

3. If Contravention is continues everyday further penalty which may extend to Rs.5,000 /- for Every Day after the First Day during which contravention continues on him within a period of 90 days, he shall be liable to Civil Imprisonment.

2. Give out the Rules relating to Capital Account Transactions According to Section 6 of FEMA.

Rules relating to Capital Account Transactions, FEMA 1999 [Section 6]:

1. Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

2. The Reserve Bank may, in consultation with the Central Government, specify

a) Any class or classes of capital account transactions which are permissible

b) The limit upto which foreign exchange shall be admissible for such transaction

Provided that the Reserve Bank shall not impose any restriction on the drawl of foreign exchange for payments due on account of Amortization of loans or for depreciation of direct investments in the ordinary course of business.

3. Without prejudice to the generally of the provisions of sub-section (2), the Reserve Bank may, be regulations, prohibit, restrict or regulate the following

a) Transfer or issue of any foreign security by a person resident in India

b) Transfer or issue of any foreign security by a person resident outside India

c) Transfer for issue of any security or foreign security by any branch, office or agency in India of a person resident outside India

d) Any borrowing or lending in foreign exchange in whatever form or by whatever name called

e) Any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India

f) Deposits between persons resident in India and persons resident outside India

g) Export, import or holding or currency or currency notes

h) Transfer of immovable property outside India, other than a lease not exceeding five years, bya person resident in India

i) Acquisition or Transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India

j) Giving a guarantee or surety in respect of any debt, obligation or other liability incurred

i. By a person resident in India and owed to a person resident outside India

ii. By a person resident outside India

4. A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside.

5. A person resident in India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident, inIndia.

6. Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict or regulate establishment in India of a branch, office or relating to such branch, office or other place of business.

SECTION-C

1. Explain in brief the Important Provisions of FEMA.

Important Provisions/Features of FEMA 1999:

1. Dealing in Foreign Exchange [Section 3]

2. Restriction on holding of Foreign Exchange [Section 4]

3. Current Account Transactions [Section 5]

4. Capital Account Transactions [Section 6]

5. Realisation and Repatriation of Foreign Exchange [Section 8]

6. Authorised Person [Section 10]

7. Contravention and Penalties [Section 13]

8. Power to make Rules by Central Government [Section 46]

1. Dealing in Foreign Exchange [Section 3]

Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall—

(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;

(b) make any payment to or for the credit of any person resident outside India in any manner;

(c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner;

Explanation.—For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;

(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation.—For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

2. Holding of foreign exchange.

Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

3. Current account transactions.

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction:

Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

4. Capital account transactions.

(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify—

(a) any class or classes of capital account transactions which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions :

Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

(3) Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank

may, by regulations, prohibit, restrict or regulate the following—

(a) transfer or issue of any foreign security by a person resident in India;
(b) transfer or issue of any security by a person resident outside India;
(c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
(d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
(e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
(f) deposits between persons resident in India and persons resident outside India;
(g) export, import or holding of currency or currency notes;
(h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
(i) acquisition or transfer of immovable property in India, other than a lease

5. Realisation and repatriation of foreign exchange.

Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank. Exemption from realisation and repatriation in certain cases.

6. Authorised person

(1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorized person to deal in foreign exchange or in foreign securities, as an authorized dealer, money changer or off-shore banking unit or in any other manner as it deems fit.
(2) An authorization under this section shall be in writing and shall be subject to the conditions laid down therein.
(3) An authorization granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that— (a) it is in public interest so to do; or (b) the authorized person has failed to comply with the condition subject to which the authorization was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder: Provided that no such authorization shall be revoked on any ground referred to in clause (b) unless the authorized person has been given a reasonable opportunity of making a representation in the matter.
(4) An authorized person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorized person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorization under this section.
(5) An authorized person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made there under, and where the said person refuses to comply

with any such requirement or makes only unsatisfactory compliance therewith, the authorized person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

(6) Any person, other than an authorized person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorized person under sub-section (5) does not use it for such purpose or does not surrender it to authorized person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made there under shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

7. CONTRAVENTION AND PENALTIES

(1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contraventioncontinues.

(2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf. Explanation.—For the purposes of this sub-section, "property" in respect of which contravention has taken place, shall include—

(a) deposits in a bank, where the said property is converted into such deposits;
(b) Indian currency, where the said property is converted into that currency; and
(c) any other property which has resulted out of the conversion of that property.

8. Power to make rules by Central Government.

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the imposition of reasonable restrictions on current account transactions under section 5;
(b) the manner in which the contravention may be compounded under sub-section (1) of section 15;

(c) the manner of holding an inquiry by the Adjudicating Authority under sub-section (1) of section 16;
(d) the form of appeal and fee for filing such appeal under sections 17 and 19;
(e) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal and the Special Director (Appeals) under section 23;
(f) the salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal and the office of the Special Director (Appeals) under sub-section (3) of section 27;
(g) the additional matters in respect of which the Appellate Tribunal and the Special Director (Appeals) may exercise the powers of civil court under clause (i) of subsection (2) of section 28; (h) the authority or person and the manner in which any document may be authenticated under clause (ii) of section 39; and
(i) any other matter which is required to be, or may be, prescribed

ENVIRONMENT PROTECTION ACT 1986

SECTION-A

1. What is Environment?

According to Environment Protection Act 1986, Section 2 (a), Environment includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property.

2. What is an Environmental Pollutant?

According to Environment Protection Act 1986, Section 2 (b), Environment Pollutant means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment.

3. What is Environment Pollution?

According to Environment Protection Act 1986, Section 2 (c), Environment Pollution means the presence in the environment of any Environment Pollutant.

4. What is Handling?

According to Environment Protection Act 1986, Section 2 (d), Handling in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substance.

5. What is Hazardous Substance?

According to Environment Protection Act 1986, Section 2 (e), Hazardous substance means any substance or preparation which by reason of its chemical or physio-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, microorganism, property or the environment.

6. Who is an Occupier?

According to Environment Protection Act 1986, Section 2 (f), Occupier means a person who has control over the affairs of the factory or the premises and includes, in relation to any substance, the person in possession of the substance.

SECTION-B

1. State the Objectives of the Environment Protection Act.

Objectives of the Environment Protection Act:

1. To co-ordinate the activities of the various regulatory agencies already in existence.
2. Creation of an authority or authorities with adequate powers for environmental protection.
3. Laying Down Standards for emission or discharge of environmental pollutants from various sources.

4. Laying Down the procedure and safeguards for the handling of hazardous substances.
5. Restriction of areas in which any industry shall not be carried out or shall be carried out to subject to certain safeguards.
6. Speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment safety and health.
7. Establishing or Recognising Environmental Laboratories.

2. Bring out the Powers of the Central Government under the Environmental Protection Act.

Powers of the Central Government under Environmental Protection Act, 1986:
1. Power to measure to protect and improve the quality of Environment [Section 3]
2. Power to Appoint and their Powers and Functions [Section 4]
3. Power of the Central Government to give Directions [Section 5]
4. Power to make Rules to regulate Environmental Pollution [Section 6]
5. Power to prevent Emission in Excess of Standards [Section 7]
6. Power to make Procedures for Handling Hazardous Substance [Section 8]
7. Power to Furnishing of Information to Authorities and Agencies [Section 9]
8. Power to Entry and Inspection [Section 10]
9. Power to take Samples and Procedure [Section 11]
10. Power to establish Environmental Laboratories [Section 12]
11. Power to appoint Government Analysts [Section 13]
12. Power to Sign Report of Analyst [Section 14]
13. Power to impose Penalty [Section 15]

3. What are Environmental Laboratories? Bring out its Functions.

According to Environment Protection Act 1986, Section 12 empowers that the Central Government to
a) Establish one or more Environmental laboratories
b) Recognise one or more laboratories or institutes as Environmental Laboratories to carry out the functions entrusted to an Environmental Laboratory under this Act.

Functions of Environmental Laboratories:
1. To find out Standardized methods for Sampling and Analysis of different types of Environmental Pollutants.
2. To Analyse samples sent by Central Government or Empowered Officials.
3. To Conduct Investigations as directed by Central Government to specify standards for the quality of the as directed by Central Government to specify standards for the Quality of the Environment and Discharge of Environmental Pollutants, to monitor and to enforce the standards laid down.
4. To send Periodical Reports of its activities to the central Government.
5. To carry out such other functions as may be entrusted by the Central Government.

4. State the Penalties with Contraventions under the Provisions of Environmental Protection Act.

Penalties with Contraventions under the Provisions of Environmental Protection Act, 1986, Section 15:

Section 15 provides Penalty for Contravention of any provision of the Act or any rule made therein.
The punishment for the first offence may extend to Five Years Imprisonment or fine of One Lakh Rupees or Both.
In case the failure or Contravention continues additional fine of Rupees five Thousand for Every Day during which such failure or contravention continues after the conviction for the first such failure or contravention.
If the failure or contravention continues beyond a period of one year after the date of conviction, the Offender shall be punishable with Imprisonment for a term which may extend to Seven Years.

INFORMATION TECHNOLOGY (IT) ACT 2000

SECTION-A

1. What do you understand by Digital Signature?

According to Information Technology Act 2000, Section 2 (p), Digital Signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure with the provisions of Section 3 of the Act.

2. What do you understand by Private Key?

Private Key is a key of a key pair used (by Signer (Subscriber)) to create a Digital Signature.

3. What do you understand by Public Key?

Public key is a key of a key pair used (by relying party) to verify a digital signature and listed in the Digital Signature Certificate.

4. What is Electronic Governance?

According to Information Technology Act 2000, Electronic Governance provides

a) Legal Recognition of Electronic Records [Section 4]
b) Legal Recognition of Digital Signature [Section 5]
c) Lays down the Foundation of Electronic Governance [Section 6]
d) Provides documents, records or information which has to be retained [Section 7]
e) Provides publication of Rules, Regulations and Notifications in the Electronic Gazette [Section 8]
f) Provides that conditions stipulated in Section 6, 7 and 8 shall not confer any right to insist document should be accepted in an electronic form by any Ministry or Department of the Central Government or State Government [Section 9]
g) Power to Central Government to make Rules [Section 10]

5. Define Certifying Authority.

According to Information Technology Act 2000, Section 2 (h), a Person who has been granted a license to issue a Digital Signature Certificate under Section 24 of Information technology Act, 2000 is called Certifying Authority.

SECTION-B

1. List out the Objectives of IT Act.

Objectives of Information Technology (IT) Act, 2000:

1. To provide for legal recognition of electronic records and digital signatures.

2. To prevent the possible misuse arising out of transactions and other dealings concluded over the electronic medium.
3. To create civil and criminal liabilities for contravention of the provisions of the proposed legislation.
4. To provide for the use and acceptance of electronic records and digital signatures inthe Government offices and its agencies.
5. To facilitate electronic storage of information and data.
6. To facilitate electronic fund transfers between financial institutions and banks.
7. To give Legal sanctity for books of account maintained in the electronic form by the banks.

2. State the Salient Features of IT Act 2000.

Salient Features of IT Act 2000:

1. To provide for legal recognition of electronic records and digital signatures.
2. To prevent the possible misuse arising out of transactions and other dealings concluded over the electronic medium.
3. To create civil and criminal liabilities for contravention of the provisions of the proposed legislation.
4. To provide for the use and acceptance of electronic records and digital signatures inthe Government offices and its agencies.
5. To facilitate electronic storage of information and data.
6. To facilitate electronic fund transfers between financial institutions and banks.
7. To give Legal sanctity for books of account maintained in the electronic form by the banks.

SECTION-C

1. Explain in brief the Provisions of IT Act.

Provisions of Information Technology (IT) Act 2000 [Section 3-78]:

1. Digital Signature [Section 3]
2. Electronic Governance [Section 4-10]
3. Attribution, Acknowledgement (Receipt) and Dispatch of Electronic Records [Section 11-13]
4. Security of Electronic Records and Digital Signatures [Section 14-16]
5. Certifying Authorities [Section 17-34]
6. Digital Signature Certification [Section 35-39]
7. Duties of Subscribers [Section 40-42]
8. Penalties and Adjudication [Section 43-47]
9. Cyber Regulations Appellate Tribunal [Section 48-64]
10. Offences [Section 65-78]
11. E-Commerce
12. Paperless Society
13. Cyber Crimes

2. Discuss in detail the functioning of Certifying Authority.

Functioning of Certifying Authority IT Act 2000 [Section 17-34]:

1. Appointment of Controller and Other Officers [Section 17]
2. Functions of Controller [Section 18]

3. Recognition of Foreign Certifying Authorities [Section 19]
4. Controller to act as Repository [Section 20]
5. License to Issue Digital Signature Certificate [Section 21]
6. Application for License [Section 22]
7. Renewal of License [Section 23]
8. Procedure for Grant or Rejection of License [Section 24]
9. Suspension of License [Section 25]
10. Notice of Suspension or Revocation of License [Section 26]
11. Controller's Power to Delegate [Section 27]
12. Controller's Power to Investigate Contraventions [Section 28]
13. Access to Computers and Data [Section 29]
14. Duties of Certifying Authorities [Section 30]
15. Certifying Authority to ensure Compliance of the Act etc. [Section 31]
16. Display of License [Section 32]
17. Surrender of License [Section 33]
18. Surrender of License [Section 34]

3. What is Offence under IT Act? Give the Penalties under each Offence.

Offences with Penalties under Information Technology Act 2000 [Section 65-78]:

1. Tampering with Computer Source Documents- Imprisonment upto 3 years or fine upto 2 Lakhs or both [Section 65]
2. Hacking with Computer System- Imprisonment upto 3years or fine upto 2 Lakhs or both [Section 66]
3. Publishing of Obscene Information in Electronic Form- first Conviction, Imprisonment upto 5 years with fine upto 1 Lakh and Second and Subsequent Conviction Imprisonment upto 10 years with fine upto 2 Lakhs [Section 67]
4. Power of Controller to give directions to Certifying Authority or an employee of such authority to take such measures or cease carrying on such activities as specified in the order, so as to ensure compliance with the act- If fails Imprisonment upto 5 years or fine upto 2 Lakhs or both [Section 68]
5. The Act empowers the controller, if he is satisfied that is necessary or expedient so to do in the interest of sovereignty and integrity of India. Security of State, friendly relation with foreign relation with foreign states or public order, to intercept any information transmitted through any computer system or computer network [Section 69]
6. The Act empowers the Appropriate Government to declare by notification any computer, computer system or computer network to be a protected system- Any Unauthorised Access Imprisonment of Ten Years or with fine [Section 70]
7. Penalty for Misrepresentation- Imprisonment upto 2 years or fine upto 1 Lakh or both [Section 71]
8. Penalty for Breach of Confidentiality- Imprisonment upto 2 years or fine upto 1 Lakh or both [section 72]
9. Penalty for Publishing False Digital Signature Certificate- Imprisonment upto 2 years or fine upto 1 Lakh or both [Section 73]
10. Penalty for Fraudulent Publication of Digital Signature Certificate- Imprisonment upto 2 years or fine upto 1 Lakh or both [Section 74]
11. Contravention committed outside India [Section 75]

12. Confiscation [Section 76]
13. Penalty and Confiscation not to interfere with other Punishment [Section 77]
14. Power to Investigate the Officers by Police Officer not below the rank of Deputy Superintendent of Police [Section 78]

4. What is Cyber Crime? Explain the different Types of Cyber Crimes.

Cyber Law is a term which refers to all the Legal and Regulatory aspects of Internet and World Wide Web.
A Cyber Crime is any crime with the help of computer and telecommunication technology with the purpose of influencing the functioning of computer or computer system.

Types of Cyber Crimes:

1. Hacking
2. Cracking
3. Security Related Crimes
4. Network Packet Snifters
5. Internet Protocol Spoofing
6. Password Attacks
7. Fraud on the Internet
8. Online Investment Newsletters
9. Bulletin Boards
10. Credit Card Fraud
11. Publishing of False Digital Signature
12. Making Available Digital Signature for Fraudulent Purpose
13. Alteration and Destruction of Digital Information

5. What is E-Commerce? Explain its Advantages and Disadvantages.

The term E-Commerce is more commonly associated with information on buying and selling of products and services via computer networks using technologies like Web, EDI, EFT, e-mail etc.
The World trade Organisation defines E-Commerce as “E-Commerce is the production, distribution, marketing, sales or delivery of goods and services by electronic means”.

Advantages of E-Commerce:

1. Lower Transaction Costs
2. Larger Purchases per Transaction
3. Integration into the Business Cycle
4. Larger Catalogues
5. Improved Customer Interactions

Disadvantages of E-Commerce:

1. E-Commerce lacks that Personal Touch
2. System and Data Integrity
3. E-Commerce Delays Goods
4. System Scalability
5. Dependent on Internet
6. Many Goods cannot be Purchased Online