STUDY MATERIAL

CSEET

BUSINESS LAWS & MANAGEMENT

PAPER 4

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BUSINESS LAWS & MANAGEMENT

This paper consists of two parts, namely Part-A: Business Laws and Part- B: Business Management. Business laws provide the legal framework that governs the Corporate Organisations and Business Management *inter alia* covers the concept of management, its functions and principles.

Business Laws serves as the foundation of commercial transactions and the very existence of business organizations. A comprehensive understanding of Business laws empowers the professionals to safeguard the company's interests, enforce compliance, streamline business operations, mitigate legal and financial risks. The knowledge of Business Laws not only ensure the legal compliances but also fosters decision making thereby strengthening Corporate Governance.

The Business Law part is designed to impart foundational knowledge of legal principles, terminologies and business related laws essential for a Company Secretary. By covering key areas such as elements of Company law, Law of Contracts, Partnership Act, Negotiable instruments and Sale of Goods Act and Introduction to Law, this paper ensures that the students develop an analytical mindset which is required to identify legal issues and interpret statutory provisions accurately from the very beginning of the Company Secretary journey.

The second part of this paper is Business Management which focuses on the concept, genesis and various critical dimensions. It is to be noted that right from the first till fifth industrial revolution which is evolving has witnessed sea changes in the mode of running business operations, advent of manufacturing sector and adoption of digitalization and its upgradation with the passage of time. All these stages of industrial revolution, a common and the most significant element have been management. Different management theories / approaches have been propounded by various renowned management experts to assist organisation in achieving their desired goals and objectives by enhancing the effectiveness of human capital. A thorough knowledge of management helps in performing the functions of management i.e. planning, organizing, staffing, directing, coordinating, reporting and budgeting.

As management is pervasive and is required for all forms of organisation such as sole proprietorship, partnership, cooperative society, company etc. it is essential to be conversant with the basic concepts of management, key principles of management, functions of management, advanced approaches in management etc. Further, it is also important to know as to how the knowledge of management is of immense use for a future Company Secretary.

The subject of Business Laws is inherently fundamental to evolution and refinement of legislations, rules and regulations. It, therefore becomes necessary for every student to constantly update with legislative changes made as well as judicial pronouncements rendered from time to time.

The students are advised to refer to the updations at the Regulator's website and other websites as applicable, Supplement relevant for the subject issued by ICSI and monthly CSEET e-Bulettin. In the event of any doubt, students may contact the Directorate of Academics at *academics@icsi.edu.*

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Paper 4

BUSINESS LAWS & MANAGEMENT

SYLLABUS

Objectives:

- To impart the basic knowledge of elements of Business Laws.
- To impart conceptual and basic practical insights on Business Management.

Level of Knowledge: Basic Knowledge

PART A - BUSINESS LAWS (60 MARKS)

1. Introduction to Law: ● Meaning of Law and its Significance ● Relevance of Law to Modern Civilized Society ● Sources of Law ● Legal Terminology and Maxims ● Understanding Citation of Cases ● Emerging Legislations - A Bird's Eye View

2. Elements of Company Law: ● Basic Concepts ● Meaning, Nature and Types of Companies ● Board of Directors ● Management ● Shareholders of Companies

3. Elements of Law of Contracts: ● Meaning of Contract ● Essentials of a Valid Contract ● Nature and Performance of Contract ● Termination and Discharge of Contract ● Indemnity and Guarantee ● Bailment and Pledge ● Law of Agency

4. Elements of Law relating to Partnership and Limited Liability Partnership: ● Nature of Partnership and Similar Organizations- Co-Ownership, HUF ● Partnership Deed ● Rights and Liabilities of Partners- New Admitted, Retiring and Deceased Partners ● Implied Authority of Partners and its Scope ● Registration of Firms ● Dissolution of Firms and of the Partnership ● Overview of Limited Liability Partnership Act ● Difference between Partnership and LLP

5. Elements of Law relating to Sale of Goods: ● Essentials of a Contract of Sale ● Sale Distinguished from Agreement to Sell, Bailment, Contract for Work and Labour and Hire-Purchase ● Conditions and Warranties ● Transfer of Title by Non-Owners ● Doctrine of Caveat Emptor ● Performance of the Contract of Sale ● Rights of Unpaid Seller.

6. Elements of Law relating to Negotiable Instruments: ● Definition of a Negotiable Instruments ● Instruments Negotiable by Law and by Custom: Types of Negotiable Instruments ● Parties to a Negotiable Instruments- Duties, Rights, Liabilities and Discharge ● Material Alteration ● Crossing of Cheques ● Payment and Collection of Cheques and Demand Drafts ● Presumption of Law as to Negotiable Instruments

PART B – BUSINESS MANAGEMENT (40 MARKS)

7. Introduction to Management: ● Genesis of Management (From Vedic to Industrial era) ● Meaning and Definitions of Management ● Features of Management ● Nature of Management- Management as an Art, Management as a Science and Management as a Profession ● Types of Management Styles-Autocratic, Persuasive, Paternalistic, Democratic, Consultative, Transformational, Visionary, Coaching, Servant Leadership and Laissez-faire.

8. Functions of Management: Planning: Meaning and definition of Planning; Features and Importance of Planning; Types and Process of Planning ● Elements of Planning - Mission, Objectives, Strategies, Policies, Procedures, Rules, Programmes, Budget; Planning at different levels i.e. Corporate Plan, Business unit Plan, Departmental Plans.

Organizing: Meaning and Definition of Organizing ● Significance of Organizing ● Steps in the process of Organizing ● Authority and Responsibility relationship ● Centralization and Decentralization, its Merits and Demerits.

Staffing: Meaning and Definition of Staffing ● Characteristics of Staffing ● Manpower Planning; Recruitment ● Selection ● Training and Development ● Performance Appraisal ● Compensation and Benefits.

Directing: Meaning and Definition of Directing ● Features of Directing, Principles guiding Directing Process ● Supervision and its significance ● Motivation and its importance ● Leadership.

Coordinating: Characteristics and Importance of Coordinating ● Elements of Coordination ● Process of Coordination ● Types of Coordination ● Factors determining Effective Coordination.

Reporting: Meaning of Management Reporting ● Importance of Management Reports ● Reporting of Deviations.

Budgeting: Meaning of Budgeting ● Objectives of Budgeting ● Importance of budgeting ● Types of Budgets ● Budgeting Process.

9. Principles of Management and Modern Approaches: ● Henri Fayol's fourteen Principles of Management; Principles of Scientific Management by Taylor

10. Management Knowledge for Company Secretaries: ● Significance of Management Theories / Approaches for Company Secretaries; Small cases on Management of Companies / Organizations.

ARRANGEMENT OF STUDY LESSONS
BUSINESS LAWS & MANAGEMENT
PAPER 4

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PART A

BUSINESS LAWS

Introduction to Law

Lesson 1

KEY CONCEPTS

■ Legislature ■ Codification of Law ■ Interpretation ■ Construction of provision(s) ■ Stare Decisis ■ Jurisprudence ■ Natural Justice

Learning Objectives

To understand:

At the heart of the legal enterprise lies an important concept that is Law. Owing to the societal inclination of interest in favour of businesses, it is essential to understand the basics of law. Without an understanding of the concept of law, the orientation and motivation towards attainment of justice is found missing. Moreover, without a comprehension of the cognitive and teleological foundations of the discipline, pedagogy becomes a mere teaching of the rules. The objective behind this is to present various statutes, cases, procedure, practices and customs as a systematic body of knowledge, and to be able to show the inter- connection between these various branches of law, procedure and principles.

The introduction to law is the very foundation to acquaint students with the law and its terminologies which will enable them to have a better understanding while dealing with statutes. But primarily, it inducts the student into realm of question concerning law so that he is able to live with their perplexity or complexity and driven to seek out answers for himself.

Lesson Outline

- Nature of Law
- Meaning of Law
- Significance of Law
- Relevance of Law to Modern Civilized Society
- Sources of Law
- Legal Terminology and Maxims
- Understanding Citation of Cases
- Emerging Legislations - A Bird's Eye View
- Lesson Round Up
- Glossary
- Test Yourself
- Suggested Readings

Law is the command of the sovereign, Law is an instrument to regulate human behaviour, Be it social life or business life.

Jack Welch

INTRODUCTION

The nature and meaning of law has been described by various jurists. However, there is no unanimity of opinion regarding the true nature and meaning of law. The reason for lack of unanimity is that the subject has been viewed and dealt with by different jurists at different times and from different point of views, that is to say, from the point of view of nature, source, function and purpose of law, to meet the needs of some given period of legal development. Therefore, it is not practicable to give a precise and definite meaning to law which may hold good for all times to come. However, it is desirable to refer to some of the definitions given by different jurists so as to clarify and amplify the term 'law'. The various definitions of law propounded by legal theorists serve to emphasize the different facets of law and build up a complete and rounded picture of the concept of law.

Law is not static. As circumstances and conditions in a society change, laws are also changed to fit the requirements of the society. At any given point of time the prevailing law of a society must be in conformity with the general statements, customs and aspirations of its people.

Modern science and technology have unfolded vast prospects and have aroused new and big ambitions in men. Materialism and individualism are prevailing at all spheres of life. These developments and changes have tended to transform the law patently and latently. Therefore, law has undergone a vast transformation – conceptual and structural. The idea of abstract justice has been replaced by social justice.

Hereinafter we shall refer to some representative definitions and discuss them. For the purpose of clarity and better understanding of the nature and meaning of law, we may classify the various definitions into five broad classes:

- Natural
- Positivistic
- Historical
- Sociological
- Realistic

Natural School

Under this school fall most of the ancient definitions given by Roman and other ancient Jurists. Ulpine defined Law as "the art or science of what is equitable and good."

Cicero said that Law is "the highest reason implanted in nature." Justinian's Digest defines Law as "the standard of what is just and unjust."

In all these definitions, propounded by Romans, "justice" is the main and guiding element of law.

Salmond, the prominent modern natural law thinker, defines law as "the body of principles recognised and applied by the State in the administration of justice."

In other words, the law consists of rules recognised and acted on by the courts of Justice. It may be noted that there are two main factors of the definition. First, that to understand law, one should know its purpose: Second, in order to ascertain the true nature of law, one should go to the courts and not to the legislature.

Positivistic Definition of Law

According to Austin, "Law is the aggregate of rules set by man as politically superior, or sovereign, to men as political subject." In other words, law is the "command of the sovereign". It obliges a certain course of conduct or imposes a duty and is backed by a sanction. Thus, the command, duty and sanction are the three elements of law.

Kelsen gave a ‘pure theory of law’. According to him, law is a ‘normative science’. The legal norms are ‘Ought’ norms as distinct from ‘Is’ norms of physical and natural sciences. Law does not attempt to describe what actually occurs but only prescribes certain rules. The science of law to Kelson is the knowledge of hierarchy of normative relations. All norms derive their power from the ultimate norm called Grund norm.

Historical Definition of Law

Savigny’s theory of law can be summarised as follows:

- That law is a matter of unconscious and organic growth. Therefore, law is found and not made.
- Law is not universal in its nature. Like language, it varies with people and age.
- Custom not only precedes legislation but it is superior to it. Law should always conform to the popular consciousness.
- Law has its source in the common consciousness (Volkgeist) of the people.
- Legislation is the last stage of law making, and, therefore, the lawyer or the jurist is more important than the legislator.

According to Sir Henry Maine, “The word ‘law’ has come down to us in close association with two notions, the notion of order and the notion of force”.

Sociological Definition of Law

Duguit defines law as “essentially and exclusively as social fact.”

Ihering defines law as “the form of the guarantee of the conditions of life of society, assured by State’s power of constraint”. There are three essentials of this definition. First, in this definition law is treated as only one means of social control. Second, law is to serve social purpose. Third, it is coercive in character.

Roscoe Pound analysed the term “law” in the 20th century background as predominantly an instrument of social engineering in which conflicting pulls of political philosophy, economic interests and ethical values constantly struggled for recognition against background of history, tradition and legal technique.

Realist Definition of Law

Realists define law in terms of judicial process. According to Holmes, “Law is a statement of the circumstances in which public force will be brought to bear upon through courts.” According to Cardozo, “A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged, is a principle or rule of law.”

From the above definitions, it follows that law is nothing but a mechanism of regulating the human conduct in society so that the harmonious co-operation of its members increases and thereby avoid the ruin by co-ordinating the divergent conflicting interests of individuals and of society which would, in its turn, enhance the potentialities and viability of the society as a whole.

To summarise, following are the main characteristics of law and a definition to become universal one, must incorporate all these elements:

- Law pre-supposes a State
- The State makes or authorizes to make, or recognizes or sanctions rules which are called law
- For the rules to be effective, there are sanctions behind them
- These rules (called laws) are made to serve some purpose. The purpose may be a social purpose, or it may be simply to serve some personal ends of a despot

Separate rules and principles are known as 'laws'. Such laws may be mandatory, prohibitive or permissive. A mandatory law calls for affirmative act, as in the case of law requiring the payment of taxes. A prohibitive law requires negative conduct, as in the case of law prohibiting the carrying of concealed weapon or running a lottery. A permissive law is one which neither requires nor forbids action, but allows certain conduct on the part of an individual if he desires to act.

Laws are made effective:

- by requiring damages to be paid for an injury due to disobedience
- by requiring one, in some instances, to complete an obligation he has failed to perform
- by preventing disobedience
- by administering some form of punishment

The law, and the system through which it operates, has developed over many centuries into the present combination of statutes, judicial decisions, custom and convention. By examining the sources from which we derive our law and legal system, we gain some insight into the particular characteristics of our law.

The State, in order to maintain peace and order in society, formulates certain rules of conduct to be followed by the people. These rules of conduct are called 'laws'.

MEANING OF LAW

Under the Constitution of India, the inclusive definition of the term "Law" and "Laws in force" has been provided under Article 13(3) which says:

(a) "Law" includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "Laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of the Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Jurists/philosophers defined the term "Law" differently as for instance :

Ulpine defined Law as "the art or science of what is equitable and good"

Cicero said that Law is "the highest reason implanted in nature"

Justinian's Digest defines Law as "the standard of what is just and unjust"

So, the meaning of law may differ from person to person but the purpose is to provide a set of rules for regulation human conduct and maintain peaceful and orderly relations between people.

SIGNIFICANCE OF LAW

Law is not static. As circumstances and conditions in a society change, laws are also changed to fit the requirements of the society. At any given point of time the prevailing law of a society must be in conformity with the general statements, customs and aspirations of its people.

Modern science and technology have unfolded vast prospects and have aroused new and big ambitions in men. Materialism and individualism are prevailing at all spheres of life. These developments and changes have tended to transform the law patently and latently. Therefore, law has undergone a vast transformation –

conceptual and structural. The idea of abstract justice has been replaced by social justice.

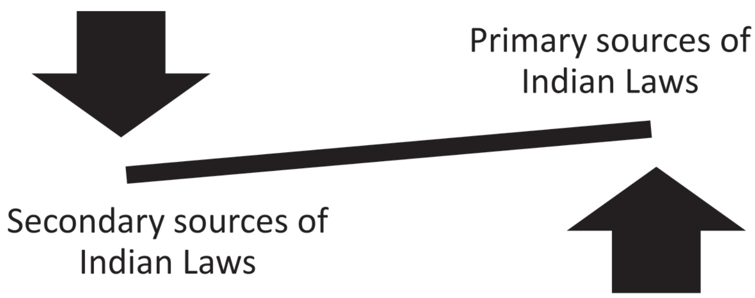
The object of law is order which in turn provides hope of security for the future. Law is expected to provide socio-economic justice and remove the existing imbalances in the socio-economic structure and to play special role in the task of achieving the various socio-economic goals enshrined in our Constitution.

RELEVANCE OF LAW TO MODERN CIVILIZED SOCIETY

Numerous duties are carried out by law to assist civil society. These need to be differentiated in practise as well as theory. The failure to draw the required distinctions—whether deliberate or unintentional—leads to the law's restriction, distorting, or suppression of civil society. In actuality, for civil society to function to its full potential, an enabling legal environment is required. It promotes and defends civic society. But only if it also supports and empowers. Due to the fact that it obstructs, restricts, and even suppresses people's freedoms, law has a poor reputation in many sectors of civil society.

SOURCES OF INDIAN LAW

The expression "sources of law" has been used to convey different meanings. There are as many interpretations of the expression "sources of law" as there are schools and theories about the concept of law. The general meaning of the word "source" is origin. There is a difference of opinion among the jurists about the origin of law. Austin contends that law originates from the sovereign. Savigny traces the origin in Volkgeist (general consciousness of the people). The sociologists find law in numerous heterogeneous factors. For theologians, law originates from God. Precisely, whatever source of origin may be attributed to law, it has emanated from almost similar sources in most of the societies. The modern Indian law as administered in courts is derived from various sources and these sources fall under the following two heads:



(A) PRINCIPLE SOURCES OF INDIAN LAW

The principal sources of Indian law are:

- Customs or Customary Law
- Judicial Decisions or Precedents
- Statutes or Legislation

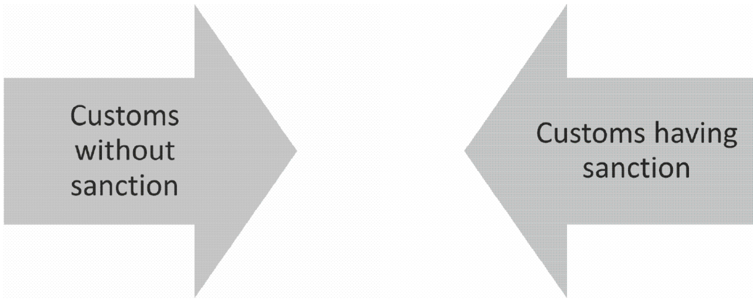
(i) Customs or Customary Law

Custom is the most ancient of all the sources of law and has held the most important place in the past, though its importance is now diminishing with the growth of legislation and precedent.

A study of the ancient law shows that in primitive society, the lives of the people were regulated by customs which developed spontaneously according to circumstances. It was felt that a particular way of doing things was more convenient than others. When the same thing was done again and again in a particular way, it assumed the form of custom.

Classification of Customs

The customs may be divided into two classes:



1. Customs without sanction are those customs which are non-obligatory and are observed due to the pressure of public opinion. These are called as “positive morality”.
2. Customs having sanction are those customs which are enforced by the State. It is with these customs that we are concerned here. These may be divided into two classes: (i) Legal, and (ii) Conventional.

   (i) Legal Customs: These customs operate as a binding rule of law. They have been recognised and enforced by the courts and therefore, they have become a part of the law of land. Legal customs are again of two kinds: (a) Local Customs (b) General Customs.

   (ii) Conventional Customs: These are also known as “usages”. These customs are binding due to an agreement between the parties, and not due to any legal authority independently possessed by them. Before a Court treats the conventional custom as incorporated in a contract, following conditions must be satisfied:

   – It must be shown that the convention is clearly established and it is fully known to the contracting parties. There is no fixed period for which a convention must have been observed before it is recognised as binding.

   – Convention cannot alter the general law of the land.

   – It must be reasonable.

Like legal customs, conventional customs may also be classified as general or local. Local conventional customs are limited either to a particular place or market or to a particular trade or transaction.

Requisites of a Valid Custom

A custom will be valid at law and will have a binding force only if it fulfills the following essential.

REQUISITE OF VALID CUSTOMS INCLUDES

- (i) Immemorial (Antiquity)
- (ii) Certainty
- (iii) Reasonableness
- (iv) Compulsory Observance
- (v) Conformity with Law and Public Morality
- (vi) Unanimity of Opinion
- (vii) Peaceful Enjoyment
- (viii) Consistency

(ii) Judicial Decision or Precedents

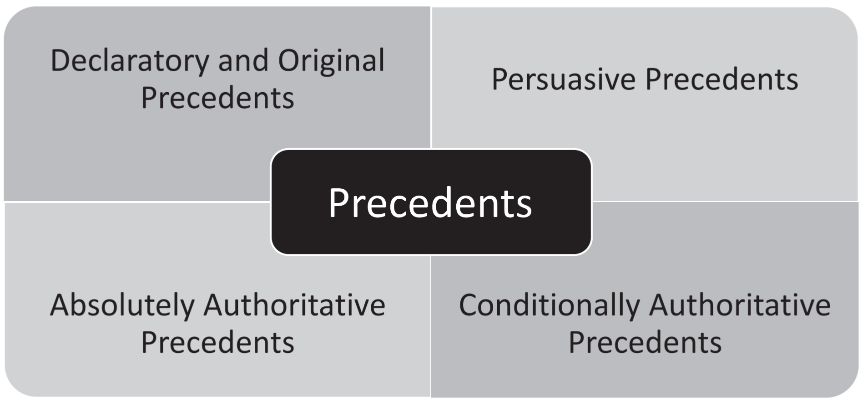
In general use, the term "precedent" means some set pattern guiding the future conduct. In the judicial field, it means the guidance or authority of past decisions of the courts for future cases. Only such decisions which lay down some new rule or principle are called judicial precedents.

Judicial precedents are an important source of law. They have enjoyed high authority at all times and in all countries. This is particularly so in the case of England and other countries which have been influenced by English jurisprudence. The principles of law expressed for the first time in court decisions become precedents to be followed as law in deciding problems and cases identical with them in future. The rule that a court decision becomes a precedent to be followed in similar cases is known as doctrine of stare decisis.

The reason why a precedent is recognised is that a judicial decision is presumed to be correct. The practice of following precedents creates confidence in the minds of the litigants. Law becomes certain and known and that in itself is a great advantage. Administration of justice becomes equitable and fair.

Kinds of Precedents

Precedents may be classified as:



(i) **Declaratory and Original Precedents:** According to Salmond, a declaratory precedent is one which is merely the application of an already existing rule of law. An original precedent is one which creates and applies a new rule of law. In the case of a declaratory precedent, the rule is applied because it is already a law. In the case of an original precedent, it is law for the future because it is now applied. In the case of advanced countries, declaratory precedents are more numerous. The number of original precedents is small but their importance is very great. They alone develop the law of the country. They serve as good evidence of law for the future. A declaratory precedent is as good a source of law as an original precedent. The legal authority of both is exactly the same.

(ii) **Persuasive Precedents:** A persuasive precedent is one which the judges are not obliged to follow but which they will take into consideration and to which they will attach great weight as it seems to them to deserve. A persuasive precedent, therefore, is not a legal source of law; but is regarded as a historical source of law. Thus, in India, the decisions of one High Court are only persuasive precedents in the other High Courts. The rulings of the English and American Courts are persuasive precedents only. Obiter dicta also have only persuasive value.

(iii) **Absolutely Authoritative Precedents:** An authoritative precedent is one which judges must follow whether they approve of it or not. Its binding force is absolute and the judge's discretion is altogether excluded as he must follow it. Such a decision has a legal claim to implicit obedience, even if the judge considers it wrong. Unlike a persuasive precedent which is merely historical, an authoritative precedent is a legal source of law.

Absolutely authoritative precedents in India: Every court in India is absolutely bound by the decisions of courts superior to itself. The subordinate courts are bound to follow the decisions of the High Court to which they are subordinate. A single judge of a High Court is bound by the decision of a bench of two or more judges. All courts are absolutely bound by decisions of the Supreme Court.

In England decisions of the House of Lords are absolutely binding not only upon all inferior courts but even upon itself. Likewise, the decisions of the Court of Appeal are absolutely binding upon itself.

(iv) Conditionally Authoritative Precedents: A conditionally authoritative precedent is one which, though ordinarily binding on the court before which it is cited, is liable to be disregarded in certain circumstances. The court is entitled to disregard a decision if it is a wrong one, i.e., contrary to law and reason. In India, for instance, the decision of a single Judge of the High Court is absolutely authoritative so far as subordinate judiciary is concerned, but it is only conditionally authoritative when cited before a Division Bench of the same High Court.

Doctrine of Stare Decisis

The doctrine of stare decisis means "adhere to the decision and do not unsettle things which are established". It is a useful doctrine intended to bring about certainty and uniformity in the law. Under the stare decisis doctrine, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases. In simple words, the principle means that like cases should be decided alike. This rule is based on public policy and expediency. Although generally the doctrine should be strictly adhered to by the courts, it is not universally applicable. The doctrine should not be regarded as a rigid and inevitable doctrine which must be applied at the cost of justice.

Ratio Decidendi

The underlying principle of a judicial decision, which is only authoritative, is termed as ratio decidendi. The proposition of law which is necessary for the decision or could be extracted from the decision constitutes the ratio. The concrete decision is binding between the parties to it. The abstract ratio decidendi alone has the force of law as regards the world at large. In other words, the authority of a decision as a precedent lies in its ratio decidendi.

Prof. Goodhart says that ratio decidendi is nothing more than the decision based on the material facts of the case.

Where an issue requires to be answered on principles, the principles which are deduced by way of abstraction of the material facts of the case eliminating the immaterial elements is known as ratio decidendi and such principle is not only applicable to that case but to other cases also which are of similar nature.

It is the ratio decidendi or the general principle which has the binding effect as a precedent, and not the obiter dictum. However, the determination or separation of ratio decidendi from obiter dictum is not so easy. It is for the judge to determine the ratio decidendi and to apply it on the case to be decided.

Obiter Dicta

The literal meaning of this Latin expression is "said by the way". The expression is used especially to denote those judicial utterances in the course of delivering a judgement which taken by themselves, were not strictly necessary for the decision of the particular issue raised. These statements thus go beyond the requirement of the particular case and have the force of persuasive precedents only. The judges are not bound to follow them although they can take advantage of them. They some times help the cause of the reform of law.

Obiter Dicta are of different kinds and of varying degrees of weight. Some obiter dicta are deliberate expressions of opinion given after consideration on a point clearly brought and argued before the court. It is quite often too difficult for lawyers and courts to see whether an expression is the ratio of judgement or just a causal opinion by the judge. It is open, no doubt, to other judges to give a decision contrary to such obiter dicta.

(iii) Statutes or Legislation

Legislation is that source of law which consists in the declaration or promulgation of legal rules by an authority duly empowered by the Constitution in that behalf. It is sometimes called Jus scriptum (written law) as contrasted with the customary law or jus non-scriptum (unwritten law). Salmond prefers to call it as “enacted law”. Statute law or statutory law is what is created by legislation, for example, Acts of Parliament or of State Legislature. Legislation is either supreme or subordinate (delegated).

Supreme Legislation is that which proceeds from the sovereign power in the State or which derives its power directly from the Constitution. It cannot be repealed, annulled or controlled by any other legislative authority. Subordinate Legislation is that which proceeds from any authority other than the sovereign power. It is dependent for its continued existence and validity on some superior authority. The Parliament of India possesses the power of supreme legislation. Legislative powers have been given to the judiciary, as the superior courts are allowed to make rules for the regulation of their own procedure. The executive, whose main function is to enforce the law, is given in some cases the power to make rules. Such subordinate legislation is known as executive or delegated legislation. Municipal bodies enjoy by delegation from the legislature, a limited power of making regulations or bye-laws for the area under their jurisdiction. Sometimes, the State allows autonomous bodies like universities to make bye-laws which are recognised and enforced by courts of law.

The rule-making power of the executive is, however, hedged with limitations. The rules made by it are placed on the table of both Houses of Parliament for a stipulated period and this is taken as having been approved by the legislature. Such rules then become part of the enactment. Where a dispute arises as to the validity of the rules framed by the executive, courts have the power to sit in judgement whether any part of the rules so made is in excess of the power delegated by the parent Act.

In our legal system, Acts of Parliament and the Ordinances and other laws made by the President and Governors in so far as they are authorised to do so under the Constitution are supreme legislation while the legislation made by various authorities like Corporations, Municipalities, etc. under the authority of the supreme legislation are subordinate legislation. Personal Law e.g., Hindu and Mohammedan Law, etc.

(B) SECONDARY SOURCES OF INDIAN LAW

(i) Justice, Equity and Good Conscience

The concept of “justice, equity and good conscience” was introduced by Impey’s Regulations of 1781. In personal law disputes, the courts are required to apply the personal law of the defendant if the point at issue is not covered by any statute or custom.

In the absence of any rule of a statutory law or custom or personal law, the Indian courts apply to the decision of a case what is known as “justice, equity and good conscience”, which may mean the rules of English Law in so far as they are applicable to Indian society and circumstances.

The Ancient Hindu Law had its own versions of the doctrine of justice, equity and good conscience. In its modern version, justice, equity and good conscience as a source of law, owes its origin to the beginning of the British administration of justice in India. The Charters of the several High Courts established by the British Government directed that when the law was silent on a matter, they should decide the cases in accordance with justice, equity and good conscience. Justice, equity and good conscience have been generally interpreted to mean rules of English law on an analogous matter as modified to suit the Indian conditions and circumstances. The Supreme Court has stated that it is now well established that in the absence of any rule of Hindu Law, the courts have authority to decide cases on the principles of justice, equity and good conscience unless in doing so the decision would be repugnant to, or inconsistent with, any doctrine or theory of Hindu Law: (1951) 1 SCR 1135.

Since the main body of rules and principles of Indian law is an adaptation of English law, in the following pages the main sources of English law are discussed in some detail.

(ii) English Law

The chief sources of English law are:

- Common Law
- Law Merchant
- Principle of Equity
- Statute Law.

(i) Common Law: The Common Law, in this context is the name given to those principles of law evolved by the judges in making decisions on cases that are brought before them.

(ii) Law Merchant: The Law Merchant is the most important source of the Merchantile Law. Law Merchant means those customs and usages which are binding on traders in their dealings with each other. But before a custom can have a binding force of law, it must be shown that such a custom is ancient, general as well as commands universal compliance. In all other cases, a custom has to be proved by the party claiming it.

(iii) Principle of Equity: Equity is a body of rules, the primary source of which was neither custom nor written law, but the imperative dictates of conscience and which had been set forth and developed in the Courts of Chancery. The procedure of Common Law Courts was very technical and dilatory. Action at Common Law could be commenced by first obtaining a writ or a process. The writs were limited in number and unless a person was able to bring his case within one of those writs, no action could lie at Common Law.

In some cases, there was no remedy or inadequate remedy at Common Law. The King is considered as the fountain head of justice; when people were dissatisfied or aggrieved with the decision of the Common Law Court, they could always file a mercy petition with the King-in-Council. The King would refer these petitions to his Chancellor. The Chancellor, who was usually a Bishop, would dispose of these petitions not according to the rigid letter of the law but according to his own dictates of commonsense, natural justice and good conscience. The law so administered by the Chancellor came to be known as ‘Equity’ and such courts as ‘Equity Courts’. These ‘Equity Courts’ acted on number of maxims e.g.,

1. “He who seeks equity must do equity”,
2. “He who comes to equity must come with clean hands”.

Some of the important principles and remedies developed by Equity Courts are recognition of the right of beneficiary to trust property, remedy of specific performance of contracts, equity of redemption in case of mortgages etc.

(iv) Statute Law: “Statute law is that portion of law which is derived from the legislation or enactment of Parliament or the subordinate and delegated legislative bodies.” It is now a very important source of Mercantile Law. A written or statute law overrides unwritten law, i.e., both Common Law and Equity. Some of the important enactments in the domain of Mercantile Law are: The English Partnership Act, 1890, The English Sale of Goods Act, 1893, The Bankruptcy Act, 1914, The Carriers Act, 1830, The English Companies Act, 1948 etc.

(iii) Mercantile or Commercial Law

Legal Commentaries, International Treaties and Conventions, Legal Dictionaries, Law Commission Reports are also secondary sources of Indian Laws.

Indian legal system, legislative and executive functions

Government of India is mainly composed of the executive, legislative, and judicial branches, in which all powers are vested by the Constitution in the Parliament, the Prime Minister and the Supreme Court. The President of India is the Head of State and the Supreme Commander of the Indian Armed Forces while the people-elected Prime Minister acts as the chief executive (of the executive branch) and is responsible for running the Government. There is a bicameral Parliament with the Lok Sabha as a lower house and the Rajya Sabha as an upper house. The judicial branch systematically contains an apex Supreme Court, 24 high courts, and several district courts; all inferior to the Supreme Court.

Legislative branch in India is exercised by the Parliament and a bicameral legislature consisting of the Rajya Sabha, and the Lok Sabha. Of the two houses of Parliament, the former is considered to be the upper house or the Council of States and consists of members appointed by the President and elected by the state and territorial legislatures. The latter is considered the lower house or the House of the people.

The executive power is vested mainly in the President of India, as per Article 53 (1) of the constitution. The President has all constitutional powers and exercises them directly or through officers subordinate to him as per the aforesaid Article 53(1). The President is to act in accordance with aid and advice tendered by the Prime Minister, who leads the Council of Ministers as described in Article 74 of the Constitution of India.

LEGAL TERMINOLOGY AND MAXIMS

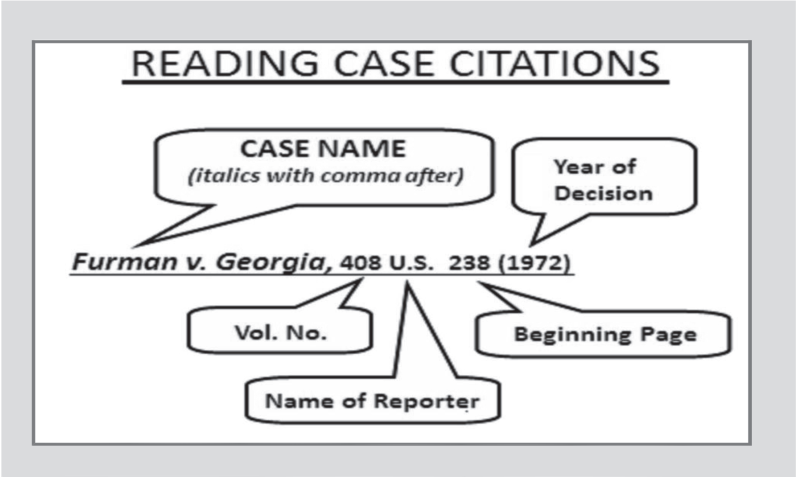
A legal maxim is an established principle or proposition. The Latin term which were used as the language for law and courts, are presently in use in law. A list of important legal maxims with meaning is being given hereunder:

Term/Phrase	Meaning
ab initio	From the beginning.
ad hoc	Not intended to be able to be adapted to other purposes.
ad idem	To the same thing.
ad infinitum	To infinity.
ad valorem	According to value.
alter ego	A second identity living within a person.
amicus curiae	Friend of the court.
audi alteram partem	Hear the other side.
de facto	In fact.
de jure	In law.

Term/Phrase	Meaning
de novo	A new.
dehors	Outside of.
ex gratia	As a matter of grace or favour.
ex officio	By virtue of an office.
ex parte	Expression used to signify something done or said by one person not in the presence of his opponent.
fait accompli	An accomplished act.
actus reus	Guilty act.
in personam	Against the person.
in rem	An act/proceeding done or directed with reference to no specific person or with reference to all whom it might concern.
inter alia	Amongst other things.
inter vivos	Between living persons.
intestate	A person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition ("will") capable of taking effect.
intra vires	Within the powers.
ipso facto	By the mere fact.
ipso jure	By the law itself.
lis pendens	A pending suit.
locus standi	Signifies a right to be heard.
mens rea	A guilty mind.
modus operandi	Mode of operating; the way in which a thing, cause etc. operates.
ratio decidendires integra	Reasons for deciding, the grounds of decision.An untouched matter; a point without a precedent; a case of novel impression.
res judicata	A case or suit already decided.
sine die	Without day.
sine qua non	An indispensable requisite.
status quo	Existing condition.
sub judice	Before a judge or court, pending decision of a competent count.

UNDERSTANDING CASE CITATION

Knowing how to read and write case citations is an important skill for everyone studying law. The figure below and the comments that follow may help with your understanding of the basic elements.



Above are the parts of a standard case citation. The citation tells us that a case called *Furman versus Georgia* was decided in 1972 and can be found in Volume 408 of the United States Reports, starting on page 238.

For example: *Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225*

Element	Example	Explanation
Case Name	*Kesavananda Bharati v. State of Kerala*	The parties involved
Year of Reporter	(1973)	Year case was published (essential for locating volume)
Volume Number	4	Volume of the case report series
Reporter Series	SCC	Abbreviated title of the law report
Page Number	225	Starting page of the judgment in the report

Case Name

There are typically two names for a case. Usually, the first name identifies who is bringing the court action and the second name is the person against whom action is being brought. In a criminal law case action is almost always brought by the state (e.g., People or State) against a person (e.g., Sunil) as in Nathu Ram Shukla v. State of Madhya Pradesh or Union of India v. Union Carbide.

However, the “defendant” may not always stay the same. In the Furman v. Georgia case, Furman was originally the defendant in a murder case being prosecuted in Georgia. However, Furman appealed his conviction and in doing so he became the person taking action against the state.

Year

This is the year in which the decision was delivered by the court. It may not be (and in appellate cases, probably isn’t) the year in which the case was heard.

Name of Reporter

A ‘reporter’ is a multi-volume publication where court decisions are found. The full name and abbreviations for the reporters you are most likely to encounter as undergraduates are:

Full Name	Official Abbreviation	Type of Case Reported
All India Reports	AIR	Important decision from Supreme Court and High Courts.
Supreme Court Cases	SCC	Indian Supreme Court.
Company Law Journal	CLJ	Important decisions relating to company law matters.
Income Tax Report	ITR	Important decisions relating to income tax matters.
Labour Reports	LR	Important decisions relating to Labour law matters.

EMERGING LEGISLATIONS - A BIRD'S EYE VIEW

India's legal landscape has undergone a remarkable transformation in recent decades. The country's rapid economic growth, technological advancements, globalization, and rising public awareness have necessitated a continuous evolution of its legal framework. New-age challenges from digital commerce and data protection to consumer rights and corporate governance have led to the formulation of a series of progressive laws aimed at ensuring transparency, accountability, and fairness in public as well as private dealings.

Emerging Legislations are reshaping governance, commerce, and individual rights in India. The laws mentioned below are few of the important emerging legislations in India.

Securities Laws

These laws protects investors and regulates the securities market to ensure transparency, efficiency, and investor confidence. It inter alia includes the Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956, The Depositories Act, 1996 along with rules and regulations made thereunder and the International Financial Services Centres Authority Act, 2019 and rules & regulations made thereunder.

Information Technology Law

The Information Technology Act, 2000 governs electronic transactions, cyber security, and digital governance in India. Information Technology Act 2000 has tried to adopt legal principles, relating to information technology, enacted earlier by several other countries, as also various guidelines pertaining to information technology law. The Act is supplemented by a number of rules which includes rules for cyber cafes, electronic service delivery, data security, blocking of websites. It also has rules for observance of due diligence by internet intermediaries (ISP's, network service providers, cyber cafes, etc.).

Arbitration and Conciliation Law

Arbitration and Conciliation Act, 1996 provides mechanisms for out-of-court dispute resolution, promoting speedier and cost-effective justice. With a view to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and also to provide for a law relating to conciliation and related matters, a new law called Arbitration and Conciliation Act, 1996 has been passed. The new Law is based on United Nations Commission on International Trade Law (UNCITRAL), model law on International Commercial Arbitration.

The Arbitration and Conciliation Act, 1996 aims at streamlining the process of arbitration and facilitating conciliation in business matters. The Act recognises the autonomy of parties in the conduct of arbitral proceedings by the arbitral tribunal and abolishes the scope of judicial review of the award and minimizes the supervisory role of Courts. The autonomy of the arbitral tribunal has further been strengthened by empowering them to decide on jurisdiction and to consider objections regarding the existence or validity of the arbitration agreement.

Mediation Law

Mediation Act, 2023 Encourages voluntary and structured mediation to resolve disputes amicably. Mediation is a voluntary, party-centred and structured negotiation process where a neutral third party assists the parties in amicably resolving their dispute by using specialized communication and negotiation techniques.

Mediation encourages the active and direct participation of the parties in the resolution of their dispute. Though the mediator, advocates, and other participants also have active roles in mediation, the parties play the key role in the mediation process.

Digital Personal Data Protection Law

The Digital Personal Data Protection Act, 2023 establishes rules for collection, storage, and processing of personal data to protect individual privacy. The Digital Personal Data Protection Act, 2023 (DPDP Act) provides for the processing of digital personal data in a manner that recognises both the rights of the individual to protect their personal data and the need to process such personal data for lawful purposes.

Competition Law

The Competition Act, 2002 prevents anti-competitive practices, promotes fair market competition, and safeguards consumer welfare. Competition refers to a situation in a market place in which firms/ entities or sellers independently strive for the patronage of buyers in order to achieve a particular business objective, such as profits, sales, market share etc.

By responding to demand for goods and services with lower prices and higher quality, competing businesses are pressured to reduce costs, innovate in processes and products, invest in technology and better managerial practices and increase productivity. This process leads to achievement of static, dynamic as also resource/ allocative efficiencies, sustainable economic growth, development, and poverty alleviation.

Criminal and Evidence Law

The new criminal laws modernizes the substantive and procedural framework of criminal justice to meet contemporary challenges. These laws includes Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS) and Bharatiya Sakshya Adhiniyam, 2023 (BSA). BNS consolidate and amend the provisions relating to offences and connected or incidental matter. BNSS consolidate and amend the law relating to Criminal Procedure. BSA provide for general rules and principles of evidence for fair trial.

Intellectual Property Rights Law

IPR Laws protects innovations, creative works, and brand identity, thus encouraging entrepreneurship and creativity. These laws *inter alia* include Patent Act, 1970, Trademarks Act, 1999, Copyright Act, 1957, Design Act, 2000, Geographical Indications (Registration and Protection) Act, 1999

As the term intellectual property relates to the creations of human mind and human intellect, this property is called Intellectual property. Creators can be given the right to prevent others from using their inventions, designs or other creations and to use that right to negotiate payment in return for others using them. These are Intellectual Property Rights. The creation of Intellectual Property Rights (IPR) is increasingly being recognised in today's global economy and society. Intellectual Property Rights are considered to be the backbone of any economy and their creation and protection is essential for sustained growth of a nation. The intellectual property rights are now not only being used as a tool to protect the creativity and generate revenue but also to build strategic alliances for the socio-economic and technological growth.

Real Estate Regulation Law (RERA)

Real Estate (Regulation and Development) Act, 2016 ensures accountability, transparency, and consumer protection in the real estate sector. Real estate sector plays a catalytic role in fulfilling the needs and demand for housing and infrastructure in the country and is an important pillar of the economy. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection.

In view of the above, Parliament enacted the Real Estate (Regulation and Development) Act, 2016 which aims at protecting the rights and interests of consumers and promotion of uniformity and standardization of business practices and transactions in the real estate sector. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism.

Telecommunication Law

This law Governs licensing, spectrum use, and consumer interests in India's fast-evolving telecom sector.

The Telecommunications Act, 2023 aims to amend and consolidate the law relating to development, expansion and operation of telecommunication services and telecommunication networks; assignment of spectrum and for matters connected therewith. The Telecommunications Act, 2023 also seeks to repeal existing legislative framework like Indian Telegraph Act,1885 and Indian Wireless Telegraph Act, 1933 owing to huge technical advancements in the telecom sector and technologies.

Guided by the principles of *Samavesh* (Inclusion), *Suraksha* (Security), *Vriddhi* (Growth), and *Tvarit* (Responsiveness), the Act aims to achieve the vision of Viksit Bharat (Developed India).

Consumer Protection Law

Consumer Protection Act, 2019 Strengthens consumer rights in an age of digital transactions, e-commerce, and global trade. This Law provides for provides for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto. Consumer Protection Act, 2019, certainly create a consumer-friendly ecosystem in the country and strengthen the consumer rights with timely and effective administration of consumer disputes.

LESSON ROUNDUP

- The nature and meaning of law has been described by various jurists. However, there is no unanimity of opinion regarding the true nature and meaning of law. The various definitions of law propounded by legal theorists serve to emphasize the different facets of law and build up a complete and rounded picture of the concept of law.
- The various definitions into five broad classes:
  - Natural: The law consists of rules recognised and acted on by the courts of Justice.
  - Positivistic: Law is the aggregate of rules set by man as politically superior, or sovereign, to men as political subject.

- Historical: Law is found and not made.
- Sociological: Essentially and exclusively as social fact.
- Realistic: Law is a statement of the circumstances in which public force will be brought to bear upon through courts.

- The modern Indian law as administered in courts is derived from various sources and these sources fall under the following two heads:
  - Principal Sources of Indian Law
  - Secondary Sources of Indian Law
- The principal sources of Indian law are:
  - Customs or Customary Law
  - Judicial Decisions or Precedents
  - Statutes or Legislation
  - Personal Law
- Custom is the most ancient of all the sources of law and has held the most important place in the past, though its importance is now diminishing with the growth of legislation and precedent.
- The guidance or authority of past decisions of the courts for future cases or only such decisions which lay down some new rule or principle are called judicial precedents.
- The doctrine of stare decisis means "adhere to the decision and do not unsettle things which are established". It is a useful doctrine intended to bring about certainty and uniformity in the law.
- Legislation is that source of law which consists in the declaration or promulgation of legal rules by an authority duly empowered by the Constitution in that behalf. It is sometimes called Jus scriptum (written law) as contrasted with the customary law or jus non-scriptum (unwritten law).
- The courts are required to apply the personal law of the parties where the point at issue is not covered by any statutory law or custom.
- Secondary Source of Indian Law
  - Justice, Equity and Good Conscience
  - Sources of English Law
- India's legal landscape has undergone a remarkable transformation in recent decades. The country's rapid economic growth, technological advancements, globalization, and rising public awareness have necessitated a continuous evolution of its legal framework. New-age challenges from digital commerce and data protection to consumer rights and corporate governance have led to the formulation of a series of progressive laws aimed at ensuring transparency, accountability, and fairness in public as well as private dealings.
- Emerging Legislations are reshaping governance, commerce, and individual rights in India. The laws mentioned below are few of the important emerging legislations in India.

GLOSSARY

Customary Law: Traditional common rule or practice that has become an intrinsic part of the accepted and expected conduct in a community, profession, or trade and is treated as a legal requirement.

Statutes : An act of a legislature that declares, proscribes, or commands something; a specific law, expressed in writing.

Doctrine of Stare Decisis: The policy of courts to abide by or adhere to principles established by decisions in earlier cases.

Ratio Decidendi: The legal principle upon which the decision in a specific case is founded. The *ratio decidendi* is also known as the rationale for a decision.

Obiter Dicta: An opinion voiced by a judge that has only incidental bearing on the case in question and is therefore not binding. Remarks of a judge which are not necessary to reaching a decision, but are made as comments, illustrations or thoughts.

TEST YOURSELF

Q1. Identify the jurist who does not belong to natural law school

(a) Ulpine

(b) Cicero

(c) Austin

(d) Salmond

Q2. Austin's understanding of law requires the presence of

(a) Command, sanction, sovereign

(b) Political superior only as laws are dictated by them

(c) King and command

(d) Political superiors and political inferiors

Q3. Concept of volkgeist was evolved by

(a) Historian- Henry Maine

(b) Positivist- Bentham

(c) Naturalist- Salmond

(d) Historian- Savigny

Q4. Which of the following is not a principle source of law?

(a) Conventional Custom

(b) High court precedents

(c) Justice, equity and good conscience

(d) Legislations/ statures

Q5. Customs without sanction are called as

(a) Positive morality

(b) Public opinion

(c) General customs

(d) Conventional customs

Q6. An underlying principle of judicial decision which is binding is called

(a) *Ratio Decidend*i

(b) *Stare Decisis*

(c) *Obiter Dicta*

(d) Precedent of High Court

Q7. Which of the following is not a kind of precedent?

(a) Declaratory

(b) Pervasive

(c) Supreme

(d) Absolute

Q8. The law declared by the Supreme courts is binding on all courts in the territory of India is laid down in

(a) Article 142

(b) Section 141

(c) Article 141

(d) Judgement of Supreme Court

Q9. Indian courts bound by judgment of Privy Council

(a) True

(b) False

(c) Depends on circumstances of the case

(d) Both (a) and (c)

Q10. Which of the following is not a feature of local custom?

(a) Immemorial

(b) Reasonable and compulsory observance

(c) Conformity with law and public morality

(d) Peaceful enjoyment and undefined

SUGGESTED READINGS	
(1)	An introduction to Jurisprudence (Legal Theory) – B.N.M.P. Tripathi
(2)	Introduction of Jurisprudence with Selected Texts – Dennis Lloyd
(3)	Essential Business Law (Law and the legal System) – Peter Smith.

Elements of Company Law

Lesson 2

KEY CONCEPTS

■ Kinds of Companies ■ Secretarial Audit ■ Lifting of Corporate Veil ■ MCA-21 ■ E-Governance ■ Corporate Social Responsibility ■ Board of Directors

Learning Objectives

To understand:

Industrialisation plays a vital role in the development of India. Companies are no doubt powerful instrument of development. Besides bringing returns and financial benefits to the capital and labour they help amelioration of the living conditions of masses.

Company has separate legal entity. Its perpetual succession leads it to longer life. The Company acts as an artificial person and activities of the company are carried out by the persons. The persons are called as director and key managerial personnel who holds the power to act on behalf of company. The companies work according to the set pattern of process and the process is called meetings. The officers of the company are responsible for its day to day functioning. Company secretary is one of the said officers; who is responsible for the legal compliance of the company. He is the bridge between Board and shareholders.

The objective of this lesson is to articulate about Basic Concepts, Meaning, Nature and Types of Companies, Board of Directors, Management, and Shareholders of Companies.

Lesson Outline

COMPANY – MEANING AND CHARACTERISTICS

MEANING

The word "company" is derived from the Latin (Com = with or together; panis = bread), and originally referred to an association of persons who took their meals together. It may be assumed, since human nature does not change that in the leisurely past no less than in the speedy present, merchants took advantage of festive gatherings, to discuss business matters. Now-a-days, the business matters have become most complicated and cannot be discussed at length on festive gatherings. Therefore, the word "company" has assumed great importance as it denotes a joint stock enterprise in which the capital is contributed by a large number of people. Thus, in popular parlance, company denotes an association of like minded persons formed for the purpose of carrying on same business or undertaking. Though an association may be brought into existence for multifarious purposes, in Company Law it figures predominantly as a business association with a large and fluctuating membership formed for making a gain as profit. There may also be non-profit trading concerns like a club or a society. In Smith v. Anderson, (1880) 15 Ch.D.247, it was observed that "a company, in broad sense, may mean an association of individuals formed for some purpose".

A company may be an incorporated company or a "corporation" or an unincorporated company. An incorporated company is a separate person distinct from the individuals constituting it whereas an unincorporated company, such as a partnership, is mere collection or aggregation of individuals. Therefore, unlike a partnership firm, a company is a corporate body and a legal person having status and personality distinct and separate from that of the members constituting it.

It is called a body corporate because the persons composing it are made into one body by incorporating it according to the law, and clothing it with legal personality, and, so turn it into a corporation (The word "corporation" is derived from the Latin term "corpus" which means "body"). Accordingly, "corporation" is a legal person created by the process other than natural birth. It is, for this reason, sometimes called artificial person. This corporate being is capable of enjoying many of the rights and incurring many of the liabilities of a natural person - a human being.

The incorporated company owes its existence to a special Act of Parliament or to Companies Law. The public corporations like Life Insurance Corporation of India and Damodar Valley Corporation have been brought into existence through special Acts of Parliament whereas companies like Tata Steel Ltd., Reliance Industries Ltd. have been formed under the Companies Act, 1956 which is being replaced by Companies Act, 2013. The trading partnership which is governed by Partnership Act is the most apt example of an unincorporated association.

In the legal sense, a company is an association of both natural and artificial persons incorporated under the existing law of a country. As per section 2(20) of the Companies Act, 2013 "company" means a company incorporated under Companies Act, 2013 or under any previous company law;" . In common law, a company is a "legal person" or "legal entity" separate from, and capable of surviving beyond the lives of, its members. However, an association formed not for profit acquires a corporate life and falls within the meaning of a company by reason of a licence under Section 8 of the Companies Act, 2013.

Characteristics

The main characteristics of a company are as follow:

Corporate Personality

By incorporation under the Act, the company is vested with a corporate personality quite distinct from individuals who are its members. Being a separate legal entity it bears its own name and acts under a corporate name. It has a seal of its own. Its assets are separate and distinct from those of its members. It is also a different 'person' from the members who compose it. As such it is capable of owning property, incurring debts, borrowing money, having a bank account, employing people, entering into contracts and suing or being sued in the same manner as an individual. Its members are its owners but they can be its creditors simultaneously as it has a separate legal entity. A shareholder cannot be held liable for the acts of the company even if he holds virtually the entire share capital. The shareholders are not the agents of the company and so they cannot bind it by their acts. The company does not hold its property as an agent or trustee for its members and they cannot sue to enforce its rights, nor can they be sued in respect of its liabilities. The case of Salomon v. Salomon and Co. Ltd., (1897) A.C.22, has clearly established the principle that once a company has been validly constituted under the Companies Act it becomes a legal person distinct from its members and for this purpose it is immaterial whether any member has a large or small proportion of the shares, and whether he holds those shares beneficially or as a mere trustee. The facts of this case are as follows:

Salomon had, for some years, carried on a prosperous business as leather merchant and boot manufacturer. He formed a limited company consisting of himself, his wife, his daughter and his four sons as the shareholders, all of whom subscribed for 1 share each so that the actual cash paid as capital was £ 7. Salomon sold his business (which was perfectly solvent at that time), to the Company for the sum of £ 38,782. The company's nominal capital was £ 40,000 in £ 1 shares. In part payment of the purchase money for the business sold to the company, debentures of the amount of £ 10,000 secured by a floating charge on the company's assets were issued to Salomon, who also applied for and received an allotment of 20,000 £ 1 fully paid shares. The remaining amount of £ 8,782 was paid to Salomon in cash. Salomon was the managing director and two of his sons were other directors.

The company soon ran into difficulties and the debenture holders appointed a receiver and the company went into liquidation. The total assets of the company amounted to £6050, its liabilities were £10,000 secured by debentures, £8,000 owning to unsecured trade creditors, who claimed the whole of the company's assets, viz.,£6,050, on the ground that, as the company was a mere 'alias' or agent for Salomon, they were entitled to payment of their debts in priority to debentures. They further pleaded that Salomon, as principal beneficiary, was ultimately responsible for the debts incurred by his agent or trustee on his behalf. The trial judge and the Appellate Court agreed with these contentions and decreed against Salomon. The House of Lords disagreeing with the lower Courts, repudiated these contentions and accepted the appeal and reversed the order of the Appellate Court. The House of Lords held that on registration, the company comes into existence and attains maturity on its birth. There is no period of minority, no interval of incapacity. It has its own existence or personality separate and distinct from its members and, as a result, a shareholder cannot be held liable for its acts even though he holds virtually the entire share capital. Thus, the case also established the legality of what is known as "one-man company". The case also recognised that subscribers do not have to be independent or strangers to one another. The case also recognised the principle of limited liability. It also established that a person can be at the same time a member, a creditor and an employee of the company, as well as its director.

Their Lordships observed:

"When the memorandum is duly signed and registered, though there be only seven shares taken, the subscribers are a body corporate capable forthwith of exercising all the functions of an incorporated company. It is difficult to understand how a body corporate thus created by statute can lose its individuality by issuing the bulk of its capital to one person. The company is at law a different person altogether from the subscribers of the memorandum; and though it may be that after incorporation the business is precisely the same as before, the same persons are managers, and the same hands receive the profits, the company is not in law their agent or trustee."

Limited Liability

The company being a separate entity, leading its own business life, the members are not liable for its debts.

The liability of the members of a company is limited to the extent of the nominal value of the shares held by them. In no event can a shareholder be asked to pay anything more than the unpaid value of his shares. In the case of a company limited by guarantee, the members are liable only to the extent of the amount guaranteed by them and not beyond, and only when the company goes into liquidation.

Perpetual Succession

Members may come and members may go but the company goes on for ever. Variation in members or their identity does not affect the legal existence and identity of a company. It is a creation of law and can be dissolved only under the law.

Transferability of Shares

The capital of a company is divided into parts, called shares. The shares are said to be movable property and, subject to certain conditions, freely transferable, so that no shareholder is permanently or necessarily wedded to a company. The shares of joint stock companies are freely transferable. In the case of a private company, the Companies Act requires it to put certain restrictions on the transferability of shares. Every member owing fully paid-up shares is at liberty to dispose them off according to his choice but subject to the articles of the company. Any absolute restriction on the right to transfer shares is void.

Separate Property

As a corporate person, the company is entitled to own and hold property in its own name. No member can claim ownership of any item of the company's assets.

Common Seal

On incorporation, a company acquires legal entity with perpetual succession and a common seal. Since the company has no physical existence, it must act through its agents and all such contracts entered into by its agents must be under the seal of the company. The common seal of the company is of very great importance. It acts as the official signature of a company. The name of the company must be engraved on its common seal. A rubber stamp does not serve the purpose. A document not bearing common seal of the company is not authentic and has no legal force behind it.

However, as per the Companies (Amendment) Act, 2015, the requirement of affixing of Common Seal has been dispensed with. It has been provided in the act that in case a company does not have a common seal, the authorisation shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

Capacity to Sue and Be Sued

A company being a body corporate, can sue and be sued in its own name. All legal proceedings against the company are to be instituted in its own name. Similarly, the company may bring an action against anyone in its own name. In case of unincorporated association an action may have to be brought in the name of the members either individually or collectively.

Advantages of Incorporation

As compared to other types of business associations, an incorporated company has the following advantages:

A. *Corporate Personality:* Unlike a partnership firm, which has no existence apart from its members, a company is a distinct legal or juristic person independent of its members. Under the law, an incorporated company is a distinct entity, even the one-man company as discussed above in Salomon & Co. Ltd., case is different from its shareholders.

   As per section 9 of the Companies Act, 2013 from the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under the Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

B. *Limited Liability:* The Companies Act provides that in the event of the company being wound-up, the members shall have liability to contribute to the assets of the company in accordance with the Act. In the case of companies limited by shares, no member is bound to contribute anything more than the nominal value of the shares held by him which remains unpaid. The privilege of limiting the liability is one of the principal advantages of doing business under the corporate form of organisation.

C. *Perpetual Succession:* As stated in Section 9 of the Companies Act, 2013 an incorporated company has perpetual succession. Notwithstanding any change in its members, the company will be the same entity with the same privileges and immunities, estate and possessions. The death or insolvency of individual members does not in any way, affect the corporate entity, its existence or continuity. The company shall continue to exist indefinitely till it is wound-up in accordance with the provisions of the Companies Act. "Members may come and members may go but the company can go on forever".

D. *Transferable Shares:* Section 44 of the Companies Act, 2013 provides the shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company. This encourages investment of funds in the shares, so that the members may encash them at any time. Thus, it provides liquidity to the investors as shares could be sold in the open market and in stock exchange. It also provides stability to the company.

E. *Separate Property*: A company as a legal entity is capable of owning its funds and other assets. "The property of the company is not the property of the shareholders, it is property of the company" [Gramophone & Typewriter Co. v. Stanley, (1906) 2 K.B. 856 at p. 869]. "The company is the real person in which all the property is vested, and by which it is controlled, managed and disposed of". In the eyes of law, even a member holding majority of shares or a managing director of a company is held liable for criminal mis- appropriation of the funds or property of the company, if he unauthorisedly takes it away and uses it for his personal purposes.

F. *Capacity to Sue:* As a juristic legal person, a company can sue in its name and be sued by others. The managing director and other directors are not liable to be sued for dues against a company.

G. *Flexibility and Autonomy:* The company has an autonomy and independence to form its own policies and implement them, subject to the general principles of law, equity and good conscience and in accordance with the provisions contained in the Companies Act, Memorandum and Articles of Association. The company form of management of business disassociates the "ownership" from the "control" of business, and helps promote professional management and efficiency. The Key Managerial Personnel can carry on the business activities with freedom, authority and accountability in accordance with the Company Law. The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel. As per section 2(51) "key managerial personnel", in relation to a company, means –

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the Company Secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed.

Limitations of Incorporation

There are, however, certain disadvantages and inconveniences in Incorporation. Some of these disadvantages are:

1. *Formalities and expenses:* Incorporation of a company is coupled with complex, cumbersome and detailed legal formalities and procedures, involving considerable amount of time and money. Such elaborate procedures have been laid down to deter persons who are not serious about doing business, as a company enjoys various facilities from the community. Even after the company is incorporated, its affairs and working must be conducted strictly in accordance with legal provisions. Thus various returns and documents are required to be filed with the Registrar of Companies, some periodically and some on the happening of an event. Certain books and registers are compulsorily required to be maintained by a company. Approval and sanction of the National Company Law Tribunal / National Company Law Appellate Tribunal , the Government, the Court, the Registrar of Companies or other appropriate authority, as the case may be, is necessarily required to be obtained for certain corporate activities. Certain corporate activities such as corporate meetings, accounts, audit, borrowings, lending, investment, issue of capital, dividends etc. are necessarily required to be conducted and carried out strictly in accordance with the provisions of the Act and within the prescribed time. Any breach of the legal provisions is followed by severe penal consequences. Other forms of business organisations are comparatively free from these legal complexities and procedural formalities.

2. *Corporate disclosures:* Notwithstanding the elaborate legal framework designed to ensure maximum disclosure of corporate information, the members of a company are having comparatively restricted accessibility to its internal management and day-to-day administration of corporate working.

3. *Separation of control from ownership:* Members of a company are not having as effective and intimate control over its working as one can have in other forms of business organisation, say, a partnership firm. This is particularly so in big companies in which the number of members is too large to exercise any effective control over its day-to-day affairs. No member of a company can act in his individual capacity for and on behalf of the company. The members of a company are neither the owners nor the agents of the company. Thus, the position of ownership of members is more passive in nature. The members may not have an active and complete control over the company's working as the partners may have over the firm's affairs.

4. *Greater social responsibility:* Having regard to the enormous powers wielded by the companies and the impact they have on the society, the companies are called upon to show greater social responsibility in their working and, for that purpose, are subject to greater control and regulation than that by which other forms of business organisation are governed and regulated.

5. *Greater tax burden in certain cases:* In certain circumstances, the tax burden on a company is more than that on other forms of business organisation. A company is liable to tax without any minimum taxable limit as is prescribed in the cases of registered partnership firms and others. Also it has to pay income-tax on the whole of its income at a flat rate whereas others are taxed on graduated scale or slab system. These tax implications may have crucial bearing on a decision regarding the selection of any form of business organisation and the time when the existing form of business organisation should be changed to a new one. Thus, tax implications may direct the adoption of the partnership form of business organisation as expedient at the initial stage to be converted into a company later on, when the tax implications may be more favourable because of the size of the organisation and its scale of operations.

6. *Detailed winding-up procedure:* The Act provides elaborate and detailed procedure for winding-up of companies which is more expensive and time consuming than that which is applicable to other forms of business organisation.

There are, however, some exceptions to the principles of Corporate Personality and the Limited Liability of members. These are discussed below:

Lifting or Piercing the Corporate Veil

Law has clothed a corporation with a distinct personality, yet in reality it is an association of persons who are in fact, in a way, the beneficial owners of the property of the body corporate. A company, being an artificial person, cannot act on its own, it can act only through natural persons.

Indeed, the theory of corporate entity is still the basic principle on which the whole law of corporations is based. But as the separate personality of the company is a statutory privilege, it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will breakthrough the corporate shell and apply the principle of what is known as "lifting of or piercing through the corporate veil". The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company.

The corporate veil is lifted when in defence proceedings, such as for the evasion of tax, an entity relies on its corporate personality as a shield to cover its wrong doings. *[BSN (UK) Ltd. v. Janardan Mohandas Rajan Pillai [1996] 86 Comp. Cas. 371 (Bom).]*

In the following cases the Courts have lifted the corporate veil:

1. Where the corporate veil has been used for commission of fraud or improper conduct, Courts have lifted the veil and looked at the realities of the situation. In Gilford Motor Co. v. Horne, (1933) 1 Ch. 935, a former employee of a company made a covenant not to solicit its customers. He formed a company which undertook solicitation. The company was restrained by the Court.

2. Where the corporation is really an agency or trust for some one else and the corporate facade is used to cover up that agency or trust. In re R.G. Films Ltd., (1953) 1 All E.R. 615, an American company produced a film in India technically in the name of a British Company, 90% of whose capital was held by the President of the American Company which financed the production of the film. Board of Trade refused to register the film as a British film on the ground that English company acted merely as the nominee of the American corporation.

3. Where the doctrine conflicts with public policy, Courts have lifted the corporate veil for protecting the public policy. In *Connors Bros. v. Connors (1940) 4 All E.R. 179*, the principle was applied against the managing director who made use of his position contrary to public policy. In this case, the House of Lords determined the character of the company as "enemy" company, since the persons who were de facto in control of its affairs, were residents of Germany, which was at war with England at that time. The alien company was not allowed to proceed with the action, as that would have meant giving money to the enemy, which was considered as monstrous and against "public policy".

4. For determining the true character or status of the company. In *Daimler Co. Ltd. v. Continental Tyre and Rubber Co., (1916) 2 A.C. 307,* the Court looked behind the facade of the company and its place of registration in order to determine the true character of the company, i.e., whether it was an "enemy" company.

5. Where the veil has been used for evasion of taxes and duties, the Court upheld the piercing of the veil to look at the real transaction. *(Commissioner of Income Tax v. Meenakshi Mills Ltd., A.I.R. (1967) S.C.819).*

6. Where it was found that the sole purpose for which the company was formed was to evade taxes the Court will ignore the concept of separate entity, and make the individuals liable to pay the taxes which they would have paid but for the formation of the company. In the case of Sir Dinshaw Manakjee Petit,

AIR 1927 Bombay 371, the assessee was a wealthy man enjoying large dividend and interest income. He formed four private companies and agreed with each to hold a block of investment as an agent for it. Income received was credited in the accounts of the company but the company handed back the amount to him as a pretended loan. This way he divided his income in four parts in a bid to reduce his tax liability. The Court disregarded the corporate entity on the grounds that the company was formed by the assessee purely and simply as a means of avoiding tax and the company was nothing more than the assessee himself.

7. Where the purpose of company formation was to avoid welfare legislation. Where it was found that the sole purpose for the formation of the new company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction (*The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar v. The Associated Rubber Industries Ltd., Bhavnagar and another, A.I.R. 1986 SC 1).*

TYPES OF COMPANIES

The Companies Act, 2013 provides for a variety of companies of which can be promoted and registered under the Act. These companies may be:

(i) limited by shares;

(ii) limited by guarantee; or

(iii) unlimited companies.

Companies may also be classified as:

(a) Private Companies;

(b) Public Companies;

(c) One Person Company

(d) Company with charitable objects, etc. under Section 8 of the Companies Act, 2013;

(e) Small Company

(f) Government companies;

(g) Foreign companies;

(h) Holding companies;

(i) Subsidiary companies

(j) Producer Companies.

A brief discussion of each type of company follows hereunder.

A Company Limited by Shares

A company limited by shares may be defined as a "registered company" whether public or private company having the liability of its members limited by its memorandum to the amount, if any, unpaid on the shares respectively held by them. In other words, a member of a company limited by shares is required to pay only the nominal amount of shares held by him and nothing more. If the shares are fully paid-up he has nothing more to pay.

A Company Limited by Guarantee

A company limited by guarantee is a registered company having the liability of its members limited by its memorandum to such an amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.

A special feature of this type of company is that the liability of members to pay their guarantee amount arises only when the company goes into liquidation and not when it is a going concern.

Clubs, trade associations and societies for promoting different objects are at times incorporated as companies limited by Guarantee to take the advantages of incorporation without running the risk of heavy liabilities.

An Unlimited Company

An unlimited company is a company not having any limit on the liability of its members. Thus, the maximum liability of the members of such a company, in the event of its being wound up, might stretch up to the full extent of their properties to meet the obligations of the company by contributing to its assets. However, the members of an unlimited company are not liable directly to the creditors of the company, as in the case of partners of a firm. The liability of the members is only towards the company and in the event of its being wound up only the liquidator can ask the members to contribute to the assets of the company which will be used in discharging the debts of the company.

A company registered as an unlimited company may subsequently convert itself as a limited company, subject to the condition that any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the unlimited company before such conversion are not affected by such changed registration.

Private Companies

"Private company" means a company having a minimum paid-up share capital as may be prescribed by Central Government.

The Private Company should by its articles:

- restricts the right to transfer its shares
- Limits the number of its members to two hundred except in case of One Person Company

The private companies should prohibit any invitation to the public to subscribe for any securities of the company.

Public Company

"Public company" means a company which:

- is not a private company
- has a minimum paid-up share capital as may be prescribed

Further, a company which is a subsidiary of a company, *not being a private company*, shall be deemed to be public company.

One Person Company

"One Person Company" means a company which has only one person as a member.

Formation of Companies with Charitable Objects, etc.

Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under the Companies Act, 2013 as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members,

the Central Government may, by licence issued and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under section 8 without the addition to its name of the word "Limited", or the words "Private Limited", and thereupon the Registrar can, on application register such person or association of persons as a company under this section.

Small Company

"Small company" means a company, other than a public company:

- Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- Turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

These limits of 10 Crore for share capital and 100 Crore for Turnover are the powers of Central Government to prescribe the higher limits for identification of small companies over and above 50 Lakh share capital and 2 Crore Turnover as provided in the section itself.

Provided that nothing mentioned shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

Government Company

"Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

Foreign Company

"Foreign company" means any company or body corporate incorporated outside India which,—

(*a*) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(*b*) conducts any business activity in India in any other manner.

Holding Company

"Holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies.

In view of the above, detailed definition of subsidiary company has been given.

Subsidiary Company

"Subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

(*i*) controls the composition of the Board of Directors; or

(*ii*) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

Producer Company

"Producer Company" means a body corporate having objects or activities specified in section 378B and registered as Producer Company under this Act or under the Companies Act, 1956.

Section 378B(1): The objects of the Producer Company shall relate to all or any of the following matters, namely:—

"(a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit: Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;

(b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;

(c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;

(d) providing education on the mutual assistance principles to its Members and others;

(e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;

(f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;

(g) insurance of producers or their primary produce;

(h) promoting techniques of mutuality and mutual assistance;

(i) welfare measures or facilities for the benefit of Members as may be decided by the Board;

(j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner;

(k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members."

BOARD OF DIRECTORS

A company, though a legal entity in the eyes of law, is an artificial person, existing only in contemplation of law. It has no physical existence. It has neither soul nor body of its own. As such, it cannot act in its own person. It can do so only through some human agency. The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board. The directors are the brain of a company. They occupy a pivotal position in the structure of the company. Directors take the decision regarding the management of a company collectively in their meetings known as Board Meetings or at the meetings of their committees constituted for certain specific purposes.

Section 2 (10) of the Companies Act, 2013 defined that "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company.

Minimum/Maximum Number of Directors

Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required.

Number of directorships

As per Section 165 of the Companies Act, 2013, maximum number of directorships, including any alternate directorship a person can hold is 20. It has come with a rider that number of directorships in public companies/ private companies that are either holding or subsidiary company of a public company shall be limited to 10. Further the members of a company may restrict abovementioned limit by passing a special resolution.

For reckoning the limit of directorships of 20 companies, the directorship in a dormant company shall not be included.

Residence of a director in India

As per Section 149 (3) of the Companies Act, 2013, every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year:

However, in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

Woman Director

Every listed company shall appoint at least one woman director and Every other public company having paid up share capital of Rs. 100 crores or more or turnover of Rs. 300 crore or more as on the last date of latest audited financial statements, shall also appoint at least one woman director under Section 149(1) of the Companies Act, 2013 read with rule 3 of the Companies (Appointment and Qualifications of Directors) Rules, 2014.

Any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Independent Directors

Section 2(47) of the Companies Act, 2013 prescribed that "Independent director" means an independent director referred to in sub section (5) of section 149 of the Act. In fact reference should have been made to sub section (6) of 149 as it specified the qualifications of independent director with clarity.

An independent director means a director other than a managing director or a whole-time director or a nominee director who does not have any material or pecuniary relationship with the company/ directors. Section 149(6) of the Act prescribes the criteria for independent directors which are as follows:

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives—

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);]

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications as prescribed. Rule 5 of The Companies (Appointment and Qualifications of Directors) Rules, 2014 prescribes Qualifications of Independent Director as follows:

(1) An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-

(i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or

(ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company,

for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.

Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

The following class or classes of companies shall have at least two directors as independent directors subject to the proviso of rule 4 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 -

(i) the Public Companies having paid up share capital of ten crore rupees or more; or

(ii) the Public Companies having turnover of one hundred crore rupees or more; or

(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees

Director elected by Small Shareholders

According to section 151 of the Companies Act, 2013 every listed company may have one director elected by such small shareholders. For the purpose of this section, "small shareholder" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Duties of directors

As per Section 166 of the Companies Act, 2013, a director of a company shall:

- Act in accordance with the articles of the company.
- Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- Not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- Not assign his office and any assignment so made shall be void.

If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000.

Powers of Board

Section 179 of the Companies Act, 2013 deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting.

The following powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely :-

(1) to make calls on shareholders in respect of money unpaid on their shares;

(2) to authorise buy-back of securities under section 68;

(3) to issue securities, including debentures, whether in or outside India;

(4) to borrow monies;

(5) to invest the funds of the company;

(6) to grant loans or give guarantee or provide security in respect of loans;

(7) to approve financial statement and the Board's report;

(8) to diversify the business of the company;

(9) to approve amalgamation, merger or reconstruction;

(10) to take over a company or acquire a controlling or substantial stake in another company;

(11) to make political contributions;

(12) to appoint or remove key managerial personnel (KMP);

(13) to appoint internal auditors and secretarial auditor;

MEETINGS OF THE BOARD

The way we run board meetings says much about how we run the company. Successful companies use board meetings to create and improve key business strategies.

The board of directors of a company is primarily an oversight board. It oversees the management of the company to ensure that the interest of non-controlling shareholders is protected. It also functions as advisory board. Independent directors bring diverse knowledge and expertise in the board room and the CEO uses the knowledge pool in addressing issues being faced by the company. The most important function of a monitoring board is to provide direction to the company. Another very important function of a monitoring board is to set the 'tone at the top'. It is expected to create the right culture within the company.

Section 173 of the Companies Act, 2013 deals with Meetings of the Board and it provides that the first Board meeting should be held within thirty days of the date of incorporation. In addition to the first meeting to be held within thirty days of the date of incorporation, there shall be minimum of four Board meetings every year and not more than one hundred and twenty days shall intervene between two consecutive Board meetings.

In case of One Person Company (OPC), small company and dormant company, at least one Board meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than Ninety days. Directors may participate in the meeting either in person or through video conferencing or other audio visual means.

As per the Companies Act 2013, the company has to file the resolutions of the board meetings of certain specified agenda to RoC in e-form MGT-14.

Notice of Board Meetings

The Companies Act, 2013 requires that not less than seven days notice in writing shall be given to every director at the registered address as available with the company. The notice can be given by hand delivery or by post or by electronic means.

In case the Board meeting is called at shorter notice, at least one independent director shall be present at the meeting. If he is not present, then decision of the meeting shall be circulated to all directors and it shall be final only after ratification of decision by at least one Independent Director.

SS-1 "Secretarial Standard on Meetings of the Board of Directors" issued by The Institute of Company Secretaries of India which has to be mandatorily followed by the companies. According to the standard, Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means.

Notice shall be issued by the Company Secretary or where there is no Company Secretary, any Director or any other person authorised by the Board for the purpose.

The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting.

The Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information.

The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.

Notice convening a Meeting shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

Quorum for Board Meetings

As per section 174, the quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.

Where at any time the number of interested directors exceeds or is equal to twothirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.

Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

Further SS-1, provides that the Quorum for a Meeting of the Board shall be one-third of the total strength of the Board, or two Directors, whichever is higher.

Quorum shall be present throughout the Meeting.

Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of a private company, a Director shall be reckoned for Quorum and entitled to participate in respect of such item after disclosure of his interest.

MEMBERS' MEETINGS

A company is composed of members, though it has its own entity distinct from members. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity. However, a company, being an artificial person, cannot act on its own. It, therefore, expresses its will or takes its decisions through resolutions passed at validly held Meetings. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures.

The decision making powers of a company are vested in the Members and the Directors and they exercise their respective powers through Resolutions passed by them. General Meetings of the Members provide a platform to express their will in regard to the management of the affairs of the company.

Convening of one such meeting every year is compulsory. Holding of more general meetings is left to the choice of the management or to a given percentage of shareholders to exercise their power to compel the company to convene a meeting. Shareholder Democracy, Class Action Suits and Protection of interest of investors are the essence and attributes of the Companies Act, 2013.

A company is required to hold meetings of the members to take approval of certain business items, as prescribed in the Act. The meetings to be held for seeking approval to ordinary business and special business are called annual general meeting and extraordinary general meeting. In certain cases, a company may have to hold a meeting of the members of a particular class of members.

Members' Meetings are:

- Annual General Meeting
- Extraordinary General Meeting
- Class Meeting

The company shall mandatorily follow SS-2 "SECRETARIAL STANDARD ON GENERAL MEETINGS" issued by The Institute of Company Secretaries of India regarding the procedure of general meetings.

Notice of Meeting

A general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Notice through electronic mode shall be given in such manner as may be prescribed.

Short notice

A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

Contents of Notice

Place of meeting

The notice should state the place where the general meeting is scheduled to be held. In case of an annual general meeting, the place of the meeting has to be either the registered office of the company or some other place within the city, town or village in which the registered office of the company is situated. No such restriction applies to an extraordinary general meeting.

Day of meeting

The day and date of the meeting should be clearly stated in the notice. In case of an annual general meeting, the day should be one that is not a National Holiday. An extraordinary general meeting can however be held on any day.

Time of meeting

Exact time of holding the meeting should be given in the notice. An annual general meeting can be called during business hours only, that is, between 9 a.m. and 6 p.m. There is no need to follow such timings in case of an extraordinary general meeting.

Agenda

A statement of the business to be transacted at the general meeting should be given in the notice. In case, the meeting is to transact a special business, a explanatory statement should be attached about such item.

Proxy clause with reasonable prominence

Every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, should carry with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

Notice through Electronic Mode

A company may give notice through electronic mode. Electronic mode' means any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

KEY MANAGERIAL PERSONNEL

The executive management of a company is responsible for the day to day management of a company. The companies Act, 2013 has used the term key management personnel to define the executive management. The key management personnel are the point of first contact between the company and its stakeholders. While the Board of Directors are responsible for providing the oversight, it is the key management personnel who are responsible for not just laying down the strategies as well as its implementation. Chapter XIII of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 deal with the legal and procedural aspects of appointment of Key Managerial Personnel including Managing Director, Whole-time Director or Manager, managerial remuneration, secretarial audit etc.

The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel. As per section 2(51) of the Companies Act, 2013 "key managerial personnel", in relation to a company, means –

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the Company Secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed.

Company Secretary

Section 2(24) of the Companies Act, 2013 defines "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.

Appointment of Whole-Time Company Secretary

As per Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 provides that a company which has a paid up capital of Five crore rupees or more shall have a whole-time company secretary.

Company Secretary in Practice

A company secretary may be appointed as KMPs and also otherwise for various functions by the Companies and Companies Act, 2013 also authorizes the company secretary in practice for various important activities during the management of the companies.

According to section 2(25) "company secretary in practice" means a company secretary who is deemed to be in practice under of section 2(2) of the Company Secretaries Act, 1980.

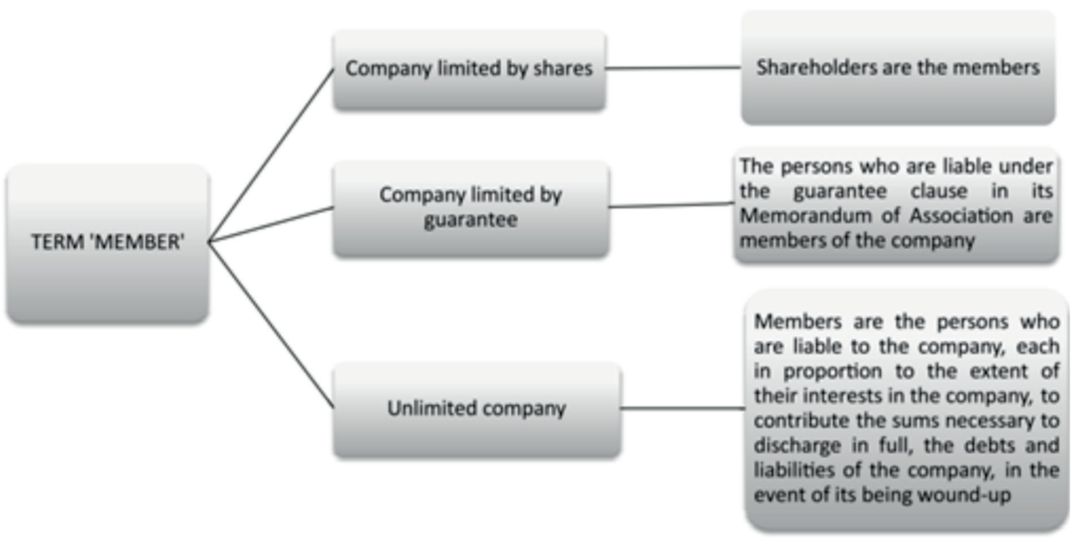
SHAREHOLDERS OF COMPANIES

"Member", in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.



Essential Elements for Membership of the Company

There are two important elements which must be present before a person can acquire membership of a company viz., –

- An agreement to become a member; and
- Entry of the name of the person so agreeing, in the register of members of the company.

Differences between Members and Shareholders

MEMBER	SHAREHOLDER
Section 2(55) of the Companies Act, 2013 specifies the meaning of 'member'	On the other hand, the meaning of 'shareholder' is not defined under the Companies Act, 2013
A shareholder becomes a member of a company, once his name is entered into the company's register of members or if he is a subscriber to the incorporation of the company	The person who has ownership of shares of a company is known as shareholder Further, in case of companies limited by guarantee do not have a share capital, and consequently, their members are not shareholders
The person who signs the memorandum of association with the company becomes a member	After signing the memorandum, a person may become shareholder only when the shares are allotted to him

LESSON ROUNDUP

- Company is referred to an association of persons who took their meals together. A company may be an incorporated company or a "corporation" or an unincorporated company. It is called a body corporate because the persons composing it are made into one body by incorporating it according to the law, and clothing it with legal personality, and, so turn it into a corporation.
- The main characteristics of a company are as follows:
  - Corporate Personality
  - Limited Liability
  - Perpetual Succession
  - Transferability of Shares
  - Separate Property
  - Capacity to Sue and Be Sued
- Company is a distinguished form of business as compared to other forms.
- The companies are regulated under Companies Act 2013.
- The Companies Act, 2013 provides for a variety of companies of which can be promoted and registered under the Act.

  These companies may be:
  - limited by shares;

- limited by guarantee; or
- unlimited companies.
- Companies may also be classified as:
  - (a) Private Companies;
  - (b) Public Companies;
  - (c) One Person Company
  - (d) Company with charitable objects, etc. under Section 8 of the Companies Act, 2013;
  - (e) Small Company
  - (f) Government companies;
  - (g) Foreign companies;
  - (h) Holding companies; and
  - (i) Subsidiary companies.
  - (j) Producer Companies.

- A company, though a legal entity in the eyes of law, is an artificial person, existing only in contemplation of law. It has no physical existence. It has neither soul nor body of its own. As such, it cannot act in its own person. It can do so only through some human agency.
- The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board. The directors are the brain of a company.
- Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company.
- Every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company.
- As per Section 165 of the Companies Act, 2013, maximum number of directorships, including any alternate directorship a person can hold is 20.
- Every listed company shall appoint at least one woman director and every other public company having paid up share capital of Rs. 100 crores or more or turnover of Rs. 300 crore or more as on the last date of latest audited financial statements, shall also appoint at least one woman director.
- Every listed company may have one director elected by small shareholders.
- The first Board meeting should be held within thirty days of the date of incorporation. In addition to the first meeting to be held within thirty days of the date of incorporation, there shall be minimum of four Board meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board meetings.
- Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 of the Companies Act, 2013 provides that every company, other than a one person company is required to hold an annual general meeting every year.

- All general meetings other than annual general meetings are called extraordinary general meetings.

  Extraordinary General Meetings shall called by Board; by Board on requisition of shareholders; by requisitionists; by Tribunal.

GLOSSARY

Corporate Personality: The distinct status of a business organization that has complied with law for its recognition as a legal entity and that has an independent legal existence from that of its officers, directors, and shareholders.

Limited Liability: Type of investment in which a partner or investor cannot lose more than the amount invested. The investor or partner is not personally responsible for the debts and obligations of the company in the event that these are not fulfilled.

Perpetual Succession: Continuation of an incorporated firm's existence, unaffected by the death of any of its owners or the transfer of its shares to a new entity.

Foreign Company: Any company or body corporate incorporated outside India which -(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner.

One Person Company: A company which has only one person as a member.

TEST YOURSELF

Q1. "The property of company is not the property of shareholders, it is the property of the company" was governed by the case study ....

a) Gramophone & Typewriter Co. v. Stanley

b) Solamon v. Solamon

c) BSN v. Janardan Mohandas Pilai

d) None of the above

Q2. A company registered under section 8 , shall not alter the provisions of its memorandum or articles except with the previous approval of...............

a) High Court

b) Supreme Court

c) District Court

d) Central Government

Q3. Who among them can not become member of One Person Company.

a) Minor

b) Non Resident Indian

c) Both 'a' & 'b'

d) None of the above

Q4. .... is a new form of Private Company under the Companies Act, 2013.

a) Holding company

b) Small company

c) Body corporate

d) None of the above

Q5. Every company Public or Private has to be registered with ....

a) Central Government

b) Registrar of Companies

c) RBI

d) None of the above

Q6. Statement 1: As a corporate person, the company is entitled to own and hold property in its own name.

Statement 2: No member can claim ownership of any item of the company's assets.

Choose the correct Answer

(a) Statement 1 is False and Statement 2 is True

(b) Statement 1 is True and Statement 2 is True

(c) Statement 1 is False and Statement 2 is False

(d) Statement 1 is True and Statement 2 is False

Q7. Which of the given is not a type of Company under the Companies Act, 2013?

(a) Public Limited Company

(b) Private Limited Company

(c) Foreign Company

(d) International Company

Q8. Which of the given type of companies restricts the right to transfer its shares and Limits the number of its members to two hundred?

(a) Public Limited Company

(b) Private Limited Company

(c) Both (a) and (b)

(d) Neither (a) and (b)

Q9. Identify the company: A Company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments?

(a) Central Government Company

(b) State Government Company

(c) Government Company

(d) Multi-national Company

Q10. Every private company shall have a minimum ....

(a) One

(b) Two

(c) Three

(d) Four

SUGGESTED READINGS

(1) ICSI Premier on Company Law

(2) Bare Act- Companies Act, 2013 and Rules made thereunder

(3) Company Law Exploring Procedural Dimensions VOL I / II / III – by ICSI

Elements of Law of Contracts

Lesson 3

KEY CONCEPTS

■ Agreement ■ Contract ■ Void ■ Agreement Law of Agency ■ Bailment and Pledge ■ E-Contract

Learning Objectives

To understand:

Every man in his day to day life from dawn to dusk makes a variety of contracts. Man's contract making activities increases with the increasing trade, commerce and industry. In a way, living in a modern society `would be impossible if the law did not recognize this contract making power of a person. T his prompted Roscoe Pound to make his celebrated observation: "Wealth, in a commercial age, is made up largely of promises". In this sense, India is also a 'promissory' society.

The conferment and protection by the law of this contract making power of persons gives them a considerable leeway to strike best bargain for the contract making persons. In a way, they are permitted to regulate and define their relations in a best possible manner they choose. However, the contours of contractual relations in a feudal, colonial and capitalist society of pre-independence India cannot necessarily be the same in an independent and developing Indian society. Whatever way be the nature of a given society, the contractual relations, as are obtained in that society, are governed by certain principles which are more or less of a general and basic nature. In India these general principles are statutised by Indian Contract Act, 1872.

Lesson Outline

- Meaning and Nature of Contract
- Agreement
- Obligation
- Rights and Obligations
- Essential Elements of a Valid Contract
- Flaws in Contract
- Void Agreement
- Voidable Contract
- Illegal Agreement
- Discharge or Termination of Contracts
- Contract of Indemnity and Guarantee
- Contract of Bailment and Pledge
- Law of Agency
- E-Contracts
- Lesson Round Up
- Glossary
- Test Yourself
- Suggested readings

MEANING AND NATURE OF CONTRACT

The law relating to contract is governed by the Indian Contract Act, 1872. The Act came into force on the first day of September, 1872. The preamble to the Act says that it is an Act "to define and amend certain parts of the law relating to contract". The Act is by no means exhaustive on the law of contract. It does not deal with all the branches of the law of contract. Thus, contracts relating to partnership, sale of goods, negotiable instruments, insurance etc. are dealt with by separate Acts.

The Indian Contract Act mostly deals with the general principles and rules governing contracts.

The Act is divisible into two parts.

- The first part (Section 1-75) deals with the general principles of the law of contract, and therefore applies to all contracts irrespective of their nature.
- The second part (Sections 124-238) deals with certain special kinds of contracts, namely contracts of Indemnity and Guarantee, Bailment, Pledge, and Agency.

These definitions indicate that a contract essentially consists of two distinct parts. First, there must be an agreement. Secondly, such an agreement must be enforceable by law. To be enforceable, an agreement must be coupled with an obligation.

A contract therefore, is a combination of the two elements:

(1) an agreement and

(2) an obligation.

Example: A orally agreed to supply goods to B and to receive payment against it. Is it an agreement?

Yes, it is an oral agreement.

Agreement

An agreement gives birth to a contract. As per Section 2(e) of the Indian Contract Act "every promise and every set of promises, forming the consideration for each other, is an agreement. It is evident from the definition given above that an agreement is based on a promise.

What is a promise?

According to Section 2(b) of the Indian Contract Act "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. An agreement, therefore, comes into existence when one party makes a proposal or offer to the other party and that other party signifies his assent thereto. In nutshell, an agreement is the sum total of offer and acceptance."

CLASSIFICATION OF CONTRACTS/AGREEMENTS

On the Basis of Enforceability	On the Basis of Formation	On the Basis of Performance
I. Contract	I. Express contract	I. Executed contract
II. Void agreement	II. Tacit contract	II. Executory contract
III. Contract	III. Implied/Quasi Contracts	(a) Unilateral contract
IV. Void contract		(b) Bilateral contract
V. Unenforceable Contract		
VI. Illegal Agreement		

I. On the basis of enforceability

1. **Contract:**

   [Section 2 (b)] "A contract is an agreement enforceable by law" an agreement becomes contract if it has all the essential elements of a contract. A valid contract can be enforced by law.

   Example: X offers Y to supply 10 bags of rice for ₹ 50,000/- Y agreed for it, it is a contract.

2. **Void agreement:**

   Section 2 (g) "An agreement not enforceable by law is said to be void." Such agreement does not confer any right to any of the parties to it. An agreement becomes void due to absence of one or more essentials under section 10. The agreement, in such a case, is void-ab-initio (void from the very beginning) and can never converts into contract. Such an agreement does not result in a contract at all.

   Example: X offers Y a minor to deliver 100 bags of rice. Y agrees but further not supplied the rice. Here X cannot sue Y as Y is minor.

3. **Voidable contract [Section 2(1)]:**

   "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". It is a contract where in, the law confers right on the aggrieved party either to reject the contract or to accept it. However, the contract continues to be valid and enforceable unless it is repudiated by the aggrieved party.

   Example: A Threatens B to murder if he does not sell his land for ₹ 100000/- B agreed for it due to threat. It is a voidable contract which can be rejected by B.

4. **Void contract [Section 2(j)]:**

   "A void contract is a contract which ceases to be enforceable by law". A contract which was valid at the time of formation and binding on the parties however, subsequently become void, due to impossibility to perform is said to be void contract. Example X a famous singer agrees to sing an album for a musical company. Unfortunately suffered from throat cancer and not allowed to sing by doctor. Here the contract becomes void contract.

5. **Unenforceable contract:**

   Where a contract is good in substance but becomes unenforceable due to some technical defect and cannot be enforced by law is called unenforceable contract. These contracts becomes enforceable when these technical defects (legal formalities) are completed.

   Example: A draw a promissory note without stamp it is not enforceable but further after one week A come to know about the mistake and stamped it become enforceable.

6. **Illegal agreement:**

   When the object and consideration of an agreement is unlawful it is said to be illegal agreement, such an agreement is void. The object and consideration is said to be unlawful if (a) it is forbidden by law; or (b) is of such nature that, if permitted, would defeat the provisions of any law or (c) is fraudulent; or (d) involves or implies injury to a person or property of another, or (e) court regards it as immoral (f) opposed to public policy. These agreements are punishable by law and are void-ab-initio. Example X agrees to pay ₹ 1,00,000/- to Y to murdered Z it is an illegal agreement as it is injurious to Z and forbidden under I.P.C.

"All illegal agreements are void because an illegal agreement is not enforceable by law but all void agreements are not illegal," as it is not necessary that object and consideration of every agreement is unlawful.

II. On the basis of formation

1. **Express contract:** Where the terms of the contract are expressly agreed upon in words (written or spoken) at the time of formation, the contract is said to be express contract.
2. **Implied contract:** An implied contract is one which is inferred from the acts or conduct of the parties or from the circumstances of the cases. W here a proposal and acceptance is made otherwise than in words, it is said to be implied contract.
3. **Quasi contracts:** A quasi contract is created by law on the basis of principal of equity. There, is no intention of parties to enter into a contract. It is legal obligation which is imposed on a party and is required to perform it. A quasi contract is based on the principle on equity which states that a person shall not be allowed to enrich himself at the cost of another. A quasi contract is a contract imposed by law.

III. On the basis of performance

1. **Executed contract:** when both of the parties to contract have performed their contractual obligation and nothing remains to be performed it is said to be executed. It is a contract in which both the parties have performed their respective obligation.
2. **Executory contract:** An executory contract is one where one or both the parties to the contract have to perform their obligations in future. Thus, a contract which is partially performed or wholly unperformed is termed as executory contract.

   It is of two types:

   (a) Unilateral contract: A unilateral contract is one in which only one party has to perform his obligation after formation of the contract and the other party have fulfilled his obligation at the time of the contract or before the contract comes into existence.

   (b) Bilateral contract: A bilateral contract is one in which the obligation of both the parties to the contract is outstanding. In other words when both of parties have still to perform their obligation it is known as bilateral contract. Bilateral contracts are also known as contracts with executory consideration.

ESSENTIAL ELEMENTS OF A VALID CONTRACT [SECTION 10]

According to Section 10, "All agreements are contracts if they are made by free consent of parties, competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void". The analysis of section 10 and section 2(b) reveals that an agreement must have certain essential elements to constitute contract.

The essential elements of a valid contract are:

1. **Two Parties**: To constitute a contract there must be at least two parties, i.e. one party making an offer (offerer/proposer) and the other party accepting the offer (offeree / proposee). The terms of the offer must be definite.
2. **Agreement:** A contract is initially an agreement when person whom the offer has given signifies his acceptance on it there arises an agreement which is the foundation of a contract.

3. **Consent:** There must be consensus-ad-idem (meeting of minds) to constitute a valid contract unity of minds i.e. consensus-ad-idem means that the parties must agree to the same thing in the same sense and at the same time. An agreement without consent is void.

4. **Intention to create legal relationship:** There must be an intention by both parties to create legal relationship and to legally bind themselves as a result of such agreement. Thus, agreements of social or household nature are not contracts, as the usual presumption is that the parties do not intend to create legal relationship unless otherwise agreed upon. However, in case of commercial transaction the usual presumption is that parties intend to create legal relationship.

5. **Contractual Capacity:** The parties to the agreement must be capable of entering into a valid contract.

   According to Section 11, every person is competent to contract if he or she,

   (a) is of the age of majority;

   (b) is of sound mind; and

   (c) is not disqualified from contracting by any law to which he/she is subject.

6. **Consideration:** An agreement by incompetent person is void. A valid contract must be supported by consideration. Consideration means "something in return" (quid pro quo). It can be cash, kind, an act or abstinence. It can be past, present or future. However, consideration must be real and lawful. An agreement without consideration is void however, it need not to be adequate, if parties are agreed in it.

7. **Free consent:** The parties are said to be in consent when they are agree upon the same thing in the same sense, in addition to it, to constitute a valid contract there must be free and genuine consent of the parties to the contract, consent is said to be free if it is not be obtained by misrepresentation, fraud, coercion, undue influence or mistake. If the consent is not free, the contract becomes voidable.

8. **Lawful object and consideration:** The object as well as consideration of the Contract must not be unlawful. According to Section 23, the consideration or object of an agreement is unlawful, if

   - It is forbidden by law; or
   - it Is of such nature that, if permitted it would defeat the provisions of any law or
   - It is fraudulent; or
   - it Involves or implies, injury to the person or property of another; or
   - The court regards it as immoral

9. **Agreement not declared void:** Under the provisions of Indian Contract Act, 1872 certain agreement are expressly declared as void. Agreements which have been expressly declared void are not enforceable at law; hence does not constitute a valid contract. For example agreement of wager, agreement in restraint of trade and marriage.

10. **Certainty of meaning:** The terms of agreement must be certain and not vague. It must be either certain or be certained at the time of execution. If it is not possible to ascertain the meaning of the agreement, it is not enforceable at law.

11. **Possibility to Perform:** The promises made under a valid contract must be executable. An agreement to do some impossible act is void from the beginning and never converted into contract.

12. **Legal formalities:** Although Indian contract Act does not provide any formality to enter into contract therefore a contract may be express (oral or written) or even implied (by conduct). However, where the

law requires for a particular contract, it must comply with all the legal formalities such as in writing, registration and attestation.

For example under the provisions of Immovable Properties Act, a contract of immovable must be written, registered and duly stamped unless not enforceable by law.

OFFER/PROPOSAL AND ACCEPTANCE, INTENTION TO CREATE LEGAL RELATIONS, CONSIDERATION, LAWFUL OBJECT AND CONSIDERATION, AGREEMENTS VOID AS BEING OPPOSED TO PUBLIC POLICY

(a) Offer or Proposal and Acceptance

One of the early steps in the formation of a contract lies in arriving at an agreement between the contracting parties by means of an offer and acceptance. Thus, when one party (the offeror) makes a definite proposal to another party (the offeree) and the offeree accepts it in its entirety and without any qualification, there is a meeting of the minds of the parties and a contract comes into being, assuming that all other elements are also present.

What is an Offer or a Proposal?

A proposal is also termed as an offer. The word 'proposal' is synonymous with the English word "offer". An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for a promise, act or forbearance. Section 2(a) of the Indian Contract Act defines proposal or offer as "when one person signifies to another his willingness to do or 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 or offer is called the proposer or offeror and the person to whom the proposal is made is called the offeree.

Rules Governing Offers

A valid offer must comply with the following rules:

(a) An offer must be clear, definite, complete and final. It must not be vague. For example, a promise to pay an increased price for a horse if it proves lucky to promisor, is too vague and is not binding.

(b) An offer must be communicated to the offeree. An offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the same.

(c) The communication of an offer may be made by express words-oral or written-or it may be implied by conduct. A offers his car to B for Rs. 10,000. It is an express offer. A bus plying on a definite route goes along the street. This is an implied offer on the part of the owners of the bus to carry passengers at the scheduled fares for the various stages.

The communication of the offer may be general or specific. Where an offer is made to a specific person it is called specific offer and it can be accepted only by that person. But when an offer is addressed to an uncertain body of individuals i.e. the world at large, it is a general offer and can be accepted by any member of the general public by fulfilling the condition laid down in the offer.

Acceptance

A contract emerges from the acceptance of an offer. Acceptance is the act of assenting by the offeree to an offer. Under Section 2(b) of the Contract Act when a person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise.

Rules Governing Acceptance

(a) Acceptance may be express i.e. by words spoken or written or implied from the conduct of the parties.

(b) If a particular method of acceptance is prescribed, the offer must be accepted in the prescribed manner.

(c) Acceptance must be unqualified and absolute and must correspond with all the terms of the offer.

(d) A counter offer or conditional acceptance operates as a rejection of the offer and causes it to lapse, e.g., where a horse is offered for ₹ 1,000 and the offeree counter-offers ₹ 990, the offer lapses by rejection.

(e) Acceptance must be communicated to the offeror, for acceptance is complete the moment it is communicated. Where the offeree merely intended to accept but does not communicate his intention to the offeror, there is no contract. Mere mental acceptance is not enough.

(f) Mere silence on the part of the offeree does not amount to acceptance.

Ordinarily, the offeror cannot frame his offer in such a way as to make the silence or inaction of the offeree as an acceptance. In other words, the offeror can prescribe the mode of acceptance but not the mode of rejection.

(g) If the offer is one which is to be accepted by being acted upon, no communication of acceptance to the offeror is necessary, unless communication is stipulated for the offer itself.

Thus, if a reward is offered for finding a lost dog, the offer is accepted by finding the dog after reading about the offer, and it is unnecessary before beginning to search for the dog to give notice of acceptance to the offeror.

(h) Acceptance must be given within a reasonable time and before the offer lapses or is revoked. An offer becomes irrevocable by acceptance.

(b) Intention to Create Legal Relations

The second essential element of a valid contract is that there must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. If there is no such intention on the part of the parties, there is no contract between them. Agreements of a social or domestic nature do not contemplate legal relationship. As such they are not contracts.

A proposal or an offer is made with a view to obtain the assent to the other party and when that other party expresses his willingness to the act or abstinence proposed, he accepts the offer and a contract is made between the two. But both offer and acceptance must be made with the intention of creating legal relations between the parties. The test of intention is objective. The Courts seek to give effect to the presumed intention of the parties. Where necessary, the Court would look into the conduct of the parties, for much can be inferred from the conduct. The Court is not concerned with the mental intention of the parties, but rather with what a reasonable man would say, was the intention of the parties, having regard to all the circumstances of the case.

For example, if two persons agree to assist each other by rendering advice, in the pursuit of virtue, science or art, it cannot be regarded as a contract. In commercial and business agreements, the presumption is usually that the parties intended to create legal relations. But this presumption is rebuttable which means that it must be shown that the parties did not intend to be legally bound.

(c) Consideration

Need for Consideration

Consideration is one of the essential elements of a valid contract. The requirement of consideration stems from the policy of extending the arm of the law to the enforcement of mutual promises of parties. A mere promise is not enforceable at law. For example, if A promises to make a gift of ₹ 500 to B, and subsequently changes his mind, B cannot succeed against A for breach of promise, as B has not given anything in return. It is only when a promise is made for something in return from the promisee, that such promise can be enforced by law against the promisor. This something in return is the consideration for the promise.

Definition of Consideration

Sir Fredrick Pollock has defined consideration "as an act or forbearance of one party, or the promise thereof is the price for which the promise of the other is bought".

Consideration is identified as "quid pro quo", i.e. "something in return". This something need not to be in terms of money, as stated in the case of *Currie* v. *Misa* it is "some right, interest, profit or benefit accruing to one party or some for bearance, detriment, loss or responsibility, given suffered or undertaken by the other".

However it must have value in the eyes of law and must not be vague or illusory.

Section 2(d) of the Indian Contract Act, 1872 defines consideration thus: "when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise".

Kinds of Consideration

Consideration may be:

(a) **Executory or future** which means that it makes the form of promise to be performed in the future, e.g., an engagement to marry someone; or

(b) **Executed or present** in which it is an act or forbearance made or suffered for a promise. In other words, the act constituting consideration is wholly or completely performed, e.g., if A pays today ` 100 to a shopkeeper for goods which are promised to be supplied the next day, A has executed his consideration but the shopkeeper is giving executory consideration—a promise to be executed the following day. If the price is paid by the buyer and the goods are delivered by the seller at the same time, consideration is executed by both the parties.

(c) **Past** which means a past act or forbearance, that is to say, an act constituting consideration which took place and is complete (wholly executed) before the promise is made.

According to English law, a consideration may be executory or executed but never past. The English law is that past consideration is no consideration. The Indian law recognizes all the above three kinds of consideration.

(d) Lawful Object and consideration

One of the requisites of a valid contract is that the object should be lawful. Section 10 of the Indian Contract Act,

1872, provides, "All agreements are contracts if they are made by free consent of parties competent to contract for a lawful consideration and with a lawful object..." Therefore, it follows that where the consideration or object for which an agreement is made is unlawful, it is not a contract.

Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is lawful unless it is

(i) forbidden by law; or

(ii) it is of such nature that if permitted it would defeat the provisions of law; or

(iii) is fraudulent; or

(iv) involves or implies injury to the person or property of another; or

(v) the Court regards it an immoral or opposed to public policy.

In each of these cases the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustration

(i) X, Y and Z enter into an agreement for the division among them of gains acquired by them by fraud. The agreement is void as its object is unlawful.

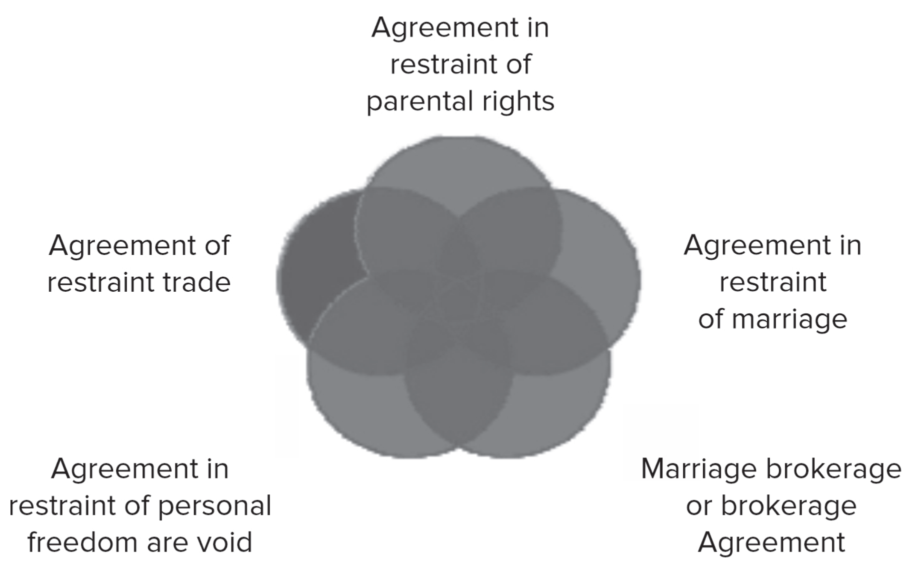
(ii) X promises to obtain for Y an employment in the Government service and Y promises to pay ₹ 1,500 to X.

The agreement is void, as the consideration for it is unlawful.

(e) Agreements Void as being Opposed to Public Policy

The head public policy covers a wide range of topics. Agreements may offend public policy by tending to the prejudice of the State in times of war, by tending to the abuse of justice or by trying to impose unreasonable and inconvenient restrictions on the free choice of individuals in marriage, or their liberty to exercise lawful trade or calling. The doctrine of public policy is a branch of Common Law and like any other branch of Common Law it is governed by the *precedents [Gherulal Parakh v. Mahadeodas Maiya (1959) 2 S.C.R. (Suppl.) 406; AIR 1959 S.C. 781]*. The doctrine of public policy is not to be extended beyond the classes of cases already covered by it and no Court can invent a new head of public policy *[Lord Halsbury, Janson v. Driefontien Consolidated Mines (1902) A.C. 484, 491]*. It has been said by the House of Lords that public policy is always an unsafe and treacherous ground for legal decisions. Even if it is possible for Courts to evolve a new head of public policy, it should be done under extraordinary circumstances giving rise to incontestable harm to the society.

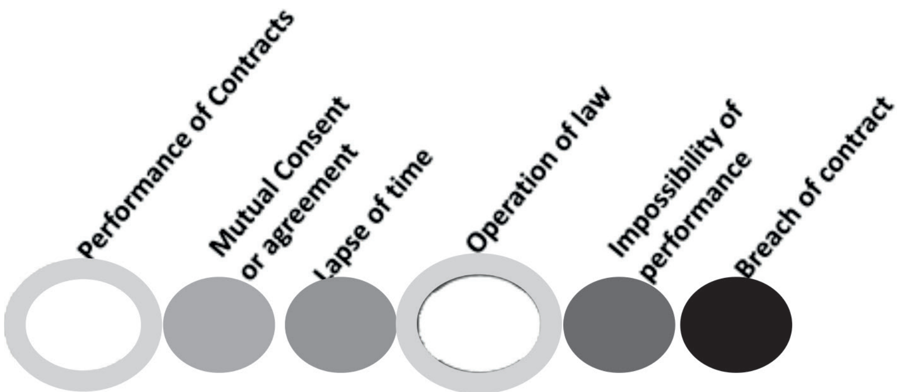
The following agreements are void as being against public policy but they are not illegal:



DISCHARGE OR TERMINATION OF CONTRACTS

A contract is said to be discharged or terminated when the rights and obligations arising out of a contract are extinguished.

Contracts may be discharge or terminated by any of the following modes:



(a) Performance of Contracts (Section 37)

Section 37 of the Act provides that the parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provision of the Indian Contract Act, or any other law. In case of death of the promisor before performance, the representatives of the promisor are bound to perform the promise unless a contrary intention appears from the contract.

Illustration

X promises to deliver a horse to Y on a certain day on payment of Rs 1,000. X dies before that day. X's representatives are bound to deliver the horse to Y and Y is bound is pay ₹ 1,000 to X's representatives.

Tender of Performance (Section 38)

In case of some contracts, it is sometimes sufficient if the promisor performs his side of the contract. Then, if the performance is rejected,the promisor is discharged from further liability and may sue for the breach of contract if he so wishes. This is called discharge by tender.

To be valid, a tender must fulfil the following conditions

(a) it must be unconditional;

(b) it must be made at a proper time and place;

(c) it must be made under circumstances enabling the other party to ascertain that the party by whom it is made is able and willing then and there to do the whole of what he is bound, to do by his promise;

(d) if the tender relates to delivery of goods, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver;

(e) tender made to one of the several joint promisees has the same effect as a tender to all of them.

Who can demand performance?

Generally speaking, a stranger to contract cannot sue and the person who can demand performance is the party to whom the promise is made. But an assignee of the rights and benefits under a contract may demand performance by the promisor, in the same way as the assignor, (i.e., the promisee) could have demanded.

Effect of refusal of party to perform wholly

Section 39 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract unless he had signified by words or conduct his acquiescence in its continuance.

Illustration

(a) X, a singer enters into a contract with Y, the manager of a theatre to sing at his theatres two nights in every week during the next two months, and Y engaged to pay her ₹ 100 for each nights performance. On the sixth night X wilfully absents herself form the theatre. Y is at liberty to put an end to the contract.

(b) If in the above illustration, with the assent of Y, X sings on the seventh night, Y is presumed to have signified his acquiescence in the continuance of the contract and cannot put an end to it; but is entitled to compensation for the damages sustained by him through X's failure to sing on the sixth night.

By whom contract must be performed

Under Section 40 of the Act, if it appears from the nature of the case that it was the intention of the parties to a contract that it should be performed by the promisor himself such promise must be performed by the promisor himself. In other cases, the promisor or his representative may employ a competent person to perform it.

Illustration

(a) X promises to pay ₹ 1,000 to Y. X may either personally pay the money to Y or cause it to be paid to Y by another. If X dies before making payment, his representatives must perform the promise or employ some proper person to do so.

(b) X promises to paint a picture for Y. X must personally perform the promise.

Devolution of Joint Liabilities

Under Section 42 of the Indian Contract Act, where two or more persons have made a joint promise then, unless a contrary intention appears from the contract all such persons should perform the promise. If any one of them dies, his representatives jointly with the survivor or survivors should perform. After the death of the last survivor, the representatives of all jointly must fulfil the promise.

Under Section 43 of the Indian Contract Act when two or more persons made a joint promise, the promisee may, in the absence of an express agreement to the contrary compel any one or more of such joint promisors to perform the whole of the promise. Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise unless a contrary intention appears from the contract. If any one of two or more promisors make default in such contribution, the remaining joint promisors should bear the loss arising from such default in equal share.

Illustrations

(a) X, Y and Z jointly promise to pay ₹ 6,000 to A. A may compel either X or Y or Z to pay the amount.

(b) In the above example imagine, Z is compelled to pay the whole amount; X is insolvent but his assets are sufficient to pay one-half of his debts. Z is entitled to receive ₹ 1,000 from X's estate and ₹ 2,500 from Y.

(c) X, Y and Z make a joint promise to pay ₹ 5,000 to A, Z is unable to pay any amount and X is compelled to pay the whole. X is entitled to receive ₹ 3,000 from Y.

Under Section 44 of the Act, where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor(s); neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Devolution of Joint Rights

A promise may be made to two or more persons. The promisees are called joint promisees. For example, X may give a promise to repay ₹ 1,000 given by Y and Z jointly. In such case, in the absence of a contrary intention, the right to claim, performance rests with Y and Z. If Y dies, Y's representative jointly with Z may, demand performance. If Z also dies, the representatives of Y and Z may demand jointly performance from X.

Assignment

The promisee may assign rights and benefits of contract and the assignee will be entitled to demand performance by the promisor. But the assignment to be complete and effectual, must be made by an instrument in writing.

An obligation or liability under a contract cannot be assigned. For example, if A owes B ₹ 500 and A transfers the liability to C i.e. asks C to pay the sum to B, this would not bind B, and B may not consent to this arrangement, as he may know nothing of C's solvency. But if B consents to accept performance by C, there is a substitution of new contract and the old contract is discharged and all rights and liabilities under it are extinguished. This is technically called novation.

(b) Discharge by Mutual Agreement or Consent (Sections 62 and 63)

A contract may be discharged by the agreement of all parties to the contract, or by waiver or release by the party entitled to performance.

The methods stipulated under Sections 62 and 63 of the Indian Contract Act for discharging a contract by mutual consent are:

Novation – when a new contract is substituted for existing contract either between the same parties or between different parties, the consideration mutually being the discharge of the old contract.

Alteration – change in one or more of the material terms of a contract.

Rescission – Cancellation of contract by agreement between the parties at any time before it is discharged by performance or in some other way and as a result none requires to perform.

Remission – acceptance of a lesser sum than what was contracted for or a lesser fulfilment of the promise made. In other words discharge to a party by accepting his less performance in lieu of whole.

Waiver – deliberate abandonment or giving up of a right which a party is entitled to under a contract, where upon the other party to the contract is released from his obligation.

(c) Discharge by Lapes of Time

The Limitation Act, in certain circumstance, affords a good defence to suits for breach of contract, and infact terminates the contract by depriving the party of his remedy to law. For example, where a debtor has failed to repay the loan on the stipulated date, the creditor must file the suit against him within three years of the default. If the limitation period of three years expires and he takes no action he will be barred from his remedy and the other party is discharged of his liability to perform.

(d) Discharge by Operation of the Law

Discharge under this head may take place as follows:

(a) *By **merger***: When the parties embody the inferior contract in a superior contract.

(b) *By the unauthorised **alteration** of items of a written document*: Where a party to a written contract makes any material alteration without knowledge and consent of the other, the contract can be avoided by the other party.

(c) *By **insolvency***: The Insolvency Act provides for discharge of contracts under particular circumstances.

For example, where the Court passes an order discharging the insolvent, this order exonerates or discharges him from liabilities on all debts incurred previous to his adjudication.

(e) Discharge by Impossibility or Frustration (Section 56)

1. Agreement to do an Impossible Act (Initial Impossibility)

- A contract to perform something inherently impossible is void from the very beginning (void ab initio).
- Example: *A agrees with B to discover treasure by magic.* Such an agreement is void because it is impossible in itself.

2. Subsequent Impossibility (Supervening Impossibility / Frustration)

- Sometimes, a contract is valid when made, but later becomes impossible or unlawful due to circumstances beyond the parties' control.
- In such cases, the contract becomes void and stands discharged.
- Example: A singer contracts to perform but later becomes seriously ill. The contract is discharged as performance has become impossible.
- Section 56 (para 2) provides that if performance becomes impossible or unlawful due to an event which the promisor could not prevent, the contract becomes void.

3. Knowledge of Impossibility (Fraudulent Promisor)

- If the impossibility was not obvious, and the promisor knew or ought to have known about it, he is liable to compensate the promisee for losses.
- Example: If A agrees to sell land to B, knowing that the land is already acquired by the Government, the agreement is void but A must compensate B.

4. Judicial Interpretation –

In ***Satyabarta Ghose v. Mugnuram A.I.R. 1954 S.C. 44*** the Supreme Court interpreted the term 'impossible appearing in second paragraph of Section 56. The Court observed that the word 'impossible has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain; it can very well be said that the promisor found it impossible to do the act which he promised to do. In this case, A undertook to sell a plot of land to B but before the plot could be developed, war broke out and the land was temporarily requisitioned by the Government. A offered to return earnest money to B in cancellation of contract. B did not accept and sued A for specific performance. A pleaded discharge by frustration. The Court held that Section 56 is not applicable on the ground that the requisition was of temporary nature and there was no time limit within which A was obliged to perform the contract. The impossibility was not of such a nature which would strike at the root of the contract.

(a) Supervening Impossibility

A contract will be discharged by subsequent or supervening impossibility in any of the following ways:

(a) Where the subject-matter of the contract is destroyed without the fault of the parties, the contract is discharged.

(b) When a contract is entered into on the basis of the continued existence of a certain state of affairs, the contract is discharged if the state of things changes or ceases to exist.

(c) Where the personal qualifications of a party is the basis of the contract, the contract is discharged by the death or physical disablement of that party.

(b) Discharge by Supervening Illegality

A contract which is contrary to law at the time of its formation is void. But if, after the making of the contract, owing to alteration of the law or the act of some person armed with statutory authority the performance of the contract becomes impossible, the contract is discharged. This is so because the performance of the promise is prevented or prohibited by a subsequent change in the law. A enters into contract with B for cutting trees. By a statutory provision cutting of trees is prohibited except under a licence and the same is refused to A. The contract is discharged.

Cases in which there is no supervening impossibility

In the following cases contracts are not discharged on the ground of supervening impossibility –

(a) ***Difficulty of performance:*** The mere fact that performance is more difficult or expensive than the parties anticipated does not discharge the duty to perform.

(b) ***Commercial impossibilities*** do not discharge the contract. A contract is not discharged merely because expectation of higher profits is not realised.

(c) ***Strikes, lockouts*** and civil disturbance like riots do not terminate contracts unless there is a clause in the contract providing for non-performance in such cases.

Supervening impossibility or illegality is known as frustration under English Law.

(f) Discharge by Breach

Where the promisor neither performs his contract nor does he tender performance, or where the performance is defective, there is a breach of contract. The breach of contract may be (i) actual; or (ii) anticipatory. The actual breach may take place either at the time the performance is due, or when actually performing the contract. Anticipatory breach means a breach before the time for the performance has arrived. This may also take place in two ways – by the promisor doing an act which makes the performance of his promise impossible or by the promisor in some other way showing his intention not to perform it.

REMEDIES FOR BREACH

Where a contract is broken, the injured party has several courses of action open to him. The appropriate remedy in any case will depend upon the subject-matter of the contract and the nature of the breach.

(i) Remedies for Breach of Contract

In case of breach of contract, the injured party may:

(a) Rescind the contract and refuse further performance of the contract;

(b) Sue for damages;

(c) Sue for specific performance;

(d) Sue for an injunction to restrain the breach of a negative term; and

(e) Sue on quantum meruit.

CONTRACT OF INDEMNITY AND GUARANTEE (SECTIONS 124 TO 147)

Meaning of Indemnity

A contract of indemnity is a contract by which one party promises to save the other party from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person (Section 124).

Example

A contracts to indemnify B against the consequence of legal proceedings which C may take against B in respect of 3 lakh rupees. This is a contract of indemnity. The contract of indemnity may be express or implied.

The person who promises to indemnify or make good the loss is called the indemnifier and the person whose loss is made good is called the indemnified or the indemnity holder. A contract of insurance is an example of a contract of indemnity according to English Law. In consideration of premium, the insurer promises to make good the loss suffered by the assured on account of the destruction by fire of his property insured against fire.

Under the Indian Contract Act, the contract of indemnity is restricted to such cases only where the loss promised to be reimbursed, is caused by the conduct of the promisor or of any other person. The loss caused by events or accidents which do not depend on the conduct of any person, it seems, cannot be sought to be reimbursed under a contract of indemnity.

Rights of Indemnity Holder when Sued

Under Section 125, the promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor –

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as if it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit; and

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

Meaning of Contract of Guarantee

A contract of guarantee is a contract to perform the promise, or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the Surety, the person for whom the guarantee is given is called the Principal Debtor, and the person to whom the guarantee is given is called the Creditor (Section 126). A guarantee may be either oral or written, although in the English law, it must be in writing.

Illustration

A advances a loan of ₹ 5,000 to B and C promises to A that if B does not repay the loan, C will do so. This is a contract of guarantee. Here B is the principal debtor, A is the creditor and C is the surety or guarantor.

Like a contract of indemnity, a guarantee must also satisfy all the essential elements of a valid contract. There is, however, a special feature with regard to consideration in a contract of guarantee. The consideration received by the principal debtor is sufficient for surety.

Section 127 provides that anything done or any promise made for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Illustration

(i) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is sufficient consideration for C's promise.

(ii) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is sufficient consideration for C's promise.

Distinction between Indemnity and Guarantee

A contract of indemnity differs from a contract of guarantee in the following ways:

(a) In a contract of indemnity there are only two parties: the indemnifier and the indemnified. In a contract of guarantee, there are three parties; the surety, the principal debtor and the creditor.

(b) In a contract of indemnity, the liability of the indemnifier is primary. In a contract of guarantee, the liability of the surety is secondary. The surety is liable only if the principal debtor makes a default, the primary liability being that of the principal debtor.

(c) The indemnifier need not necessarily act at the request of the debtor; the surety gives guarantee only at the request of the principal debtor.

(d) In the case of a guarantee, there is an existing debt or duty, the performance of which is guaranteed by the surety, whereas in the case of indemnity, the possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.

(e) The surety, on payment of the debt when the principal debtor has failed to pay is entitled to proceed against the principal debtor in his own right, but the indemnifier cannot sue third-parties in his own name, unless there be assignment. He must sue in the name of the indemnified.

Extent of Surety's Liability

The liability of the surety is co-extensive with that of the principal debtor unless the contract otherwise provides (Section 128). A creditor is not bound to proceed against the principal debtor. He can sue the surety without sueing the principal debtor. As soon as the debtor has made default in payment of the debt, the surety is immediately liable. But until default, the creditor cannot call upon the surety to pay. In this sense, the nature of the surety's liability is secondary.

Kinds of Guarantees

A contract of guarantee may be for an existing debt, or for a future debt. It may be a specific guarantee, or it may be a continuing guarantee. A specific guarantee is given for a single debt and comes to an end when the debt guaranteed has been paid.

A continuing guarantee is one which extends to a series of transactions (Section 129). The liability of surety in case of a continuing guarantee extends to all the transactions contemplated until the revocation of the guarantee. As for instance, S, in consideration that C will employ P in collecting the rents of C's Zamindari, promises C to be responsible to the amount of ₹ 5,000 for the due collection and payment by P of these rents. This is a continuing guarantee.

Revocation of Continuing Guarantee

A continuing guarantee is revoked in the following circumstances:

(a) By notice of revocation by the surety (Section 130): The notice operates to revoke the surety's liability as regards future transactions. He continues to be liable for transactions entered into prior to the notice (*Offord* v. *Davies* (1862) 6 L.T.S. 79).

(b) By the death of the surety: The death of the surety operates, in the absence of contract (*Lloyds* v. *Harper* (188) 16 Ch. D. 290) as a revocation of a continuing guarantee, so far as regards future transactions (Section 131). But for all the transactions made before his death, the surety's estate will be liable.

Rights of Surety

A surety has certain rights against the creditor, (Section 141) the principal debtor (Sections 140 and 145) and the co-securities (Sections 146 and 147). Those are –

(a) *Surety's Rights against the Creditor:* Under Section 141 a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into whether the surety knows of the existence of such security or not; and, if the creditor losses or, without the consent of the surety parts with such security, the surety is discharged to the extent of the value of the security.

(b) *Rights against the Principal Debtor:* After discharging the debt, the surety steps into the shoes of the creditor or is subrogated to all the rights of the creditor against the principal debtor. He can then sue the principal debtor for the amount paid by him to the creditor on the debtors default; he becomes a creditor of the principal debtor for what he has paid.

In some circumstances, the surety may get certain rights even before payment. The surety has remedies against the principal debtor before payment and after payment. In *Mamta Ghose* v. *United Industrial Bank* (AIR 1987 Cal. 180) where the principal debtor, after finding that the debt became due, started disposing of his properties to prevent seizure by surety, the Court granted an injunction to the surety restraining the principal debtor from doing so. The surety can compel the debtor, after debt has become due to exonerate him from his liability by paying the debt.

(c) *Surety's Rights Gains Co-sureties:* When a surety has paid more than his share of debt to the creditor, he has a right of contribution from the co-securities who are equally bound to pay with him. A, B and C are sureties to D for the sum of ₹ 3,000 lent to E who makes default in payment. A, B and C are liable, as between themselves to pay ₹ 1,000 each. If any one of them has to pay more than ₹ 1,000 he can claim contribution from the other two to reduce his payment to only ₹ 1,000. If one of them becomes insolvent, the other two shall have to contribute the unpaid amount equally.

Discharge of Surety

A surety may be discharged from liability under the following circumstances:

(a) By notice of revocation in case of a continuing guarantee as regards future transaction (Section 130.)

(b) By the death of the surety as regards future transactions, in a continuing guarantee in the absence of a contract to the contrary (Section 131).

(c) Any variation in the terms of the contract between the creditor and the principal debtor, without the consent of the surety, discharges the surety as regards all transactions taking place after the variation (Section 133).

(d) A surety will be discharged if the creditor releases the principal debtor, or acts or makes an omission which results in the discharge of the principal debtor (Section 134). But where the creditor fails to sue the principal debtor within the limitation period, the surety is not discharged.

(e) Where the creditor, without the consent of the surety, makes an arrangement with the principal debtor for composition, or promises to give time or not to sue him, the surety will be discharged (Section 135).

(f) If the creditor does any act which is against the rights of the surety, or omits to do an act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged (Section 139).

(g) If the creditor loses or parts with any security which at the time of the contract the debtor had given in favour of the creditor, the surety is discharged to the extent of the value of the security, unless the surety consented to the release of such security by creditor in favour of the debtor. It is immaterial whether the surety was or is aware of such security or not (Section 141).

CONTRACT OF BAILMENT AND PLEDGE

(a) Bailment

A bailment is a transaction whereby one person delivers goods to another person for some purpose, upon a contract that they are, when the purpose is accomplished to be returned or otherwise disposed of according to the directions of the person delivering them (Section 148). The person who delivers the goods is called the bailor and the person to whom they are delivered is called the bailee.

Bailment is a voluntary delivery of goods for a temporary purpose on the understanding that they are to be returned in specie in the same or altered form. The ownership of the goods remains with the bailor, the bailee getting only the possession. Delivery of goods may be actual or constructive, e.g., where the key of a godown is handed over to another person, it amounts to delivery of goods in the godown.

Gratuitous Bailment

A gratuitous bailment is one in which neither the bailor nor the bailee is entitled to any remuneration. Such a bailment may be for the exclusive benefit of the bailor, e.g., when A leaves his dog with a neighbour to be looked after in A's absence on a holiday. It may again be for exclusive benefit of the bailee, e.g., where you lend your book to a friend of yours for a week. In neither case any charge is made.

A gratuitous bailment terminates by the death of either the bailor or the bailee (Section 162).

Under Section 159 the lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower the amount in which the loss so occasioned exceeds the benefit so derived.

Bailment for Reward

This is for the mutual benefit of both the bailor and the bailee. For example, A lets out a motor-car for hire to B. A is the bailor and receives the hire charges and B is the bailee and gets the use of the car. Where, A hands over his goods to B, a carrier for carriage at a price, A is the bailor who enjoys the benefit of carriage and B is the bailee who receives a remuneration for carrying the goods.

Duties of Bailee

The bailee owes the following duties in respect of the goods bailed to him:

(a) The bailee must take as much care of the goods bailed to him as a man of ordinary prudence would take under similar circumstances of his own goods of the same bulk, quality and value as the goods bailed (Section 151). If he takes this much care he will not be liable for any loss, destruction or deterioration of the goods bailed (Section 152). The degree of care required from the bailee is the same whether the bailment is for reward or gratuitous.

Of course, the bailee may agree to take special care of the goods, e.g., he may agree to keep the property safe from all perils and answers for accidents or thefts. But even such a bailee will not be liable for loss happening by an act of God or by public enemies.

(b) The bailee is under a duty not to use the goods in an unauthorised manner or for unauthorised purpose (Section 153). If the does so, the bailor can terminate the bailment and claim damages for any loss or damage caused by the unauthorised used (Section 154).

(c) He must keep the goods bailed to him separate from his own goods (Sections 155-157).

If the bailee without the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in production to their respective shares, in the mixture thus produced. If the bailee without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expenses of separation, and any damages arising from the mixture.

If the bailee without the consent of the bailor mixes, the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of goods.

(d) He must not set up an adverse title to the goods.

(e) It is the duty of the bailee to return the goods without demand on the expiry of the time fixed or when the purpose is accomplished (Section 160). If he fails to return them, he shall be liable for any loss, destruction or deterioration of the goods even without negligence on his part (Section 161).

(f) In the absence of any contract to the contrary, the baliee must return to the bailor any increase, or profits which may have accrued from the goods bailed; for example, when A leaves a cow in the custody of B to be taken care of and the cow gets a calf, B is bound is deliver the cow as well as the calf to A (Section 163).

Bailee's Particular Lien *(Section 170)*

Where the goods are bailed for a particular purpose and the bailee in due performance of bailment, expands his skill and labour, he has in the absence of an agreement to the contrary a lien on the goods, i.e., the bailee can retain the goods until his charges in respect of labour and skill used on the goods are paid by the bailor. A gives a piece of cloth to B, a tailor, for making it into a suit, B promises to have the suit ready for delivery within a fortnight, B has the suit ready for delivery. He has a right to retain the suit until he is paid his dues. The section expresses the Common Law principle that if a man has an article delivered to him on the improvement of which he has to bestow trouble and expenses, he has a right to detain it until his demand is paid.

The right of lien arises only where labour and skill have been used so as to confer an additional value on the article.

Particular and General Lien

Lien is of two kinds: Particular lien and General lien. A particular lien is one which is available only against that property of which the skill and labour have been exercised. A bailee's lien is a particular lien.

A general lien is a right to detain any property belonging to the other and in the possession of the person trying to exercise the lien in respect of any payment lawfully due to him.

Thus, a general lien is the right to retain the property of another for a general balance of accounts but a particular lien is a right to retain only for a charge on account of labour employed or expenses bestowed upon the identical property detained.

The right of general lien is expressly given by Section 171 of the Indian Contract Act to bankers, factors, warfingers, attorneys of High Court and policy-brokers, provided there is no agreement to the contrary.

Duties of bailor

The bailor has the following duties:

(a) The bailor must disclose all the known faults in the goods; and if he fails to do that, he will be liable for any damage resulting directly from the faults (Section 150). For example, A delivers to B, a carrier, some explosive in a case, but does not warn B. The case is handled without extraordinary care necessary for such articles and explodes. A is liable for all the resulting damage to men and other goods.

    In the case of bailment for hire, a still greater responsibility is placed on the bailor. He will be liable even if he did not know of the defects (Section 150). A hires a carriage of B. The carriage is unsafe though B does not know this. A is injured. B is responsible to A for the injury.

(b) It is the duty of the bailor to pay any extraordinary expenses incurred by the bailee. For example, if a horse is lent for a journey, the expense of feeding the house would, of course, subject to any special agreement be borne by the bailee. If however the horse becomes ill and expenses have been incurred on its treatment, the bailor shall have to pay these expenses (Section 158).

(c) The bailor is bound to indemnify the bailee for any cost or costs which the bailee may incur because of the defective title of the bailor of the goods bailed (Section 164).

Termination of bailment

Where the bailee wrongfully uses or dispose of the goods bailed, the bailor may determine the bailment (Section153.)

As soon as the period of bailment expires or the object of the bailment has been achieved, the bailment comes to an end, and the bailee must return the goods to the bailor (Section 160). Bailment is terminated when the subject matter of bailment is destroyed or by reason of change in its nature, becomes incapable of use for the purpose of bailment.

A gratuitous bailment can be terminated by the bailor at any time, even before the agreed time, subject to the limitation that where termination before the agreed period causes loss in excess of benefit, the bailor must compensate the bailee (Section 159).

A gratuitous bailment terminates by the death of either the bailor or the bailee (Section 162).

Finder of Lost Goods

The position of a finder of lost goods is exactly that of a bailee. The rights of a finder are that he can sue the owner for any reward that might have been offered, and may retain the goods until he receives the reward. But where the owner has offered no reward, the finder has only a particular lien and can detain the goods until he receives compensation for the troubles and expenses incurred in preserving the property for finding out the true owner. But he cannot file a suit for the recovery of the compensation [Section 168].

Thus, as against the true owner, the finder of goods in a public or quasi public place is only a bailee; he keeps the article in trust for the real owner. As against every-one else, the property in the goods vests in the finder on his taking possession of it.

The finder has a right to sell the property –

(a) where the owner cannot with reasonable diligence be found, or

(b) when found, he refuses to pay the lawful charges of the finder and –

    (i) if the thing is in danger of perishing or losing greater part of its value, or

(ii) when the lawful charges of the finder for the preservation of goods and the finding out of the owner amounts to two-thirds of the value of the thing (Section 169).

Carrier as Bailee

A common carrier undertakes to carry goods of all persons who are willing to pay his usual or reasonable rates. He further undertakes to carry them safely, and make good all loses, unless they are caused by act of God or public enemies. Carriers by land including railways and carriers by inland navigation, are common carriers. Carriers by Sea for hire are not common carriers and they can limit their liability. Railways in India are now common carriers.

Inn-keepers: The liability of a hotel keeper is governed by Sections 151 and 152 of the Contract Act and is that of an ordinary bailee with regard to the property of the guests.

C stayed in a room in a hotel. The hotel-keeper knew that the room was in an insecure condition. While C was dining in the dining room, some articles were stolen from his room. It was held that the hotel-keeper was liable as he should have taken reasonable steps to rectify the insecured condition of the rooms (Jan & San v. Caneron (1922) 44 All. 735).

(b) Pledge

Pledge or pawn is a contract whereby an article is deposited with a lender of money or promisee as security for the repayment of a loan or performance of a promise. The bailor or depositor is called the Pawnor and the bailee or depositee the "Pawnee" (Section 172). Since pledge is a branch of bailment, the pawness is bound to take reasonable care of the goods pledged with him. Any kind of goods, valuables, documents or securities may be pledged. The Government securities, e.g., promissory notes must, however, be pledged by endorsement and delivery.

The following are the essential ingredients of a pledge:

(i) The property pledged should be delivered to the pawnee.

(ii) Delivery should be in pursuance of a contract.

(iii) Delivery should be for the purpose of security.

(iv) Delivery should be upon a condition to return.

Rights of the Pawnee

No property in goods pawned passes to the pawnee, but the pawnee gets a "special property to retain possession even against the true owner until the payment of the debt, interest on the debt, and any other expense incurred in respect of the possession or for preservation of the goods pledged" (Section 173). The pawnee must return the goods to the pawnor on the tender of all that is due to him. The pawnee cannot confer a good title upon a bona fide purchaser for value.

Should the pawnor make a default in payment of the debt or performance of the promise at the stipulated time, the pawnee may-

(i) file a suit for the recovery of the amount due to him while retaining the goods pledged as collateral security; or

(ii) sue for the sale of the goods and the realisation of money due to him; or

(iii) himself sell the goods pawned, after giving reasonable notice to the pawnor, sue for the deficiency, if any, after the sale.

If the sale is made in execution of a decree, the pawnee may buy the goods at the sale. But he cannot sell them to himself in a sale made by himself under (iii) above. If after sale of the goods, there is surplus, the pawnee must pay it to the pawnor (Section 176).

Rights of Pawnor

On default by pawnor to repay on the stipulated date, the pawnee may sell the goods after giving reasonable notice to the pawnor. If the pawnee makes an unauthorised sale without giving notice to the pawnor, the pawnor has the following rights –

(i) He can file a suit for redemption of goods by depositing the money treating the sale as if it had never taken place; or

(ii) He can ask for damages on the ground of conversion.

Pledge by Non-owners

Ordinarily, the owner of the goods would pledge them to secure a loan but the law permits under certain circumstances a pledge by a person who is not the owner but is in possession of the goods. Thus, a valid pledge may be created by the following non-owners.

(a) A mercantile agent: Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, is as valid as if he were expressly authorised by the owner of the goods to make the same. But the pledge is valid only if the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not the authority to pledge (Section 178).

(b) Pledge by seller or buyer in possession after sale: A seller, left in possession of goods sold, is no more the owner, but pledge by him will be valid, provided the pawnee acted in good faith and had no notice of the sale of goods to the buyer (Section 30 of The Sale of Goods Act 1930).

(c) Pledge where pawnor having limited interest: When the pawnor is not the owner of the goods but has a limited interest in the goods which he pawns, e.g., he is a mortgagee or he has a lien with respect of these goods, the pledge will be valid to the extent of such interest.

(d) Pledge by co-owner in possession: One of the several co-owners of goods in possession thereof with the assent of the other co-owners may create a valid pledge of the goods.

(e) Pledge by person in possession under a voidable contract: A person may obtain possession under a contract which is voidable at the option of the lawful owner on the ground of misrepresentation, fraud, etc. The person in possession may pledge the goods before the contract is avoided by the other party (Section 178A).

LAW OF AGENCY

Definition of Agent (Section 182)

An agent is a person who is employed to bring his principal into contractual relations with third-parties. As the definition indicates, an agent is a mere connecting link between the principal and a third-party. But during the period that an agent is acting for his principal, he is clothed with the capacity of his principal.

Creation of Agency

A contract of agency may be express or implied, (Section 186) but consideration is not an essential element in this contract (Section 185). Agency may also arise by estoppel, necessity or ratification.

(a) Express Agency: A contract of agency may be made orally or in writing. The usual form of written contract of agency is the Power of Attorney, which gives him the authority to act on behalf of his principal in accordance with the terms and conditions therein. In an agency created to transfer immovable property, the power of attorney must be registered. A power of attorney may be general, giving several powers to the agent, or special, giving authority to the agent for transacting a single act.

(b) Implied Agency: Implied agency may arise by conduct, situation of parties or necessity of the case.

(i) ***Agency by Estoppel (Section 237):*** Estoppel arises when you are precluded from denying the truth of anything which you have represented as a fact, although it is not a fact. Thus, where P allows third- parties to believe that A is acting as his authorised agent, he will be estopped from denying the agency if such third-parties relying on it make a contract with A even when A had no authority at all.

(ii) ***Wife as Agent:*** Where a husband and wife are living together, the wife is presumed to have her husbands authority to pledge his credit for the purchase of necessaries of life suitable to their standard of living. But the husband will not be liable if he shows that (i) he had expressly warned the trademan not to supply goods on credit to his wife; or (ii) he had expressly forbidden the wife to pledge his credit; or (iii) his wife was already sufficiently supplied with the articles in question; or (iv) she was supplied with a sufficient allowance.

Similarly, where any person is held out by another as his agent, the third-party can hold that person liable for the acts of the ostensible agent, or the agent by holding out. Partners are each others agents for making contracts in the ordinary course of the partnership business.

(iii) ***Agency of Necessity (Sections 188 and 189):*** In certain circumstances, a person who has been entrusted with anothers property, may have to incur unauthorised expenses to protect or preserve it. Such an agency is called an agency of necessity. For example, A sent a horse by railway and on its arrival at the destination there was no one to receive it. The railway company, being bound to take reasonable steps to keep the horse alive, was an agent of necessity of A.

A wife deserted by her husband and thus forced to live separate from him, can pledge her husbands credit to buy all necessaries of life according to the position of the husband even against his wishes.

(iv) ***Agency by Ratification (Sections 169-200)*:** Where a person having no authority purports to act as agent, or a duly appointed agent exceeds his authority, the principal is not bound by the contract supposedly based on his behalf. But the principal may ratify the agents transaction and so accept liability. In this way an agency by ratification arises. This is also known as ex post facto agency— agency arising after the event. The effect of ratification is to render the contract binding on the principal as if the agent had been authorised before hand. Also ratification relates back to the original making of the contract so that the agency is taken to have come into existence from the moment the agent first acted, and not from the date the principal ratified it. Ratification is effective only if the following conditions are satisfied –

(a) The agent must expressly contract as agent for a principal who is in existence and competent to contract.

(b) The principal must be competent to contract not only at the time the agent acted, but also when he ratified the agents act.

(c) The principal at the time of ratification has full knowledge of the material facts, and must ratify the whole contract, within a reasonable time.

(d) Ratification cannot be made so as to subject a third-party to damages, or terminate any right or interest of a third person.

(e) Only lawful acts can be ratified.

Classes of Agents

Agents may be special or general or, they may be mercantile agents:

(a) Special Agent: A special agent is one who is appointed to do a specified act, or to perform a specified function. He has no authority outside this special task. The third-party has no right to assume that the agent has unlimited authority. Any act of the agent beyond that authority will not bind the principal.

(b) General Agent: A general agent is appointed to do anything within the authority given to him by the principal in all transactions, or in all transactions relating to a specified trade or matter. The third-party may assume that such an agent has power to do all that is usual for a general agent to do in the business involved. The third party is not affected by any private restrictions on the agents authority.

Sub-Agent

A person who is appointed by the agent and to whom the principal's work is delegated to known as sub-agent. Section 191 provides that "a sub-agent is a person employed by, and acting under the control of the original agent in the business of the agency." So, the sub-agent is the agent of the original agent.

As between themselves, the relation of sub-agent and original agent is that of agent and the principal. A sub-agent is bound by all the duties of the original agent. The sub-agent is not directly responsible to the principal except for fraud and wilful wrong. The sub-agent is responsible to the original agent. The original agent is responsible to the principal for the acts of the sub-agent. As regards third persons, the principal is represented by sub-agent and he is bound and responsible for all the acts of sub-agent as if he were an agent originally appointed by the principal.

Mercantile Agents

Section 2(9) of the Sale of Goods Act, 1930, defines a mercantile agent as "a mercantile agent having in the customary course of business as such agent authority either to sell goods or consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods". This definition covers factors, brokers, auctioneers, commission agents etc.

Factors: A factor is a mercantile agent employed to sell goods which have been placed in his possession or contract to buy goods for his principal. He is the apparent owner of the goods in his custody and can sell them in his own name and receive payment for the goods. He has an insurable interest in the goods and also a general lien in respect of any claim he may have arising out of the agency.

Brokers: A broker is a mercantile agent whose ordinary course of business is to make contracts with other parties for the sale and purchase of goods and securities of which he is not entrusted with the possession for a commission called brokerage. He acts in the name of principal. He has no lien over the goods as he is not in possession of them.

Del Credere Agent: A del credere agent is a mercantile agent, who is consideration of an extra remuneration guarantees to his principal that the purchasers who buy on credit will pay for the goods they take. In the event of a third-party failing to pay, the del credere agent is bound to pay his principal the sum owned by third-party.

Auctioneers: An auctioneer is an agent who sells goods by auction, i.e., to the highest bidder in public competition. He has no authority to warrant his principals title to the goods. He is an agent for the seller but after the goods have been knocked down he is agent for the buyer also for the purpose of evidence that the sale has taken place.

Partners: In a partnership firm, every partner is an agent of the firm and of his co-partners for the purpose of the business of the firm.

Bankers: The relationship between a banker and his customer is primarily that of debtor and creditor. In addition, a banker is an agent of his customer when he buys or sells securities, collects cheques dividends, bills or promissory notes on behalf of his customer. He has a general lien on all securities and goods in his possession in respect of the general balance due to him by the customer.

Duties of the Agent

An agent's duties towards his principal are as follows (which give corresponding rights to the principal who may sue for damages in the event of a breach of duty by the agent):

(a) An agent must act within the scope of the authority conferred upon him and carry out strictly the instructions of the principal (Section 211).

(b) in the absence of express instructions, he must follow the custom prevailing in the same kind of business at the place where the agent conducts the business (Section 211).

(c) He must do the work with reasonable skill and diligence whereby the nature of his profession, the agent purports to have special skill, he must exercise the skill which is expected from the members of the profession (Section 212).

(d) He must disclose promptly any material information coming to his knowledge which is likely to influence the principal in the making of the contract.

(e) He must not disclose confidential information entrusted to him by his principal (Section 213).

(f) He must not allow his interest to conflict with his duty, e.g., he must not compete with his principal (Section 215).

(g) The agent must keep true accounts and must be prepared on reasonable notice to render an account.

(h) He must not make any secret profit; he must disclose any extra profit that he may make.

Where an agent is discovered taking secret bribe, etc., the principal is entitled to (i) dismiss the agent without notice, (ii) recover the amount of secret profit, and (iii) refuse to pay the agent his remuneration. He may repudiate the contract, if the third-party is involved in secret profit and also recover damages.

(i) An agent must not delegate his authority to sub-agent. A sub-agent is a person employed by and acting under the control of the original agent in the business of agency (Section 191). This rule is based on the principle: Delegatus non-protest delegare–a delegate cannot further delegate (Section 190).

But there are exceptions to this rule and the agent may delegate (i) where delegation is allowed by the principal, (ii) where the trade custom or usage sanctions delegation, (iii) where delegation is essential for proper performance, (iv) where an emergency renders it imperative, (v) where nature of the work is purely ministerial, and (vi) where the principal knows that the agent intends to delegate.

Rights of Agents

Where the services rendered by the agent are not gratuitous or voluntary, the agent is entitled to receive the agreed remuneration, or if none was agreed, a reasonable remuneration. The agent becomes entitled to receive remuneration as soon as he has done what he had undertaken to do (Section 219).

Certain classes of agents, e.g., factors who have goods and property of their principal in their possession, have a lien on the goods or property in respect of their remuneration and expense and liabilities incurred. He has a right to stop the goods in transit where he is an unpaid seller.

As the agent represents the principal, the agent has a right to be indemnified by the principal against all charges, expenses and liabilities properly incurred by him in the course of the agency (Sections 222-223).

Extent of Agent's Authority

The extent of the authority of an agent depends upon the terms expressed in his appointment or it may be implied by the circumstances of the case. The contractual authority is the real authority, but implied authority is to do whatevers incidental to carry out the real authority. This implied authority is also known as apparent or ostensible authority, Thus, an agent having an authority to do an act has authority to do everything lawful which is necessary for the purpose or usually done in the course of conducting business.

An agent has authority to do all such things which may be necessary to protect the principal from loss in an emergency and which he would do to protect his own property under similar circumstances. Where butter was becoming useless owing to delay in transit and was therefore sold by the station master for the best price available as it was not possible to obtain instructions from the principal, the sale was held binding upon the principal.

Responsibilities of Principal to Third-parties

The effect of a contract made by an agent varies according to the circumstances under which the agent contracted. There are three circumstances in which an agent may contract, namely –

(i) the agent acts for a named principal;

(ii) the agent acts for an undisclosed principal; and

(iii) the agent acts for a concealed principal.

(a) ***Disclosed principal:*** Where the agent contracts as agent for a named principal, he generally incurs neither rights nor liabilities under the contract, and drops out as soon as it is made. The contract is made between the principal and the third-party and it is between these two that rights and obligations are created. The legal effect is the same as if the principal had contracted directly with the third-party.

The effect is that the principal is bound by all acts of the agent done within the scope of actual, apparent or ostensible authority. This ostensible authority of the agent is important, for the acts of a general agent are binding on the principal if they are within the scope of his apparent authority, although they may be outside the scope of his actual authority. Therefore, a private or secret limitation or restriction of powers of an agent do not bind innocent third-party.

(b) ***Undisclosed principal:*** Where the agent disclose that he is merely an agent but conceals the identity of his principal, he is not personally liable, as the drops out in normal way. The principal, on being discovered, will be responsible for the contract made by the agent.

(c) ***Concealed principal:*** Where an agent appears to be contracting on his own behalf, without either contracting as an agent or disclosing the existence of an agency (i.e., he discloses neither the name of the principal nor his existence), he becomes personally liable. The third-party may sue either the principal (when discovered) or the agent or both. If the third-party chooses to sue the principal and not the agent, he must allow the principal the benefit of all payments made by him to the agent on account of the contract before the agency was disclosed. The third-party is also entitled to get the benefit of anything he may have paid to the agent.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not the principal, he would not have entered into the contract.

Principal Liable for Agent's Torts (Section 238)

If an agent commits a tort or other wrong (e.g., misrepresentation or fraud) during his agency, whilst acting within the scope of his actual or apparent authority, the principal is liable. But the agent is also personally liable, and he may be sued also. The principal is liable even if the tort is committed exclusively for the benefit of the agent and against the interests of the principal.

Personal Liability of Agent to Third-party

An agent is personally liable in the following cases:

(a) Where the agent has agreed to be personally liable to the third-party. (b) Where an agent acts for a principal residing abroad.

(c) When the agent signs a negotiable instrument in his own name without making it clear that he is signing it only as agent.

(d) When an agent acts for a principal who cannot be sued (e.g., he is minor), the agent is personally liable.

(e) An agent is liable for breach of warranty of authority. Where a person contracts as agent without any authority there is a breach of warranty of authority. He is liable to the person who has relied on the warranty of authority and has suffered loss.

(f) Where authority is one coupled with interest or where trade, usage or custom makes the agent personally liable, he will be liable to the third-party.

(g) He is also liable for his torts committed in the course of agency.

Meaning of Authority Coupled with Interest (Section 202)

An agency is coupled with an interest when the agent has an interest in the authority granted to him or when the agent has an interest in the subject matter with which he is authorised to deal. Where the agent was appointed to enable him to secure some benefit already owed to him by the principal, the agency was coupled with an interest. For example, where a factor had made advances to the principal and is authorised to sell at the best price and recoup the advances made by him or where the agent is authorised to collect money from third-parties and pay himself the debt due by the principal, the agencies are coupled with interest. But a mere arrangement that the agent's remuneration to paid out of the rents collected by him, it does not give him any interest in the property and the agency is not the one coupled with an interest. An agency coupled with interest cannot be terminated in the absence of a contract to the contrary to the prejudice of such interest.

The principal laid down in Section 202 applies only if the following conditions are fulfilled:

(i) The interest of the agent should exist at the time of creation of agency and should not have arisen after the creation of agency.

(ii) Authority given to the agent must be intended for the protection of the interest of the agent. (iii) The interest of the agent in the subject matter must be substantial and not ordinary.

(iv) The interest of the agent should be over and above his remuneration. Mere prospect of remuneration is not sufficient interest.

Termination of Agency

An agency comes to an end or terminates –

(a) By the performance of the contract of agency; (Section 201)

(b) By an agreement between the principal and the agent;

(c) By expiration of the period fixed for the contract of agency;

(d) By the death of the principal or the agency; (Section 201)

(e) By the insanity of either the principal or the agent; (Section 201)

(f) By the insolvency of the principal, and in some cases that of the agent; (Section 201) (g) Where the principal or agent is an incorporated company, by its dissolution;

(h) By the destruction of the subject-matter; (Section 56)

(i) By the renunciation of his authority by the agent; (Section 201)

(j) By the revocation of authority by the principal. (Section 201)

When Agency is Irrevocable

Revocation of an agency by the principal is not possible in the following cases:

(a) Where the authority of agency is one coupled with an interest, even the death or insanity of the principal does not terminate the authority in this case (Section 202).

(b) When agent has incurred personal liability, the agency becomes irrevocable.

(c) When the authority has been partly exercised by the agent, it is irrevocable in particular with regard to obligations which arise from acts already done (Section 204).

When Termination Takes Effect

Termination of an agency takes effect or is complete, as regards the agent when it becomes known to the agent. If the principal revokes the agents authority, the revocation will take effect when the agent comes to know of it. As regards the third-parties, the termination takes effect when it comes to their knowledge (Section 208). Thus, if an agent whose authority has been terminated to his knowledge, enters into a contract with a third-party who deals with him bona fide, the contract will be binding on the principal as against the third-party. The termination of an agent's authority terminates the authority of the sub-agent appointed by the agent (Section 210).

The revocation of agency as regards the agent and as regards the principal takes effect at different points of time. Section 209 charges the agent with duty to protect the principal's interest where the principal dies or becomes of unsound mind. It provides that when an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interest entrusted to him. So it is the duty of the agent to take all steps to protect the interest of his deceased principal on his death.

LESSON ROUNDUP

- The law relating to contract is governed by the Indian Contract Act, 1872. The Act came into force on the first day of September, 1872.
- The Indian Contract Act mostly deals with the general principles and rules governing contracts.
- An agreement gives birth to a contract.
- As per Section 2(e) of the Indian Contract Act "every promise and every set of promises, forming the consideration for each other, is an agreement.
- According to Section 2(b) of the Indian Contract Act "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. An agreement, therefore, comes into existence when one party makes a proposal or offer to the other party and that other party signifies his assent thereto. In nutshell, an agreement is the sum total of offer and acceptance."
- Characteristics of an Agreement :
  - Plurality of persons
  - Consensus ad idem
- Where parties have made a binding contract, they have created rights and obligations between themselves.

- Agreements in which the idea of bargain is absent and there is no intention to create legal relations are not contracts.
- The essential elements of a valid contract are :
  - An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement – consensus-ad-idem.
  - An intention to create legal relations or an intent to have legal consequences.
  - The agreement is supported by a lawful consideration.
  - The parties to the contract are legally capable of contracting.
  - Genuine consent between the parties.
  - The object and consideration of the contract is legal and is not opposed to public policy.
  - The terms of the contract are certain.
  - The agreement is capable of being performed i.e., it is not impossible of being performed.
- Flaws in Contract
  - Void Agreement
  - Voidable Contract
  - Illegal Agreement
- The general rule is that all natural persons have full capacity to make binding contracts. But the Indian Contract Act, 1872 admits an exception in the case of:
  - The terms of the contract are certain.
  - minors,
  - lunatics, and
  - persons disqualified from contracting by any law to which they are subject.
- The law says that it will not aid any one to evade consequences on the plea that he was mistaken.
- Misrepresentation ; be either (i) Innocent misrepresentation, or (ii) Wilful misrepresentation with intent to deceive and is called fraud.
- Coercion as defined in Section 15 means "the committing or threatening to commit any act forbidden by the Indian Penal Code, or unlawful detaining or threatening to detain, any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement".
- Under Section 16 of the Indian Contract Act, 1872, a contract is said to be produced 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".
- One of the requisites of a valid contract is that the object should be lawful.
- A contract is said to be discharged or terminated when the rights and obligations arising out of a contract are extinguished.
- Contracts may be discharged or terminated by any of the following modes:
  - performance, i.e., by fulfilment of the duties undertaken by parties or, by tender;
  - mutual consent or agreement
  - lapse of time
  - operation of law
  - impossibility of performance

- breach of contract.

– A contract of indemnity is a contract by which one party promises to save the other party from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

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

– A bailment is a transaction whereby one person delivers goods to another person for some purpose, upon a contract that they are, when the purpose is accomplished to be returned or otherwise disposed of according to the directions of the person delivering them.

– Pledge or pawn is a contract whereby an article is deposited with a lender of money or promisee as security for the repayment of a loan or performance of a promise.

– An agent is a person who is employed to bring his principal into contractual relations with third-parties.

– Electronic contracts are not paper based but ratherin electronic form are born out of the need for speed, convenience and efficiency.

GLOSSARY

Agreement: Every promise and every set of promises, forming the consideration for each other, is an agreement.

Promisor: A person to whom a promise has been made.

Promisee: One who makes a promise.

Offeree: A person to whom an offer is made.

Acceptance: An express act or implication by conduct that manifests assent to the terms of an offer in a manner invited or required by the offer so that a binding contract is formed.

Standing Offers: Agreement under which a vendor allows a buyer to purchase specified goods or services at a predetermined price for a certain period on an 'as and when' requirement basis.

Donor: A person or entity making a gift or donation.

Donee: A person or organization which receives a gift.

Privity of Contract: Legal doctrine that a contract confers rights and imposes liabilities only on its contracting parties. They, and not any third-party, can sue each other (or be sued) under the terms of the contracts.

Void Agreement: An agreement not enforceable by law is said to be void.

Voidable Contract: An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

Illegal Agreement: An agreement having no legal effects as between the immediate parties. Further, transactions collateral to it also become tainted with illegality and are, therefore, not enforceable.

Coercion: The intimidation of a victim to compel the individual to do some act against his or her will by the use of psychological pressure, physical force, or threats.

Fraud: Untrue statement made knowingly or without belief in its truth or recklessly, carelessly, with the intent to deceive.

Ultra Vires: Beyond the scope, power, authority.

Ignorantia juris non-excusat: Ignorance of law excuses no one.

Uberrimae fidei: Of utmost good faith.

Ex turpi cause non-oritur action: No action arises from an illegal or immoral cause.

Pari delicto: Equally guilty.

Agreements: future uncertain event, such as a horse race, or upon the ascertainment of the truth concerning some past or present event. Agreements by way of wager are void.

Restitution: The act of restoring to the rightful owner something that has been taken away, lost, or surrendered.

Contingent Contract: A Contract to do or not to do something, if some event, collateral to such Contract, does or does not happen.

Quasi-Contracts: A situation in which there is an obligation as if there was a contract, although the technical requirements of a contract have not been fulfilled.

Quantum meruit: As much as earned or reasonable remuneration.

TEST YOURSELF

Q1. Consensus ad idem means

(a) Meeting of Parties

(b) Meeting of mind

(c) Meeting in court

(d) Meeting of parties at the same time

Q2. Contract creates

(a) Correlative rights and obligations

(b) Absolute rights and duties

(c) Absolute rights only

(d) Relative rights and obligations

Q3. Carlill v Carbolic Smoke Ball Co is an example of

(a) Specific offer

(b) General offer

(c) Implied offer

(d) Executed offer

Q4. Which of the following is not an example of quasi contract?

(a) Necessities supplied to the minor u/s 68

(b) Obligation of finder of goods

(c) Agreement in restraint of trade

(d) Obligation of person enjoying benefit of a non- gratuitous act

Q5. Insolvency leads to discharge of a contract because of

(a) Impossibility of performance

(b) Operation of law

(c) Mutual consent

(d) Breach of contract

Q6. Impossibility to perform includes

(a) Commercial impossibility, strikes, lockouts

(b) Difficulty to perform

(c) Supervening impossibility and subsequent illegality

(d) Waiver, frustration, novation

Q7. Match the following

1. Liquidated damages - (a) awarded to punish the defendant
2. Unliquidated damages - (b) compensation decided by the court
3. Punitive damage - (c) small token award for infringement of right when there is no loss
4. Nominal damage - (d) amount decided in advance as compensation for breach

(a) 1-a, 2-b, 3-c, 4-d

(b) 1-d, 2-b, 3-a, 4-c

(c) 1-b, 2-d, 3-a, 4-c

(d) 1-a, 2-d, 3-b, 4-c

Q8. Which of the following contracts involve three parties?

(a) Indemnity

(b) Guarantee

(c) Bailment

(d) Pledge

Q9. When a party is precluded from denying the truth of anything which is represented as a fact by the party although it is not one, is called

(a) Coercion

(b) Fraud

(c) Estoppel

(d) Ratification

Q10. Mistake of foreign laws makes the contract

(a) Voidable

(b) Void

(c) Valid and binding

(d) Unenforceable

SUGGESTED READINGS

(1) Indian Contract Act, 1872 – Bare Act

(2) A Manual of Mercantile Law – M.C. Shukla

(3) Law of Contract – Avtar Singh

Elements of Law relating to Partnership and Limited Liability Partnership

Lesson 4

KEY CONCEPTS

■ Nature of partnership ■ Kinds of partners ■ Rights and duties of partners ■ Dissolution of partnership

Learning Objectives

To understand:

Likewise corporations which are regulated by Companies Act, 2013 , the other form of business is partnership which is regulated by Indian Partnership Act, 1932. The partnership is considered as the convenient way to start a business. Suppose one wants to open a bookshop in the locality. There are various things that are required to start and run the business which may not be feasible to arrange all alone. These may include resources from money to place to management. In that case, the idea may be spoken to friends and relatives who may agree to run a bookshop by contributing a certain amount of money and other things required. So all of them join hands together to become the owners and agree to share profits and losses.

This chapter deals with laws relating to partnership that will regulate this form of business, its registration, admission of new partners, and dissolution. It also explains other aspects of partnership like kinds of partners, relationship among themselves and with others.

Lesson Outline

- Nature of Partnership
- Essentials of a Partnership and True Test of Partnership
- Classification of Partnership
- Kinds of Partners
- Actual, Active or Ostensible Partner
- Sleeping or Dormant Partner
- Nominal Partner
- Partner in Profits Only
- Sub-Partner
- Partner by Estoppel or Holding Out
- Review Questions
- Minor Admitted to the Benefits of Partnership
- Rights and Duties of Partners
- Relation of Partners to Third Parties
- Dissolution of Partnership
- Lesson Round Up
- Glossary
- Test Yourself
- Suggested readings

INTRODUCTION

The Indian Partnership Act, 1932, came into force w.e.f. 1st October, 1932 except section 69, which came into force on the 1st day of October, 1933. It extends to the whole of India except the state of Jammu and Kashmir. (The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019)

It lays down the important provisions relating to partnership contracts. However, the general principles of the Indian Contracts Act, 1872 which formally contained the provisions of the law of partnership shall apply so far as they are not inconsistent with this Act. (Section 3)

DEFINITIONS

Partnership

According to Section 4 "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all".

When analysed, the definition tells us that in order that persons may become partners, it is essential that:

(1) There must be at least two persons

(2) There must be a relationship arising out of an agreement between two or more persons to do a business

(3) The agreement must be to share the profits of a business

(4) The business must be carried on by all or any of them acting for all

All these four elements must be present before a group or an association can be held to be partners. In other words, it can be said that all the aforestated four elements must co-exist before a partnership can be said to come into existence. If any one of them is not proved to be present, there cannot be a partnership.

Partners, Firm and Firm Name

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name". (Section 4)

In law, "a firm" is only a convenient phrase for describing the partners, and the firm has no legal existence apart from its partners. It is neither a legal entity, nor it is a person as is a corporation; it is only a collective name of the members of a partnership. In the case of **Munshi Ram v. Municipal Committee, (1979) 3 SCC 83** it was stated that Firm is not a legal person neither it has a separate legal entity having an independent or distinct existence from its partners. It is only a compendious description of individuals who compose the firm.

As regard the "firm name", partners have a right to carry on business under any name and style which they choose to adopt, provided they do not violate the rules relating to trade name or goodwill. They must not adopt name calculated to mislead the public into confusing them with a firm of repute already in existence with a similar name. They must not use a name implying the sanction of patronage of the Government. A partnership firm cannot use the word "Limited" as a part of its name.

ESSENTIALS OF A PARTNERSHIP AND TRUE TEST OF PARTNERSHIP

These elements are discussed below in detail:

(i) Association of two or more Persons: There must be a contract between two or more persons. Therefore unless there are at least two persons there can not be a partnership. Persons must be competent to enter into a contract. They may all be natural or artificial or some natural and other artificial. Thus a corporation or limited partnership may itself be a partner in a general partnership if provided by their articles.

(ii) **Agreement:** Existence of an agreement is essential of partnership. Section 5 of the Act states that the relation of partnership arises from contract and not from status. The members of a Hindu Undivided Family carrying on a family business as such, or a Burmese Buddhist Husband and wife carrying on business as such are not partners in such business.

Such an agreement between the partners may be express or implied. Further, the agreement must be a valid agreement and for a lawful object and purpose and between the persons competent to contract.

(iii) **Business:** Partnership implies business and when there is no association to carry on business there is no partnership. The term "business" is, however, used in the widest sense to cover trade, occupation and profession.

As per Section 2(b) of the Act the term "business" includes every trade, occupation and profession. In the definition of partnership the word "business" is used in the sense of "carrying on business" which suggests continuity or repetition of acts. But it does not mean that it should be confined to lengthy operations, it may consist of a single adventure of a single undertaking, if there is continued participation of two or more persons for acquisition of gains.

The term must be understood in a particular sense . It refers to any activity which, if successful, would result in profit. The business must be lawful.

(iv) **Sharing of Profits:** To constitute a partnership, the parties must have agreed to carry on a business and to share profits in common. "Profits" mean the excess of returns over advances, the excess of what is obtained over the cost of obtaining it. Sharing of profits also involves sharing of losses. But whereas the sharing of profit is an essential element of partnership, the sharing of losses is not. It is open to one or more partners to bear all the losses of the business as decided by the agreement among them.

It follows that the sharing of profits is an essential ingredient of partnership and there would be no partnership where only one of the partners is entitled to the whole of the profits of the business. But it is open to the partners to agree to share the profits in any way they like. They may agree to share the profits either in specific proportions or in specific sums.

(v) **Mutual Agency the True Test:** Mutual agency is the foundation of partner's liability. Each partner is both an agent and principal for himself and others; that is the significance of the phrase "carried on by all or any of them acting for all". Each partner is an agent binding the other partners who are his principal and each partner is again a principal, who in turn is bound by the acts of the other partners. In other words, there must be facts or circumstances from which it can be inferred that each of the persons alleged to be partners was the agent, real or implied of another. What is essential is that the partner who conducts the business of the firm not only acts for himself but for the other partners also.

Formation of Partnership

According to the definition of partnership under the Indian Partnership Act, 1932, there must be an agreement between the partners of a partnership firm. Thus, partnership arises by the contract.

The partnership agreement must comply with all the essentials of a valid contract. There must be free consent of the parties who must be competent to contract and the object of partnership should not be forbidden by law or immoral or opposed to public policy. Two exceptions, however, may be noted:

(i) A minor may be admitted to the benefits of an existing partnership firm with the consent of all other partners.

(ii) As relations of partners inter se are that of agency, no consideration is required to create the partnership.

PARTNERSHIP DEED

The agreement of partnership may be oral but to avoid future disputes it is always advisable to have it in writing. The mutual rights and obligations of partners must be discussed in detail and should be put into writing in the shape of a 'Partnership Deed', before the partnership is actually started. Thus, the written document which contains the mutual rights and obligations of partners is known as partnership deed. (The partnership deed is also called as 'Partnership Agreement', 'Constitution of Partnership', 'Articles of Partnership' etc.). The deed must be property drafted and stamped according to the provisions of the Indian Stamp Act. Each partner should be given a copy of the deed and if the firm is to be registered, a copy of the deed should be filed with the Registrar of Firms at the time of such legislation. The partnership deed is not a public document and therefore binds only third parties so far as they have notice of it.

Contents of Partnership Deed

The exact terms of the partnership deed (or agreement) will depend upon the circumstances but generally a partnership deed contains the following covenants:

(i) The firm name and business to be carried on under that name.

(ii) Names and addresses of partners.

(iii) Nature and scope of business and address(s) of business place(s).

(iv) Commencement and duration of partnership.

(v) The capital and the contribution made by each partner.

(vi) Provision for further capital and loans by partners to the firm.

(vii) Partner's drawings.

(viii) Interest on capital, loans, drawings and current account.

(ix) Salaries, commission and remuneration to partners,

(x) Profit (or loss) sharing ratio of partners.

(xi) The keeping of proper books of accounts, inspection and audit, Bank Accounts and their operation.

(xii) The accounting period and the date on which that accounts are to be prepared.

(xiii) Rights, powers and duties of the partners.

(xiv) Whether and in what circumstances, notice of retirement or dissolution can be given by a partner.

(xv) Provision that death or retirement of a partner will not bring about dissolution of partnership,

(xvi) Valuation of goodwill on retirement, death, dissolution etc.

(xvii) The method of valuation of assets (and liabilities) on retirement or death of any partner.

(xviii) Provision for expulsion of a partner.

(xix) Provision regarding the allocation of business activities to be performed by individual partners

(xx) The arbitration clause for the settlement of disputes. The terms contained in the partnership deed may be varied with the consent of all the parties, and such consent may be express or implied by a course of dealing. [Section 11(1)]

CLASSIFICATION OF PARTNERSHIP

A partnership may either be for a particular adventure or for a fixed period. It may also be a partnership at will. From the duration point of view, a partnership may be classified into the following two categories:

(i) Particular Partnership (Section 8)

"A person may become a partner with another person in a particular adventure or undertaking or for a particular period". When two or more persons agree to do business in a particular adventure or undertaking or for a particular period, such a partnership is called "Particular Partnership". Thus, a particular partnership may even be for a single adventure or undertaking.

(ii) Partnership at Will (Section 7)

"Where no provision is made by contract between the partners for the duration of their partnership or for the determination of their partnership, the partnership is called Partnership at Will". A partnership is deemed to be a partnership at will when (i) no fixed period has been agreed upon for the duration of partnership, and (ii) there is no provision made as to the determination of partnership in any other way. The partnership at will has no fixed or definite date of termination and, therefore, death or retirement of a partner does not affect the existence of such partnership.

Section 43(1) provides that "Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm. The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no such date is mentioned, as from the date of communication of the notice".

Co-ownership and Partnership

There is a possibility that two co-owners may employ their property in a business and share the profits, and still be not partners. A distinction between the two is in point. Partnership is between two persons, co-ownership may have two or any number more than two. Co- ownership is not always the result of an agreement: it may arise by the operation of law or from status, e.g., co-heirs of a property. Partnership must arise from an agreement. A partner is the agent of the other partners, but a co-owner is not the agent of the other co- owner(s). Co-ownership does not necessarily involve community of profits and loss, partnership does. A co- owner can transfer his rights and interests to strangers without the consent of the others, a partner cannot do so without the consent of all the other partners so as to make the transferee a partner in the firm. A co-owner can ask for division of property in specie, but no partner can ask for this. His only right is to have a share of the profits out of the properties. A co-owner has no lien on the property while a partner has a lien on the firm property.

Hindu Joint Family Firm and Partnership

A Hindu joint family firm differs from a partnership in the following ways:

Partnership Firm	Joint Hindu Family
A partnership comes into existence by means of a contract between the partners;	a Hindu joint family firm arises as a result of status, i.e., by birth in the family.
The death of a partner dissolves the partnership	the death of a co-parcener does not dissolve the family firm.
in a partnership each partner has implied authority to borrow and bind other members;	In a joint family firm only the Karta or manager (who is the head of the family) has implied authority to borrow and bind other members;

Partnership Firm	Joint Hindu Family
Every partner is personally liable for the debts of firm	in a joint family business only the Karta is personally liable
A minor cannot be a partner, although he may be admitted to the benefits of partnership	A minor is a member of a joint family firm from the very day of his birth by virtue of his status, but he is not personally liable
A partner can demand the accounts of the firm,	a co-parcener cannot ask for accounts, his only remedy is to ask for partition of the assets of the family firm.
In a partnership firm must be registered before it can maintain suits against outsiders.	No registration of a family firm is necessary
Each partner has a definite share in the business and this can be changed only by agreement,	the share of a co- parcener is not fixed; it may be enlarged by death or reduced by a birth in the family.
There is a definite limit to the number of partners	here is no such limit in the case of a Hindu joint family firm
Indian Partnership Act, governs partnerships and excludes Hindu joint family firms. (Section 5)	A Hindu joint family business is governed by Hindu Law,

Company and Partnership

The members constituting a partnership do not form a whole as distinct from the individuals composing it. The firm has no legal entity and has no rights and obligations separate from the partners. In a firm every partner is an agent of the rest of the partners, but a member of a company is neither the agent of the company nor of other members. A company, as soon as it is incorporated, say by registration under the Companies Act, becomes a legal entity distinct from its members constituting it (Salomon v. Salomon & Co., 1897, A.C. 22). It can sue and be sued in its own name like any natural person. In a partnership, there are rights and obligations as against individual partners, but in the case of a company, the rights and obligations are as against the fictitious entity of the whole of the company and not the members composing it. The creditors of the partnership can call upon individual partners to pay the firm's debt, but the members of a company are not personally liable for the company's debts. In other words, a partner's liability is unlimited while the liability of the members of a company is limited to the extent of the amount remaining unpaid on their shares (Prasad v. Missir). Partnership firm may dissolve by the death or insolvency of a partner, but a company is not affected by the death or insolvency of a member. A partner cannot transfer his interest so as to substitute the transferee in his place as the partner, without the consent of all the other partners; a member can transfer his share to any one he likes. The maximum number of partners for a banking firm is 10 and for other firms it is 20, while the maximum number of members for a private company is 50 and a public company can have any number of members.

Change in a Firm

The Indian Partnership Act, 1932, contemplates the following changes in a partnership firm:

(1) Changes in the constitution of a firm.

(2) Changes in the nature of a business or undertakings.

(3) Changes in the duration of a firm.

A change in the constitution of a firm takes place when:

(a) a new partner is introduced as a partner in a firm (Section 31)

(b) a partner retires from a firm (Section 32)

(c) a partner is expelled from a firm (Section 33)

(d) a partner is adjudicated as an insolvent (Section 34)

(e) a partner dies (Section 35)

A change in the nature of the business can only be brought about by the consent of all the partners. Thus, a partnership formed for a definite purpose, agreed upon at the time of formation of the partnership, cannot depart from the agreed purpose without the consent of all the partners [Section 12(c)]. Section 17(c)provides for a case whether a partnership firm is formed for a particular undertaking or undertakings, it proceeds to carry on other undertaking or undertakings, in that event the mutual rights and duties of the partners in respect of the other adventures or undertakings remains the same as those in respect of the original adventures of undertakings.

Partnership Property

It is open to the partners to agree among themselves as to what is to be treated as the property of the firm, and what is to be separate property of one or more partners, although employed for the purposes of the firm. In the absence of any such agreement, express or implied, the property of the firm is deemed to include:

(a) all property, rights and interests which have been brought into the common stock for the purposes of the partnership by individual partners, whether at the commencement of the business or subsequently added thereto

(b) those acquired in the course of the business with money belonging to the firm

(c) the goodwill of the business (Section 14)

The property of the firm belongs to the firm and not to the individual partner or partners. The ownership belongs to the firm, and no partner can deal with specific properties as if the properties are his own, nor does the partner possess any assignable interest in such property (Narayanappa v. Bhaskaia Krishnappa, AIR 1966 SC 1300). What is meant by the share of a partner is his proportion of the partnership assets after they are all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged. If certain partners jointly own immovable property which they use for the purposes of the partnership business, the mere use of such property does not make such property as partnership property. Whether such property is or is not partnership property depends upon the agreement between the partners (Lachhman Dass v. Mrs. Gulab Devi, AIR 1936 ALL. 270). The ultimate test to determine the property of the firm is the real intention of the partners and the Court can take into consideration the following facts:

(1) The source of the purchase money.

(2) The reason due to which the property was purchased or acquired.

(3) The object for which the property was purchased or acquired.

(4) The mode in which the property was obtained.

(5) The mode in which the property was dealt with.

(6) The use to which the property was put to.

All such facts are matter of evidence and depend on the facts of each case. These facts indicate the intention of the parties but are not conclusive to make a property as partnership property. These facts can be established by entries in the books of account of the firm and of the partners, correspondence, the deed of partnership, etc.

KINDS OF PARTNERS

The following kinds of partners generally exist in a partnership:

(i) Actual, Active or Ostensible Partner

These are the ordinary types of partners who invest money into the business of the firm, actively participate in the functioning and management of the business and share its profits or losses. Section 12(a) lays down that "Subject to contract between the partners, every partner is entitled to take part in the conduct of the business of the firm". Such partner as actively participates in the firm's business, binds himself and other partners by all his acts done in the usual course of partnership business. Such partner must give a public notice of his retirement from the firm in order to absolve (free) himself from liability for the acts of the other partners done after his retirement.

(ii) Sleeping or Dormant Partner

These partners invest money in the firm's business and take their share of profits but do not participate in the functioning and management of the business. But even then their liability is unlimited. The Act specially provides that if an act is binding on the firm, every partner is liable for it.

A sleeping partner can retire from the firm without giving any public notice to this effect. His liability for the acts of the firm ceases soon after retirement. Such a partner has no duties to perform but is entitled to have access to books and accounts of the firm and he can have a copy of them.

(iii) Nominal Partner

Some people do not invest or participate in the management of the firm but only give their name to the business or firm. They are nominal partners but are liable to third parties for all the acts of the firm. Unlike a sleeping partner, they are known to the outsiders as partners in the firm, whereas actually they are not. They require to give public notice at the time of being separate from the firm.

(iv) Partner in Profits Only

A partner who is entitled to share in the profits of a partnership firm without being liable to share the losses, is called a partner in profits only. Thus, a person who has sufficient capital but is not prepared to take risk may be admitted to the partnership by the other partners. Inspite of his specific position, he continues to be liable to the third parties for all acts of the firm, just like other partners.

(v) Sub-Partner

Where a partner agrees to share his profits in the firm with a third person, that third person is called a sub- partner. All sub-partner is not the partner in firm. He is partner of a partner. Such a sub-partner has no rights or duties towards the firm and does not carry any liability for the debts of the firm. He can neither participate in partnership business nor check the accounts of such partner and to claim share. Also he cannot bind the firm or other partners by his acts. The only right he has to share the profits in property at the time of winding-up.

(vi) Partner by Estoppel or Holding Out

If the behaviour of a person arouses misunderstanding that he is a partner in a firm (when actually he is not), such a person is estopped from later on denying the liabilities for the acts of the firm. Such person is called partner by estoppel and is liable to all third parties.

Similarly, if a person who is declared to be a partner (when actually he is not) does not deny the fact that he is a partner, he being held out as a partner is responsible for all liability of the business. The law relating to partners by holding out is contained in Section 28 of the Act which lays down thus:

"Any one who by words, spoken or written or by conduct represents himself, or knowingly permits himself to be represented to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit". The rule as to holding out is based on the doctrine of estoppel as contained in Section 115 of the Indian Evidence Act.

Holding Out means "to represent". Strangers, who hold themselves out or represent themselves to be partners in a firm, whereby they induce others to give credit to the partnership are called "Partners by Holding Out". An active partner who fails to give public notice at the time of retirement is also liable as partner by holding out.

In case of "Partnership by Estoppel", the representation is made by partners about a stranger within his knowledge and hearing and he does not contradict it. He is then held liable as a partner.

Effects of Holding Out

The Holding Out partner becomes personally and individually liable for the acts of the firm. But he does not become a partner in the firm and is not entitled to any rights or claim upon the firm. An outsider, who has given credit to the firm thinking him to be a partner, can hold him liable as if he is a partner in that firm. As the liability of the partners is joint and several he can be held liable to pay the entire amount. But under the doctrine of subrogation as well as on the basis of quasi-contract, he can recover the amount so paid from the partners of the firm, if they are solvent.

Exceptions to Holding Out

The doctrine of Holding Out is not applicable in the following cases:

1. It does not apply to cases of torts committed by partners. A person, therefore, cannot be held liable for the torts of another simply because that other person held himself to be his partner.
2. It does not extend to bind the estate of a deceased partner, where after a partner's death the business of the firm is continued in the old firm name. [Section 28(2)]
3. It also does not apply where the Holding Out partner has been adjudicated insolvent. (Section 45)

Minor Admitted to the Benefits of Partnership

In view of Section 11 of the Indian Contract Act, 1872, and the decision of the Privy Council in Mohri Bibi v. Dharmo Das Ghose, (1903) 30 I.A 114, a minor's agreement is altogether void and not enforceable. An agreement is an essential ingredient in a partnership, it follows that a minor cannot enter into an agreement of partnership as he is incompetent to enter into a contract. On the same principle, a minor cannot be clothed with all the rights and obligations of a full-fledged partner through a guardian. Section 5 states "The relation of partnership arises from a contract..." The minor is incompetent to contract and, therefore, partnership cannot come into existence if the parties to a contract of partnership consist of one major and one minor. The only provision that Section 30 makes is that with the "consent of all the partners for the time being, a minor can be admitted into the benefits of partnership to which a minor is going to be admitted". A partnership firm cannot be formed with a minor as partner. The only fact is that in an existing firm a minor can be admitted only for profits with the consent of all partners.

Rights of Minor

He is entitled to his agreed share and can inspect books of account of the firm [Section 30(2)]. He can bring a suit for account and his share when he intends to sever his connections with the firm, but not otherwise. [Section 30(4)]

A minor who was admitted to the benefits during his minority within six months of his attaining the age of majority or when he comes to know of his being so admitted (whichever date is later), he has to elect whether he wants to become a partner, or sever his connection with the firm. He may give public notice of his election to continue or repudiate, but if he fails to give any public notice within the period stated above, he will be deemed to have elected to become a partner in the firm. [Section 30(5)]

Liabilities of Minor

(i) Share in Liability: A minor partner's liability is confined only to the extent of his share in the firm. Section 30(3) provides that a minor's share is liable for the acts of the firm. But a minor is not personally liable in any such act. Thus, he is neither personally liable nor is his private estate liable for the acts of the firm.

(ii) Personal Liabilities: Where a minor on attaining majority, elects to become a partner, he becomes personally liable as other partners to the third parties for all the acts of the firm done since he was admitted to the benefits of partnership.

(iii) Election by Minor: A minor who was admitted to the benefits during his minority within six months of his attaining the age of majority or when he comes to know of his being so admitted (whichever date is later), he has to elect whether he wants to become a partner, or sever his connection with the firm. He may give public notice of his election to continue or repudiate, but if he fails to give any public notice within the period stated above, he will be deemed to have elected to become a partner in the firm. [Section 30(5)]

If he becomes or elects to become a partner, his position will be as under:

1. His rights and liabilities will be similar to those of a full-fledged partner.
2. He will be personally liable for all the acts of the firm, done since he was first admitted to the benefits of the partnership.
3. His share of profits and property remains the same as was before, unless altered by agreement. If he elects not to become a partner, then:
    1. His rights and liabilities shall continue to be those of a minor upto the date of his giving public notice.
    2. His share shall not be liable for any acts of the firm done after the date of the public notice.
    3. He is entitled to sue the partners for his share of the property and profits in the firm. [Section 30(8)]

Relation of Partners to one another

The relation of partnership arises through an agreement between the parties and such an agreement normally provides for mutual rights and obligations, or duties of the partners. Where, however, partnership arises by implication, or wherever the articles of partnership are silent, or where they do not exist, the rights and duties of partners are governed by the Act.

RIGHTS AND DUTIES OF PARTNERS

Rights of Partners

Unless otherwise agreed by the partners, the following rules apply:

(a) Every partner has a right to take part in the conduct and management of the business. [Section 12(a)]

(b) Every partner whether active or dormant, has a right of free access to all records, books and accounts of the business and also to examine and copy them. [Section 12(d)]

(c) Every partner is entitled to share in the profits equally, unless different proportions are stipulated. [Section 13(b)]

(d) A partner who has contributed more than the share of the capital for the purpose of the business is entitled to an interest at a rate agreed upon, and where no rate is stipulated for, at six per cent per annum. But a partner cannot claim interest on capital, unless there is an agreement to pay it. [Section 13(d)]

(e) A partner is entitled to be indemnified by the firm for all expenses incurred by him in the course of the business, for all payments made by him in respect of partnership debts or liabilities and disbursements made in an emergency for protecting the firm from loss. [Section 13(e)]

(f) Every partner is, as a rule, a joint owner of the partnership property, and have it applied exclusively for the purposes of the partnership. (Section 15)

(g) A partner has power to act in an emergency for protecting the firm from loss. (Section 21)

(h) Every partner is entitled to prevent the introduction of a new partner into the firm without his consent. (Section 31)

(i) Every partner has a right to retire by giving notice where the partnership is at will. [Section 32(1)(c)]

(j) Every partner has a right to continue in the partnership and not to be expelled from it. [Section 33(1)]

(k) An incoming partner will not be liable for any debts or liabilities of the firm before he becomes a partner. [Section 31(2)] (l)

(l) Every outgoing partner has a right to carry on a competitive business under certain conditions. (Section 36)

Duties of Partners

Apart from any duties imposed by the partnership articles, the following statutory duties are implied:

(a) Every partner is bound to carry on the business of the firm to the greatest common advantage. (Section 9)

(b) Every partner must be just and faithful to other partners. (Section 9)

(c) A partner is bound to keep and render true, proper and correct accounts of the partnership. (Section 9)

(d) Utmost good faith between the partners is the rule and one partner must not take advantage of the other.

As an agent of other partners, every partner is bound to communicate full information to them. (Section 9)

(e) Every partner must account for any benefits derived from the partnership business without the consent of the other partners, i.e., a partner must not make "secret profits". [Section 16(a)]

(f) A partner must not compete with the firm, without the consent of the other partners. Any profits made by such unauthorised competition can be claimed by the firm. [Section 16(b)]

(g) Every partner is bound to attend diligently to the business of the firm and in the absence of any agreement to the contrary, he is not entitled to receive any remuneration. [Section 12(b) and 13(a)]

(h) In the absence of an agreement to the contrary, every partner is bound to share losses equally with the others. [Section 13(b)]

(i) Every partner must hold and use the partnership property exclusively for the firm. (Section 15)

(j) Every partner is bound to indemnify the firm for any loss caused by fraud in the conduct of the business. (Section 10)

(k) A partner who is guilty of wilful neglect in the conduct of the business and the firm suffers loss in consequence, is bound to make compensation to the firm and other partners. [Section 13(f)]

(l) No partner can assign or transfer his partnership interest to any other person, so as to make him a partner in the business. (Section 29)

(m) But a partner may assign the profits and share in the partnership assets. But the assignee or transferee will have no right to ask for the accounts or to interfere in the management of the business; he would be entitled only to share the actual profits. On dissolution of the firm, he will be entitled to the share of the assets and also to accounts but only from the date of dissolution. (Section 29)

(n) Every partner is bound to act within the scope of his actual authority. If he exceeds his authority, he shall compensate the other partners for loss unless they ratify his act.

RELATION OF PARTNERS TO THIRD PARTIES

Partners as Agents

Every partner is an agent of the firm and of other partners for the purpose of the business of the firm (Section 18). In the case of a partnership each partner is a principal and each one is an agent for the other partners. A partner is both a principal and an agent. Thus, the general law of agency is incorporated into the law of partnership. The law of partnership is often regarded as branch of the law of agency. The acts of every partner who does any act for carrying on in the usual way the business of the kind carried on by the firm bind the firm and his partners unless:

(i) The partner so acting has no authority to act for the firm in that matter; and

(ii) The person with whom he is dealing knows that he has no authority; or

(iii) Does not know or believe him to be a partner.

Authority of a Partner

The authority of a partner means the capacity of a partner to bind the firm by his act. This authority may be express or implied.

(i) Express Authority

Authority is said to be express when it is given by words, spoken or written. The firm is bound by all acts of a partner done within the scope of his express authority even if the acts are not within the scope of the partnership business.

(ii) Implied Authority

The authority which is inferred from the conduct of the parties, nature of business, circumstances, customs and usage are said to be implied authority.

Sections 19 and 22 contain provisions regarding the scope of the implied authority of a partner. The implied authority is subject to the following conditions:

(1) the act done must relate to the "normal business" of the firm;

(2) the act must be done in the usual way;

(3) the act must be done in the name of the firm.

Implied Authority of a Partner

Subject to the limitations mentioned above, every partner binds the firm for the acts done within the scope of implied authority. Following acts are under the implied authority:

(i) To sale firm's goods;

(ii) To Purchase goods for the firm;

(iii) To accept any payment of debts due to the firm; and

(iv) To engage and discharge employees.

In a Trading Firm (one which carries on business of buying and selling goods), a partner has the following additional powers:

(i) To borrow money on the firm's credit and to pledge the firm's goods for that purpose;

(ii) To accept, make and issue negotiable instruments in the firm's name; and

(iii) To employ a solicitor or attorney on behalf of the firm (Bank of Australasia v. Beriliat, (1847) 6 Moor, P.C. 152 at pp. 193-94).

Acts beyond Implied Authority

Section 19(2) states that in the absence of any usage or custom or trade to the contrary, the implied authority of a partner does not empower him to:

(a) submit a dispute relating to the business of the firm to arbitration;

(b) open a bank account on behalf of the firm in his own name;

(c) compromise or relinquish any claim or portion of a claim by the firm;

(d) withdraw a suit or proceeding filed on behalf of the firm;

(e) admit any liability in a suit or proceedings against the firm;

(f) acquire immovable property on behalf of the firm;

(g) transfer immovable property belonging to the firm; and

(h) enter into a partnership on behalf of the firm.

Extent of Partners' Liability

It is, however, open to the partners by means of an express contract to extend or limit the implied authority, but third parties will be bound by such limitations only when they have notice of such curtailment.

All partners are liable jointly and severally for all acts or omissions binding on the firm including liabilities arising from contracts as well as torts (Section 25). This is known as the liability of partners for the acts of the firm. But in order that an act done may be an act of the firm and, therefore, binding on the firm, it is necessary that the partner doing the act on behalf of the firm must have done that act in the name of and on behalf of the firm and not in his personal capacity. And the act must have been done in the ordinary course of the business of the firm. [Sections 19(1) and 22]

Liability of the Firm for Torts

Every partner is liable for the negligence and fraud of the other partners in the course of the management of business. A partner binds the firm if he acts as an agent for it. The firm is similarly liable where a partner commits a tort with the authority of his co-partners. (Section 26)

If a partner acting within the scope of his apparent authority receives the property of a third person and misapplies it, or if the firm in the course of its business receives the property of a third person and, while it is in the firm's custody, a partner misapplies it, in each case the firm is liable to make good the loss. (Section 27)

Liability of an Incoming Partner

As a general rule, an incoming partner is not liable for the debts incurred before he joined the firm as a partner [Section 31(2)]. The incoming partner may, however, assume liability for past debts by novation, i.e., by a tripartite agreement between (i) the creditor of the firm, (ii) the partners existing at the time the debt was incurred, and (iii) the incoming partner.

Liability of an Outgoing or Retiring Partner

An outgoing partner remains liable for the partnership debts contracted while he was a partner. He may, however, be discharged by novation, i.e., by an agreement between himself, the new firm and the creditors. He may also continue to be liable after retirement if he allows himself to be held out as a partner, e.g. by allowing his name to remain the firm name. To protect himself from his liability, he should give express notice of his retirement to the persons who were dealing with the firm before his retirement or give public notice in the manner as laid down in Section 72 of the Act, that is to say, by publishing it in the Official Gazette and in at least one vernacular newspaper where the firm carries on the business. [Section 32(3)]

Death or Insolvency

The estate of a partner who dies, or who becomes insolvent, is not liable for partnership debts contracted after the date of the death or insolvency. It will, however, be liable for debts incurred before death or insolvency. (Sections 34 and 35)

DISSOLUTION

According to Section 39 "The dissolution of partnership between all the partners of a firm" is called the "Dissolution of the Firm". A dissolution does not necessarily follow because the partnership has ceased to do business, for the partnership may continue for the purpose of realising the assets.

The law of Partnership makes a distinction between the "dissolution of partnership" and "dissolution of firm". Where the relation between all the partners come to an end, it is a dissolution of the firm (Section 39). Where there is an extinction of relationship between some of the partners only, it is a dissolution of partnership. So the dissolution of a partnership may or may not include the dissolution of the firm, but the dissolution of the firm necessarily means the dissolution of the partnership as well.

Distinction between dissolution of Partnership and Dissolution of Firm

Basis	Dissolution of Partnership	Dissolution of Firm
Termination of business	The business is into terminated	The business of the firm is closed.
Settlement of Assets and liabilities	Assets and liabilities are revalued and new balance sheet is drawn.	Assets and liabilities are paid off.
Court's intervene	Court does not intervene because partnership is dissolved by mutual agreement.	A firm can be dissolved by court's order.

Basis	Dissolution of Partnership	Dissolution of Firm
Economic relationship	4. Economic relationship between the partners continues though in a changed form.	4. Economic relationship between the partners continues in a changed form.
Closure of books	Does not require because business is not closed.	The books of account are closed.

Dissolution of Partnership

The dissolution of partnership takes place (even when there is no dissolution of the firm) in the following circumstances:

- Dissolution by Agreement
  - Section 40 provides that a partnership firm may be dissolved with the consent of all partners or in accordance with a contract between the partners. This represents the most amicable method of dissolution, where partners mutually agree to terminate their business relationship.
- Compulsory Dissolution
  - Under Section 41, a firm is compulsorily dissolved in the following circumstances:
    - When all partners or all but one partner are declared insolvent.
    - When the business of the firm becomes unlawful due to changes in law or circumstances.
    - The law provides a safeguard that if a firm operates multiple separate businesses, the illegality of one business will not necessarily cause dissolution of the firm regarding its lawful operations.
- Dissolution on Contingencies
  - Section 42 states that, subject to contract between partners, a firm is dissolved upon:
    - Expiry of a fixed term for which the firm was constituted.
    - Completion of specific adventures or undertakings for which the firm was formed.
    - Death of any partner
    - Insolvency of any partner
- Dissolution by Notice
  - In partnerships at will, Section 43 allows any partner to dissolve the firm by giving written notice to all other partners. The dissolution takes effect from the date specified in the notice or, if no date is mentioned, from the date of communication of the notice.
- Dissolution by Court
  - Section 44 empowers the Court to dissolve a firm at the request of a partner on several grounds:
    - Mental unsoundness of a partner
    - Permanent incapacity of a partner
    - Conduct of a partner prejudicial to the business

- Persistent breach of partnership agreements
- Transfer of a partner's entire interest to a third party
- Business operations that can only continue at a loss

Any other just and equitable reason

Consequences of Dissolution

- Continuing Liability
  - Section 45 maintains that despite dissolution, partners continue to be liable to third parties for acts that would have been firm acts before dissolution, until public notice of dissolution is given. This protects third parties who may be unaware of the firm's dissolved status.
- Right to Winding Up
  - Section 46 entitles every partner to have the firm's property applied to payment of debts and liabilities, with surplus distributed among partners according to their rights.
- Continuing Authority
  - Section 47 extends partners' authority to bind the firm after dissolution, but only for necessary winding up activities and completing unfinished transactions. This authority does not extend to creating new obligations unrelated to winding up.

Dissolution of the Firm

In the following cases there is necessarily a breaking up or extinction of the relationship between all the partners of the firm, and closing up of the business:

(a) By mutual agreement: A firm may be dissolved where all the partners agree that it shall be dissolved. (Section 40)

(b) By the insolvency of all the partners but one: If all the partners or except one all the partners become insolvent, the firm must come to an end, as a partnership firm with one partner cannot continue. [Section 41(a)]

(c) By business becoming illegal: If the business of the firm becomes illegal because of some subsequent events, such as change of law, it is automatically or compulsorily dissolved by the operation of law. [Section 41(b)]

(d) By notice of dissolution: Where the partnership is at will, the firm may be dissolved at any time, by any partner giving notice in writing of his intention to dissolve the firm, to all the other partners. The dissolution will take place from the date mentioned in the notice or, if no such date is mentioned, as from the date of the communication of the notice. (Section 43)

Dissolution of the Firm through Court

As per Section 44, the Court may order dissolution of the firm in the following circumstances:

(a) When a partner becomes of unsound mind: As the insanity of a partner does not automatically dissolve the firm, either the lunatic through his guardian or other partners may file a suit for the dissolution of the firm, in either case the Court may order dissolution which will take effect from the date of the order.

(b) Permanent incapacity of a partner: Where a partner has become permanently incapable of performing his duties as a partner, e.g., he becomes blind, paralytic, etc., the Court may, at the instance of any of the other partners, order the dissolution of the firm.

(c) Misconduct of a partner affecting the business: Where a partner is guilty of misconduct, which is likely to affect prejudicially the business of the firm, the Court may dissolve the firm at the instance of any of the other partners. Gambling by a partner or conviction of a partner for travelling without ticket would be sufficient ground for dissolution.

(d) Persistent disregard of partnership agreement by a partner: Where a partner frequently commits breaches of the partnership agreement and the other partners find it impossible to carry on the business, the Court may order dissolution at the instance of the other partners.

(e) Transfer of interest or share by a partner: A partner is not entitled to assign away his interest so as to introduce a new partner into the firm. Where a partner has transferred the whole of his interest to a third person or where his interest has been attached under a decree or sold under a process of law, the other partners may sue for dissolution.

(f) Business working at a loss: The Court may dissolve a partnership firm where it is satisfied that the business of the firm cannot be carried on except at a loss.

(g) Any just and equitable: As the grounds mentioned are not exhaustive, the Court may dissolve a firm on any other ground if it is satisfied that it would be just and equitable to dissolve the firm. The Court may order dissolution where the sub-stratum of the partnership firm has gone or where there is a complete deadlock and destruction of confidence between the partners [re. Yenidjee Tobacco Co. Ltd. (1916) 2 Ch. 426].

Right to Return of Premium

To buy entry into an existing firm, a new partner sometimes has to pay a premium to the existing partners in addition to any investment of capital. On dissolution, he is entitled to demand the return of a proportion of the premium if the partnership was for a fixed term and was dissolved before the expiry of that term, unless dissolution was caused by (i) agreement, or (ii) misconduct of the party seeking return of the premium, or (iii) death of a partner. (Section 51)

Settlement of Accounts on Dissolution

Section 48 of the Act provides that in settling accounts between the partners after a dissolution of partnership .

- Order of Payment
  - Section 48 establishes the rules for settling accounts:
    - Losses are paid first from profits, then from capital, and finally by partners individually
    - Assets are applied first to third-party debts, then to advances made by partners, then to capital contributed by partners
    - Any residue is distributed among partners in profit-sharing proportions
- Treatment of Debts
  - Section 49 prioritizes firm property for firm debts and personal property for personal debts, creating a clear hierarchy for debt settlement.
- Special Rights and Restrictions
  - Section 50 prohibits personal profits from firm opportunities during winding up
  - Section 51 provides for return of premium on premature dissolution
  - Section 52 grants remedies when partnership contracts involved fraud

- Section 53 restricts use of firm name or property after dissolution
- Section 54 validates reasonable non-compete agreements
- Section 55 addresses goodwill valuation and rights upon sale

Inability of a Partner to Contribute Towards Deficiency

In the context of settlement of accounts among the partners there is still another important aspect to be noted, i.e., when a partner is unable to contribute towards the deficiency of his capital account (the account finally showing a debit balance), He/she is said to be insolvent, and the sum not recoverable is treated as capital loss for the firm. In the absence of any agreement, to the contrary, such a capital loss is to be borne by the remaining solvent partners in accordance with the principle laid down in Garner vs. Murray case, which states that the solvent partners have to bear such loss in the ratio of their capitals as on the date of dissolution. However, the accounting treatment relating to dissolution of partnership on account of insolvency of partners is not being taken up at this stage.

Loss due to insolvency of partners

In case a partner is insolvent and is not able to contribute towards the deficiency, the principle laid down in the case of Garner vs. Murray will be applicable.

It helds that :

(a) The solvent partners will contribute only their share of deficiency in cash

(b) The available assets should be distributed among the solvent partners in proportion to their capital.

(c) Thus, the deficiency of capital of the insolvent partners will be distributed among the solvent partners in the ratio of their respective capitals.

Goodwill

This is a partnership asset and means the benefit arising from a firm's business connections or reputation. "It is the advantage which is acquired by a business, beyond the mere value of the capital, stock fund and properly employed therein, in consequence of the general public patronage and encouragement". Though an intangible asset, it has value; and unless otherwise agreed in the partnership articles, upon dissolution it must be sold and the proceeds of sale distributed as capital. Where dissolution is caused by death, the estate of the deceased partner is entitled to share in the proceeds of the sale.

If the goodwill is sold and there is no agreement as to its disposal, any partner can carry on the business, provided that by doing so he does not expose former partners to liability. But if by agreement the goodwill is assigned to any person, he can restrain partners as explained in the next para.

Sale of Goodwill: Where goodwill is sold, either to a partner or to an outsider, the value is divisible among the partners in the same manner as they share profits and losses, unless otherwise agreed.

The rights of the buyer and seller of the goodwill are as follows:

(a) Buyer's Rights: On the sale of goodwill the buyer may, unless the terms in the contract of sale provide otherwise:

  (i) represent himself in continuing the business,

  (ii) maintain his exclusive rights to the use of the firm name, and

  (iii) solicit former customers of the business and restrain the seller of the goodwill from doing so.

(b) Seller's Rights: The vendors may enter into competition with the purchaser unless he is prevented by a valid restraint clause in the contract of sale.

Registration of the Firm

Section 56-71 deal with the registration of a firm and consequences of non-registration.

Registration: The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating:

(a) the name of the firm;

(b) the place or principal place of business of the firm;

(c) the names of any other places where the firm carries on business;

(d) the date when each partner joined the firm;

(e) the names in full and permanent addresses of the partners; and

(f) the duration of the firm.

The statement shall be signed and verified by all the partners or by their agents specially authorised in this behalf. (Section 58)

The Partnership Act, 1932, does not make registration of a firm compulsory but it introduces certain disabilities, which makes registration necessary at one time or other. An unregistered firm is not an illegal association.

Effects of Non-Registration

The following are the effects of non-registration of a firm:

1. Sub-section (1) of Section 69 places a bar on the right of the partners of a firm to sue each other or the firm for enforcing any right arising from a contract or conferred by the Partnership Act, if the firm is not registered and the person suing is or has not been shown in the Register of Firms as a partner in the firm.

2. Sub-section (2) of Section 69 places a bar on the institution of a suit by or on behalf of a firm against a third-party if the firm is not registered and the persons suing are or have not been shown in the Register of Firms as partners in the firm.

3. There is no bar on the right of third-parties to sue the firm or any partner.

However, the Act allows the following suits:

(a) A suit for the dissolution of a firm.

(b) A suit for rendering of accounts of a dissolved firm.

(c) A suit for realisation of the property of a dissolved firm.

(d) A suit or claim of set-off, the value of which does not exceed one hundred rupees,

(e) A proceeding in execution or other proceeding incidental to or arising from a suit or claim for not exceeding one hundred rupees in value.

(f) A suit by a firm which has no place of business in the territories to which the Indian Partnership Act extends.

(g) A suit for the realisation of the property of an insolvent partner.

(h) A suit by a firm whose places of business are situated in areas which are exempted from the application of Chapter VII of the Indian Partnership Act, 1932.

Section 69 bars the very institution of a suit by an unregistered firm or by its partners. Registration is a condition precedent to the right to institute the suit and, therefore, the condition precedent must first be fulfilled before the institution of the suit. If, therefore, on the date of the institution of a suit, the firm is not registered, the subsequent registration cannot validate the suit. The only option left to the Court is to dismiss the suit (Prithvi Singh v. Hasan Ali, (1950) Bom. L.R. 862). By virtue of this provision a partner of an unregistered firm cannot institute a suit to compel the other partner or partners to join in the registration of firm. The only remedy of such a partner is to institute a suit for dissolution (Keshav Lal v. Chuni Lal, AIR 1941 Rangoon 196). A suit by the firm is really a suit by all the partners who were its partners at the time of the accrual of the cause of action and, therefore, all must join in the institution of the suit. However, an unregistered firm can bring a suit to enforce a right arising otherwise than out of contract e.g., for an injunction against a person for wrongful infringement of trade mark etc.

Specific Performance of Partnership Agreement

The working of a partnership depends upon the personal inclination of the partners, there can be no specific performance of a partnership agreement (Scott v. Raymont, 1868, 7 Fq. 112).

Suit for Libel or Slander

A firm is merely a collection of partners and cannot bring a suit for libel or slander. Libel or slander against a firm imply a libel or slander of its partners. Such partners themselves or any one may file the suit for libel or slander (P. K. Oswal Hosiery Mills v. Tilak Chand, AIR 1969, Punj. 150).

OVERVIEW OF LIMITED LIABILITY PARTNERSHIP ACT

Meaning

Limited Liability Partnership has been introduced in India by way of Limited Liability Partnership Act, 2008.

A Limited Liability Partnership, popularly known as LLP combines the advantages of both the Company and Partnership into a single form of organization. In an LLP one partner is not responsible or liable for another partner's misconduct or negligence; this is an important difference from that of an unlimited partnership. In an LLP, all partners have a form of limited liability for each individual's protection within the partnership, similar to that of the shareholders of a corporation. However, unlike corporate shareholders, the partners have the right to manage the business directly. An LLP also limits the personal liability of a partner for the errors, omissions, incompetence, or negligence of the LLP's employees or other agents.

LLP has a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their agreed contribution in the LLP. Further, no partner would be liable on account of the independent or un-authorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.

Limited Liability Partnership Act, 2008 came into effect by way of notification dated 31st March 2009. Provisions of the Partnership Act, 1932 do not apply to Limited Liability Partnership.

LLP as Body Corporate

According to LLP Act, 2008 –

(1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

(2) A limited liability partnership shall have perpetual succession.

(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

Characteristics of LLP

(i) The LLP shall be a body corporate and a legal entity having perpetual succession, separate from its partners.

(ii) The mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the LLP Act 2008. The act provides flexibility to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of proposed the LLP Act.

(iii) The LLP will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be of tangible or intangible nature or both tangible and intangible in nature. No partner would be liable on account of the independent or un-authorized actions of other partner or their misconduct. The liabilities of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.

(iv) Every Partner Equal: Each partner is an equal member in a LLP company. They decide together on various company issues, such as the name of the business, where it is located and how it is going to be operated. Partners also share equally in the profits and losses of the business. Like a general partnership, there are no limits to the number of partners a LLP can have.

(iv) Limited Liability Protection: Each partner in this type of partnership is protected against the actions of the other partners which results in a lawsuit.

Advantages of LLP

1. Separate legal entity: An LLP is a separate legal entity, distinct from its partners. It has perpetual succession, which means it can continue to exist even if one or more partners leave or die.
2. Limited liability: The liability of partners is limited to the amount of capital they have contributed to the LLP. Partners are not personally liable for the debts and obligations of the LLP.
3. No restriction on the number of partners: There is no minimum or maximum limit on the number of partners in an LLP. However, at least two partners are required to form an LLP.
4. Management: The LLP is managed by its partners, who can also be designated as designated partners. At least one designated partner must be a resident of India.
5. Audit and maintenance of accounts: An LLP must maintain proper books of accounts and have them audited annually.
6. Easy to establish
7. Flexibility without imposing detailed legal and procedural requirements
8. Perpetual existence irrespective of changes in partners
9. Internationally renowned form of business in comparison to Company
10. No requirement of minimum capital contribution

11. LLP & its partners are distinct from each other
12. Partners are not liable for Act of other partners
13. Personal assets of the partners are not exposed except in case of fraud
14. Easy to dissolve or wind-up
15. Less Cost of formation (Compared to a company)

Disadvantages of LLP

i. LLP cannot raise funds from Public
ii. Any act of the partner without the knowledge of other partners may bind the LLP
iii. Under some cases, liability may extend to personal assets of partners
iv. No separation of Management from owners

Distinction between LLP and ordinary partnership:

	LLP	Ordinary Partnership
Liability	In an LLP, the liability of partners is limited to the amount of capital they have contributed to the LLP.	the partners have unlimited liability, which means they are personally liable for the debts and obligations of the partnership.
Legal entity	In an LLP, it is a separate legal entity, and partners are not personally liable for the debts and obligations of the LLP.	An ordinary partnership is not a separate legal entity, and the partners are jointly and severally liable.
Management:	In an LLP, the partners can appoint designated partners who have the responsibility of managing the LLP.	In an ordinary partnership, all partners have an equal say in the management of the partnership.
Audit and maintenance of accounts.	In an LLP, proper books of accounts must be maintained and audited annually.	An ordinary partnership is not required to maintain proper books of accounts or have them audited.

Limited Liability Partnership Agreements

Limited Liability Partnership Agreement (LLP Agreement) is a written agreement between the partners of the limited liability partnership or between limited liability partnerships and its partners which determines the mutual rights and duties in relation to that limited liability partnership.

Limited Liability Partnership is managed as per the LLP Agreement, however in the absence of such agreement the LLP would be governed by the framework provided in Schedule 1 of Limited Liability Partnership Act, 2008 which describes the matters relating to mutual rights and duties of partners of the LLP and of the limited liability partnership and its partners.

For example in case of M/s ABC LLP an agreement mutual rights and duties of partners executed among its partners X, Y and Z constitutes its LLP agreement. M/s ABC LLP and its partners may opt for an LLP agreement executed by all partners X, Y, Z and the ABC LLP. In absence of any such LLP agreement framework under Schedule 1 shall be applicable as if it is LLP Agreement of ABC LLP.

Provisions in absence of Limited Liability Partnership Agreements

Schedule 1 list provisions which shall be applicable to LLP in absence of LLP Agreement. These provisions are given here under :

1. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.
2. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him –
   (a) in the ordinary and proper conduct of the business of the limited liability partnership; or
   (b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.
3. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.
4. Every partner may take part in the management of the limited liability partnership.
5. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
6. No person may be introduced as a partner without the consent of all the existing partners.
7. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.
8. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership.
9. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.
10. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.
11. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.
12. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.
13. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996)

Where an LLP and its partner execute an LLP Agreement, they are free to alter modify or delete any of the provision given in Schedule 1. An LLP and its partners may have additional provisions in its LLP Agreement.

Partner

Any individual or body corporate may be a partner in a limited liability partnership

Any person may be admitted as partner in the LLP in accordance with LLP agreement of that LLP. Usually name of partners are mentioned in LLP Agreement or any of its supplementary agreement. However LLP agreement is not a mandatory requirement.

Eligibility to be a partner

On the incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation document shall be its partners. Any other person may become a partner of the limited liability partnership by and in accordance with the limited liability partnership agreement.

Qualification for individual partners –

An individual shall not be capable of becoming a partner of a limited liability partnership, if –

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

(b) he is an undischarged insolvent; or

(c) he has applied to be adjudicated as an insolvent and his application is pending.

Number of partners

Every limited liability partnership shall have at least two partners.

Liability of Partners

There shall be personal liability of a partner for his own wrongful act or omission. A partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

Partner as agent

Every partner of a limited liability partnership is agent of the limited liability partnership for the purpose of the business of the limited liability partnership. A partner is not agent of other partners of LLP.

Contribution

A contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership. Money, promissory notes, other agreements to contribute cash or property, contracts for services performed, contract of services to be performed are valid contribution.

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

Designated Partner

Every LLP shall have at least two Designated Partners. Designated Partners manages day to day affairs of LLP. Designated partners shall be individual. At least one of these designated partners shall be resident of India.

Designated partners shall be appointed by partners in accordance with LLP agreement. A Designated partner shall be an individual partner or nominee of partner which is a body corporate. In case of any body corporate is partner of an LLP, their nominee who is an individual may become designated partner.

Every designated partners shall have Designated Partner Identification Number (DPIN) or Director Identification

Number (DIN). A prior consent of person to be appointed as designated is required. LLP shall also file particulars of designated partner and his consent with the Registrar of LLPs.

Liabilities of designated Partners

A designated partner shall be responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act specified in the limited liability partnership agreement.

A Designated partner shall be liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Name of LLP

Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.

Before incorporation of an LLP, a promoter of LLP shall apply for reservation of name for proposed LLP. The Registrar may reserve an applied rule if it is not undesirable and not identical or too nearly reseamble with name of any existing partnership firm, LLP, company, body corporate or trademark.

Incorporation of LLP

For incorporation of a limited liability partnership –

(a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;

(b) the incorporation document shall be filed with the Registrar of LLP; and

(c) a statement made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant that all the requirements of this Act and the rules made thereunder have been complied with in respect of incorporation and matters precedent and incidental thereto.

Contents of incorporation documents

The incorporation document shall –

(a) be in a form as may be prescribed;

(b) state the name of the limited liability partnership;

(c) state the proposed business of the limited liability partnership;

(d) state the address of the registered office of the limited liability partnership;

(e) state the name and address of each of the persons who are to be partners of the limited liability partnership on incorporation;

(f) state the name and address of the persons who are to be designated partners of the limited liability partnership on incorporation;

(g) contain such other information concerning the proposed limited liability partnership as may be prescribed.

Registration of LLP/ Incorporation by Registration/ Certificate of Incorporation

On filing of incorporation documents, registrar shall retain and register incorporation documents. This registration of document is registration of LLP. An LLP when registered becomes incorporated. Upon registration of incorporation document, the registrar and give a certificate that the limited liability partnership is incorporated by the name specified therein. This certificate is called incorporation certificate of that LLP.

The incorporation certificate shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein. The certificate of incorporation shall be signed by the Registrar and authenticated by his official seal. The certificate of incorporation shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein.

Effect of Registration

On registration, a limited liability partnership shall, by its name, be capable of –

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;

(c) having a common seal, if it decides to have one; and

(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer. Registered Office –

Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.

Service of Documents

A document may be served on a limited liability partnership or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other prescribed manner at the registered office.

Publication of name and limited liability

Every limited liability partnership shall ensure that its invoices, official correspondence and publications bear the following, namely:–

(a) the name, address of its registered office and registration number of the limited liability partnership; and

(b) a statement that it is registered with limited liability.

Holding out

Any act of representing himself, or knowingly permits himself to be represented to be a partner in a limited liability partnership is called holding off. Any person holding off as partner is liable to any person who has on the faith of any such representation given credit to the limited liability partnership. It is not relevant that the person holding off to be a partner does or does not know that the representation has reached the person so giving credit.

Where any credit is received by the limited liability partnership as a result of such representation, the limited liability partnership shall be liable to the extent of credit received by it or any financial benefit derived thereon. This Liability of LLP shall be without prejudice to the liability of the person so representing himself or represented to be a partner.

Legal Representative of a partner shall not be liable

Where after a partner's death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.

Unlimited liability in case of fraud

Liability of LLP and its fraudulent partner shall be unlimited, if an act carried out by a limited liability partnership, or any of its partners,

1. with intent to defraud creditors or any other person, or
2. for any fraudulent purpose.

The liability of the limited liability partnership and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership.

Partner's transferable interest

The rights of a partner –

1. to a share of the profits and losses of the limited liability partnership,
2. to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.

Accordingly, a partner may transfer all or any of these rights wholly or in part.

The transfer of any right by any partner does not cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.

No transfer of management or control

Any transfer of any transferable interest or right by a partner does neither make the transferee a partner nor give any additional rights.

The transfer of transferable right does not the transferee or assignee –

- to participate in the management or conduct of the activities of the limited liability partnership, or
- access information concerning the transactions of the limited liability partnership.

Business transactions of partner with limited liability partnership

A partner may lend money to and transact other business with the limited liability partnership and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

Winding up and dissolution

The winding up of a limited liability partnership may be either voluntary or by the Tribunal. The limited liability partnership, so wound up may be dissolved.

Winding up by Tribunal

A limited liability partnership may be wound up by the Tribunal, **–**

(a) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;

(b) if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;

(c) if the limited liability partnership is unable to pay its debts; ***

(d) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;

(e) if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or

(f) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

**** clause (c) omitted by the Insolvency and Bankruptcy Code, 2016.*

Foreign limited liability partnership

"Foreign limited liability partnership" means a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India.

LESSON ROUNDUP

– The Indian Partnership Act, 1932 lays down the important provisions relating to partnership contracts. According to Section 4 "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all".

– The definition tells us that in order that persons may become partners, it is essential that:
  - There must be at least two persons
  - There must be a relationship arising out of an agreement between two or more persons to do a business
  - The agreement must be to share the profits of a business
  - The business must be carried on by all or any of them acting for all

– A partnership may either be for a particular adventure or for a fixed period. It may also be a partnership at will.

– Kinds of Partners
  - Actual, Active or Ostensible Partner
  - Sleeping or Dormant Partner
  - Nominal Partner
  - Partner in Profits Only
  - Sub-Partner
  - Partner by Estoppel or Holding Out

– The minor is incompetent to contract and, therefore, partnership cannot come into existence if the parties to a contract of partnership consist of one major and one minor.

- Every partner is an agent of the firm and of other partners for the purpose of the business of the firm.
- The authority of a partner means the capacity of a partner to bind the firm by his act. This authority may be express or implied.
- All partners are liable jointly and severally for all acts or omissions binding on the firm including liabilities arising from contracts as well as torts.
- The dissolution of partnership between all the partners of a firm" is called the "Dissolution of the Firm". A dissolution does not necessarily follow because the partnership has ceased to do business, for the partnership may continue for the purpose of realising the assets.
- Limited Liability Partnership has been introduced in India by way of Limited Liability Partnership Act, 2008.
- A Limited Liability Partnership, popularly known as LLP combines the advantages of both the Company and Partnership into a single form of organization. In an LLP one partner is not responsible or liable for another partner's misconduct or negligence; this is an important difference from that of an unlimited partnership.
- In an LLP, all partners have a form of limited liability for each individual's protection within the partnership, similar to that of the shareholders of a corporation. However, unlike corporate shareholders, the partners have the right to manage the business directly.
- An LLP also limits the personal liability of a partner for the errors, omissions, incompetence, or negligence of the LLP's employees or other agents.
- Limited Liability Partnership Agreement (LLP Agreement) is a written agreement between the partners of the limited liability partnership or between limited liability partnerships and its partners which determines the mutual rights and duties in relation to that limited liability partnership.
- Any individual or body corporate may be a partner in a limited liability partnership. Any person may be admitted as partner in the LLP in accordance with LLP agreement of that LLP. Usually nameof partners are mentioned in LLP Agreement or any of its supplementary agreement. However LLP agreementis not a mandatory requirement.

GLOSSARY

Ostensible Partner: A partner who invests money into the business of the firm, actively participates in the functioning and management of the business and shares its profits or losses.

Dormant Partner: A partner who invests money in the firm's business and shares profits but does not participate in the functioning and management of the business.

Nominal Partner: A partner who does not invest or participate in the management of the firm but only give their name to the business or firm.

Sub Partner: Where a partner agrees to share his profits in the firm with a third person, that third person is called a sub-partner.

TEST YOURSELF

Q1. The Partnership Act requires a minor to elect to be a partner in partnership firm after attaining majority within

(a) Three months of attaining majority

(b) Six months of attaining majority

(c) After six months of attaining majority

(d) After nine months of attaining majority

Q2. Which of the following acts are not included in implied authority of a partner?

(a) Hire and fire employees

(b) Purchase and sell goods of the firm

(c) Accept any payment of debts of the firm

(d) Admit any liability in proceedings against the firm

Q3. An unregistered firm cannot bring a suit

(a) For Dissolution of the firm

(b) Against third parties

(c) For realisation of property of an insolvent person

(d) Set-off value less than hundred rupees

Q4. Which of the following is not recognised as a partner in partnership firm?

(a) Active and ostensible partner

(b) Sleeping partner

(c) Assigned and service partner

(d) Nominal and sub-partner

Q5. Partner by holding out is referred to as –

(a) Partner by estoppel

(b) Partner for profits only

(c) Minor Partner

(d) Partners admitted at the time of retirement of a partner

Q6. Who among the following is not qualified to be a partner in partnership firm?

(a) Minor

(b) Clerk of the firm

(c) Insolvent person

(d) person holding out

Q7. The true test of partnership is

(a) Partnership deed

(b) Sharing of profits

(c) Mutual agency

(d) Testimony of partners

Q8. Every limited liability partnership shall have at least partners.

(a) 1

(b) 2

(c) 3

(d) 5

Q9. At least of the designated partners of LLP shall be resident of India.

(a) 1

(b) 2

(c) 3

(d) 5

Q10. Foreign limited liability partnership means a limited liability partnership formed, incorporated or registered outside India which establishes a place of business_

(a) within India

(b) outside India

(c) both a & b

(d) none of these

SUGGESTED READINGS

(1) A manual of Mercantile Law – *M.C. Shukla*

(2) The Indian Partnership Act, 1932 – *Bare Act*

(3) Elements of Mercantile Law – *N. D. Kapoor*

(4) Law of Partnership – *Avtar Singh*

Elements of Law relating to Sale of Goods

Lesson 5

KEY CONCEPTS

■ Sale Goods ■ Future Goods ■ Contract of Sale ■ Agreement to Sell ■ Doctrine of Caveat Emptor

Learning Objectives

To understand:

Sale of Goods Act is one of very old mercantile law. Sale of Goods is one of the special types of Contract. Initially, this was part of Indian Contract Act itself. Later, this was deleted in Contract Act, and separate Sale of Goods Act was passed in 1930.

Sale of Goods Act is complimentary to Contract Act. Basic provisions of Contract Act apply to contract of Sale of Goods Act also. Basic requirements of contract i.e. offer and legally enforceable agreement, mutual consent, parties competent to contract; free consent, lawful object, consideration etc. apply to contract of Sale of Goods Act also.

This lesson is to be taught after the students have been made familiar with the general principles of contract in which the emphasis is on understanding and appreciating the basic essentials of a valid contract and on the existence of contractual relationship in various instances. In today's era the need for awareness of buyers and sellers rights is of utmost importance. In the backdrop of this and Contract Act, Sales of Goods Act is taught here to let the buyers aware and sellers to comply the requisite law in letter and spirit.

Lesson Outline

- Introduction
- Contract of Sale of Goods
- Distinction between
  - Sale and Agreement to Sell
  - Sale and Bailment
  - Sale and Contract for work and Labour
  - Sale and Hire Purchase Agreement
- Subject matter of Contract of Sale of Goods
- Conditions and Warranties
- Doctrine of Caveat Emptor
- Passing of Property or Transfer of Ownership
- Transfer of Title by Person not the Owner
- Performance of the Contract of Sale
- Review Questions
- Unpaid Seller
- Lesson Round Up
- Glossary
- Test Yourself
- Suggested readings

INTRODUCTION

The law relating to sale of goods is contained in the Sale of Goods Act, 1930. It has to be read as part of the Indian Contract Act, 1872 [Sections 2(5) and (3)].

Contract of Sale of Goods

According to Section 4, a contract of sale of goods is a contract whereby the seller:

(i) transfers or agrees to transfer the property in goods,

(ii) to the buyer,

(iii) for a money consideration called the price.

It shows that the expression "contract of sale" includes both a sale where the seller transfers the ownership of the goods to the buyer, and an agreement to sell where the ownership of goods is to be transferred at a future time or subject to some conditions to be fulfilled later on.

The following are thus the essentials of a contract of sale of goods:

(i) *Bilateral contract:* It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself.

(ii) *Transfer of property:* The object of a contract of sale must be the transfer of property (meaning ownership) in goods from one person to another.

(iii) *Goods:* The subject matter must be some goods.

(iv) *Price or money consideration:* The goods must be sold for some price, where the goods are exchanged for goods it is barter, not sale.

(v) *All essential elements of a valid contract* must be present in a contract of sale.

Difference between Sale and Agreement to Sale

The following points will bring out the distinction between sale and an agreement to sell:

(a) In a sale, the property in the goods sold passes to the buyer at the time of contract so that he becomes the owner of the goods. In an agreement to sell, the ownership does not pass to the buyer at the time of the contract, but it passes only when it becomes sale on the expiry of certain time or the fulfilment of some conditions subject to which the property in the goods is to be transferred.

(b) An agreement to sell is an executory contract; a sale is an executed contract.

(c) An agreement to sell is a contract pure and simple, but a sale is contract plus conveyance.

(d) If there is an agreement to sell and the goods are destroyed by accident, the loss falls on the seller. In a sale, the loss falls on the buyer, even though the goods are with the seller.

(e) If there is an agreement to sell and the seller commits a breach, the buyer has only a personal remedy against the seller, namely, a claim for damages. But if there has been a sale, and the seller commits a breach by refusing to deliver the goods, the buyer has not only a personal remedy against him but also the other remedies which an owner has in respect of goods themselves such as a suit for conversion or detenue, etc.

Sale and Bailment

A "bailment" is a transaction under which goods are delivered by one person (the bailor) to another (the bailee) for some purpose, upon a contract that they be returned or disposed of as directed after the purpose is accomplished (Section 148 of the Indian Contact Act, 1872).

The property in the goods is not intended to and does not pass on delivery though it may sometimes be the intention of the parties that it should pass in due course. But where goods are delivered to another on terms which indicate that the property is to pass at once the contract must be one of sale and not bailment.

Sale and Contract for Work and Labour

The distinction between a "sale" and a "contract for work and labour" becomes important when question of passing of property arises for consideration.

However, these two are difficult to distinguish. The test generally applied is that if as a result of the contract, property in an article is transferred to one who had no property therein previously for a money consideration, it is a sale, where it is otherwise it is a contract for work and labour.

Sale and Hire Purchase Agreement

"Sale", is a contract by which property in goods passes from the seller to the buyer for a price.

A "hire purchase agreement" is basically a contract of hire, but in addition, it gives the hirer an option to purchase the goods at the end of the hiring period. Consequently, until the final payment, the hirer is merely a bailee of goods and ownership remains vested in the bailor. Under such a contract, the owner of goods delivers the goods to person who agrees to pay certain stipulated periodical payments as hire charges. Though the possession is with the hirer, the ownership of the goods remains with the original owner.

The essence of hire purchase agreement is that there is no agreement to buy, but only an option is given to the hirer to buy by paying all the instalments or put an end to the hiring and return the goods to the owner, at any time before the exercise of the option.

Since the hirer does not become owner of the goods until he has exercised his option to buy, he cannot pass any title even to an innocent and *bona fide* purchaser. The transaction of hire-purchase protects the owner of the goods against the insolvency of the buyer, for if the buyer becomes insolvent or fails to pay the instalments, he can take back the goods as owner. If the hirer declines to take delivery of the goods, the remedy of the owner will be damages for non-hiring and not for rent for the period agreed.

It is important to note the difference between a hire purchase agreement and mere payment of the price by instalments because, the latter is a sale, only the payment of price is to be made by instalments.

The distinction between the two is very important because, in a hire-purchase agreement the risk of loss or deterioration of the goods hired lies with the owner and the hirer will be absolved of any responsibility therefor, if he has taken reasonable care to protect the same as a bailee. But it is otherwise in the case of a sale where the price is to be paid in instalments.

SUBJECT MATTER OF CONTRACT OF SALE OF GOODS

Goods: The subject matter of the contract of sale is essentially goods. According to Section 2(7) of the Sale of Goods Act, "goods" means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Actionable claims and money are not goods and cannot be brought and sold under this Act. Money means current money, i.e., the recognised currency in circulation in the country, but not old and rare coins which may be treated as goods. An actionable claim is what a person cannot make a present use of or enjoy, but what can be recovered by him by means of a suit or an action. Thus, a debt due to a man from another is an actionable claim and cannot be sold as goods, although it can be assigned. Under the provisions of the Transfer of Property Act, 1882, goodwill, trade marks, copyrights, patents are all goods, so is a ship. As regards water, gas, electricity, it is doubtful whether they are goods (*Rash Behari* v. *Emperor,* (1936) 41 C.W.N. 225; *M.B. Electric Supply Co. Ltd.* v. *State of Rajasthan,* AIR (1973) Raj. 132).

Goods may be

(a) existing,

(b) future, or

(c) contingent.

The existing goods may be

(i) specific or generic,

(ii) ascertained or unascertained.

(i) ***Existing Goods:*** Existing goods are goods which are either owned or possessed by the seller at the time of the contract. Sale of goods possessed but not owned by the seller would be by an agent or pledgee.

Existing goods are specific goods which are identified and agreed upon at the time of the contract of sale. Ascertained goods are either specific goods at the time of the contract or are ascertained or identified to the contract later on i.e. made specific.

Generic or unascertained goods are goods which are not specifically identified but are indicated by description. If a merchant agrees to supply a radio set from his stock of radio sets, it is a contract of sale of unascertained goods because it is not known which set will be delivered. As soon as a particular set is separated or identified for delivery and the buyer has notice of it, the goods are ascertained and become specific goods.

(ii) ***Future Goods:*** Future goods are goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. A agrees to sell all the mangoes which will be produced in his garden next season. This is an agreement for the sale of future goods. [Section 2(6)]

(iii) ***Contingent Goods:*** Where there is a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen–such goods are known as contigent goods. Contigent goods fall in the class of future goods. A agrees to sell a certain TV set provided he is able to get it from its present owner. This is an agreement to sell contigent goods. In such a case, if the contingency does not happen for no fault of the seller, he will not be liable for damages.

Actual sale can take place only of specific goods and property in goods passes from the seller to buyer at the time of the contract, provided the goods are in a deliverable state and the contract is unconditional.

There can be an agreement to sell only in respect of future or contingent goods.

Effect of Perishing of Goods

In a contract of sale of goods, the goods may perish before sale is complete. Such a stage may arise in the following cases:

(i) ***Goods perishing before making a contract***

Where in a contract of sale of specific goods, the goods without the knowledge of the seller have, at the time of making the contract perished or become so damaged as no longer to answer to their description in the contract, the contract is void. This is based on the rule that mutual mistake of fact essential to the contract renders the contract void. (Section 7)

If the seller was aware of the destruction and still entered into the contract, he is estopped from disputing the contract. Moreover, perishing of goods not only includes loss by theft but also where the goods have lost their commercial value.

(ii) ***Goods perishing after agreement to sell***

Where there is an agreement to sell specific goods, and subsequently the goods without any fault of any party perish or are so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided. The provision applies only to sale of specific goods. If the sale is of unascertained goods, the perishing of the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver. (Section 8)

Price

No sale can take place without a price. Thus, if there is no valuable consideration to support a voluntary surrender of goods by the real owner to another person, the transaction is a gift, and is not governed by the Sale of Goods Act. Therefore, price, which is money consideration for the sale of goods, constitutes the essence for a contract of sale. It may be money actually paid or promised to be paid. If a consideration other than money is to be given, it is not a sale.

Modes of Fixing Price (Sections 9 and 10)

The price may be fixed:

(i) at the time of contract by the parties themselves, or

(ii) may be left to be determined by the course of dealings between the parties, or

(iii) may be left to be fixed in some way stipulated in the contract, or

(iv) may be left to be fixed by some third-party.

Where the contract states that the price is to be fixed by a third-party and such third-party fails to do so, the contract is void. But if the buyer has already taken the benefit of the goods, he must pay a reasonable price for them. If the third-party's failure to fix the price is due to the fault of the seller or buyer, then that party is liable for an action for damages.

Where nothing is said by the parties regarding price, the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent upon the circumstances of each particular case. Generally, the market price would be a reasonable price.

CONDITIONS AND WARRANTIES (SECTIONS 10-17)

The parties are at liberty to enter into a contract with any terms they please. As a rule, before a contract of sale is concluded, certain statements are made by the parties to each other. The statement may amount to a stipulation, forming part of the contract or a mere expression of opinion which is not part of the contract. If it is a statement by the seller on the reliance of which the buyer makes the contract, it will amount to a stipulation. If it is a mere commendation by the seller of his goods it does not amount to a stipulation and does not give the right of action.

The stipulation may either be a condition or a warranty. Section 12 draws a clear distinction between a condition and a warranty. Whether a stipulation is a condition or only a warranty is a matter of substance rather than the form of the words used. A stipulation may be a condition though called a warranty and vice versa.

Conditions

If the stipulation forms the very basis of the contract or is essential to the main purpose of the contract, it is a condition. The breach of the condition gives the aggrieved party a right to treat the contract as repudiated. Thus, if the seller fails to fulfil a condition, the buyer may treat the contract as repudiated, refuse the goods and, if he has already paid for them, recover the price. He can also claim damages for the breach of contract.

Warranties

If the stipulation is collateral to the main purpose of the contract, i.e., is a subsidiary promise, it is a warranty. The effect of a breach of a warranty is that the aggrieved party cannot repudiate the contract but can only claim damages. Thus, if the seller does not fulfil a warranty, the buyer must accept the goods and claim damages for breach of warranty.

Section 11 states that the stipulation as to time of payment are not to be deemed conditions (and hence not to be of the essence of a contract of sale) unless such an intention appears from the contract. Whether any other stipulation as to time (e.g., time of delivery) is of the essence of the contract or not depends on the terms of the contract.

When Condition Sinks to the Level of Warranty

In some cases a condition sinks or descends to the level of a warranty. The first two cases depend upon the will of the buyer, but the third is compulsory and acts as estoppel against him.

(a) A condition will become a warranty where the buyer waives the condition; or

(b) A condition will sink to the level of a warranty where the buyer treats the breach of condition as a breach of warranty; or

(c) Where the contract is indivisible and the buyer has accepted the goods or part thereof, the breach of condition can only be treated as breach of warranty. The buyer can only claim damages and cannot reject the goods or treat the contract as repudiated.

Sometimes the seller may be excused by law from fulfilling any condition or warranty and the buyer will not then have a remedy in damages.

Implied Warranties/Conditions

Even where no definite representations have been made, the law implies certain representations as having been made which may be warranties or conditions. An express warranty or condition does not negative an implied warranty or condition unless inconsistent therewith.

There are two implied warranties:

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

(a) ***Implied warranty of quiet possession**:* If the circumstances of the contract are such as there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

(b) ***Implied warranty against encumbrances**:* There is a further warranty that the goods are not subject to any right in favour of a third-party, or the buyer's possession shall not be disturbed by reason of the existence of encumbrances. This means that if the buyer is required to, and does discharge the amount of the encumbrance, there is breach of warranty, and he is entitled to claim damages from the seller.

Implied Conditions [Sections 14(a), 15(1), (2), 16(1) and Proviso 16(2), and Proviso 16(3) and 12(b) and 12(c)]. Different implied conditions apply under different types of contracts of sale of goods, such as sale by description, or sale by sample, or sale by description as well as sample. The condition, as to title to goods applies to all types of contracts, subject to that there is apparently no other intention.

Implied Conditions as to Title

There is an implied condition that the seller, in an actual sale, has the right to sell the goods, and, in an agreement to sell, he will have a right to sell the goods at the time when property is to pass. As a result, if the title of the seller turns out to be defective, the buyer is entitled to reject the goods and can recover the full price paid by him.

In *Rowland* v. *Divall* (1923) 2 K.B. 500, 'A' had bought a second hand motor car from 'B' and paid for it. After he had used it for six months, he was deprived of it because the seller had no title to it. It was held that 'B' had broken the condition as to title and 'A' was therefore, entitled to recover the purchase money from 'B'

Implied Conditions under a Sale by Description

In a sale by description there are the following implied conditions:

(a) *Goods must correspond with description:* It is provided under Section 15 of the Act that when there is a sale of goods by description, there is an implied condition that the goods shall correspond with description.

In a sale by description, the buyer relies for his information on the description of the goods given by the seller, e.g. in the contract or in the preliminary negotiations.

Where 'A' buys goods which he has not seen, it must be sale by description, e.g., where he buys a 'new Fiat car' from 'B' and the car is not new, he can reject the car.

Even if the buyer has seen the goods, the goods must be in accordance with the description (*Beale* v. *Taylor* (1967) All E.R. 253).

(b) *Goods must also be of merchantable quality:* If they are bought by description from dealer of goods of that description. [Section 16(2)]

Merchantable quality means that the goods must be such as would be acceptable to a reasonable person, having regard to prevailing conditions. They are not merchantable if they have defects which make them unfit for ordinary use, or are such that a reasonable person knowing of their condition would not buy them. 'P' bought black yarn from 'D' and, when delivered, found it damaged by the white ants. The condition of merchantability was broken.

But, if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. If, however, examination by the buyer does not reveal the defect and he approves and accepts the goods, but when put to work, the goods are found to be defective, there is a breach of condition of merchantable quality.

The buyer is given a right to examine the goods before accepting them. But a mere opportunity without an actual examination, however, cursory, would not suffice to deprive him of this right.

(c) *Condition as to wholesomeness:* The provisions, (i.e., eatables) supplied must not only answer the description, but they must also be merchantable and wholesome or sound. 'F' bought milk from 'A' and the milk contained typhoid germs. 'F's wife became infected and died. 'A' was liable for damages. Again, 'C' bought a bun at 'M's bakery, and broke one of his teeth by biting on a stone present in the bun. 'M' was held liable.

(d) *Condition as to quality or fitness for a particular purpose:* Ordinarily, in a contract of sale, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied.

But there is an implied condition that the goods are reasonably fit for the purpose for which they are required if:

(i) the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill and judgement, and

(ii) the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not). There is no such condition if the goods are bought under a patent or trade name.

In *Priest* v. *Last* (1903) 2 K.B. 148, a hot water bottle was bought by the plaintiff, a draper, who could not be expected to have special skill knowledge with regard to hot water bottles, from a chemist, who sold such articles stating that the bottle will not stand boiling water but was intended to hold hot water. While being used by the plaintiff's wife, the bottle bursted and injured her. *Held,* the seller was responsible for damages as the bottle was not fit for use as a hot water bottle.

In *Grant* v. *Australian Knitting Mills* (1936) 70 MLJ 513, 'G' a doctor purchased woollen underpants from 'M' a retailer whose business was to sell goods of that description. After wearing the underpants, 'G' developed some skin diseases. *Held,* the goods were not fit for their only use and 'G' was entitled to avoid the contract and claim damages.

Implied Conditions under a Sale by Sample **(Section 17)**

In a contract of sale by sample:

(a) there is an implied condition that the bulk shall correspond with the sample in quality;

(b) there is another implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) it is further an implied condition of merchantability, as regards latent or hidden defects in the goods which would not be apparent on reasonable examination of the sample. "Worsted coating" quality equal to sample was sold to tailors, the cloth was found to have a defect in the fixture rendering the same unfit for stitching into coats. The seller was held liable even though the same defect existed in the sample, which was examined.

Implied Conditions in Sale by Sample as Well as by Description

In a sale by sample as well as by description, the goods supplied must correspond both with the samples as well as with the description. Thus, in *Nichol* v. *Godis* (1854) 158 E.R. 426, there was a sale of "foreign refined rape- oil having warranty only equal to sample". The oil tendered was the same as the sample, but it was not "foreign refined rape-oil" having a mixture of it and other oil. It was held that the seller was liable, and the buyer could refuse to accept.

Implied Warranties

Implied warranties are those which the law presumes to have been incorporated in the contract of sale inspite of the fact that the parties have not expressly included them in a contract of sale. Subject to the contract to the contrary, following are the implied warranties in a contract of sale:

(i) ***Warranty as to Quiet Possession:*** Section 14(b) of the Sale of Goods Act provides that there is an implied warranty that the buyer shall have and enjoy quiet possession of goods. If the buyer's possession is disturbed by anyone having superior title than that of the seller, the buyer is entitled to hold the seller liable for breach of warranty.

(ii) ***Warranty as to Freedom from Encumbrances****:* Section 14(c) states that in a contract of sale, there is an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made. But if the buyer is aware of any encumbrance on the goods at the time of entering into the contract, he will not be entitled to any compensation from the seller for discharging the encumbrance.

(iii) ***Warranty to Disclose Dangerous Nature of Goods***: If the goods are inherently dangerous or likely to be dangerous and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger.

(iv) ***Warranties implied by the custom or usage of trade***: Section 16(3) provides that an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

Doctrine of *Caveat Emptor*

The term *"caveat emptor"* is a Latin word which means "let the buyer beware". This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose. The doctrine of *caveat emptor* is embodied in Section 16 of the Act which states that "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". In simple words, it is not the seller's duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose. The principle was applied in the case of *Ward* v. *Hobbs,* (1878) 4 A.C. 13, where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer's own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer's duty to satisfy himself regarding the health of the pigs.

Exceptions: Section 16 lays down the following exceptions to the doctrine of *Caveat Emptor:*

(1) Where the seller makes a false representation and the buyer relies on it.

(2) When the seller actively conceals a defect in the goods which is not visible on a reasonable examination of the same.

(3) When the buyer, relying upon the skill and judgement of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.

(4) Where goods are bought by description from a seller who deals in goods of that description.

Passing of Property or Transfer of Ownership (Sections 18-20)

The sole purpose of a sale is the transfer of ownership of goods from the seller to the buyer. It is important to know the precise moment of time at which the property in the goods passes from the seller to the buyer for the following reasons:

(a) The general rule is that risk follows the ownership, whether the delivery has been made or not. If the goods are lost or damaged by accident or otherwise, then, subject to certain exceptions, the loss falls on the owner of the goods at the time they are lost or damaged.

(b) When there is a danger of the goods being damaged by the action of third parties, it is generally the owner who can take action.

(c) The rights of third parties may depend upon the passing of the property if the buyer resells the goods to a third-party, the third-party will only obtain a good title if the property in the goods has passed to the buyer before or at the time of the resale. Similarly, if the seller, in breach of his contract with the buyer, attempts to sell the goods to a third party in the goods, has not passed to the buyer, e.g., where there is only an agreement to sell.

(d) In case of insolvency of either the seller or the buyer, it is necessary to know whether the goods can be taken over by the official assignee or the official receiver. It will depend upon whether the property in the goods was with the party adjudged insolvent.

Thus in this context, ownership and possession are two distinct concepts and these two can at times remain separately with two different persons.

Passing of Property in Specific Goods

In a sale of specific or ascertained goods, the property in them passes to the buyer as and when the parties intended to pass. The intention must be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case.

Unless a contrary intention appears, the following rules are applicable for ascertaining the intention of the parties:

(a) Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made. Deliverable state means such a state that the buyer would be bound to take delivery of the goods. The fact that the time of delivery or the time of payment is postponed does not prevent the property from passing at once. (Section 20)

(b) Where there is a contract for the sale of specific goods not in a deliverable state, i.e., the seller has to do something to the goods to put them in a deliverable state, the property does not pass until that thing is done and the buyer has notice of it. (Section 21)

A certain quantity of oil was brought. The oil was to be filled into casks by the seller and then taken away by the buyer. Some casks were filled in the presence of buyer but, before the remainder could be filled, a fire broke out and the entire quantity of oil was destroyed, *Held,* the buyer must bear the loss of the oil which was put into the casks (i.e., put in deliverable state) and the seller must bear the loss of the remainder (*Rugg* v. *Minett* (1809) 11 East 210).

(c) Where there is a sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do something with reference to the goods for the purpose of ascertaining the price, the property to the goods for the purpose of ascertaining the price, does not pass until such act or thing is done and the buyer has notice of it. (Section 22)

(d) When goods are delivered to the buyer "on approval" or "on sale of return" or other similar terms the property therein passes to the buyer:

(i) when he signifies his approval or acceptance to the seller, or does any other act adopting the transaction;

(ii) if he does not signify his approval or acceptance but retains the goods without giving notice of rejection, in such a case—(a) if a time has been fixed for the return of the goods, on the expiration of such time; and (b) if no time has been fixed, on the expiration of a reasonable time.

Ownership in Unascertained Goods

The property in unascertained or future goods does not pass until the goods are ascertained.

Unascertained goods are goods defined by description only, for example, 100 quintals of wheat; and not goods identified and agreed upon when the contract is made.

Unless a different intention appears, the following rules are applicable for ascertaining the intention of the parties in regard to passing of property in respect of such goods:

(a) The property in unascertained or future goods sold by description passes to the buyer when goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller. Such assent may be expressed or implied and may be given either before or after the appropriation is made. (Section 23)

(b) If there is a sale of a quantity of goods out of a large quantity, for example, 50 quintals of rice out of a heap in B's godown, the property will pass on the appropriation of the specified quantity by one party with the assent of the other.

(c) Delivery by the seller of the goods to a carrier or other buyer for the purpose of transmission to the buyer in pursuance of the contact is an appropriation sufficient to pass the property in the goods.

(d) The property in goods, whether specific or unascertained, does not pass if the seller reserves the right of disposal of the goods. Apart from an express reservation of the right of disposal, the seller is deemed to reserve the right of disposal in the following two cases:

   (i) where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, the goods are deliverable to the order of the seller or his agent.

   (ii) when the seller sends the bill of exchange for the price of the goods to the buyer for this acceptance, together with the bill of lading, the property in the goods does not pass to the buyer unless he accepts the bill of exchange.

Passing of Risk **(Section 26)**

The general rule is that goods remain at the seller's risk until the ownership is transferred to the buyer. After the ownership has passed to the buyer, the goods are at the buyer's risk whether the delivery has been made or not. For example, 'A' buys goods of 'B' and property has passed from 'B' to 'A'; but the goods remain in 'B's warehouse and the price is unpaid. Before delivery, 'B's warehouse is burnt down for no fault of 'B' and the goods are destroyed. 'A' must pay 'B' the price of the goods, as he was the owner. The rule is *resperit demino*-the loss falls on the owner.

But the parties may agree that risk will pass at the time different from the time when ownership passed. For example, the seller may agree to be responsible for the goods even after the ownership is passed to the buyer or *vice versa*.

Transfer of Title by Person not the Owner (Section 27-30)

The general rule is that only the owner of goods can sell the goods. Conversely, the sale of an article by a person who is not or who has not the authority of the owner, gives no title to the buyer. The rule is expressed by the maxim; *"Nemo Dat Quod Non Habet"* i.e. no one can pass a better title than he himself has. As applied to the sale of goods, the rule means that a seller of goods cannot give a better title to the buyer than he himself possess. Thus, even a *bona fide* buyer who buys stolen goods from a thief or from a transfree from such a thief can get no valid title to them, since the thief has no title, nor could he give one to any transferee.

Example:

1. A, the hirer of goods under a hire purchase agreement, sells them to B, then B, though a *bona fide* purchaser, does not acquire the property in the goods. At most he can acquire such an interest as the hirer had.
2. A finds a ring of B and sells it to a third person who purchases it for value and in good faith. The true owner, i.e. B can recover from that person, for A having no title to the ring could pass none the better.

Exception to the General Rule

The Act while recognizing the general rule that no one can give a better title than he himself has, laid down important exceptions to it. Under the exceptions the buyer gets a better title to the goods than the seller himself. These exceptions are given below:

(a) *Sale by a mercantile agent:* A buyer will get a good title if he buys in good faith from a mercantile agent who is in possession either of the goods or documents of title to the goods with the consent of the owner, and who sells the goods in the ordinary course of his business.

(b) *Sale by a co-owner:* A buyer who buys in good faith from one of the several joint owners who is in sole possession of the goods with the permission of his co-owners will get good title to the goods.

(c) *Sale by a person in possession under a voidable contract:* A buyer buys in good faith from a person in possession of goods under a contract which is voidable, but has not been rescinded at the time of the sale.

(d) *Sale by seller in possession after sale:* Where a seller, after having sold the goods, continues or is in possession of the goods or of the documents of title to the goods and again sells them by himself or through his mercantile agent to a person who buys in good faith and without notice of the previous sale, such a buyer gets a good title to the goods.

(e) *Sale by buyer in possession:* If a person has brought or agreed to buy goods obtains, with the seller's consent, possession of the goods or of the documents of title to them, any sale by him or by his mercantile agent to a buyer who takes in good faith without notice of any lien or other claim of the original seller against the goods, will give a good title to the buyer. In any of the above cases, if the transfer is by way of pledge or pawn only, it will be valid as a pledge or pawn.

(f) *Estoppel:* If the true owner stands by and allows an innocent buyer to pay over money to a third-party, who professes to have the right to sell an article, the true owner will be estopped from denying the third- party's right to sell.

(g) *Sale by an unpaid seller:* Where an unpaid seller has exercised his right of lien or stoppage in transit and is in possession of the goods, he may resell them and the second buyer will get absolute right to the goods.

(g) *Sale by person under other laws:* A pawnee, on default in repayment, has a right to sell thegoods, pawned and the buyer gets a good title to the goods. The finder of lost goods can also sell under certain circumstances. The Official Assignee or Official Receiver, Liquidator, Officers of Court selling under a decree, Executors, and Administrators, all these persons are not owners, but they can convey better title than they have.

PERFORMANCE OF THE CONTRACT OF SALE

It is the duty of the seller and buyer that the contract is performed. The duty of the seller is to deliver the goods and that of the buyer to accept the goods and pay for them in accordance with the contract of sale.

Unless otherwise agreed, payment of the price and the delivery of the goods and concurrent conditions, i.e., they both take place at the same time as in a cash sale over a shop counter.

***Delivery* (Sections 33-39)**

Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic. *Actual or physical delivery* takes place where the goods are handed over by the seller to the buyer or his agent authorised to take possession of the goods. *Constructive* delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer. For example, where the seller, after having sold the goods, may hold them as bailee for the buyer, there is constructive delivery. *Symbolic* delivery is made by indicating or giving a symbol. Here the goods themselves are not delivered, but the "means of obtaining possession" of goods is delivered, e.g, by delivering the key of the warehouse where the goods are stored, bill of lading which will entitle the holder to receive the goods on the arrival of the ship.

Rules as to Delivery

The following rules apply regarding delivery of goods:

(a) Delivery should have the effect of putting the buyer in possession.

(b) The seller must deliver the goods according to the contract.

(c) The seller is to deliver the goods when the buyer applies for delivery; it is the duty of the buyer to claim delivery.

(d) Where the goods at the time of the sale are in the possession of a third person, there will be delivery only when that person acknowledges to the buyer that he holds the goods on his behalf.

(e) The seller should tender delivery so that the buyer can take the goods. It is no duty of the seller to send or carry the goods to the buyer unless the contract so provides. But the goods must be in a deliverable state at the time of delivery or tender of delivery. If by the contract the seller is bound to send the goods to the buyer, but no time is fixed, the seller is bound to send them within a reasonable time.

(f) The place of delivery is usually stated in the contract. Where it is so stated, the goods must be delivered at the specified place during working hours on a working day. Where no place is mentioned, the goods are to be delivered at a place at which they happen to be at the time of the contract of sale and if not then in existence they are to be delivered at the place at which they are manufactured or produced.

(g) The seller has to bear the cost of delivery unless the contract otherwise provides. While the cost of obtaining delivery is said to be of the buyer, the cost of the putting the goods into deliverable state must be borne by the seller. In other words, in the absence of an agreement to the contrary, the expenses of and incidental to making delivery of the goods must be borne by the seller, the expenses of and incidental to receiving delivery must be borne by the buyer.

(h) If the goods are to be delivered at a place other than where they are, the risk of deterioration in transit will, unless otherwise agreed, be borne by the buyer.

(i) Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.

Acceptance of Goods by the Buyer

Acceptance of the goods by the buyer takes place when the buyer:

(a) intimates to the seller that he has accepted the goods; or

(b) retains the goods, after the lapse of a reasonable time without intimating to the seller that he has rejected them; or

(c) does any act on the goods which is inconsistent with the ownership of the seller, e.g., pledges or resells.

If the seller sends the buyer a larger or smaller quantity of goods than ordered, the buyer may:

(a) reject the whole; or

(b) accept the whole; or

(c) accept the quantity be ordered and reject the rest.

If the seller delivers with the goods ordered, goods of a wrong description, the buyer may accept the goods ordered and reject the rest, or reject the whole.

Where the buyer rightly rejects the goods, he is not bound to return the rejected goods to the seller. It is sufficient if he intimates the seller that he refuses to accept them. In that case, the seller has to remove them.

Installment Deliveries

When there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and either the buyer or the seller commits a breach of contract, it depends on the terms of the contract whether the breach is a repudiation of the whole contract or a severable breach merely giving right to claim for damages.

SUITS FOR BREACH OF CONTRACT

Where the property in the goods has passed to the buyer, the seller may sue him for the price.

Where the price is payable on a certain day regardless of delivery, the seller may sue for the price, if it is not paid on that day, although the property in the goods has not passed.

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

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue him for damages for non-delivery.

Where there is a breach of warranty or where the buyer elects or is compelled to treat the breach of condition as a breach of warranty, the buyer cannot reject the goods. He can set breach of warranty in extinction or dimunition of the price payable by him and if loss suffered by him is more than the price he may sue for the damages.

If the buyer has paid the price and the goods are not delivered, the buyer can sue the seller for the recovery of the amount paid. In appropriate cases the buyer can also get an order from the court that the specific goods ought to be delivered.

Anticipatory Breach

Where either party to a contract of sale repudiates the contract before the date of delivery, the other party may either treat the contract as still subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

In case the contract is treated as still subsisting it would be for the benefit of both the parties and the party who had originally repudiated will not be deprived of:

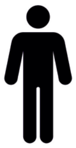
(a) his right of performance on the due date in spite of his prior repudiation; or

(b) his rights to set up any defence for non-performance which might have actually arisen after the date of the prior repudiation.

Measure of Damages

The Act does not specifically provide for rules as regards the measure of damages except by stating that nothing in the Act shall affect the right of the seller or the buyer to recover interest or special damages in any case were by law they are entitled to the same. The inference is that the rules laid down in Section 73 of the Indian Contract Act will apply.

UNPAID SELLER (SECTIONS 45-54)



Who is an unpaid seller? (Section 45)

The seller of goods is deemed to be unpaid seller:

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

(b) When a conditional payment was made by a bill of exchange or other negotiable instrument, and the instrument has been dishonoured.

RIGHTS OF AN UNPAID SELLER AGAINST THE GOODS

An unpaid seller's right against the goods are:

(a) A lien or right of retention

(b) The right of stoppage in transit.

(c) The right of resale.

(d) The right to withhold delivery.

(a) ***Right of Lien*** **(**Sections 47-49 and 54) An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to deliver them to the buyer until the fulfilment or tender of the price in cases where:

(i) the goods have been sold without stipulation as to credit; or

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

(iii) the buyer becomes insolvent.

The lien depends on physical possession. The seller's lien is *possessory lien,* so that it can be exercised only so long as the seller is in possession of the goods. It can only be exercised for the non-payment of the price and not for any other charges.

A lien is lost –

(i) When the seller 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) When the buyer or his agent lawfully obtains possession of the goods;

(iii) By waiver of his lien by the **unpaid seller.**

(b) ***Stoppage in transit*** (Sections 50-52) : The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price.

The right to stop goods is available to an unpaid seller

(i) when the buyer becomes insolvent; and

(ii) the goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehouse keeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The transit comes to an end in the following cases:

(i) If the buyer obtains delivery before the arrival of the goods at their destination;

(ii) If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer;

(iii) If the carrier wrongfully refuses to deliver the goods to the buyer.

If the goods are rejected by the buyer and the carrier or other bailee holds them, the transit will be deemed to continue even if the seller has refused to receive them back.

The right to stop in transit may be exercised by the unpaid seller either by taking actual possession of the goods or by giving notice of the seller's claim to the carrier or other person having control of the goods. On notice being given to the carrier, he must redeliver the goods to the seller who must pay the expenses of the redelivery.

The seller's right of lien or stoppage in transit is not affected by any sale on the part of the buyer unless the seller has assented to it. A transfer, however, of the bill of lading or other document of seller to a bona fide purchaser for value is valid against the seller's right.

(c) *Right of re-sale* (Section 54): The unpaid seller may re-sell: (i) where the goods are perishable;

(ii) where the right is expressly reserved in the contract;

(iii) where in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not pay or tender the price within a reasonable time.

If on a re-sale, there is a deficiency between the price due and amount realised, he is entitled to recover it from the buyer. If there is a surplus, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer profit, if any, on the resale.

(d) *Rights to withhold Delivery*: If the property in the goods has passed, the unpaid seller has right as described above. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

***Rights of an unpaid seller against the buyer* (Sections 55 and 56)**

An unpaid seller may sue the buyer for the price of the goods in case of breach of contract where the property in the goods has passed to the buyer or he has wrongfully refused to pay the price according to the terms of the contract.

The seller may sue the buyer even if the property in the goods has not passed where the price is payable on a certain day.

Under Section 56, the seller may sue the buyer for damages or breach of contract where the buyer wrongfully neglects or refuses to accept and pay for the goods.

Thus an unpaid sellers rights against the buyer personally are:

(a) a suit for the price.

(b) a suit for damages.

Auction Sales (Section 64)

A sale by auction is a public sale where goods are offered to be taken by bidders. It is a proceeding at which people are invited to complete for the purchase of property by successive offer of advancing sums.

Section 64 lays down the rules regulating auction sales. Where goods are put up for sale in lots, each, lot is *prima facie* deemed to be the subject of a separate contract of sale. The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made, any bidder may retract his bid.

A right to bid may be reserved expressly by or on behalf of the seller. Where such right is expressly so reserved, the seller or any other person on his behalf may bid at the auction. Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale in contravention of this rule may be treated as fraudulent by the buyer. The sale may be notified to be subject to a reserved price. Where there is such notification, every bid is a conditional offer subject to its being up to the reserve price. Where an auctioneer inadvertently knocks down to a bidder who has bid less than the reserved price, there is no contract of sale. If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Trading Contracts Involving Rail or Sea Transit

In the case of a contract for the sale of goods which are to be shipped by sea a number of conditions are attached by the parties or by custom and practice of merchants. Some of the important types of such contracts are given below:

(a) *F.O.B.(Free on Board):* Under an F.O.B. contract, it is the duty of the seller to put the goods on board a ship at his own expenses. The property in goods passes to the buyer only after the goods have been put on board the ship, and they are at buyer's risk as soon as they are put on board the ship, usually named by the buyer. The seller must notify the buyer immediately that the goods have been delivered on board, so that the buyer may insure them. If he fails to do so the goods shall be deemed to be at seller's risk during such sea transit.

(b) *F.O.R. (Free on Rail):* Similar position prevails in these contracts as in the case of F.O.B. contracts.

(c) *C.I.F. or C.F.I. (Cost Insurance and Freight):* A CIF contract is a contract for the sale of insured goods lost or not lost to be implemented by transfer of proper documents.

In such types of contracts, the seller not only bears all the expenses of putting the goods on board the ship as in an F.O.B. contract, but also to bear the freight and insurance charges. He will arrange for an insurance of the goods for the benefit of the buyer. On the tender of documents, the buyer is required to pay and then take delivery. He has a right to reject the goods if they are not according to the contract.

(d) *Ex-Ship:* Here the seller is bound to arrange the shipment of the goods to the port of destination, and to such further inland destination as the buyer may stipulate. The buyer is not bound to pay until the goods are ready for unloading from the ship and all freight charges paid. The goods travel at the seller's risk, but he is not bound to insure them.

LESSON ROUND UP

- The law relating to sale of goods is contained in the Sale of Goods Act, 1930. It has to be read as part of the Indian Contract Act, 1872.
- 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 money consideration called the price
  - The following are thus the essentials of a contract of sale of goods:
  - Bilateral contract
  - Transfer of property
  - Goods
  - Price or money consideration
  - All essential elements of a valid contract must be present in a contract of sale.
- In a sale, the property in the goods sold passes to the buyer at the time of contract so that he becomes the owner of the goods. In an agreement to sell, the ownership does not pass to the buyer at the time of the contract, but it passes only when it becomes sale on the expiry of certain time or the fulfilment of some conditions subject to which the property in the goods is to be transferred.
- Where goods are delivered to another on terms which indicate that the property is to pass at once the contract must be one of sale and not bailment.
- A "hire purchase agreement" is basically a contract of hire that gives the hirer an option to purchase the goods at the end of the hiring period.
- The subject matter of the contract of sale is essentially goods. According to Section 2(7) of the Sale of Goods Act, "goods" means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Goods may be

  (a) existing,

  (b) future, or

  (c) contingent.

  The existing goods may be

  (i) specific or generic,

  (ii) ascertained or unascertained.
- No sale can take place without a price. The price may be fixed:
  - at the time of contract by the parties themselves
  - may be left to be determined by the course of dealings between the parties
  - may be left to be fixed in some way stipulated in the contract
  - may be left to be fixed by some third-party.

- The parties are at liberty to enter into a contract with any terms they please. Before a contract, certain statements are made by the parties to each other. The statement may amount to a stipulation. Stipulation may either be a condition or a warranty.
- The sole purpose of a sale is the transfer of ownership of goods from the seller to the buyer. The general rule is that only the owner of goods can sell the goods. Conversely, the sale of an article by a person who is not or who has not the authority of the owner, gives no title to the buyer.
- It is the duty of the seller and buyer that the contract is performed. The duty of the seller is to deliver the goods and that of the buyer to accept the goods and pay for them in accordance with the contract of sale.
- Unless otherwise agreed, payment of the price and the delivery of the goods and concurrent conditions, i.e., they both take place at the same time as in a cash sale over a shop counter.
- Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic.
- Acceptance of the goods by the buyer takes place when the buyer:
  - intimates to the seller that he has accepted the goods
  - retains the goods
  - does any act on the goods which is inconsistent with the ownership of the seller.
- The seller of goods is deemed to be unpaid seller:
  - When the whole of the price has not been paid or tendered
  - When a conditional payment was made by a bill of exchange or other negotiable instrument, and the instrument has been dishonored.
- An unpaid seller's right against the goods are:
  - (a) A lien or right of retention.
  - (b) The right of stoppage in transit.
  - (c) The right of resale.
  - (d) The right to withhold delivery.
- A sale by auction is a public sale where goods are offered to be taken by bidders. It is a proceeding at which people are invited to complete for the purchase of property by successive offer of advancing sums.

GLOSSARY

Bilateral Contract An agreement formed by an exchange of a promise in which the promise of one party is consideration supporting the promise of the other party.

Goods According to Section 2(7) of the Sale of Goods Act, "goods" means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

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

Generic Goods Generic or unascertained goods are goods which are not specifically identified but are indicated by description.

Specific Goods Specific goods are identified and agreed upon at the time of the contract of sale.

Future Goods Future goods are goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.

Contingent Goods Where there is a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen–such goods are known as contigent goods.

Conditions If the stipulation forms the very basis of the contract or is essential to the main purpose of the contract, it is a condition.

Warranties If the stipulation is collateral to the main purpose of the contract, i.e., is a subsidiary promise, it is a warranty.

Estoppel Estoppel precludes a person from asserting something contrary to what is implied by his or her previous action or statement or by a previous judicial determination concerning that person.

Encumbrances An encumbrance, as it pertains to real estate, means anything that burdens title to the property. An encumbrance can be a mortgage (loan), a lien (voluntary or non voluntary) an easement or a restriction that limits the title.

Constructive Constructive delivery takes place when the person in possession of the goods

Symbolic Delivery Symbolic delivery is made by indicating or giving a symbol. Here the goods themselves are not delivered, but the "means of obtaining possession" of goods is delivered. It is the delivery of property by means of a token.

Bill of Lading A document signed by a carrier (a transporter of goods) or the carrier's representative and issued to a consignor (the shipper of goods) that evidences the receipt of goods for shipment to a specified designation and person.

TEST YOURSELF

Q1. Which of the following is incorrect?

(a) Transfer of ownership is done at the moment of sale but deferred for fulfilment of condition, in case of agreement to sell.

(b) Sale is executory contract whereas agreement to sell is executed

(c) Agreement to sell is contract pure and simple, sale is contract plus conveyance.

(d) In case of accident or fire, loss is borne by buyer in sale and by seller in agreement to sell.

Q2. Goods in Sale of Goods Act includes

(a) Existing goods only

(b) Existing and future goods only

(c) Existing goods, future goods, contingent goods

(d) Existing goods, future goods, contingent goods, actionable claims

Q3. Where in sale of goods,price is to be fixed by third party but if the third party fails to determine the price, the contract is

(a) Valid

(b) Voidable

(c) Void

(d) Unenforceable

Q4. Merchantable quality means

(a) Goods must be such as would be acceptable in law.

(b) Goods must be such as would be acceptable to a reasonable man.

(c) Goods must be such as would be acceptable to an ordinary man.

(d) Goods must be such as would be acceptable to a rational and ordinary man.

Q5. Which of the following is incorrect?

(a) Uncertain goods are those which are defined by description but not identified.

(b) Property in uncertain good passes immediately when an agreement is made.

(c) Property in goods does not pass if the seller reserves the right of disposal of goods.

(d) Goods remain at the seller's risk until the ownership is transferred.

Q6. *NemoDat Quod Non Habet* implies

(a) No one can pass a better title than he himself has

(b) Where there is a right there is a remedy

(c) Owner passes a better title to the goods

(d) There is always a remedy irrespective of a right

Q7. Which of the following is not a rule of delivery?

(a) Delivery has an effect of putting the buyer in possession

(b) Seller delivers according to the contract

(c) Buyer claims delivery then seller delivers

(d) It is the duty of the seller to send or carry the goods to the buyer regardless of the contract

Q8. Condition may be treated as warranty when

(a) The buyer waives the condition

(b) The buyer treats the breach of condition as breach of warranty

(c) Both (a) and (b)

(d) Either (a) or (b)

Q9. Right of resale is available to the unpaid seller when

(a) Goods are perishable

(b) Goods are durable

(c) The right is reserved expressly reserved by seller

(d) Both (a) and (c)

Q10. FOB implies

(a) Free on board

(b) Float on boat

(c) Flow on board

(d) Fleet on board

SUGGESTED READINGS

(1) The Sale of Goods Act, 1930 – *Bare Act*

(2) Manual of Merchantile Law – *M.C. Shukla*

(3) The Indian Contract Act, Sale of Goods Act and Partnership Act – *T.R. Desai Revised by K.H. Kaji, S.C. Sarkar & Sons, Calcutta*

Elements of Law relating to Negotiable Instruments

Lesson 6

KEY CONCEPTS

■ Negotiable Instrument ■ Bouncing of Cheques ■ Dishonour of Cheques ■ Instruments

Learning Objectives

To understand:

Sale Exchange of goods and services is the basis of every business activity. Goods are bought and sold for cash as well as on credit. All these transactions require flow of cash either immediately or after a certain time. In modern business, a large number of transactions involving huge sums of money takes place everyday. It is quite inconvenient as well as risky for either party to make and receive payments in cash. Therefore, it is a common practice for businessmen to make use of certain documents as means of making payment.

Some of these documents are called negotiable instruments.

But on the other hand, accepting payment using negotiable instruments is no less than a risky transaction since it involves deferred payments. In the light of this, the Negotiable Instruments Act was passed in 1881. There is no doubt that the Act is to regulate commercial transactions and was drafted to suit requirements of business conditions prevailing then.

This lesson deals with the common provisions of the mentioned act, which has played an important role in increasing commercial activities

"In present times, besides traditional instruments, digital forms such as electronic cheques and digital promissory notes have gained importance, governed by the IT Act, 2000 and amendments to the NI Act.".

Lesson Outline

- Definition of a Negotiable Instrument
- Important Characteristics of Negotiable Instruments
- Classification of Negotiable Instruments
- Review Questions
- Kinds of Negotiable Instruments
  - Promissory Notes
  - Bills of Exchange
  - Cheques
- Modes of Crossing
- Review Questions
- Negotiation
- Importance of Delivery
- Endorsement
- Acceptance of a Bill of Exchange
- NEFT/RTGS
- Lesson Round Up
- Glossary
- Test Yourself
- Suggested Readings

DEFINITION OF A NEGOTIABLE INSTRUMENT

The law relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881. It is an Act to define and amend the law relating to promissory notes, bills of exchange and Cheques.

"The Act does not affect the custom or local usage relating to indigenous instruments such as Hundis, which continue to be governed by local trade customs." The term *"negotiable instrument"* means a document transferable from one person to another. However the Act has not defined the term. It merely says that "A negotiable instrument" means a promissory note, bill of exchange or Cheque payable either to order or to bearer. [Section 13(1)]

A negotiable instrument may be defined as "an instrument, the property in which is acquired by anyone who takes it bona fide, and for value, notwithstanding any defect of title in the person from whom he took it, from which it follows that an instrument cannot be negotiable unless it is such and in such a state that the true owner could transfer the contract or engagement contained therein by simple delivery of instrument" (*Willis–The Law of Negotiable Securities, Page 6*).

According to this definition the following are the conditions of negotiability:

(i) The instrument should be freely transferable. An instrument cannot be negotiable unless it is such and in such a state that the true owner could transfer by simple delivery or endorsement and delivery.

(ii) The person who takes it for value and in good faith is not affected by the defect in the title of the transferor.

(iii) Such a person can sue upon the instrument in his own name.

Negotiability involves two elements namely, transferability free from equities and transferability by delivery or endorsement (Mookerjee J. In *Tailors Priya* v. *Gulab Chand*, AIR 1965 Cal).

But the Act recognises only three types of instruments viz., a Promissory Note, a Bill of Exchange and a Cheque as negotiable instruments. However, it does not mean that other instruments are not negotiable instruments provided that they satisfy the following conditions of negotiability:

1. The instrument should be freely transferable by the custom of trade. Transferability may be by (i) delivery or (ii) endorsement and delivery.
2. The person who obtains it in good faith and for consideration gets it free from all defects and can sue upon it in his own name.
3. The holder has the right to transfer. The negotiability continues till maturity.

Effect of Negotiability

The general principle of law relating to transfer of property is that no one can pass a better title than he himself has *(nemodat quad non-habet)*. The exceptions to this general rule arise by virtue of statute or by a custom. A negotiable instrument is one such exception which is originally a creation of mercantile custom.

Thus a *bona fide* transferee of negotiable instrument for consideration without notice of any defect of title, acquires the instrument free of any defect, i.e., he acquires a better title than that of the transferor.

Important Characteristics of Negotiable Instruments

Following are the important characteristics of negotiable instruments:

(1) The holder of the instrument is presumed to be the owner of the property contained in it.

(2) They are freely transferable.

(3) A holder in due course gets the instrument free from all defects of title of any previous holder.

(4) The holder in due course is entitled to sue on the instrument in his own name.

(5) The instrument is transferable till maturity and in case of cheques till it becomes stale (on the expiry of 6 months from the date of issue).

(6) Certain equal presumptions are applicable to all negotiable instruments unless the contrary is proved.

CLASSIFICATION OF NEGOTIABLE INSTRUMENTS

The negotiable instruments may be classified as under:

(i) **Bearer Instruments:** A promissory note, bill of exchange or cheque is payable to bearer when (i) it is expressed to be so payable, or the only or last endorsement on the instrument is an endorsement in blank. A person who is a holder of a bearer instrument can obtain the payment of the instrument.

(ii) **Order Instruments:** A promissory note, bill of exchange or cheque is payable to order (i) which is expressed to be so payable; or (ii) which is expressed to be payable to a particular person, and does not contain any words prohibiting transfer or indicating an intention that it shall not be transferable.

(iii) **Inland Instruments (Section 11):** A promissory note, bill of exchange or cheque drawn or made in India, and made payable, or drawn upon any person, resident in India shall be deemed to be an inland instrument. Since a promissory note is not drawn on any person, an inland promissory note is one which is made payable in India. Subject to this exception, an inland instrument is one which is either:

(a) drawn and made payable in India, or

(b) drawn in India upon some persons resident therein, even though it is made payable in a foreign country.

(iv) **Foreign Instruments:** An instrument which is not an inland instrument, is deemed to be a foreign instrument. The essentials of a foreign instrument include that:

(a) it must be drawn outside India and made payable outside or inside India; or

(b) it must be drawn in India and made payable outside India and drawn on a person resident outside India.

(v) **Demand Instruments (Section 19):** A promissory note or a bill of exchange in which no time for payment is specified is an instrument payable on demand.

(vi) **Time Instruments:** Time instruments are those which are payable at sometime in the future. Therefore, a promissory note or a bill of exchange payable after a fixed period, or after sight, or on specified day, or on the happening of an event which is certain to happen, is known as a time instrument. The expression “after sight” in a promissory note means that the payment cannot be demanded on it unless it has been shown to the maker. In the case of bill of exchange, the expression “after sight” means after acceptance, or after noting for non-acceptance or after protest for non-acceptance.

(vii) **Ambiguous Instruments (Section 17):** An instrument, which in form is such that it may either be treated by the holder as a bill or as a note, is an ambiguous instrument. Section 5(2) of the English Bills of Exchange Act provides that where in a bill, the drawer and the drawee are the same person or where the drawee is a fictitious person or a person incompetent to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Bill drawn to or to the order of the drawee or by an agent on his principal, or by one branch of a bank on another or by the direction of a company or their cashier are also ambiguous instruments. A promissory note addressed to a third person may be treated as a bill by such person by accepting it, while a bill not addressed to any one may be treated as a note. But where the drawer and payee are the same,e.g., where A draws a bill payable to A's order, it is not an ambiguous instrument and cannot be treated as a promissory note. Once an instrument has been treated either as a bill or as a note, it cannot be treated differently afterwards.

(viii) **Inchoate or Incomplete Instrument (Section 20):** When one person signs and delivers to another properly stamped in accordance with the law relating to negotiable instruments, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount, covered by the stamp. Such an instrument is called an inchoate instrument. The person so signing shall be liable upon such instrument, in the capacity in which he signs the same, to any holder in due course for such amount, provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereon.

The authority to fill up a blank or incomplete instrument may be exercised by any "holder" and not only the first holder to whom the instrument was delivered. The person signing and delivering the paper is liable both to a "holder" and a "holder-in-due- course". But there is a difference in their respective rights. A "holder" can recover only what the person signing and delivering the paper agreed to pay under the instrument, while a "holder-in- due-course" can recover the whole amount made payable by the instrument provided that it is covered by the stamp, even though the amount authorised was smaller.

KINDS OF NEGOTIABLE INSTRUMENTS

The Act recognises only three kinds of negotiable instruments under Section 13 but it does not exclude any other negotiable instrument provided the instrument entitles a person to a sum of money and is transferable by delivery. Instruments written in oriental languages i.e. hundis are also negotiable instruments. These instruments are discussed below:

(i) Promissory Note

A "promissory note" is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money to, or to the order of, a certain person, or only to bearer of the instrument. (Section 4)

Parties to a Promissory Note:

A promissory note has the following parties:

(a) The Maker: the person who makes or executes the note promising to pay the amount stated therein.

(b) The Payee: one to whom the note is payable.

(c) The Holder: is either the payee or some other person to whom he may have endorsed the note.

(d) The Endorser.

(e) The Endorsee.

Essentials of a Promissory Note

To be a promissory note, an instrument must possess the following essentials:

(a) It must be in writing. An oral promise to pay will not do.

(b) It must contain an express promise or clear undertaking to pay. A promise to pay cannot be inferred. A mere acknowledgement of debt is not sufficient. If A writes to B "I owe you (I.O.U.) Rs. 500", there is no promise to pay and the instrument is not a promissory note.

(c) The promise or undertaking to pay must be unconditional. A promise to pay "when able", or "as soon as possible", or "after your marriage to D", is conditional. But a promise to pay after a specific time or on the happening of an event which must happen, is not conditional, e.g. "I promise to pay Rs. 1,000 ten days after the death of B", is unconditional.

(d) The maker must sign the promissory note in token of an undertaking to pay to the payee or his order.

(e) The maker must be a certain person, i.e., the note must show clearly who is the person engaging himself to pay.

(f) The payee must be certain. The promissory note must contain a promise to pay to some person or persons ascertained by name or designation or to their order.

(g) The sum payable must be certain and the amount must not be capable of contingent additions or subtractions. If A promises to pay Rs. 100 and all other sums which shall become due to him, the instrument is not a promissory note.

(h) Payment must be in the legal money of the country. Thus, a promise to pay Rs. 500 and deliver 10 quintals of rice is not a promissory note.

(i) It must be properly stamped in accordance with the provisions of the Indian Stamp Act. Each stamp must be duly cancelled by the maker's signature or initials.

(j) It must contain the name of place, number and the date on which it is made. However, their omission will not render the instrument invalid, e.g. if it is undated, it is deemed to be dated on the date of delivery. "Although omission of these particulars does not invalidate the instrument, it is advisable to include them to avoid disputes in commercial practice."

Note : A promissory note cannot be made payable or issued to bearer, no matter whether it is payable on demand or after a certain time (Section 31 of the RBI Act).

(ii) Bills of Exchange

A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of, a certain person or to the bearer of the instrument. (Section 5)

The definition of a bill of exchange is very similar to that of a promissory note and for most of the cases the rules which apply to promissory notes are in general applicable to bills. There are, however, certain important points of distinction between the two.

Parties to Bills of Exchange

The following are parties to a bill of exchange:

(a) *The Drawer:* The person who draws the bill

(b) *The Drawee:* The person on whom the bill is drawn.

(c) *The Acceptor:* One who accepts the bill. Generally, the drawee is the acceptor but a stranger may accept it on behalf of the drawee.

(d) *The Payee:* One to whom the sum stated in the bill is payable, either the drawer or any other person may be the payee.

(e) *The Holder: He is* either the original payee or any other person to whom; the payee has endorsed the bill.

In case of a bearer bill, the bearer is the holder.

(f) *The Endorser:* When the holder endorses the bill to any one else he becomes the endorser. (g) *The Endorsee:* Is the person to whom the bill is endorsed.

(h) *Drawee in case of Need:* Besides the above parties, another person called the "drawee in case of need" may be introduced at the option of the drawer. The name of such a person may be inserted either by the drawer or by any endorser in order that resort may be had to him in case of need, i.e., when the bill is dishonoured by either non-acceptance or non-payment.

(i) *Acceptor for Honour:* Further, any person may voluntarily become a party to a bill as acceptor. A person, who on the refusal by the original drawee to accept the bill or to furnish better security, when demanded by the notary, accept the bill supra protest in order to safeguard the honour of the drawer or any endorser, is called the acceptor for honour.

Essentials of a Bill of Exchange:

(1) It must be in writing.

(2) It must contain an unconditional order to pay money only and not merely a request.

(3) It must be signed by the drawer.

(4) The parties must be certain.

(5) The sum payable must also be certain.

(6) It must comply with other formalities e.g. stamps, date, etc.

Distinction between Bill of Exchange and Promissory Note

The following are the important points of distinction between a bill of exchange and a promissory note:

(a) A promissory note is a two-party instrument, with a maker (debtor) and a payee (creditor). In a bill there are three parties–drawer, drawee and payee, though any two out of the three capacities may be filled by one and the same person. In a bill, the drawer is the maker who orders the drawee to pay the bill to a person called the payee or to his order. When the drawee accepts the bill he is called the acceptor.

(b) A note cannot be made payable to the maker himself, while in a bill, the drawer and payee may be the same person.

(c) A note contains an unconditional promise by the maker to pay to the payee or his order; in a bill there is an unconditional order to the drawee to pay according to the directions of the drawer.

(d) A note is presented for payment without any prior acceptance by the maker. A bill payable after sight must be accepted by the drawee or someone else on his behalf before it can be presented for payment.

(e) The liability of the maker of a pro-note is primary and absolute, but the liability of the drawer of a bill is secondary and conditional.

(f) Foreign bill must be protested for dishonour but no such protest is necessary in the case of a note.

(g) When a bill is dishonoured, due notice of dishonour is to be given by the holder to the drawer and the intermediate endorsee, but no such notice need to be given in the case of a note.

(h) A bill can be drawn payable to bearer provided it is not payable on demand. A promissory note cannot be made payable to bearer, even if it is made payable otherwise than on demand.

How Bill of Exchange Originates – Forms of Bills of Exchange

Bills of exchange were originally used for payment of debts by traders residing in one country to another country with a view to avoid transmission of coin. Now-a-days they are used more as trade bills both in connection with domestic trade and foreign trade and are called inland bills and foreign bills respectively.

Inland Bills (Sections 11 and 12)

A bill of exchange is an inland instrument if it is (i) drawn or made and payable in India, or (ii) drawn in India upon any person who is a resident in India, even though it is made payable in a foreign country. But a promissory note to be an inland should be drawn and payable in India, as it has no drawee.

Two essential conditions to make an inland instrument are:

(1) the instrument must have been drawn or made in India; and

(2) the instrument must be payable in India or the drawee must be in India.

Examples: A bill drawn in India, payable in USA, upon a person in India is an inland instrument. A bill drawn in India and payable in India but drawn on a person in USA is also an inland instrument.

Foreign Bills

All bills which are not inland are deemed to be foreign bills. Normally foreign bills are drawn in sets of three copies.

Trade Bill

A bill drawn and accepted for a genuine trade transaction is termed as a trade bill. When a trader sells goods on credit, he may make use of a bill of exchange. Suppose A sells goods worth Rs. 1,000 to B and allows him 90 days time to pay the price, A will draw a bill of exchange on B, in the following terms: “Ninety days after date pay A or order, the sum of one thousand rupees only for value received”. A will sign the bill and then present it to B for acceptance. This is necessary because, until a bill is accepted by the drawee, nobody has either rights or obligations. If B agrees to obey the order of A, he will accept the bill by writing across its face the word “accepted” and signing his name underneath and then delivering the bill to the holder. B, the drawee, now becomes the acceptor of the bill and liable to its holders. Such a bill is a genuine trade bill.

Accommodation Bill

All bills are not genuine trade bills, as they are often drawn for accommodating a party. An accommodation bill is a bill in which a person lends or gives his name to oblige a friend or some person whom he knows or otherwise. In other words, a bill which is drawn, accepted or endorsed without consideration is called an accommodation bill. The party lending his name to oblige the other party is known as the accommodating or accommodation party, and the party so obliged is called the party accommodated. An accommodation party is not liable on the instrument to the party accommodated because as between them there was no consideration and the instrument was merely to help. But the accommodation party is liable to a holder for value, who takes the accommodation bill for value, though such holder may not be a holder in due course. Thus, A may be in need of money and approach his friends B and C who, instead of lending the money directly, propose to draw an “Accommodation Bill” in his favour in the following form:

> "Three months after date pay A or order, the sum of Rupees one thousand only".
>
> B.
>
> To
>
> C.

If the credit of B and C is good, this device enables A to get an advance of Rs. 1,000 from his banker at the commercial rate of discount. The real debtor in this case is not C, but A the payee who promises to reimburse C before the period of three months only. A is here the principal debtor and B and C are mere sureties. This inversion of liability affords a good definition of an accommodation bill: "If as between the original parties to the bill the one who should prima facie be principal is in fact the surety whether he be drawer, acceptor, or endorser, that bill is an accommodation bill".

Bills in Sets (Section 132 and 133)

Foreign bills are usually drawn in sets to avoid the danger of loss. They are drawn in sets of three, each of which is called "Via" and as soon as any one of them is paid, the others become inoperative. All these parts form one bill and the drawer must sign and deliver all of them to the payee. The stamp is affixed only on one part and one part is required to be accepted. But if the drawer mistakenly accepts all the parts of the same bill, he will be liable on each part accepted as if it were a separate bill.

Right to Duplicate Bill

Where a bill of exchange has been lost before it was overdue, the person who was the holder to it may apply to the drawer, to give him another bill of the same tenor. It is only the holder who can ask for a duplicate bill, promissory note or cheque.

Bank Draft

A bill of exchange is also sometimes spoken of as a draft. It is called a bank draft when a bill of exchange is drawn by one bank on another bank, or by itself on its own branch, and is a negotiable instrument. It is very much like the cheque with three points of distinction between the two. A bank draft can be drawn only by a bank on another bank, usually its own branch. It cannot so easily be counter-manded. It cannot be made payable to the bearer.

"Today, bank drafts are less frequently used due to the rise of NEFT, RTGS, IMPS and UPI transfers, but they still hold legal sanctity under NI Act."

Specimen of a Bank Draft

> A.B.C. Bank
>
> X.Y.Z. Branch
>
> No...................... Date...................
>
> On demand pay 'A' or order the sum of rupees one thousand five hundred only for value received.
>
> Rs.1,500/-
>
> Sd./- Manager
>
> To
>
> 'B' Branch, (Place)
>
> In the above demand draft, the drawer is X.Y.Z. Branch, the drawee is 'B' branch and the payee is 'A'.

(iii) Cheque

The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and The Negotiable Instruments (Amendment) Act, 2015 have broadened the definition of cheque to include the electronic image of a truncated cheque and a cheque in the electronic form. Section 6 of the Act provides that a 'cheque' is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Despite the amendment as is evident the basic definition of the cheque has been retained and the definition has only been enlarged to include cheques in the above form as well.

As per explanation appended to the section, the expression:

(a) "a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;

(b) 'a truncated cheque' means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing. (Explanation I).

The expression 'clearing house' means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India. (Explanation II).

Simply stated, a cheque is a bill of exchange drawn on a bank payable always on demand. Thus, a cheque is a bill of exchange with two additional qualifications, namely: (i) it is always drawn on a banker, and (ii) it is always payable on demand. A cheque being a species of a bill of exchange, must satisfy all the requirements of a bill; it does not, however, require acceptance.

Note: By virtue of Section 31 of the Reserve Bank of India Act, no bill of exchange or hundi can be made payable to bearer on demand and no promissory note or a bank draft can be made payable to bearer at all, whether on demand or after a specified time. Only a cheque can be payable to the bearer on demand.

Parties to a Cheque

The following are the parties to a cheque:

(a) The drawer: The person who draws the cheque.

(b) The drawee: The banker of the drawer on whom the cheque is drawn.

(c), (d), (e) and (f) The payee, holder, endorser and endorsee: same as in the case of a bill.

Essentials of a Cheque

(1) It is always drawn on a banker.

(2) It is always payable on demand.

(3) It does not require acceptance. There is, however, a custom among banks to mark cheques as good for purposes of clearance.

(4) A cheque can be drawn on a bank where the drawer has an account.

(5) Cheques may be payable to the drawer himself. It may be made payable to the bearer on demand unlike a bill or a note.

(6) The banker is liable only to the drawer. A holder has no remedy against the banker if a cheque is dishonoured.

(7) "A cheque is valid for three months from the date of issue as per RBI guidelines (reduced from six months by a 2012 circular)." However, it is not invalid if it is post dated or ante-dated.

(8) No Stamp is required to be affixed on cheques.

Distinction between Cheques and Bills of Exchange

As a general rule, the provisions applicable to bills payable on demand apply to cheques, yet there are few points of distinction between the two, namely:

(a) A cheque is a bill of exchange and always drawn on a banker, while a bill may be drawn on any one, including the banker.

(b) A cheque can only be drawn payable on demand, a bill may be drawn payable on demand, or on the expiry of a specified period after sight or date.

(c) A bill payable after sight must be accepted before payment can be demanded, a cheque does not require acceptance and is intended for immediate payment.

(d) A grace of 3 days is allowed in the case of time bills, while no grace is given in the case of a cheque, for payment.

(e) The drawer of a bill is discharged, if it is not presented for payment, but the drawer of a cheque is discharged only if he suffers any damage by delay in presentation for payment.

(f) Notice of the dishonour of a bill is necessary, but not in the case of a cheque.

(g) The cheque being a revocable mandate, the authority may be revoked by countermanding payment, and is determined by notice of the customer's death or insolvency. This is not so in the case of bills.

(h) A check may be crossed, but not a bill.

A cheque is a bill of exchange drawn on a specified banker and always payable on demand. A cheque is always drawn on a particular banker and is always payable on demand. Consequently, all cheques are bills of exchange but all bills are not cheques.

Specimen of a Cheque

A.B.C. Bank
X.Y.Z. Branch

Date....................................

Pay 'A' .... or the bearer sum of rupees only.

A/c No............... LF.............

Rs. /-

No...................................... Sd/-

Banker

A banker is one who does banking business. Section 5(b) of the Banking Regulation Act, 1949 defines banking as, "accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft or otherwise." This definition emphasises two points: (1)

that the primary function of a banker consists of accepting of deposits for the purpose of lending or investing the same; (2) that the amount deposited is repayable to the depositor on demand or according to the agreement. The demand for repayment can be made through a cheque, draft or otherwise, and not merely by verbal order.

Customer

The term "customer" is neither defined in Indian nor in English statutes. The general opinion is that a customer is one who has an account with the bank or who utilises the services of the bank.

The special features of the legal relationship between the banker and the customer may be termed as the obligations and rights of the banker. These are:

1. Obligation to honour cheques of the customers.
2. Obligation to collect cheques and drafts on behalf of the customers.
3. Obligation to keep proper record of transactions with the customer.
4. Obligation to comply with the express standing instructions of the customer.
5. Obligation not to disclose the state of customer's account to anyone else.
6. Obligation to give reasonable notice to the customer, if the banker wishes to close the account.
7. Right of lien over any goods and securities bailed to him for a general balance of account.
8. Right of set off and right of appropriation.
9. Right to claim incidental charges and interest as per rules and regulations of the bank, as communicated to the customer at the time of opening the account.

Liability of a Banker

By opening a current account of a customer, the banker becomes liable to his debtor to the extent of the amount so received in the said account and undertakes to honour the cheques drawn by the customer so long as he holds sufficient funds to the customer's credit. If a banker, without justification, fails to honour his customer's cheques, he is liable to compensate the drawer for any loss or damage suffered by him. But the payee or holder of the cheque has no cause of action against the banker as the obligation to honour a cheque is only towards the drawer.

The banker must also maintain proper and accurate accounts of credits and debits. He must honour a cheque presented in due course. But in the following circumstances, he must refuse to honour a cheque and in some others he may do so.

When Banker must Refuse Payment

In the following cases the authority of the banker to honour customer's cheque comes to an end, he must refuse to honour cheques issued by the customer:

(a) When a customer countermands payment i.e., where or when a customer, after issuing a cheque, issues cheque issues instructions not to honour it, the banker must not pay it.

(b) When the banker receives notice of a customer's death.

(c) When a customer has been adjudged an insolvent.

(d) When the banker receives notice of the customer's insanity.

(e) When an order (e.g., Garnishee Order) of the Court, prohibits payment.

(f) When the customer has given notice of assignment of the credit balance of his account. (g) When the holder's title is defective and the banker comes to know of it.

(h) When the customer has given notice for closing his account.

When Banker may Refuse Payment

In the following cases the banker may refuse to pay a customer's cheque:

(a) When the cheque is post-dated.

(b) When the banker has no sufficient funds in the drawer with him and there is no communication between the bank and the customer to honour the cheque.

(c) When the cheque is of doubtful legality.

(d) When the cheque is not duly presented, e.g., it is presented after banking hours.

(e) When the cheque on the face of it is irregular, ambiguous or otherwise materially altered. (f) When the cheque is presented at a branch where the customer has no account.

(g) When some persons have a joint account and the cheque is not signed jointly by all or by the survivors of them.

(h) When the cheque has been allowed to become stale, i.e., it has not been presented within six months of the date mentioned on it.

Protection of Paying Banker (Sections 10, 85 and 128)

Section 85 lays down that where a cheque payable to order purports to be endorsed by or on behalf of the payee the banker is discharged by payment in due course. He can debit the account of the customer with the amount even though the endorsement turns out subsequently to have been forged, or the agent of the payee without authority endorsed it on behalf of the payee. It would be seen that the payee includes endorsee. This protection is granted because a banker cannot be expected to know the signatures of all the persons in the world. He is only bound to know the signatures of his own customers.

Therefore, the forgery of drawer's signature will not ordinarily protect the banker but even in this case, the banker may debit the account of the customer, if it can show that the forgery was intimately connected with the negligence of the customer and was the proximate cause of loss.

In the case of bearer cheques, the rule is that once a bearer cheque, always a bearer cheque. Where, therefore, a cheque originally expressed by the drawer himself to be payable to bearer, the banker may ignore any endorsement on the cheque. He will be discharged by payment in due course. But a cheque which becomes bearer by a subsequent endorsement in blank is not covered by this Section. A banker is discharged from liability on a crossed cheque if he makes payment in due course.

"However, with electronic cheque truncation, banks are now required to exercise additional diligence to verify image-based instruments (Section 131, Explanation II, NI Act)."

Payment in Due Course (Section 10)

Any person liable to make payment under a negotiable instrument, must make the payment of the amount due thereunder in due course in order to obtain a valid discharge against the holder.

A payment in due course means a payment in accordance with the apparent tenor of the instrument, in good faith and without negligence to any person in possession thereof.

A payment will be a payment in due course if:

(a) it is in accordance with the apparent tenor of the instrument, i.e., according to what appears on the face of the instrument to be the intention of the parties;

(b) it is made in good faith and without negligence, and under circumstances which do not afford a ground for believing that the person to whom it is made is not entitled to receive the amount;

(c) it is made to the person in possession of the instrument who is entitled as holder to receive payment;

(d) payment is made under circumstances which do not afford a reasonable ground believing that he is not entitled to receive payment of the amount mentioned in the instrument; and

(e) payment is made in money and money only.

Under Sections 10 and 128, a paying banker making payment in due course is protected.

Collecting Banker

Collecting Banker is one who collects the proceeds of a cheque for a customer. Although a banker collects the proceeds of a cheque for a customer purely as a matter of service, yet the Negotiable Instruments Act, 1881 indirectly imposes statutory obligation, statutory in nature. This is evident from Section 126 of the Act which provides that a cheque bearing a "general crossing" shall not be paid to anyone other than banker and a cheque which is "specially crossed" shall not be paid to a person other than the banker to whom it is crossed. Thus, a paying banker must pay a generally crossed cheque only to a banker thereby meaning that it should be collected by another banker. While so collecting the cheques for a customer, it is quite possible that the banker collects for a customer, proceeds of a cheque to which the customer had no title in fact. In such cases, the true owner may sue the collecting banker for "conversion". At the same time, it cannot be expected of a banker to know or to ensure that all the signatures appearing in endorsements on the reverse of the cheque are genuine. The banker is expected to be conversant only with the signatures of his customer. A customer to whom a cheque has been endorsed, would request his banker to collect a cheque. In the event of the endorser's signature being proved to be forged at later date, the banker who collected the proceeds should not be held liable for the simple reason that he has merely collected the proceeds of a cheque. Section 131 of the Negotiable Instruments Act affords statutory protection in such a case where the customer's title to the cheque which the banker has collected has been questioned. It reads as follows:

"A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason of only having received such payment.

Explanation: A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof."

The Amendment Act, 2002 has added a new explanation to Section 131 which provides that it shall be the duty of the banker who receives payment based on an electronic image of a truncated cheque held with him, to verify the *prima facie* genuineness of the cheque to be truncated and any fraud, forgery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary care. *(Explanation II)*

The requisites of claiming protection under Section 131 are as follows:

(i) The collecting banker should have acted in good faith and without negligence. An act is done in good faith when it is done honestly. The plea of good faith can be rebutted on the ground of recklessness indicative of want of proper care and attention. Therefore, much depends upon the facts of the case. The burden of proving that the cheque was collected in good faith and without negligence is upon the banker claiming protection. Failure to verify the regularity of endorsements, collecting a cheque payable to the account of the company to the credit of the director, etc. are examples of negligence.

(ii) The banker should have collected a crossed cheque, i.e., the cheque should have been crossed before it came to him for collection.

(iii) The proceeds should have been collected for a customer, i.e., a person who has an account with him.

(iv) That the collecting banker has only acted as an agent of the customer. If he had become the holder for value, the protection available under Section 131 is forfeited–Where for instance, the banker allows the customer to withdraw the amount of the cheque before the cheque is collected or where the cheque has been accepted in specific reduction of an overdraft, the banker is *deemed to have become the holder for value and the protection is lost*. But the explanation to Section 131 says that the mere crediting of the amount to the account does not imply that the banker has become a holder for value because due to accounting conveniences the banker may credit the account of the cheque to the customer's account even before proceeds thereof are realised.

Overdue, Stale or Out-of-date Cheques

A cheque is overdue or becomes statute-barred after three years from its due date of issue. A holder cannot sue on the cheque after that time. Apart from this provision, the holder of a cheque is required to present it for payment within a reasonable time, as a cheque is not meant for indefinite circulation. In India, a cheque, which has been in circulation for more than six months, is regarded by bankers as stale. If, as a result of any delay in presenting a cheque, the drawer suffers any loss, as by the failure of the bank, the drawer is discharged from liability to the holder to the extent of the damage.

Liability of Endorser

In order to charge an endorser, it is necessary to present the cheque for payment within a reasonable time of its delivery by such endorser. 'A' endorses and delivers a cheque to B, and B keeps it for an unreasonable length of time, and then endorses and delivers it to C. C presents it for payment within a reasonable time after its receipt by him, and it is dishonoured. C can enforce payment against B but not against A, as *qua* A, the cheque has become stale.

Rights of Holder against Banker

A banker is liable to his customer for wrongful dishonour of his cheque but it is not liable to the payee or holder of the cheque. The holder has no right to enforce payment from the banker except in two cases, namely, (i) where the holder does not present the cheque within a reasonable time after issue, and as a result the drawer suffers damage by the failure of the banker in liquidation proceedings; and (ii) where a banker pays a crossed cheque by mistake over the counter, he is liable to the owner for any loss occasioned by it.

CROSSING OF CHEQUES

A cheque is either "open" or "crossed". "Crossing is mainly a security feature and has become more relevant in preventing frauds in paper-based cheque transactions. "An open cheque can be presented by the payee to the paying banker and is paid over the counter. A crossed cheque cannot be paid across the counter but must be collected through a banker.

A crossing is a direction to the paying banker to pay the money generally to a banker or to a particular banker, and not to pay otherwise. The object of crossing is to secure payment to a banker so that it could be traced to the person receiving the amount of the cheque. Crossing is a direction to the paying banker that the cheque should be paid only to a banker or a specified banker. To restrain negotiability, addition of words "Not Negotiable" or "Account Payee Only" is necessary. A crossed bearer cheque can be negotiated by delivery and crossed order cheque by endorsement and delivery. Crossing affords security and protection to the holder of the cheque.

Modes of Crossing (Sections 123-131A)

There are two types of crossing which may be used on cheque, namely: (i) General, and (ii) Special. To these may be added another type, i.e. Restrictive crossing.

It is general crossing where a cheque bears across its face an addition of two parallel transverse lines and/or the addition of the words "and Co." between them, or addition of "not negotiable". As stated earlier, where a cheque is crossed generally, the paying banker will pay to any banker. Two transverse parallel lines are essential for a general crossing (Sections 123-126).

In case of general crossing, the holder or payee cannot get the payment over the counter of the bank but through a bank only. The addition of the words "and Co." do not have any significance but the addition of the words "not negotiable" restrict the negotiability of the cheque and in case of transfer, the transferee will not give a better title than that of a transferor.

Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable" that addition constitutes a crossing and the cheque is crossed specially and to that banker. The paying banker will pay only to the banker whose name appears across the cheque, or to his collecting agent. Parallel transverse lines are not essential but the name of the banker is the insignia of a special crossing.

In case of special crossing, the paying banker is to honour the cheque only when it is prescribed through the bank mentioned in the crossing or it's agent bank.

Account Payee's Crossing: Such crossing does, in practice, restrict negotiability of a cheque. It warns the collecting banker that the proceeds are to be credited only to the account of the payee, or the party named, or his agent. If the collecting banker allows the proceeds of a cheque bearing such crossing to be credited to any other account, he will be guilty of negligence and will not be entitled to the protection given to collecting banker under Section 131. Such crossing does not affect the paying banker, who is under no duty to ascertain that the cheque is in fact collected for the account of the person named as payee.

Not Negotiable Crossing

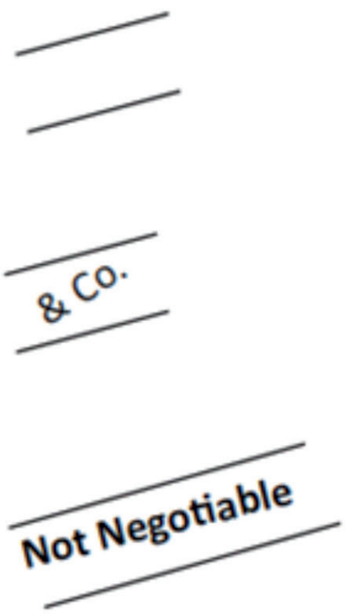
A cheque may be crossed not negotiable by writing across the face of the cheque the words "Not Negotiable" within two transverse parallel lines in the case of a general crossing or alongwith the name of a banker in the case of a special crossing. Section 130 of the Negotiable Instruments Act provides "A person taking a cheque crossed generally or specially bearing in either case with the words "not negotiable" shall not have and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had". The crossing of cheque "not negotiable" does not mean that it is non-transferable. It only deprives the instrument of the incident of negotiability. Normally speaking, the essential feature of a negotiable instrument as opposed to chattels is that a person who takes the instrument in good faith, without negligence, for value, before maturity and without knowledge of the defect in the title of the transferor, gets a good title to the instrument. In other words, he is called a holder in due course who acquires an indisputable title to the cheque. (When the instrument passes through a holder-in-due course, it is purged of all defects and the subsequent holders also get good title). It is exactly this important feature which is taken away by crossing the cheque "not negotiable". In other words, a cheque crossed "not negotiable" is like any other chattel and therefore the transferee gets same title to the cheque which his transferor had. That is to say that the transferee cannot claim the rights of a holder-in-due- course. So long as the title of the transferors is good, the title of the transferees is also good but if there is a taint in the title to the cheque of one of the endorsers, then all the subsequent transferees' title also become tainted with the same defect they cannot claim to be holders-in-due-course.

The object of this Section is to afford protection to the drawer or holder of a cheque who is desirous of transmitting it to another person, as much protection as can reasonably be afforded to him against dishonestly or actual miscarriage in the course of transit. For example, a cheque payable to bearer is crossed generally and is marked "not negotiable". It is lost or stolen and comes into the possession of X who takes it in good faith and gives value for it, X collects the cheque through his bank and paying banker also pays. In this case, both the paying and the collecting bankers are protected under Sections 128 and 131 respectively. But X cannot claim that he is a holder-in-due course which he could have under the normal circumstances claimed. The reason is that cheque is crossed "not negotiable" and hence the true owner's (holder's) right supercedes the rights of the holder-in-due-course. Since X obtained the cheque from a person who had no title to the cheque (i.e. from one whose title was defective) X can claim no better title solely because the cheque was crossed "not negotiable" and not for any other reason. Thus "not negotiable" crossing not only protects the rights of the true owner of the cheque but also serves as a warning to the endorsees' to enquire thoroughly before taking the cheque as they may have to be answerable to the true owner thereof if the endorser's title is found to be defective.

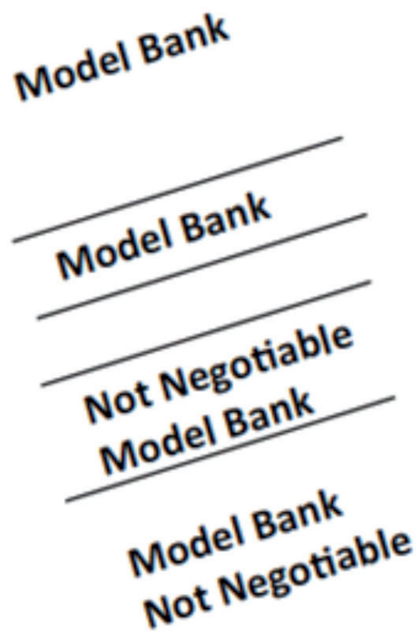
"Not negotiable" restricts the negotiability of the cheque and in case of transfer, the transferee will not get a better title than that of a transferor.

If the cheque becomes "not negotiable" it lacks negotiability. A cheque crossed specially or generally bearing the words "not negotiable", lacks negotiability and therefore is not a negotiable instrument in the true sense. It does not restrict transferability but restricts negotiability only.

Specimen of general crossing



Specimen of special crossing



Maturity

Cheques are always payable on demand but other instruments like bills, notes, etc. may be made payable on a specified date or after the specified period of time. The date on which payment of an instrument falls due is called its maturity. According to Section 22 of the Act, "the maturity of a promissory note or a bill of exchange is the date at which it falls due". According to Section 21 a promissory note or bill of exchange payable "at sight" or "on presentment" is payable on demand. It is due for payment as soon as it is issued. The question of maturity, therefore, arises only in the case of a promissory note or a bill of exchange payable "after date" or "after sight" or at a certain period after the happening of an event which is certain to happen.

Maturity is the date on which the payment of an instrument falls due. Every instrument payable at a specified period after date or after sight is entitled to three days of grace. "However, electronic negotiable instruments are not entitled to grace days since they are payable strictly as per their due date." Such a bill or note matures or falls due on the last day of the grace period, and must be presented for payment on that day and if dishonoured, suit can be instituted on the next day after maturity. If an instrument is payable by instalments, each instalment is entitled to three days of grace. No days of grace are allowed for cheques, as they are payable on demand.

Where a note or bill is expressed to be payable on the expiry of specified number of months after sight, or after date, the period of payment terminates on the day of the month which corresponds with the date of instrument, or with the date of acceptance if the bill be accepted or presented for sight, or noted or protested for non-acceptance. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations

(i) A negotiable instrument dated 31st January, 2001, is made payable one month after date. The instrument is at maturity on the third day after the 28th February, 2001, i.e. on 3rd March, 2001.

(ii) A negotiable instrument dated 30th August, 2001, is made payable three months after date. The instrument was at maturity on 3rd December, 2001.

(iii) A negotiable instrument dated the 31st August, 2001, is made payable three months after the date. The instrument was at maturity on 3rd December, 2001.

If the day of maturity falls on a public holiday, the instrument is payable on the preceeding business day. Thus, if a bill is at maturity on a Sunday. It will be deemed due on Saturday and not on Monday.

The ascertainment of the date of maturity becomes important because all these instruments must be presented for payment on the last day of grace and their payment cannot be demanded before that date. Where an instrument is payable by instalments, it must be presented for payment on the third day after the day fixed for the payment of each instalment.

Holder

According to Section 8 of the Act a person is a holder of a negotiable instrument who is entitled in his own name (i) to the possession of the instrument, and (ii) to recover or receive its amount from the parties thereto. It is not every person in possession of the instrument who is called a holder. To be a holder, the person must be named in the instrument as the payee, or the endorsee, or he must be the bearer thereof.

Holder in Due Course

Section 9 states that a holder in due course is (i) a person who for consideration, obtains possession of a negotiable instrument if payable to bearer, or (ii) the payee or endorsee thereof, if payable to order, before its maturity and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

In order to be a holder in due course, a person must satisfy the following conditions:

(i) He must be the holder of the instrument.

(ii) He should have obtained the instrument for value or consideration.

(iii) He must have obtained the negotiable instrument before maturity.

(iv) The instrument should be complete and regular on the face of it.

(v) The holder should take the instrument in good faith.

Capacity of Parties

Capacity to incur liability as a party to a negotiable instrument is co-extensive with capacity to contract. According to Section 26, every person capable of contracting according to law to which he is subject, may bind himself and be bound by making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Negatively, minors, lunatics, idiots, drunken person and persons otherwise disqualified by their personal law, do not incur any liability as parties to negotiable instruments. But incapacity of one or more of the parties to a negotiable instrument in no way diminishes the abilities and the liabilities of the competent parties. Where a minor is the endorser or payee of an instrument which has been endorsed all the parties accepting the minor are liable in the event of its dishonour.

Liability of Parties

The provisions regarding the liability of parties to negotiable instruments are laid down in Sections 30 to 32 and 35 to 42 of the Negotiable Instruments Act. These provisions are as follows:

1. *Liability of Drawer* (Section 30)

   The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to or received by the drawer.

   The nature of drawer's liability is that by drawing a bill, he undertakes that (i) on due presentation, it shall be accepted and paid according to its tenor, and (ii) in case of dishonour, he will compensate the holder or any endorser, provided notice of dishonour has been duly given. However, in case of an accommodation bill no notice of dishonour to the drawer is required.

   The liability of a drawer of a bill of exchange is secondary and arises only on default of the drawee, who is primarily liable to make payment of the negotiable instrument.

2. *Liability of the Drawee of Cheque* (Section 31)

   The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required to do so and, or in default of such payment, he shall compensate the drawer for any loss or damage caused by such default.

   As a cheque is a bill of exchange, drawn on a specified banker, the drawee of a cheque must always be a banker. The banker, therefore, is bound to pay the cheque of the drawer, i.e., customer, if the following conditions are satisfied:

   (i) The banker has sufficient funds to credit the customer's account.

   (ii) The funds are properly applicable to the payment of such cheque, e.g., the funds are not under any kind of lien etc.

   (iii) The cheque is duly required to be paid, during banking hours and on or after the date on which it is made payable.

   If the banker is unjustified in refusing to honour the cheque of its customer, it shall be liable for damages.

3. *Liability of "Maker" of Note and "Acceptor" of Bill* (Section 32)

In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity, according to the apparent tenor of the note or acceptance respectively. The acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

It follows that the liability of the acceptor of a bill corresponds to that of the maker of a note and is absolute and unconditional but the liability under this Section is subject to a contract to the contrary (e.g., as in the case of accommodation bills) and may be excluded or modified by a collateral agreement. Further, the payment must be made to the party named in the instrument and not to any-one else, and it must be made at maturity and not before.

4. *Liability of Endorser* (Section 35)

Every endorser incurs liability to the parties that are subsequent to him. W hoever endorses and delivers a negotiable instrument before maturity is bound thereby to every subsequent holder in case of dishonour of the instrument by the drawee, acceptor or maker, to compensate such holder of any loss or damage caused to him by such dishonour provided (i) there is no contract to the contrary; (ii) he (endorser) has not expressly excluded, limited or made conditional his own liability; and (iii) due notice of dishonour has been given to, or received by, such endorser. Every endorser after dishonour, is liable upon the instrument as if it is payable on demand.

He is bound by his endorsement notwithstanding any previous alteration of the instrument. (Section 88)

5. *Liability of Prior Parties* (Section 36)

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied. Prior parties may include the maker or drawer, the acceptor and all the intervening endorsers to a negotiable instrument. The liability of the prior parties to a holder in due course is joint and several. The holder in due course may hold any or all prior parties liable for the amount of the dishonoured instrument.

6. *Liability Inter se*

Various parties to a negotiable instrument who are liable thereon stand on a different footing with respect to the nature of liability of each one of them.

7. *Liability of Acceptor of Forged Endorsement* (Section 41)

An acceptor of a bill of exchange already endorsed is not relieved from liability by reason that such endorsement is forged, if he knew or had reason to believe the endorsement to be forged when he accepted the bill.

8. *Acceptor's Liability on a Bill drawn in a Fictitious Name*

An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an endorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

NEGOTIATION (SECTION 14)

A negotiable instrument may be transferred by negotiation or assignment. Negotiation is the transfer of an instrument (a note, bill or cheque) for one person to another in such a manner as to convey title and to constitute the transferee the holder thereof*. When a negotiable instrument is transferred by negotiation, the rights of

* * Section 14 reads "When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiable".

the transferee may rise higher than those of the transferor, depending upon the circumstances attending the negotiation. W hen the transfer is made by assignment, the assignee has only those rights which the assignor possesses. In case of assignment, there is a transfer of ownership by means of a written and registered document.

Negotiability and Assignability Distinguished

A transfer by negotiation differs from transfer by assignment in the following respects:

(a) Negotiation requires mere delivery of a bearer instrument and endorsement and delivery of an order instrument to effectuate a transfer. Assignment requires a written document signed by the transferor.

(b) Notice of transfer of debt (actionable claim) must be given by the assignee to the debtor in order to complete his title; no such notice is necessary in a transfer by negotiation.

(c) On assignment, the transferee of an actionable claim takes it subject to all the defects in the title of, and subject to all the equities and defences available against the assignor, even though he took the assignment for value and in good faith. In case of negotiation the transferee, as holder-in-due course, takes the instrument free from any defects in the title of the transferor.

Importance of Delivery

Negotiation is effected by mere delivery of a bearer instrument and by endorsement and delivery of an order instrument. “In electronic transactions, delivery is substituted by secure digital transmission, authenticated by digital signatures under IT Act, 2000.” This shows that “delivery” is essential in negotiable instruments. Section 46 expressly provides that making acceptance or endorsement of a negotiable instrument is not complete until delivery, actual or constructive, of the instrument. Delivery made voluntarily with the intention of passing property in the instrument to the person to whom it is given is essential.

Negotiation by Mere Delivery

A bill or cheque payable to the bearer is negotiated by mere delivery of the instrument. An instrument is payable to bearer:

(i) Where it is made so payable, or

(ii) Where it is originally made payable to order but the only or the last endorsement is blank.

(iii) Where the payee is a fictitious or a non-existing person.

These instruments do not require signature of the transferor. The person who takes them is a holder, and can sue in his own name on them. Where a bearer negotiates an instrument by mere delivery, and does not put his signature thereon, he is not liable to any party to the instrument in case the instrument is dishonoured, as he has not lent his credit to it. His obligations are only towards his immediate transferee and to no other holders.

A cheque, originally drawn payable to bearer remains bearer, even though it is subsequently endorsed in full. The rule is once a bearer cheque is always a bearer cheque.

Negotiation by Endorsement and Delivery

An instrument payable to a specified person or to the order of a specified person or to a specified person or order is an instrument payable to order. Such an instrument can be negotiated only by endorsement and delivery. Unless the holder signs his endorsement on the instrument, the transferee does not become a holder. Where an instrument payable to order is delivered without endorsement, it is merely assigned and not negotiated and the holder thereof is not entitled to the rights of a holder in due course, and he cannot negotiate it to a third person.

ENDORSEMENT (SECTIONS 15 AND 16)

Where the maker or holder of a negotiable instrument signs the same otherwise than as such maker for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto (called Allonge), or so, signs for the same purpose, a stamped paper intended to be completed as a negotiable instrument, he is said to endorse the same (Section 15), the person to whom the instrument is endorsed is called the endorsee.

In other words, 'endorsement' means and involves the writing of something on the back of an instrument for the purpose of transferring the right, title and interest therein to some other person.

Classes of Endorsement

An endorsement may be (a) Blank or General, (b) Special or Full, (c) Restrictive, or (d) Partial, and (e) Conditional or Qualified.

(a) *Blank or General:* An endorsement is to be blank or general where the endorser merely writes his signature on the back of the instrument, and the instrument so endorsed becomes payable to bearer, even though originally it was payable to order. Thus, where bill is payable to "Mohan or order", and he writes on its back "Mohan", it is an endorsement in blank by Mohan and the property in the bill can pass by mere delivery, as long as the endorsement continues to be a blank. But a holder of an instrument endorsed in blank may convert the endorsement in blank into an endorsement in full, by writing above the endorser's signature, a direction to pay the instrument to another person or his order.

(b) *Special or Full:* If the endorser signs his name and adds a direction to pay the amount mentioned in the instrument to, or to the order of a specified person, the endorsement is said to be special or in full. A bill made payable to Mohan or Mohan or order, and endorsed "pay to the order of Sohan" would be specially endorsed and Sohan endorses it further. A blank endorsement can be turned into a special one by the addition of an order making the bill payable to the transferee.

(c) *Restrictive:* An endorsement is restrictive which prohibits or restricts the further negotiation of an instrument.

Examples of restrictive endorsement: "Pay A only" or "Pay A for my use" or "Pay A on account of B" or "Pay A or order for collection".

(d) *Partial:* An endorsement partial is one which purports to transfer to the endorsee a part only of the amount payable on the instrument. A partial endorsement does not operate as negotiation of the instrument. A holds a bill for Rs. 1,000 and endorses it as "Pay B or order Rs. 500". The endorsement is partial and invalid.

(e) *Conditional or Qualified:* An endorsement is conditional or qualified which limits or negatives the liability of the endorser. An endorser may limit his liability in any of the following ways:

   (i) By sans recourse endorsement, i.e. by making it clear that he does not incur the liability of an endorser to the endorsee or subsequent holders and they should not look to him in case of dishonour of instrument. The endorser excludes his liability by adding the words "sans recourse" or "without recourse", e.g., "pay A or order sans recourse".

   (ii) By making his liability depending upon happening of a specified event which may never happen, e.g., the holder of a bill may endorse it thus: "Pay A or order on his marrying B". In such a case, the endorser will not be liable until A marries B.

It is pertinent to refer to Section 52 of the Negotiable Instruments Act, 1881 here. It reads "The endorser of a negotiable instrument may, by express words in the endorsement exclude his own liability thereon, or make such liability or the right of the endorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen".

Negotiation Back

Where an endorser negotiates an instrument and again becomes its holder, the instrument is said to be negotiated back to that endorser and none of the intermediary endorsees are then liable to him. The rule prevents a circuity of action. For example, A, the holder of a bill endorses it to B, B endorses to C, and C to D, and endorses it again to A. A, being a holder in due course of the bill by second endorsement by D, can recover the amount thereof from B, C, or D and himself being a prior party is liable to all of them. Therefore, A having been relegated by the second endorsement to his original position, cannot sue B, C and D.

Where an endorser so excludes his liability and afterwards becomes the holder of the instrument, all the intermediate endorsers are liable to him. "the italicised portion of the above Section is important". An illustration will make the point clear. A is the payee of a negotiable instrument. He endorses the instrument 'sans recourse' to B, B endorses to C, C to D, and D again endorses it to A. In this case, A is not only reinstated in his former rights but has the right of an endorsee against B, C and D.

Negotiation of Lost Instrument or that Obtained by Unlawful Means

When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or endorsee, who claims through the person who found or obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor, or holder from any party prior to such holder unless such possessor or endorsee is, or some person through whom he claims was, a holder in due course.

Forged Endorsement

The case of a forged endorsement is worth special notice. If an instrument is endorsed in full, it cannot be negotiated except by an endorsement signed by the person to whom or to whose order the instrument is payable, for the endorsee obtains title only through his endorsement. Thus, if an instrument be negotiated by means of a forged endorsement, the endorsee acquires no title even though he be a purchaser for value and in good faith, for the endorsement is a nullity. Forgery conveys no title. *But where the instrument is a bearer instrument or has been endorsed in blank, it can be negotiated by mere delivery, and the holder derives his title independent of the forged endorsement and can claim the amount from any of the parties to the instrument.* For example, a bill is endorsed, "Pay A or order". A endorses it in blank, and it comes into the hands of B, who simply delivers it to C, C forges B's endorsement and transfer it to D. Here, D, as the holder does not derive his title through the forged endorsement of B, but through the genuine endorsement of A and can claim payment from any of the parties to the instrument in spite of the intervening forged endorsement.

Acceptance of a Bill of Exchange

The drawee of a bill of exchange, as such, has no liability on any bill addressed to him for acceptance or payment. A refusal to accept or to pay such bill gives the holder no rights against him. The drawee becomes liable only after he accepts the bill. The acceptor has to write the word 'accepted' on the bill and sign his name below it. Thus, it is the acceptor who is primarily liable on a bill.

The acceptance of a bill is the indication by the drawee of his assent to the order of the drawer. Thus, when the drawee writes across the face of the bill the word "accepted" and signs his name underneath he becomes the acceptor of the bill.

An acceptance may be either general or qualified. A general acceptance is absolute and as a rule, an acceptance has to be general. Where an acceptance is made subject to some condition or qualification, thereby varying the effect of the bill, it is a qualified acceptance. The holder of the bill may either refuse to take a qualified acceptance or non-acquiescence in it. Where he refuses to take it, he can treat the bill as dishonoured by non-acceptance, and sue the drawer accordingly

Acceptance for Honour

When a bill has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto. The stranger so accepting, will declare under his hand that he accepts the protested bill for the honour of the drawer or any particular endorser whom he names.

The acceptor for honour is liable to pay only when the bill has been duly presented at maturity to the drawee for payment and the drawee has refused to pay and the bill has been noted and protested for non-payment. Where a bill has been protested for non-payment after having been duly accepted, any person may intervene and pay it supra protest for the honour of any party liable on the bill. When a bill is paid *supra protest,* it ceases to be negotiable. The stranger, on paying for honour, acquires all the right of holder for whom he pays.

Presentment for Acceptance

It is only bills of exchange that require presentment for acceptance and even these of certain kinds only. Bills payable on demand or on a fixed date need not be presented. Thus, a bill payable 60 days after due date on the happening of a certain event may or may not be presented for acceptance. But the following bills must be presented for acceptance otherwise, the parties to the bill will not be liable on it:

(a) A bill payable *after sight*. Presentment is necessary in order to fix maturity of the bills; and

(b) A bill in which there is an express stipulation that it shall be presented for acceptance before it is presented for payment.

Section 15 provides that the presentment for acceptance must be made to the drawee or his duly authorised agent. If the drawee is dead, the bill should be presented to his legal representative, or if he has been declared an insolvent, to the official receiver or assigner.

The following are the persons to whom a bill of exchange should be presented:

(i) The drawee or his duly authorised agent.

(ii) If there are many drawees, bill must be presented to all of them.

(iii) The legal representatives of the drawee if drawee is dead.

(iv) The official receiver or assignee of insolvent drawee.

(v) To a drawee in case of need, if there is any. This is necessary when the original drawee refuses to accept the bill.

(vi) The acceptor for honour. In case the bill is not accepted and is noted or protested for non-acceptance, the bill may be accepted by the acceptor for honour. He is a person who comes forward to accept the bill when it is dishonoured by non-acceptance.

The presentment must be made before maturity, within a reasonable time after it is drawn, or within the stipulated period, if any, on a business day within business hours and at the place of business or residence of the drawee. The presentment must be made by exhibiting the bill to the drawee; mere notice of its existence in the possession of holder will not be sufficient.

When presentment is compulsory and the holder fails to present for acceptance, the drawer and all the endorsers are discharged from liability to him.

Presentment for Acceptance when Excused

Compulsory presentment for acceptance is excused and the bill may be treated as dishonoured in the following cases:

(a) Where the drawee cannot be found after reasonable search.

(b) Where drawee is a fictitious person or one incapable of contracting.

(c) Where although the presentment is irregular, acceptance has been refused on some other ground.

Presentment for Payment

Section 64 lays down the general rule as to presentment of negotiable instruments for payment. It says all notes, bills and cheques must be presented for payment thereof respectively by or on behalf of the holder during the usual hours of business and of the maker or acceptor, and if at banker's within banking hours. [Section 64(1)]

As mentioned earlier, the definition of cheque has been broadened to include the electronic image of a truncated cheque and a cheque in the electronic form. Thus, the section has also been suitably amended to provide rules as to presentment of truncated cheque. The amendment, despite recognising electronic image of a truncated cheque, has made provision for the drawee bank to call for the truncated cheque in original if it is not satisfied about the instrument.

Section 64(2)* stipulates, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.

Presentment for Payment when Excused

No presentment is necessary and the instrument may be treated as dishonoured in the following cases:

(a) W here the maker, drawer or acceptor actively does something so as to intentionally obstruct the presentment of the instrument, e.g., deprives the holder of the instrument and keeps it after maturity.

(b) Where his business place is closed on the due date.

(c) Where no person is present to make payment at the place specified for payment.

(d) Where he cannot, after due search be found. (Section 61)

(e) Where there is a promise to pay notwithstanding non-presentment.

(f) Where the presentment is express or impliedly waived by the party entitled to presentment.

(g) Where the drawer could not possibly have suffered any damage by non-presentment.

(h) Where the drawer is a fictitious person, or one incompetent to contract.

(i) Where the drawer and the drawee are the same person.

(j) Where the bill is dishonoured by non-acceptance.

(k) Where presentment has become impossible, e.g., the declaration of war between the countries of the holder and drawee.

(l) Where though the presentment is irregular, acceptance has been refused on some other grounds.

Dishonour by Non-Acceptance

Section 91 provides that a bill is said to be dishonoured by non-acceptance

(a) When the drawee does not accept it within 48 hours from the time of presentment for acceptance.

(b) When presentment for acceptance is excused and the bill remains unaccepted.

(c) When the drawee is incompetent to contract.

(d) When the drawee is a fictitious person or after reasonable search cannot be found. (e) Where the acceptance is a qualified one.

Dishonour by Non-Payment (Section 92)

A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same. Also, a negotiable instrument is dishonoured by non-payment when presentment for payment is excused and the instrument when overdue remains unpaid.

If the bill is dishonoured either by non-acceptance or by non-payment, the drawer and all the endorsers of the bill are liable to the holder, provided he gives notice of such dishonour. The drawee is liable only when there is dishonour by non-payment.

Notice of Dishonour (Sections 91-98 and Sections 105-107)

When a negotiable instrument is dishonoured either by non-acceptance or by non-payment, the holder or some party liable thereon must give notice of dishonour to all other parties whom he seeks to make liable. Each party receiving notice of dishonour must in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time after he has received it. The object of giving notice is not to demand payment but to whom the party notified of his liability and in case of drawer to enable him to protect himself as against the drawee or acceptor who has dishonoured the instrument issued by him. Notice of dishonour is so necessary that an omission to give it discharges all parties other than the maker or acceptor. These parties are discharged not only on the bill or note, but also in respect of the original consideration.

Notice may be oral or in writing, but it must be actual formal notice. It must be given within a responsible time of dishonour.

Notice of Dishonour Unnecessary

No notice of dishonour is necessary:

(a) When it is dispensed with or waived by the party entitled thereto, e.g., where an endorser writes on the instrument such words as “notice of dishonour waived”,

(b) When the drawer has countermanded payment.

(c) When the party charged would not suffer damage for want of notice.

(d) When the party entitled to notice cannot after due search be found.

(e) When the omission to give notice is caused by unavoidable circumstances, e.g., death or dangerous illness of the holder.

(f) Where the acceptor is also a drawer, e.g., where a firm draws on its branch.

(g) Where the promissory note is not negotiable. Such a note cannot be endorsed. (h) Where the party entitled to notice promises to pay unconditionally

Noting and Protest (Sections 99-104 A)

Noting

Where a note or bill is dishonoured, the holder is entitled after giving due notice of dishonour, to sue the drawer and the endorsers. Section 99 provides a convenient method of authenticating the fact of dishonour by means of "Noting". Where a bill or note is dishonoured, the holder may, if he so desires, cause such dishonour to be noted by a notary public on the instrument, or on a paper attached thereto or partly on each. The noting or minute must be recorded by the notary public within a reasonable time after dishonour and must contain the fact of dishonour, the date of dishonour, the reason, if any, assigned for such dishonour if the instrument has not been expressly dishonoured the reasons why the holder treats it dishonoured and notary's charges.

Protest

The protest is the formal notarial certificate attesting the dishonour of the bill, and based upon the noting which has been effected on the dishonour of the bill. After the noting has been made, the formal protest is drawn up by the notary and when it is drawn up it relates back to the date of noting.

Where the acceptor of a bill has become insolvent, or has suspended payment, or his credit has been publicly impeached, before the maturity of the bill, the holder may have the bill protested for better security. The notary public demands better security and on its refusal makes a protest known as "protest for better security".

Foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn. Foreign promissory notes need not be so protested. Where a bill is required by law to be protested, then instead of a notice of dishonour, notice of protest must be given by the notary public.

A protest to be valid must contain on the instrument itself or a literal transcript thereof, the names of the parties for and against whom protest is made, the fact and reasons for dishonour together with the place and time of dishonour and the signature of the notary public. Protest affords an authentic evidence of dishonour to the drawer and the endorsee.

DISCHARGE

The discharge in relation to negotiable instrument may be either (i) discharge of the instrument or (ii) discharge of one or more parties to the instrument from liability.

Discharge of the Instrument

A negotiable instrument is discharged:

(a) by payment in due course;

(b) when the principal debtor becomes the holder;

(c) by an act that would discharge simple contract;

(d) by renunciation; and

(e) by cancellation.

Discharge of a Party or Parties

W hen any particular party or parties are discharged, the instrument continues to be negotiable and the undischarged parties remain liable on it. For example, the non-presentment of a bill on the due date discharges the endorsers from their liability, but the acceptor remains liable on it

A party may be discharged in the following ways :

(a) *By cancellation* by the holder of the name of any party to it with the intention of discharging him.

(b) *By release*, when the holder releases any party to the instrument

(c) *Discharge* of secondary parties, i.e., endorsers.

(d) *By the operation* of the law, i.e., by insolvency of the debtor.

(e) *By allowing* drawee more than 48 hours to accept the bill, all previous parties are discharged.

(f) *By non-presentment* of cheque promptly the drawer is discharged.

(g) *By taking qualified* acceptance, all the previous parties are discharged.

(h) *By material alteration*.

MATERIAL ALTERATION (SECTION 87)

An alteration is material which in any way alters the operation of the instrument and the liabilities of the parties thereto. Therefore, any change in an instrument which causes it to speak a different language in legal effect from that which it originally spoke, or which changes legal character of the instrument is a material alteration.

A material alteration renders the instrument void, but it affects only those persons who have already become parties at the date of the alteration. Those who take the altered instrument cannot complain. Section 88 provides that an acceptor or endorser of a negotiable instrument is bound by his acceptance or endorsement notwithstanding any previous alteration of the instrument.

Examples of material alteration are :

Alteration (i) of the date of the instrument (ii) of the sum payable, (iii) in the time of payment, (iv) of the place of payment,(v) of the rate of interest, (vi) by addition of a new party, (vii) tearing the instrument in a material part.

There is no material alteration and the instrument is not vitiated in the following cases:

(i) correction of a mistake,

(ii) to carry out the common intention of the parties,

(iii) an alteration made before the instrument is issued and made with the consent of the parties,

(iv) crossing a cheque,

(v) addition of the words “on demand” in an instrument where no time of payment is stated.

Section 89 affords protection to a person who pays an altered note bill or cheque. However, in order to be able to claim the protection, the following conditions must be fulfilled:

(i) the alteration should not be apparent;

(ii) the payment must be made in due course; and

(iii) the payment must be by a person or banker liable to pay.

Section 89 has been amended to provide for the amendment in the definition of cheque so as to provide for electronic image of a truncated cheque. The section provides that any bank or a clearing house which receives a transmitted electronic image of a truncated cheque, shall verify from the party who transmitted the image to it, that the image so transmitted to it and received by it, is exactly the same. Where there is any difference in apparent tenor of such electronic image and the truncated cheque, it shall be a material alteration. In such a case, it shall be the duty of the bank or the clearing house, as the case may be, to ensure the exactness of the apparent tenor of electronic image of the truncated cheque while truncating and transmitting the image. If the bank fails to discharge this duty, the payment made by it shall not be regarded as good and it shall not be afforded protection.

Retirement of a Bill under Rebate

An acceptor of a bill may make payment before maturity, and the bill is then said to be retired, but it is not discharged and must not be cancelled except by the acceptor when it comes into his hands. It is customary in such a case to make allowance of interest on the money to the acceptor for the remainder of the time which the bill has to run. The interest allowance is known as rebate.

Presumptions of Law

A negotiable instrument is subject to certain presumptions. These have been recognised by the Negotiable Instruments

Act under Sections 118 and 119 with a view to facilitate the business transactions. These are described below: It shall be presumed that:

(1) Every negotiable instrument was made or drawn for consideration irrespective of the consideration mentioned in the instrument or not.

(2) Every negotiable instrument having a date was made on such date.

(3) Every accepted bill of exchange was accepted within a reasonable time before its maturity. (4) Every negotiable instrument was transferred before its maturity.

(5) The instruments were endorsed in the order in which they appear on it. (6) A lost or destroyed instrument was duly signed and stamped.

(7) The holder of the instrument is a holder in due course.

(8) In a suit upon an instrument which has been dishonoured, the Court shall presume the fact of dishonour, or proof of the protest.

However these legal presumptions are rebuttable by evidence to the contrary. The burden to prove to the contrary lies upon the defendant to the suit and not upon the plaintiff.

Payment of Interest in case of Dishonour

The Negotiable Instruments Act, 1881 was amended in the year 1988, revising the rate of interest as contained in Sections 80 and 117, from 6 per cent to 18 per cent per annum payable on negotiable instruments from the due date in case no rate of interest is specified, or payable to an endorser from the date of payment on a negotiable instrument on its dishonour with a view to discourage the withholding of payment on negotiable instruments on due dates.

LESSON ROUND UP

– The law relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881. It is an Act to define and amend the law relating to promissory notes, bills of exchange and Cheques.

– The term *"negotiable instrument"* means a document transferable from one person to another.

– According to this definition the following are the conditions of negotiability:

  - The instrument should be freely transferable. An instrument cannot be negotiable unless it is such and in such state that the true owner could transfer by simple delivery or endorsement and delivery.
  - The person who takes it for value and in good faith is not affected by the defect in the title of the transferor.
  - Such a person can sue upon the instrument in his own name.

– The Act recognizes only three kinds of negotiable instruments under Section 13 but it does not exclude any other negotiable instrument provided the instrument entitles a person to a sum of money and is transferable by delivery.

  - Promissory Notes
  - Bills of Exchange
  - Cheques

– A "promissory note" is an instrument in writing containing an unconditional undertaking, signed by the maker to pay a certain sum of money to, or to the order of, a certain person, or only to bearer of the instrument.

– To be a promissory note, an instrument must possess the following essentials

  - be in writing
  - contain an express promise
  - undertaking to pay must be unconditional
  - maker must sign the promissory note
  - maker
  - payee must be certain
  - sum payable must be certain
  - be properly stamped in accordance with the provisions of the Indian Stamp Act

– A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of, a certain person or to the bearer of the instrument.

– Bills of exchange were originally used for payment of debts by traders residing in one country to another country with a view to avoid transmission of coin. Now-a-days they are used more as trade bills both in connection with domestic trade and foreign trade and are called inland bills and foreign bills respectively.

– A 'Cheque' is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated Cheque and a Cheque in the electronic form.

GLOSSARY

Negotiable Instrument: "Negotiable instrument" means a document transferable from one person to another. However the Act has not defined the term. It merely says that "A negotiable instrument" means a promissory note, bill of exchange or Cheque payable either to order or to bearer.

Inland Instruments: A promissory note, bill of exchange or cheque drawn or made in India, and made payable, or drawn upon any person, resident in India shall be deemed to be an inland instrument.

Foreign Instruments : An instrument which is not an inland instrument, is deemed to be a foreign instrument. it must be drawn outside India.

Inchoate or Incomplete Instrument: When one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount, covered by the stamp.

Trade Bill : A bill drawn and accepted for a genuine trade transaction is termed as a trade bill.

Accommodation Bill : All bills are not genuine trade bills, as they are often drawn for accommodating a party.

Accommodation bill is a bill in which a person lends or gives his name to oblige a friend or some person whom he knows or otherwise.

Collecting Banker: Collecting Banker is one who collects the proceeds of a cheque for a customer.

Endorser: Person who, by signing a negotiable instrument, transfers the title of the instrument (or the property named therein) to another.

Holder: A person is a holder of a negotiable instrument who is entitled in his own name (i) to the possession of the instrument, and (ii) to recover or receive its amount from the parties thereto.

Holder in Due Course: A holder in due course is (i) a person who for consideration, obtains possession of a negotiable instrument if payable to bearer, or (ii) the payee or endorsee thereof, if payable to order, before its maturity and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

Hundis: Hundis are negotiable instruments written in an oriental language. They are sometimes bills of exchange and sometimes promissory notes, and are not covered under the Negotiable Instruments Act, 1881.

TEST YOURSELF

Q.1 A negotiable instrument in which no time for payment is specified is payable :

(a) on demand	(b) after a specified period
(b) after acceptance	(d) after sight

Q.2 The presentment for acceptance is required in case of a :

(a) Cheque	(b) Hundi
(b) Bill of exchange	(d) None of the above

Q.3 Hundi is also known as :

(a) zickri chit	(b) perpeth
(b) maidi hundi	(d) peth

Q.4 Which of the following are Negotiable Instrument

(a) Promisory Note (b) Bill of exchange

(b) Cheque (d) All of the above

Q.5............. is the person who makes or execute the note promising to pay the amount stated there in

(a) Maker (b) Payee

(b) Holder (d) None of these

Q.6 The person who draws the bill is known as

(a) Drawee (b) Drawer

(b) Stranger (d) None of the above

Q.7 When the holder endorses the bill to anyone else he becames the..................

(a) Endorsee (b) Payee

(c) Endorser (d) Holder

Q.8............... is a person to whom the bill is endorsed.

(a) Endorsee (b) Payee

(c) Endorser (d) Holder

Q.9 Essential of a Bill of exchange

(a) It must be stamped (b) it must be in writing

(c) both (a) and (b) (d) none of the above

Q.10 A......... Hundi is always drawn on or against goods shipped on the vessel mentioned in the hundi.

(a) Jokhmi Hundi (b) Shah Jog Hundi

(c) Darshani Hundi (d) none of the above

SUGGESTED READINGS

(1) The Negotiable Instruments Act, 1881 – *Bare Act*

(2) A Manual of Mercantile Law – *M. C. Shukla*

(3) Negotiable Instruments Act – *Khergamwala*

(4) The Negotiable Instruments Act – *Bhashyam & Adiga* (Revised by *J.C. Verma*, Bharat Law House Pvt. Ltd., New Delhi)

PART B

BUSINESS MANAGEMENT

Introduction to Management

Lesson 7

KEY CONCEPTS

■ Management ■ Vedic Era Management ■ Scientific Management ■ Management as an Art, Science and Profession ■ Leadership

Learning Objectives

To understand:

- Trace and appreciate the historical origins and evolution of management thought from ancient civilizations to the modern industrial era.
- Define and articulate the core meaning and fundamental definitions of management from various academic perspectives.
- Identify and explain the essential features and characteristics that distinguish management as an organizational activity.
- Critically analyze and differentiate the nature of management as an Art, a Science, and a Profession, understanding their synergistic relationship.
- Distinguish and evaluate the principles, applications, and suitability of the ten principal management styles in different organizational contexts.
- Apply foundational management concepts to real-world business scenarios.

Lesson Outline

INTRODUCTION TO MANAGEMENT

The discipline of management is perhaps the most crucial factor determining the success or failure of any collective human endeavor, be it a multinational corporation, a government agency, or a small non-profit organization. Management is not merely a set of rules but a dynamic process that breathes life into resources—converting disorganized resources into a powerful, goal-achieving entity.

The word “management” has its origin in the Greek word ‘nomos’ which means ‘management’.

It is concerned with human beings whose behavior is highly unpredictable. Ever since people have begun forming groups to achieve individual goals, management has become the essence coordinating the individual efforts.

It involves not only a function but also the people who discharge it. A group of people, who accept the responsibility to run an organization and direct its activities, form the management of that organization.

Management encompasses not only a specific position and rank but also a discipline and field of study. It is management that provides planning, organization and direction which are necessary for business operations. In a more fundamental sense, management is a vital function concerned with all aspects of an enterprise’s operation.

Management, in this sense, may be defined as the art of getting things done.

Various economists have given different definitions of ‘Management’.

Pioneer	Definition	Key Focus
Mary Parker Follett	"Management is the art of getting things done through people."	Focus on human relations and leadership.
F.W. Taylor	"Management is knowing exactly what you want men to do, and then seeing that they do it in the best and cheapest way."	Focus on efficiency and cost reduction (Scientific Management).
Henri Fayol	"To manage is to forecast and to plan, to organize, to command, to coordinate, and to control."	Focus on administrative functions (Classical Management).
Peter Drucker	"Management is a multi-purpose organ that manages a business, manages managers, and manages workers and work."	Focus on the holistic, organizational role of management.

The purpose of organisations (businesses and institutions) is to create wealth. If the primary purpose of the business or institution is to create wealth, then the manager’s primary role is to add value to this wealth-creating process.

GENESIS OF MANAGEMENT (FROM VEDIC TO INDUSTRIAL ERA)

The notion that management is a modern concept born out of the Industrial Revolution is a misconception. While formal theories are recent, the practice of management is as old as civilization itself. Organized human activity—whether building the Pyramids, administering ancient empires, or conducting large-scale trade—required sophisticated managerial techniques.

Management in the Ancient and Vedic Era

In ancient societies, management was closely tied to governance, military strategy, and large-scale infrastructure projects.

The Vedic and Arthashastra Tradition

The Indian subcontinent provides profound historical insights into structured management. Texts from the Vedic period (circa 1500 BCE) detail hierarchical social and professional structures that facilitated the completion of complex tasks.

The most authoritative ancient text on administration is **Kautilya's *Arthashastra*** (circa 300 BCE). This text is, in essence, an ancient management manual, covering:

- **Public Administration:** Detailed rules for the management of state finance, taxation, foreign policy, and judicial administration.
- **Organizational Design:** Recommendations for the structure of government departments, with specific roles for superintendents (*Adhyaksha*) responsible for mines, markets, treasury, and transport.
- **Resource Allocation:** Principles for efficient resource usage, storage, and distribution—all modern managerial functions.

These ancient structures demonstrate a recognition of specialization, hierarchy, and accountability—the bedrock of modern organizational theory.

Management in the Pre-Industrial Era

Following the decline of centralized empires, management practices were predominantly observed in two sectors: the **Military** and the **Church**.

- **The Roman Catholic Church:** Developed a robust, geographically extensive, and highly centralized administrative structure that survives to this day. The use of hierarchy, functional specialization, and clear lines of communication influenced early organizational theorists.
- **The Military:** Throughout history, military organizations perfected the concepts of span of control, unity of command, chain of command, and strategic planning—all crucial principles later adopted by business management.

The rise of the Guild System and later the Mercantile System in Europe introduced early forms of quality control, apprentice training, and standardized production processes.

The Dawn of Modern Management: The Industrial Revolution

The true catalyst for modern management theory was the Industrial Revolution (mid-18th to mid-19th century). This era marked a profound shift from manual, agrarian production to machine-based, large-scale factory production. A brief discussion of the five industrial revolution is as under:

First Industrial Revolution (1760-1840): The First Industrial Revolution was characterized by the transition from agrarian economies to industrial ones, driven primarily by mechanization and the use of steam power.

Second Industrial Revolution (1870-1914): The Second Industrial Revolution was marked by advancements in steel production, electricity, and internal combustion engines.

Third Industrial Revolution (1950-1970): The Third Industrial Revolution, also known as the Digital Revolution, was characterized by the rise of electronics, computers, and information technology.

Fourth Industrial Revolution (2010-present): The Fourth Industrial Revolution, also known as Industry 4.0, is characterized by the fusion of technologies that blur the lines between the physical, digital, and biological spheres.

Fifth Industrial Revolution (Emerging): While the exact contours of the Fifth Industrial Revolution are still emerging, it is likely to be characterized by advancements in biotechnology, nanotechnology, and quantum computing.[1]

1. "The Five Industrial Revolutions: A Historical Overview", Accessed from https://www.fogwing.io/learning/industrial-revolutions/

Features of Management

Management is a unique and dynamic activity characterized by the following features:

i) *Goal-Oriented Process*

Management always works towards achieving predetermined goals. All activities—from planning the budget to coordinating work—are directed toward the final objectives of the organization (e.g., profit maximization, market share growth, service delivery).

Management is required in all types of organizations, at all levels, and across all departments.

- Universal Application**:** Whether it is a school, a bank, a football team, or a company, the basic functions (planning, organizing, controlling) remain the same, although the techniques used may vary.
- Management Hierarchy**:** Management is needed at the top (strategic planning), middle (departmental execution), and supervisory (operational control) levels.

iii) *Multi-Dimensional*

Management is a complex activity involving three main dimensions:

1. Management of Work**:** Determining what work is to be done, how it will be organized, and who will do it.
2. Management of People**:** Handling the human resource dimension, which includes staffing, motivation, leadership, and conflict resolution. This is often the most critical and challenging dimension.
3. Management of Operations**:** Managing the cycle of production—transforming input (raw materials) into output (finished goods or services).

iv) *Continuous Process*

The functions of management (Planning, Organizing, Staffing, Directing, and Controlling) are performed continuously. A manager is never done with the process. They plan, execute, control, and then re-plan based on the results, forming a continuous cycle.

v) *Group Activity*

Management is fundamentally a collaborative effort. An organization is a collection of diverse individuals, each with unique needs and goals. Management aims to integrate these diverse efforts into a unified, focused effort towards a common organizational goal.

vi) *Dynamic Function*

Organizations operate within a constantly changing external environment (economic, political, social, technological). Management must constantly monitor and adapt its objectives, policies, and operations to survive and thrive in this dynamic environment.

vii) *Intangible Force*

Management cannot be physically seen or touched, but its presence can be felt in the way the organization functions. When order, efficiency, motivated employees, and timely work completion are visible, it is evidence of good management. Conversely, chaos, delays, and waste signal poor management.

NATURE OF MANAGEMENT

A perennial debate in management studies concerns its inherent nature: Is it an art, a science, or a profession? The prevailing view is that management is a synthesized discipline incorporating elements of all three.

MANAGEMENT AS A SCIENCE

Science may be defined as a body of knowledge systematized through the application of scientific methods in any department of enquiry. Science is systematic in the sense that certain relationships, principles and their limitations have been discovered, tested and established into theories, laws and principles, but it does not mean that the principles and laws so established are immutable for all times to come. Discovery of new knowledge and phenomena can always change any principle, irrespective of its nature, standing and application.

Science encompasses physical sciences, such as physics and chemistry, as well as mathematics (also known as exact sciences), and social sciences, including economics, sociology, and psychology (known as variable sciences), as they are based on human behaviour, which is unpredictable.

Management can then be well described as a science, albeit a variable one, when compared to the nature of exact physical sciences.

Management now has a theoretical base with several principles relating to coordination, organisation, decision-making and so on. It is true that we cannot have the same kind of experimentation in management as is possible in natural sciences. But the same is the case with economics, political science, military science and a number of other sciences dealing with the complex structure of group norms and behaviour. When there is no objection to using the term science for these disciplines, there should not be any controversy about its use in the activity described as management. It is worth emphasising here that management is still a growing field of study.

Arguments for Management as a Science

1. *Systematized Body of Knowledge*: Management has a structured body of theories, principles (like unity of command, division of work), and concepts (like motivation, hierarchy) developed through continuous research and analysis.
2. *Use of Scientific Methods*: Managers use scientific tools and techniques like operations research, statistical analysis, and simulation models for decision-making.
3. *Cause and Effect Relationship*: Managerial principles attempt to establish cause-and-effect relationships (e.g., low morale causes low productivity).

However, unlike pure sciences (Physics, Chemistry), management deals with human behavior, which is unpredictable and cannot be accurately measured or controlled. Therefore, management principles are guidelines, not absolute laws, making it a social science or an inexact science.

Management as an Art

Art refers to the practical application of skill and creativity to achieve desired results. It is about the "how-to" of the process.

Arguments for Management as an Art

1. *Personalized Application*: While knowledge exists, a manager's effectiveness depends on their individual skill, judgment, and creativity in applying it. Two managers facing the same problem may use the same theory but implement it differently based on their style.
2. *Creativity and Innovation*: Effective management often requires innovation—devising new plans,

strategies, and solutions to unprecedented problems, which is a hallmark of artistic endeavour.

3. *Practice and Experience*: Art is perfected through continuous practice. Similarly, managerial skills are honed through real-world experience, observation, and repeated decision-making.

Management as a Profession

A profession is a vocation requiring specialized knowledge, prolonged academic preparation, formal qualification, and adherence to a prescribed code of conduct.

Evaluation of Management as a Profession

Characteristic of a Profession	Management Status	Rationale
Well-Defined Body of Knowledge	Present	Knowledge is vast and taught in universities (e.g., MBA, BBA degrees).
Restricted Entry	Not Fully Present	No legal requirement for a specific degree (like a medical license) to become a manager (though preferred).
Professional Association	Developing	Bodies like AIMA (All India Management Association) exist, but membership is not mandatory.
Ethical Code of Conduct	Developing	A formal code exists but is often not strictly enforced by a central body on all managers.
Service Motive	Present	Although profit is key, modern management encompasses social responsibility and a customer-centric focus.

TYPES OF MANAGEMENT STYLES

Management style refers to the manner in which a manager exercises authority, makes decisions, and interacts with team members. No single style is universally superior; the best style depends on the situation (task, team maturity, time constraints).

Autocratic Management

This is a classical, top-down approach where the manager makes decisions alone and expects strict adherence to these decisions.

- *Principle*: Complete centralized authority. The manager dictates work methods, assigns tasks, and controls rewards.
- *When to Use*: Highly effective in crises, when quick decisions are required, or when managing inexperienced, low-skilled employees.

Example: A Fire Chief during an active building fire. They must issue rapid, non-negotiable commands ("Enter through the south door," "Vent the roof now") without debate. In this scenario, time and safety require absolute, centralized authority.

Features of Autocratic Management:

- *Centralized Decision-Making*: The manager or leader makes decisions without subordinates' participation.

- *Limited Employee Participation***:** It indicates that employees are not given room to participate in the process of making decisions.
- *Creating a Chain of Command***:** There has to be a chain of command where instruction comes from above, and employees are expected to obey the instructions from their superiors.

Merits:

- Quick decision-making in crisis situations.
- Clear chain of command and high accountability.
- Effective when managing unskilled or temporary workers who need strict guidance.

Demerits:

- Leads to low employee morale, creativity, and engagement.
- High risk of poor decisions if the manager lacks all the necessary information.
- Can create a hostile or fearful work environment.

Persuasive Management

The manager still retains final decision-making authority but attempts to convince employees of the benefits of the decision.

- *Principle***:** The manager explains *why* the decision was made. This provides some context and reduces resistance, even if input wasn't solicited.
- *When to Use:* When the decision is critical, but the team needs to feel ownership or understanding of the outcome.

Example: A Manufacturing Plant Manager who decides, based on cost analysis, that all workers must switch to a new, complicated time-tracking software. They hold an all-hands meeting to explain how the change will ultimately lead to better resource allocation, preventing future layoffs and thereby persuading workers to adopt the new system willingly.

Features of Persuasive Management:

- *Manager Retains Final Authority***:** Similar to the autocratic style, the manager makes the ultimate decision without turning it over to a vote. The key difference is the effort to explain the "why."
- *Emphasis on Communication***:** The manager prioritizes clear, effective, and persuasive communication to articulate the vision, goals, and reasoning behind decisions. They employ techniques such as active listening to hear employee concerns and address them thoughtfully.
- *Rationale and Logic***:** Managers take the time to explain the logic, evidence, and benefits of their decisions to the team. This transparency helps employees understand the direction and their role in achieving the goals.
- *Building Trust and Relationships:* It focuses on fostering strong relationships, respect, and trust by valuing employee input and feedback, even if the final decision is unilateral.

Merits:

- Decisions are still made quickly and efficiently.
- Employees feel *heard* and understand the context, which can improve acceptance.

- Reduces resistance and conflict compared to pure autocratic style.

Demerits:

- Still essentially a top-down decision process; employee input isn't truly integrated.
- If the manager's reasons are weak, it can breed distrust and resentment.

Paternalistic Management

The manager acts like a "father figure" who cares deeply for the employees' well-being, but expects loyalty and trust in return for guidance.

- *Principle*: The manager provides extensive support, security, and benefits to employees, believing that a happy employee is a productive employee. Decisions are made for the "good of the team."
- *When to Use*: In stable, long-term organizations where high loyalty is valued.

Example: The owner of a Mid-sized, multi-generational family business (like a regional bakery or hardware store). The owner provides generous benefits, pays for employee children's schooling, and organizes family events, but expects unwavering loyalty, strict adherence to traditions, and rarely accepts challenges to their ultimate authority.

Features of Paternalistic Management:

- *Leader as Authority*: The manager acts like a "father figure," making all final decisions while believing those choices are in the **best interest** and welfare of their employees.
- *Welfare and Support*: The leader provides extensive care, benefits, and support for the employees' personal and professional well-being, fostering a supportive, family-like environment.
- *Expected Loyalty*: In exchange for the benefits and security provided, the manager expects strong loyalty, trust, and obedience from the subordinates.
- *Reward and Discipline*: Compliance and hard work are rewarded with stability and perks, while non-compliance is met with disciplinary action viewed as "tough love" or guidance.

Merits:

- High employee loyalty and low turnover due to strong care and support.
- Decisions are clear and quick.
- Can result in a very harmonious work environment.

Demerits:

- Employees can become over-reliant on the manager.
- Can lead to a "parent-child" dynamic, hindering maturity and initiative.
- If the manager leaves, the culture can collapse.

Democratic Management

Decisions are made based on majority rule, with the manager serving as a facilitator who ensures all voices are heard.

- *Principle*: Shared governance and high involvement. Authority is decentralized, and the manager trusts the team's collective intelligence.

- *When to Use*: When team expertise is high, creativity is needed, or the decision's acceptance is crucial for successful implementation.

Example: A Marketing Team Lead gathering their copywriters, designers, and media buyers to decide on the best name and slogan for a new product. The team discusses multiple options, debates the pros and cons, and ultimately votes to select the final campaign concept.

Features of Democratic Management:

Participative Decision-Making: Employees are engaged in the decision-making process and can provide their unique perspectives and ideas.

Empowerment of Employees: Employees can freely let others know their opinion, take responsibility for certain tasks, and be engaged in achieving the company's goals.

Open Communication: There is transparency in communication between employees and managers.

Merits:

- High morale and commitment from employees.
- Leads to better, more innovative decisions by pooling expertise.
- Develops the skills and experience of team members.

Demerits:

- Slow decision-making due to required meetings and consensus-building.
- Can be ineffective in crisis or high-pressure situations.
- A strong individual can sometimes dominate the group decision.

Consultative Management

The manager retains ultimate decision-making power but actively seeks and considers input from employees before finalizing the decision.

- *Principle:* Manager asks, listens, and decides. This is a subtle yet crucial variation of the democratic style. The employees' advice is valuable but not binding.
- *When to Use:* For technical decisions where specialized knowledge from the team is required, but strategic control must remain with the manager.

Example: A CEO deciding whether to acquire a smaller competitor. Before making the final decision, they hold meetings with the CFO (for financial analysis), the Head of Legal (for risk assessment), and the Head of HR (for integration issues). The CEO listens to all expert advice but then makes the final, single decision herself.

Features of Consultative Management:

- *Final Decision by Manager:* The leader maintains the ultimate authority and accountability for the decision. They are not bound to follow the team's consensus or vote.
- *Active Solicitation of Input:* Managers proactively ask team members for their knowledge, experience, and feedback, especially in areas where employees possess specialized expertise. This often takes the form of open-door policies and dedicated discussion sessions.
- *Two-Way Communication:* Communication flows both ways. The manager informs the team of the problem and potential solutions, and the team offers suggestions and perspectives.

- *Increased Employee Engagement:* By involving staff in the process, this style boosts morale, motivation, and job satisfaction. Employees feel respected, valued, and more committed to the final decision because their voice was heard.

Merits:

- Combines the speed of a single decision-maker with the wisdom of collective input.
- Employees feel their expertise is valued, boosting morale.
- Better decisions due to an informed perspective.

Demerits:

- Employees can become frustrated if their input is consistently ignored.
- It still rests heavily on the manager's ability to synthesize advice.

Transformational Management

This leader inspires and motivates employees to look beyond their own self-interest for the good of the group and to strive for ambitious goals.

- *Principle:* Idealized Influence (charisma), Inspirational Motivation (vision), Intellectual Stimulation (innovation), and Individualized Consideration (coaching).
- *When to Use:* During periods of significant change, organizational restructuring, or when a high degree of creativity and buy-in is needed for a new vision.

Example: Elon Musk (during the early days of SpaceX or Tesla). He didn't just manage; he inspired engineers to believe they could achieve impossible feats (like reusable rockets or mass-market electric cars) by challenging the norms and linking their daily, intense work to a grand, world-changing vision of humanity's future.

Features of Transformational Management:

- *Visionary Leadership:* Transformational Managers inspire and motivate employees by communicating a clear and compelling vision of the future of the organization and directing employees' efforts towards realizing that vision.
- *Charismatic Leadership*: Transformational Managers are typically charismatic leaders who can influence and excite others by example, personal charisma, enthusiasm, and energy as well as by dedication to the mission and values of the organization.
- *Intellectual Stimulation:* Transformational Managers encourage creativity and innovation among the employees by questioning the conventional assumptions and encouraging the employees to be curious and learn new things continuously.

Merits:

- Creates a highly engaged, innovative, and high-performing culture.
- Excellent for driving major organizational change.
- Develops employees into future leaders.

Demerits:

- Requires a high level of charisma and skill from the manager.
- Can be ineffective in stable, routine environments that don't need radical change.

- Results can take a long time to materialize.

Visionary Management

The leader mobilizes people towards an inspiring future vision.

- *Principle:* Articulates a clear, long-term direction, often simplifying complex challenges into an easy-to-understand narrative. They focus on *what* needs to be achieved, not *how*.
- *When to Use:* When an organization is adrift, or when a new direction is needed after an acquisition or market disruption.

Features of Visionary Management:

- *Inspiring Future Vision*: The core characteristic is the ability to articulate an exciting, bold, and persuasive picture of the future (the "what") that resonates deeply with employees, fostering a sense of shared purpose.
- *Empowerment and Autonomy*: The leader communicates the destination but typically gives the team considerable freedom and autonomy (the "how") to innovate, experiment, and determine the best route to reach the vision.
- *Innovation and Strategic Risk-Taking*: This style encourage creativity and out-of-the-box thinking. The leader is often a strategic risk-taker, comfortable with the unknown and challenging the *status quo* to achieve disruptive change.
- *Focus on Long-Term Goals*: There is a strong emphasis on long-term strategic alignment and growth. While inspirational, this style sometimes risks overlooking critical short-term details or immediate operational issues.

Merits:

- Provides strong motivation and purpose.
- Encourages innovation and experimentation within the framework of the vision.
- Great for new, growing, or rapidly changing companies.

Demerits:

- Can fail if the vision is not supported by concrete, actionable steps.
- The team may get lost if the manager doesn't provide enough operational guidance.

Coaching Management

The manager views team members as having high potential and focuses on developing their long-term strengths and capabilities.

- *Principle:* Emphasis on dialogue, feedback, goal-setting, and skills development. The manager asks probing questions instead of providing direct answers.
- *When to Use:* With talented employees who are receptive to growth, or in organizations that prioritize long-term talent development.

Example: A Manager in a large consulting firm. Instead of telling a junior associate how to structure a client presentation, the manager asks: "What are the three most important points the client needs to take away?" and "How can you visually represent the data to support those points?" The goal is to develop the associate's strategic thinking for future projects.

Features of Coaching Management:

- *Guided Problem-Solving:* The manager primarily uses questions (e.g., "What do you think is the best solution?") to help employees think critically and discover answers themselves. This shifts ownership from the manager to the individual.
- *Focus on Long-Term Capability:* The style prioritizes the development and growth of the individual's skills and potential over the immediate, short-term completion of a specific task.
- *Empowerment and Self-Reliance:* By providing supportive guidance rather than direct instructions, the manager builds the employee's confidence, self-awareness, and accountability for their own performance.
- *Continuous, Developmental Feedback:* Communication is based on active listening and providing frequent, constructive feedback aimed at improving future performance and nurturing a culture of learning.

Merits:

- Maximizes employee potential and skills development.
- Creates a resilient team capable of solving problems independently.
- High retention rate among motivated employees.

Demerits:

- Can be time-consuming and requires significant manager-employee interaction.
- May not be effective with employees who resist self-improvement or coaching.

Servant Leadership

This is a philosophy and practice where the leader's main priority is the growth, well-being, and empowerment of the people and the communities they are part of.

- *Principle:* The leader is a servant first. They focus on meeting the needs of the team, fostering a culture of trust and ethical behaviour. Authority is earned through respect, not position.
- *When to Use:* In knowledge-based organizations, non-profits, or any context where collaboration, empathy, and ethical standards are critical.

Example: A Restaurant Kitchen Manager (Chef) who ensures her line cooks have the best equipment, timely breaks, and competitive wages, and is often seen helping with the dishes or prep work herself during peak hours. Her focus is on removing roadblocks and supporting the team so they can focus on delivering high-quality food.

Features of Servant Leadership:

- *Serving First Mentality:* The core motivation of the leader is to prioritize the needs and well-being of their followers, the organization, and the community. The act of leading is secondary to the act of service.
- *Fostering Growth and Development:* The leader is fundamentally committed to the personal, professional, and spiritual growth of every individual they lead, providing them with the necessary resources and opportunities.
- *Active Listening and Empathy:* The leader practices deep, active listening to truly understand the concerns and ideas of the team, demonstrating genuine empathy and acceptance.

- *Stewardship and Ethical Foresight:* The leader acts as a responsible steward of the organization's resources, using foresight to anticipate future consequences and make ethical, long-term decisions.

Merits:

- Extremely high trust, loyalty, and morale.
- Empowered employees are highly productive and customer-focused.
- Creates a strong, ethical, and collaborative culture.

Demerits:

- Can be difficult to implement in highly hierarchical or bureaucratic organizations.
- May be viewed as a lack of authority or "too soft" in tough situations.

Laissez-faire Management

Also known as delegative management, this style gives team members almost complete freedom to perform their work.

- *Principle:* "Hands-off" approach. The manager provides the necessary resources and objectives but allows the team to define their own structure, processes, and decision-making methods.
- *When to Use:* When managing highly skilled, self-motivated experts (e.g., R&D teams, creative professionals) who thrive on autonomy.

Example: The director of a Scientific Research Lab managing a team of veteran PhD researchers. Each researcher is a world-class expert on their specific project. The director simply ensures their budget is secure and their access to equipment is granted, allowing them maximum autonomy to conduct their complex, self-directed research.

Features of Laissez-Faire Management:

- *Employee Autonomy:* Employees are allowed to work on their own, being provided with a degree of freedom in their method of work and defining their own schedule.
- *Limited Supervision:* Managers are minimally involved. They supervise work or intervene in it when requested or necessary.
- *Trust in Employees:* The philosophy is based on managers believing in their employees' ability to effectively do their jobs without their constant involvement.

Merits:

- Maximum autonomy, creativity, and job satisfaction for highly skilled workers.
- Quick project completion when the team is fully capable.
- Managers can focus on high-level strategy.

Demerits:

- Can lead to a lack of cohesion, poor coordination, and missed deadlines if the team lacks discipline or clear goals.
- Completely ineffective for new or unskilled teams.

LESSON ROUNDUP

- Management is the universal, goal-oriented process of coordinating resources through the functions of planning, organizing, staffing, directing, and controlling to achieve organizational objectives efficiently and effectively.
- The roots of management are ancient, evident in historical texts like Kautilya's *Arthashastra*, but its formal theory blossomed during the Industrial Revolution to handle challenges of scale and efficiency.
- The nature of management is hybrid: it is an Art because it requires creative application and personal skill; it is a Science because it relies on a systematized body of knowledge and principles; and it is evolving into a Profession through the formalization of education and ethical codes.
- Management styles range along a continuum of authority: from the highly centralized Autocratic style, where the manager dictates, to the highly decentralized Laissez-faire style, where the team is fully autonomous.
- Modern leadership styles like Transformational, Visionary, and Servant Leadership emphasize motivating, inspiring, and developing employees to achieve higher levels of performance and ethical conduct.

TEST YOURSELF

1. Which management style relies on providing the "why" behind the decision to the subordinates?

A. Autocratic

B. Democratic

C. Persuasive

D. Laissez-faire

2. The management feature that mandates continuous adaptation to the external environment is:

A. Goal-oriented Process

B. Intangible Force

C. Dynamic Function

D. Group Activity

3. The style where the leader's primary concern is the well-being and growth of the team is:

A. Visionary

B. Coaching

C. Servant Leadership

D. Paternalistic

4. Management is often referred to as a "social science" because:

A. Its principles are rigid and universally applied.

B. It deals primarily with human behaviour, which is unpredictable.

C. It is restricted to non-profit and social organizations.

D. It only requires an artistic touch, not scientific rigor.

5. According to Henri Fayol, which of the following is not a core function of management?

A. Forecasting

B. Staffing

C. Commanding

D. Controlling

SUGGESTED READINGS

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6. Bass, Bernard M., and Ronald E. Riggio. *Transformational Leadership*. 2nd ed. Mahwah, NJ: Lawrence Erlbaum Associates, 2006. (Detailed study of transformational and transactional styles).
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Functions of Management

Lesson 8

KEY CONCEPTS

■ Planning ■ Organizing ■ Staffing ■ Directing ■ Coordinating ■ Reporting ■ Budgeting

Learning Objectives

To understand:

- Meaning and process of planning
- Meaning of organizing and its various crucial aspects.
- Meaning of staffing, manpower planning, performance appraisal and its other significant concepts.
- Meaning of directing, its features, leadership and its other important concepts.
- Meaning of coordinating, its characteristics, forms and its other significant dimensions.
- Meaning of budgeting, objectives, forms and other essential elements of budgeting.

Lesson Outline

- Meaning and definition of planning, Features and Importance of Planning, Types and Process of Planning, Elements of Planning.
- Meaning and Definition of Organizing, Significance of Organizing, Steps in the process of Organizing, Authority and Responsibility relationship, Centralization and Decentralization.
- Meaning and Definition of Staffing, Characteristics of Staffing, Manpower Planning, Recruitment, Selection, Training and Development, Performance Appraisal, Compensation and Benefits.
- Meaning and Definition of Directing, Features of Directing, Principles guiding Directing Process, Supervision and its significance, Motivation and its importance, Leadership.
- Characteristics and Importance of Coordinating, Elements of Coordination, Process of Coordination, Types of Coordination, Factors determining Effective Coordination.
- Meaning of Management Reporting, Importance of Management Reports, Reporting of Deviations.
- Meaning of Budgeting, Objectives of Budgeting, Importance of budgeting, Types of Budgets, Budgeting Process.
- Lesson Roundup
- Test Yourself
- Suggested Readings

PLANNING

Planning is an all-pervasive and fundamental function of management. All other functions of organizing, staffing, directing and controlling must reflect planning function of management. Though more important for higher levels, planning is the function of every manager. It involves deciding in advance what is to be done and where, how and by whom it is to be done. While planning, the manager projects a course of action for the future aimed at achieving desired results for the enterprise as a whole and each department within it. Thus, merely ascertaining the future is not planning till it is followed by making provisions for it. Planning is a rational approach to the future.

Planning deals with future and involves forecasting. A manager does not plan about the past though in his planning for future he is also guided by past performance. Since planning relates activities of the enterprise to its future environment, it requires projecting future activities of the organization. But mere forecasting is not planning. Planning requires assessing the future and providing for it. Planning is forecasting and deciding in advance a course of action to be followed or activities to be pursued in future.

According to George R. Terry – Planning is the selecting and relating of facts and the making and using of assumptions regarding the future in the visualization and formulation of proposed activities believed necessary to achieve desired results.

So, planning is a process whereby the relevant facts are collected and analyzed, the assumptions and premises are made for the future. In the light of these assumptions and premises, a plan of action believed necessary to achieve the desired results is visualized and formulated. Planning, therefore, essentially means looking ahead and preparing for the future. It is a mental task. One should have reflective thinking, imagination and farsightedness, if one is to succeed well in performing this difficult task.

Features of Planning

The essential nature of planning can be highlighted by the following major aspects of planning:

(i) ***Planning – an Intellectual Process:*** Planning is the process of choosing the proper course of action from among alternatives and calls for decision-making, which is an intellectual process. Changes in the environment bring opportunities and involve risks as well. It is the task of planners to take advantage of opportunities and minimize the risks. This calls for mental pre-disposition to think before taking action. Moreover, planning is not a guess work. It is conscious determination and projecting a course of action for the future and is based on objectives, facts and considered forecasts.

(ii) ***Planning – a Primary Function:*** Planning is the most basic function of management. As a matter of fact, all other functions of management largely depend upon planning. Control, for example, is a necessary corollary of planning and cannot exist without planning. Organization is also set up with a plan and objectives in mind and people are invariably guided and motivated towards accomplishing enterprise objectives. Planning is, therefore, the primary function of management.

(iii) ***Planning – a Continuous Function of Management:*** Management is a dynamic process and planning as its function cannot be an exception to it. Since different functions of management overlap and intermesh with each other, the planning process is continuously repeated. Moreover, as plans beget a number of sub-plans and since plans have to be revised in the light of changing environment, planning becomes a continuing necessity for management.

(iv) ***Planning – a Pervasive Function:*** Planning is a pervasive function. It pervades at all levels and in all departments of an organization. Sometimes, planning is erroneously considered to be the prerogative and responsibility of top management alone. In fact, planning which involves choosing the future course of action from among alternatives is basically the same whether it is at the supervisory level or at higher echelons of management. It must be noted, however, that planning horizons broaden and the implications of plans becomes wider as one goes up the levels in the management hierarchy.

Importance of Planning

Planning substitutes order for chaos and introduces rationality into the decision-making process of management. It provides the framework within which organizing, staffing, direction and controlling are undertaken. The importance of planning in any organized enterprise needs no exaggeration. To be more specific, planning makes following contributions:

(i) ***Planning makes Personnel Conscious of Enterprise Objectives:*** The first stage in any type of planning is the deliberate statement of objectives of each department in the organization and the enterprise as a whole. It helps personnel to see the enterprise in its entirety and see how their actions may contribute to its ultimate goals. Since objectives represent end points of planning, management should be aware of the future and revise its plans in the light of possible changes so that goals are accomplished more effectively.

(ii) ***Planning Leads to Economy in Operations***: Planning is always done with an eye on economy and efficiency in operations. As an all-pervasive function, planning improves effectiveness of all other functions of management and also helps to secure coordinated efforts throughout the organization. Since it involves choosing, planning facilitates the choice of the best method and helps to identify alternatives expected to produce desired results with minimum unsought consequences. Planning for repetitive or routine matters reduces the need for thinking over the whole problem once again. Moreover, planning for the change, arms the management to face future contingencies very boldly, confidently and effectively.

(iii) ***Planning Precedes Control:*** Control consists of those activities that are undertaken to force events to conform to plans. Planning is then the necessary prerequisite for control. Management function of control seeks to check the performance against some predetermined standard or projected course of action established through planning process. Though planning affects all other functions of management, the unique feature of control is that it cannot exist without planning.

(iv) ***Planning is a Precious Managerial Instrument to Provide for Future:*** Though forecasting is its essential characteristic, the task of planning does not end merely with assessing the future. Providing for future contingencies is an equally important part of planning. It is through planning process that management is made to look at the future and discover suitable alternative courses of action. If future changes can be correctly predicted, planning helps the management to have a clear view of the future and chalk out a suitable programme of action.

There is no doubt that even the best plans cannot anticipate all the future changes. But this does not mean that planning is a futile exercise which can be dispensed with. As a matter of fact, it is during changing conditions and difficult situations that planning becomes all the more necessary and assumes a greater importance. As a rational approach to the future, planning provides for unexpected events and arms the management against undesirable changes.

(v) ***Planning Influences Efficacy of Other Managerial Functions:*** Planning, organizing, staffing, direction and control – all account for and have their due contribution to the accomplishment of group's goals. The importance of each in the success of the management job cannot be overlooked. However, planning as a primary function goes a long way in improving efficiency of all other functions of management and makes the tasks of managing more effective.

TYPES OF PLANS

i. Strategic Plans

These are detailed action steps laid out to achieve strategic goals. Generally these have a time horizon of five years and above. These plans often include their mission and goals as these are the basis for action steps. These plans address issues such as response to changed conditions, resource allocation and efforts required to achieve strategic goals.

ii. Standing Plans

Standing plans are those plan which is used again and again whenever a particular situation arises. It is designed to make sure that the internal operations of an enterprise run smoothly. These plans are developed once but are designed to be used over the years. It is generally developed in such a manner that it can be modified when needed. These plans are also known as multiple-use plans or repeated-use plans. These plans are generally prepared by top-level managers. Standing plans include objectives and goals, strategy, policy, procedure, rules, and methods.

iii. Single-use Plans

Single-use plans are made to serve a specific objective. They cease to exist once such an objective is achieved. They are nonrecurring and the duration of this plan generally depends upon the type of project. These plans are short-lived and they have to be reformulated after every use.[1]

Process of Planning

Following are the steps in the planning process:

i. *Perception of Opportunities (The market, Competition, What customer wants, Strength and weakness*): Although preceding actual planning and therefore not strictly a part of the planning process, awareness of an opportunity is the real starting point for planning. It includes a preliminary look at possible future opportunities and the ability to see them clearly and completely, knowledge of where we stand in the light of our strengths and weaknesses, an understanding of why we wish to solve uncertainties, and a vision of what we expect to gain. Setting realistic objectives depends on this awareness. Planning requires realistic diagnosis of the opportunity situation. Defining the present situation includes measuring success and examining internal capabilities and external threats.

ii. *Setting Objectives*: The idea behind planning is to achieve desired objectives. Therefore, the first step is to clearly define and describe the objectives of the organization. Firstly, the major objectives should be specified, and then they should be broken down into individual, sectional and departmental objectives. Objectives serve as guidelines for discussion-making in terms of resource allocation. Work schedule, nature of actions, etc., are kept in mind while setting objectives.

   All efforts must be made to anticipate the problems and relevant opportunities that are likely to arise in the future. For example, an enterprise Pinnacle Ltd. is opening their new branch of laptops, firstly they have to specify the objective, i.e., to sell 3,000 units this year, which is double the previous year's sales. For achieving this aim, they have to distribute this objective into various departments, such as production, marketing, sales, and finance departments. By distributing the main objective into departmental objectives, the company will face fewer problems in managing its organization.

1. "Types of Plans: Standing Plan and Single-use Plan", Accessed from https://www.geeksforgeeks.org/business-studies/types-of-plans-standing-plan-and-single-use-plan/

iii. *Considering the Planning Premises (Analyze the Environment to Forecast Aids and Barriers to Goals and Objectives):* As an extension of defining the present situation, the manager or other planner attempts to predict which internal and external factors will foster or hinder attainment of the desired ends. These are forecast data of a factual nature, applicable basic policies, and existing company plans. Premises, then, are planning assumptions – in other words, the expected environment of plans in operation.

This step leads to one of the major principles of planning. Planning premises include far more than the usual basic forecasts of population, prices, costs, production, markets, and similar matters. Because the future environment of plans is so complex, it would not be profitable or realistic to make assumptions about every detail of the future environment of a plan.

iv. *Develop Action Plans to Reach Goals and Objectives*: Goals and objectives are only wishful thinking until action plans are drawn. An action plan consists of the specific steps necessary to achieve a goal or objective.

v. *Develop Budgets*: Planning usually results in action plans that require money to implement. Among the expenses would be larger advertising and promotion budgets geared to seniors and women.

vi. *Implement the Plans*: If the plans developed in the previous five steps are to benefit the firm, they must be put to use. A frequent criticism of planners is that they develop elaborate plans and then abandon them in favor of conducting business as usual. One estimate is that 70 percent of the time when CEOs fail, the major cause of failure is poor execution, not poor planning. Poor execution in this study included not getting things done, being indecisive, and not delivering on commitments. Furthermore, execution is considered to be a specific set of behaviours and techniques that companies need to master in order to maintain a competitive advantage.

vii. *Control the Plans*: Planning does not end with implementation, because plans may not always proceed as conceived. The control process measures progress toward goal attainment and indicates corrective action if too much deviation is detected. The deviation from expected performance can be negative or positive. Progress against all of the goals and objectives mentioned above must be measured. One goal was to hold on to much of the existing customer base.[2]

Elements of Planning

1. Mission: An organisation's mission is its purpose or fundamental reason for existence. It is a broad statement distinguishing the organisation from others of its type. It can be a written document or it may be implicit. The purpose of a Mission Statement is:

- A mission statement is a benchmark for managers to evaluate success.
- For employees it defines common purpose, fosters loyalty, builds a sense of community.
- For outside parties, like investors, the government and the public, it gives insight into values and future direction of the organisation.

Components of a Mission Statement are-

- Who are the customers?
- What are the products or services?
- Where does the organisation compete?
- What is the basic technology?

2. *"Principles of Management", Accessed from https://www.nprcet.org/site/download?file=MBA+POM-Unit-II+NOTES.pdf*

- The firm's commitment to economic objectives.
- Basic beliefs, values and aspirations of the firm.
- Major strengths and competitive advantages.
- Public responsibilities and desired image.
- Attitude towards employees.

2. Objectives: The first important task of planning is to lay down objectives or goals. Objectives represent the end towards which not only planning but all other activities of management are directed. Thus, goals are set for the organisation to accomplish. Similarly, staffing, direction and control aim at reaching common objectives. In fact, managing is more effective when based on properly selected objectives. These objectives should be clearly defined and communicated throughout the organisation. Objectives can be individualistic or collective; short-term or long-term; tangible or intangible; general or specific.

3. Strategies: For years, the military used the word strategies to mean grand plans made in light of what it was believed an adversary might or might not do. While the term still usually has a competitive implication, managers increasingly use it to reflect broad areas of an enterprise's operation. Here the term, strategy is defined as the determination of the basic long-term objectives of an enterprise and the adoption of courses of action and allocation of resources necessary to achieve these goals.[3]

4. Policies: Policies are guide to thinking in decision-making. Policy lays down the course of action selected to guide and determine present and future decisions. Policy as a general statement of understanding lays down the limits within which decisions are to be made and, thereby, assures consistent and unified performance.

For example, if it is the policy of a company to reinvest 50% of its earnings each year, decision relating to appropriation of profit and resorting to external sources of finance shall have to be made within the limits of this policy. Policies can originate at any level in the organisation and a manager should lay down policies within the limits of authority and also within the limits set by earlier policies and decisions of his / her seniors.

Policy may be written, verbal or implied. On functional basis, policies may be classified as those pertaining to sales, production, personnel, finance, purchase, etc.

5. Procedures: It suggest the exact manner in which a particular activity is to be done. It specifies the chronological sequence for handling future activities. An enterprise, for example, may have promotion policy based on seniority. To implement this policy procedures must be established for calculating seniority of employees and granting them actual promotions. It is apparent, therefore, whereas policy is a guide to thinking, procedures are guide to actions.

6. Rules: It signifies some kind of regulation, positive or negative and permit no discretion in its application. Thus, when we talk of leave rules, the idea is that leave can be granted and availed only subject to the regulations contained therein.

7. Programmes: Programme refers to the outline of plans of work to be carried out in proper sequence for the purpose of achieving specific objectives. Thus, a company might embark upon an expansion programme by say, sixty per cent. And to implement this programme, management must lay down certain policies, procedures, methods, rules and other assignments properly related to and coordinated for its successful implementation. Programme is frequently supported by capital revenue and expense budgets. Thus, programme is a complex structure of policies, procedures, methods, rules, budgets and other assignments.

Programme can originate at any level in the organisation, and it can be a major programme or a minor one. Basic or major programmes usually call for establishing a number of derivative programmes.

3. "Principles of Management", Accessed from https://www.nprcet.org/site/download?file=MBA+POM-Unit-II+NOTES.pdf

8. Budget: Budget is single-use plan containing expected results in numerical terms. Budgets may be expressed in time, money, materials or other suitable units capable of numerical expression. Income and expense budget, for example, projects the expected revenues and expenses for a given period. Since budget is an important control device it is often thought of in connection with controlling alone. However, budget-making is primarily a planning process, whereas its administration is part of controlling.

Planning at Different Levels

1. Corporate Plan: Corporate planning is the process by which businesses create strategies for meeting business goals and achieving objectives. It involves strategy definition, strategy direction, decision-making and resource allocation. Corporate planning ensures that business operations are orderly and that the team works towards the same goals. It can also help the organisation in identifying potential challenges in meeting goals, so that the methods to overcome them can be ascertained. Corporate planning is a continuous and dynamic process that lasts throughout the life of the business.

The different types of corporate planning include:

i. *Strategic planning*

Strategic planning overlaps with corporate planning in some areas, though there are still key differences. Strategic planning requires a close look at the company's missions, strengths and weaknesses. It defines the present state, the desired future and how to get there. Corporate planning is much larger in scope than strategic planning. You can use it to guide a more complex company with many businesses and subsidiaries. The corporate plan has the same components as the strategic plan, though it pertains only to the broader company and any shared services used by the various units, such as marketing and human resources. It also considers the individual steps of the business. These include how to counteract challenges, train employees and achieve objectives.

ii. *Tactical planning*

Tactical planning involves defining goals and determining how to achieve them through actions and steps. It's the next step that a business takes after formulating a strategic plan. With it, you can break down the strategic plan into smaller goals and objectives. Generally, you can create a tactical plan to address a short-term goal. Completing the tactical plan may help you work to achieve medium or long-term goals.

iii. *Operational planning*

An operational plan is a specific, detailed plan that outlines the details of the business's daily operations for a specific period, usually more than one year. It outlines the daily tasks and responsibilities of each employee and manager and the mode of operation of the tasks. Operational planning helps you allocate physical, financial and human resources, so you can reach short-term objectives that support a business' larger growth.

iv. *Contingency planning*

Contingency planning is the process by which organisations develop strategies that help ensure they respond to an event that could impact their operations. The purpose of a contingency plan is to ensure that a business resumes normal activities after a disruptive event, such as a natural disaster. Businesses also plan contingency plans around positive events, like an unexpected influx of cash.[4]

2. Business Unit Plan: A business unit plan should include a vision and mission, market analysis, product/

4. "What Is Corporate Planning? Benefits, Types and Expert Tips", Accessed from https://sg.indeed.com/career-advice/career-development/what-is-corporate-planning service details, marketing and sales strategies, operational and management plans, and a comprehensive financial plan. The plan should be structured logically with an executive summary at the beginning, clearly defined goals, and metrics to track progress and performance.

Business unit plans can be categorized by their purpose (strategic, tactical, operational, or contingency), structure (geographic, product, or customer-focused), and format (traditional, lean, or one-page). The type of plan depends on its intended scope, timeframe, and audience, such as creating a comprehensive multi-year strategy or a simple daily to-do list for a specific department.

3. Departmental Plans: Departmental plans are operational plans that translate a business's overall strategic objectives into specific activities and targets for individual functional areas like marketing, finance, and human resources. A departmental plan is essential for several reasons:

- *Clarity of Purpose*: It provides clarity on the department's purpose, goals, and priorities, ensuring that everyone is aligned and working towards the same objectives.
- *Alignment with Organizational Goals*: It ensures that the department's goals and strategies are aligned with the broader goals of the organization, contributing to overall success.
- *Resource Allocation*: It helps to allocate resources, such as budget, personnel, and time, effectively to achieve organisational goals.
- *Performance Monitoring*: It provides a framework for monitoring and evaluating the department's performance, allowing the management to make adjustments as needed. [5]

ORGANIZING

Meaning and Definition of Organizing

Organization structure is the pattern of relationships among the component parts of the organization. organization in a formal sense refers to a collective group of persons engaged in pursuing specified objectives. The behavioural scientists and the sociologists view organization as comprising human relationships in group activity. It is referred to as the social system encompassing all formal relations. Another way of looking at organization is to consider it as an essential function of management. In operational sense, organization can be considered as consisting of divisions of work among people and coordination of their activities towards some common objectives.

The following are the definitions of organizing:

Henri Fayol – "Organizing is providing the business with everything useful to its functioning—raw materials, tools, capital, and personnel."

Peter Drucker – "Organizing is the process of defining and grouping activities, establishing authority relationships, and creating a structure that enables people to work effectively toward common objectives."

Chester Barnard – "Organizing is a system of consciously coordinated activities or forces of two or more persons."

Louis A. Allen – "Organizing is the process of identifying and grouping work to be performed, defining and delegating responsibility and authority, and establishing relationships for the purpose of enabling people to work most effectively together."

Koontz & O'Donnell – "Organizing involves grouping activities, assigning duties to individuals, and allocating resources to achieve organizational goals efficiently."

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5. "Creating a Departmental Plan: Your Roadmap to Success", Accessed from https://reliabilityx.com/creating-a-departmental-plan-your-roadmap-to-success/

George R. Terry – "Organizing is the establishing of effective behavioral relationships among persons so that they may work together efficiently."

James D. Mooney & Alan C. Reiley – "Organizing is the form of every human association for the attainment of a common purpose."

Lyndall Urwick – "Organizing is determining what activities are necessary to achieve the plan and arranging them in groups for assignment to individuals."[6]

Significance of Organizing

i) *Specialization* - Organizational structure is a network of relationships in which the work is divided into units and departments. This division of work is helping in bringing specialization in various activities of concern.

ii) *Well defined jobs* - Organizational structure helps in putting right men on right job which can be done by selecting people for various departments according to their qualifications, skill and experience. This is helping in defining the jobs properly which clarifies the role of every person.

iii) *Clarifies authority* - Organizational structure helps in clarifying the role positions to every manager (status quo). This can be done by clarifying the powers to every manager and the way he has to exercise those powers should be clarified so that misuse of powers do not take place. Well defined jobs and responsibilities attached helps in bringing efficiency into managers working. This helps in increasing productivity.

iv) *Coordination*: Organization is a means of creating co-ordination among different departments of the enterprise. It creates clear cut relationships among positions and ensure mutual co-operation among individuals. Harmony of work is brought by higher level managers exercising their authority over interconnected activities of lower level manager.

Authority responsibility relationships can be fruitful only when there is a formal relationship between the two. For smooth running of an organization, the co-ordination between authority- responsibility is very important. There should be co-ordination between different relationships. Clarity should be made for having an ultimate responsibility attached to every authority. There is a saying, "Authority without responsibility leads to ineffective behaviour and responsibility without authority makes person ineffective." Therefore, co-ordination of authority- responsibility is very significant.

v) *Effective administration* - The organization structure is helpful in defining the jobs positions. The roles to be performed by different managers are clarified. Specialization is achieved through division of work. This all leads to efficient and effective administration.[7]

vi) *Optimum utilisation of resources*: Organising leads to the proper usage of all material, fin ancial and human resources. The proper assignment of jobs avoids overlapping of work and also makes possible the best use of resources. Avoidance of duplication of work helps in preventing confusion and minimising the wastage of resources and efforts.

vii) *Adaptation to change*: The process of organising allows a business enterprise to accommodate changes in the business environment. It allows the organisation structure to be suitably modified and the revision of inter relationships amongst managerial levels to pave the way for a smooth transition. It also provides much needed stability to the enterprise as it can then continue to survive and grow inspite of changes.

6 "Definitions of Organizing", Accessed from https://thembains.com/definitions-of-organizing/

7. "Organisation", Accessed from https://www.kdkce.edu.in/pdf/Organisation_Structure.pdf

viii) *Development of personnel:* Organising stimulates creativity amongst the managers. Effective delegation allows the managers to reduce their workload by assigning routine jobs to their subordinates. The reduction in workload by delegation is not just necessary because of limited capacity of an individual but also allows the manager to develop new methods and ways of performing tasks. It gives them the time to explore areas for growth and the opportunity to innovate thereby strengthening the company's competitive position. Delegation also develops in the subordinate the ability to deal effectively with challenges and helps them to realise their full potential.

Steps in the Process of Organizing

The steps involved in the process of an organisation are:

(i) Determination of Objectives*:* Organisation is usually associated with defining objectives. Therefore, it is necessary for the management to identify the objectives before begining any activity. It will assist the management in the selection of men and materials and with their help it can attain its objectives. Objectives also act as the strategy for the management and the workers. They give unity of direction in the organization.

(ii) Identification and Grouping of Activities: When the members of the groups are to unite their efforts effectively there must be an appropriate division of the main activities. Each job should be properly classified and grouped. This will facilitate the group to know what is expected of them as members of the group and will help in avoiding any duplication of efforts. For example, the total activities of an individual industrial organization can be separated into major functions, like production, purchasing, marketing and financing, and each such function is further subdivided into various jobs. The job assigned may be classified and grouped to ensure the useful achievement of the additional steps.

(iv) Allotment of Duties: Once the activities are categorized and grouped into various jobs categorizing and grouping the activities into various jobs, they should be allocated to the employees so that they can carry them out effectively. Each individual should be given a particular job to do according to his ability and made responsible for that. He should also be given sufficient authority to do the job assigned to him.

(v) Developing Relationships*:* Since various individuals work in the same organization it is the duty of the management to lay down the structure of relationships in the organization. Everybody should clearly know to whom he is accountable. This will facilitate the smooth functioning of the enterprise by facilitating delegation of responsibility and authority.

(vi) Integration of Activities*:* Integration can be accomplished in the entire activities in following ways:

  (a) Through authority relationships – horizontally, vertically, and laterally.

  (b) Through organized information or communication systems and with the help of effective coordination integration can be accomplished. This will enable the enterprise to achieve unity of objectives, team work and team spirit by the integration of different activities.

AUTHORITY AND RESPONSIBILITY RELATIONSHIP

Authority

Authority may be described as the right of a manager to command subordinates, issue them orders and instructions and exact obedience from them. Authority is also the right of the manager to make decisions, and to act or not to act depends upon how he deems fit to accomplish certain objectives of the organization.

Fayol defined authority as "the right to give orders and exact obedience", and viewed this as official authority.

He also recognised that official authority vested in the job was often ineffective. Authority is greatly enhanced by personal authority comprising of intelligence, experience, moral values, leadership quality, etc. But as the key to management job, authority is conveniently described as the power to command others, to act or not to act in a manner for the purpose of achieving some objectives. An individual without authority cannot occupy the position of a manager. It is authority that makes the managerial position real and vests in him the power to order his subordinates and secure necessary compliance. In an organization with a chain of superior-subordinate relations authority acts as the binding force and provides the basis for responsibility. Mooney[1] described authority as "the supreme coordinating power". Delegation of authority is one of the important means of securing coordination in the organization. Without authority there would be no superior-subordinate relations and there would be chaos and anarchy in the organization.

The following are the characteristics of authority:

(i) *Legitimacy*: Legitimate power is called authority. To be effective, authority should always be legitimate otherwise, it will not be obeyed. Authority is vested to an individual by the virtue of his the position in the organisation.

(ii) *Dominance*: An individual or a group which possesses authority exercises dominance over other. Authority determines superior subordinate relationship. Authority decreases as one moves down in the hierarchy.

(iii) *Accountability*: The individual who possess authority is liable to superior for fulfilling his obligations by using such authority Accountability is the most significant characteristic of authority. Accountability ensures performance according to standards.

(iv) *Authority flows Downward*: Authority is a downward flowing concept. The lower we go down in the hierarchy, the lesser is the authority. Higher authority is enjoyed by higher organisational positions. Authority establishes superiority.

(v) *Delegation of Authority*: Authority flows from the higher level to the lower levels. Authority can be delegated to the lower levels in the organization for sharing the work load of the superior. But one thing must be noted that even though authority can be delegated but the responsibility of performance of obligation always lies with the delegator.

(vi) *Parity of Authority and responsibility*: Authority should never be assigned without responsibility. Authority and responsibility should go together. Authority must be equal to Responsibility. This is also one of the fourteen principles of management advocated by Fayol. Responsibility and authority are closely linked. A manager can fulfil his responsibility only if he has adequate authority to perform that task. An employee must be clear about what is expected of him.

If authority is greater than responsibility, then this could result in autocratic behaviour and misuse his authority. Similarly, if responsibility is greater than authority, then this could result in frustration as discharge of responsibilities is not possible without adequate authority. e.g. if a manager has been assigned the responsibility to purchases raw material but has not been given any authority to make the financial commitments regarding the payment of such purchases, this would frustrate the manager as he could not accomplish the desired goal effectively but would be held answerable for the act which was beyond his authority.

Responsibility

Very often we hear statements, like 'delegating responsibility', 'carrying out a responsibility', 'discharging a responsibility', 'possessing responsibility'. Such statements are a pointer to the fact that responsibility is a term clogged with variety of meanings in the field of management. It is frequently described as an obligation on the part of manager to perform a task himself. Those who accept the task should be held responsible for their performance as well.

The basic essence of responsibility is obligation. However, in the context of hierarchical relations in the organization, responsibility may well be described as the obligation of a subordinate to perform the duty or tasks assigned to him. Responsibility should then be construed in relation to a person and no other object. Implied in this is also the assumption that responsibility is founded on and emanates from superior- subordinate relations established in the organization. Thus a manager has the right to get the assigned duty performed properly by his subordinate. Moreover, he should ensure that the authority delegated to the subordinate gets properly discharged. From the above, it follows that authority flows downwards, whereas responsibility is exacted upwards.

Features of Responsibility:

1. Responsibility is to assign duty to human beings only.
2. Responsibility is the obligation of a subordinate to properly perform the assigned duty.
3. It arises from superior subordinate relationship
4. Responsibility flows upward. A subordinate is always responsible to his superior.
5. Responsibility cannot be delegated.
6. The person accepting responsibility is accountable for the performance of assigned duties.
7. It is hard to fulfil responsibility without authority.[8]

The balance between authority, responsibility, and power is fundamental to effective leadership and organizational success. These three elements form the backbone of any structured institution, yet their interplay can lead to efficiency or dysfunction depending on how they are managed. Authority is the right to make decisions, power is the ability to execute those decisions, and responsibility is the accountability for the outcomes of those decisions and their implementation. An imbalance among these elements, particularly in an administrative office, often results in abuse, inefficiency, and a breakdown of trust within the organization.

When authority, responsibility, and power are out of alignment, it creates fertile ground for abuse, inefficiency, and dissatisfaction.

i) *Authority without Power*: When an individual has the authority to make decisions but lacks the power to execute them, frustration and inefficiency result. For instance, an office manager who approves a project but cannot allocate the necessary resources becomes ineffective. The decision remains theoretical, and the team loses faith in the leader's ability to bring ideas to fruition.

ii) *Power without Responsibility*: This scenario leads to unaccountability and potential abuse. For example, an administrator who has the power to enforce policies but is not held responsible for the consequences of their enforcement may act arbitrarily, causing harm to employees or the organization.

iii) *Responsibility without Authority or Power*: Assigning responsibility without granting corresponding authority and power sets individuals up for failure. A staff member tasked with improving office efficiency but denied the authority to implement changes or access necessary resources will struggle to deliver results, leading to undue stress and possible scapegoating.

At this juncture, it is also important to understand the concept of delegation of authority.

Delegation is the process of assigning authority, power, and responsibility to subordinates. It is a critical tool for maintaining balance and ensuring organizational efficiency. In an administrative office, delegation enables leaders to focus on strategic objectives while empowering team members to manage operational tasks.

8. *"Authority and Responsibility", Accessed from https://ebooks.inflibnet.ac.in/mgmtp05/chapter/authority-and-responsibility/*

How Delegation Balances Authority, Responsibility, and Power

i) *Delegation of Authority*: Leaders must carefully determine the level of decision-making authority to delegate. For instance, an administrative director might delegate the authority to approve routine expenditures to department managers, freeing up time for higher-level strategic decisions.

ii) *Delegation of Power*: Alongside authority, leaders must grant subordinates the power to carry out their decisions effectively. This includes providing access to resources, clear communication channels, and support from other departments.

iii) *Transfer of Responsibility*: Responsibility cannot be fully delegated; the ultimate accountability for outcomes rests with the leader. However, task-specific accountability is assigned to the individual executing the task. For example, a team leader may delegate the task of scheduling a meeting to a staff member, but the leader remains responsible for the meeting's overall success.

However, the following challenges may be faced in the process of delegation:

- *Trust Issues*: Leaders may hesitate to delegate due to a lack of trust in their team's competence or dedication.
- *Overloading Subordinates*: Delegation must be reasonable; overburdening employees with tasks beyond their capacity can lead to burnout and inefficiency.
- *Ambiguity in Roles*: Poorly defined boundaries in authority, power, and responsibility can cause confusion and conflict.[9]

Centralization and Decentralization[10]

Centralization refers to the concentration of authority at the top level of the organisation. It is the systematic and consistent reservation of authority at the central points within an organisation. In a centralized organisation, managers at the lower level have a limited role in decision-making. They just have to execute the orders and decisions of the top level.

Decentralization means the dispersal of authority throughout the organisation. It refers to a systematic effort to delegate to the lowest levels all authority except which can be exercised at central points. It is the distribution of authority throughout the organisation. In a decentralized organisation, the authority of major decisions is vested with the top management and balance authority is delegated to the middle and lower levels.

Difference between Centralization and Decentralization:

Basis	Centralization	Decentralization
Meaning	The concentration of authority at the top level is known as Centralization.	The evenly and systematic distribution of authority at all levels is known as Decentralization.
Delegation of authority	There is no delegation of authority as all the authority for taking decisions is vested in the hands of top-level management.	There is a systematic delegation of authority at all levels.
Suitability	It is suitable for small organisations.	It is suitable for large organisations.

9. "The Relationship between Authority, Responsibility, and Power", Accessed from https://www.fieldsadminservices.com/the-relationship-between-authority-responsibility-and-power/

10. "Difference between Centralization and Decentralization", Accessed from https://www.geeksforgeeks.org/business-studies/difference--between-centralization-and-decentralization/

Basis	Centralization	Decentralization
Freedom of decision making	There is no freedom of decision-making at the middle and lower level.	There is freedom of decision-making at all levels of management.
Flow of Information	There is a vertical flow of information.	There is an open and free flow of information.
Employee Motivation	Employees are demotivated as compared to decentralization.	Employees are motivated as compared to centralization.
Conflict in Decision	There are least chances of any conflict in decision as only top-level management is involved.	There are chances of conflict in decision as many people are involved.
Burden	The burden of work is not shared and only one group carries the burden.	The burden of work is shared amongst all levels.

Merits of Centralization

i. *Clear Chain of Command*: A streamlined and well-defined hierarchy ensures efficient decision-making. Everyone in the organization knows who to report to and who to approach whenever they have questions. This clarity ensures prompt responses to concerns from employees. Senior executives follow a clear plan of delegating authority to employees who excel in specific functions. The executives also gain the confidence that when they delegate responsibilities to mid-level managers and other employees, there will be no overlap. A clear chain of command is beneficial when the organization needs to execute decisions quickly and in a unified manner.

ii. *Focused Vision*: Centralized management aids in communicating and delivering the organization's vision, and the clear lines of authority enable consistent message delivery. There are clear lines of communication and senior executives can communicate the organization's vision to employees and guide them towards achievement of that vision.

iii. *Reduced Costs*: A centralized organization follows standard procedures and methods that lead to reduced office and administrative costs. The administrative costs and minimize operational expenses. The organization does not need to incur extra costs to hire specialists for other parts of the organization since critical decisions are made at the head office and then communicated outwards. The clear chain of command reduces duplication of responsibilities that may result in additional costs to the organization.

iv. *Quick Implementation*: A centralized structure allows for faster decision making from the top since decisions are made by a small group of people and then communicated to the lower-level managers. The involvement of only a few people makes the decision-making process more efficient since they can discuss the details of each decision in one meeting.

v. *Improved Quality of Work*: The standardized procedures and better supervision in a centralized organization result in improved quality of work. Supervisors in each department ensure that the work outputs are uniform and of high quality.

Disadvantages of Centralization

i. *Bureaucratic Leadership*: As decision making is restricted to individuals at the headquarters level, employees are unable to contribute to the decision-making process of the organization, and they are merely implementers of decisions made at a higher level. This lack involvement in shaping decisions results in a loss of creativity, reduced performance, and motivation. Furthermore when the employees face difficulties in implementing some of the decisions, senior executives will not understand because they are only decision makers and not implementers of the decisions.

ii. *Remote Control*: The organization's executives are under significant pressure to formulate decisions for the organization and they lack control over the implementation process leading to inefficiencies. The failure of senior managers to decentralize the decision-making process contributes significantly to their workload.

iii. *Delays in Work*: Centralized communication may lead to productivity losses as employees rely on information flowing to them from the top to guide project implementation. This means that the employees will be less productive if they need to wait long periods to get guidance on their next task.

iv. *Lack of Employee Loyalty*: Employees become loyal to an organization when they are allowed initiative in the work they do. Employee loyalty can decline in a centralized structure as their limited autonomy stifles creativity and loyalty due to the rigidity of the work.[11]

Merits of Decentralization

i. *Quick Decision Making:* Decentralization allows for faster decision-making processes as authority is delegated to operational levels closest to the situation. This ensures that decisions are made promptly and effectively, addressing issues as they arise.

ii. *Executive Development:* By empowering subordinates with decision-making authority, decentralization fosters self-sufficiency and confidence. Executives are challenged to rely on their judgment, enhancing their problem-solving skills and overall competence.

iii. *Development of Managerial Skills:* Subordinates in a decentralized structure have the opportunity to prove their abilities. This creates a talent pool of competent individuals who can take on challenging roles, leading to promotions and career growth.

iv. *Relieves Top Management:* Decentralization reduces the need for direct supervision by top management, allowing them to focus on policy decisions and strategic planning. Subordinates are given the liberty to make decisions within set limits, easing the burden on higher management.

v. *Facilitates Growth:* Greater independence at lower management levels fosters a sense of competition among departments, leading to increased productivity and higher returns for the enterprise. Each department can operate in a manner best suited to its functions, driving overall growth.

Demerits of Decentralization

i. *Risk of Misaligned Objectives:* Decentralization can sometimes lead to misaligned objectives between different departments and the overall organization. Each unit may prioritize its goals over the organization's strategic vision, potentially causing conflicts and inefficiencies.

ii. *Lack of Uniformity:* With decision-making spread across various levels, maintaining consistency in policies and procedures can be challenging. This lack of uniformity can lead to confusion and discrepancies in how different parts of the organization operate.

iii. *Increased Costs*: Decentralization may result in higher operational costs due to the need for additional resources and support systems at multiple levels. Training, infrastructure, and administrative costs can add up, impacting the organization's budget.

iv. *Coordination Challenges:* Ensuring effective coordination among various departments and units can

11. "Centralization vs. Decentralization", Accessed from https://corporatefinanceinstitute.com/resources/management/centralization//

be difficult in a decentralized structure. Miscommunication or lack of collaboration can hinder the organization's overall performance and goal achievement.

v. *Quality Control Issues:* Decentralization might lead to variations in the quality of decisions made by different departments. While some units may excel, others might struggle, affecting the overall quality and efficiency of the organization's operations.[12]

STAFFING

Meaning and Definition of Staffing

Staffing refers to the process of hiring, training, and maintaining a workforce that reflects the organization's objectives. In this process, human resource requirements are determined, and there is sourcing of relevant qualified people. They also go through professional development. This process aims at filling each position with the best possible person. Such a function directly affects the organization in terms of efficiency and performance through the strong human capital base it creates.

In addition to hiring employees, staffing focuses on their development and retention to ensure long-term organizational success. It bridges the gap between the organization's needs and the available talent pool. This is because, by addressing both immediate and future workforce requirements, staffing ensures that the organization runs smoothly. The objectives of staffing include ensuring the right talent is placed in the right roles to maximize efficiency and organizational growth.[13]

According to Koontz and O'Donnell, "The managerial function of staffing involves managing the organisation structure through proper and effective selection, appraisal and development of personnel to fill the roles designed into the structure."

S. Benjamin has defined staffing as – "The process involved in identifying, assessing, placing, evaluating and directing individuals at work."

According to Theo Hainmann, "Staffing function is concerned with the placement, growth and development of all those members of the organisation whose function is to get things done through the efforts of other individuals."

Koontz and Weihrich- "Staffing can be defined as filling and keeping filled positions in the organisation structure."

J. L. Massie- 'Staffing is the process by which managers select, train, promote and retire subordinates.'

Caruth, Caruth and Pane- "Staffing is a process through which an organisation ensures that it has, on a continuous basis, the proper number of employees with the appropriate skills in the right jobs at the right times to achieve the organisation's objectives."

Characteristics of Staffing

i. People-oriented – Staffing deals with efficient utilization of human resources in an organization. It promotes and stimulates every employee to make his full contribution for achieving desired objective of the organization.

ii. Development-oriented – It is concerned with developing potentialities of personnel in the organization. It develops their personality, interests, and skills. It enables employees to get maximum satisfaction from their work. It assists employees to realize their full potential. It provides opportunities to employees for their advancement through training, job education, etc.

12. *"Decentralization", Accessed from https://www.peoplehum.com/glossary/decentralisationn*

13. *"Functions of Staffing: Meaning, Importance, and Key Activities", Accessed from https://plutuseducation.com/blog/functions-of-staffing//*

iii. Pervasive function – Staffing is required in every organization. It is a major sub-system in the total management system that can be applied to both profit making and non-profit making organizations. It is required at all levels of organization for all types of employees.

iv. Continuous function – Staffing is a continuous and never-ending process. It requires constant alertness and awareness of human relations and their importance in every operation.

v. Human objectives – It develops potentialities of employees so that they can derive maximum satisfaction from their work. It creates an atmosphere where employees willingly cooperate for the attainment of desired organizational goals.

vi. Individuals as well as group-oriented – Staffing is concerned with employees both as individuals and as group in attaining goals. It establishes proper organizational structure to satisfy individual needs and group efforts. It integrates individual and group goals in such a manner that the employees feel a sense of involvement towards the organization.

vii. Developing cordial working environment – It develops a cordial environment in the enterprise where each employee contributes his best for the achievement of organizational goals. It provides a very comfortable physical and psychological working environment.[14]

Manpower Planning

Manpower Planning which is also called as Human Resource Planning consists of putting right number of people, right kind of people at the right place, right time, doing the right things for which they are suited for the achievement of goals of the organization.

Human Resource Planning has got an important place in the arena of industrialization. Human Resource Planning has to be a systems approach and is carried out in a set procedure. The procedure is as follows:

1. Analysing the current manpower inventory
2. Making future manpower forecasts
3. Developing employment programmes
4. Design training programmes[15]

RECRUITMENT AND SELECTION

Recruitment

Recruitment refers to the process of identifying, attracting, interviewing, selecting, hiring and on boarding employees. In other words, it involves everything from the identification of a staffing need to filling it. Depending on the size of an organization, recruitment is the responsibility of a range of workers. Larger organizations may have entire teams of recruiters, while others only a single recruiter. In small outfits, the hiring manager may be responsible for recruiting.

While the recruitment process is unique to each organization, however, broadly the following steps are following in the recruitment process.

- Devise a recruitment plan
- Write a job description

14. "Staffing", Accessed from https://www.economicsdiscussion.net/organisation/staffing/318666

15. "Manpower Planning-Meaning, Need and Its Importance", Accessed from https://www.managementstudyguide.com/manpower--planning.htm

- Advertise the position
- Recruit the position
- Review applications
- Phone Interview/Initial Screening
- Interviews
- Applicant Assessment
- Background Check
- Decision
- Reference Check
- Job offer
- Hiring
- On boarding[16]

Selection

According to Dale Yoder, "Selection is the process in which candidates by employment are divided into two classes those who are to be offered employment and those who are not." Selection means selecting the candidates by various acts from the application forms invited through recruitment.

The following procedure is adopted generally:

a) Receiving and screening the applications: After receiving applications, they are screened. Those applicants who fulfil the minimum criteria are shortlisted. Other applications of are rejected.

b) Preliminary Interview: After this, applicants are called for a preliminary interview. By this interview the appearance, attitudes, behaviour of the candidate can be known easily and the interviewer can decide whether the applicant is fit for job or not on a preliminary basis. Preliminary interviews are often called a courtesy interview as well.

c) Selection Tests: Candidates who qualify the preliminary interviews are called for tests. Tests are conducted for testing the knowledge, personal behaviour, efficiency of work and interest. There are various types of tests conducted depending upon the jobs and the company.

d) Employment Interview: Those who qualify the selection tests are called for employment interview. This interview is formal and in-depth interview. It provides quite deep knowledge about the candidate's suitability and helps in finding out the physical appearance and mental alertness of the candidate.

e) Checking References on Investigation of Previous History: Applicants are generally asked to give names of at least two persons to whom the firm may make a reference to verify the information provided by the candidates. Reference checks can be made through formal letters or telephonic conversations.

f) Selection Decision**:** After obtaining all the information, the most critical step is the selection decision. The final decision has to be made out of applicants who have passed preliminary interviews, tests, final interviews and reference checks. The views of line managers are considered generally because it is the line manager who is responsible for the performance of the new employee.

16. "Recruitment Definition, Process and Types of Recruiting", Accessed from https://www.smartrecruiters.com/resources/glossary//recruitment/

g) Physical Examination**:** After the selection decision is made, the candidate is required to undergo a physical fitness test. A job offer depends upon the candidate passing the physical examination test.

h) Job Offer**:** Job offer is made to those applicants who have crossed all the previous hurdles. The offer is made by sending the appointment letter which specifies the post, salary and terms of employment.

i) Placement: This the final selection process. The candidate who accepts the job offer is placed on the job.[17]

Training and Development

i) Training: Training refers to an education process in which employees get a chance to develop skills, competency and learning as per the post-duty requirements. So simply we can say it is a process of increasing the knowledge and skills of an employee. Training is performed to improve the knowledge and skills that are needed to perform their existing jobs. That's why it is short-time/term focused and for a fixed duration. Mainly it is the result of initiatives, taken by management and it is a result of outside motivation.

- It is a job-oriented process.
- It is performed to improve the knowledge and skills that are needed to perform their existing jobs.
- It helps an individual to learn how to perform his/her present job satisfactorily.
- It is a reactive process.
- It mainly refers to learning new things and refreshing old ones.
- It focuses on technical skills and it has a narrow scope.
- It focuses on the role.
- It revolves around present needs.

ii) Development:

Development refers to an informative process that mainly helps in understanding the overall growth and improvement of the skills of the employee. So simply we can say it is a process of learning and growth. Developments are performed to improve knowledge and skills to face future challenges. That's why it is long-term/term-focused, which takes place throughout the life of a person. Mainly it is the result of initiatives, taken by self and it is a result of self-motivation.

- It is a career-oriented process.
- It is performed to improve knowledge and skills to face future challenges.
- It prepares individuals for future jobs and growth in all aspects.
- It is the result of initiatives, taken by self and it is a result of self-motivation.
- It refers to implementing learned sessions and finding new ones.
- It focuses on conceptual and human ideas and it has a wider scope.
- It revolves around the future needs of the individual.[18]

17. "Principles and Practice of Management – Staffing", Accessed from https://ebooks.inflibnet.ac.in/mgmtp05/chapter/167//

18. "What do you mean by Training and Development?", Accessed from https://www.geeksforgeeks.org/software-engineering/what-do-you--mean-by-training-and-development/

Performance Appraisal

The term "performance appraisal" refers to the regular review of an employee's job performance and overall contribution to a company. Also known as an annual review, employee appraisal, performance review, or evaluation, a performance appraisal evaluates an employee's skills, achievements, and growth, or lack thereof.

Companies use performance appraisals to give employees big-picture feedback on their work and to justify pay increases and bonuses, as well as termination decisions. They can be conducted at any given time but tend to be annual, semi-annual, or quarterly. Thus, the key points of performance appraisal are-

- A performance appraisal is a regular review of an employee's job performance and contribution to a company.
- Performance appraisals are also called annual reviews, performance reviews or evaluations, or employee appraisals.
- Companies use performance appraisals to determine which employees have contributed the most to the company's growth, to review their progress, and to reward high-achieving workers.
- Although there are many different kinds of performance reviews, the most common is a top-down review in which a manager reviews their direct report.
- Employees who believe that the evaluation's construction isn't reflective of their company's culture may feel dissatisfied with the appraisal process.[19]

Compensation and Benefits

Compensation and benefits refers to the monetary and non-monetary rewards an employee receives from their employer in exchange for their work. Together, they make up a total compensation package, which may include salary, bonuses, insurance, retirement contributions, and various other perks aimed at attracting, motivating, and retaining employees.

The main difference between compensation and benefits is that compensation is a financial form of remuneration, while benefits are non-financial.

Compensation is the money an employee receives in exchange for their labour, which could be a salary, wages, commission, and bonuses. This money is subject to taxation. HR uses compensation to attract top talent and boost retention rates.

Benefits are extra perks or rewards that an organization provides to an employee, and they may have a financial value, but the employee doesn't receive any cash directly. This includes health insurance, stock options, gym memberships, flexible working hours, learning and development opportunities, and retirement savings plans. Some benefits may be exempt from taxation.[20]

19. *"Performance Appraisals in the Workplace: Use, Types, and Criticisms", Accessed from https://www.investopedia.com/what-is-a--performance-appraisal-4586834*

20. *"Compensation and Benefits – The Complete Guide", Accessed from https://www.aihr.com/blog/compensation-and-benefits//*

DIRECTING

Meaning and Definition of Directing

The process of instructing, guiding, counselling, motivating, and leading people in an organisation to achieve the organisational goals is known as directing.

Directing not only includes order and instructions by a superior to the subordinates but also includes guiding and inspiring them. It encompassed many elements like motivation, leadership, supervision, besides communication. It is a managerial function which is performed throughout the life of an organisation.

In the words of Ernest Dale," Direction is telling people what to do and seeing that they do it to the best of their ability".

In the words of Theo Haimann," Directing consists of the process and techniques utilised in issuing instructions and making certain that operations are carried on as originally planned".

Features of Directing

- *Directing initiates' action*: The other functions of management, i.e., planning, organising, staffing, etc., create conditions for managers to take appropriate actions, whereas directing function initiates actions in an organisation. It converts plans into action. It is the key managerial function performed by the managers.
- *Directing is pervasive*: It is pervasive as it takes place at every level of management. It takes place wherever superior-subordinate relations exist. Every manager has a subordinate who works under him and is responsible for getting things done.
- *Directing is a continuous process*: Directing is an ongoing activity. It takes place throughout the life of an organisation, irrespective of the people in the organisation. Managers give orders to their subordinates, motivate them, and guide them on a continuous basis.
- *Directing flows from top to bottom*: It flows from top to bottom through the organisational hierarchy. In directing, every manager directs his subordinates and takes instructions from his immediate boss. It is a function of a superior, i.e., the superior motivates, guides, and supervises his subordinates to achieve the organisational goals.

Directing deals with people: It is concerned with the direction of human efforts towards organisational goals. It can be said that directing is a delicate function, as it deals with people, and human behaviour is complex and highly unpredictable.[21]

Principles Guiding Directing Process

- *Maximum Individual Contribution*: This principle says that the directing function should create self-confidence amongst the subordinates and motivate them so that they give their best to the organisation. Objectives of an organisation are achieved at the optimum level only when every individual in the organisation makes a maximum contribution. Therefore managers should try to elicit the maximum possible contribution from each subordinate. It is the duty of the managers to explore and find out the hidden talents of the subordinates. For example, timely rewarding the workers can motivate them to contribute maximum towards the organisation's goals.
- *Harmony of Objectives*: This principle says that management should harmonise the individuals'

21. "Directing: Meaning, Characteristics and Importance", Accessed from https://www.geeksforgeeks.org/business-studies/directing--meaning-characteristics-and-importance/

objectives with organisational objectives. Every individual joins the organisation to satisfy their needs both their physiological and psychological needs. They are expected to work for the achievement of organisational goals. They will perform their tasks better if they feel that it will satisfy their personal goals too. Therefore managers should harmonise or reconcile the personal goals of employees with the organisational goals.

- *Unity of Command*: According to this principle, each subordinate should receive orders and instructions from one superior only. If a subordinate is made accountable to two bosses simultaneously, there will be confusion, conflict, disorder and indiscipline in the organisation. Therefore, every subordinate should report to one manager only.

- *Appropriateness of Direction Techniques:* According to this the manager should use correct direction techniques to ensure the efficiency of direction. The techniques used should be suitable for subordinates, organisation and the situation. Goals can be accomplished only when an efficient direction is given.

- *Managerial Communication:* According to this, there should be a systematic flow of communication between the superiors and subordinates to achieve the goals of the organisation. A good system of communication between the superior and subordinates helps to achieve mutual understanding. Upward communication, i.e., taking feedback from the subordinates helps a manager to understand the subordinates and allows the subordinates to express their feelings. So proper feedback is needed from the subordinates.

- *Strategic Use of Informal Organisation:* Management should try to identify, understand and use informal groups to strengthen formal and official relationships to improve the effectiveness of direction.

- *Effective Leadership:* According to this principle, managers should exercise good leadership while directing the subordinates. They should act as leaders so that they can influence the activities of subordinates to achieve the goals of the organisation. As leaders, they should guide and council subordinates in their personal problems too to win the confidence and trust of their subordinates.

- *Direct Supervision:* Direction becomes more effective when there is a direct personal contact between the superior and his subordinates. Morale and commitment of employees are improved through direct contact. Therefore, direct supervision should be used wherever possible.

- *Principle of Follow through:* After issuing orders and instructions, the subordinates must be monitored. A manager should find out whether the subordinates are working properly and the problems they are facing regularly because directing is a continuous process. He should act accordingly after following through with the activities of the subordinates. [22]

Supervision and its Significance

Supervision refers to the process by which managers oversee the activities and performance of their subordinates to ensure that tasks are completed correctly, efficiently, and in alignment with organizational goals. Effective supervision involves various responsibilities and practices, including Guidance and Support, Monitoring Performance, Feedback and Coaching, Problem Solving, Motivation, and Communication.

The term ‘Supervision’ is made up of two words, Super and Vision. Super means over and above and Vision means seeing. Therefore, supervision means overseeing the work of subordinates to ensure that they are working according to the plans and policies of the organisation. It is instructing, guiding, and observing the subordinates at work to ensure that they are working as per the plans. Supervision aims to ensure that subordinates work efficiently and effectively to accomplish the organisational objectives.

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22. “Principles and Elements of Directing”, Accessed from https://www.geeksforgeeks.org/business-studies/principles-and-elements-of--directing/

Significance of Supervision

Supervision is a critical function in business management, playing a vital role in the success and growth of an organization. Here are the key reasons why supervision is important:

i. *Interpersonal Contact with Workers*: Day-to-day contact and friendly relations with the workers is maintained by the supervisor. He acts as a guide, friend and philosopher to the workers.

ii. *Link between Workers and Management*: A supervisor acts as a link between workers and management. He communicates managerial policies and decisions to the workers and conveys workers' suggestions, ideas, complaints and grievances to the management. Supervisor helps to avoid misunderstandings and conflicts between the management and workers.

iii. *Maintains Discipline*: He maintains discipline in the organisation by enforcing rules and regulations. He uses various techniques to maintain discipline among the subordinates.

iv. *Promotes Group Unity*: A supervisor helps in maintaining group unity amongst the subordinates. He sorts internal differences among the workers and follows a people-oriented approach to build and maintain harmonious relations in the organisation.

v. *Helps in Improving Performance*: Supervision helps in inspiring and guiding workers to achieve organisational goals. As a supervisor is in direct contact with the workers, he is in better condition to improve the performance of the workers. He motivates them to work hard and improve their productivity by using both financial and non-financial incentives.

vi. *Provides Training to Employees*: Supervisors provide on-the-job training to new and existing employees to make an efficient team of workers. They instruct, suggest, criticise, and guide the employees, which makes them efficient and reduces accidents and wastage of resources in the workplace.

vii. *Influences Workers*: Supervisor influences the workers by inspiring them to cooperate and contribute to the best of their ability. A supervisor can build up higher morale of the employees through effective leadership.

viii. *Provides Feedback*: A supervisor evaluates the performance of the workers as per the pre-determined standards. By measuring the actual performances, the weakness of the employees is identified. The supervisor provides feedback and corrective measures are taken by the supervisors and subordinates to improve the performance.

Motivation and its importance

Motivation can be defined as the driving force behind your actions. It is often associated with 'why' you want to do something. It is intertwined with your goals, feelings, dreams and hopes. Motivation at work can drive the employees of an organisation to meet their individual goals as well as the company's overall goals.

The word Motivation derives from the Latin word "Movere". The Latin word "Movere" means "To move", "To drive" or "To drive forward" etc. Motivation can be defined as stimulating, inspiring and inducing the employees to perform to their best capacity. Motivation is a psychological term which means it cannot be forced on employees. It comes automatically from inside the employees as it is the willingness to do the work.

"Motivation means a process of stimulating people to action to accomplish desired goal" - **William G. Scout**

"Motivation refers to the way, in which urges, drives, desires, aspirations, strivings or needs, direct, control and explain the behaviour of human beings" - **Mc Farland**

"Motivation is the complex forces starting and keeping a person at work in an organisation. Motivation is something which moves the person to action and continues him in the course of action already initiated" - **Robert Dubin** [23]

Importance of Motivation

The importance of Motivation are as follows:

i. *Motivation helps to improve performance level*: Motivation helps in satisfying needs of the employees and providing them satisfaction. Performance of the employees is improved with the help of motivation as it bridges the gap between the capacity to work and willingness to work. As a result, employees work with full dedication and make full use of their abilities to raise the existing level of efficiency.

ii. *Motivation helps in changing negative attitude to positive attitude*: Positive attitude towards the organisation helps to achieve organisational goals easily. Sometimes, employees have a negative attitude towards the organisation or work. Motivation helps to change this negative attitude to a positive attitude through suitable rewards, positive encouragement and praise for good work. When the workers are motivated they work positively towards the organisational goals.

iii. *Motivation helps to reduce employee turnover*: Lack of motivation is the main cause behind employee turnover. Employees do not think of leaving the job when they are motivated by financial and non-financial incentives. Reduction in employee turnover saves a lot of money as direct expenses(recruitment and selection costs) and indirect expenses(labour dissatisfaction) are reduced. The organisations also benefit because the skill and competence of employees continue to be available to the organisation.

iv. *Motivation helps to reduce absenteeism*: Some of the reasons behind absenteeism are improper work environment, inadequate rewards, lack of recognition, etc., and these can be overcome or reduced if the employees are motivated properly. Proper motivation makes the work a source of pleasure, and workers do not refrain from work unless it is unavoidable.

v. *Motivation helps to introduce changes smoothly*: An organisation can survive and grow only when it adapts itself to the dynamic environment. Changes are generally resisted by the employees because of fear of adverse effects on their employment. This resistance can be overcome by proper motivation. Motivation helps to convince employees that proposed changes will bring additional rewards to them. As a result, they readily accept these changes.[24]

LEADERSHIP

Leadership is an attempt at influencing the activities of followers through the communication process and toward the attainment of some goal or goals.

Leadership is the capacity or ability to guide, inspire, and influence individuals or groups toward achieving a common goal. It involves decision-making, communication, and motivation while fostering collaboration and accountability.

According to C.I. Bernard – 'Leadership is the quality of behaviour of the individuals whereby they guide people or their activities in organised efforts'.

According to Bernard Keys and Thomas – 'Leadership is the process of influencing and supporting others to work enthusiastically towards achieving objectives'.

Leadership is essentially a continuous process of influencing behaviour. It may be considered in context of

23. "Process of Motivation", https://www.geeksforgeeks.org/business-studies/process-of-motivation//

24. "Features and Importance of Motivation", Accessed from https://www.geeksforgeeks.org/business-studies/features-and-importance-of--motivation/

mutual relations between a leader and his followers. The leader tries to influence the behaviour of individuals or group of individuals around him to achieve desired goals.

Keith Davis, "Leadership is the process of encouraging and helping others to work enthusiastically towards their objectives. Leadership must extract cooperation and willingness of the individuals and groups to attain the organisational objectives."

George R. Terry, "Leadership is a relationship in which one person influences others to work together willingly on related tasks to attain what the leader desires."

Koontz and O'Donnell, "Leadership is the process of influencing people so that they will strive willingly towards the achievement of group goals."

Chester I. Bernard, "Leadership refers to the quality of the behaviour of the individual whereby they guide people on their activities in organised work."

Mooney and Reiley, "Leadership is regarded as the form which authority assumes when it enters into process."

Alford and Beattey, "Leadership is the ability to secure desirable actions from a group of followers voluntarily without the use of coercion."

Features of Leadership

The features of leadership are as under:

i. *There must be Followers***:** A leadership cannot exist without followers. If a leader does not have followers, he cannot exercise his authority. Leadership exists both in formal and informal organisations.

ii. *Working Relationship between Leader and Followers***:** There must be a working relationship between the leader and his followers. It means that the leader should present himself in a place where the work is actually going on. Besides, the leader should be a dynamic person of the concerned group. If he is not so, he cannot get things done.

iii. *Personal Quality*: The character and behaviour of a man influence the works of others.

iv. *Reciprocal Relationship*: Leadership kindles a reciprocal relationship between the leader and his followers. A leader can influence his followers and, in turn, the followers can influence the leader. The willingness of both the leader and the followers is responsible for the influence and no enforcement is adopted.

v. *Community of Interests***:** There must be community of interests between the leader and his followers. A leader has his own objectives. The followers have their own objectives. They are moving in different directions in the absence of community of interests. It is not advisable. It is the leader who should try to reconcile the different objectives and compromise the individual interests with organisation interests.

vi. *Guidance***:** A leader guides his followers to achieve the goals of the organisation. A leader should take steps to motivate his followers for this purpose.

vii. *Related to a Particular Situation*: Leadership is applicable to a particular situation at a given point of time. It varies from time to time.

viii. *Shared Function*: Leadership is a shared function. A leader is also working along with his followers to achieve the objectives of the organisation. Besides, the leader shares his experience, ideas and views with his followers.[25]

25. "What is Leadership?", Accessed from https://www.economicsdiscussion.net/management/leadership/what-is-leadership/321166

COORDINATING

Definition and Meaning of Coordination

Coordination is the force that connects all managerial functions and ensures the smooth and efficient functioning of an organization. All the activities of an organization such as purchase, production, sales, and finance are connected through this link of coordination, which enables and helps in the continuous working of an organization. It is considered the soul of management, as it helps in achieving the goal through harmony and discipline of both individuals and groups.

Mooney and Reiley defines Coordination is an orderly arrangement of group efforts to provide unity of action in the pursuit of common goals. Charles Worth defines Coordination is the integration of several parts into an orderly hole to achieve the purpose of understanding. Brech defines Coordination is balancing and keeping together the team by ensuring suitable allocation of tasks to the various members and seeing that the tasks are performed with the harmony among the members themselves.

Characteristics of Coordinating

i. It is relevant for group efforts and not for individual efforts. Coordination involves an orderly pattern of group efforts. In the case of individual efforts, since the performance of the individual does not affect the functioning of others, the need for coordination does not arise.

ii. It is a continuous and dynamic process. Continuous because it is achieved through the performance of different functions. Also, it is dynamic since functions can change according to the stage of work.

iii. Most organizations have some sort of coordination in place. However, the management can always make special efforts to improve it.

iv. Coordination emphasizes the unity of efforts. This involves fixing the time and manner in which the various functions are performed in the organization. This allows individuals to integrate with the overall process.

v. A higher degree of coordination happens when the degree of integration in the performance of various functions increases.

vi. It is the responsibility of every manager in the organization. In fact, this is integral to the role of a manager because he synchronizes the efforts of his subordinates with others.

Importance of Coordinating

1. *Teamwork*: It allows people and organizations to cooperate to achieve a common objective. When people work together, they can share ideas and talents and find different points of view and strategies. As a result, problem-solving is made easier and more effective, which can help people make better decisions.

2. *Unity in Diversity*: Coordination plays an important role in achieving Unity in diversity. When people with different backgrounds and talents join together to work towards a common objective, good coordination is necessary to make sure that everyone is pursuing the same goal.

3. *Conflicting Goals*: When different people or groups have different objectives, there is always a possibility of conflict. In such situations, coordination might help to end the dispute by finding a beneficial solution. Coordination can reduce misunderstandings and promote cooperation by establishing clear communication channels and a framework for decision-making.

4. *Growth in Size:* when an organization grows in size, it gets more complex and challenging to maintain

communication and order among different departments in an organization. Coordination helps maintain efficiency and proper communication among different departments.

5. *Specialization:* Effective coordination enables individuals or teams to collaborate effectively, allowing them to specialize in their fields of expertise while continuing to work towards the organization's goals. To guarantee that everyone is on the same page, coordination often requires effective collaboration, clear communication, and the use of suitable tools and processes.

6. *Synergy Effect:* The synergy effect refers to the process where the result of a group's effort exceeds an individual effort. It promotes teamwork, the exchange of ideas and viewpoints, allowing the organization to reach its maximum potential.

7. *Human Nature:* Coordination recognizes the subconscious traits of human nature throughout organizations. It understands that to create efficiency and involvement, there must be clear communication, incentive, and a supportive work environment.

8. *Empire-Building:* Coordination encourages transparency and collaboration between departments, and an overall focus on organizational objectives, all of which help to reduce empire-building habits.

9. *Interdependence:* Coordination recognises the interdependence of various departments and teams within an organization. It emphasises the need for teamwork and shared responsibility to make sure that tasks and objectives are coordinated, enabling effective functioning and the achievement of desired results.

10. *Congruence of Flows:* Coordination makes sure that different flows, including those of information, resources, and activities, are smoothly coordinated and timed. Ensuring that these processes are entirely linked and consistent, maximizes efficiency, reduces duplication, and improves overall performance.

11. *Differentiation and Integration:* Coordination finds a balance between allowing differentiation in roles and functions while promoting integration towards common objectives. It facilitates coordinating and harmonizing various units, teams, or individuals, promoting specialization and organizational unity.[26]

Elements of Coordination

The three core elements of coordination are balancing, timing, and integration. Balancing involves ensuring efforts are spread appropriately across different departments and activities; timing ensures tasks are performed in the correct sequence and at the right time; and integration unifies diverse activities and interests under a common purpose.

- *Balancing*: This element focuses on adjusting and synchronizing different efforts and activities so that they work together harmoniously. It involves ensuring the right amount of resources or effort is dedicated to each part of a project or organization to avoid one area overpowering another.
- *Timing*: This refers to the sequencing of operations to ensure they are performed in the proper order and at the right time to support each other. Effective timing helps avoid delays and ensures that one activity's output is available when the next one begins.
- *Integration*: This involves bringing together diverse activities, interests, and functions into a cohesive whole. It is the process of unifying separate parts so that they work together toward the common goal.

26. "Significance of Coordination", Accessed from https://www.geeksforgeeks.org/business-studies/coordination-types-need-significance--and-constraints/

Process of Communication

The process of coordination involves the following :

i. Planning: Planning is the elementary stage of achieving coordination. When various functions are properly planned and various policies are integrated then coordination will be easily achieved.

ii. Organisation: In the process of organisation, the authority and responsibility of various persons are defined and even the relationship among different jobs is also specifically given.

iii. Directing: When a manager directs his subordinates he will be coordinating their work. He will give them directions, guidelines and instructions for doing a job assigned to them. He will direct in such a way that the achievement of overall organisational objectives is ensured.

iv. Controlling: The manager is required to control the work of everyone in the organisation so that all efforts are directed towards the main goals. There may be instances when the performance of subordinates is not up to the mark or it is not in the direction in which it should have been.

    The manager will take corrective measures as and when required. He will synchronise the work of his subordinates so that the goals are achieved easily.

v. Staffing: The staffing function can also help in proper coordination. While staffing, the manager should keep in mind the nature of jobs and the type of persons required for managing them.

vi. Proper Communication: Effective communication is of utmost importance for achieving better coordination. There should be a regular flow of information among various persons so that they are given the required information for proper coordination.[27]

Types of Coordination

Different forms of coordination are used in various settings and professions. These are a few of the common types of coordination that are used in numerous organizational and different situations. Depending on the circumstance, the following are some of the common types of coordination used-

1. **Internal Coordination:** Internal coordination is the practice of coordinating operations and efforts within a company to accomplish shared goals. To maximize productivity and accomplish desired results, it involves making sure that all departments, teams, and individuals work well together.

2. **External Coordination:** External coordination is the management of interactions and relationships with external stakeholders, including clients, partners, suppliers, and governmental bodies. In order to accomplish mutual objectives and maintain positive relationships, it involves coordinating activities with external organizations.

3. **Procedural Coordination:** Procedure coordination refers to the methods used by various organizations or agencies to coordinate their activities. This includes establishing communication channels, exchanging information, establishing goals and deadlines, developing decision-making procedures, and evaluating growth in performance.

4. **Substantive Coordination:** The alignment of procedures, goals, and policies among different organizations or institutions is referred to as substantive coordination. Setting up guidelines for decision-making and problem-solving is also a part of substantive coordination. It can include making sure that rules and practices are uniform across all organizations and resources.

5. **Vertical Coordination:** This kind of coordination takes place between several organizational levels

27. *"6 Steps Process of Coordination", Accessed from https://getuplearn.com/blog/process-of-coordination//*

within a team or an organization. It involves the communication between managers as well as employees in terms of information, instructions, and feedback. Vertical coordination makes sure that tasks and activities fit with the organization's ultimate goals and strategies.

6. **Horizontal Coordination:** Horizontal coordination takes place between individuals or departments at the same hierarchical level within an organization. It involves working together, communicating, and sharing resources to accomplish common objectives. Effective teamwork, resolution of disputes, and efficiency all depend on horizontal coordination.

7. **Formal Coordination:** In any organization, formal coordination is formed by formal systems, processes, and structures. It consists of formal reporting channels, regulations, and procedures. The following are a few examples of formal coordination systems: meetings, documents, job descriptions, and performance appraisals.

8. **Informal Coordination:** Within a company, networks, relationships, and social interactions all play an important role in establishing informal coordination. It depends on people's relationships, mutual trust, and understanding. Informal coordination can be flexible and impulsive, and it frequently takes place through social interactions, casual talks, or electronic platforms.

9. **Functional Coordination:** Functional coordination refers to the coordinating activities among specific functional areas or departments, for example, finance marketing human resources, etc. It makes sure that the efforts of each department are directed towards the same ultimate goal of the organization.

10. **Cross-functional Coordination:** Cross-functional coordination refers to coordinating activities between different functional areas or departments. To accomplish shared objectives, an organization required contributions from many functions. It needs collaboration, communication, and integration of efforts. For projects, product development, and improvement of systems, cross-functional cooperation is an important element.

11. **Inter-organizational Coordination:** Inter-organizational coordination is the process by which various organizations or groups collaborate to achieve a single goal. Collaboration, sharing of information, and taking decisions together are all involved. Supply chains, partnerships, alliances, and joint projects all require inter-organizational coordination.

12. **Global Coordination:** Coordinating activities and operations across different countries or geographical regions is referred to as global coordination. It requires handling various cultural, legal, and operational situations while assuring consistency and compliance with international standards and strategies.[28]

Factors determining Effective Coordination

Factors or principles determining effective coordination are as under:

Mary Parker Follett has laid down the following principles of co-ordination with the help of which an executive ensures integrated efforts in an organisation with a minimum of friction and a maximum of collaborative effectiveness.

i. **Principle of Early Beginning:** The success of co-ordinating activities depends on the beginning itself. If it has started at the early stage it proves fruitful. Planning is the beginning of an enterprise. Co-ordination should from this very stage start functioning. Production Manager has a plan to start producing a new item for which he requires a plant. He orders for the same. After placing the orders he informs Finance controller.

28. "Coordination – Types, Need, Significance and Constraints", Accessed from https://www.geeksforgeeks.org/business-studies/ /coordination-types-need-significance-and-constraints/

Finance Controller refuses to meet the bill as he is short of funds and funds at a short notice cannot be arranged. The order for plant has to be cancelled. Had there been co-ordination between the two in the initial stages of the plan such a situation would have never arisen.

ii. **Principle of Direct Contact:** Instead of issuing orders and instructions it is better and helpful if the co-ordinating parties meet personally and talk over the matter. This helps in mutual understanding and creates mutual confidence. Respect for each other develops between the personnels at the same level and also at different levels which is helpful in future also.

iii. **Principle of Reciprocity:** A situation can be easily visualised where all elements are influenced by doing and undoing of each one. For Example – in an industrial undertaking production department is as much linked with purchase department as the personnel department as the personnel department is or vice-versa. Principles of reciprocity help in co-ordinating the efforts of each other thus help in establishing an effective and harmonious relations between each other.

iv. **Principle of Continuity:** Co-ordination is a continuous process. It goes on relentlessly from the very beginning. If anywhere it either stops or slackens a derailment is the only possibility which in that case will harm the whole enterprise.[29]

REPORTING

Meaning of Management Reporting

A management report is a critical tool in business intelligence, enabling leaders and managers at all levels to make informed, data-driven decisions. These reports, varying in format and detail, are prepared to reflect the financial and operational aspects of a business over a specific period.

By providing insights into different areas and departments, management reports help in assessing the company's performance against its strategic goals.

Management reports include a range of data like cash flow, budget, profit, wage-revenue ratio, and employee productivity. They can be presented in various formats such as visual (graphs, charts), written (tables, ratios), or oral (meetings, discussions), depending on the audience and the type of information being communicated.[30]

Importance of Management Reports

- It helps managers understand the factors impacting their business. This, in turn, allows them to formulate strategies to improve business performance.
- The information presented in the written and visual reports enables the managers to analyze the business performance quickly.
- It helps managers identify trends. This allows them to make better business decisions.
- The reports help an organization's top decision-makers understand the KPIs and set performance goals.
- Managers can measure the business's overall health with the help of the data provided in the reports.
- The information helps managers prevent unnecessary expenses and losses.[31]

29. "Principles of Coordination in Management", Accessed from https://www.economicsdiscussion.net/management/coordination/principles--of-coordination/31861

30. "What is a Management Report", Accessed from https://www.wudpecker.io/blog/management-reporting-definition-examples-best--practices

31. "Importance of Management Reports", Accessed from https://www.wallstreetmojo.com/management-reporting//

Reporting of Deviations

Deviation management involves the systematic process of identifying, documenting, investigating, and resolving any departures from standard operating procedures, specifications, or regulatory requirements during the manufacturing process. Implementing an effective deviation management system is crucial for maintaining quality standards and ensuring compliance with both internal and external expectations.

These deviations can occur at any stage of production and may impact product quality, safety, or regulatory compliance. They might arise from human error, equipment failure, raw material inconsistencies, contaminated raw materials, or unforeseen circumstances in the production environment. Deviations are often recognized as measured differences between expected and observed values in product or process conditions.

Steps for reporting deviations

1. *Detect and document immediately:* Identify the deviation as soon as it occurs and immediately create a report. Record key details like the date, time, location, and a clear description of what happened.
2. *Provide thorough details:* Include specific information such as product and lot numbers, equipment involved, and names of any personnel involved. The more comprehensive the details, the smoother the investigation will be. Photos and relevant documents can also be included.
3. *Implement immediate corrective actions:* Take immediate steps to mitigate the problem, and document these actions in the report.
4. *Initiate an impact assessment:* A designated owner will assess the deviation's impact, often classifying it as minor, major, or critical.
5. *Conduct root cause analysis:* Investigate to find the underlying reasons for the deviation, which can involve using tools like the 5 Whys or fishbone diagrams.
6. *Develop and implement corrective/preventative actions (CAPA):* Based on the root cause, create a plan to correct the immediate problem and implement preventative actions to stop it from happening again.
7. *Track and follow up:* Use a structured system, such as a quality management system, to track the deviation through to completion

BUDGETING

Meaning of Budgeting

Budgeting's the process of creating a plan to spend an organization's resources, including money, time, and personnel. It involves estimating revenue and expenses over a specified future period, often annually, and serves as a financial blueprint for the organization. The budget's a critical tool for financial planning and analysis (FP&A) because it helps organizations allocate resources efficiently, set financial goals, and monitor performance against those goals.

The Chartered Institute of Management Accountants, London defines a budget as, "a financial and / or quantitative statement, prepared prior to a defined period of time, of the policy to be pursued during that period for the purpose of attaining a given objective." Thus, the following are the essentials of a budget:

(a) It is prepared in advance and is based on a future plan of action.

(b) It relates to a future period and is based on objectives to be attained.

(c) It is a statement expressed in monetary and/ or physical units prepared for the implementation of policy formulated by the management.

Objectives of Budgeting

i. *Allocating resources*: Proper budgeting helps ensure that resources are allocated efficiently and effectively to various departments, projects, and initiatives based on their priority and potential impact on the organization's overall success.

ii. *Controlling costs*: Budgeting helps organizations monitor and control expenses, identify areas of overspending, and implement cost-cutting measures to maintain financial stability.

iii. *Profit maximization*: By accurately projecting revenue and expenses, budgeting helps organizations identify opportunities to increase profitability through strategic planning and decision-making.

iv. *Cash flow management*: Budgeting assists in managing cash flow by projecting inflows and outflows over a specific period, helping to ensure that the organization has sufficient cash to meet its financial obligations and avoid potential liquidity issues.

v. *Performance evaluation*: Budgeting provides a benchmark against which an organization can measure its actual financial performance, allowing for the identification of areas of success and those in need of improvement.

vi. *Financial planning*: Budgeting is a critical component of long-term financial planning, enabling organizations to set financial goals, develop strategies to achieve those goals, and monitor progress over time.

vii. *Risk management*: Through the budgeting process, organizations can identify and mitigate potential financial risks, such as unexpected revenue declines, cost increases, or economic downturns, by building contingency plans and maintaining financial flexibility.

viii. *Communicating financial priorities*: A budget serves as a communication tool that outlines an organization's financial priorities, ensuring that all stakeholders, including employees, management, and investors, understand the organization's goals and the necessary steps to achieve them.[32]

Importance of Budgeting

i. *It ensures resource availability*: At its core, budgeting's primary function is to ensure an organization has enough resources to meet its goals. By planning financials in advance, you can determine which teams and initiatives require more resources and areas where you can cut back.

ii. *It can help set and report on internal goals*: Budgeting for an upcoming period isn't just about allocating spend; it's also about determining how much revenue is needed to reach company goals.

iii. *It helps prioritize projects*: A by-product of the budgeting process is that it requires prioritizing projects and initiatives. When prioritizing, consider the potential return on investment for each project, how each aligns with your company's values, and the extent they could impact broader financial goals.

iv. *It can lead to financing opportunities*: If someone working at a start-up or are considering seeking outside investors, it's important to have documented budgetary information. When deciding whether to fund a company, investors highly value its current, past, and predicted financial performance.

   Providing documents for previous periods with budgeted and actual spend can show ability to handle a company's finances, allocate funds, and pivot when appropriate. Some investors may ask for the current budget to see the predicted performance and priorities based on it.

32. "Budgeting Objectives", Accessed from https://www.superfastcpa.com/what-are-budgeting-objectives//

v. *It provides a pivotable plan*: A budget is a financial roadmap for the upcoming period; if all goes according to plan, it shows how much should be earned and spent on specific items.[33]

Types of Budgets

i. **Incremental Budgeting:** Incremental budgeting takes last year's actual figures and adds or subtracts a percentage to obtain the current year's budget. It is the most common type of budget because it is simple and easy to understand. Incremental budgeting is appropriate to use if the primary cost drivers do not change from year to year. However, there are some problems with using the method:

- It is likely to perpetuate inefficiencies. For example, if a manager knows that there is an opportunity to grow his budget by 10% every year, he will simply take that opportunity to attain a bigger budget while not putting effort into seeking ways to cut costs or economize.
- It is likely to result in budgetary slack. For example, a manager might overstate the size of the budget that the team actually needs so it appears that the team is always under budget.

It is also likely to ignore external drivers of activity and performance. For example, there is very high inflation in certain input costs. Incremental budgeting ignores any external factors and simply assumes the cost will grow by, for example, 10% this year.

ii. **Activity-based Budgeting**: Activity-based budgeting is a top-down type of budget that determines the amount of inputs required to support the targets or outputs set by the company. For example, a company sets an output target of $100 million in revenues. The company will need to first determine the activities that need to be undertaken to meet the sales target, and then find out the costs of carrying out these activities.

iii. **Value Proposition Budgeting**

In value proposition budgeting, the budgeter considers the following questions:

- Why is this amount included in the budget?
- Does the item create value for customers, staff, or other stakeholders?
- Does the value of the item outweigh its cost? If not, then is there another reason why the cost is justified?

Value proposition budgeting is really a mind set about making sure that everything that is included in the budget delivers value for the business. Value proposition budgeting aims to avoid unnecessary expenditures – although it is not as precisely aimed at that goal as our final budgeting option, zero-based budgeting.

iv. **Zero-based Budgeting**

As one of the most commonly used budgeting methods, zero-based budgeting starts with the assumption that all department budgets are zero and must be rebuilt from scratch. Managers must be able to justify every single expense. No expenditures are automatically "okayed". Zero-based budgeting is very tight, aiming to avoid any and all expenditures that are not considered absolutely essential to the company's successful (profitable) operation. This kind of bottom-up budgeting can be a highly effective way to "shake things up".

The zero-based approach is good to use when there is an urgent need for cost containment, for example, in a situation where a company is going through a financial restructuring or a major economic or market downturn that requires it to reduce the budget dramatically.

33. "Why is Budgeting Important", Accessed from https://online.hbs.edu/blog/post/importance-of-budgeting-in-businesss

Zero-based budgeting is best suited for addressing discretionary costs rather than essential operating costs. However, it can be an extremely time-consuming approach, so many companies only use this approach occasionally.[34]

v. *Operating budget*: Revenues and associated expenses in day-to-day operations are budgeted in detail and are divided into major categories such as revenues, salaries, benefits, and non-salary expenses.

vi. *Capital budget*: Capital budgets are typically requests for purchases of large assets such as property, equipment, or IT systems that create major demands on an organization's cash flow. The purposes of capital budgets are to allocate funds, control risks in decision-making, and set priorities.

vii. *Cash budget*: Cash budgets tie the other two budgets together and take into account the timing of payments and the timing of receipt of cash from revenues. Cash budgets help management track and manage the company's cash flow effectively by assessing whether additional capital is required, whether the company needs to raise money, or if there is excess capital.

Budgeting Process

The budgeting process is often considered a long and tedious one that requires gathering, consolidating, and analysis of data from multiple sources. There is much more to the budgeting process than simple data consolidation; one have to answer several questions, piece together missing information, and consult multiple teams to arrive at the perfect budget. Simply put, budgeting is the tactical implementation of a business plan. A detailed and descriptive road map of the business plan that sets various measures and indicators of performance is required for every business. The process of budgeting helps chalk out a detailed road map for the business.

- Once a budget is prepared, the process teams get a clear picture of goals and objectives and the performance indicators to measure the progress.
- Finance teams review past budgets and plan expenses for forecasting revenue during the budgeting in process.
- The process of budgeting must align with the upper management while analyzing the budget data and establishing future goals for better control of spending.[35]

LESSON ROUNDUP

- Planning is an all-pervasive and fundamental function of management. All other functions of organizing, staffing, directing and controlling must reflect planning function of management. Though more important for higher levels, planning is the function of every manager. It involves deciding in advance what is to be done and where, how and by whom it is to be done. While planning, the manager projects a course of action for the future aimed at achieving desired results for the enterprise as a whole and each department within it.
- Organizing is providing the business with everything useful to its functioning—raw materials, tools, capital, and personnel.

34. "The Four Main Types of Budgets and Budgeting Methods", Accessed from https://corporatefinanceinstitute.com/resources/fpa/types--of-budgets-budgeting-methods/

35. "Overview of the budgeting process", Accessed from https://www.cflowapps.com/budgeting-process//

- Staffing refers to the process of hiring, training, and maintaining a workforce that reflects the organization's objectives. In this process, human resource requirements are determined, and there is sourcing of relevant qualified people. They also go through professional development. This process aims at filling each position with the best possible person. Such a function directly affects the organization in terms of efficiency and performance through the strong human capital base it creates.
- The process of instructing, guiding, counselling, motivating, and leading people in an organisation to achieve the organisational goals is known as directing.
- Motivation can be defined as the driving force behind your actions. It is often associated with 'why' you want to do something. It is intertwined with your goals, feelings, dreams and hopes. Motivation at work can drive the employees of an organisation to meet their individual goals as well as the company's overall goals.
- Leadership is an attempt at influencing the activities of followers through the communication process and toward the attainment of some goal or goals.
- Coordination is the force that connects all managerial functions and ensures the smooth and efficient functioning of an organization. All the activities of an organization such as purchase, production, sales, and finance are connected through this link of coordination, which enables and helps in the continuous working of an organization. It is considered the soul of management, as it helps in achieving the goal through harmony and discipline of both individuals and groups.
- A management report is a critical tool in business intelligence, enabling leaders and managers at all levels to make informed, data-driven decisions. These reports, varying in format and detail, are prepared to reflect the financial and operational aspects of a business over a specific period.
- Budgeting's the process of creating a plan to spend an organization's resources, including money, time, and personnel. It involves estimating revenue and expenses over a specified future period, often annually, and serves as a financial blueprint for the organization. The budget's a critical tool for financial planning and analysis (FP&A) because it helps organizations allocate resources efficiently, set financial goals, and monitor performance against those goals.

TEST YOURSELF

1. Which of the following is a core function of management?

A. Cooperating

B. Organizing

C. Budgeting

D. Innovation

2. What function of management involves setting goals and developing strategies to achieve them?

A. Controlling

B. Staffing

C. Planning

D. Organizing

3. Which of the following is not a subsidiary function of management?

A. Decision making

B. Staffing

C. Innovation

D. Communication

4. Coordination is considered to be:

A. A separate function

B. The essence of management

C. Not related to management

D. None of the above

5. Which function of management involves determining how best to group activities and resources?

A. Organizing

B. Planning and decision making

C. Controlling

D. Directing

SUGGESTED READINGS

1. Principles of Management (7th Edition), by PC Tripathi, PN Reddy and Ashish Bajpai, Published by McGraw Hill.
2. Principles of Management by Pushpinder Singh Gill and Paramjeet Kaur, Published by Atlantic.

Principles of Management and Modern Approaches

Lesson 9

KEY CONCEPTS

■ Henry Fayol's Principles of Management ■ Principles of Scientific Management ■ Modern Approaches to Management

Learning Objectives

To understand:

- To comprehend the various principles of management propounded by Henry Fayol and Frederick Taylor.
- To develop insights on modern approaches to management- Management By Objectives and Contingency Approach

Lesson Outline

- Henry Fayol's Fourteen Principles of Management
- Principles of Scientific Management by Taylor
- Management By Objectives
- Contingency Approach
- Most Analysis
- Lesson Round Up
- Test Yourself
- Suggested Readings

HENRY FAYOL'S FOURTEEN PRINCIPLES OF MANAGEMENT

Fayol suggested the following fourteen principles of management.

1. *Division of Work:* So as to produce more and secure better performance with the same effort.
2. *Authority and Responsibility:* Whenever authority is used responsibility arises, and the two are co-extensive.
3. *Discipline:* To ensure obedience and respect for superiors.
4. *Unity of Command:* An employee shall receive orders from one senior only.
5. *Unity of Direction:* A group of activities with common objectives shall have one head and one plan.
6. *Subordination:* Subordination of individual interest to general interest.
7. *Remuneration:* It should be fair and afford maximum satisfaction to the firm and employees as well.
8. *Centralization:* Top management should decide the extent to which authority is to be dispersed in the organization or retained at higher levels. Centralisation or decentralisation should be viewed as a question of proportion.
9. *Scalar Chain:* It refers to superior-subordinate relations throughout the organization. It should be shortcircuited and not be carried to the extent that it proves detrimental to the business.
10. *Order:* There must be a place for everything, and each thing must be in its appointed place. Similarly, there must be appointed place for each employee and every employee must be in his appointed place.
11. *Equity:* Management must have the desire for equity and equality of treatment while dealing with people. Equity is the combination of kindliness and justice in a manager.
12. *Stability of Tenure of Personnel:* Management should strive to minimise employee turnover.
13. *Initiative:* It refers to thinking out and executing a plan.
14. *Espirit de Corps:* This principle emphasises the need for teamwork and the importance of effective communication in obtaining it.

Fayol described the above principles as a matter of convenience. He did not intend to close the list or make the principles inflexible.

Principles of Scientific Management by Taylor

Frederick Taylor who is popularly known as the Father of Scientific Management. The goal of Frederick Taylor's (1901) scientific management was to use systematic study to find the 'one best way' of doing each task. To do that, managers must follow the four principles:

- *First, 'develop a science' for each element of work. Study it. Analyse it. Determine the 'one best way' to do the work.* For example, one of Taylor's controversial proposals at the time was to give rest breaks to factory workers doing physical labour. Today, we take breaks for granted, but in Taylor's day, factory workers were expected to work without stopping. Through systematic experiments, Taylor showedthat frequent rest breaks greatly increased daily output.
- *Second, scientifically select, train, teach and develop workers to help them reach their full potential.*

Before Taylor, supervisors often hired on the basis of favouritism and nepotism. Who you knew was often more important than what you could do. By contrast, Taylor instructed supervisors to hire 'first class' workers on the basis of their aptitude to do a job well. For similar reasons, Taylor also recommended that companies train and develop their workers - a rare practice at the time.

- *Third, cooperate with employees to ensure implementation of the scientific principles.* As Taylor knew from personal experience, more often than not workers and management viewed each other as enemies. Taylor said, 'The majority of these men believe that the fundamental interests of employees and employers are necessarily antagonistic. Scientific management, on the contrary, has at its very foundation the firm conviction that the true interests of the two are one and the same; that prosperity for the employer cannot exist for many years unless it is accompanied by prosperity for the employee and vice versa; and that it is possible to give the worker what is most wanted - high wages - and the employer what he wants - a low labour cost - for the product'.

- *The fourth principle of scientific management was to divide the work and the responsibility equally between management and workers.* Prior to Taylor, workers alone were held responsible for productivity and performance. But, said Taylor, 'Almost every act of the workman should be preceded by one or more preparatory acts of the management which enable him to do his work better and quicker than he otherwise could'.

Above all, Taylor felt these principles could be used to determine a 'fair day's work', for a 'Fair day's pay' for management and employees so that what was good for employees was also good for management. One of the best ways, according to Taylor, to align management and employees was to use incentives to motivate workers e.g. payment for each product produced.

The scientific management movement early in the twentieth century was hailed as a "second industrial revolution". Since scientific management meant an innovation in the field of management, it generated tremendous opposition even during the life time of Taylor. Public criticism and opinions compelled him to appear before the special Congressional Committee hearings in 1912. The industrial psychologists challenged his assumption of the best *method of job performance*. Although Taylor gave a very lucid explanation of management as a separate and identifiable discipline, his stress on time and motion study and on efficiency at the shop level led to the overlooking of other general aspects of management, particularly in the U.K. and the U.S.A. In fact, the enthusiasm for Taylorism and scientific management had the unfortunate effect of overshadowing the work of Henry Fayol.

MODERN APPROACHES

Management By Objectives (MBOs)

Management by Objectives (MBO) is a strategic approach to enhance the performance of an organization. It is a process where the goals of the organization are defined and conveyed by the management to the members of the organization with the intention to achieve each objective.

Management by objectives (MBO) is a strategic management approach that involves aligning an organization's performance goals with both employee and management objectives. It has five steps: define objectives, share them with employees, encourage employees to participate, monitor progress, and finally, evaluate performance and reward achievements. In practice, a manager and an employee agree on specific performance goals and then develop a plan to reach them. MBO can foster employee engagement and commitment, enhancing results of work efforts.

Features of MBO

- Management by Objectives (MBO) is a strategic approach that aligns company goals with employee objectives, promoting collaboration and clarity in organizational performance.
- The process involves five key steps: defining objectives, communicating them to employees, encouraging participation, monitoring progress, and evaluating performance with rewards.
- MBO can increase employee motivation and communication but may also place excessive focus on targets, potentially leading to shortcuts and overlooked company culture.
- While MBO effectively aligns individual and organizational goals, it requires strong support from management and can be misapplied if relied upon exclusively.
- Critics of MBO argue that the heavy emphasis on achieving specific goals might detract from broader organizational values and long-term growth.

Steps in Management by Objectives Process

1. **Define organization goals**

   Setting objectives is not only critical to the success of any company, but it also serves a variety of purposes. It needs to include several different types of managers in setting goals. The objectives set by the supervisors are provisional, based on an interpretation and evaluation of what the company can and should achieve within a specified time.

2. **Define employee objectives**

   Once the employees are briefed about the general objectives, plan, and the strategies to follow, the managers can start working with their subordinates on establishing their personal objectives. This will be a one-on-one discussion where the subordinates will let the managers know about their targets and which goals they can accomplish within a specific time and with what resources. They can then share some tentative thoughts about which goals the organization or department can find feasible.

3. **Continuous monitoring performance and progress**

   Though the management by objectives approach is necessary for increasing the effectiveness of managers, it is equally essential for monitoring the performance and progress of each employee in the organization.

4. **Performance evaluation**

   Within the MBO framework, the performance review is achieved by the participation of the managers concerned.

5. **Providing feedback**

   In the management by objectives approach, the most essential step is the continuous feedback on the results and objectives, as it enables the employees to track and make corrections to their actions. The ongoing feedback is complemented by frequent formal evaluation meetings in which superiors and subordinates may discuss progress towards objectives, leading to more feedback.

6. **Performance appraisal**

   Performance reviews are a routine review of the success of employees within MBO organizations.

Source: CFI

Benefits of Management by Objectives

- Management by objectives helps employees appreciate their on-the-job roles and responsibilities.
- The Key Result Areas (KRAs) planned are specific to each employee, depending on their interest, educational qualification, and specialization.
- The MBO approach usually results in better teamwork and communication.
- It provides the employees with a clear understanding of what is expected of them. The supervisors set goals for every member of the team, and every employee is provided with a list of unique tasks.
- Every employee is assigned unique goals. Hence, each employee feels indispensable to the organization and eventually develops a sense of loyalty to the organization.
- Managers help ensure that subordinates' goals are related to the objectives of the organization.

Limitations of Management by Objectives

- Management by objectives often ignores the organization's existing ethos and working conditions.
- More emphasis is given on goals and targets. The managers put constant pressure on the employees to accomplish their goals and forget about the use of MBO for involvement, willingness to contribute, and growth of management.
- The managers sometimes over-emphasize the target setting, as compared to operational issues, as a generator of success.
- The MBO approach does not emphasize the significance of the context wherein the goals are set. The context encompasses everything from resource availability and efficiency to relative buy-in from the leadership and stakeholders.
- Finally, there is a tendency for many managers to see management by objectives as a total system that can handle all management issues once installed. The overdependence may impose problems on the MBO system that it is not prepared to tackle, and that frustrates any potentially positive effects on the issues it is supposed to deal with.[1]

1. "Management by Objectives (MBO)", Accessed from https://corporatefinanceinstitute.com/resources/management/management-by-objectives-mbo/

Contingency Approach

The contingency approach is a management theory that suggests there's no single best way to manage an organization. Instead, the most effective management style or organizational structure depends on the specific circumstances or context in which a company operates. This approach takes into account factors like the external environment, nature of each task, workforce, and organizational culture, and it tailors management practices to fit these variables.

Often referred to as contingency theory or contingency approach to management, this concept recognizes the dynamic and ever-changing nature of the workplace. It emphasizes the need to adapt HR practices to suit an organization's unique circumstances, ultimately leading to more effective decision-making and problem-solving.

The contingency approach encompasses various theories, offering a distinct perspective on managing organizations. These theories are:

1. **Fiedler's Contingency Theory**

   Fiedler's Contingency Theory posits that a leader's effectiveness is determined by the match between their leadership style (task-oriented or relationship-oriented) and the specific situation. The situation is assessed based on three factors: leader-member relations, task structure, and the leader's positional power.

   Fiedler's Contingency Theory example

   A task-oriented manager excels in a structured production environment but struggles when transferred to a less structured, relationship-driven customer service role. Their effectiveness depends on the fit between their style and the environment.

2. **Situational Leadership Theory**

   The Situational Leadership Theory suggests leaders should adapt their style based on the readiness or maturity of their followers. The theory identifies four leadership styles — Telling, Selling, Participating, and Delegating — each suited to different levels of employee competence and commitment.

   Situational Leadership Theory example

   A manager uses a directive approach (Telling) with a new, inexperienced team member and gradually shifts to a more hands-off style (Delegating) as they become more skilled and confident.

3. **Path-Goal Theory**

   The Path-Goal Theory, developed by Robert House, focuses on how leaders can motivate their followers to achieve goals by clarifying the path to success, removing obstacles, and providing support. The theory suggests leaders can adapt their behaviour to fit their team's needs using directive, supportive, participative, or achievement-oriented styles.

   Path-Goal Theory example

   A sales manager clarifies goals and provides additional training to help the team overcome challenges, while also offering incentives to boost motivation. This approach helps the team achieve their targets by ensuring they have a clear path and the necessary support.

4. **Decision-Making Theory**

   The Decision-Making Theory in management proposes that managers tailor their decision-making approach based on the situation. Depending on the problem's complexity and urgency, managers might choose autocratic, consultative, or participative decision-making styles.

Characteristics of the contingency approach

The contingency approach to leadership is characterized by several fundamental principles, including:

- *Situational perspective*: The approach recognizes there is no one-size-fits-all solution or management style. Different scenarios require different directions, and HR professionals must adapt accordingly.
- *Contextual factors*: The effectiveness of management practices depends on several contextual factors, including the organization's size, industry, technology, culture, goals, and external environment. These factors should inform decision-making and leadership style.
- *Flexibility*: Managers should be flexible in their approach and willing to adjust their strategies based on changing situations. What works well in one case may not work in another. Flexibility is a cornerstone of the contingency approach.
- *Individualization*: The contingency approach encourages individualized approaches to leadership and management. It acknowledges that employees have diverse needs and motivations. This means leaders must tailor their management practices accordingly to meet these unique requirements, ultimately enhancing performance.[2]

MOST Analysis

MOST analysis is a useful strategic tool for analysing an organisation's strategic plan. MOST stands for Mission, Objectives, Strategy, and Tactics.

- *Mission*: Defines the overriding direction and purpose of the organisation and should position the business to succeed.
- *Objectives*: Are the statements of specific outcomes that are to be achieved by the organisation. Objectives should be SMART– that is, Specific, Measurable. Achievable, Realistic, and Timely.
- *Strategy*: Defines the direction and scope of an organisation over the long term, which achieves an advantage in a changing environment to achieve organisational objectives. Strategy contains options to help meet the business objectives.
- *Tactics*: The short-term, operational plans and projects that will implement the strategy.

MOST analysis is used to analyse what the organisation has set out to achieve (the mission and objectives) and how it aims to achieve this (strategy and tactics).

MOST analysis provides a statement of intent for the organisation, and is usually created following some strategic analysis activity. It is also used during the strategy analysis, since it can demonstrate strength within the organisation or expose inherent weaknesses.

Benefits of MOST Analysis

MOST Analysis provides the following benefits to a business organisation:

- Helps define what the organisation has set out to achieve (the mission and objectives).
- Determines how it aims to achieve this (strategy and tactics).
- Identifies, strengths, weaknesses, opportunities, and threats that the organisation faces.
- Helps the organisation communicate its purpose.
- Helps define business and transformation roadmaps to help enable the strategy.
- Enables alignment with stakeholders.
- Avoids day-to-day distractions and provides a basis for overall strategic direction.

2. *"Contingency Approach", Accessed from https://www.aihr.com/hr-glossary/contingency-approach/*

LESSON ROUNDUP

- Henry Fayol's fourteen Principles of Management - *Division of Work; Authority and Responsibility; Discipline; Unity of Command; Unity of Direction; Subordination; Remuneration; Centralization; Scalar Chain; Order; Equity; Stability of Tenure of Personnel; Initiative and Espirit de Corps.*
- Principles of Scientific Management by Taylor- *First, 'develop a science' for each element of work. Study it. Analyse it. Determine the 'one best way' to do the work; Second, scientifically select, train, teach and develop workers to help them reach their full potential; Third, cooperate with employees to ensure implementation of the scientific principles and the fourth principle of scientific management was to divide the work and the responsibility equally between management and workers.*
- Management by Objectives (MBO) is a strategic approach to enhance the performance of an organization. It is a process where the goals of the organization are defined and conveyed by the management to the members of the organization with the intention to achieve each objective.
- The contingency approach is a management theory that suggests there's no single best way to manage an organization. Instead, the most effective management style or organizational structure depends on the specific circumstances or context in which a company operates.
- MOST analysis is a useful strategic tool for analysing an organisation's strategic plan. MOST stands for Mission, Objectives, Strategy, and Tactics.

TEST YOURSELF

1. Pure science principles are rigid, whereas management principles are relatively_________.

A. Contingent

B. Dependent

C. Flexible

D. Absolute

2. Who is referred to be the "Father of Scientific Management?"

A. Henry Fayol

B. Robert Owen

C. Fredrick W. Taylor

D. None of these

3. Formulation of MOST is done by:

A. Workers

B. Managers

C. Government

D. Trademark Authorities

4. What is the main aim of Scientific Management according to Taylor?

A. Increase sales

B. Reduce wages

C. Improve efficiency and reduce wastage

D. Increase the number of employees.

SUGGESTED READINGS

1. Principles of Management, Dinkar Pagare, Sultan Chand & Sons
2. Principles of Management, Meenakshi Gupta, PHI Learning

Management Knowledge for Company Secretaries

Lesson 10

KEY CONCEPTS

■ Company Secretary's role ■ Duties of a Company Secretary ■ Management theories for Company Secretaries

Learning Objectives

To understand:

- Company Secretaries role and duties
- Requirement to be conversant with management knowledge
- How management theories impact Company Secretaries profession

Lesson Outline

- Role of Company Secretaries
- Need for Management Knowledge by a Company Secretary
- Significance of Management Theories / Approaches for Company Secretaries.
- Case Studies on Management
- Lesson Roundup
- Test Yourself
- Suggested Readings

COMPANY SECRETARY AS KEY MANAGERIAL PERSONNEL (KMP)

The Company Secretaries play an important role as governance professionals in all types of corporates, whether it is a private company, public company, section 8 company, government company or so. In the recent international development in corporate governance, the role of Company Secretaries is not limited to the doing compliance with laws, regulations, standards, and codes; it is also about creating cultures of good practice.

The Company Secretary acts as a bridge for information, communication, advice, and arbitration between the board and management and between the organization and its stakeholders including shareholders

To fulfill this role, the Company Secretary needs to be fully aware of the powers, rights, duties, and obligations of his entire business portfolio. In addition to providing advice and communication, the corporate secretary often called on to create and manage relationships between these different players in the corporate governance system. To carry out this role effectively, a Company Secretary needs to act with the highest integrity and independence in protecting the interests of the organization, its shareholders, and others with a legitimate interest in the organization's affairs. This level of responsibility calls for a thorough knowledge of the business environment in which the organization operates as well as of the laws, rules, and regulations that govern its activities. Company Secretaries typically provide practical support to the chairman of the organization to ensure that board meetings are managed effectively. This typically would entail assisting the chairman with agenda development, ensuring that meetings are conducted in line with good governance and statutory and regulatory requirements, drafting minutes, and following up on implementation of decisions made by the board.

Company Secretary has been recognized as Key Managerial Personnel and has placed along with Managing Director (MD) or Chief Executive officers (CEO) or Manager, Whole time director(s) or Chief Financial Officer (CFO) under Section 203 of the Companies Act, 2013. Accordingly, every listed company and every other company having paid-up share capital of ten crore rupees or more is required to appoint the whole time Company Secretary as the Key Managerial Personnel.

Key Managerial Personnel: The term 'key managerial personnel' has been defined in the Act which means :

(i) the Chief Executive Officer or the Managing Director or the Manager;

(ii) the Company Secretary;

(iii) the Whole-Time Director;

(iv) the Chief Financial Officer;

(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

(vi) such other officer as may be prescribed [section 2(51)].

The role and liability have been defined at various places under the Companies Act, 2013.

Company Secretary as Compliance Officer

Under Regulation 6 of the SEBI (LODR) Regulations, 2015, a listed company is required to appoint a qualified company secretary as the compliance officer. The compliance officer of the Company is responsible for:

(a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit;

(b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in the manner as specified from time to time;

(c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations;

(d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors:

However, the company secretary is also entrusted with the duties for ensuring compliance with SEBI (Prohibition of Insider Trading) Regulations, 2015 including maintenance of various documents and also to ensure compliance of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The requirement for appointment of Compliance officer is not applicable in case of units issued by mutual funds which are listed on recognised stock exchange(s) governed by the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations 1996.

Company Secretary as a part of Senior Management

The Regulation 16 of the SEBI (LODR) Regulations, 2015 provides that the "senior management" shall mean the officers and personnel of the listed entity who are members of its core management team, excluding the Board of Directors , and shall also comprise all the members of the management one level below the Chief Executive Officer or Managing Director or Whole Time Director or Manager (including Chief Executive Officer and Manager, in case they are not part of the Board of Directors) and shall specifically include the functional heads, by whatever name called and the Company Secretary and the Chief Financial Officer.

Accordingly, the role of Company Secretary in the various segments, is performed in different capacities. Broadly the Company Secretary is having the opportunities in the following two domains:

- Company Secretary in Employment
- Company Secretary in Practice

ROLE OF COMPANY SECRETARIES

The earliest role of a Company Secretary was to act as a record keeper and document the proceedings of meetings of the Board and Shareholders. Things have come a long way since then. Company Secretaries are now recognised as Key Managerial Personnel under the Companies Act 2013. They play a pivotal role in fostering good governance practices and ensuring that regulatory compliances are fully taken care of.

The Company Secretary plays the role of a confidante to the Board providing advice and counsel on the duties and responsibilities of the Board. He/she ensures that the Company has both the legal and social licence to conduct operations. He/she plays a crucial role in increasing the attention and ownership of the Board to sustainability best practices. To put in a nutshell, he/she acts as a glue to effective decision making at the Board Level.

Function and Duties of Company Secretary

At this juncture, it would be interesting to know about the following functions and duties of a Company Secretary in India, as provided under Companies Act, 2013 and Rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 respectively.

(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

(b) to ensure that the company complies with the applicable secretarial standards;

(c) to discharge such other duties as may be prescribed.

The duties of a Company Secretary are as under:

(1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;

(2) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;

(3) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;

(4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;

(5) to assist the Board in the conduct of the affairs of the company;

(6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and

(7) to discharge such other duties as have been specified under the Act or rules; and

(8) such other duties as may be assigned by the Board from time to time.

ROLE OF COMPANY SECRETARY – AS SECRETARIAL AUDITOR

The term "Secretarial Audit" refers to the mechanism which is connected with the audit of the non-financial aspects of the company. It gives necessary comfort to the investors, management, regulators and other stakeholders, as to the compliance of all applicable laws by the company and certifies the existence of adequate systems and processes for ensuring compliance of laws in the company.

Secretarial Audit is not just an audit of the diligent compliance or that of the adherence to the law in true letter and spirit but has proved to be a strong founding pillar of the governance framework of the Indian Corporate Sector and a futuristic torchlight for the entire Indian Economy. Secretarial Audit, as a result of faith of the law makers and the Regulatory Authorities in the Governance Professionals or as the law puts it, in the practicing company secretaries, bestows a huge responsibility on the Secretarial Auditors.

As per provisions of Section 204(1) of Companies Act, 2013, every listed company or every public company having a paid- up share capital of 50 crore rupees or more or a turnover of 250 crore rupees or more or every company having outstanding loans or borrowings from banks or public financial institutions of 100 crore rupees or more shall annex with its Board's Report, a Secretarial audit report, given by a company secretary in practice in Form MR-3.

Regulation 24A of the SEBI (LODR) Regulations, 2015 states that every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice, in such form as specified, with the annual report of the listed entity.

Every listed entity shall submit a secretarial compliance report in such form as specified, to stock exchanges, within sixty days from end of each financial year.

Section 134 and Sub-section (3) of Section 204 provides that the Board of Directors, in its report, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in the secretarial audit report.

If a company or any officer of the company or the company secretary in practice, contravenes the provisions of section 204, the company, every officer of the company or the company secretary in practice, who is in default, shall be liable to a penalty of two lakh rupees.

The Secretarial Audit process involves audit planning, organised documentation process, co-ordination with different parties/stakeholders, risk assessment and efficient control mechanism during audit process.

Areas where Company Secretary render services

Corporate Governance Services: Advising on good governance practices and compliance of Corporate Governance norms as prescribed under various Corporate, Securities and Other Business Laws and regulations and guidelines made thereunder.

Corporate Secretarial Services:

- Promotion, formation and incorporation of companies and matters related therewith
- Filing, registering any document including forms, returns and applications by and on behalf of the company as an authorized representative
- Maintenance of secretarial records, statutory books and registers
- Arranging board/general meetings and preparing minutes thereof
- All work relating to shares and their transfer and transmission etc.

Secretarial/Compliance Audit and Certification Services:

- Secretarial Audit
- Internal Audit
- Signing of Annual Return
- Other declaration, attestations and certifications under the Companies Act, 2013 and other legislations

Corporate Laws Advisory Services:

Advising companies on Compliance of legal and procedural aspects, particularly under –

- SEBI Act, SCRA and rules and regulations made thereunder
- Foreign Exchange Management Act
- Consumer Protection Act
- Depositories Act
- Environment and Pollution Control Laws
- Labour and Industrial Laws
- Co-operative Societies Act
- Mergers and Amalgamations and Strategic Alliances
- Foreign Collaborations and Joint Ventures
- Setting up subsidiaries abroad
- Competition Policy and Anti-Competitive Practices
- IPR Protection, Management, Valuation and Audit

- Drafting of Legal documents

Representation Services:

Representing on behalf of a company and other persons before-

- National Company Law Tribunal
- Competition Commission of India
- Securities Appellate Tribunal
- Registrar of Companies
- Labour Courts
- Consumer Forums
- Telecom Disputes Settlement and Appellate Tribunal
- Tax Authorities
- Other quasi-judicial bodies and

Arbitration and Conciliation Services:

- Advising on arbitration, negotiation, and conciliation in commercial disputes between the parties
- Acting as arbitration/conciliator in domestic and international commercial disputes
- Drafting Arbitration/Conciliation Agreement/ clause

Financial Markets Services:

- Public Issue, Listing and Securities Management
- Advisor/consultant in issue of shares and other securities
- Preparation of Projects Reports and Feasibility Studies
- Syndication of Loans from banks & financial institutions
- Drafting of prospectus/offer for sale/letter of offer/other documents related to issue of securities and obtaining various approvals in association with lead managers
- Loan Documentation, registration of charges, status and search reports
- Listing of securities/delisting of securities with recognized stock exchange
- Private placement of shares and other securities
- Buy-back of shares and other securities
- Raising of funds from international markets – ADR/GDR/ECB

Takeover Code and Insider Trading:

- Ensuring compliance of the Takeover Regulations and any other laws or rules as may be applicable in this regard
- Acting as Compliance Officer and ensuring compliance with SEBI (Prohibition of insider Trading) Regulations, 1992 including maintenance of various documents

Securities Compliance and Certification Services

Compliance with rules and regulations in the securities market particularly –

- Internal Audit of Depository Participants
- Certification under SEBI (DIP) Guidelines
- Audit in relation to Reconciliation of shares
- Certificate in respect of compliance of Private Limited and Unlisted Public Company (Buy Back Securities) Rules

Finance and Accounting Services

- Internal Audit
- Secretary to Audit Committee
- Working capital and liquidity management
- Determination of an appropriate capital structure
- Analysis of capital investment proposals
- Business valuations prior to mergers and/or acquisitions
- Loan syndication
- Budgetary controls
- Accounting and comp

Taxation Services

- Advisory services to companies on tax management and tax planning under Income Tax, Excise and Customs Laws
- Preparing/reviewing various returns and reports required for compliance with a the tax laws and regulations
- Representing companies and other persons before the tax authorities and tribunals

Management Services

- General/Strategic Management
- Advising on Legal Structure of the organization
- Business policy strategy and planning
- Formulation of the organizational structure
- Acting as management representative to obtain ISO Certification

Corporate Communications and Public Relations

- Communication with shareholders, stakeholders, Government and Regulators, Authorities, etc.
- Advisory services for Brand equity and image

Human Resources Management

- Advising on industrial and labour laws
- Manpower planning and development

- Audit of the HR function l Performance appraisal
- Motivation and remuneration strategies
- Industrial relations
- Office management, work studies and performance standards

Information Technology

- Compliance with cyber laws
- Conducting Board Meetings through video-conferencing and teleconferencing
- Advising on software copyright and licensing
- Development of management reports and controls
- Maintenance of statutory records in electronic form
- Sending notices to shareholders by electronic mode
- Filing of forms/documents in electronic form with Registrar of Companies and other statutory authorities

Need for Management Knowledge by a Company Secretary

With the paradigm shift in the role and responsibility, the Company Secretary today is not only a subject matter expert but an active participant in Senior Management deliberations. He/she has not only to ensure that legal compliances are fully met but also play a managerial role while extending counsel and advice to other members in the Senior Management and also to the Board of Directors.

A Company Secretary undertakes wide spectrum of activities conferred under Companies Act, 2013 and other laws and regulations, allowing him / her to incorporate companies, deal with various certification and audit services, sign annual returns, handle corporate restructuring, scrutinization of voting and reporting procedures and so on and so forth. In view of this, it is necessary for a company secretary to have sound knowledge of management.

S. No.	Functions of Management	Applicability
1.	Planning	Since a Company Secretary is a strategic planner, in view of this, to formulate a robust plans pertaining to crucial business activities, such as corporate restructuring, setting up of a new business entity in domestic or foreign jurisdiction, critical operations, risk management plan etc. he / she needs to undertake the following steps: perception of opportunities, establishing objectives, setting premises, development of action plans, effective implementation of plans and checking its deviations.
2.	Organizing	A Company Secretary holds a crucial position in a company in the capacity of a Key Managerial Personnel and contribute substantially in integration and optimum utilization of resources, in this regard, the knowledge of organizing function of management will help immensely in achieving organisational efficiency.

3.	Staffing	Since staffing function involves managing the organisation structure through proper and effective selection, appraisal and development of personnel to fill the roles designed into the structure, in this regard, a Company Secretary have to select personnel for various secretarial work, compliances related activities, formulation of strategies, filing of annual returns, in providing support to the board and so on and so forth.
4.	Directing	As a governance professional, a Company Secretary needs to provide strategic leadership to the board, ensure all the regulatory compliances, safeguard the interests of the stakeholders, act as a catalyst in embracing environmental, social and governance dimensions etc. thereby, entailing leadership qualities to discharge the professional obligations efficiently.
5.	Coordination	Company Secretary being the vital link between the company and its Board of Directors, shareholders and other stakeholders and regulatory authorities, as well as ensures that the Board procedures are followed and regularly reviewed, coordination becomes an important function for him / her.

Significance of Management Theories / Approaches for Company Secretaries

Company Secretaries being advisor to the board, corporate planner, key managerial personnel, governance professional etc. have a big role in driving the management of a business organisation. Since business is always in a constant state of flux and continuously impacted by the changes occurring in the ESTEMPLE factors (E-Economic, S-Social, T-Technological, E-Ecological, M-Media, P-Political, L-Legal and E-Ethical), it is imperative to have a deep understanding about these factors and their possible degree of impact on various crucial aspects of a business.

In view of this, it is essential for a Company Secretary to possess deep understanding of various management theories like Scientific Management Theory of Fredrick Winslow Taylor; Administrative Management Theory of Henry Fayol covering fourteen principles of management (*both the theories discussed in Lesson 9- Principles of Management and Modern Approaches*) ; Contingency management theory (*please refer lesson 9: Principles of Management and Modern Approaches*); The X and Y theories; Classical management theory; Modern management theory etc.

The knowledge of management theories will assist immensely in comprehending the critical issues and devising best solutions, thereby safeguarding the interests of both internal and external stakeholders. Different management theories impart varying knowledge of management, ways to tackle the problems and devise an optimum solution.

Since a Company Secretary in the capacity of advisor to the board of directors, corporate planner and risk manager, governance officer etc. occupy a prominent position in the corporate world. As a Company Secretary deals with Board of Directors, work with various high officials of a company such as CEO, CFO, CIO etc. and needs to contribute substantially in formulation of strategic decisions, it is imperative for them to be conversant with management theories. Moreover, a Company Secretary needs to be equipped with planning, organisational, communication, IT, people and other critical skills, which can be learnt through various management theories.

Case Studies on Management: (Indian)

This section discussed select case studies of renowned corporates for both Indian and global. On perusing these case studies, it will provide deep insights regarding the opportunities for Company Secretaries in dealing with various management related matters.

Amul and Covid-19[1]

Amul is an Indian Dairy Cooperative managed by the Gujarat Cooperative Milk Marketing Federation Limited. The Company is the largest producer of milk and milk products in India. When the lockdown because of Covid was announced in March 2020, the Company was staring at a huge disruption in operations. The restaurant sector contributing almost 20% to their overall revenues was shut down completely. Other competitors were drawing plans to reduce procurement of milk, cut back on logistics and brace themselves for a period of low demand and operational losses.

Amul, however, took the opposite stand. They decided that this was the time to support their milk farmers. While the lock down forced other manufacturers to shut down their operations, milk and milk products being essential commodities were allowed to operate with restrictions. They also felt that the drop in restaurant purchases would be compensated by other categories. The operations continued without any reduction in milk procurement or milk handling.

The Company initially witnessed a 10 to 12% reduction in its revenues. Slowly but surely household demand for milk and milk products skyrocketed as most the family members were home (either work from home or otherwise). Amul actually saw increase in their demand for milk and milk products and had to procure extra milk from their farmers. While Covid-19 was a disaster for many, Amul was able to sell more and compensate their farmers more. The top management felt that their resilient supply chain and their information technology backbone were mainly responsible for their excellent performance during Covid-19.

Bajaj Auto Limited: The Change from Scooters to Motorcycles[2]

Bajaj Auto Limited is one of the leading two-wheeler manufacturers in India. In the early 60s the Company manufactured "Vespa" brand scooters under licence from Piaggio. Their own brand "Bajaj Chetak" was introduced in the 70s and became the preferred choice for all customers so much so that waiting times for delivery were as long as 10 to 12 years. In the 1980s Bajaj introduced their motorcycles.

However, by the 2000s, the market for gearless scooters improved dramatically, motorcycles were being sold in much larger volumes and competition was biting into the market share of Bajaj scooters. While the company's motorcycles share was growing, scooters was falling. In 2006, production of "Chetak" their flagship brand was discontinued.

By 2010, the management went for a serious review of their market share in the scooter segment. Finding the motorcycle segment responding well, they took an aggressive decision to completely eliminate scooter production and only concentrate on motor-cycle production. 2010 marked the end of their scooter production.

The Company has not been impacted by this huge strategic decision and continues to be one of the three top two-wheeler manufacturers in the country. This has happened because of their relentless focus on a single segment in the two-wheeler space apart from being the largest manufacturer of three wheelers in the country.

DMart: How DMart disrupted the Indian Retail Market[3]

DMart was founded in the early 2000s by the well-known stockbroker Radhakishan Damani. His simple mission was to provide Indian consumers with high quality goods at affordable prices.

Starting with a single store in Mumbai, DMart now has over 400 stores all across India. For the financial year 2025, their revenues stood at INR 57790 crores. The Company has been consistently profitable and had a hugely successful public listing of their shares in 2017.

1. "Business Case Study: Amul's Strategy during the Pandemic", Accessed from https://www.mypminterview.com/p/amul-business-strategy-during-pandemic
2. "Bajaj Auto Limited", Accessed from https://www.scribd.com/document/476619277/Bajaj-Auto-Ltd-Case-analysis-pdf
3. "DMart's Success Story: How DMart DISRUPTED India's $1.2 Trillion Retail Market?", Accessed from https://geoiq.ai/blog/dmart-success-story/

Their successful business strategy rests on the following:

- Everyday Low Pricing:
  - DMart offered consistent offers throughout the year.
- Cautious Expansion Strategy:
  - A slow and steady approach to Store Expansion.
- Owning Store Properties:
  - Over 70% of the stores are owned by DMart and not rented.
- Focus on High Demand Fast Moving Products:
  - Focus on Groceries, FMCG products and Household items.
- Efficient Supply Chain:
  - Bulk Purchasing, Good Vendor Relationships and Efficient Distribution
- Lean Operational Model:
  - Flat Organisational Structure and Low Advertisement expenditure.

Ford India : The Entry and Exit[4]

In October 1995, Ford Motor Company of the US entered India as a Joint Venture with the Mahindra Group named Mahindra Ford India Limited. The Joint Venture was an equal partnership initially. Over time, Ford bought over the entire stake of Mahindra Group and renamed the Company Ford India Private Ltd.

From 1995 till 2021, the Company introduced several passenger cars in India and invested over US$ 2 billion in the Indian Company. Sales were not taking off and while the company was able to make a small dent into the Indian market, it lagged behind on capacity utilisation. Unmindful of this, Ford put up a second plant in Gujarat expecting exports to the European Union but this did not materialise. The Company was therefore bleeding year after year. As of 2021 it had accumulated losses of around US$ 2 billion. Faced with a bleak prospect, the Company shut down all its operations in September 2021.

The reasons for the closure of operations as identified by various analysts were:

- Accumulated Losses
- Overcapacity at Ford and Overcapacity across the industry
- Low Product Launches
- Lack of clear understanding of the Indian Market – Ford could not make a car that was compelling to the Indian buyer.

The Company sold the Gujarat plant to Tata Motors. The Chennai plant is still to be disposed off.

Zomato: The Move to Local Delivery[5]

Zomato was established in 2010 as DC Foodiebay Online Services Private Ltd as a restaurant listing website. The name of the Company was changed to Zomato to avoid a potential naming conflict with "ebay". In 2011 the Company introduced online ticketing for events on its website.

As a restaurant listing website, the Company expanded into other cities in India and also internationally. However, the revenue streams were not encouraging. They, therefore, decided to pivot their business model in

4. "Why Ford Decided to Exit India", Accessed from https://finshots.in/archive/why-ford-decided-to-exit-india/
5. "Focus: Ford wakes up badly burnt from its India dream", Accessed from https://www.reuters.com/business/autos-transportation/ford-wakes-up-badly-burnt-its-india-dream-2021-09-17/

2015 to food delivery service initially partnering with other logistics companies and letter using their own fleet. In 2022 Zomato bought over the quick commerce company Blinkit

The business expanded dramatically. For the financial year ended March 25, Zomato had a turnover of 20243 crores. The important reason for the success of Zomato is the change to local delivery from only doing restaurant listing and/or table reservation. The change led to the following:

- Solving a core consumer problem of online ordering and doorstep delivery
- Leveraging the rise of technology in online ordering and delivery
- Creating a sustainable revenue model for the Company.

The Company is now one of the leading players in the local delivery place sharing the top spot with Swiggy.

Asian Paints: Growing the Paints Services Market[6]

The country's largest manufacturer of paints started in 1942 as a partnership firm. Well known for their distribution prowess, Asian Paints operates through a large network of dealers across the country. While the dealers were in touch with the contractors who effectively decided on the choice of paints, the final customer was always away. In order to reach the final consumer directly, Asian Paints introduced the Beautiful Homes Painting Service (BHPS) in the year 2019 offering an end-to-end solution from consulting to execution. They proposed an On Time Performance or Money Back model covering:

- Expert Consultation
- Professional Execution
- Site Supervision
- Warranties.

Different teams of people complete different portions of this end-to-end solution but they all represent Asian Paints who takes complete responsibility.

While initially people were doubtful, the service has slowly grown to now cover 600 cities and 100000 customers annually. The Company is now doubling up efforts to see that one million customers are serviced under this model.

It is important to note that the "paint" sale has now become incidental to the overall solution in this model.

Gillette Guard: A Case of Reverse Engineering[7]

Gillette is an American brand of safety razors and other personal care products. The Company launched its products in the Indian market in 1984 and introduced its flagship product March 3 in 2004.

The Mach3 was rugged in its features: long lasting blades, 'power glide' smoothness, ergonomic handles, and pivoting precision heads. However, it was priced at a princely 10 times the cost of a twin razor blade. Sales were very flat and even consumers with higher disposable incomes did not purchase the product. To counter the flat sales, Gillette introduced low end US made razor blades. However there was not much success.

Gillette then did "reverse innovation". Normally products were developed in the US and then distributed in local markets. Gillette manufactured "Gillette Guard" a product for the Indian market based on feedback from Indian consumers. The complete design was suited for Indian conditions. The product was priced at Rs.15/- The refill cartridge was priced at Rs.5/-.

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6. "Asian Paints", Accessed from https://www.scribd.com/document/914892266/Asian-Paints-Paint-Service-Case
7. "How Gillette innovated and improved its market share in India", Accessed from https://www.businesstoday.in/magazine/lbs-case-study/story/gillette-innovated-improved-its-market-share-in-india-47708-2014-04-04

Gillette Guard met customer expectations both on the price point and safe use. The product was a runaway success. Gillette could make this happen because:

- It made investments in local market research to understand the pain points of the Indian consumers.
- It made design changes to bring down complications in manufacturing
- The products were manufactured in India.
- The P&G distribution enabled wide reach of the product to all corners of the country.

Case Studies on Management (International)

PayPal and the Financial Wellness Initiative[8]

In 2015 when Dan Schulman became CEO of PayPal, a digital payments company, he embarked on a mission to democratise financial services using technology. According to the CEO it would turn the slogan "it is expensive to be poor" upside down with the help of technology. Universal financial health would come to define the vision, mission and values of PayPal.

After a few years of rolling out this universal financial health promise, (in 1919) the CEO was surprised to find that a significant number of PayPal's own employees were financially insecure. The entry level employees ran out of money between pay checks. The CEO felt that this was at odds with their promise of Universal financial wellness and he decided to take quick action to rectify the situation for PayPal's employees.

Over the next six months, a comprehensive programme to improve the financial health of employees was developed. This included reducing healthcare costs, granting stock options to all employees regardless of level or tenure, raising wages where required and providing access to personal financial education.

The exercise costed them tens of thousands of dollars but the Company was clear about its goals. Two years later, the benefits of the Company's new initiative began to be seen. There were lesser number of people who ran out of money between pay checks, lesser number of frontline people leaving the company and the programme cost more than compensated by increasing revenues of the Company leading to increased profits.

Hilti's Fleet Management : Turning a successful Business Model on its Head[9]

Hilti a family-owned company founded in 1941 manufactures power tools mainly for the construction industry. The Company was originally selling these power tools to various construction companies. The buyers/customers while happy with the quality and life of the products felt that they could not make full use of all the tools in different construction sites. Also, they had to upgrade to new tools with every development in technology.

In the year 2000, the Company took a bold and aggressive decision. They would henceforth lease these tools for a fixed period time on a monthly rental and take back these tools once the agreement period expired. This way, the buyers did not own their tools and only paid for usage. Hilti took back the tools after the contract period and replaced them with new tools as technology evolved. Initially the Company faced a lot of scepticism. However, their rental business took off and has now become the backbone of their Company operations. The Company identified early that tools were incidental assets for the real estate customers and could very well be offered on a pay and use basis. This rental model has continued for more than two decades successfully.

Netflix: Employee Empowerment Model[10]

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8. "PayPal and the Financial Wellness Initiative", Accessed from https://mitsloan.mit.edu/teaching-resources-library/paypal-and-financial-wellness-initiative
9. "Hilti Fleet Management (A): Turning a Successful Business Model on Its Head", Accessed from https://www.hbs.edu/faculty/Pages/item.aspx?num=52550#:~:text=Abstract,(approximately%20$1.4%20billion%20USD)
10. "Netflix: Employee Empowerment Model", Accessed from https://jobs.netflix.com/work-life-philosophy

Netflix Inc is an American media company founded in 1997 and currently based in California. It primarily offers streaming video and video on demand service on subscription basis. As of 2024 it had over 14000 employees and over 300 million subscribers.

Netflix grants to its employees extremely broad discretion with respect to business decisions, expenses and vacations and in return expects consistently high performance. On expenses and work-related travel, the Netflix policy is "act in Netflix's best interest" using the guiding principles of context and not control. There is no set vacation leave. Employees decide the number of days they will be on vacation. Employees also get parental leave and health benefits.

On Compensation, employees are paid on top of their personal market (whatever is their worth in their market). They are free to allocate the compensation between cash and stock options. Stock options are provided monthly instead of an annual grant.

In return Netflix expects their employees to satisfy the "keeper's test". All Supervisors are constantly to review if they would fight to keep an employee. If the answer is "no" the employee is let go. This provides for a high-performance culture and a transparent evaluation mechanism.

IBM: Exit from PC Business[11]

International Business Machines Corporation nicknamed Big Blue (also known as IBM) is an American multinational technology company headquartered in New York. Founded in 1911, IBM became a leader in the 60s in the punch card tabulating systems followed by dominance in the mainframe market with 70% of all computers being made by IBM. In 1981 they entered the PC market and the "Think Pad" brand was a best seller amongst PCs.

By the 2000s, however, IBM found margins in the PC market dwindling with competitors HP and Dell gaining market shares. The Company decided that they would exit the PC market and concentrate on services and industrial research. They found a manufacturer in China – Lenovo who had equal ambitions on going global. Lenovo was the largest PC seller in China and ambitious to play an aggressive role in the international market place.

In 2005, IBM sold their PC division to Lenovo for roughly US$1.25 billion (mix of cash and stock). Lenovo gained the ThinkPad brand, access to IBM's R&D and a five year licence to use the IBM name on the PCs. They would also supply PCs to IBM's enterprise clients and receive services from IBM for their requirements.

It was a win-win deal for both. IBM released crucial resources to allocate to their more profitable services business. Lenovo instantly became the third largest manufacture of PCs with an international presence in 160 countries.

The key issue that made analysts sceptical about the deal was the ability to integrate the IBM employees into the Chinese company's organisation structure. This was crucial for maintaining a steady sales stream for the Think Pad. Lenovo established their international headquarters at New York signalling their commitment to internationalisation, preserved the Think Pad's reputation for quality and by 2010 became the world's largest PC supplier.

The deal stands as a masterclass in global strategy and execution.

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11. "The 20th Anniversary Of Lenovo-IBM Deal That Reshaped The PC Industry", Accessed from https://www.forbes.com/sites/ /timbajarin/2025/05/06/the-20th-anniversary-of-lenovo-ibm-deal-that-reshaped-the-pc-industry/

LESSON ROUNDUP

- The role of a Company Secretary has undergone a vast change over time. He/she is now a confidante of the Board and advises and guides the Board on matters related to governance and compliance.
- He is therefore required to have a broad understanding of the concept of management.

TEST YOURSELF

Multiple Choice Questions

1. Company Secretaries are now recognised as Key Managerial Personnel under the _______________.

A. Companies Act, 2013

B. Companies Act, 1956

C. Companies Act, 1936

D. Companies Act, 2000

2. Under ESTEMPLE, T stands for:

A. Theological

B. Technological

C. Temperamental

D. Total

3. A Company Secretary needs to be equipped with which of the following skill / (s)?

A. Communication

B. Planning

C. Organisational

D. All of the above

SUGGESTED READINGS

1. Principles of Management by Koontz and O'Donnell
2. The Essential Drucker by Peter F Drucker
3. The Practice of Management by Peter F Drucker
4. Understanding Management by C Northcote Parkinson and M K Rustomji
5. The Rules of Management by Richard Templar

6 The Game Changer by A G Lafley and Ram Charan

7. The Fortune at the Bottom of the Pyramid by C K Prahalad

WARNING

Regulation 27 of the Company Secretaries Regulations, 1982

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or any Committee formed by the Council in this regard, may suo-moto or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity of being heard, suspend or debar him from appearing in any one or more examinations, cancel his examination result, or registration as a student, or debar him from re-registration as a student, or take such action as may be deemed fit.

It may be noted that according to regulation 2(ia) of the Company Secretaries Regulations, 1982, 'misconduct' in relation to a registered student or a candidate enrolled for any examination conducted by the Institute means behaviour in disorderly manner in relation to the Institute or in or around an examination centre or premises, or breach of any provision of the Act, rule, regulation, notification, condition, guideline, direction, advisory, circular of the Institute, or adoption of malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with writing of any examination conducted by the Institute, or tampering with the Institute's record or database, writing or sharing information about the Institute on public forums, social networking or any print or electronic media which is defamatory or any other act which may harm, damage, hamper or challenge the secrecy, decorum or sanctity of examination or training or any policy of the Institute.

CSEET
BUSINESS LAWS & MANAGEMENT – TEST PAPER
PAPER 4

(This test paper is for practice and self-study only and not to be sent to the Institute)

Time allowed: 2 hours *Maximum Mark: 100*

Note:

(i) The contents and structure of this test paper is indicative only.

(ii) All the questions are compulsory.

(iii) This paper is OMR Based.

(iv) Choose the most appropriate answer.

PART A – BUSINESS LAWS (60 MARKS)

1. Who defined law as "the art or science of what is equitable and good"?
   a. Cicero
   b. Justinian
   c. Ulpian
   d. Salmond
2. The doctrine of stare decisis means:
   a. To stand by the law
   b. To adhere to the decision and do not unsettle things which are established
   c. Justice according to law
   d. Let the buyer beware
3. Which of the following has only persuasive value and is not binding on courts?
   a. Ratio decidendi
   b. Obiter dicta
   c. Decision of a larger bench
   d. Per incuriam judgment
4. An "ad hoc" committee is one that is:
   a. Permanent in nature
   b. Formed for a specific purpose and not meant for other uses
   c. Elected by the public
   d. Headed by the President

5. "Fait accompli" refers to:
   a. An accomplished act
   b. Future possibility
   c. Temporary arrangement
   d. Proposal
6. Something that happens "ipso facto" means:
   a. By the mere fact
   b. As a matter of favour
   c. After a hearing
   d. From the beginning
7. Which section of the Companies Act, 2013 provides for the object of producer Company?
   a. 2(59)
   b. 198C
   c. 203A
   d. 378B
8. What is the requirement of minimum number of Directors for a public company in accordance with the Companies Act, 2013?
   a. One
   b. Two
   c. Three
   d. Four
9. Which section defines Independent director under the Companies Act, 2013?
   a. 2(47)
   b. 2(50)
   c. 2(87)
   d. 3(31)
10. A director shall not assign his office and any assignment so made shall be ....
    a. Valid
    b. ab initio
    c. void
    d. accepted
11. "Members may come and members may go but the company can go on forever" refers to the advantage of:
    a. Limited liability

b. Perpetual succession

c. Transferable shares

d. Separate property

12. The person making the proposal is called the ..... and the person accepting the proposal is called the ....:

a. Proposor/ Proposee

b. Promisee/ Promisor

c. Promisor/Promisee

d. Proposee/ Proposor

13. Every promise and every set of promises, forming the consideration for each other, is called as:

a. A voidable contract

b. A contract

c. A void contract

d. An agreement

14. An agreement enforceable by law is:

a. A voidable contract

b. Void

c. A contract

d. A void contract

15. An agreement not enforceable by law is said to be:

a. A contract

b. Void

c. A voidable contract

d. A void contract

16. In order to convert a proposal into a promise, the acceptance must:

a. Be absolute and qualified

b. Be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted

c. Be absolute and unqualified

d. Both B and C only

17. Can a HUF become partner in LLP?

a. HUF may become partner of LLP provided the Registrar may grant permission in this behalf

b. No, HUF can not become partner in the LLP

c. Yes, HUF may become partner of LLP

d. None of the above

18. How many partners are required to form a LLP?
    a. It shall have at least more than two partners
    b. It shall have at least more than seven partners
    c. It shall have at least two partners
    d. It shall have least seven partners
19. Section 2(1) of the Sale of Goods Act defines buyer as:
    a. A person who buys goods and services
    b. A person who agrees to buy only services
    c. A person who agrees to buy only goods
    d. A person who buys or agrees to buy goods
20. There is an implied undertaking in a contract of sale of goods that:
    a. The goods shall be free from any charge or encumbrance.
    b. The buyer shall have and enjoy quiet possession of the goods.
    c. Both A and B are correct
    d. None of the above
21. Which section of Sale of Goods Act, 1930, defines the term 'Unpaid Seller'?
    a. Section 45
    b. Section 46
    c. Section 47
    d. Section 48
22. A principle of law relating to transfer of property is expressed by the legal maxim nemo dat quod non habet. What does this principle means?
    a. An individual can transfer his property even if he does not has the ownership
    b. No one can transfer a better title than what he himself possesses.
    c. Title of property passes to the possessor.
    d. Without the consent of the government, no property can be transferred
23. Which of the given is not true with respect to the characteristic of a negotiable instrument?
    a. The holder of the instrument is presumed to be the owner of the property contained in it.
    b. A holder in due course gets the instrument free from all defects of title of any previous holder.
    c. The holder in due course is entitled to sue on the instrument in his own name.
    d. Negotiable Instruments are not transferable
24. An instrument which is not an inland instrument, is deemed to be a ....
    a. Foreign Instrument
    b. Demand Instruments

c. Ambiguous Instruments

d. Time Instruments

25. When does a person cease to be a partner of a limited liability partnership?

a. If he is declared to be of unsound mind by a competent court;

b. If he has applied to be adjudged as an , insolvent or declared as an insolvent

c. On his death or dissolution of the limited liability partnership

d. All of the above.

26. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is called as:

a. Particular partnership

b. Partnership for a fixed term

c. partnership at will

d. None of the above

27. A Limited Liability Partnership, popularly known as LLP combines the advantages of which of the following type of entities?

a. Company and Proprietorship

b. Company and HUF

c. Public and Private companies

d. Company and Partnership

28. In which conditions a person may be deemed as partner by estoppels or holding out?

a. When he by his conduct represents himself to be a partner in a firm

b. When he knowingly permits himself to be represented, to be a partner in a firm.

c. When he expressly by words spoken or written let the others that he is a partner in a firm.

d. All of the above

29. What are the general duties of a partner?

a. To render true accounts and full information of all things affecting the firm to any partner or his legal representative

b. To carry on the business of the firm to the greatest common advantage

c. To be just and faithful to each other

d. All of the above

30. Subject to contract between the partners, the property of the firm includes:

a. Properties acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm

b. The goodwill of the business.

c. All property and rights and interests in property originally brought into the stock of the firm

d. All of the above.

31. Goods may be:
    a. Future
    b. Contingent
    c. Existing
    d. All of the above
32. The contract of sale may provide for:
    a. The immediate payment of the price.
    b. The delivery or payment by instalments, or that the delivery or payment or both shall be postponed
    c. The immediate delivery of the goods.
    d. All of the above.
33. A contract of sale may be made:
    a. Partly in writing and partly by word of mouth
    b. It may be implied from the conduct of the parties.
    c. In writing or by word of mouth
    d. All of the above.
34. How stoppage in transit is effected by the unpaid seller?
    a. By giving notice of his claim to the carrier in whose possession the goods are
    b. By giving notice of his claim to the other bailee in whose possession the goods are
    c. By taking actual possession of the goods.
    d. All of the above.
35. A lien can be exercised by the unpaid seller only:
    a. When the ownership right relating to goods have transferred to the buyer
    b. When the goods are still in possession of the un-paid seller
    c. When the goods have been transported through the carrier made available by the buyer
    d. When the goods have delivered to the buyer
36. The existing goods may be:
    a. Unascertained
    b. Specific or generic
    c. Ascertained
    d. All of the above
37. When one person signs and delivers to another properly stamped in accordance with the law relating to negotiable instruments, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount, covered by the stamp. Such an instrument is called an inchoate instrument.

Which section of Negotiable Instruments Act, 1881 provides for inchoate instrument?

a. Section 10

b. Section 20

c. Section 41

d. Section 51

38. The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and The Negotiable Instruments (Amendment) Act, 2015 have broadened the definition of cheque to include the .... of a truncated cheque.

a. Electronic Image

b. Unsigned Copy

c. Carbon Copy

d. Photocopy

39. Any person liable to make payment under a negotiable instrument, must make the payment of the amount due thereunder in due course in order to obtain a valid discharge against the holder. Which section gives the meaning of payment in due course under Negotiable Instruments Act, 1881?

a. Section 10

b. Section 20

c. Section 41

d. Section 51

40. A maker or holder of a negotiable instrument signs the same otherwise than as such maker for the purpose of negotiation, on the back or face thereof or so, signs for the same purpose, a stamped paper intended to be completed as a negotiable instrument. Which of the given is referred to in this situation?

a. Making

b. Endorsing

c. Cancelling

d. Forwarding

41. Cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder. In case of default, what is the liability of the other party?

a. Other party is liable without presentment also

b. The other parties thereto are not liable thereon to such holder

c. Other party is liable to the Court

d. Other party should deposit this in the Account of government

42. The drawee of the cheque makes default in payment upon being duly required to pay the same. Which of the given best summarise this situations?

a. Dishonour by Non-Acceptance

b. Notice of Dishonour

c. Dishonour by Non-Payment

d. Dishonour by Making Payment

43. A negotiable instrument is not discharged:

a. By payment in due course

b. When the principal debtor becomes the holder

c. By an act that would not discharge simple contract

d. By renunciation

44. Which of the given is not a characteristics of a company?

a. Corporate Personality

b. Limited Liability

c. Perpetual Succession

d. Joint Property of Company and Shareholders

45. Which of the given is not specifically included in the definition of Key Managerial Personnel under the Companies Act, 2013?

a. Company Secretary

b. Managing Director

c. Chief Executive Officer

d. Director of Finance

46. Which of the given is not a type of Company under the Companies Act, 2013?

a. Foreign Company

b. Producer Companies

c. Public Companies

d. Public Transport Companies

47. A company limited by guarantee is a registered company having the liability of its members limited by its memorandum to such an amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.

Which type of company is being referred to?

a. Public Limited Company

b. Company Limited by Guarantee

c. Private Limited Company

d. Government Company

48. What is the limit of members of Private Companies?

a. 10

b. 50

c. 100

d. 200

49. Which of the given is not a criteria for deciding the status of Subsidiary Company?

a. Composition of the Board of Directors

b. Exercises voting power

c. Turnover of the Company

d. Control of voting power

50. The Depositories Act, 1996 is associated with:

a. Cyber security

b. Securities Laws

c. Electronic signatures

d. Data privacy

51. The Arbitration and Conciliation Act, 1996 is primarily based on:

a. Indian Contract Act, 1872

b. UNCITRAL Model Law

c. English Arbitration Act

d. New York Convention only

52. The Competition Act, 2002 aims to prevent:

a. All forms of competition

b. Anti-competitive practices

c. Export of goods

d. Labour unions

53. The Telecommunications Act, 2023 primarily governs:

a. Only internet service provision

b. Licensing, spectrum use, and consumer interests in the telecom sector

c. Postal services exclusively

d. Satellite broadcasting only

54. The leading case that established the principle of separate legal personality of a company is:

a. Foss v. Harbottle

b. Salomon v. Salomon & Co. Ltd.

c. Royal British Bank v. Turquand

d. Ashbury Railway Carriage Co. v. Riche

55. A ‘proposal’ is defined as:

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

 b. When one person signifies to another his willingness to do, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

 c. When one person signifies to another his willingness to do or to abstain from doing anything, he is said to make a proposal.

 d. When one person signifies to many persons 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.

56. Consent is said to be free when it is not caused by:

 a. Very much influence

 b. Undue influence

 c. Slightly influence

 d. Influence

57. A, being in debt to B, the money lender of his village, contracts a fresh loan on terms which appear to be unconscionable. This will be termed as:

 a. Fraud

 b. Coercion

 c. Undue influence

 d. Misrepresentation

58. The consideration:

 a. Must be adequate

 b. Must be in terms of money

 c. Need not be adequate

 d. Should be Substantially adequate

59. If the event becomes impossible, such contracts becomes:

 a. Illegal

 b. Bad

 c. Void

 d. Voidable

60. In which circumstances the original contract need not be performed:

 a. If the parties to a contract agree to alter it

 b. If the parties to a contract agree to substitute a new contract

 c. If the parties to a contract agree to rescind it

 d. All of the above

PART B – BUSINESS MANAGEMENT (40 MARKS)

61. Which of the following covers detailed rules for the management of state finance, taxation foreign policy, and judicial administration?
    a. Public Administration
    b. Organizational Design
    c. Company Administration
    d. Society Administration

62. Which of the following industrial revolution was characterized by the transition from agrarian economies to industrial ones, driven primarily by mechanization and the use of steam power?
    a. Second Industrial Revolution
    b. Third Industrial Revolution
    c. Fourth Industrial Revolution
    d. First Industrial Revolution

63. The Fourth Industrial Revolution is also known as_______
    a. Industry 4.A
    b. Industry 4.0
    c. Industry 4.1
    d. Industry 4.i

64. The third industrial revolution is also known as________
    a. Human Resource Revolution
    b. Agricultural Revolution
    c. Industrial Revolution
    d. Digital Revolution

65. Which of the industrial revolution was marked by advancements in steel production, electricity, and internal combustion engines?
    a. First Industrial Revolution
    b. Fourth Industrial Revolution
    c. Second Industrial Revolution
    d. Third Industrial Revolution

66. In ancient societies, management was closely tied to which of the following?
    a. Governance and military strategy.
    b. Only governance.
    c. Military strategy and large-scale infrastructure projects.
    d. Governance, military strategy, and large-scale infrastructure projects.

67. In ____________, there exist complete centralized authority. The manager dictates work methods, assign tasks, and control rewards.
    a. Autocratic Management
    b. Persuasive Management
    c. Paternalistic Management
    d. Consultative Management
68. In which of the following styles of management, the manager retains ultimate decision-making power but actively seeks and considers input from employees before finalizing the decision.
    a. Democratic Management
    b. Paternalistic Management
    c. Coaching Management
    d. Consultative Management
69. Under which of the following styles of management, the manager views team members as having high potential and focuses on developing their long-term strengths and capabilities?
    a. Democratic Management
    b. Coaching Management
    c. Paternalistic Management
    d. Consultative Management
70. Which of the following forms of management, focus on the principle of articulating a clear, long-term direction, often simplifying complex challenges into an easy-to-understand narrative, stressing on what needs to be achieved and not how to be achieved?
    a. Visionary Management
    b. Coaching Management
    c. Transformational Management
    d. Democratic Management
71. Employee autonomy, Limited supervision and Trust in employees are features of which of the following types of management?
    a. Visionary Management
    b. Coaching Management
    c. Laissez-faire Management
    d. Transformational Management.
72. ____________ are those plan which is used again and again whenever a particular situation arises. It is designed to make sure that the internal operations of an enterprise run smoothly.
    a. Standing Plans
    b. Strategic Plans
    c. Single-use Plans
    d. Significant Plans

73. _____ plans are made to serve a specific objective.

a. Strategic Plans

b. Standing Plans

c. Single-use Plans

d. Significant Plans

74. An organization's ____________ is its purpose or fundamental reason for existence.

a. Vision

b. Mission

c. Philosophy

d. Motto

75. "Organizing is providing the business with everything useful to its functioning – raw materials, tools, capital, and personnel". Who gave this definition?

a. Henri Fayol

b. Peter Drucker

c. Chester Barnard

d. Louis A. Allen

76. Identify the correct steps in the process of organizing-

a. Determination of Objectives, Allotment of Duties, Identification and Grouping of Activities, Developing Relationships.

b. Determination of Objectives, Identification and Grouping of Activities, Allotment of Duties, Developing Relationships and Integration of Activities

c. Developing Relationships, Determination of Objectives, Identification and Grouping of Activities, Allotment of Duties and Integration of Activities.

d. Allotment of Duties, Identification and Grouping of Activities, Developing Relationships, Integration of Activities and Determination of Objectives.

77. Bureaucratic leadership is the disadvantage of which of the following?

a. Centralization

b. Decentralization

c. Delegation

d. Division

78. Risk of misaligned objectives is the demerit of which of the following?

a. Division

b. Delegation

c. Centralization

d. Decentralization

79. ________ consists of putting right number of people, right kind of people at the right place, right time, doing the right things for which they are suited for the achievement of goals of the organization.

   a. Manpower Utilization

   b. Manpower Planning

   c. Manpower Organizing

   d. Manpower Coordination

80. _________ refers to an informative process that mainly helps in understanding the overall growth and improvement of the skills of the employee.

   a. Determination

   b. Decentralization

   c. Development

   d. Decisiveness

81. The principle that Management should strive to minimize employee turnover, was propounded by whom?

   a. Frederick Talyor

   b. Henry Fayol

   c. George R. Terry

   d. Lyndall Urwick

82. Which of the following principles of Henry Fayol involve, Thinking out and executing a plan?

   a. Division of work

   b. Unity of command

   c. Initiative

   d. Equity

83. "Almost every act of the workman should be preceded by one or more preparatory acts of the management which enable him to do his work better and quicker than he otherwise could", has been covered under which of the following principles of scientific management by Frederick Taylor?

   a. Develop a science for each element of work.

   b. Scientifically select, train, teach and develop workers to help them reach their full potential.

   c. Cooperate with employees to ensure implementation of the scientific principles.

   d. Divide the work and the responsibility equally between management and workers.

84. ________ is a strategic management approach that involves aligning an organization's performance goals with both employee and management objectives.

   a. Management by Objectives

   b. Management by Objections

   c. Management by Orientation

   d. Management by Ombudsman

85. Which of the following explains the key steps involved in the process of Management by Objectives?

a. Defining objectives, Communicating them to employees, Encouraging participation, Monitoring progress, and Evaluating performance with rewards.

b. Defining objectives, Communicating them to employees and Encouraging participation.

c. Defining objectives, Monitoring progress, Encouraging participation and Evaluating performance with rewards.

d. Defining objectives, Encouraging participation and Monitoring progress.

86. The managers sometimes over-emphasis the target setting, as compared to operational issues, as a generator of success is a limitation of which of the following?

a. MOST Analysis

b. Management by Objectives

c. Business Process Reengineering

d. None of the above

87. Promotion, formation and incorporation of companies and matters related therewith is covered under which of the following areas where a Company Secretary render services?

a. Secretarial / Compliance Audit and Certification Services

b. Corporate Law Advisory Services

c. Representation Services

d. Corporate Secretarial Services

88. Advising companies on compliance of legal and procedural aspects such as on setting up of subsidiaries abroad is covered which of the following areas where a Company Secretary render services?

a. Corporate Laws Advisory Services

b. Representation Services

c. Secretarial / Compliance Audit and Certification Services

d. Corporate Secretarial Services

89. A Company Secretary's compliance with rules and regulations, especially, internal audit of depository participants will be covered under-

a. Financial Markets Services

b. Securities Compliance and Certification Services

c. Taxation Services

d. Management Services

90. Advising on industrial and labour laws will be covered which of the following services rendered by a Company Secretary?

a. Management services

b. Finance and Accounting services

c. Human Resources Management services

d. Arbitration and Conciliation services

91. A Company Secretary being in a crucial position contributes substantially in integration and optimum utilization of resources. Which function of management is being performed by a company secretary in the mentioned statement?

    a. Planning

    b. Organizing

    c. Staffing

    d. Directing

92. As a governance professional, a Company Secretary needs to provide strategic leadership to the board. Which function of management is referred to in this statement?

    a. Planning

    b. Organizing

    c. Staffing

    d. Directing

93. Company Secretary being the vital link between the company and its Board of Directors, shareholders and other stakeholders and regulatory authorities, as well as ensures that the Board procedures are followed and regularly reviewed, denotes which function of management being performed by a company secretary?

    a. Planning

    b. Staffing

    c. Coordination

    d. Directing

94. __________element of coordination focuses on adjusting and synchronizing different efforts and activities so that they work together harmoniously.

    a. Balancing

    b. Timing

    c. Integration

    d. Organization

95. Which principle of Directing process states that the directing function should create self-confidence amongst the subordinates and motivate them so that they give their best to the organization?

    a. Managerial communication

    b. Unity of command

    c. Harmony of objectives

    d. Maximum individual contribution

96. ____________ refers to the coordinating activities between different functional areas or departments.

    a. Cross-functional Coordination

    b. Formal Coordination

c. Horizontal Coordination

d. Substantive Coordination

97. __________ typically deals with purchases of large assets such as property, equipment, or IT systems.

a. Operating budget

b. Capital budget

c. Cash budget

d. Zero-based budget

98. Which of the following is not the objective of budgeting?

a. Allocating resources

b. Controlling costs

c. Performance evaluation

d. Increasing expenditure on fictitious assets

99. The term________ refers to the regular review of an employee's job performance and overall contribution to a company

a. Performance Appraisal

b. Manpower Planning

c. Job Evaluation

d. Job Rotation

100. What does MOST stands for in 'MOST Analysis'?

a. M- Mission, O- Objectives, S- Strategy and T- Tactics

b. M- Method, O- Objectives, S- Strategy and T- Technology

c. M- Mission, O- Outlook, S- Strategy and T – Total Management

d. M- Mission, O- Optimum Output , S – Superior Performance and T - Technology

Part A – Business Laws

Q. No.	Answer	Q. No.	Answer	Q. No.	Answer	Q. No.	Answer	Q. No.	Answer	Q. No.	Answer
1	c	11	b	21	a	31	d	41	b	51	b
2	b	12	c	22	b	32	d	42	c	52	b
3	b	13	d	23	d	33	d	43	c	53	b
4	b	14	c	24	a	34	d	44	d	54	b
5	a	15	b	25	d	35	b	45	d	55	a
6	a	16	d	26	c	36	d	46	d	56	b
7	d	17	b	27	d	37	b	47	b	57	c
8	c	18	c	28	d	38	a	48	d	58	c
9	a	19	d	29	d	39	a	49	c	59	c
10	c	20	c	30	d	40	b	50	b	60	d

Part B – Business Management

Q. No.	Answer	Q. No.	Answer	Q. No.	Answer	Q. No.	Answer
61	a	71	c	81	b	91	b
62	d	72	a	82	c	92	d
63	b	73	c	83	d	93	c
64	d	74	b	84	a	94	a
65	c	75	a	85	a	95	d
66	d	76	b	86	b	96	a
67	a	77	a	87	d	97	b
68	d	78	d	88	a	98	d
69	b	79	b	89	b	99	a
70	a	80	c	90	c	100	a