



# **SASURIE COLLEGE OF ENGINEERING**

**DEPARTMENT OF MASTER OF BUSINESS ADMINISTRATION**

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**I YEAR – I SEMESTER**

**BA4105**

**LEGAL ASPECTS OF BUSINESS**

## **BA4105 LEGAL ASPECTS OF BUSINESS**

### **UNIT I COMMERCIAL LAW OF THE INDIAN CONTRACT ACT 1872**

Definition of contract, essentials elements and types of a contract, Formation of a contract, performance of contracts, breach of contract and its remedies, Quasi contracts - Contract Of Agency: Nature of agency, Creation and types of agents, Authority and liability of Agent and principal: Rights and duties of principal and agents, termination of agency. THE SALE OF GOODS ACT 1930 Nature of Sales contract, Documents of title, risk of loss, Guarantees and Warranties, performance of sales contracts, conditional sales and rights of an unpaid seller - NEGOTIABLE INSTRUMENTS ACT 1881: Nature and requisites of negotiable instruments. Types of negotiable instruments, liability of parties, holder in due course, special rules for Cheque and drafts,.

### **UNIT II COMPANY LAW AND COMPETITION ACT COMPANY ACT 1956&2013**

Major principles – Nature and types of companies, Formation, Memorandum and Articles of Association, Prospectus, Power, duties and liabilities of Directors, winding up of companies, Corporate Governance. Competition Act 2002 - Introduction, Definitions, Enquiry into Certain Agreements and Dominant Position of Enterprise and Combinations.

**UNIT III INDUSTRIAL LAW** An Overview of Factories Act - Payment of Wages Act - Payment of Bonus Act - Industrial Disputes Act

### **UNIT IV CORPORATE TAX & GST**

Corporate Tax Planning, Corporate Taxes and Overview of Latest Developments in Indirect tax Laws relating to GST:An introduction including constitutional aspects, Levy and collection of CGST & IGST, Basic concept of time and value of supply, Input tax credit, Computation of GST Liability, Registration, Tax Invoice, Credit & Debit Notes, Electronic Way bill, Returns, Payment of taxes including Reverse Charge

**UNIT V CONSUMER PROTECTION ACT AND INTRODUCTION OF CYBER LAWS** Consumer Protection Act – Consumer rights, Procedures for Consumer grievances redressal, Types of consumer Redressal Machineries and Forums-- Cyber crimes, IT Act 2000 and 2002, Cyber Laws, Introduction of IPR Intellectual Property Laws- Introduction, Legal Aspects of Patents, Filing of Patent Applications, Rights from Patents, Infringement of Patents, Copyright and its Ownership, Infringement of Copyright, Civil Remedies for Infringement.– Copy rights, Trade marks, Patent Act. Introduction, Right to Information Act, 2005.

## UNIT-I

### 1. COMMERCIAL LAW

#### THE INDIAN CONTRACT ACT 1872

##### Meaning of Law

The Oxford English Dictionary defines the word 'LAW' as the rule made by authority for the proper regulation of a community or society or for correct conduct in life.

##### Meaning of Business Law

Business law is that branch of law which comprises laws concerning trade, industry etc. Business law refers to those rules and regulations which govern the formation and execution of business transactions made by various persons in the society.

##### Meaning of Contract

The word contract is derived from the Latin word 'Contractum' meaning drawing together. According to the act, an agreement enforceable by law is a contract.

**Contract = An Agreement + Its Enforceability**

##### Meaning of Agreement

- Every promise and set of promises forming the consideration for each other is an agreement.
- A promise is defined as when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. When a proposal is accepted it becomes a promise.
- Therefore, an agreement is an offer by one party and its acceptance by the other.

**Agreement = Offer + Acceptance**

- In case of social or domestic agreements, the usual presumption is that the parties do not intend to create legal relations.
- Example: Maha invites her friend Priya to a dinner and Priya accepts the invitation. If Priya fails to turn up for dinner, Maha cannot go to the court to claim her loss.

##### Sources of Business Law

1. **English Law:** Indian business law is formed on the lines of English mercantile law, as India was under British rule before its independence. The differences in the laws of India and

England are primarily on account of their different business environment, customs, and trade practices

- **English common law:** It refers to a system of law based upon English customs, usages and traditions which were developed over centuries by the English courts. These are found in the reported decisions of the courts of law.
  - **Equity:** It refers to that branch of the English law which developed separately from the common law. It is based on the principle of fairness and concepts of justice developed by the judges whose decisions became standard.
  - **Law merchant:** It refers to the usage or customs of merchants and traders that have been ratified by the courts of law. The object is to protect the interest of trade. This law thus gets incorporated into the common law and the courts honor it
  - **Statute law:** - It refers to the law laid down in the acts of parliament. It is superior to and overrides any rules of the common law, equity or law merchant.
2. **Judicial decisions or case law:** Judicial decisions are usually referred to as precedents and are binding on all courts having jurisdiction lower to that of the court which gave the judgment. This is also called judge made law.
  3. **Customs and usages:** - It is a particular trade also guides the courts in deciding arguments arising out of mercantile transactions. Such a custom or usage must be widely known, certain and reasonable and must not be opposed to any governmental performance.
  4. **Indian Statutes:-** the constitution of India confers power to enact law on its parliament and legislatures of states when a bill is passed by the parliament/ state legislatures and assented to by the president or governor of a state, it becomes an 'Act' or statute.

#### **Essential Elements of Valid Contract:**

##### **Offer and Acceptance:**

The party making the offer is known as "offeror" and the party to whom the offer is made is known as the "offeree". It is important that they must agree to the same thing and in the same sense. E.g. X has 2 flats, one in Delhi and the other in Kolkata. He has offered to sell one house to Y. Y accepts the offer with the idea of purchasing the house in Delhi, while X was intending to sell the house in Kolkata. There is no identity of minds. So the agreement is void.

## 5. Lawful consideration: -

An agreement must be supported by consideration.

- Consideration means 'something in return'. The agreement is legally enforceable only when the parties give something and get something in return.
- The consideration is considered lawful unless it is opposed to public policy.
- It may be past or present or future. But it must be real and lawful.

## 6. Capacity of parties: Competency:

- Every person is competent to contract if he has attained the age of majority.
- Is of sound mind.
- Is not disqualified from contracting by law to which he is subject.

## 7. Free and real consent:-

For a contract to be valid, it is essential that there must be free and genuine consent of the parties to the contract.

- Consent is said to be free when it is not caused by coercion, under influence, fraud, misrepresentation or mistake.
- A contract without free consent is voidable.

## 8. Lawful object:- The object or purpose of the agreement must be lawful.

- It should not be immoral or illegal or opposed to public policy.
- It suffers from any legal mistake, it is not enforceable.

E.g. If A rents out a house for use as a gambling, the agreement is void because the object of the agreement is unlawful.

## 6. Agreement not declared void:

The agreement must not have been expressly declared void by law in force in the country.

## 7. Certainty and possibility of performance:

The agreement must be certain and not vague or indefinite.

- If it is vague and it is not possible to ascertain its meaning, it cannot be enforced. E.g. A agrees to sell to B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

## 8. Legal formalities: There are some other formalities also which have to be complied with in order to make an agreement legally enforceable.

- In some cases, the document in which the contract is incorporated is to be stamped or being a written one, has to be registered.
- Thus where there is a statutory requirement that a contract should be made in writing or in the presence of witnesses or registered, the required statutory formalities must be complied with.

## **Void Agreement**

### **Meaning of Void Agreement**

An agreement not enforceable by law is said to be void. A void agreement does not create any legal rights or obligations. E.g. An agreement with a minor.

### **Illegal Agreement**

It is one which disobeys some rule of basic public policy or which is criminal in nature or which is immoral. E.g. Gambling.

### **Agreements the meaning of which is uncertain:**

Agreements, the meaning of which is not certain, or capable of being made certain, are void. The uncertainty may be as to

- Existence
- Quantity of
- Quality of
- Price of
- Title to, the subject matter

### **Wagering Agreements or Wager (Sec 30)**

A wager is an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party's promise to pay if the event does not happen. E.g. A shall pay B Rs.100 if it rains on Monday, and that B shall pay A the same amount if it does not rain, It is a wagering agreement.

### **Essentials of a Wagering Agreement**

- **Promise to pay money or money's worth:** The wagering agreement must contain a promise to pay money or money's worth

- **Uncertain event:** The promise must be conditional on an event happening or not happening. A wager generally contemplates a future event, but it may also relate to a past event provided the parties are not aware of its result or the time of its happening
- **Mutual chance of Gain or Loss:** In this wager agreement, each party should stand to win or lose.
- An agreement is not a wager if either of the parties may win but cannot lose or may lose but cannot win
- **No control over the event:** Neither party should have control over the happening of the event one way or the other.
- If one of the parties has the event in his own hands, the transaction lacks an essential element of a wager.
- **No other interest in event :-** Neither party should have any interest in the happening or non-happening of the event other than the sum he will win or lose
- **Effect of wagering agreements:** - wagering agreement has been expressly declared to be void in India. No suit can be brought for recovering anything supposed to be won on any wager, or entrusted to any person to abide by the result of any game or other uncertain event on which any wager is made.
- **Principal and Agent:-**
  - An agent cannot recover from the principal any money paid on a wagering agreement entered into on behalf of his principal since the act done by the agent is not lawful.
  - Where the agent fails to carry out his instructions in respect of a wagering transaction, the principal cannot sue him for breach of the contract of agency because a contract which is void cannot be the basis of legal claim.
- **Collateral Transactions:** Since wagering agreements are void transactions collateral to them are not affected.

### **Expressly Declared Void Agreement**

- **Agreement in Restraint of Trade:** According to the act "Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that level, void".
- Agreement in restraint of legal proceedings

- **Agreements restricting enforcement of rights:** An agreement by which any party is restricted absolutely from enforcing his legal rights under or in respect of any contract is void to that extent.
- **Agreements limiting the period of limitation:** An agreement which limits the time within which an action may be brought so as to make it shorter than that prescribed by the law of limitation, is void. Wagering agreements.

### **Performance of Contract**

- A contract is said to have been performed when the parties to a contract either perform or offer to perform their respective promises
- Section 37 of Indian contract act lays down the obligation of the parties regarding performance

#### **1.1.8. Types of Performance**

- **Actual performance :** Where a Promisor has made an offer of performance to the promisee and offer has been accepted by the promisee, it is called an actual performance
- **Attempted performance or tender of performance:** Where a Promisor has made an offer of performance to the promisee, and the offer has not been accepted by the promisee, it is called an attempted performance

### **Tender of Performance**

- **It must be Unconditional:** A conditional offer of performance is not valid.
- **It must be made at proper time and place:** E.g. X offers the goods contracted to Y at 1 a.m. this is not a valid tender unless it was so agreed.
- **Reasonable opportunity:** Since the tender is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity to see that the thing offered is the thing contracted for.

### **Essential for a Valid Tender**

- The tender must be absolute and unconditional
- The tender must be for the **whole obligation** not for the part. Tender in part is no tender
- The tender must be made to the proper person: - a tender of performance made to a third party is not a valid tender. It should be made to the promisee



- The tender must be given at the agreed place (place fixed in the contract). However, if no place is agreed, it must be given at a proper place
- The tender of contract must be made in terms of legal tender. E.g. in rupees in India
- Willing to perform: The party making a tender must be in a position and willing to perform his promise.
- The tender must be given at the agreed time (time fixed in the contract). However, if no time is agreed, it must be given at a reasonable time.
- Reasonable opportunity: When a tender of goods is made by the Promisor, a reasonable opportunity must be given to the promisee to inspect the goods to enable him to see whether the quality of the goods is as per the contract.

#### **Effect of Refusal of Party to Perform Promise Wholly:-**

- When a party to a contract has refused (rejected) to perform disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words, his acceptance in its continuance
- E.g. A, a singer enters into a contract with B, the manager of a theatre, to sing at his theater two days in every week during the next two months, and B engages to pay her Rs.100 for each night's performance. On the sixth night, A willfully absents herself from the theatre. B is at right to put an end to the contract unless she has signified, her acceptance in its continuance

#### **Who Can Demand Performance**

- **Promisee:** Promisee can only demand the performance of the promise under a contract.  
E.g. X promises Y to pay rs. 5000 to Z. it is only Y who can demand performance and not Z.
- **Legal representative:** In case of death of the promisee, his legal representative can demand performance unless the contract is of a personal nature. e.g. X promises to marry Y on the specified day. Y dies before the specified day. The legal representatives of Y cannot demand performance of the promise from X because the contract is of personal nature.

- **Third party:** A third party can also demand the performance of the contract in some exceptional cases like beneficiary in case of trust, the person for whose benefit the provision is made in family arrangements.
- **Joint promises :** In case of death of all joint promisees, representatives of all of them jointly can demand

### **Who Must Perform**

- **Promisor himself (section 40):** If it appears that it was the intention of the parties that the promise should be performed by the Promisor. E.g. A promises to paint a picture for B. A must perform his promise personally
- **Agent:** In case of other than the personal nature, the Promisor may employ a capable person to perform it. E.g. A promises to pay to B a sum of money. A may perform this promise either personally paying the money to B or causing it to be paid to B by another
- **Legal representative:** In case of death of Promisor, the legal representative must perform the promise unless the contract is of a personal nature. E.g. A promises to deliver goods to B on a certain day on payment of rs.1000. A dies before that day. A's legal representatives are bound to deliver the goods to B and B is bound to pay rs. 1000 to A's representatives.
- **Personal performance:** A contract involves personal skills or is founded on normal considerations; it comes to an end with the death of the Promisor. E.g. A promises to paint a picture for B by a certain day. A dies before that day. The contract cannot be enforced either by A's representatives or by B
- **Joint Promisor:** In case of death of all joint promisees, representatives of all of them jointly can perform.

### **Contract Which Need Not Be Performed**

- If the parties mutually agree to replace with the original contract by a new one or to withdraw or alter it (sec 62)
- If the promise gives out with or pay, wholly or in part the performance of the promisee made to him or extends the time for such performance or accepts any satisfaction for it (sec 63)
- If the person, at whose option the contract is voidable, rescinds it (64)

- If the Promisee neglects or refuses to afford the Promisor reasonable facilities for the performance of his promise. (Sec 67). E.g. A contracts with B to repair B's house .B refuses to point out to A the place in which his house requires repair. A need not perform

### **Performance of Joint Promises**

1. **Devolution of joint liabilities:** devolution means passing over from one person to another. When two or more person has made a joint promise, they are known as joint promisors.

#### **The rules regarding performance of joint promises**

- a. **Anyone of the joint promisors may be compelled to perform:** When two or more persons make a joint promise, the promisee may, in the absence of an express agreement to the contrary; the promisee may compel anyone or more of such joint promisors to perform the whole of the promise. E.g. A, B, and C jointly promise to pay D rs. 3000. D may compel either A or B or C or any two of them to pay him rs. 3000
  - b. **Right of Contribution:** Where a joint Promisor, has been compelled to perform the whole of the contract, he can call for equal contribution from others. E.g. A, B and C jointly promise to pay D rs. 3000. A is compelled to pay D. A is entitled to recover rs.1000 each from B and C.
  - c. **Release of Joint Promisor:** 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 from liability. The released joint Promisor is responsible to the other joint Promisor or promisors
2. **Devolution of joint rights:** When a person has made a promise to two or more persons jointly, these persons are known as joint promisee. Unless a contrary intention appears from the contract, the right to claim performance rests with all the joint promisees. When one of the joint promises dies, the right to claim performance rests with his legal representatives jointly with the surviving joint promisees. When all the joint promisees die, the right to claim performance rests with their legal representatives jointly. E.g. A in consideration of rs. 5000 lent to him by B and C, promises B and C jointly to repay then that sum with interest. On a day specified B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after C's death, with the representatives of B and C jointly.

### **Time, place and manner of performance (Sections 46 to 50 and 55):**

- The time for performance has been specified and Promisor has undertaken to perform it without application, by the promisee, the Promisor must perform on the day fixed during the usual business hours and at the place at which the promise ought to be performed. E.g. A promises to deliver goods to B at his warehouse on 15<sup>th</sup> July, 1989. A offers the goods at B's warehouse but after the usual hours for closing it. The performance of A is not valid.
- But, where the time of performance is not specified, and the Promisor agreed to perform without a demand from the promisee, the performance must be made within a reasonable time.
- A promise is to be performed on a certain day, and the Promisor has not undertaken to perform it without application by the promisee, the promisee must apply for performance at a proper place and within the usual business hours.
- When a promise is to be performed without application by the promisee and no place is fixed for its performance, the Promisor must apply to the promisee to appoint a reasonable place for the performance of the promise, and perform it at such place. E.g. A undertakes to deliver 1000 kilos of jute to B on a fixed day. A must apply to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.
- The performance of any promise may be made in any manner, or at any time which the promise prescribes. E.g. A owes B Rs. 2000. B accepts some of A's goods in deduction of the debt. The delivery of the goods operates as a part payment.

### **Performance of Reciprocal Promises (Sec: 51, 54 and 57)**

- **Mutual and Dependent:** The performance of one party depends upon the prior performance of the other party. Thus, if the Promisor who must perform, fails to perform it, he cannot claim the performance of the reciprocal promise. On the other hand, he must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract. E.g. A contracts with B to execute certain builder's work for a fixed price, B supplying the necessary timber for the work. B refuses to supply any timber and the work cannot be executed. A need not execute the work and B is

bound to make compensation to A for any loss caused to him by the non-performance of the contract

- **Mutual and Independent:** Each party must perform his promise without waiting for the performance to perform on the part of the other. E.g. A promises B to deliver him goods on 11<sup>th</sup> September and B turn promises to pay the price on 10<sup>th</sup> November. B' paying the price is independent of A's delivering the goods and even if Y does not pay the price on 11<sup>th</sup> September, X must deliver the goods, on 10<sup>th</sup> November. He can of course, sue Y for compensation
- **Mutual and Concurrent:** According to Section 51, when a contract consists of reciprocal promises to be simultaneously performed, no Promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. E.g. A and B contract that A shall deliver goods to B at a price to be paid for by B on delivery. A need not deliver, unless B is ready and willing to pay the first installment on delivery.

### **Assignments of Contract**

Assignment of contract means transfer of contractual rights and liabilities to a third party with or without the agreement of the other party

#### **Rules:-**

- Contracts involving personal skill, taste or credit, e.g. a contract to paint a picture, a contract to perform a service or to marry, cannot be assigned
- The obligations under a contract cannot be assigned except with the permission of the promisee. e.g. A owes Y rs.200, he cannot transfer the liability to Z and force Y to collect his money from Z. but if Y agrees to accept Z as his debtor in place of X, there is "Novation" ( i.e., the old contract is substituted by new contract) and the liability to pay the debt stands transferred from X to Z.
- The rights and benefits under a contract are assignable unless the contract is of personal nature
- Assignment by operation of law takes place in cases of death and insolvency

## **Appropriation of Payment**

### **Appropriation by Debtor:**

- Where a debtor owing several distinct debts to one person, makes a payment to him, with express intimation that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied to the debt.
- **Appropriation by Creditor:** Where the debtor does not intimate and there are no circumstances indicating to which debt the payment is to be applied, the creditors may apply it at his judgment to any lawful debt actually due and payable to him from the debtor, including time barred debt
- **Where neither party appropriates:** Where neither party makes any appropriation the payment is to be applied in discharge of the debts in order of time.

## **Distinction between Succession and Assignment**

### **Meaning:**

The transfer of rights and liabilities of a dead person to his legal representative is called as succession.

While the transfer of rights by a person to another person is called as assignment

- **Time:** Succession takes place on the death of the person. While assignment takes place during the life time of the a person
- **Voluntary Act:** Succession is not a voluntary act. It takes place automatically by operation of law. While assignment is a voluntary act
- **Written Document:** Succession may take place even without any written document. While assignment requires execution of an assignment legal document
- **Scope:** All the rights and liabilities of a person are transferred by way of succession. While only rights can be assigned. Liabilities, under a contract cannot be assigned.

### **Meaning of Breach of Contract**

- A breach of contract occurs if any party refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract.
- In case of breach, the aggrieved party is relieved from performing his obligation and gets a right to proceed against the party at fault.

## **Remedies of Breach of Contract**

- a. **Rescission of Contract:** When there is breach of contract by one party, the party may sue to treat the contract as withdrawn and refuse further performance. In such a case, he is absolved of all his obligations under the contract. e.g. Contracts to supply 100kg of tea leaves for rs. 8000 to B on 15 April. If A does not supply the tea leaves on the agreed day, B need not pay the price. B may treat the contract as rescinded and B may also file a suit for rescission and claim damages
- b. **Suit for Damage:** Damages are monetary compensation allowed to an injured party for the loss suffered by him as a result of the breach of contract
  - **Ordinary or general or Compensatory Damages:** When a contract has been broken, the injured party can recover damages from the guilty party ordinary or general damages. Such damages may fairly and reasonably be considered as arising naturally and directly in the usual course of things from breach of contract. e.g. in case of sale of goods the damages are the difference between the contracted price and the market price existing at the time of sale when time is fixed
  - **Special Damages:** Special damages are those which arise on account of the special or unusual circumstances affecting the plaintiff. e.g. there was a book exhibition at Madurai on 10 June. A publisher handed over books to the carrier and informed them that the books must reach Madurai on or before the date of exhibition. The carrier delivered the books after the exhibition. The publisher is entitled to claim compensation as special damages.
  - **Exemplary, Punitive or Vindictive Damages:** These damages are of punishment in nature which is awarded with a view to punish the guilty party for the breach. e.g. breach of contract to marry:- the amount of the damages will depend upon the extent of injury to the party's feelings
  - **Nominal Damages:** Nominal damages are those which are awarded only for name sake. Where the injured party has not in fact suffered any loss, nominal damages are awarded for the breach of contract. e.g. wherein a contract of sale of goods, if the contract price and the market price is almost the same at the date of breach of the contract, then the aggrieved party is entitled only to nominal damages

- **Damages for Loss of Reputation:** Damages for loss of reputation in case of breach of a contract are generally not recoverable. An exception to this rule exists in the case of a banker who wrongfully refuses to honor a customer's cheque. e.g. if the customer happens to be a tradesman, he can recover damages in respect of any loss to his trade reputation by the breach. Here the smaller the amount of the cheque dishonored, the larger the amount of damages awarded." but if the customer is not a tradesman, he can recover only nominal damages.
- **Damages for Inconvenience and Discomfort:** Damages can be recovered for physical inconvenience and discomfort. The general rule in this connection is that the measure of damages is not affected by the motive or the manner of the breach. e.g. H, with his wife and children, took a ticket for a midnight train, to be transported to a particular place where he lived. They were, however, transported to a wrong place and they had to walk several miles home on a drizzling wet night. Held, H could recover the sum of compensation for the inconvenience, but nothing for the medical expenses of his wife who caught cold as this outcome was too remote
  - **Mitigation of Damages:** It is the duty of the injured party to take all reasonable steps to mitigate the loss caused by the breach. He cannot claim to be compensated by the party in default for loss which he ought reasonably to have avoided.
  - **Liquidate Damages:** It represents a sum, fixed or ascertained by the parties in the contract, which is a fair and genuine pre-estimate of the probable loss that might result from the breach, if it takes place.
  - **Difficulty of Assessment:** Although damages which are incapable of assessment cannot be recovered, the fact that they are difficult to assess with certainty does not prevent the aggrieved party from recovering them. The court must do its best to estimate the loss and a contingency may be taken into account.
  - **Cost of Decree:** The aggrieved party is entitled, in addition to damages, to get the cost of getting the decree for damages. The cost of suit for damages is in the judgment of the court
- **Damages Agreed upon in advance in case of Breach:** If a sum is named in a contract as the amount to be paid in case of its breach. E.g. A contracts with B to pay B Rs. 1000 if he



fails to pay B rs. 500 on a given day. B is entitled to recover from such compensation not exceeding rs. 1000 as the court considers reasonable

### **Rectification or Cancellation**

When through fraud or a mutual mistake of the parties, a contract or other instrument does not express their real intention; either party may institute a suit to have the instrument rectified.

### **Quasi Contract**

There is always an agreement between parties. In a contract, the consent of the party is essential, whereas in quasi contracts the parties do not necessarily give consent. In quasi contracts, the liability exists independent of the agreement and rests upon equity, justice and good conscience. E.g. A is a lunatic and has some property. B, son of A met with an accident. Moved by the pitiable condition of the boy B, X spends Rs. 1000 for his treatment and medicines. X can claim this amount from A. X can also claim this amount against A's property. **1.1.12.1 Essential**

### **Ingredients of Quasi Contract**

- A Quasi-contract is imposed by law. It is not created by the operation of the contract
- The person, who incurs expenses is entitled to receive the money
- The duty of a party and not the promise of any party is the basis of such contract
- A suit for its breach may be filed in the same way as in case of a complete contract
- The right under it is available against specific person(s) and not against the world.

### **1.1.12.2 Types of Quasi Contracts**

**1. Necessaries supplied to persons incapable of contracting (sec 68):** If a person incapable of entering into a contract or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. E.g. A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property

**2. Reimbursement of person paying money due to another (Sec 69):-** A person who is interested in the payment of money which another is bound by law to pay, and who, therefore pays it is entitled to be reimbursed by the other". E.g. B holds land in Bengal, on a lease granted

by A, the zamindar. The revenue payable by A to the government being in sum unpaid, his land is advertised for sale by the government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. But to prevent the sale and consequent annulment of his own lease, "B" pays to the government the sum due from A. A is bound to make good to B the amount so paid

**3. Obligation of persons enjoying benefit of non - gratuitous act (sec 70):** Where a person that where a person lawfully does anything for another person, or delivers anything to him, not intending to do unnecessary and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore the things so done or delivered.

E.g. A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them

**4. Responsibilities of finder of lost goods (sec 71):** A person who finds goods belonging to another, and takes them into his custody. He has following duty.

- Duty of reasonable care
- Duty not to mix
- Duty to return
- Duty to return in case of increase

**5. Liability of persons to whom money is paid or thing delivered, by mistake or under coercion (sec 72):** A person to whom money has been paid or anything delivered, by mistake, must repay. E.g.: - A and B jointly owe Rs. 100 to C. A alone pays the amount to C, and B, not knowing his fact, pays over Rs. 100 again to C. C is bound to repay the amount to B.

### **Distinction between a Contract and Quasi-Contract**

#### **1. Purpose:**

- Contract results from the will of the parties expressed with a view to create an obligation
- Quasi-contract is an obligation resembling that created by a contract

#### **2. Agreement:**

- A contract is an agreement
- There is no agreement at all

#### **3. Essential Elements**

- The contract has certain essential elements.
- Essential elements of a contract are absent

#### 4. Nature:

- It is fully fledged contract and is binding
- It is not a full-fledged contract. It is an implied contract

### THE SALE OF GOODS ACT 1930

#### Definition of Sale of Goods

Section 4(1) of the Sale of Goods Act defines the contract of sale of goods as "A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price".

Agreement to sell "whereby a seller transfers the ownership of goods to the buyer or agrees to transfer it for a price".

#### Essential of a contract of sale:-

1. **Two Parties:** There should be two parties namely a buyer and a seller. It is a bilateral (mutual) contract where the property in goods has to pass from one party to another.
2. **Transfer of Property:** Property here means ownership. A simple transfer of custody of goods cannot be termed as sale. To represent a contract of sale, the seller must transfer the sale of ownership of the goods to the buyer.
3. **Goods:** The subject matter of the contract of sale must be 'goods'. According to section 2(7) "Goods means every kind of movable property other than actionable claims and money.
4. **Price:** The consideration for a contract of sale must be money consideration called the 'price'. If goods are sold for other goods, it is not a sale of goods. But if goods sold partly for goods and partly for money is called one of sale of goods.
5. All essential elements of a valid contract must be presented in a contract of sale like, agreement, free consent, consideration etc...

#### Difference between Agreement to Sell and Sale

	Sale	Agreement to Sell
1. Transfer of property	The property in the goods passes from seller to buyer immediately.	The goods is to take place at a future time.
2. Type of contract	A sale is an executed (finished) contract.	An agreement to sell is an executor (future time) contract.
3. Particular and general property	It creates a right in rem, i.e. against the whole world	It creates a right in personam, i.e., against a specified person only

4. Consequences of breach	If the buyer refuse to pay the price of the goods, the seller can sue for price, even though the goods are still in his possession	If the buyer fails to accept the goods, the seller can only sue for damages and not for price, even though the goods are in the possession of seller
5. Risk of loss	If the goods are destroyed, the loss falls on the buyers	If the goods are destroyed, loss falls on the seller
6. Insolvency of the seller	If the seller is insolvent, the buyer is entitled to recover the goods from the official receiver.	The buyer, who has paid the price, cannot claim the title of goods from the seller, if he is declared insolvent. He can only claim a dividend from the official seller.
7. Insolvency of the Buyer	If the buyer is insolvent before making the payment, the seller can claim only a rateable dividend.	If the buyer who is declared insolvent before payment, the seller is not bound to deliver the goods.

### Hire Purchase

- A method of buying goods through making installment payments over time. The term hire purchase initiated in the U.K., and dissimilar to what are called "rent-to-own" arrangements in the United States.
- Under a hire purchase contract, the buyer is leasing the goods and does not obtain ownership until the full amount of the contract is paid.

### Difference between Sale and Hire Purchase

	Sales	Higher purchase
1. Nature	It may be made either orally or in writing	It must be writing
2. Ownership	The ownership of the goods is transferred from seller to buyer	The ownership of the goods is transferred from the seller to the hirer only when all installments are paid.
3. Position	The position of the buyer is that of	The position of the buyer is that of

	the owner.	the bailee.
4. Resell	The buyer can resell the goods.	The hire-purchase cannot resell unless he has paid all the installments of hire purchase.
5. Act	It is governed by the sale of goods act 1930.	It is governed by the hire purchase act 1972.
6. Risk of loss	The seller takes the risk of any loss resulting from insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay in instalment, the owner has the right to take back the goods.

### Types or Classification of Goods

1. **Existing Goods** : At the time of sale, if the goods are physically in existence and are in possession of the seller that goods are called ' Existing goods'
  - a. **Specified Goods:** Goods identified and agreed upon at the time of making the contract of sale are called 'specific goods. E.g. if A agrees to sell his horse to B, it is a sale of specific goods.
  - b. **Unascertained goods or Generic:** The goods, which are not separately identified at the time of contract, are known as unascertained goods.e.g. if A agrees to sell to B one bag of sugar out of the lot of one hundred bags lying in his godown, it is a sale of unascertained goods because it is not known which bag is to be delivered.
  - c. **Ascertained Goods:** As soon as a particular bag is separated from the lot of delivery, it becomes ascertained or specific goods
2. **Future Goods:** Future goods are goods to be manufactured or produced or yet to be acquired by a seller. There is no present sale because the property cannot be delivered immediately.E.g.A agrees to sell to B all the milk that his cow may yield during the coming year. This is a contract for the sale of future goods
3. **Contingent Goods:** It is a type of future goods, the acquisition by the seller depends upon a contingency, which may or may not happen. **E.g.** A agrees to sell specific goods in a particular ship to B to be delivered on the arrival of the ship. If the ship arrives but with no such goods on board, the seller is not liable, for the contract is to deliver the goods should they arrive?

## **(TP)TransferofProperty**

- The phrase ‘ transfer of property in goods means transfer of ownership of goods and not the physical possession of goods

### **(TP.1)Legalconsequenceof transferof title**

- a. **Ownership:** The moment the property in goods passes, the seller ceases to be their owner and the buyer acquires the ownership. The buyer can exercise the proprietary right over the goods
- b. **Risk follows ownership :** If the goods are damaged or destroyed, the loss shall be borne by the person who was the owner of the goods at the time of damage or destruction
- c. **Action against third party :** When the goods are in any way damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action against them
- d. **Suit for price:** The seller can sue the buyer for the price, unless otherwise agreed, only after the goods have become the property of the buyer
- e. **Insolvency :** In the event of insolvency of either the seller or the buyer, the question whether the goods can be taken over by the official receiver, will depend on whether the property in goods is with the party who has become insolvent

### **(TP.2)Essentialof Transferof Title/Passingof property**

1. Goods must be ascertained (sec 18): - unless the goods are ascertained, they cannot pass from the seller to the buyer
2. Intention of parties: - in a sale of specific or ascertained goods the property in them is transferred to the buyer unless and until the goods are ascertained

### **(TP.3) Riskof Loss(cont)**

- According to the general rule, the risk of loss or damage to goods is borne by the person who is the owner at the time of the loss or damage

### **(TP.4)Rulesrelatingto transferof title(cont)**

#### **1. Specificgoods (sec.23)**

- **Rules**
  - a. Passing of property at the time of contract: - in 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.

Payment of the price or the time of delivery of goods, is postponed does not prevent the property in goods passing at once (sec 20)

**E.g.** S sells to B a horse which is to be delivered to B the next week. B is to pay the price on delivery. B asks his servant to keep the horse separate from the other horses. The horse dies before it is delivered and paid for. The property in the horse has passed to the buyer and he is bound to pay the price

b. Passing of property delayed beyond the date of the contract

b (1). Goods not in a deliverable state: - where there is a contract for the sale of specific goods not in a deliverable state, the property does not pass until such thing is done and the buyer has notice of it

b (2). When the price of goods is to be ascertained by evaluating, etc: - when there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to evaluate, measure, test or do some other act, for the purpose of ascertaining the price, the property does not pass until such act is done (sec 22)

**2. Unascertained goods (sec.23):-** where there is a contract for the sale of unascertained goods, the property in the goods does not pass to the buyer until the goods are ascertained (sec 18).  
**Delivery to carrier (transporter) (sec 23(2)):-** A seller is considered to have unconditionally appropriated the goods to the contract where he delivers them to the buyer or to a carrier for the purpose of transmission to the buyer, and does not reserve the right of disposal.

- **Absolutely for the buyer:** - where the bill of railway receipt is made out in the name of the buyer and is sent to him. There is no right of disposal reserved by the seller in the respect of those goods
- **Absolutely for the seller:** - where the bill of railway receipt is taken in the seller's name, he has rights to disposal of goods. In such a case the ownership does not pass to the buyer until the necessary conditions are fulfilled and the documents of title are delivered to the buyer

**3. Goods sent with approval on sale or return (sec 24)**

- When he signifies his approval or acceptance to the seller
- When he does any other act adopting the transaction

**(TP.5) Transfer of title by non-owners**

**A. Exceptions under the Sale of Goods Act, 1930**

1. **Estoppel (sec. 27)** where the owner by his conduct or by an act, leads the buyer to believe that the seller has the authority to sell and induce the buyer to buy the goods. In such a case the buyer gets the better title than the seller.

e.g. A tells B within the hearing of C that A is the owner of certain goods which in fact belongs to C. C does not disagree with A's statement. After some time B buys those goods from A. The title of the B is better than A

**2. Sale by mercantile agent (sec 27):-** A mercantile agent is one, who has authority to sell the goods or buy goods or to raise money on the security of goods.

**3. Sale by one of several joint owners (sec 28):-** if one of the several joint owners, who is in sole possession of the goods by permission of the other co-owners, sells the goods

**4. Sale by a person in possession under a voidable contract (sec 29):-** when the seller of the goods has obtained their possession under a voidable contract, but the contract has not been canceled at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in faith and without notice of the seller's defect of title. **E.g.** A purchases a piano from B by fraud. A has a voidable title to the goods. Before B rescinds the contract, A sells the piano to C, who buys in good faith and in ignorance of the fraud. C gets a good title.

**5. Sale by seller in possession after sale (sec 30 (1)):-** where a seller, having sold goods, continues to be in possession of the goods or of the documents of title to the goods and sell them either himself or through a mercantile agent to a person who buys them in good faith and without notice of the previous sale, the buyer gets a good title. **E.g.** A sells certain goods to B and promises to deliver the goods the next day. But a deliver the goods to C who buys them in good faith and without notice of the prior sale to B. C gets a good title.

## **B. Exceptions as provided in other laws**

- Sale by finder of lost goods
- Sale by a Pawnee pledgee
- Sale by an official assignee
- Execution sales
- Sale by executors and administrators
- Purchase in market overt.

## **(G) Guarantee**

A promise or assurance, especially one in writing, that something is of specified quality, content, benefit, etc., or that it will perform satisfactorily for a given length of time.

### **(G.1). Types of guarantee**

- Performance guarantee: A performance guarantee may be sought by a buyer from a seller in respect of any commercial contract that involves performance of obligation. In the event of



default by a seller of a service, the buyer can claim on the guarantee in accordance with the guarantee agreement between the parties concerned

- Repayment guarantee construction: If a buyer has paid money in advance the contract is not performed owing to the seller's default, the buyer construction on the money paid in advance. It is to be emphasized that prior to his making any claim.

**(G.2). Some general points in relation to guarantees**

- Buyer
- Seller
- Guarantor

**(C) Condition**

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives the aggrieved party a right to repudiate the contract itself.

E.g. X asked a car dealer to suggest him a car suitable for touring purpose. The dealer suggested a particular car. Accordingly, X purchased it but found it unsuitable for touring purpose. In this case, suitability of car for touring purpose was a condition of contract. X was, therefore, entitled to reject the car and have refund of the price paid.

**(W) Warranty**

A warranty is a stipulation collateral (security) to the main purpose of the contract, the breach of which gives the aggrieved party a right to sue for damage only, and not to avoid the contract itself.

E.g. X asked a car dealer to suggest him a good car and while suggesting the car, the dealer said that it could run for 20km per liter of petrol. But the car could run only 15km per liter of petrol. In this case the statement made by the seller was a warranty. X was not entitled to reject the car but he was entitled to claim the damages.

**(C.W.1). Difference between Condition and Warranty**

	<b>Condition</b>	<b>Warranty</b>
1. Importance	Condition is essential to the main purpose of contract	Warranty is only security to the main purpose of contract
2. Remedy on breach	Breach of condition gives right to reject the contract and also to claim damages	Breach of warranty gives right to claim damage only
3. Treatment	Breach of condition may be treated as breach of warranty	A breach of warranty cannot be treated as a breach of condition

## (C.W.2).ExpressandimpliedConditionsandWarranties

- **Express:** They are said to be express when at the will of the parties they are inserted in a contract. **E.g.** in an advertisement for Bajaj fans, guarantee for 5 yrs is an express warranty
- **Implied:** Conditions and warranty are said to be implied when the law presumes their existence in the contract automatically though they have not been put into it in express word

## (C.2).Implied Conditions

- **Condition as to title of Goods:** There is an implied condition on the part of the seller, in the case of a sale, he has a right to sell the goods and in case of agreement to sell, he will have a right to sell the goods at the time when the property is to pass. **E.g.** X purchased a car from Y. after 6 months Z, the true owner of the car demanded it from X. X had to return it to its true owner. X was entitled to recover the full price even though he had used the car for 6 months
- **Sale by Description:** Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. The description may be in terms of the qualities or characteristics of the goods
- **Condition as to Sample :** When a contract of sale, goods are to be supplied according to a sample agreed upon
- **Condition in a sale by sample as well as by Description:** If the sale is by sample as well as by description, the goods must be correspond both with the sample as well as description
- **Condition as to Fitness or Quality:** In an implied condition is deemed to exist on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them. **E.g.** X purchased a hot water bottle from Y, a retailer. X asked Y if it would stand boiling water. Y told him that the bottle was meant to hold hot water. The bottle burst when hot water was poured into it and injured X's wife. Y is liable to refund the price and pay damages because bottle was unfit for the purpose for which it was purchased
- **Condition as to Merchantability:** Merchantable quality means quality and condition of goods must be as per the description and free from hidden defects. **E.g.** where the towel supplied contained certain chemicals which could cause skin disease to a person using that. The towel was not of merchantable quality and the buyer was entitled to reject the goods.
- **Conditions as to Wholesomeness:** In case of eatables, there is an implied condition as to wholesomeness, free from any defect. **E.g.** W bought a bottle of milk from H, a dealer in milk shop. The milk was infected with germs. W, on taking the milk fell ill. H was held liable to W for the consequent illness

## **(W.2).ImpliedWarranties**

- **Warranty of Quite Possession:** There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. This is an extension of the implied condition as to title.  
**E.g.** M a lady purchased a second hand type- writer from B. she thereafter spend some money on its repair and used it for some months. Unknown to the parties the type-writer was a stolen one and M was compelled to return the same to its true owner. She was entitled to recover from the sellers for the breach of this warranty damages for price and also for cost of repair
- **Warranty of free from burden:-** There is an implied warranty that the goods are free from any charge of any third person if the buyer is not aware of such charge. **E.g.** X borrowed rs. 500 from Y and hypothecated his radio with Y as security. Later on X sold this radio to Z who bought in good faith. Here Z can claim damages from X because his possession is disturbed by Y having a charge
- **Disclosure of dangerous nature of goods:** There is an implied warranty on the part of the seller that in case the goods are of dangerous nature he will warn the ignorant buyer of the probable danger.

## **(C.W.3)Doctrine of Caveat Emptor(Let's Buyer Beware)**

- It is no part of the seller's duty in a contract of sale of goods to the buyer an article suitable for a particular purpose, or of a particular quality, unless such quality or fitness is made an express term of the contract beware

### **(C.W.3.1)Exceptionstothe'doctrineofcaveat emptor'**

- **Fraud:** If he seller has made a false representation relating to the goods and the buyer has relied upon it to his damage
- **Merchantable Quality :** In the case of goods bought by description from seller who deals in the class of goods, there is an implied condition that the goods shall be of " merchantable quality"
- **In case of sale by Description:** Where the goods are sold by description and the goods supplied by the seller do not correspond to the description
- **In case of sale by Sample:** Where the goods are sold by sample and the goods supplied by the seller do not correspond with the sample
- **In case of sale by sample as well as Description :** Where the goods are sold by the sample as well as description and the goods supplied do not correspond with sample as well as description.

## **(PC)PerformanceofContractof Sale**

- The performance of contract of sale implies delivery of goods by the seller and acceptance of the delivery of goods and payment for them by the buyer, in accordance with the contract

### **(PC.1)PerformanceofcontractofSale**

1. **Duty of the seller and the buyer:** It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.
2. **Delivery:** Delivery means voluntary transfer of possession of goods from one person to another.

#### **Modesofdelivery(Delivery Cont)**

- **Actual delivery:** Where the goods are physically handed over by the seller or his authorized agent to the buyer
- **Symbolic delivery:** Where the goods are bulky and incapable of actual delivery. Delivering of key of the warehouse, railway receipt etc
- **Constructive delivery:** Where the third person in possession of goods acknowledges to hold goods on behalf of and at the disposal of the buyer, the delivery is constructive

#### **Rulesregardingdelivery(Delivery Cont)**

- **Methodsof delivery ofgoods:** Delivery may be either actual or symbolic or constructive
- **Delivery and payment are similar :-** The seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price and buyer shall be ready and willing to pay the price in exchange for possession of the goods
- **Delivery to be made to buyer :-** Delivery of goods sold has the effect of putting the goods in possession of the buyer or of any person authorized to hold them on his behalf
- **Part delivery :-** Delivery of parts of goods, in progress of delivery of whole amounts to delivery of the whole, if there is no intention of severing (separating) of such part from the whole
- **Mode of delivery :-** Mode of delivery depends on the contract between the parties whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer depend upon the contract
- **Place of delivery:-** Goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell

- **Time of delivery:** - Where no time for sending the goods is fixed the seller is bound to send them within a reasonable time. It implies that where time is fixed, the seller must send the goods in time. If the delivery is to be done as and when required, demand for delivery must be made at reasonable time
- **Demand at reasonable hour:** - Demand for delivery must be made at reasonable hour.
- **Goods in possession of third person:** Where the goods at the time of the sale are in possession of the third person, delivery to the buyer is only effected when such third person acknowledges to the buyer that he holds the goods on his behalf
- **Expenses:** Expenses of and incidental to delivery are as a general rule to be borne by the seller. The party may however, agree otherwise
- **Installment delivery:** Buyer of the goods is not bound to accept delivery thereof by instalments unless otherwise agreed. An agreement for delivery by instalments is made expressly or from the conduct of parties
- **Examining the goods:** The buyer has a right to examine the goods which he has not previously examined before he accepts them

### 2.3. Delivery of Wrong Quality (Delivery Cont)

- **In case of short delivery:** - The buyer may reject the goods delivered. If he accepts, he must pay for them
- **In case of excess delivery:** - The buyer may accept the goods included in the contract and reject the rest or he may reject the whole. If he accepts the whole, he must pay for them
- **Where the seller mixes his goods with the buyers' goods:** - The buyer may accept the goods which are in accordance with the contract or reject the rest or he may reject the whole

**(PC.2). Buyers liability for rejecting or refusing delivery of the goods:** - If he buyer refuse to take goods within a reasonable time, buyer is liable to the seller

### (PC.3) Rights of the buyer

- **Right To have delivery as per contract (sec 31 & 32 ):** - the first right of the buyer is to have delivery of the goods as per contract
- **Right To reject the contract :- (sec 37)** if he seller sent to the buyer a larger or smaller quality of goods than he ordered, the buyer may reject the whole, accept the whole or accept the quantity he ordered and reject the rest

- **To notice of insurance :-** unless otherwise agreed, where goods are sent by the seller to the buyer by a sea route, the buyer has a right to be informed by the seller so that he may get the goods insured
- **Right To examine the good :-** the buyer has a right to examine the goods which he has not previously examined before he accepts them
- **Right to sue for breach of contract :-** suit for damage, suit for price, suit for specific performance, suit for breach of warranty

### **(PC.3) Duties of the buyer**

- **To accept delivery of goods and make payment (sec 31):-** it is the duty of the buyer to accept the goods and pay for them, in accordance with the terms of the contract of sale. The buyer must be ready and willing to pay the price in exchange for possession of the goods.
- **To demand for delivery (sec 35):-** apart from any express contract, it is the duty of the buyer to apply for delivery.
- **To demand for delivery at a reasonable hour (sec 36(4)):-** It is the duty of the buyer to demand delivery at a reasonable hour.
- **To accept installment delivery and pay for it (sec 38(2)):-** Unless otherwise agreed, the seller is not entitled to deliver the goods by instalments and if he does so, the buyer is not bound to accept the goods.
- **To inform the seller if he rejects the goods (sec 43):-** Unless otherwise agreed, it is the duty of the buyer to inform the seller in case he refuses to accept the goods.
- **To compensate the Seller:-** Where the buyer refuses to accept and pay for the goods, he will have to compensate the seller, in a suit by him, for damages for non-acceptance.

### **(PC.4) Rights of the seller**

- To receive the price of the goods
- To receive compensation or sue for damages for any loss occasioned by him by neglect or refusal of the buyer to take delivery of the goods
- To receive reasonable charge for care and custody of the goods
- If he is an unpaid seller then to exercise his right of lien (legal claim), to exercise his right of resale
- To sue the buyer for damage for refusing to accept the goods.

## **(PC.5) Duties**

- To Deliver the goods when buyer demands the delivery thereof
- To Compensate the buyer in case he rejects the contract
- To give reasonable opportunity to the buyer to examine goods
- To refund the amount paid by the buyer in case he fails to deliver the goods

## **1.2.10 (US) UNPAID SELLER**

### **According to sec. 45 unpaid seller as follows**

- When the whole of the price has not been paid
- When a bill of exchange or other negotiable instrument has been received as a conditional standard.

### **(US.1) Rights of Seller against the Goods**

- **Right of lien:** - The term lien means the right to retain possession of goods and refuse to deliver them to the buyer until the price due in respect of them is paid. This right of lien can be exercised only for the non-payment of the price and not for any other charges.
- **Right of stoppage of Goods in Transit:** - The right of stoppage in transit means the right of stopping the good while they are in transit to regain the possession and to retain them till his full price is paid.
- **Right of Resale:** The right of resale is a very valuable right given to an unpaid seller. If the buyer continues to remain in default, then the seller should be expected to retain the goods. The law gives to the unpaid seller a limited right to resell the goods in the following cases
  - Where the goods are of a perishable nature.
  - If on a resale, there is a loss to the seller, he can recover it from the defaulting buyer.

### **(US.2). Buyer rights against Seller**

- **Suit for damages for non-delivery (sec 57):** - Where the seller refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery
- **Suit for specific performance (sec 58):** - In any suit for breach of contract to deliver specific or ascertained goods, the court may direct that the contract shall be performed specially

- **Suit for breach of warranty (sec59):** Where there is a breach of warranty by the seller or where the buyer selects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is entitled to reject the goods or he can take legal action against the seller
- **Suit the seller for damage for breach of Warranty: E.g.** M a lady purchased a secondhand type- writer from B. she thereafter spends some money on its repair and used it for some months. Unknown to the parties the type-writer was a stolen one and M was compelled to return the same to its true owner. She was entitled to recover from the seller for the breach of this warranty damages for price and also for cost of repair
- **Suit for Interest:** - in case of breach of the contract on the part of the seller, the buyer may sue the seller for interest from the date on which the payment was made.

### **Negotiable Instruments Act 1881:**

The word negotiable means transferable by delivery and the word instrument means ‘a written document by which a right is created in favor of some person’. Thus, the term “negotiable instrument” literally means “a written document transferable by delivery”.

#### **Example of negotiable instruments**

- Bill of exchange
- Promissory notes
- Cheque
- Treasury bills
- Hundis etc

#### **Nature and basics of negotiable instruments**

- **Writing and signature :-** Negotiable instruments must be written and signed by the parties according to the rules relating to promissory notes, bill of exchange and cheques
- **Money:** - Negotiable instruments are payable by legal tender money of India. The liabilities of the parties of negotiable instruments are fixed and determined in terms of legal tender money
- **Freely transferability:** - The property in a negotiable instrument is freely transferable. They can be transferred from one person to another by a simple process. Two things are required for a valid transfer: endorsement (signature of the holder) and delivery
- **Title of holder free from all defects :-** A person taking an instrument ‘bona fide’ and ‘for value or the transferee of a negotiable instrument, when he fulfills certain conditions, known as a holder in due course gets the instrument free from all defects in the title of the transferor



- **Notice:-** It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay.
- **Presumption:-** A negotiable instrument is always subject to certain presumptions. They will be applicable unless contrary is proved. E.g. it is presumed that there is consideration. It is not necessary to write in a promissory note the words “ for value received “because the payment of consideration is presumed
- **Special procedure:** - A special procedure is provided for suits on promissory notes and bills of exchange
- **Popularity:-** Negotiable instruments are popular in commercial transactions because of their easy negotiability and quick remedies
- **Evidence:** - A document which fails to qualify as a negotiable instrument may nevertheless be used as evidence of the fact of gratefulness

### **Presumptions as to Negotiable Instruments (sec 118 & 119)**

- **Of consideration:-** That every negotiable instrument was made or drawn accepted, endorsed, negotiable or transferred for consideration
- **As to date:-** That every negotiable instrument bearing a date was made or drawn on such date
- **As to time of acceptance:-** That every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity
- **As to time of transfer :-** That every transfer of a negotiable instrument was made before its maturity
- **As to time of endorsement :-** That the endorsement appearing upon a negotiable instrument were made in the order in which they appear thereon
- **As to stamp :-** That almost every promissory note, bill of exchange or cheque was duly stamped
- **Holder presumed to be a holder in due course :-** Every holder of a negotiable instrument is presumed to be a holder in due course
- **As to protest:** - In a suit upon an instrument, which has been dishonored, the court shall, on proof of the protest, presume the fact of dishonor, unless and until such fact is disproved.

### **(T) Types of Negotiable Instrument**

Instruments negotiable by statute

- Promissory notes
- Bills of exchange

- Cheques

### (T.1) Promissory Notes

A 'Promissory note' is an instrument in writing containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument.

#### Essential characteristics of a Promissory Note

- **It is an instrument in writing:** - A simple verbal promise to pay is not a promissory note. The promise should be in writing. The writing may be in ink or pencil, or printing. In other words, an oral promise does not make a promissory note since it is not an instrument
- **It is a promise to pay:** - There must be an express undertaking or promise to pay. A simple acknowledgement of implied undertaking by the use of the word 'debt' is not sufficient and it does not constitute a promissory note
- **Signed by the maker:** - The instrument must be signed by the maker, otherwise it is incomplete and of no effect. Signature means the writing of a person's name in order to confirm and give effect to the contract contained in the instrument.
- **Other formalities:** - The other formalities regarding number, place, consideration, etc though usually found given in the promissory notes. Promissory note must be properly stamped as required by the Indian stamps Act
- **Definite and unconditional promise:** - The promise must be definite and unconditional. It may be noted that a promise to pay is not conditional if it depends upon an event which is certain to happen
- **Promise to pay money only:** - The payment to be made under the instrument must be in the legal tender money of India. If the instrument contains a promise to pay something other than money or something in addition to money, it cannot be a promissory note
- **Maker must be a certain person** :- The instrument itself must indicate with certainty who is the person or are the persons engaging him or themselves to pay
- **Payee must be certain:** - Like the maker, the payee of promissory note must also be certain on the face of the instrument. A note is valid even if the payee is misnamed or indicated by his official designation only provided he can be ascertained by evidence
- **Sum payable must be certain** :- For a valid promissory note it is also essential that the sum of money promised to be payable must be certain and definite
- **It may be payable on demand:** - The expression on demand means payable immediately

## **Partiestoapromissorynote**

- **Maker:-**Makeristhepersonwhopromisestopaytheamountstatedinthenote.Heis debtor
- **Payee:-**Payeeis theperson to whom theamount of thenoteis payable, i.e., the creditor
- **Holder;-**Heis either thepayeeor theperson to whomthe notemayhavebeenendorsed

### **(T.2). Bill ofExchange**

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”.

#### **EssentialElementof Bill of Exchange**

- It must be in writing:-the bill of exchange must be in writing
- Order to pay:-the order does not mean command. Any request or direction or other words, which show an intention of the drawer to cause a payment
- Being made by the drawee is sufficient.
- **Unconditional order:-**the order must be unconditional, as the bill is payable at all events. It is absolutely necessary for the drawer's order to the drawee to be unconditional. The order must not make the payment of the bill dependent on a contingent (conditional) event. A conditional bill of exchange is invalid
- **Signature of drawer:** - the drawee must sign the instrument. The instrument without the proper signature will be unclear and hence ineffective.
- **Drawee :-** a bill, in order to be perfect, must indicate a drawee who should be called upon to accept or pay it
- **Parties:-** the drawer, the drawee and the payee – the parties to a bill are to be specified in the instrument with reasonable certainty
- **Certainty of amount:-**the sum (amount) must be certain
- **Payment in kind is not valid:** - the medium of payment must be in money and money only. The distinctive order to pay anything in kind will be ineffective the bill
- **Stamping:-** a bill of exchange, to be valid, must be duly stamped as per the Indian stamp act

- **Cannot be made payable to bearer on demand:**-a bill of exchange as originally drawn cannot be made payable to bearer on demand

### Parties to a bill of exchange

- **Drawer:**-the maker of a bill of exchange is called the drawer
- **Drawee:**-the person directed to pay the money by the drawer is called the drawee
- **Payee:**-the person named in the instrument, to whom to whose order the money are directed to be paid by the instrument are called the payee

### Distinction between Promissory Notes and Bill of Exchange

	<b>BILL OF EXCHANGE</b>	<b>PROMISSORY NOTE</b>
No of parties	Three parties-drawer, drawee, payee	Two parties maker and the payee
Promise/order	A bill contains an unconditional order to pay	A note contains an unconditional promise to pay
Debtor/creditor	The drawer of a bill is the creditor who directs the drawee to pay	The maker of the note is the debtor and he himself undertakes to pay
Identity of payor and payee	In a bill, the drawer and the payee must be one and the same person	A note cannot be made payable to the maker himself
Acceptance	A bill payable after a certain period must be accepted by the drawee before it is presented for payment	A note requires no acceptance as it is signed by the person who is liable to pay
Immediate relation	The drawer of the bill stands in immediate relation with the acceptor and not the payee	The maker of the note stands in immediate relation with the payee
Notice of dishonor	Notice of dishonor must be given to all the persons who are to be made liable to pay	Such notice is not required to be given to the maker

## Classification of bills

- **Inland and foreign bills:** - inland bills are drawn in India on a person residing in India whether payable in or outside India. Foreign bills drawn outside India on any person residing outside India
- **Time and demand bills:** - a bill payable after a fixed time is termed as a time bill. A bill payable after date is a time bill, a bill payable on demand is termed as a demand bill
- **Trade and accommodation bills:** - a bill drawn and accepted for a real trade transaction is termed as trade bill.
- A bill drawn and accepted not for a real trade but only to provide financial help to some party is termed as an accommodation bill.

## (T.3) Cheque

A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

### Essential elements of a cheque

- **In writing:** - It must be in writing
- **Express order to pay:** - There must be an express order to pay and not request to pay
- **Definite and unconditional order:** - The order must be an express order to pay and not request to pay
- **Signed by the drawer:** - It must be signed by the drawer
- **Order to pay certain sum:** - The order must be to pay a certain sum (amount)
- **Order to pay money only:** - The order must be to pay money only
- **Certain three parties:** - drawer, drawee and payee must be certain and must be mentioned in the instrument
- **Drawn upon a certain banker:** - it must always be drawn upon a specified banker
- **Payable on demand:** - it must always be payable on demand

### Parties to a cheque:

- **Drawer:** Drawer is the person who draws the cheque, i.e., the depositor of money in the bank
- **Drawee:** Drawee is the drawer's banker on whom the cheque has been drawn
- **Payee:** Payee is the person who is entitled to receive the payment of a cheque.

### Difference between Cheque and Bill of Exchange:

	<b>CHEQUE</b>	<b>BILL OF EXCHANGE</b>
1. Drawer	It is always drawn on a bank	It is usually drawn on some person or firm.
2. Payable on demand	It is always payable on demand	It may be payable on demand or on the expiry of a fixed period.
3. Acceptance	It does not require an acceptance	It requires an acceptance of drawee
4. Stamp	It does not require a stamp	It must be properly stamped
5. Grace period	It is payable immediately on demand without any days of grace	In bill of exchange, three days of grace are allowed from the due date
6. Payable to bearer on demand	A cheque drawn "payable to bearer on demand" shall be valid	A bill payable on demand can never be drawn payable to bearer
7. Crossing	It can be crossed	It cannot be crossed
8. Countermanded (cancelled)	The payment of cheque may be countermanded by the drawer	The payment of a bill cannot be countermanded

### Difference between Cheque and Promissory Note

	<b>Cheque</b>	<b>Promissory Note</b>
1. Drawer	It is always drawn on a bank	It is usually drawn on some person or firm.
2. Payable on demand	It is always payable on demand	It may be payable on demand or on the expiry of a fixed period.
3. Stamp	It does not require a stamp	It must be properly stamped
4. Payable on bearer on demand :	A cheque drawn "payable to bearer on demand" shall be valid	A bill payable on demand can never be drawn payable to bearer

5. Crossing	It can be crossed	It cannot be crossed
6. countermanded(cancelled)	The payment of a bill can be countermanded	The payment of a bill cannot be countermanded.

### Similarities between Cheque and Promissory Note

1. Both the instrument do not need acceptance as they are payable on demand
2. The parties involved in the immediate relation are the maker of the instrument and the payee

### Types of cheque

- **Open cheque:** An open cheque is payable at the counter of the bank for the presentation of the cheque. Such a cheque runs great risk in the course of circulation because if a wrong person takes away the payment of an open cheque it is difficult to trace him
- **Crossed cheque:** A cheque is said to be crossed when two transverse parallel lines with or without any words are drawn across its face. Crossing affords security and protection to the holder of the cheque. Cheques are crossed in order to avoid losses arising from open cheques falling into the hands of wrong person.

### Whom may cross a cheque?

- **Drawer:-** He may cross the cheque generally or specially
- **Holder:-** Where the cheque is uncrossed, the holder may cross it generally or specially
- **Banker :-** Where a cheque is crossed specially, the banker to whom it is crossed may again cross it especially to another bank for collection
- **Demand Draft:** Demand draft is drawn by one branch of a bank on another branch of the same bank instructing the latter to pay a specified sum of money to a named payee or to his order
- **Hundis:** A Hundi is a negotiable instrument by usage. It is often in the form of a bill of exchange drawn in any local language in accordance with the custom of the place. Sometimes it can also be in the form of a promissory note. A Hundi is the oldest known instrument used for the purpose of transfer of money without its actual physical movement. The provisions of the Negotiable Instruments Act shall apply to hundis only when there is no customary rule known to the people.

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## Transfer of Negotiable Instruments

**Negotiation:** According to SEC 14, 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 negotiated

### (TN) TRANSFER BY NEGOTIATION:-

Negotiation is the process of transferring a negotiable instrument in the manner future in a negotiable instrument

**(TN.1) Mode of Negotiation:** Negotiation by mere delivery: - it does not require signature of the transferor and the transferee becomes the holder. The transferor of the holder instrument is not liable on its dishonor because by not signing as endorser. **E.g.** A delivers a cheque to B for safe custody. This will not amount to negotiation because there is no intention to transfer the ownership of the instrument to B.

- Negotiation by endorsement and delivery: - Sec 15. when the maker of the negotiable instrument signs the same, otherwise than as such, maker, for the purpose of negotiation, on the back or on a slip of paper annexed thereto contain stamp and the signature of the endorser

**(TN.2) Whom may endorse/negotiate:** Maker, Drawer, Payee, Joint makers etc

### (TN.3) Essential requirement of a valid endorsement:

On the back or on a slip of paper annexed (fixed) thereto contain stamp and the signature of the endorser. It must be completed by the delivery of the instrument.

#### (TN3.1) Kinds of Endorsement

- **Blank or general endorsement (sec 16(1)):** An endorsement is said to be blank if endorser signs his name only on the face or back of the instrument. **E.g.** ram sign on the back of the bill. The property in the bill may pass by simple delivery as if the bill is payable to bearer
- **Full or special endorsement (sec 16(1)):-** If an endorser signs his name and adds a direction to pay the amount mentioned in the instrument. **E.g.**, pay to ram
- **Partial endorsement (sec 56):-** When an endorsement declares to transfer to the endorsee a part only of the amount of the instrument, the endorsement is said to be partial. But it is not valid. **E.g.** A is the holder of bill of exchange for RS.1000. he writes on it "pay B Rs. 100". The endorsement is invalid



- **Restrictive endorsement:** - An endorsement is said to be restrictive when it prohibits the further negotiability of the instrument. It merely entitles the holder of the instrument to receive the amount on the instrument for a specific purpose E.g. .pay to ram only.

**(TN3.2) Liability of Endorser on Dishonor:** Every endorser of negotiable instrument is liable to every subsequent party to it provided due notice of dishonor is given to or received by him

E.g. A bill is drawn by A upon B and is payable to C. C endorses the bill to D who in turn

it to E. If B dishonors the bill, E has rights against all the parties.

## Negotiation by Unauthorized Parties

### 1. Lost negotiable instruments

- **Notice to prior parties :-** The owner of the lost bill should give notice of the loss to the parties liable on the bill for they will thereby be prevented from taking it up without proper inquiry
- **Finder acquires no title:** - The finder of the lost bill acquires no title to it. The rightful owner is entitled to recover it from the finder
- **Duplicate of lost bill :-** Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same amount, security to the drawer to cover him against loss
- **Application to the Drawee:-** The party who has lost the bill must make an application to the drawee for the payment at the time it is due
- **Security in case of Loss :-** Any person liable to pay the amount due on a negotiable instrument and called upon by the holder to pay is, before payment, entitled to see the instrument
- **Payment in due course ;-** If the finder obtains payment on the lost bill or note, the person who pays in due course gets a valid discharge for it. But the true owner can recover the money due on the instrument as damages from the finder
- **Rights of holders in due course :-** If the finder of the lost bill, which is endorsed in blank, negotiates it to a bona fide transferee for value, the latter acquires a valid title to it
- **Effect of forgery :-** If the finder of the lost bill forges the endorsement of the loser even the bona fide transferee for value acquires no title to it, for forgery can confer no title

**2. Stolen instruments:** - The position in case of stolen instrument is more or less the same as in the case of a lost instrument. The thief does not get any title to the instrument

**3. Instruments obtained by fraud:**-If a person obtains a negotiable instrument by fraud or compulsion, he is not entitled to enforce its payment as his title is defective

**4. Instruments obtained for an unlawful consideration:**-A negotiable instrument for a consideration of a contract, which is illegal or opposed to public policy, it is void

**5. Forged Instrument & Forged Endorsement:** - forged instrument and endorsement cannot acquire the holder in due course.

#### **(TN.4) Liability of Parties to Negotiable Instrument**

- Liability of drawer (sec 30) :- the drawer of bill of exchange is bound, in case of dishonor by the drawee thereof, to compensate the holder, provided due note of dishonor has been given to or received by the drawer
- Liability of drawee of Cheque (sec 31):- the drawee of a cheque has sufficient funds of the drawer in his hands. In default of such payment, the drawee, i.e., the banker must compensate the drawer for any loss or damage caused by such default
- Liability of maker of note and acceptor of bill( sec 32) :- the maker of a promissory note and the acceptor of a bill of exchange are the persons who are primarily liable to pay the amount to the holder on demand
- Liability of Endorser (sec 356) :- the endorser of a negotiable instrument before maturity is liable to all subsequent holders in case of dishonor of the instrument
- Liability of prior parties to a holder in due course (sec 36) :- every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied
- Liability of prior parties as a principal debtor in respect of each subsequent (following) party:- as between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party
- Discharge of endorser's liability:- where the holder of negotiable instrument, without the consent of the endorser, destroys the endorser's preparation against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument has been paid at maturity.
  1. Effect of forged endorsement :- an acceptor of a bill of exchange already endorsed is not relieved from liability by reason that such endorsement is forged

2. Liability of acceptor of a bill drawn in untrue name :- an acceptor of bill of exchange drawn in a untrue name and payable to drawers order is not relieved from liability to any holder in due course, on the ground being that such name is untrue
3. Liability on negotiable instrument, etc., made without consideration :- a negotiable instrument made, drawn, accepted, endorsed or transferred without consideration which fails, creates no obligation of payment between the parties to the transaction

## **(Es)EnforcementofSecondaryLiability**

### **(ES.1) Secondary liability**

On a negotiable instrument, secondary liability is similar to the liability of a guarantor in a simple contract in the sense that it is contingent liability. In other words, a drawer or an endorser will be liable only if the party that is responsible for paying the instrument refuses to do so. The drawer's secondary liability does not arise until the drawee fails to pay or to accept the instrument, whichever is required

- **Proper and timely presentation:** Presentation is the formal production of a negotiable instrument of payment. Payment can be made by any commercially reasonable means; including oral, written etc. one of the most crucial criteria for proper presentment is timeliness. Failure to present an instrument on time is the most common reason for improper presentment and leads to unqualified endorses being discharged from secondary liability
- **Dishonor:** An instrument is dishonored when the required presentment is excused ( maker died)
- **Proper notice:** Once an instrument has been dishonored, proper notice must be given to secondary parties within thirty days.

### **(PN)PartiesinNegotiableInstrument**

- **Holder:** Who is entitled in his own name to the possession of goods. Holder means the bearer of the bearer instrument
- **Holder in due course:** Becomes the possessor of a negotiable instrument payable to holder.
- A transferee gets better title than the transferor

### **(PN.1)Qualificationofholderindue course**

- He must be a 'holder: He must be entitled to the possession of the instrument in his own name under a legal title and to recover the amount thereof from the parties liable.

- He must be a holder for valuable consideration: There must be some consideration to which law attaches value. The consideration, however, need not be adequate
- He must have become the holder of the negotiable instrument before its maturity: The holder who acquires a negotiable instrument after maturity cannot be a holder in due course.

**E.g.** If a person present cheque in the bank after six months from the given date. It is not valid & he is not holder in due course

- He must take the negotiable instrument complete and regular on the face of it: - it is the duty of every person who takes a negotiable instrument to examine its form and contents thoroughly. If it is incomplete, drawer's name is not there or it is properly stamped, he will not become a holder in due course
- He must have become holder in good faith: - without having sufficient cause to believe that any defect existed in the title of the transferor. This is the most important condition to be satisfied.

### **(PN.2) Privileges of a holder in due course**

- Instrument cleansed of all defects: - once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud, which affected the instrument in some stages of its journey
- Rights not affected in case of an unclear instrument :- the right of holder in due course to recover money is not at all affected even though the instrument was originally an unclear stamped instrument and transferee completed the instrument for a sum greater than what was intended by the maker.
- All prior parties liable: - all prior parties to the instrument continue to remain liable to the holder in due course until the instrument is duly satisfied
- No effect of conditional delivery: - where an negotiable instrument delivered conditionally or for a special purpose and is negotiable to a holder in due course, a valid delivery of it is conclusively presumed and he acquires good title to it
- Instrument obtained by unlawful means or for unlawful consideration :- the person liable to pay on a negotiable instrument cannot, as against a holder in due course, contend that he had lost it, or that It was obtained from him by means of an fraud or for an unlawful consideration
- Every holder is a holder in due course: - the law presumes that every holder is a holder in due course, until any against from opposite parties
- Estoppels against denying original validity of instrument :- the maker of a promissory note, the drawer of bill of exchange and the acceptor of bill of exchange for the honor of the

drawer cannot, in a suit thereon by a holder in due course, reject the validity of the instrument as originally made or drawn

- Endorser not permitted to deny the capacity of prior parties :- the endorser of a negotiable instrument cannot, in a suit thereon by a subsequent holder, reject the signature or capacity to contract of any prior party to the instrument

#### Difference between a Holder and a Holder in Due Course

	HOLDER	HOLDER IN DUE COURSE
1. Consideration	He may become the payee of an instrument even without consideration	He acquires possession for consideration
2. Before maturity	He need not become the possessor before the maturity of the instrument	He must become the possessor before the maturity of the instrument
3. Good faith	He need not become the possessor in good faith	He must become the possessor in good faith
4. Right to have better title than that of transferor	He cannot have a better title than that of transferor	He can have a better title than that of transferor
5. Right to enforce rights against all prior parties:-	He cannot enforce his rights against all the prior parties	He can enforce his rights against all the prior parties
6. privileges	He does not enjoy all the privileges available to holder in due course.	He enjoys some privileges under the act sec 20, 36 etc

#### (DN) Discharge of Negotiable Instruments

- **DN.1 Discharge of Instrument:** - An instrument is said to be discharged only when the party who is ultimately liable thereon is discharged from liability
- **DN.2 Discharge of one or more parties** :- A party is said to be discharged only when a party or parties to a negotiable instrument is discharged and the instrument continues to be negotiable with the liabilities of undischarged parties thereto.

### **DN.1 Mode of discharge of an instrument**

- By payment in due course :- If the maker or acceptor makes payment to the holder of the instrument at or after maturity in good faith and without notice of any defect in the title to the instrument, the instrument is discharged
- By cancellation :- If the holder of an instrument cancels acceptor's or endorser's name with intent to discharge him, the instrument is discharged
- By party primarily liable becoming holder: - If the acceptor of bill of exchange becomes it holder at or after maturity in his own right, the instrument is discharged. This happens by negotiable back
- By express waiver (release):-When the holder of a negotiable instrument at or after its maturity absolutely and unconditionally rejects in writing or gives up his rights against all the parties to the instrument, the instrument is discharged
- By discharge as a simple contract: A negotiable instrument may be discharged in the same way as any other contract for the payment of money.

### **(DN.2) Mode of discharge of one or more parties**

- By payment :- When payment on an instrument is made in due course, both the instrument and the parties to it are discharged
- By cancellation: - Holder may purposely cancel the name of any of the third parties liable under a negotiable instrument with intent to discharge them from liability thereon. Cancellation in order to release a party from liability must be intentional
- By release :- If the holder of a negotiable instrument releases any party to the instrument by any method other than cancellation of names, the party so released and all parties subsequent to him, who have a right of action against the party so released, are discharged from liability
- By taking qualified acceptance :- If the holder of the bill agrees to a qualified acceptance all prior parties whose acceptance is not obtained to such an acceptance are discharged from liability
- By not giving notice of dishonor :- Any party to a negotiable instrument to whom notice of dishonor is not sent by the holder is discharged from liability as against the holder, unless the circumstances are such that no notice of dishonor is required to be sent
- By non – presentation for acceptance of a bill: - When a bill of exchange is payable certain period after view, its holder must present it for acceptance to the drawee within a reasonable time after it is drawn. If he makes a default in making such presentation the drawer and all

endorsers who were liable towards such a holder are discharged from their liability towards him

- By delaying presenting cheque: - It is the duty of the holder of a cheque to present it for payment within reasonable time. If he fails to do so, the drawer is discharged
- By material alteration: - It is that change in the negotiable instrument. Changes in order to be material must alter the business effect of the instrument.

**Difference between discharge of Instrument and Discharge of a Party**

	<b>Discharge of instrument</b>	<b>Discharge of a party</b>
1. When takes place	Where the party who is ultimately liable, is discharged from liability	When any party or parties to an instrument is discharged
2. Negotiability	The instrument ceases to be negotiable	The instrument continues to be negotiable
3. Extinguishment of all rights of action	All rights of action under the instrument are completely extinguished (put to an end)	All rights of action under the instrument are not completely extinguished
4. Discharge of a parties	Discharge of instrument means discharge of all parties.	Discharges of parties does not mean discharge of all parties

## UNIT-II

### THE COMPANY ACT 1956

#### COMPANY ACT 1956:

Company Act 1956 The Company Act came into force from 1 April 1956. The Act was based upon the recommendation of company law committee appointed under the chairmanship of Mr. C. H. Bhabha on 25 - 10-1950. The committee submitted its report in 1952. The Indian company act extends to the whole India.

#### Company:

COMPANY Section 3(1)(i)&(ii) of the Companies Act, 1956 defines a company as: a company formed and registered under this Act or an existing Company. Existing Company means a company formed and registered under any of the earlier Company Laws

#### Incorporation under Company Act 1956:

**1. Separate legal entity:** Separate legal entity a company is a separate legal entity means it is different from its members. It works as an individual body. It can make contracts, open a bank account, can sue and be sued by others.

- **Artificial person:** Artificial person A company is a purely a creation of law. It is invisible, intangible and exists only in the eyes of law. It has no soul, no body, but has a position to enter or exit into a contract. In short it can do everything just like a natural person.
- **Perpetual existence sec 34(2):**
- Perpetual existence sec 34(2) Section 34(2) of the act states that an incorporated company has perpetual life. The life of the company is not related to the life of the members. Law creates the company and law alone can dissolve it. The existence of the company is not affected by death, insolvency, retirement or transfer of share of members.
- **Common seal:**
- Common seal a company being an artificial person cannot work as a natural being. Therefore, it has to work through its directors, officers and other employees. Common seal used as an official signature of a



share held by him, he cannot be called upon to bear the loss from his personal property.

➤ **Transferability of share sec 82:**

Transferability of share sec 82 the share of a company is freely transferable. The shareholder can transfer his share to any person without the consent of other members. A company cannot impose absolute restrictions on the rights of member to transfer their shares.

**Types of Companies (Registered under company act (1956):**

Types of companies (Registered under company act 1956)

**Incorporated:**

- **Chartered Companies:** These companies are incorporated under a special charter such as the East India Company. The Bank of England. The company act does not apply to it.
- **Statutory Companies:** These companies are incorporated by special act of legislature (act of parliament or state legislature) E. g. RBI, UTI, LIC.
- **Registered Companies:** Companies registered under the Indian Companies Act, 1956 are called registered companies. To become a registered company one has to take the certification of incorporation from the registrar. Cont...

**Company with Liability:**

Company With Liability Company Limited By Share [sec 12 (2) a] companies in which the liability of its members is limited to the extent of the amount unpaid on the shares held by a particular member. COMPANY LIMITED BY GUARANTEE The liability of members is limited to a fixed amount which members undertake to contribute to the assets of the company in case of its winding up.

**Unlimited liability:**

Wherein members are liable for the debts of the company irrespective of their interest in the company.

**Number of members:**

Number of members Private Companies [sec 3(1)(iii)] A private company is one which, by its Article of Association restricts the right to transfer its share, if any limits the maximum number of its member to fifty prohibits any invitation to the public to subscribe for any share or debenture of the company.

### **Public company [sec 3(1) (iv)]:**

A public company means a company which is not a private company. In other words, a public company means a company which by its article does not limit the number of its members. Prohibit any invitation to the public to subscribe for any share in, or debentures, of the company.

### **Companies according to control:**

**HOLDING AND SUBSIDIARY COMPANY** where a company has control over another company, it is known as the holding company. The company over which control is exercised is called the subsidiary company.

### **Ownership:**

**GOVERNMENT COMPANY (sec 617)** a government company means any company in which at least 51% of the paid up share capital is held by the central government or by any state government or partly by one or more state governments.

### **Memorandum of Association:**

The first step in the formation of the company is to prepare a memorandum of association. It is one of the documents which has to be filed with the registrar of the companies at the time of incorporation of a company. It is a vital document; it tells about the object of the company's formation, the powers of the company as well as the boundaries beyond which the action of the company cannot go.

### **Contents of Memorandum of Association**

Name clause, registered office clause, Object clause, Doctrine of ultra-virus, Liability clause, and Capital clause

### **Importance of memorandum:**

It defines the rights and liabilities of the members. It shows the capital structure of the company. It shows the object of the company. It specifies the state in which the registered office of the company is situated. It shows the constitution of the company. It specifies the conditions under which the company has been incorporated.

## **Article of Association:**

### **Contents of article of Association:**

- Rights of different classes of shareholder.
- Use of common seal of the company.
- Keeping of book of accounts and their audit.
- Appointment, powers, duties, salary of MD, manager, and secretary.
- Borrowing power of directors.
- Voting rights of member.
- Board meetings and proceedings. Winding up company.

### **Prospectus**

A prospectus, as per Section 2(36), means any document described or issued as prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares or debentures of a body corporate. Thus, a prospectus is not merely an advertisement; it may be a circular or even a notice. A document shall be called a prospectus if it satisfies two things:

- (a) It invites subscription to shares or debentures or invites deposits.
- (b) The aforesaid invitation is made to the public.

### **Duties of Director**

#### **Statutory Duties:**

- **To file return of allotment:** Section 75 of the Companies Act, 1956 requires a company to file with the Registrar, within a period of 30 days, a return of the allotments stating the specified particulars.
- **Not to issue irredeemable preference share or shares or share redeemable after 20 years.**
- **To disclose interest**
- **To disclose receipt from transfer of property.**
- **To disclose receipt of compensation from transferee of shares**
- **Duty to attend Board meetings**
- **Other Duties:**
  - To convene statutory, Annual General meeting (AGM) and also extraordinary

general meetings

- To prepare and place at the AGM along with the balance sheet and profit & loss account a report on the
- company's affairs including the report of the Board of Directors
- To authenticate and approve annual financial statement
- To appoint first auditor of the company
- To appoint cost auditor of the company.

**General Duty:**

- Duty of good faith,
- Duty to care,
- Duty not to delegate

**Director's Liability:**

- Breach of fiduciary duty
- Ultravires acts,
- Negligence,
- Malafide acts

## UNIT-3

### 3. INDUSTRIAL LAW

#### INDUSTRIAL LAW

##### Meaning of Industrial Law

The body of law relating to relationships between employers (and their representatives) employees (and their representatives), and government.

##### An Overview of Factories Act 1948:

The first factories act in India was passed in 1881. It was designed primarily to protect children and to provide for some health and safety measures. Hence new factories act was passed in 1948 and came into force in 1<sup>st</sup> April, 1949.

##### Factory:

A factory is a premises whereon 10 or more persons are engaged if power is used, or 20 or more person are engaged if power is not used, in a manufacturing process

##### Objectives

- It protects the interests of workmen
- It ensures better working conditions in a workplace
- It regulates condition of employment of young person's including women
- It provides for safe and healthy working conditions inside factories
- It requires the employer to take certain minimum steps for the welfare of workers
- It ensures uniformity in the number of working hours and leave with wage.

**Meaning of Worker:** A person who is working inside the organization for remuneration

**Meaning of Occupier:** Occupier of a factory means the person who has ultimate control over the affairs of the factory. In the case of firm or other association of individuals, any one of the partners or members thereof shall be deemed to be the occupier. In the case of a factory owned or controlled by the central government or any state government or any local authority, the person appointed by the government shall be deemed to be the occupier

##### • Duties of Occupier:-

1. The provision and maintenance of plant and systems of work in the factory without risk

2. The arrangement in the factory for ensuring safety and absence of risk to health in connection with the use, handling, storage and transport of articles and substances
3. The provision of such information, instruction training and supervision as are necessary to ensure the health and safety of all workers at work
4. The maintenance of all places of work in the factory in a condition that is safe and without risk to health
5. Prepare, revise, a written statement of this general policy with respect to the health and safety of the workers at work

### **Provision of Factories Act 1948**

1. Health measures
2. Safety measures
3. Welfare measures

### **Rules relating to the health measures**

To take care of the health of workers in factories, the Factories Act, 1948 has provided for certain measures which are stated below:

1. **Cleanliness (sec 11):-** Every factory shall be kept clean and free from smell arising from any drain, privy or other irritation. It is specifically provided that in a factory:
  - a. All the addition of dirt and refuse shall be removed daily, by sweeping or any other method, from the floors and benches of work rooms and from stair cases and passages, and disposed off in a suitable manner;
  - b. The floor of every room shall be cleaned. This shall be done at least once every week by washing, using disinfectant or by some other effective method;
  - c. Where a floor is liable to become wet in the course of any manufacturing process to such an extent as is capable of being drained, effective means of drainage shall be provided.
  - d. All inside wall and sliding doors, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall be painted or varnished, and repainted and revarnished at least once in a period of five years; where they are repainted or varnished, be cleaned at least once in a period of 14 months by such methods as may be prescribed by the Government.

- e. Where painting or varnishing is not required, be kept white washed or color washed, and the whitewashing or color washings shall be carried out at least once in every period of 14 months.
2. **Disposal of waste: - Section 12:** This section specifies on disposal of wastes and effluents (odor). That every factory should make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on therein.
  3. **Ventilation and temperature: - Section 13:** This section focuses on ventilation and temperature maintenance at workplace. Every factory should work on proper arrangements for adequate ventilation and circulation of fresh air.
  4. **Dust and fume: - Section 14:** (This section details on the proper exhaustion of dust and fume in the Factory. In this it is mentioned that factory which deals on manufacturing process should take care of the proper exhaustion of dust, fume and other impurities from its origin point.). In every factory, where due to manufacturing process, dust or fume or other impurity arise which is likely to be injurious to the health of workers employed, effective measures shall be taken to prevent its inhalation, and accumulation in any workroom. If it is necessary to install exhaust appliances, it would be installed near the point of origin of the dust, fumes, or other impurity. Measures shall be taken to enclose such points.
  5. **Overcrowding:** - No room in any factory shall be overcrowded to such an extent which becomes injurious to the health of the workers employed therein. The Chief Inspector of factories by order in writing shall fix the maximum number of workers to be employed in each room in the factory.
  6. **Lighting:** - The Factories Act provides for sufficient and suitable lighting, natural or artificial where workers are working or passing through. Provision of cleaning of inner and outer surface is provided for all glazed windows and skylights used for the lighting of the workrooms.
  7. **Drinking water:-Section 18:** This section specifies regarding arrangements for sufficient and Pure drinking water for the workers. There are also some specified provisions for suitable point for drinking water supply. As in that drinking water point should not be within 6 meters range of any washing place, urinal, latrine, spittoon, open drainage carrying effluents. In addition to this a

factory where there are more than 250 workers provisions for cooling drinking water during hot temperature should be made.

8. **Restrooms:** - **Section 19:** This section provides details relating to restroom construction at factories. It mentions that in every factory there should be sufficient accommodation for restroom which should be provided at conveniently situated place. It should be kept clean and maintained. There is provision to provide separate restroom for both male and female workers.

9. **Spittoons:** - **Section 20:** This section specifies regarding proper arrangements of spittoons in the factory. It is mentioned that in every factory there should be sufficient number of spittoons situated at convenient places and should be properly maintained and cleaned and kept in hygienic condition.

### **Rules relating to safety of workers**

The Factories Act, 1948 also provides provisions relating to safety measures for the workers employed herein. This is to ensure safety of workers working on or around the machines. The detailed information on each provision relating to safety measures is as under:

**Fencing of machinery:** - In every factory, measures should be taken for secured fencing of machinery. Fencing is necessary in respect of:

- Every moving part of a prime mover;
- Every part of an electric generator, a motor or a rotary convertor;
- Every part of transmission machinery; and
- Every dangerous part of any other machinery.

#### **1. Safety measures in case of work on or near machinery in movement:-**

Where in any factory, it becomes necessary to examine any part of machinery, while the machinery is in motion, such examination shall be carried out only by specially trained adult male workers. Such workers shall wear tight fitting clothing and their names shall be recorded in the register prescribed in this connection. The machinery in motion with which such workers would otherwise be liable to come in contact during the course of its examination, shall be securely fenced to prevent such contact. No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or transmission machinery, while the machinery is in motion.



2. **Restriction on women or young person to work on such machines :-** Restriction on women or young person to work on such machines nearby dangerous machines

3. **Employment of young person on dangerous machines:-**

The Factories Act prohibits employment of young person's on certain types of machines as specified under Sec.23 of the Act. They can work only after they have been fully instructed as to the dangers arising in connection with the machines and the precautions to be observed. They should have received sufficient training in work at such machines. They should be under adequate supervision by a person who has a thorough knowledge and experience of the machines.

4. **Striking gear (equipments) and devices for cutting off power:-**

Suitable striking gear or other efficient mechanical appliances shall be provided and maintained, and used to move driving belts to and from fast and loose pulleys which form part of transmission machinery. Such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back onto the fast pulley. Driving belts when not in use shall not be allowed to rest or ride upon shaft in motion.

5. **Self-acting machines:-**

No traversing part of a self-acting machine in any factory, and no material carried thereon shall, if the space over which it runs, is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of eighteen inches from any fixed structure which is not a part of the machine. This is to safeguard the workers from being injured by self-acting machines.

6. **New machinery:**

Every set screw, bolt or key on any revolving shaft, spindle, wheel, or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger in all machinery driven by power and installed in the factory. The State government is authorized to make rules specifying further safeguards to be provided in respect of any dangerous part of any particular machine or class or description of machines in this connection.

**7. Prohibition of employment of women and children near cotton openers:**

Nowomen orchild shall beemployed in anypart of afactorywherepressinga cotton opener is at work.

**8. Hoists and lifts:-**

i) Hoists and lifts shall be of good mechanical construction, sound material and of adequate strength;

ii) They shall be properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months. A register shall be kept containing the prescribed particulars of each such examination;

**9. Revolving machinery:-**

Effective measures shall be taken in every factory to ensure that the safe working nonessential speed of every revolving vessel, cage, basket, flywheel, pulley disc or similar appliance driven by power is not exceeded. A notice indicating the maximum safe working nonessential speed ofeveryrevolvingmachineryshall beput up in everyroom in afactoryin which the process of grinding is carried on.

**10. Pressureplant:**

If in any factory, any part of the plant or machinery used in manufacturing process isoperated at a pressure above atmospheric pressure, effective measures shall be taken toensure that the safe working pressure of such part is not exceeded.

**11. Floors,Stairsandmeansof access:**

a) all floors, steps, stairs and passages shall be of sound construction and properly maintained, and where it is necessary to ensure safety, steps, stairs, and passages shall be provided with substantial hand rails;

b) there shall, so far as is reasonably practicable, be provided, and maintained safe means of access to every place at which any person is at any time required to work.

**12. Pits,sumps,openingin floorsetc:**

Which may be a source of danger, shall be either securely covered or securely fenced. Securelyfencinga pit means coveringor fencing it in such a waythat it ceases to be a source of danger.

**13. Excessive weights:** No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him an injury.

**14. Protection of eyes:** If the manufacturing process carried on in any factory is such that it involves:

- a. Risk of injury to the eyes from particles thrown off in the course of the process or
- b. Risk to the eyes by reason of exposure to excessive lights, effective screens or suitable spectacles shall be provided for the protection of persons employed on, or in the immediate nearness of, the process.

**15. Precautions against dangerous fumes, gases, etc:-**

- If any manufacturing process in the factory produces dust, gas, fume, or vapour of such a nature as is likely to explode on sudden increase, measures shall be taken to prevent any such explosion by:
  - effective enclosure of the plant or machinery used in the process;
  - removal or prevention of the accumulation of such dust, gas, fume or vapor;
  - Exclusion or effective enclosure of all possible sources of ignition.

**16. Precautions in case of fire:-**

- Every door, window or other exit affording a means to escape in case of fire shall be distinctively marked in a language understood by the majority of the workers. Such marking should be in red letters of adequate size or by some other effective and clearly understood sign.
- An effective and clearly audible means of giving warning, in case of fire, to every person shall be provided in the factory.
- A free passage-way giving access to each means of escape in case of fire shall be maintained for the use of all workers in the factory.
- Effective measures shall be taken to ensure that in every factory all workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such a case.

**17. Safety of Building & Machinery:-**

In case it appears that any building, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, the manager of the factory may be served an order

specifying measures to be adopted as prescribed. Further, in case it appears that the use of any building, machinery or plant in a factory involves imminent danger to human life or safety, an order may be served prohibiting the use of such building or machinery, until it has been repaired or altered.

### **18. Safety Officer:-**

1. In every factory:

(i). Wherein one thousand or more workers are ordinarily employed, or

(ii). Wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory, the occupier shall, if so required by the State Government by notification in the Official Gazette, employ such number of Safety Officers as may be specified in that notification.

(2) the duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government.

### **3.23 Rules relating to welfare measures**

#### **1. Washing facilities:-**

- Adequate and suitable facilities for washing for the use of workers in the factories.
- Separate and adequately screened washing facilities for the use of male and female workers.
- Such facilities being conveniently accessible, and being kept clean.

#### **2. Storing and drying of clothes:-**

A suitable place for keeping clothes not worn during working hours shall be provided in every factory. Facilities shall also be for the drying of wet clothes.

#### **3. Facilities for Sitting**

For workers who are to work in a standing position, suitable arrangement for sitting shall be provided in the factories. This is to enable workers to take advantage of any opportunity for rest which may occur in the course of their work.

#### 4. First–Aid appliances

First-aid boxes or cupboards equipped with the required contents should be provided for workers in every factory. This should be readily accessible to them during all working hours. The number of such first aid boxes shall not be less than one for every 150 workers employed in the factory. Such first-aid box shall be kept in the charge of a responsible person who is trained in first-aid treatment and who shall be available during the working hours of the factory. In factories employing more than 500 workers, there shall be an ambulance room. It should contain the prescribed equipments, and be in the charge of such medical and nursing staff as may be prescribed.

5. **Canteens:** In factories employing more than 250 workers, there shall be a Canteen for the use of workers. The government may prescribe the rules in respect of the food stuff to be served in the canteen;

- Charges to be made;
- Constitution of a managing committee for the canteen ; and
- Representation of the workers in the management of the canteen

6. **Shelters, rest rooms and lunch rooms:** In every factory where more than 150 workers are ordinarily employed, the occupier should make adequate and suitable arrangement for shelters or rest rooms and lunch rooms with provision of drinking water where the workers can take rest or eat meals brought by them. However any canteen, which is maintained in accordance with the provisions shall be regarded as part of the lunch and rest room

7. **Crèches:** In every factory, where more than 50 women workers are employed, provision shall be made for suitable and adequate room for the use of children under the age of six years of such women. Such a room shall be adequately lighted and ventilated. It shall be maintained in clean and sanitary conditions under the Charge of a woman trained in the care of children and infants.

8. **Welfare officer:** The factories Act also provides for employment of welfare officers with prescribed qualification to look into the implementation of various facilities provided for. Such provisions exist in every factory employing More than 500 workers.

#### Working Hours

1. Adults
2. Young person and children

3. Women

**Working hours for adults**

1. **Weekly hours:** - Weekly hours. No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.
2. **Weekly holidays:** - Weekly holidays. No adult worker shall be required or allowed to work in a factory on the first day of the week unless:
  - He has or will have a holiday for a whole day on one of the three days immediately before or after the first day,
  - Delivered a notice at the office of the Inspector of his intention to require the worker to work on the first day and of the day which is to be substituted.

3. **Compensatory holidays**

**Compensatory Holiday:** - Section 52, a worker is deprived of any of the weekly holidays, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number of the holidays so lost.

4. **Daily working hours:** - According to section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day, 48 hours in a week
5. **Intervals for rest:** - An adult worker in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour. The provisions of sub-section (1) so however that the total number of hours worked by a worker without an interval does not exceed six.
6. **Spread over time:** Spread over. The periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, they shall not spread over more than ten and a half hours on any day:
7. **Night shifts:** - Where a worker in a factory works on a shift which extends beyond midnight,
  - (a). For the purposes of sections 52 and 53, a holiday for a whole day shall mean in his case a period of twenty four consecutive hours beginning when his shift ends;
  - (b). The following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

8. **Prohibition of overlapping shifts:-** Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time.

9. **Extra wages for overtime:-** Where a worker works in a factory for more than nine hours in any day or for more than forty eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. "ordinary rate of wages"

means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

### **Employment of young Person and Children**

1. **General prohibition as to employment of children:** No child who has not completed his fourteenth year shall be required or allowed to work in any factory. A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless:

- A certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and
- Such child or young person carries while he is at work a token giving a reference to such certificate.

2. **Certificate of fitness:** A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

3. **Working hours for children:** A child shall not be required or allowed to work for more than four and half hours in any day. He is not permitted to work during night i.e. 10pm to 6am

- a. The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each;
- b. No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

c. No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.

4. **Notice of periods of work for children:-** There shall be displayed and correctly maintained in every factory in which children are employed, in accordance with the provisions of sub-section (2) of section 108 a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.

5. **Register of child worker:-**The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing-

- The name of each child worker in the factory,
- The nature of his work,
- The group, if any, in which he is included,
- Where his group works on shifts, the relay to which he is allotted, and
- No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.
- The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

6. **Medical examination: -**Where an Inspector is of opinion-

- That any person working in a factory without a certificate of fitness is a young person, or
- That a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be checked by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.



### **Employment of Women**

1. **Moving Part** :- no women or young person shall be allowed to clean or adjust any part of a machinery in motion if it would expose the women to risk of any injury from any moving part
2. **Cotton-Opener**:-no women or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work. However they may be employed if the cotton opener is separated and feed end is partitioned
3. **Suitable Room (Crèche)** :- in every factory more than 30 women workers are employed, there shall be provided and maintained a suitable room or rooms for use of children under the age of 6 years of such women
4. **Working hours** :- a woman shall not be required or allowed to work in a factory for more than 48 hours in any week or 9 hours in any day
5. **Restriction on employment of women** :- a woman shall be allowed to work in a factory only between the hours of 6.00am to 7.00 pm and no woman is allowed to work between the hours of 10.00pm to 8.00am
6. **Certificate of Fitness** :- a female employee who is in the age of below 17 allowed to work in a factory after getting certificate for fitness
7. **Dangerous Operations**:- where the state government is of opinion that any operation carried on in a factory exposes any person employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules prohibiting the employment of women in that operation.

### **Provision relating to hazardous process (comes under safety measures)**

#### **1. Site appraisal committees**

The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory, appoint a Site Appraisal Committee consisting of:

- Constitution of the committee
- The Chief Inspector of the State who shall be its Chairman;

- A representative of the Central Board for the Prevention and Control of Water Pollution appointed by the Central Government under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- A representative of the Central Board for the Prevention and Control of Air Pollution referred to in section 3 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- A representative of the State Board for the Prevention and Control of Air Pollution referred to in section 5 of the Air (Prevention and Control of Pollution) Act, 1981
- A representative of the Department of Environment in the State;
- A representative of the Meteorological Department of the Government of
- India;
- An expert in the field of occupational health; and
- A representative of the Town Planning Department of the State Government, and not more than five other members who may be co-opted by the State Government who shall be-
- A scientist having specialized knowledge of the hazardous process which will be involved in the factory,

**Functions of the committee:**

(a). The Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of ninety days of the receipt of such applications in the prescribed form.

(b). The Site Appraisal Committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.

(c). No further approval required: Where the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established.

## **2. Compulsory disclosure of information by the occupier**

Disclosure to whom : The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority within whose authority the factory is situated and the general public in the area.

- a. Policy with regard to health and safety of workers:- The occupier shall, at the time of registering the factory involving a hazardous process lay down a detailed policy with respect to the health and safety of the workers employed therein and intimate such policy to the Chief Inspector and the local authority and, thereafter, at such intervals as may be prescribed, inform the Chief Inspector and the local authority of any change made in the said policy.
- b. On-site emergency plan and disaster control measures:- Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and to the general public living in the surrounding area of the factory the safety measures required to be taken in the event of an accident taking place.
- c. Information to the chief inspector before commencement:- if such factory proposes to engage in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process, inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed.
- d. Handling, usage, transportation of hazardous substances :- The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling, usage, transportation and storage of hazardous substances inside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the surrounding area.

### 3. Special responsibility of occupier:-

(a) Maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured.

(b) Appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed.

(c) Provide for medical examination of every worker.

### 4. Workers participation in safety management:

Workers' participation in safety management. (1) The occupier shall, in every factory where a hazardous process takes place, or where hazardous substances are used or handled, set up a Safety Committee consisting of equal number of representatives of workers and management to promote cooperation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf

### 5. Rights of workers to warn about imminent danger:

Rights of workers to warn about imminent danger.

a. Where the workers employed in any factory engaged in a hazardous process have reasonable fear that there is a chance of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.

b. It shall be the duty of such occupier, agent, manager or the person in charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the nearest Inspector.

### **3.2.4.5 Annual Leave with Wages**

1. **Leave Entitlement:-** Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of--

(i) If an adult, one day for every twenty days of work performed by him during the previous calendar year;

(ii) If a child, one day for every fifteen days of work performed by him during the previous calendar year.

#### **2. Computation of 240 days:**

- any days of layoff, by agreement or contract or as permissible under the standing orders;
- In the case of a female worker, maternity leave for any number of days not exceeding twelve weeks.

3. **Discharge, dismissal, death of employment:-** If a worker is discharged or dismissed from service or quits his employment or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the small amount of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, or death calculated at the rates specified in sub-section (1),

4. **Treatment of fraction of leave:** - fraction of leave of half a day or more shall be treated as one full day's leave, and fraction of less than half a day shall be omitted.

#### **5. Treatment of unavailed leave:-**

If a worker does not in any one calendar year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year. Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of a child:

#### **6. Application for leave:**

A worker may at any time apply in writing to the manager of a factory not less than fifteen days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year: Provided that the applications shall be made not less

than thirty days before the date on which the worker wishes his leave to begin, if he is employed in a public utility service.

#### **7. Wages during leave period:**

For the leave allowed to him at a rate equal to the daily average of his total full time earnings for the days on during the month immediately preceding his leave, exclusive bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles.

#### **Penalties**

1. **General penalty for offences:-**Any factory there is any breaking of any of the rules as per Act , the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both, and if the breach is continued after certainty, with a further fine which may extend to one thousand rupees for each day on which the breach is so continued
2. **Liability of owner:** Where in any premises separate buildings are leased to different Occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services, such as approach roads, drainage, water supply, lighting and sanitation.

#### **Additional Information for your reference:-**

Where in any premises, independent or self-contained, floors or flats are leased to different occupiers for use as separate factories; the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of this Act in respect of:

- Latrines, urinals and washing facilities insofar as the maintenance of the common supply of water for these purposes is concerned;
- Fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of an occupier;
- Safe means of access to the floors or flats and maintenance and cleanliness of stair cases and common passages;
- Precautions in case of fire;

- Maintenance of hoists and lifts; and
- Maintenance of any other common facilities provided in the premises.
- The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out the provisions of sub-section (3).
- The provisions of sub-section (3) relating to the liability of the owner shall apply wherein any premises independent rooms with common latrines, urinals and washing facilities are leased to different occupiers for use as separate factories: Provided that the owner shall be responsible also for complying with the requirements relating to the provision and maintenance of latrines, urinals and washing facilities.
- The Chief Inspector shall have, subject to the control of the State Government, the power to issue orders to the owner of the premises referred to in sub-section (5) in respect of the carrying out of the provisions of section 46 or section 48.
- Where in any premises portions of a room or a shed are leased to different occupiers for use as separate factories, the owner of the premises shall be liable for any contravention of the provisions of-

### **3. Penalties for obstructing inspector**

Whoever willfully obstructs an Inspector in the exercise of any power or fails to produce on demand by an Inspector or other documents in his custody or prevents any worker in a factory from appearing before, or being examined by, an Inspector, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

### **4. Wrongfully disclosing results**

Penalty for wrongfully disclosing results of analysis under section 91, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

### **5. Offences by workers**

If any worker employed in a factory breaks any provision of this Act, he shall be punishable with fine which may extend to five hundred rupees. Where a worker is sent down for an offence punishable under sub-section (1), the occupier or manager of the

factory shall not be deemed to be guilty of an offence in respect of that breach, unless it is proved that he failed to take all reasonable measures for its prevention.

#### **6. False certificate of fitness**

Penalty for using false certificate of fitness. Whoever knowingly uses or a certificate granted to another or knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with imprisonment for a term which may extend to two months or with fine which may extend to one thousand rupees or with both.

#### **7. Double employment of child:-**

Penalty for permitting double employment of child. If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to one thousand rupees.

#### **8. Power of court to make orders**

Where the occupier or manager of a factory is convicted of an offence punishable under this Act the Court may, in addition to awarding any punishment.

## **PAYMENT OF WAGES ACT, 1936**

### **Definition of Wages:**

Wages payable under the contract of employment must be ascertained by the authority under section 15.--The definition of "wages" makes it clear that the authority must decide as to what remuneration was payable under the contract of employment. To say that authority has no control to entertain an application if the wages stated by the employee are denied by the employer, will defeat the Act itself and make it absolutely ineffective. The authority is certainly competent to construe the terms of the contract of employment in order to determine what wages are to be paid

### **Purpose:**

To prevent unauthorized deductions being made from wages and chance fines being imposed on the employed person:

- **Medium Payment**

All wages shall be paid in current coin or currency notes or in both.



- **Time of Payment**
- **The wages of every person employed upon or in-**
- Any railway, factory or [industrial or other establishment] upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.

**Deduction from Wages:** The wages of an employed persons shall be paid to him without deductions of any kind except those authorized by or under this Act.

**1. Fines:**

- No fine shall be imposed on any employed persons save in respect of such acts and omission on his part as the employer, with the previous approval of the State Government or of the prescribed authority may have specified by notice under sub-section (2).
- The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage period.
- No fine imposed on any employed person who is under the age of fifteen years

**2. Deduction from absence from duty:** - (Deductions may be made under clause (b) of sub section (2) of section 7 only) on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

**3. Deduction for damage or loss of money or goods:** - ((1) A deduction under clause (c) or clause (o) of sub-section (2) of section 7) shall not exceed the amount of the damage or loss cause to the employer by the neglect or default of the employed person.

**4. Deduction for house –accommodation:-**deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette

**5. Deduction for other facilities and services sec 7(2)e and 12:-**an employed person may be provide with various facilities and services like transport, supply of electricity, water etc. deduction can be made for such facilities:

- The amount of deduction should not exceed the amount equivalent to the value of such facilities and service.

6. **Deduction for recovery of advance** :-it is very often that money may be advanced to an employed person to meet out various types of expenses in respect of marriage, death, religious function, travelling or conveyance etc., Sec 7(2)(f) authorizes the deductions for

- Therecoveryof advance of whatever nature
- Theinterest dueon suchadvance
- Foradjustmentofover–paymentof wages

7. **Deduction for the recovery of loans**: - (Deductions for recovery of loans granted under sub-section (2) of section 7) shall be subject to any rules made by the State Government regulating the extent to which such loans may be granted and the rate of interest payable thereto.

8. **Deduction for income tax**: - it is responsibility of the employer to see that deduction on account of income tax is made before the wages are paid to any employed person. His act accordingly authorizes such deductions from the wages of an employed person

9. **Deduction for provident fund sec 7 (2)(j)**:- deductions forsubscriptions to and forrepayment of advances from any provident fund to which the Provident Funds Act, 1925 applies

10. **Deduction for payment to co-operatives societies**: - deductions for payments to co-operative societies approved by the State Government

11. **Deduction for payment to a scheme of insurance of a post office**: - deduction for payment to a scheme of insurance maintained by the Indian post office, is allowed provided deductionsare made subject to such conditions as the state government any impose

12. **Deduction for payment of life insurance premium**: - deduction can be made for payment of any premium to the life insurance corporation of India, on the life insurance policy of employed person. But the reduction is subject to the written authorization given by theemployees for such deduction

13. **Deduction for payment to post office saving bank**: - sec 7(2) (k) authorizes deduction for being deposited in any post office saving bank in furtherance of any savings scheme for centralof any state government. But these deductions are subject to:-

- a. thewrittenauthorizationoftheemployedperson
- b. such condition asmaybeimposedbythe stategovernment

**14. Deduction for payment of contribution to certain funds:-** deduction can be made with written authorization of the employed person, for the payment of his contribution to any fund constituted by the employer or the trade union registered under the trade union act, 1926 for the welfare of the employed person or the member of their families and approved by the state government

**15. Deduction for payment of certain fees:** - deduction can be made, with the written authorization of the employed person, for the payment of fees payable by him for membership of any trade union registered under the trade union act, 1926

**16. Deduction for payment to prime minister's national relief fund or any other fund:** - deduction can be made with the written authorization of the employed person, for contribution to the prime minister's national relief fund or to such other fund as the central government may issue by notification in the official gazette

- **Extent of total deductions**

The deduction from the wages should not exceed

- a. 75% in case co-operative societies
- b. 50% in any other case

### **Enforcement of Act**

#### **Inspectors:**

- An Inspector of Factories appointed under sub-section (1) of section 8 of the Factories Act 1948 (63 of 1948) shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.
- The State Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.
- The State Government may by notification in the Official Gazette appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits within which and the class of factories and industrial or other establishments in respect of which they shall exercise their functions.

#### **Power and functions of Inspector**

- Make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made there under are being observed;

- with such assistance if any as he thinks fit enter inspect and search any premises of any railway factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act;
- (c). Supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment;
- Seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer;
- **Appointment of authority (sec 15(1))**:- the state government to appoint some person as the authority to hear and decide for any specified area all claims arising out of it
  - Deductions from the wages
  - Delayed in payment of wages etc
  - a. **Appointed authority :-**
    - A1. A presiding officer of any labor court
    - A2. Any commissioner for workmen's compensation
    - A3. Judge of a civil court
  - b. **File application:-**
    - Any employed person, members from trade union, any inspector appointed under this act can apply the application in case of Deductions from the wages without authorization, Delayed in payment of wages etc
  - c. **Power of authorities appointed:-** they have power to
    - C1. Taking evidence
    - C2. Enforcing the attendance of witnesses
    - C3. Compelling the production of documents etc
- **Penalty for offences (20)**
  - a. **Delaying payment (20(1))** :- whoever being responsible for the payment of wages to an employed person delays payment of wages within the period laid down under the act or makes unauthorized deduction from wages shall be punishable with the fine which shall not be less than 200 but which may extend to 1000.
  - b. **Not paying wages :- sec 20(2)**

B1. Fixes the wages period exceeding one month B2.

Does not pay wages on working days

B3. Does not pay wages in current coins B4.

Does not record fines

B5. Does not display the rule

He shall be punishable with a fine which may extend to 500

c. **Failure to maintain record** :- Whoever being required under this Act to maintain any records or registers or to furnish any information or return--

(a). Fails to maintain such register or record; or

(b). Willfully refuses or without lawful excuse neglects to furnish such information or return; or

(c). Willfully furnishes or causes to be furnished any information or return which he knows to be false; or

(d). Refuses to answer or willfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act; shall, for each such offence, be punishable with fine<sup>2</sup> [ which shall not be less than two hundred rupees but which may extend to one thousand rupees].

d. **Penalty for Obstructing etc. Inspector**:-

a. Willfully obstructs an Inspector in the discharge of his duties under this Act; or

b. Refuses or willfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorized by or under this Act in relation to any railway, factory or <sup>2</sup>[ industrial or other establishment]; or

c. Willfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act; or

prevents or attempts to prevent or does anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under this Act; shall be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

d. **Subsequent offence** : If any person who has been convicted of any offence punishable under the act, he shall be punishable with imprisonment for a term which shall not be less than 1

month but which may be extend to 3 months, or with fine which shall not be less than 500 but which may extend to 3000 or with both.

### **Payment of Bonus Act, 1956**

#### **Meaning of Payment of Bonus Act, 1956**

Act to provide for the payment of bonus to persons employed in certain Establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

**Introduction:** - In due course of time, bonus has acquired the meaning of an annual payment which an employee may claim as a indicator of right. This was based on following two circumstances

- a. That there is a surplus available out of the profit from which bonus can be given
- b. That there is a gap between the present wage given and living wages and that a bonus is intended to bridge these two

#### **Object and scope of the Payment of Bonus Act, 1956**

- To define the principle of payment of bonus according to the prescribed formula
- To provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of set-off and set-on
- a. **Application of Act:** - It shall apply to
  - Every factory; and
  - Every other establishment in which twenty or more persons are employed on any day during an accounting year:
- b. **Act does not apply to certain classes of Employees Sec 32:**
  - Employee employed in life insurance of India
  - Employees employed in any department of central government or state government or local authority
  - Employees employed through contracts for building operations
  - Employees employed by:
    - Indian Red Cross society
    - Universities and other educational institutions.
    - Institutions established not for the purpose of profit

### 3.5.3.Important Definition

- a. **Employee** : “Employee” means any person employed on a salary or wage not exceeding in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;
- b. **Employer** : A legal entity that controls and directs a servant or worker under an express or implied contract of employment and pays (or is obligated to pay) him or her salary or wages in compensation.
- c. **Salary or wage** : It is remuneration paid by the employer to the employee for his work or service in the organization
- d. **Establishment**:-SEC3oftheactsprovidesthatthewordestablishmentshallincludedallits departments, undertaking and branches where ever it has whether situated in the same place or in different places and the same shall be treated as part of the same establishment for the purpose of computation of bonus under this act
- e. **Accounting year mean**: 1)"Accounting year"means:
  - (a) Theyear commencingonthe 1st dayof April; or
  - (b) If the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer,the year ending on the day on which its accounts are so closed and balanced :

#### Calculationof amountpayableabonus

- a. **Computation of Gross Profits** :The gross profits derived by an employer from an establishment in respect of the accounting year shall:
  - In the case of a banking company, be calculated in the manner specified in the First Schedule;
  - Inanyothercase, becalculated inthemannerspecified intheSecond Schedule
- b. **Deductionfromgrossprofits:Charges,namely**:
  - (a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act, or in accordance with the provisions of the agricultural income-tax law, as the case may be: Provided that where an employer hasbeenpayingbonustohisemployeesunderasettlementoranawardoragreement

made before the 29th May, 1965, and keep going on that date after deducting from the gross profits estimated normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from the date) continue to be such notional normal depreciation;

#### **3.5.4 Computation of available surplus:**

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in section 6:

#### **(Extra Information for your reference):**

Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of:

(a). The gross profits for that accounting year after deducting there from the sums referred to in section 6;

(b). An amount equal to the difference between "(b) an amount equal to the difference between"

- The Direct Tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year;
- The Direct Tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.]

#### **(c). Allocable surplus:-**

In relation to an employer, being a company <sup>1</sup>[(other than a banking company)] which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year;

(a) In any other case, sixty per cent of such available surplus;



### **3.5.5. Eligibility for Bonus and its Payment**

a. **Eligibility** : Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

b. **Disqualification for Bonus**: Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:

(a). Fraud;

(b). Violent behavior while on the premises of the establishment; or

(c). Theft, misappropriation or sabotage of any property of the establishment.

c. **Minimum bonus**: Subject to the other provisions of this Act, every employer shall be bound to pay to every employee, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year whether or not the employer has any allocable surplus in the accounting year

d. **Maximum bonus**: Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

e. **Set on and set off of allocable surplus**

(1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty per cent. of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.

(2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 10, and there is no amount on sufficient amount carried forward and set on under sub-section (1) which could be utilized for the purpose of payment of the minimum

bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for **being set off** in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

**f. Deduction of certain amounts from bonus:** - Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

**g. Time limit for payment of bonus:** - [All amounts] payable to an employee by way of bonus under this Act shall be paid in cash by his employer:

- where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute "
- In any other case, within a period of eight months from the close of the accounting year" Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, that the total period shall not in any case exceed two years.

#### **h. Penalty for Offences**

**Penalty:** If any person "

- Contravenes any of the provisions of this Act or any rule made thereunder
- to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition,
- He shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**a. Offences by Companies:** (1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

## **INDUSTRIAL DISPUTES ACT, 1947**

**Industry:**-Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or workmen

**Definition:**-according to section 2(k) of this act, “any dispute or difference” is:

1. Between employees and employers
2. Between employees and workmen
3. Between workmen and workmen which is connected with employment or non-employment or with the term of employment or with the condition of work of any person

### **Objectives**

1. To secure a better condition of work and ensure a decent standard of life to the workers
2. It replaces negotiation and fair negotiation instead of a lengthy trial before the court of law
3. It provides preventive measures against illegal strikes and lockouts
4. It lays down conditions for a valid layoff and retrenchment of workers
5. It restricts the closure of an establishment

### **Causes of Industrial Disputes**

#### **1. Wages and allowances:-**

- Since the cost of living is increasing, workers generally bargain for higher wages to meet the rising cost of living index and to increase their standards of living.

#### **2. Bonus:**

- Bonus also plays an important role as a cause of industrial dispute. Both the quantum and the method of bonus payment have led to a number of disputes.

#### **3. Termination of services:**

- One major cause of industrial dispute is the mass retrenchment and undue promotions of the employees. The employees start disturbance to show their anger against the heartless attitude of the management.

#### **4. Indiscipline & violence:**

- Lack of discipline among the workers and violence on the part of employees and trade union leader's result in serious disputes.

## 5. Leave and hours of work:

- Poor working conditions and other violation of provision concerning leave and working hours as laid down in the Factories Act 1948 is another cause of industrial unrest.

## 6. Other reasons:-

- Inter/Intra Union Rivalry
- Charter of Demands
- Work Load
- Standing orders/Rules/Service conditions/safety measures
  - Non-implementation of agreements and awards etc.

### 3.6.4 Consequence of Industrial Dispute Act:

The common consequences of industrial disputes are loss of production, income and employment and increase in inflation and cost of living

#### Authorities Established Under Industrial Dispute Act

##### 1. Voluntary settlement and Conciliation

- Works committee:** In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so
- however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer

**Function:** It shall be the duty of the Works Committee to promote good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and make an effort to arrange any material difference of opinion in respect of such matters.

##### Conciliation Officers:

- The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.
- (2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

## 1. Duties of Conciliation Officer (sec 12)

- **To hold conciliation proceedings** : Where any industrial dispute exists, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.
- **To Investigate the Dispute**: The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
- **To send a report and memorandum of settlement to appropriate government**: - If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.
- **Where no settlement is arrived at** : If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

## 2. Power of conciliation officer: Power to enter the premises

A conciliation officer may for the purpose of enquiry, into any existing industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates

- Power to call for and inspect documents: - he may enforce the attendance of any person for examination or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this act. He has same power as civil court

## 3. Board of Conciliation Functions

- The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.
- A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit.
- Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

#### 4. Duties of board

- To bring about a settlement of dispute :- Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavor to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
- To send a report and memorandum of settlement to the appropriate government: - If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.
- To send a full report to the appropriate government setting forth the steps taken by the board in case :- If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.
- To communicate reasons to the parties if no further reference made: - If, on the receipt of a report under sub-section (3) under section 10 in respect of a dispute relating to a public utility

service, the appropriate Government does not make a reference, it shall record and communicate to the parties concerned its reasons therefore.

- To submit report within 2 months :- The Board shall submit its report under this section within two months of the date or within such shorter period as may be fixed by the appropriate Government:

## **5. Power of board**

- Power to enter premises : A member of the board may for the purpose of enquiry, into any existing industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the disputes relates
- Powers to civil court:- member of the board may enforce the attendance of any person for examination or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this act.

Board has the same power as civil court

**d. Court of enquiry-** (1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

- (1) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman.
- (2) A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number: Provided that, if the appropriate Government notifies the Court that the services of the chairman have ceased to be available, the Court shall not act until a new chairman has been appointed.

**Functions:** - Courts A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

## **2. Adjudication machinery**

### **Arbitration**

a. **Labor court:** - Labor Courts are constituted by State Governments u/s 7. It will be presided over by Presiding Officer. The Labor Court has powers in respect of Interpretation of Standing Orders

\* Violation of Standing Orders

\* Discharge or dismissal of a workman

\* Withdrawal of any customary concession or privilege

\* Illegality or otherwise of a strike or lock-out

• Qualification for appointment:

➤ He has been judge of high court

➤ He has been judge of district court not less than 3 years

• Duties and function of labor court

Authority of an order of the employer

Application and interpretation of standing orders

Discharge including retrenchment

**b. Industrial tribunal**

• **Appointment and constitution:**

Industrial Tribunal is constituted by State Government u/s 7A. The tribunal will be presided over by Presiding Officer. The Industrial Tribunal has powers in respect of

\* Wages, including period and mode of payment

\* Compensatory and other allowances

\* Hours of work and rest intervals

\* Leave with wages and holidays

\* Bonus, profit-sharing, provident fund and gratuity

\* Shift working changes

\* Classification by grades

\* Rules of discipline

\* Rationalization and retrenchment of workmen.

• **Qualification for appointment as a presiding officer of an industries tribunal:** It will consist of one person only, who should be qualified for appointment -- as a judge of a high court



- He has worked for at least 3 years as district judge / additional district judge.
- He should be an independent person and should have age of at least 65 years.
- The govt. may appoint two persons to advise the Tribunal
- **Tribunal for a limited period:** The government has the power to constitute a tribunal for a limited specified period only. The expiry of the specified period, the government may constitute a new tribunal and refer to it the pending dispute
- **Assessors:** The government is authorized to appoint if it thinks fit two persons as assessors to advise the industrial tribunal in the proceeding before it.

#### c. National Tribunal (sec 7b)

- **Appointment and constitution:** National Tribunal is formed by Central Government for settlement of industrial disputes of national importance or where industrial establishments situated in more than one States are involved. [section 7B]
- **Qualification of presiding officer:** It will consist of one person only, who should be qualified for appointment as
  - Presiding officer of a national tribunal / a judge of a high court.
  - He should be an independent person and should have age of at least 65 years.
  - The government may appoint two persons to advise the National Tribunal
- **Disqualifications: Tribunals.** No person shall be appointed to, or continue in, the office of the presiding officer of a Labor Court, Tribunal or National Tribunal, if
  - (a) He is not an independent person; or
  - (b) He has attained the age of sixty-five years.]

#### 6. Award and settlement

(Judgment) **Award** means a temporary or final determination of any industrial dispute or of any question relating thereto by any Labor Court, Industrial Tribunal or National Tribunal. It also includes settlement award. [Section 2(b)].

Settlement means a settlement arrived at in the course of conciliation proceedings. It includes a written agreement between employer and workmen arrived at otherwise than in course of conciliation proceedings (i.e. outside the conciliation proceedings)

- **Strike And Lock Out**

**Strike** means a cessation of work by a body of persons employed in any industry, acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.[section 2(q)]

**Lock-out** means temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. [Section 2(l)]. Workers go on strike, while lock out is to be declared by employer

**Prohibition of lockout in public utility service:-**

(1). No person employed in a public utility service shall go on strike, in breach of contract

- Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- Within fourteen days of giving such notice; or
- Before the expiry of the date of strike specified in any such notice as aforesaid; or
- During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2). No employer carrying on any public utility service shall lock-out any of his workmen

- Without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
- Within fourteen days of giving such notice; or
- Before the expiry of the date of lock-out specified in any such notice as aforesaid; or
- During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3). The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4). The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5). Thenoticeoflock-outreferredtoinsub-section(2)shallbegiveninsuchmannerasmay be prescribed.

(6). If on any day an employer receives from any person employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he, within five days, thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day.

**Illegal strikes and lock out:** - Strike or lockout in violation of sections 22 or 23 and when it is continuing in violation of order issued by Government u/s 10(3) (when matter is referred to Conciliation Board or Tribunal) is illegal. [section 24]. Fine up to Rs 50 per day to workman and Rs 1,000 to employer can be imposed. In addition, he can be imprisoned up to one month. [Section 26 Other consequence: - loss, dismissal etc...]

## **LAYOFF**

**Definition:** -When an employee is not given work due to some reasons beyond the powers of the employer. It means failure / refusal / inability of the employer to give employment due to following reasons:

- Shortage of raw material/power
- Accumulation of stocks
- Breakdown of machinery
- Natural calamity
- 5 other connected reasons (sec 2(kkk))

**Rights for compensation :** A factory employing 50 or more but less than 100 employees on an average per working day can lay off the workmen, who have completed one year of service, by paying compensation equal to 50% of salary (basic plus DA) (section 25C of IDA). Employer can offer him alternate employment, if the alternate employment does not call for any special skill or previous experience, and lay off compensation will not be payable if employee refuses to accept the alternate employment (section 25E).

**Continuous services:** A workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days;

Section 25B(2) comprehends a situation where a workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date i.e. the date of retrenchment. He would be deemed to be in continuous service for a period of one year for the purpose of section 25B.

**Conditions under which workman laid off are not entitled to layoff compensation:-**

- If he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer,
- Such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also:
- . If he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;
- **Penalty for lay-off without previous permission:** Any employer, who contravenes the provisions of section 25M or section 25N, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees or with both.
- **Strike:** Strike means a cessation of work by a body of persons employed in any industry, acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.[section 2(q)]

**Retrenchment**

**Definitions:** - Retrenchment means termination by the employer of service of a workman for any reason, other than as a punishment inflicted by a disciplinary action. However, retrenchment does not include voluntary retirement or retirement on reaching age of superannuation or termination on account of non-renewal of contract or termination on account of continued ill-health of a workman.

- **Conditions procedure:** A worker who has completed one year of service can be retrenched by giving one month notice (or paying one month's salary) plus retrenchment compensation, at the time of retirement, @ 15 days' average wages for every completed year of service (section 25F)
- **Procedure for retrenchment:** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.
- **Re-employment of retrenched workmen:** Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity who offer themselves for re-employment shall have preference over other persons.
- **Penalty retrenchment without previous permission:** Any employer, who contravenes the provisions of section 25M or section 25N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

## Closure

**Definition:** - Closure means permanent closing down of a place of employment or part thereof. [section 2(cc)]. Thus, closure can be of part of establishment also. 60 days notice should be given for closure to Government, if number of persons employed is 50 or more. 60 days notice is not necessary if number of persons employed is less than 50. [Section 25FFA]. Compensation has to be given as if the workman is retrenched. [Section 25FFF(1) If number of workmen employed are 100 or more, prior permission of Government is necessary for closure u/s 25-O

## Difference between Retrenchment and Closure:-

- a. Retrenchment affects only some of the workmen, whereas closure affects all workmen.
- b. In retrenchment trade or business remains uninterrupted as it continues, while closure the business itself is discontinued

- **Notice of intention :-** any employer who intends to close down an undertaking will have to serve, atleast sixty days before the date on which the intended closure is to become effective, a notice, in the manner so prescribed by the appropriate government stating clearly the reasons for the intended closure of the undertaking
- **Compensation in case of underwriting sec 25-FF :-** the employer in relation to that undertaking to a new employer every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provision of section 25-F.
- **Penalty for closure without notice :-** Any employer, who closes down an undertaking without complying with the provisions of sub-section (1) of section 25-O shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

**Unfair Labor Practice:** Section 25T prohibits unfair labor practices by employer or workman or a trade union. If any person commits unfair labor practice, he is punishable with fine up to Rs 1,000 and imprisonment up to 6 months. [Section 25U]. Fifth schedule to Act gives list of what are Unfair Labor Practices‘

- **Prohibition:** No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (16 of 1926), or not, shall commit any unfair labor practice.
- **Penalty of union labor practices:** Any person who commits any unfair labor practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

### **Penalties**

**Penalty of Illegal:** Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### **Breach of settlement:**

Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both,<sup>2</sup>[and where the breach is a continuing one with

a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first], and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation, to any person who, in its opinion has been injured by such breach.] **Disclosing information:**

Any person who willfully discloses any such information as is referred to in section 21 in contravention of the provisions of that section shall, on complaint made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**Other offences:**

(1) Any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes any of the provisions of this Act or any rule made there under shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

## UNIT IV

### 4. INCOME TAX ACT AND VAT RIGHT TO INFORMATION ACT

#### Meaning of Income Tax Act

It is the implementation of freedom of information legislation in India on a national level "to provide for setting out the practical regime of right to information for citizens." The Act applies to all States and Union Territories of India, except the State of Jammu and Kashmir - which is covered under a State-level law. Under the provisions of the Act, any citizen (excluding the citizens within J&K) may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. This law was passed by Parliament on 15 June 2005 and came fully into force on 13 October 2005

#### Information

The Act specifies that citizens have a right to:

- Request any information (as defined).
- Take copies of documents.
- Inspect documents, works and records.
- Take certified samples of materials of work.
- Obtain information in form of printouts, diskettes, floppies, tapes, video cassettes' or in any other electronic mode' or through printouts.

#### Process

Under the Act, all authorities covered must appoint their **Public Information Officer** (PIO). Any person may submit a request to the PIO for information in writing. It is the PIO's obligation to provide information to citizens of India who request information under the Act. If the request pertains to another public authority (in whole or part) it is the PIO's responsibility to transfer/forward the concerned portions of the request to a PIO of the other within 5 days. In addition, every public authority is required to designate **Assistant Public Information Officers** (APIOs) to receive RTI requests and appeals for forwarding to the PIOs of their public authority. The citizen making the request is not obliged to disclose any.



The Act specifies time limits for replying to the request.

- If the request has been made to the PIO, the reply is to be given within **30 days** of receipt.
- If the request has been made to an APIO, the reply is to be given within **35 days** of receipt.
- If the PIO transfers the request to another public authority (better concerned with the information requested), the time allowed to reply is **30 days** but computed from the day after it is received by the PIO of the transferee authority.
- Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within **45 days** but with the prior approval of the Central Information Commission.
- However, if life or liberty of any person is involved, the PIO is expected to reply within **48 hours**.
- Since the information is to be paid for, the reply of the PIO is necessarily limited to either denying the request (in whole or part) and/or providing a computation of "further fees". The time between the reply of the PIO and the time taken to deposit the further fees for information is excluded from the time allowed.
- If information is not provided within this period, it is treated as deemed refusal. Refusal with or without reasons may be ground for appeal or complaint. Further, information not provided in the times prescribed is to be provided free of charge.
- For Central Departments as of 2006, there is a fee of Rs. 10 for filing the request, Rs. 2 per page of information and Rs. 5 for each hour of inspection after the first hour. If the applicant is a Below Poverty Card holder, then no fee shall apply. Such BPL Card holders have to provide a copy of their BPL card along with their application to the Public Authority. States Government and High Courts fix their own rules.

#### **What is not open to disclose?**

- The following is exempt from disclosure [S.8]
- Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, "strategic, scientific or economic" interests of the State, relation with foreign State or lead to incitement of an offence;
- Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

- Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- Information received in confidence from foreign Government;
- Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption);
- Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. (NB: This provision is qualified by the proviso to sub-section 11(1) of the Act which exempts disclosure of "trade or commercial secrets protected by law" under this clause when read along with 8(1)(d)).

### **Value Added Tax (VAT)**

#### **Definition:**

Most of the states in India, with effect from April 1, 2005 have adopted Value added

Tax. Value added tax or VAT is an indirect tax, which is imposed on goods and services at each stage of production, starting from raw materials to final product. VAT is levied on the value additions at different stages of production.

### **Concept of VAT**

- VAT is a multi point sales tax with set-off for tax paid on purchase.
- VAT being a multi stage levy, it allows registered dealers to take credit for the tax paid on purchase from registered suppliers against the tax payable on the sales.

### **What is Value Added Tax?**

VAT is a multi –point tax with set-off for tax paid on purchases. It is collected in installments at each transaction in the production and distributions system. It does not have cascading effect due to the system of deduction or tax credit mechanism.

The following illustration will help in highlighting the differences between a single point tax and Vat.

#### **First Stage**

- Selling price of manufacturer (Excluding tax) Rs 100.00 Tax rate applicable- 20%  
Rs. 20.00
- Selling price including tax Rs. 120.00.

#### **Second Stage:**

- Cost price to Wholesale dealer Rs. 120.00
- Overheads and profit margin Rs. 60.00
- Selling price Rs. 180.00

#### **Third stage:**

- Cost price to retail trader Rs. 180.00.
- Overheads and profit margin at 50% Rs. 90.00.
- Selling price to consumer Rs. 270.00

Thus, from the above illustration it is clear that the government gets only Rs. 20.00 whereas due to the cascading effect of tax the consumer is under compulsion to pay Rs. 45.00 indirectly toward tax.

By the introduction of VAT the Tax base is widened and every intermediary is required to pay tax only on the value addition made by him.

### **Objectives of VAT**

- Eliminates multiplicity of taxes such as entry tax, turnover tax, sales tax, surcharge, Excise duty etc,
- Prevents double taxation with cascading effect.
- Eliminates interstate tax (eg. Central Sales Tax)
- Rationalize all tax burdens in the cases of goods and services until sold for consumption.
- Make the tax structure, simple, efficient and transparent.
- Improve tax compliance.
- Development of fair and healthy competition in the interest of consumers.

### **What is the advantage of VAT?**

- Less chances for tax evasion as the incidence of tax spread over every dealer.
- Lower tax rate.
- Increased revenue to state as the tax on the sale price.
- A check on creation of black money.
- No procedural hazards.
- Uniformity of prices all over the country.

### **VAT Rate Structure**

- 1% on gold, Silver, precious metals, gems, and precious stones.
- 4% on Essential goods and primary raw materials.
- 12.5% on goods not covered in any schedule.

### **What is Input Tax?**

Input generally means goods purchased by a dealer in the course of his business for sale or for use in the manufacture, processing, packing and storing of other goods or any other business use. The tax paid on inputs is known as Input Tax.

### **4.2.6 Advantages of VAT:**

#### **1) Coverage**

If the tax is carried through the retail level, it offers all the economic advantages of a tax that includes the entire retail price within its scope, at the same time the direct

payment of the tax is spread out and over a large number of firms instead of being concentrated on particular groups, such as wholesalers or retailers.

## **2) Revenue security**

VAT represents an important instrument against tax evasion and is superior to a business tax or a sales tax from the point of view of revenue security for three reasons.

## **3) Selectivity**

VAT may be selectively applied to specific goods or business entities.

## **4) Co-ordination of VAT with direct taxation**

Most taxpayers cheat on their sales not to evade VAT but to evade personal and corporate income taxes.

### **4.2.7 Disadvantages of VAT**

- Non-uniformity of price among the state – every stage has altered the VAT
- Other taxes also available along with VAT, so it is confused.
- Continuance of CST under VAT regime
- Sweeping powers given to Commissioners.

### **Goods covered under VAT**

All goods (other than Petrol, Diesel, Aviation Turbine Fuel, IMFL and Sugarcane) including declared goods will be covered under VAT and will get the benefit of input tax credit.

### **Goods not covered under VAT**

Petrol, Diesel, Aviation Turbine Fuel, Indian Made Foreign Liquor and sugarcane will not be taxed under VAT.

### **Dealers under VAT**

1. Local authority, Company, Hindu undivided family, Association of persons, Firm.
2. Casual traders, factory, commission agent, Del Credere agent, auctioneer, local branch of a firm or company situated outside the state.
3. Person who effects transfer of property in goods other than by way of sale.
4. Dealer in hire purchase works contract and persons who transfer right to use the goods.
5. Dealers in eatables including food and drinks (eg. Hotels, restaurants and sweet stalls)
6. Port Trust, Railway administration, Shipping, Transport and Construction companies,

## Airlines

7. Any person holding a permit for transport vehicles.
8. Tamil Nadu State Transport Corporation
  1. Customs Department, Insurance Company, Advertising Agencies
  2. Corporation or Companies of State and Central Govt.

## Registration

All Traders should be registered for VAT

### **TIN (Taxpayer Identification Number)**

An eleven digit number to be quoted in all VAT transactions and correspondences. All registered dealers under NGST ACT 1959 shall be provided with TIN automatically without any fee. On receipt of TIN, the dealers have to file application for obtaining certificate of registration under VAT.

## UNIT-V

### CONSUMER PROTECTION ACT

#### Meaning:

The Act is designed to make available cheap and quick remedy to a small consumer. The Act was passed in 1986 and was made effective in 1987. Amendments were made in 1991 to provide for situations of absence of President of Forum. Major changes were made in 1993 (effective from 18-6-1993).

On getting further experience of implementation of the Act, substantial changes have been made by Amendment Act, 2002. Major changes made in the Amendment Act are - \* Enhancement in monetary limit of District Forum from Rs 5 lakhs to 20 lakhs and of State Commission from Rs 20 lakh to Rs one crore \* Payment of fees for filing complaint/appeal \* Complaint/appeal will have to be admitted first \* Reason to be recorded if decision not given within specified time \* Cost of adjournment can be imposed \* Interim orders can be passed \* In absence of President, senior most member can discharge functions of President \* Pre-deposit of certain amount before appeal is entertained \* Notice can be sent by Fax/courier. **The amendments have been made effective from 15-3-2003.**

**5.1.2 Procedure under CPA** - Section 12(1) provides that a complaint in relation to any goods sold or delivered or to be sold or delivered or any service provided or agreed to be provided may be filed with consumer forum.

The Act envisages setting up of Consumer Disputes Redressal Agency at local, i.e., district level, state level and national (Central) level. District Forum has jurisdiction to decide consumer disputes where value of goods or services and the compensation claimed does not exceed Rs. 20 lakhs. State Commission has jurisdiction to decide the cases where value of goods and services plus compensation is over Rs. 20 lakhs but not over Rs. 100 lakhs. In addition, it decides appeals filed against order of District Forum. National Commission (HQ at New Delhi) has original jurisdiction where matter is over Rs. 100 lakhs. It also has appellate jurisdiction over State Commission. Appeal against order of State Commission can be filed only in case of original order by State Commission i.e. when matter was over Rs. 20 lakhs. No appeal can be filed to National Commission in case where State Commission has

Appeal against order of National Commission lies with Supreme Court only in matters where it exercises original jurisdiction, i.e., when matter is over Rs. 100 lakhs. There is no provision of appeal in cases where National Commission decides under its appellate jurisdiction, i.e., when it decides appeal against order of State Commission.

Complaint can be filed by a consumer, a voluntary consumer association or Central/State Government. Class Action i.e., some consumers filing complaint on behalf of many consumers is also permitted. Complaint can be filed against (a) deficiency in goods or service (b) unfair trade practice or restrictive trade practice (c) charging of higher prices (d) Supplying hazardous goods or services. Fees are required to be paid along with the complaint. Complaint must be filed within two years from ‘cause of action’. This period can be extended on showing sufficient cause. Appeal against order of District Forum/State Commission/National Commission must be filed within 30 days from date of order. Penalty upto Rs. 10,000 can be imposed on a complainant, if it is found that he has made frivolous (bogus) complaint. Persons not complying with order of redressal authorities can be punished with imprisonment upto three years and/or fine upto Rs. 10,000.

Provisions are made for enforcement of order and imposition of penalty in case order of consumer forum is disobeyed.

**Complaint to consumer forum**-Section 12(1) provides that a complaint in relation to any goods sold or delivered or to be sold or delivered or any service provided or agreed to be provided may be filed with consumer forum. District, State Commission and National Commission are consumer forums, termed as Consumer Dispute Redressal Agencies. It is necessary to understand meaning of complaint’ and who can file the same.

**Defect**- The word defect’ means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard that is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods (Section 2(1)(f) of CPA).

**Consumer Dispute**: Consumer Dispute’ means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint [section 2(1)(e)]. - - Obviously, if the person against whom complaint is made agrees to the complaint, there is no ‘consumer dispute’.



**Who is 'Complainant' - Section 2(1)(b) of CPA defines that "Complainant" means**

- A consumer; or
- Any voluntary consumer association registered under the Companies Act, or under any other law for the time being in force; or
- The Central Government or any State Government, who or which makes a complaint or
- One or more consumers, where there are numerous consumers having the same interest
- In case of death of a consumer, his legal heir or representative; - - who or which makes a complaint.

Exclusion if goods or a service for Commercial purpose - A person who buys goods for resale or commercial purposes or avails services for commercial purposes is specifically excluded from definition of consumer'.

- **Trader** - Complaint can be lodged against a trader in case of goods and against service provider in case of services. Trader' includes manufacturer.
- **Deficiency in service** - Complaint can be lodged against service provider if there is deficiency in service or if he charges higher prices or provides services which are hazardous or where service provider follows unfair or restrictive trade practice.
- **Deficiency:** Deficiency' means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard, which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. [Section 2(1)(g) of CPA].
- **Restrictive and Unfair Trade Practices** - Consumer Protection Act makes specific provisions in respect of Restrictive Trade Practices (RTP) and Unfair Trade Practices (UTP).
- **Restrictive Trade Practice - Section 2(1)(nnn) of CPA [As amended by Amendment Act, 2002]:** Define Restrictive Trade Practice (RTP') as one which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include: (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price; (b) any trade practice which requires a consumer to buy, hire or

avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services.

- **Unfair Trade Practice**-Unfair Trade Practice is defined under section 2(1) (r) of CP Act. Unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.
- **IPR Copyright Act, 1957:** Copyright is right of artist, author, and producer of film setc. who have created a work by use of their artistic skills. On the other hand, Patents Act, 1970 is designed to protect inventions in respect of manufacture, machine or process of manufacture. Copyright Act has provisions to protect copyrights of foreign work also. This Act has attained special significance in view of GATT agreement. Under this international agreement, all signatory nations have to take steps to protect intellectual property rights (IPRs). It may be noted that registration of patent is compulsory, while registration of copyright or trademark is optional. Rights in a patent can be availed only if it is registered, but copyrights or rights to trade mark are available even if the work is not registered.
- **Copyright protection is limited to an author's particular expression of idea, process and concept in a tangible medium. However, the law permits fair use.**

Copyright is only in expression of an idea. There is no copyright in an idea. Copyright protects skill, labor and capital employed by the author. Its object is to protect the writer and author from the unlawful reproduction, plagiarism, piracy, copying and imitation. Thus, copyright is negative in nature. It is not a right in novelty of ideas.
- **Works in which copyright subsists** - Section 13(1) of Copyright Act provides that copyright subsists in:
  - Original literary, dramatic, musical and artistic works
  - Cinematograph films and
  - Sound recording.
- **Artistic work:** Artistic Work means (i) a painting, sculpture, a drawing (including a diagram, map, chart or plan), an engraving or photograph. It does not matter whether or not any such work possesses artistic quality and (ii) work of architecture [section 2(c)]. Work

of Architecture' means any building or structure having an artistic character or design, or any model for such building or structure [section 2(b)]. Not that a trade mark designed in an artistic way can be protected under Trade Mark Act (as Trade Mark) as well as under Copyright Act (as artistic work).

- **Dramatic work:** Dramatic Work' includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise; but does not include a cinematograph film.
- **Literary Work:** The term Literary Work 'includes computer programmes, tables and compilations including computer databases [section 2(o)].
- **Computer programme:** It means set of instructions expressed in words, codes, schemes or in any other form including a machine readable medium capable of causing computer to perform a particular task or achieve a particular result [section 2(ffc)]. Computer includes any electronic or similar device having information processing capabilities [section 2(ffb)].
- **Musical work:** Musical work means a work consisting of music and includes any graphical notation of such work, but does not include any words or any action intended to be sung, spoken or performed with the music [section 2(p)]. Composer means a person who composes the work whether or not it is recorded in form of graphical notation [section 2(ffa)].
- **Rights of a copyright owner-** As per section 14, Copyright means exclusive right to do or authorized doing any of the following acts in respect of a work or any substantial part thereof (this right is subject to provisions of the Copyright Act).
  - **Rights In Literary, Dramatic Or Musical Work** - (i) To reproduce the work in any material form including the storing of it in any medium by electronic means (ii) to issue copies of work to the public - this clause does not apply to copies which are already in circulation (iii) to perform work in public or communicate to public (iv) to make any cinematograph film or sound recording (v) to make translation (vi) to make adaptation of work (vii) to do, in relation to translation or an adaptation of work, any of the aforesaid acts mentioned in clause (i) to clause (vi).

- **Rights In Computer Programme**-(i) To do any of the acts specified above in relation to literary work (ii) to sell or give on commercial rental or offer to sale or for commercial rental any copy of the computer programme. However, such 'commercial rental' does not apply in respect of computer programmes where the programme itself is not the essential object of the rental. [Provision to Section 14(b)(ii)]
- **Rights In Artistic Work** -(i) to reproduce in any material form including depiction in two dimensions from three dimensions or vice versa (ii) to communicate work to public (iii) to issue copies of work to the public which are not already in circulation (iv) to include the work in any cinematograph film (v) to make any adaptation of the work (vi) to do in relation to an adaptation of the work, any of the acts specified in clause (i) to (iv) above.
- **Rights In Cinematograph Film**-(i) To make a copy of the film, including a photograph of any image forming part thereof (ii) to sell or give on hire or offer for sale or hire, any copy of the film. It does not matter whether or not such copy was sold or given on hire on earlier occasions. (iii) to communicate the work to public.
- **Rights In Sound Recording** - (i) To make any other sound recording embodying it (ii) to sell or give on hire or offer for sale or hire, any copy of the film. It does not matter whether or not such copy was sold or given on hire on earlier occasions (iii) to communicate the sound recording to public.
- **Ownership of Copyright** - Normally, author of work is the first owner (section 17). Author means (a) author of literary or dramatic work (b) composer of musical work (c) artist of artistic work (d) person taking the photograph (e) producer of cinematographic film or sound recording [section 2(d)]. Right of author is subject to some limitations.
- **Assignment of Copyright** - The owner of copyright can assign the copyright to a work. Such assignment can be partial or full or subject to limitations and for limited term or full term. Even rights of future work can be assigned, but the assignment becomes effective only when the work comes into existence. [Some leading and popular authors sell their work at fat price even before it is complete.] After assignment, the assignee gets rights assigned and balance rights remain with the assignor (section 18).
- **Term of copyright** - Normal term of copyright is throughout the lifetime of author plus 60 years from beginning of calendar year next following the year in which the author dies. In

case of joint authorship, the author who dies last will be considered (section 22).

- **Compulsory licensing** - If owner does not grant permission for re-publication, performance or communication to public, Copyright Board can direct Registrar of Copyrights to grant compulsory license to complainant on such terms and conditions as it deems fit [section 31(1)].
- **Registration of Copyright is optional** - Copyright may be registered with Registrar of Copyrights (section 44). Registration is not compulsory. The register will contain details like name or title of work, name and addresses of authors, publishers and owners of copyright. Application for registration has to be made in prescribed form with fees.
- **Infringement of Copyright** - The Act provides for remedies in case of infringement of Copyright.
- **Civil and Criminal Remedies under Copyright Act** - Owner of copyright has civil remedies against Infringement of Copyright. Offences are also punishable.

## **PATENTS ACT, 1970**

Patents Act, 1970 is designed to protect inventions in respect of manufacture, machine or process of manufacture. On the other hand, the Copyright Act, 1957 is to protect rights of artists, authors, producers of films, computer software owners etc. Patent is exclusive rights granted to the patent holder, for a limited period, as a reward for creative work based on his private initiative. Creativity is accorded the status of property which can be bought, sold, licensed or hired like any other commodity. The principle behind patent protection is that creativity will not get encouragement if it cannot be protected from piracy or copying.

Major changes have been made by Patents (Amendment) Act, 2002, which was passed on 25-6-2002 aligning it to TRIPS in many aspects. Highlights are - \* It provides for uniform protection for 20 years. \* Appellate Authority is provided. Appeal against order of Controller and Central Government and application for rectification of register of patents will be to appellate Board and not to High Court. [However, suit for infringement of Patent or revocation of patent will lie with Court only] \* Person other than patent holder to obtain marketing approval from regulatory authorities within 3 years before expiration of terms of patent \* Provisions for protection of bio-diversities of traditional knowledge \* Reversal of

burden in case of process patent \*Procedural simplifications.

**The amendments have not yet been brought into force. However, these have been incorporated in this writes up at appropriate places.**

**What is a Patent** - Section 2(1) (m) merely states Patent' means a patent granted under this Act'. Thus, word patent' is not defined under the Act, though what can be patented and what cannot has been specified.

A patent, generally speaking, is a grant from Government, which confers on the grantee for a limited period of time the exclusive privilege of making, selling and using the invention for which a patent has been granted and also of authorizing others to do so.

**Varieties of Patents-** Three kinds of patents are granted under the provisions of the Act :

- (a) Ordinary Patent
- (b) Patent of Addition
- (c) Patent in respect of Convention

International Application-Patents Act allows grant of patents to persons out of India, on the basis of international arrangements. Such grant is available only if there is a convention, treaty or arrangement with the foreign country for grant of patents on reciprocal basis i.e., if that country also agrees to grant patents to Indian applicants (section 133). Government has to specify such countries by issue of notification in official gazette. India has signed Paris Convention in August 1998. Hence, any country which is signatory to Paris convention is a convention country.

**What can be patented-** Requirements of patent are:

- The subject matter should be new. This is test of novelty.
- It should be useful. This is test of utility.
- It should be an invention'. It should be non-obvious.
- It should be a manner of manufacture, i.e. it should be capable of industrial application.

- 'Vendibility' test (i.e. test of marketability) is important - the subject matter should have commercial purpose. Any invention which satisfies the definition of the invention given in the Act may be patented.

Invention means a new product or process involving an inventive step and capable of industrial application. [Section 2(1) (j)]: Inventive step means a feature that makes the invention not obvious to a person skilled in that art. [Section 2(1)(a). Capable of industrial application', in relation to invention, means that the invention is capable of being made or used in an industry. [Section 2(1) (ac)].

### **Life of Patent:**

Subject to the payment of prescribed renewal fee within the prescribed period, the term of every patent granted under the Act is 20 years from date of filing the application for patent. [Section 53 (1)]. [The period was 5 or 7 years for process of manufacture of food/medicine/drug and 14 years in other cases, prior to Amendment Act, 2002].

### **Rights of a Patentee:**

Patentee has following rights (a) where the patent is for a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India (b) where the subject matter of patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product directly obtained from that process, in India. However, that product should not be such that no patent can be granted for that product in India. [Section 48].

### **Working of patent and compulsory licensing:**

The general principle is that patents are granted to encourage inventions. However, Patent is for use and not for hoarding or exploitation.

### **Infringement of Patent:**

Patentee and his agents and licensees have exclusive rights to make, use, exercise or distribute the invention in India under section 48. Infringement means violating the statutory

rights of patentee. Innocent infringement, i.e. infringement without knowledge that a patent exists does not require payment of damages and a share of profit (section 111). Suit for infringement can be filed only in District Court (section 104). The relief that can be claimed are (a) damages and a share of profit to patentee. (b) Injunction on infringe on the terms the Court may deem fit [section 108(1)]. Court can also order that the infringing goods shall be seized, forfeited or destroyed, as the Court deems fit.

### **Trade Marks Act, 1999**

A trade mark's a very important and valuable asset of a company in a market oriented economy. The Act is designed to protect this valuable property. Customers identify a product by its trade mark. Value and importance of trade mark increases as business grows. Trade Marks Act, 1999 is enacted (in place of earlier 1958 law) with an intention to protect rights of trademarks of business. It is a self-contained and comprehensive code to deal with both the civil and criminal law relating to trade and merchandise marks. Procedures and forms are prescribed in Trade Mark Rules, 2002.

#### **Trade Mark under Common Law as well as Trade Mark Act:**

Protection to Trade Marks was first introduced in India in 1940. Prior to that, the law relating to trademark was based on common law. At common law, right to property in trade mark was in the nature of monopoly enabling the holder of the said right to restrain others from using the trade mark. The trade mark had to be distinctive.

After passing of the Act, registration of trade mark is provided. However, registration of trade mark is not compulsory.

#### **What is a 'Trademark'?**

Trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors. It also includes certification trade mark or collective mark.

Mark can be in respect of goods or services. It should be capable of distinguishing the goods or services of one person from those of others. The mark should indicate a connection in the course of trade between the goods or services and some person having the right to use the mark



**DEPARTMENT OF MANAGEMENT STUDIES LEGAL  
ASPECTS OF BUSINESS  
UNIT-I  
MERCANTILE AND COMMERCIAL LAW**

- 1) **What is Law?**  
Law is those principles applied by the state in the administration of justice.
- 2) **Write short note on business law?**  
Business law refers to those rules and regulations which govern the formation and execution of business deals made by various people in the society.
- 3) **What do you understand by mercantile law?**  
Mercantile law is that branch of civil law dealing with rights and obligations of mercantile persons arising out of mercantile transactions in respect of mercantile property.
- 4) **Define commercial law?**  
Commercial law can be defined as, “the rights and obligations of commercial persons who deal with commercial transactions in respect of commercial property”.
- 5) **What is meant by valid contract?**  
A contract is an agreement, enforceable by law, made between at least two parties by which rights are acquired by one and obligations are created on the part of another.
- 6) **What are void agreements?**
  - It is an agreement which is not enforceable by law.
  - An agreement made without consideration is void.
  - An agreement, the consideration of which is unlawful is void.
  - An agreement in restraint of marriage of any person, other than a minor is void, etc.
- 7) **Define contract?**  
A contract is an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more, to act on the part of the other.
- 8) **List out the formation of a contract?**  
The following are the essential parts of formation of a contract.
  - Offer and acceptance
  - Consideration
  - Competency to contract
  - Free consent
  - Lawful object

- 9) **State the meaning of performance of contracts?**  
 'Performance' of contract means the carrying out of obligations under it. The parties to contract must either perform or offer to perform their respective promises unless such performance is dispensed with or excused under the provisions of the Indian Contract Act, or some law.
- 10) **What do you understand by Breach of contract?**  
 The term breach means violation or contravention with regard to fulfillment of the terms and conditions incorporated in an agreement. A contract is said to have been discharged by breach when the parties to the agreement fail to discharge their respective obligations or when parties act contrary or in contravention to the terms and conditions contained in the contract.
- 11) **What are the remedies for breach of contract?**
- Rescission of the contract
  - Suit for damages
  - Suit upon Quantum merit.
  - Suit for specific performance of the contract.
  - Suit for Injunction.
- 12) **Discuss about Quasi contracts?**  
 A quasi-contract has been defined as "a situation in which law imposes upon one person on grounds of natural justice, an obligation similar to that which arises from a true contract although no contract, express or implied has in fact been entered into by them.
- 13) **What is contract of sale?**  
 Section 4 defines a contract of sales as "a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price".
- 14) **Discuss about transfer of title?**  
 The main purpose of a contract of sales is the transfer of ownership of the goods from a seller to a buyer. When the ownership of the goods is transferred to the buyer, he becomes the owner of the goods and the seller ceases to be the owner of such goods.
- 15) **What are the condition and warranty in sales contract?**  
 A condition is a term which is essential to the main purpose of the contract and hence is the foundation of the contract. A warranty is a term which is collateral to the main purpose of the contract and hence is only a subsidiary promise.
- 16) **Define performance of sales contracts?**  
 It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of sales contracts.
- 17) **Who is an unpaid seller?**  
 A seller of goods is an unpaid seller when

- The whole of the price has not been paid or tendered.
- A bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.

**18) What is a Negotiable Instrument?**

A 'negotiable instrument' means a promissory note, bill of exchange or cheque payable either to order or to bearer.

**19) Define Negotiation?**

Section 14 of the Negotiable Instrument Act lays down that "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 negotiated".

**20) Write any five liabilities of the parties to a Negotiable Instrument?**

- Liability of Drawer
- Liability of Acceptor or maker
- Liability of Drawee of a cheque
- Liability of Endorser
- Liability of prior parties to a Holder in Due Course.

**21) Who is a "holder in due course"?**

'Holder in due course' means any person who for consideration and in good faith becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or Indore thereof, if payable, to order before the amount mentioned in it becomes payable.

**22) What are the obligations of a Banker to a customer?**

- Obligation to Honor cheques
- Obligation to maintain secrecy of Account
- Obligation to keep proper Records of Transactions.
- Obligation to Abide by customer's Instructions.

**23) Define agency?**

An 'agent' is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done or who is so represented is called the "principal".

**24) What are the different kinds of agents?**

- Auctioneer
- Banker
- Broker
- Factor
- Del Credere agent
- Commission agent
- Indenter

- Insurance agent.

**25) State the Agent's authority and liability of principal?**

The competency or capacity of an agent to bind his principal by his acts is known as 'agent's authority'. An agent enjoys.

- Actual or real authority
- Ostensible or apparent authority, and
- Agent's authority in emergency.

**26) How will terminate the Agency?**

- By act of parties
- By operation of Law.

**UNIT II  
COMPANY LAW**

**1. Define a 'Company'?**

The word 'company' is used generally to mean an association of persons having common objectives. Every association however is not a company in the eye of law.

**2. Classify the companies on the basis of liability?**

1. Limited companies
  - a) Companies with limited liability.
  - b) Companies limited by guarantee
2. Unlimited companies.

**3. State any four differences between a public company and a private company**

Private Company	Public Company
Minimum paid-up capital is Rs. 1,00,000	Minimum paid-up capital is Rs. 5,00,000
Minimum number of persons required to form is 2 and maximum number of members is 50.	Minimum number of persons required to form a public company is 7 and maximum is no restriction.
The right to transfer shares and debentures is restricted by the article.	The shares and debentures are freely transferable.

**4. List out the formation of a company**

The whole process of formation of a company may be roughly divided, for convenience, into three parts.

These are:

- Promotion
- Registration
- Flotation

### **5. Describe the meaning of memorandum of Association:**

The memorandum of Association of a company is its charter which contains the fundamental conditions upon which alone the company can be incorporated.

### **6. What are articles of Association?**

The articles of association of a company and its bye laws are regulations which govern the management of its internal affairs and the conduct of its business. They define the duties, rights, powers and authority of the shareholders and the directors in their respective capacities and of the company and the mode and form in which the business of the company is to be carried out.

### **7. Give any two differences between memorandum and Articles:-**

<b>Memorandum</b>	<b>Articles</b>
It is the charter of the company and defines the company's relationship with outside world.	They are the regulations for the internal management of the company.
If it defines the scope of the activities of the company, beyond which the actions of the company cannot go	They are the rules for carrying out the objects of the company as set out in the memorandum.

### **8. What is the 'Prospectus'?**

A prospectus has been defined in sec. 2 (36) of the Act as "any document described or issued as a prospectus and includes any notice, circular advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in or debentures of a body corporate".

### **9. What is meant by director?**

A person is said to be occupying the position of a director if he has been charged, with the responsibility of managing the affairs of a company and as such, performs the duties and functions of director specified at random in the companies Act.

### **10. State the provisions of the companies Act regarding the mode of appointment of directors of a company?**

1. First Director
2. Appointment by the company
3. Appointment by directors
  - a) Additional directors
  - b) In a casual vacancy
  - c) An alternative director.
4. Appointment by third parties
5. Appointment by proportional representation
6. Appointment by the central government.

### **11. State the modes of removal of Directors**

A director of a company can be removed from his office through the following modes:-

- By shareholders
- By central Government
- By Tribunal

### **12. What are the provisions regarding powers of director?**

- Powers exercisable at Board's meetings only
- Powers exercisable with consent of General meeting
- Powers exercisable under Articles.

### **13. List out the provisions regarding liabilities of directors?**

The liabilities of directors may be discussed under the following four heads:

- Liability to third parties
- Liability to the company
- Liability for breach of statutory duties.
- Liability for acts of his co-directors.

#### **14. Define 'Winding up of a company'**

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

#### **15. What are the modes of winding up?**

There are three modes of winding up of a company. These are;

- Compulsory winding up by the court
- Voluntary winding up by members well as creditors of the company.
- Winding up under the supervision of the court.

#### **16. Who can present petition for winding up?**

An application to the court for the winding up of a company shall be presented.

- Petition by company
- Petition by creditors
- Petition by contributories
- Petition by register
- Petition by central Government.

#### **17. What is voluntary winding up?**

Where a company is wound up by its members or creditors without inference by the court, it is known as voluntary winding up. A company may be wound up voluntarily either by passing an ordinary resolution or by passing a special resolution.

#### **18. State the types of voluntary winding up?**

A voluntary winding up may be a

- Members voluntary winding up or
- Creditor's voluntary winding up.

#### **19. What are the consequences of winding up?**

- Consequence as to shareholders.
- Consequence as to creditors

- Consequences as to servants and officers.
- Consequences as to proceedings against the company
- Consequences as to costs.

## **20. What is a defunct company?**

A company is said to be 'defunct' when it is not carrying on business or when it is not in operation. If a company has ceased to carry on business, the Registrar of companies may strike it off the Registrar as defunct company in accordance with section-560.

## **21. Define Corporate Governance?**

Corporate governance refers to an economic legal and institutional environment that allows companies diversify, grow, restructure and exist, and do everything necessary to maximize long term share holder value.

## **22. List out the principals of corporate Governance?**

- Right and equitable treatment shareholders.
- Interests of other stake holders.
- Role and responsibilities of the board.
- Integrity and ethical behavior.
- Disclosure and transparency.

## **23. State the essentials of corporate governance?**

The following are the four key elements of good corporate governance.

- Transparency
- Disclosure
- Fairness
- Independent Supervision.

## **24. Give any four benefits of good governance?**

- Good governance leads to good performance.
- It creates an open and transparent system.



- It improves Communication and breaks down systematic barriers to flow of information.
- Good governance allows decision making based on data. It reduces risk.

**25. What are the selected best practices of corporate governance from Indian Corporate?**

- Empower the Board
- Have an appropriate mix in the Board
- Ensure that the Board is aware of its functions.
- Make use of the subcommittee.
- Provide Transparency.

**UNIT –III  
INDUSTRIAL LAW**

**1) What is a Factory?**

A factory is a premise where on 10 more persons are engaged if power is used, or 20 or more persons are engaged if power is not used, in a manufacturing process.

**2) Give any three objectives of Factories Act?**

- To regulate working conditions in factories.
- To ensure that basic minimum requirements for the safety, health and welfare of the factory workers are provided.
- To regulate the working hours, leave, holidays, overtime, employment of children, and young persons, etc.

**3) Define the term 'Worker' used in Factories Act?**

'Worker' means a person employed directly or by or through any agency with or without the knowledge of the principal employer, whether for remuneration or not on any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the amended forces of the union.

**4) Write short note on the word 'Occupier' as defined under Factories Act.**

'Occupier' of a factory means the person who has ultimate control over the affairs of the factory.

**5) What are the provisions of the factories act, 1948, relating to Health of workers?**

- Cleanliness and disposal of waste and effluents
- Ventilation, temperature and Humidity.
- Prevent Dust and fumes
- Avoid overcrowding
- Lighting and Drinking water.
- Latrines, urinals and spittoons

**6) List out the provisions of the Factories Act regarding the Employment of Young persons.**

- Prohibition of employment of Young children
- Non-adult workers to carry tokens
- Certificate of fitness.
- Time of work
- Working hours and notice of period of work for children.
- Register of child workers
- Power to require medical examinations.
- Safety provisions for young persons.

**7) State the provisions of the Factories Act regarding the Employment of Women.**

- Expose the women to risk in any injury from any moving part.
- Separate cotton-opener and partitioned free and
- Suitable rooms.
- Working hours
- Restriction on employment of women
- Certificate of fitness
- Dangerous operations.

**8) Define 'Wages' as per the Payment of Wages Act?**

“Wages” means all remuneration expressed in terms of money or cables of being so expressed which would/ if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or work done in such employment.

**9). State any four objectives of Payment of Wages Act.**

- To ensure regular and timely payment of wages to the employed person
- To prevent the evils of withholding wages to the employed persons
- To avoid delays in paying wages
- To prevent unauthorized deductions from wages.

**10). What are the medium of Payment of Wages?**

- All wages shall be paid in current coin or currency notes or both.
- Payment of wages in kind is not permitted
- The employer may offer obtaining the written authorization of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

**11) What are the payments to the employees which are not considered a “Wages”?**

- Any bonus
- The value of any house accumulation
- Contribution to any pension or provident fund
- Any traveling allowance
- Any gratuity payable on the termination of the employment
- Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment

**12). List out the time of Payment of Wages**

- Wages to be paid before 7<sup>th</sup> day of the following month if less than 1000 persons are employed.
- Wages to be paid before 10<sup>th</sup> day of the following month if more than 1000 persons are employed.
- If any person is terminated from his employment, his wages to be paid before the expiry of the 2<sup>nd</sup> working day from the day on which his employment is terminated.

- All wages shall be paid on a working day.

**13). State any four permissible or authorized deductions under the Payment of Wages Act.**

- Lines
- Deductions for absence from duty
- Deduction for damage to or loss of goods or for loss of money
- Deduction for house – Accommodation.

**14). What are the limits on deductions?**

The total amount of all categories of deductions from the wages of any employed person in any wage – period, should not exceed the following limits prescribed by section 7(3)

- 75% of wages payable in case where such deductions are wholly or partly made for payment to co-operative societies under section 7(2) (j) of the Act.
- 50% of the wages payable in any other case.

**15). Describe the meaning of the word ‘Bonus’**

The term ‘bonus’ is not defined in the Payment of Bonus Act, 1965 or in any other enactment. However, it means an annual payment obligatory on the employers to employees on the basis of profits or on the basis of production or productivity.

**16). State the objectives of the Bonus Act.**

The objectives of the Payment of Bonus Act is to maintain peace and harmony between labor and capital by allowing the employees in recognition of their right, to share in the prosperity of the establishment reflected by the contributions made by capital, management and labor.

**17). What is minimum Bonus?**

A minimum bonus of 8.33 percent of the wage or salary (up to Rs. 1600) of an employee (Rs. 60 in case of employees below the age of 15 years) is payable irrespective of the fact whether the establishment has made a profit or loss.

**18) Define an ‘Employee’ in the Bonus Act?**

An 'employee, means any person employed on a salary or wage not exceeding 3500 rupees per men in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

**19) State the "Bonus formula" given in the payment of Bonus Act, 1965.**

The following schematic view gives the simple 'bonus formula.

**20). Define the concept of minimum wages.**

According to the committee on fair wages, a minimum wage a minimum wage must provide not merely for the bare sustenance of life but the preservation of the efficiency of the worker.

**21) State the methods for fixing and revising minimum wages (section 5)**

- Committee method
- Notification method

**22) Define 'Industry' in Industrial Disputes Act?**

'Industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

**23) What is an "Industrial Dispute"?**

An "Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms and conditions of employment of any person.

**24) What are the modes of settlement of disputes under the Industrial Dispute Act?**

- Voluntary settlement and conciliation
- Works committee
- Conciliation officers

- Boardsofconciliation
- Courts ofInquiry
- Adjudication Machinery
- Labor courts
- IndustrialTribunals
- NationalTribunals
- Arbitration

### **25).What is 'lock-out'?**

Lock-out means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

## **UNIT-IV**

### **INCOME TAX ACT AND VAT**

#### **1. What is Tax planning?**

Tax planning can be defined as an arrangement of one's financial and economic affairs by taking complete legitimate benefit of all deductions, exceptions, allowance and rabet so that tax liability reduces to minimum.

#### **2. Define Tax Evasion?**

Tax Evasion means avoiding tax by illegal mean, e.g., by suppressing facts, by not maintaining correct records, by falsifying facts, by giving false statements and would be punished in normal course.

#### **3. What are the need for corporate Tax planning**

Every transaction entered into by a businessman will have direct and immediate impact on the tax liability of the person carrying on the business from the angle of income tax and surtax as well as sales tax, excise duty and customs duty with increasing burden of direct taxes, like income tax, gift tax, wealth tax, etc

#### **4. What is Income Tax?**

Income Tax is one of the major sources of revenue for the Government. The responsibility for collection of income-tax vests with the central Government. This tax is leviable and collected under Income Tax act, 1961

#### **5. What do you mean direct Tax?**

Direct taxes are those which a person pays directly from his income, wealth or estate. Direct taxes are paid after the income or benefit reaches the hands of the person. It is in proportion of the benefit derived.

#### **6. Write short note on Indirect Tax**

Indirect taxes are what the consumers and buyers pay to the state, while buying goods or availing services. It is a tax attached not to the income of a person, but to goods and services consumed.

#### **7. State the objectives of Tax planning**

- Increase disposable income
- Shield Against High Taxation
- Inequity in Tax Burden
- Maximum Deductions allowed to Business persons, minimal to others
- Avoidance of Litigation
- Curbing tax evasion

#### **8. Give any two differences between Tax Evasion and Tax planning**

<b>Tax Evasion</b>	<b>Tax planning</b>
i. It means willful and deliberate Under-statement of income Over-statement of expenses / Losses and under-payment of tax.	i. It means systematic arrangement of affairs with a view to minimize incidence of tax, in conformity with provisions of Law.
ii. It is an offence under the law, Liable to penalty / prosecution	ii. It is permissible under law if it is not by way of colorable device to Shorter unit legal provisions

### 9. What is meant by Tax Management?

Tax management is concerned with compliance with legal obligations under the tax laws. A thorough understanding of legal provisions and timely compliance with them is essential to proper and effective tax management

### 10. What are the elements of Tax Management?

- Planning and execution of tax related matters, such as maintenance of books of account, compliance with audit requirements
- Deduction of tax at source where necessary
- Payment of installments of advance tax on time
- Filing of tax returns on or before the due date
- Getting the assessment done.

### 11. State any two differences between Tax management and Tax planning

<b>Tax Management</b>	<b>Tax planning</b>
It means planning of tax matters Such as maintenance of books of Accounts, getting the audited filling of returns, appeals etc. It has focus on the past present and the future	It is a wider term and includes tax management. It essentially concerns itself with the future



## **12. List out the authorities under the IT act?**

The following are the appellate levels provided under the IT Act:

- Commission of Income Tax (Appeals)
- Appellate Tribunal.
- The High Court.
- The Supreme Court

## **13. What are the procedures of filing appeal?**

- Appeal against an order of commissioner (Appeals) must be filed within 60 days of the date on which the order is communicated
- In order case of order under sec. 158BC within 30 days
- The appeal must be in the prescribed form No. 36/36A and accompanied by the prescribed fee.

## **14. State the types of Direct Taxes**

- Personal Income Tax
- Corporation Tax
- Wealth Tax
- Gift Tax

## **15. List out the types of Indirect Taxes**

- Customs Duty
- Excise Duty
- Value Added Tax

## **16. What do you understand by Value Added Tax**

VAT is a multi-stage tax, levied only on value added at each stage in the chain of production of goods and services with the provision of a set-off for the tax paid at earlier stages in the chain.

**17. Define Input Tax?**

It means tax paid or payable by registered dealer in the course of business on the purchase of any good made from a registered dealer

**18. What is the VAT Rate structure?**

- The VAT rates are: 1% gold, silver precious metals, gems and precious stones
- 4% essential goods and primary raw materials
- 12.5% on goods not covered in any schedule

**19. Define 'Output Tax'**

It means the tax charged or chargeable under this Act by registered dealer in respect of the sale of goods in the course of his business

**20. State any five features of VAT**

- Registration
- Incidence, levy and collection of Tax
- Input tax credit
- Rate of taxes
- Composite dealers

**21. Write any five shortcomings of VAT?**

- Continuance of CST under VAT regime
- Difference tax treatment
- Movement of goods
- Incentive schemes
- Exemption schemes

**22. List out any differences between sales Tax and VAT?**

Sales Tax	VAT
Single point Tax	Multipoint Tax

Narrowbased HighAdministrativecosts Need intensive control Doubletaxationtaxontax	Broadbased Automatedadministration Self regularly Nocascadingeffectofftaxes
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**23. What is Sales Tax Act?**

Sales Tax is a tax on the sales of goods. It is an Indirect Tax, under the constitutions of India in which both central and states Government are empowered to levy tax on sale of goods subject to certain conditions.

**24. State any two objects of control Sales Tax**

- To tax sale of goods in the course of inter – state trade and commerce and to exclude sale within the state.
- To enforce registration of dealers under the ACT for effective collection assessment and prevention of tax evasion.

**25. Give any three salient provisions of state Sales Tax.**

- State sales Tax applied on sale and purchase of goods within the state
- State sales Tax Act enacted through state legislative
- Rate of sales tax is contained in the various schedules included in the Act

**UNIT-V**

**CONSUMER PROTECTION ACT AND INTRODUCTION OF CYBER LAWS.**

1. **Define Consumer Protection Act?**

The Consumer protection Act, 1986 attempts to provide an inexpensive, Simpler and quicker access to Redressal of consumer grievances. The Act has provided machinery where by consumer can file their complaints against defective goods or deficient service with consumer forums.

**2. Sateanytwoobjectives ofConsumerProtectionAct?**

- To provide an inexpensive, simpler and quicker access to Redressal of Consumer grievances.
- To provide a machinery against defective goods or deficient services with Consumer forums.

**3. What are the various rights of consumers recognized under the Consumer Protections Act?**

- Righttosafety
- RighttoInformation
- RighttoChoose
- RighttobeHeard
- RighttoseekRedresselagainstExploitation
- RighttoconsumerEducation

**4. Who is Consumer?**

‘Consumer means’ any person whobuys any goods for a consideration whichhas been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any person who uses such goods with the approval of thebuyer.

**5. ‘Unfair’TradePractice?**

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

**6. WhatismeanbyRestrictiveTrade Practice?**

“Restrictive trade practice” means a trade practice which tend to bring aboutmanipulation of price and of its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumer’s unjustified costs or restrictions.

**7. Define Consumer Dispute.**

Consumer dispute means a dispute where the person against whom a complaint has been made denies or disputes the allegations contained in the complaint.

**8. What are the rights of consumers to be protected by central council?**

- Right to safety
- Right to information
- Right to Choose
- Right to be heard
- Right against exploitation
- Right to education

**9. Discuss about Consumer Disputes Redressal Agencies.**

The Consumer Protection Act, 1986 provides for a three-tier remedial machinery for speedy redressal of consumer disputes namely

- District forum
- State Commission and
- National Commission

**10. State the powers of the Consumer Forums?**

- Powers similar to those of civil court
- Additional power of the consumer forums (Rule 10)
- Power to issue order.

**11. Define Cyber Laws**

The expression “Cyber law” encompasses all the cases. Statutes and constitutional provisions that affect persons and institutions who control the entry to cyberspace, provide access to cyberspace create the hardware and software which enable people to access cyberspace or use their own devices to go ‘Online’ and enter cyberspace.

**12. Define Information Technology (IT)**

The term 'information technology' generally applied to broad area of activities and technologies associated with the use of computers and communication. It is an application of computers to create, store, process and use of information particularly in the field of commerce.

**13. What is Information Technology Act 2000?**

The law relating to 'information technology' is contained in the Information Technology (IT) Act, 2000, which came into force on 17<sup>th</sup> October, 2000. It is the first Cyber Law in India. It governs the processing and dissemination of information electronically.

**14. Give any two objectives of IT Act 2000.**

- To give boost to electronic commerce e-transactions, associated with commerce and trade
- To facilitate electronic governance Co-governance by means of reliable electronic records.

**15. Define the term 'Electronic Commerce'**

The Term Electronic Commerce (e-commerce) refers to the business transacted electrically. The term refers to trading of goods over the Internet. It is online sale and purchase of goods and services for value by using internet technologies such as internet processing e-mail and World Wide Web (www).

**16. What is meant by Electronic Governance?**

The term Electronic Governance refers to the application of information technology to the processes of Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance.

**17. What is Digital Signature?**

The expression digital Signature has been defined in section 2(1) (P) of the Act to mean authentication of any electronic record by a Subscriber, i.e., a person in whose name the "Digital Signature certificate" is issued by means of an electronic method or procedure in accordance with the provisions of section 3.

**18. Define Electronic record?**

It means data, record or data generated, image or sound stored, received or sent in an electronic form [sec 2(1) (r)] or microfilm or computer generated microfiche.

**19. What do you understand by Electronic form?**

With reference to information, 'electronic form' means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, Computer generated micro fiche or similar device.

**20. State any five provisions of Electronic Governance?**

- Legal Recognition of Electronic Records
- Legal Recognition of Digital Signatures
- Retention of Electronic Records
- Public of Rules Regulation setc, in Electronic Gazette
- Central Government empowered to make Rules

**21. What are the regulations under IT Act**

- Role of Controller of Certifying Authorities (CCA) in Regulating Certifying Authorities.
- Role of Controller of Certifying Authorities (CCA) in Regulating flow of Information.
- Role of cyber Regulations Appellate Tribunal (CRAT) as an Appellate Tribunal.
- Role and constitution of Cyber Regulation Advisory Committee (CRAC).

**22. What do you understand by Consumer Protection Councils?**

The Consumer protection councils are established at center State and District level. These Councils work towards the Promotion and protection of the rights of the Consumers.

**23. Write short note on Copy Rights.**

Copyrights are the exclusive right to reproduce and sell literary, musical and artistic works.

**24. Give any two examples of Unfair Trade Practice**

- Making false statements that the goods are of particular standard, quality, quantity, grade, composition, style or model.
- Making false statements that the Service is of a particular standard quality or grade.

**25. What do you mean by Patents?**

Patents are the exclusive rights granted by the Government enabling the holder to control the use of an invention.