

LECTURE NOTES FOR BUSINESS LAW

UNIT-1: Meaning & Nature of Law

Law of Contract-Definition –Classification of Contracts –essential elements of a contract - Remedies for Breach of Contract.

INTRODUCTION TO LAW

- As a social being, man comes into contact with people in different capacities
- He comes into contact,
- For example:
 1. with a landlord as a tenant
 2. with Government as a Taxpayer
 3. with customers as a seller and
 4. with suppliers as a buyer.
- Inevitable consequence of modern civilization
- In all these associations, he is expected to observe a code or a set of rules.
- The word 'Law' is a general term and has different connotations for different people, e.g.,
 - 1.A citizen may think of Law as a set of rules which he must obey.
 - 2.A Lawyer who practices law may think of Law as a vocation.
 - 3.A legislator may look at law as something Created by him
 - 4.A judge may think as guiding principles to be applied in making decisions

DEFINITION OF LAW

In the words of Salmond,” Law is the body of principles recognized and applied by the state in the administration of justice.”

Woodrow Wilson has defined law as “that portion of the established habit and thought of mankind which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government.”

- Law is not static
- laws are changed to fit the requirements of the society.
- Law prevailing in a society at any point of time must be in conformity with –
 - the general sentiments
 - customs and
 - aspirations of its people.
- It is a real phenomenon having a real existence in relation to the facts of human affairs

OBJECT OF LAW

- The object of law is order and the result of order is that men are enabled to look ahead

with some sort of security as to the future.

- In the context of new emerging India, the main object of law is considered to be “ to establish socio-economic justice and remove the existence imbalance in the socio-economic structure.”
- In the pre- independence era, the principal concern of the government was limited to the maintenance of law and order in the country.

BUT

- The situation has changed now and the fundamental task of broadening the horizons of the welfare state is being pursued by the legislation covering the entire gamut of social activity

CONTRACT

DEFINITION OF CONTRACT

It is an agreement made between two or more parties which the law will enforce

Sec. 2(h) Indian Contract Act, 1872 defines a Contract as an agreement enforceable by law

Every agreement and promise enforceable at law is a Contract

An agreement creating and defining obligations between the parties

What is enforceability of an Agreement?

An agreement is defined as “Every promise and every set of promises, forming consideration for each other”

A promise is defined thus “When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.

A proposal, when accepted, becomes a promise

An agreement is an accepted proposal

To form an agreement, there must be a proposal or offer by one party and its acceptance by the other

AGREEMENT = OFFER + ACCEPTANCE

CONSENSUS AD IDEM

The parties to the agreement must have agreed about the subject matter of the agreement in the same sense and at the same time. Unless there is *consensus ad idem*, there can be no contract.

OBLIGATION

It is defined as a legal tie which imposes upon a definite person or persons the necessity of doing or abstaining from doing a definite act or acts

It may relate to social or legal matters

An agreement which gives rise to social obligation is not a contract

ESSENTIAL ELEMENTS OF VALID CONTRACT

- Offer and acceptance
- Intention to create legal relationship
- Lawful consideration
- Capacity of parties – competency
- Free and genuine consent
- Lawful object
- Agreement not declared void
- Certainty and possibility of performance
- Legal formalities

Offer and acceptance

There must be two parties to an agreement

One party makes the offer and other party accepts it

The terms of the offer must be definite and the acceptance of the offer must be absolute and unconditional

The acceptance must be according to the mode prescribed and must be communicated to the offeror.

Intention to create legal relationship

- When two parties enter into an agreement, their intention must be to create legal relationship between them
- If there is no such intention on the part of the parties, there is no contract between them
- Agreements of social or domestic nature do not contemplate legal relationship as such they are not contracts

Case :(Balfour V. Balfour)

- A husband promised to pay his wife a household allowance of \$30 every month. Later the parties separated and the husband failed to pay the amount. The wife sued for the allowance. Held, agreements such as these were outside the realm of contract altogether

Lawful consideration

Consideration means an advantage or benefit moving from one party to the other. It is the essence of a bargain. “something in return”

A promise to do something and getting nothing in return is usually not enforceable by law

Consideration need not necessarily be in cash or kind

It may be an act or abstinence or promise to do or not to do something

It may be past, present or future

It must be real and lawful

Capacity of parties - Competency

The parties to the agreement must be capable of entering into a valid contract

Every person is competent to contract if he

Is of the age of majority

Is of sound mind and

Is not disqualified from contracting by any law to which he is subject

Free and genuine consent

It is essential to the creation of every contract that there must be free and genuine consent of the parties to the agreement

The consent of the parties is said to be free when they are of the same mind on all the material terms of the contract

There is absence of the free consent if the agreement is induced by Coercion, Undue Influence, Fraud, Misrepresentation etc.,

Lawful object

The object must not be

- Illegal
- Immoral
- Opposed to public policy

If an agreement suffers from any legal flaw, it would not be enforceable by law

Agreement not declared void

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

Certainty and possibility of Performance

- The agreement must be certain and not vague or indefinite, if not it cannot be enforced

EG : 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

“Scammell Vs. Ouston” – O agreed to purchase a motor van from S “on hire purchase terms”. The hire purchase price was to be paid over two years. Held, there was no contract as the terms were not certain about the rate of interest and mode of payment. NO precise meaning could be attributed to the words “on hire purchase” since there was a wide variety of hire purchase terms.

Legal formalities

- A contract may be made by words spoken or written
- As regards the legal effects, there is no difference between a contract in writing and a contract made by word of mouth
- In the interest of parties, the contract should be in writing
- The document in which the contract is incorporated is to be stamped
- When 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

CLASSIFICATION OF LAW



CONTRACTS ACCORDING TO VALIDITY

■ Voidable contract

- An agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contract
 - When the consent of a party of a contract is not free the contract is voidable at his option
 - When a party to a contract promises to perform all obligation within a specified time, any failure on his part to perform his obligation within the fixed time makes the contract voidable at the option of the promisee

■ Void agreement

- An agreement not enforceable by law is said to be void
- A void agreement does not create any legal rights or obligations

■ Void contract

- A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable
 - A contract, when originally entered into, may be valid and binding on the

parties, it may be subsequently become void

- Eg war or Govt. Order

■ **Illegal agreement**

- An illegal agreement is one which transgress (controversy) some rule or basic public policy or which is criminal in nature or which is immoral. *All Illegal agreements are void but all void agreements are not necessarily illegal*

■ **Unenforceable contract**

- An unenforceable contract is one which cannot be enforced in court of law because of some technical defect such as absence or writing etc.,

CLASSIFICATION ACCORDING TO FORMATION

■ **Express contract**

- If the terms of contract expressly agreed upon at the time of formation of the contract, the contract is said to be an express contract

■ **Implied contract**

- An implied contract is one which is inferred from the acts or conduct of the parties or course of dealings between them

■ **Quasi contract**

- A quasi contract is not a contract at all. A contract is intentionally entered into by the parties. A quasi contract is created by law. It resembles a contract in that a legal obligation is imposed on a party who is required to perform it.
 - Eg : T a tradesman, leaves goods at C's house by mistake. C treats the goods as his own.
 - C is bound to pay for the goods

■ **E commerce contract**

- The contracts which is entered into between two parties via internet is called E Commerce Contract

CLASSIFICATION ACCORDING TO PERFORMANCE

■ **Executed contract**

- Executed means that which is done. If both the parties have performed their obligations, they are executed contracts

■ **Executory contract**

- Both the parties have yet to perform their obligations
- It may sometimes partly executed and partly executory

■ Unilateral

- When only one party has to fulfill his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence
 - A permits a railway coolie to carry his luggage and place it in a carriage. The contract comes to an end as it places it in carriage. Now it is the obligation of A to pay the amount'

■ Bilateral contract

- The obligation on the part of both the parties the contract is outstanding at the time of formation of the contract. (Executory Contracts)

REMEDIES FOR BREACH OF CONTRACT

WHAT IS A REMEDY?

a remedy is the means given by law for the enforcement of a right.

WHEN A CONTRACT IS BROKEN, THE INJURED PARTY, HAS ONE OR MORE OF THE FOLLOWING REMEDIES:

- ❖ Rescission of the contract
- ❖ Suit for Damages
- ❖ Suit upon Quantum Meruit
- ❖ Suit for specific performance of the Contract
- ❖ Suit for injunction.

RECISSION

When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance. In such a case, he is absolved of all his obligations under the contract.

E.g: A promises B to supply 10 Bags of cement on a certain day. B agrees to pay the price after the receipt of the goods. A does not supply the goods. B is discharged from liability to pay the price.

DAMAGES

Damages are the monetary compensation allowed to the injured party by the court for the loss of injury suffered by him by the breach of a contract.

OBJECTS OF AWARDING DAMAGES

It is to put the injured party in the same position, so far as money can do it, as if he had not been injured, I.e, in the position in which he would have been there been performance and not breach.

This is also known as DOCTRINE OF RESTITUION .

(RESTITUTIO IN INTEGRUM)

CASE:HADLEY VS BAXENDALE

X's mill was stopped by the breakdown of a shaft. He delivered the shaft to Y, a common carrier, to be taken to a manufacturer to copy it and make a new one. X did not make known to Y that delay would result in loss of profits. By some neglect on the part of Y the delivery of the shaft was delayed in transit beyond a reasonable time. Held, Y was not liable for loss of profits during the period of delay as the circumstances communicated to Y did not show that a delay in the delivery of the shaft would entail loss of profits to the mill.

WHEN A CONTRACT HAS BEEN BROKEN, THE INJURED PARTY IS ENTITLED TO:

- Such damages which is naturally arose in the usual course of things from such breach. This related to ordinary damages arising in the usual course of the things.
- Such damages which the parties knew, when they made the contract, to be likely to result from the breach. This relates to Special damages.
- Such Compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach; and
- Such compensation for damages arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

DAMAGES ARISING NATURALLY – ORDINARY DAMAGES

When a contract has been broken, the injured party can recover from the other party such damages as naturally and directly arose in the usual course of things from the breach. These damages are known as ordinary damages.

E.g.: A contracts to sell and deliver 50 quintals of Farm wheat to B at Rs.475 per quintal, the price to be paid at the time of delivery. The price of Wheat rises to Rs. 500 per quintal and A refuses to sell the Wheat. B can claim damages at the rate of Rs.25 per quintal.

In a contract for the sale of goods, the measure of damages on the breach of a contract is the difference between the contract price and the market price of such goods on the date of the breach.

If, however, the thing contracted for is not available in the market, the price of the nearest and best available substitute may be taken into account for calculating damages.

Where the subject matter of a contract is goods specially made to order and which are not marketable, the price of the goods is the measure of the damages.

COMPENSATION IS NOT TO BE GIVEN FOR ANY REMOTE OR INDIRECT LOSS OR DAMAGE

E.g: A contracts to pay a sum of money to B on a specified day. He does not pay the money on that day.

B in consequence of not receiving money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay together with interest up to the day of payment.

EFFECT OF NEGLIGENCE BY PROMISEE

If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

E.g: A contracts with B to repair his house. B neglects or refuses to point out to A the places in which his house requires repair. A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

DAMAGES IN CONTEMPLATION OF THE PARTIES

Damages other than those arising from the breach of the contract may be recovered if such damages may reasonably be supposed to have been in the contemplation of the both of the parties as the probable result of the breach of the contract. Such damages are known as Special Damages, which cannot be claimed as the matter of right

SIMPSON VS LONDON & N.W.RAIL.CO.

S sent some specimens of his goods for exhibition at an agricultural show. After the show he entrusted some of his samples to an agent of the railway company for carriage to another show ground at New Castle. On the consignment note he wrote "Must, be at New Castle, Monday certain". Owing, to a default on the part of the railway company, the samples arrived late for the show. Held, S could claim damages for the loss of profit at the show.

VINDICTIVE OR EXEMPLARY DAMAGES

Damages for the breach of a contract are given by way of compensation for loss suffered, and not by way of punishment for wrong inflicted. Hence, "vindictive" or "exemplary" damages have no place in the law of contract because they are punitive by nature.

But in case of

- (a) Breach of promise to marry and
- (b) Dishonor of a cheque by banker wrongfully when he possesses sufficient funds to the credit of the customer, the Court may award exemplary damages.

NOMINAL DAMAGES

Where the injured party has not in fact suffered any loss by reason of the breach of a contract, the damages recoverable by him are nominal.

CASE : BRACE VS CALDER

A firm consisting of four partners employed B for a period of two years. After six months two partners retired, the business being carried on by the other two. B declined to be employed under the continuing partners. Held, he was only entitled to nominal damages as he had suffered no loss.

DAMAGES FOR LOSS OF REPUTATION

These 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. IF the customer happens to be a tradesman, he can recover damages in respect of any loss to his trade reputation by the breach. And the rule of law is :

THE SMALLER THE AMOUNT OF THE CHEQUE DISHONOURED, THE LARGER THE AMOUNT OF DAMAGES AWARDED. BUT IF THE CUSTOMER IS NOT A TRADESMAN, HE CAN RECOVER ONLY NOMINAL DAMAGES.

CASE : ADDIS VS GRAMOPHONE CO LTD

A was wrongfully dismissed in a harsh and humiliating manner by G from his employment. Held,

- (a) A could recover a sum representing his wages for the period of notice and the commission which he would have earned during that period; but
- (b) He could not recover anything for his injured feelings or for the loss sustained from the fact that his dismissal made it more difficult for him to obtain employment.

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.

That is he cannot claim compensation for loss which is really due not to the breach but due to his own neglect to mitigate the loss after the breach.

DIFFICULTY OF ASSESSMENT

Although damages which are incapable of assessment cannot be recovered, the fact that they are difficult to assess with certainty or precision 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.

Case : CHAPLIN VS HICKS

H advertised a beauty competition by which readers of certain newspapers were to select fifty ladies. H himself was to select twelve out of these fifty. The selected twelve were to be provided theatrical engagements. C was one of the fifty and by H's breach of contract she was not present when the final selection was made. Held, C was entitled to damages although it was difficult to assess them.

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 discretion of the court.

LIQUIDATED DAMAGES AND PENALTY

Liquidated damages 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 ensue as a result of the breach, if it takes place.

A penalty is a sum named in the contract at the time of its formation, which is disproportionate to the damage likely to accrue as a result of the breach. It is fixed up with a view to secure the performance of the contract

QUANTUM MERUIT

It means “AS MUCH AS EARNED”

A right to sue on a quantum meruit arises where a contract, partly performed by one party, has become discharged by the breach of the contract by the other party.

The right is founded not on the original contract which is discharged or is void but on an implied promise by the other party to pay for what has been done.

SPECIFIC PERFORMANCE

In certain cases, damages are not an adequate remedy. The court may, in such cases, direct the party in breach to carry out his promise according to the terms of the contract. This is a direct by the court for Specific Performance of the contract at the suit of the party not in breach.

INJUNCTION

Where a party is in breach of a negative term of a contract, the court may, by issuing an order, restrain him from doing what he promised not to do. Such an order of the court is known as an “Injunction”.

Case: LUMLEY VS WAGNER

W agreed to sing at L's theatre, and during a certain period to sing nowhere else. Afterwards W made contract with Z to sing at another theatre and refused to perform the contract with L. Held, W could be restrained by injunction from singing for Z.

Unit II:

Contract of Indemnity - Right of Indemnity Holder and Indemnifier ; Contract of Guarantee - Types of Guarantee - Rights and Liabilities - Discharge of surety from his liability ; Contract of Bailment: Duties and Rights of Bailee & Bailor and Termination of Bailment Agency - Agent and Principal - Creation of Agency - Classification of Agents - Rights, Duties and Liabilities of Agent and Principal – Termination of Agency .

Contract of Indemnity

The term Indemnity literally means “Security against loss”. In a contract of indemnity one party – i.e. the indemnifier promise to compensate the other party i.e. the indemnified against the loss suffered by the other.

The English law definition of a contract of indemnity is – “it is a promise to save a person harmless from the consequences of an act”. Thus it includes within its ambit losses caused not merely by human agency but also those caused by accident or fire or other natural calamities.

The definition of a contract of indemnity as laid down in Section 124 – “A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.

The definition provided by the Indian Contract Act confines itself to the losses occasioned due to the act of the promisor or due to the act of any other person.

Under a contract of indemnity, liability of the promisor arises from loss caused to the promisee by the conduct of the promisor himself or by the conduct of other person. [Punjab National Bank v Vikram Cotton Mills].

Every contract of insurance, other than life insurance, is a contract of indemnity. The definition is restricted to cases where loss has been caused by some human agency. [**GajananMoreswar v Moreswar Madan**]

Section 124 deals with one particular kind of indemnity which arises from a promise made by an indemnifier to save the indemnified from the loss caused to him by the conduct of the indemnifier himself or by the conduct of any other person, but does not deal with those classes of cases where the indemnity arises from loss caused by events or accidents which do not depend upon the conduct of indemnifier or any other person. [**Moreswar v Moreswar**]

“Contract of indemnity” defined.-A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a “contract of indemnity”.

Illustration

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Nature of Contract of Indemnity –

A contract of indemnity may be express or implied depending upon the circumstances of the case, though Section 124 of the Indian Contract Act does not seem to cover the case of implied indemnity.

A broker in possession of a government promissory note endorsed it to a bank with forged endorsement. The bank acting in good faith applied for and got a renewed promissory note from the Public Debt Office. Meanwhile the true owner sued the Secretary of State for conversion who in turn sued the bank on an implied indemnity. It was held that – it is general principle of law when an act is done by one person at the request of another which act is not in itself manifestly tortious to the knowledge of the person doing it, and such act turns to be injurious to the rights of a third person, the person doing it is entitled to an indemnity from him who requested that it should be done. [Secretary of State v Bank of India].

The Indian Contract Act also deals with special cases of implied indemnity –

1. U/s 69 if a person who is interested in payment of money which another is bound by law to pay and therefore pays it, he is entitled to be indemnified. For instance – if a tenant pays certain electricity bill to be paid by the owner, he is entitled to be indemnified by the owner.
2. Section 145 provides for right of a surety to claim indemnity from the principal debtor for all sums which he has rightfully paid towards the guarantee.
3. Section 222 provides for liability of the principal to indemnify the agent in respect of all amounts paid by him during the lawful exercise of his authority.

The plaintiff, an auctioneer, acting on the instruction of the defendant sold certain cattle which subsequently turned out to belong to someone else other than the defendant. When the true owner sued the auctioneer for conversion, the auctioneer in turn sued the defendant for indemnity. The Court held that the plaintiff having acted on the request of the defendant was entitled to assume that, if it would have turned out to be wrongful, he would be indemnified by the defendant. [Adamson v Jarvis].

Right of Indemnity Holder and Indemnifier

An indemnity holder (i.e. indemnified) acting within the scope of his authority is entitled to the following rights –

1. Right to recover damages – he is entitled to recover all damages which he might have been compelled to pay in any suit in respect of any matter covered by the contract.
2. Right to recover costs – He is entitled to recover all costs incidental to the institution and defending of the suit.

3. Right to recover sums paid under compromise – he is entitled to recover all amounts which he had paid under the terms of the compromise of such suit. However, the compensation must not be against the directions of the indemnifier. It must be prudent and authorized by the indemnifier.

4. Right to sue for specific performance – he is entitled to sue for specific performance if he has incurred absolute liability and the contract covers such liability. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

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

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

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not

It is important to note here that the right to indemnity cannot be claimed of dishonesty, lack of good faith and contravention of the promisor's request. However, the right cannot be negative in case of oversight. [Yeung v HSBC]

Right of Indemnifier

Section 125 of the Act only lays down the rights of the indemnified and is quite silent of the rights of indemnifier as if the indemnifier has no rights but only liability towards the indemnified.

In the logical state of things if we read Section 141 which deals with the rights of surety, we can easily conclude that the indemnifier's right would also be same as that of surety.

Where one person has agreed to indemnify the other, he will, on making good the indemnity, be entitled to succeed to all the ways and means by which the person indemnified might have protected himself against or reimbursed himself for the loss. [Simpson v Thomson]

Principle of Subrogation is applicable because it is an essential part of law of indemnity and is based on equity and the Contract Act contains no provision in contravention with [Maharaja Shri JarvatSinghji v Secretary of State for India]

Contract of Guarantee

A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety";

the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

Consideration for guarantee. -Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Contract of Guarantee

Contract of Guarantee means a contract to perform the promises made or discharge the liabilities of the third person in case of his failure to discharge such liabilities.

Types of Guarantee

A contract of guarantee may be for an existing liability or for future liability. A contract of guarantee can be a specific guarantee (for any specific transaction only) or continuing guarantee.

Specific Guarantee: A specific guarantee is for a single debt or any specified transaction. It comes to an end when such debt has been paid.

Continuing Guarantee: A continuing guarantee is a type of guarantee which applies to a series of transactions.

A continuing guarantee applies to all the transactions entered into by the principal debtor until it is revoked by the surety. A continuing guarantee can be revoked anytime by surety for future transactions by giving notice to the creditors. However, the liability of a surety is not reduced for transactions entered into before such revocation of guarantee.

Rights and Liabilities

The Indian contract act is silent regarding the RI.

On the authority of the English law, the rights of indemnifier are analogous to the rights of a surety under sec. 141.

Contract of Bailment:

- ◆ Derived from French word "bailler" means to deliver

In legal sense, it involves change in possession of goods from one person to another for some specific purpose

- ◆ The delivery of goods by one person to another for some purpose, upon a contract, that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Duties and Rights of Bailee & Bailor

- ◆ To disclose known faults: If he does not disclose he is responsible for any damages caused to the bailee directly from such faults
 - Read vs. Dean
 - A hires a motor launch from B for holiday on the river Thames. The launch caught fire and A was unable to extinguish it as the fire-fighting equipment was out of order. As such he was injured and suffered loss. Held, B was liable.
- ◆ 2. To bear extraordinary expenses of bailment:
 - E.g.: A lends his horse to B, a friend, for two days. The feeding charges are to be paid by B. But if the horse meets with an accident, A will have to repay B medical expenses, incurred by B.
 - Where in the case of gratuitous bailment, the goods are to be kept or to be carried, or some work is to be done upon the goods by the bailee for the bailor, the bailor must repay to the bailee all the necessary expenses incurred by him for the purpose of the bailment.
 - E.g.: A leaves his car with B a friend, for safe custody for two months, B has to pay Rs.100 per month to the night watchman for keeping a watch over the car. It is the duty of A to pay B the necessary expenses incurred by B,
- ◆ 3. To indemnify bailee for loss in case of premature termination of gratuitous bailment:
 - In case the loss accruing to the bailee from such premature termination should not exceed the benefit he has derived out of the bailment.
 - In case the loss exceeds the benefit, the bailor shall have to indemnify the bailee.
 - E.g.: A lends an old discarded bicycle to B gratuitously for three months. B incurs Rs.120 for repairs. IF A asks for the return of the bicycle after one month, he will have to compensate B for expenses incurred by B in excess of the benefit derived by him.
- ◆ 4. To receive back the goods:
 - If the bailor refuses to receive back the goods, the bailee is entitled to receive compensation from the bailor for the necessary expenses of custody.
- ◆ 5. To indemnify the bailee:

If the title of the bailor is defective and the bailee suffers in consequence....

1.Enforcement of rights

- Can enforce by suit all the liabilities or duties of the bailee as his rights.

2. Avoidance of contract

- Bailor can terminate the bailment- if bailee does things inconsistent with the bailment

3. Return of goods lent gratuitously

- If goods lent gratuitously bailor –can ask for return anytime –but if loss suffered by bailee –over the benefit derived then bailor has to indemnify.

4.Compensation from a wrong-doer.

- Third person is a wrong fully deprives the bailee of the use or possession of the goods bailed or does injury the bailor or bailee can suit on the third person.

◆ 1.To take reasonable care of the goods bailed:

- If in spite of the bailee's reasonable care of them, IF, in spite of the bailee's reasonable care, goods are damaged or destroyed in any way, the bailee is not liable for the loss, destruction or deterioration of the things bailed.

Coldman Vs Hill

- Some cattle belonging to A were agisted (given for feeding grass against payment) with B. Without any negligence on B's part the cattle were stolen. B did not inform the owner or the police or make any effort to recover them, because he thought it would be useless to do so. Held, B was liable for the loss.

• 2.Not to make any unauthorized use of goods:

E.g.: A hires a horse in Calcutta from B expressly to march to Varanasi. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to compensate B for the injury to the horse.

◆ 3. Not to mix the goods bailed with his own goods: IF he mixes the bailor's goods with his own goods

- (a) with the bailors consent: both the parties shall have a proportionate interest in the mixture thus produced

- (b) without the bailors consent: if the goods can be separated or divided, the bailee is bound to bear all the expenses incurred in the separation of the bales, and any other incidental charges.
- © without the bailor's consent: If the mixture is beyond the separation, the bailor is entitled to be compensated by the bailee for the loss of the goods.
- (d) IF the goods of bailor were mixed up by some act unknowingly, the mixture belongs to bailor and the bailee in proportion to their shares but the cost of separation will have to be borne by the bailee.

◆ 4. Not to set up an adverse title

◆ 5. TO return any accretion(increase) to the goods

- E.g.: A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

6. To return the goods.

◆ Shaw & Co. Vs Symmons & Sons:

- A delivered some books to B to be bound. He pressed for their return, but B neglected to return them although more than a reasonable time had elapsed. A fire accidentally broke out on B's premises, and the books were burnt. Held, B was liable for the loss, although he was not negligent, because of his failure to deliver the books within a reasonable time.

◆ 1. Delivery of goods to one of several joint bailors of goods:

◆ 2. Delivery of goods to bailor without title.

◆ 3. Right to apply to Court to stop delivery

◆ 4. Right of action against trespassers

◆ 5. Bailee's lien:

- Where the lawful charges of the bailee in respect of the goods bailed are not paid, he may retain the goods. This right of the bailee to retain the goods is known as "Particular Lien".

Termination of Bailment

- ◆ A contract of bailment can be terminated by any of the following;

- ◆ 1. ACCOMPLISHMENT OF PURPOSE

When the purpose for which goods were bailed” has been accomplished, the contract of bailment is terminated and goods are returned to the bailor.

- ◆ 2.EXPIRY OF TIME

When the goods are bailed for a fixed time, the contract of bailment is terminated at the expiry of the time fixed.

3. DEATH OF THE PARTY

A gratuitous bailment is terminated by the death either of the bailor Sec. 162.

- ◆ 4. BAILEE’S INCONSISTENT ACT

- ◆ A contract of bailment ‘is voidable (terminated) at the option of the bailee does any act with regard to the goods bailed’ with the conditions of the bailment.

Contract of Agency

- ◆ Agency is a special type of contract.
- ◆ The concept of agency was developed as one man cannot possibly do every transaction himself.
- ◆ The principles of contract of agency are :
 - (a) Accepting matters of a personal nature (*e.g. a person cannot marry through an agent, as it is a matter of personal nature*)
 - (b) A person acting through another person

As per section 185, no consideration is necessary to create an agency

Agent and Principal –

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” [section 182].

Agreement between principal and agent:

- ✓ Between the principal and third person, any person can become an agent
- ✓ Principal is liable for the acts of the agent

Intention of agent to act on behalf of the principal:

- ✓ If it is in the interest of principal

Creation of Agency

AGENCY WITH EXPRESS AGREEMENT

The authority given by principal to agent is an express authority which enables the agent to bind the principal by acts done within scope of his authority.

The agreement may be either by word of mouth or written form

It arises from the conduct, situation or relationship of parties

It may be inferred from circumstances of the case or ordinary course of dealing

E.g. A woman allowed her son to drive a car for her , she paid all the expenses for maintenance. The son caused an accident injuring his wife. Held wife could sue the mother since son was an agent of mother [Smith vs. Moss]

Classification of Agents –

As per section 182, an agent is a person who brings his principal into the contractual relations with the third parties. The principal appoints or employs an agent under the contract of agency. Thus, an agent is the link that connects the principal to the third parties. An agent binds the principal by his acts. In other words, a principal is responsible for the acts of the agent to the third parties. When an agent acts for his principal, he has the capacity of his principal. There are 3 classes of agents: General agent, Special agent and Mercantile agent. Let us discuss the Classification of Agents in detail.

Classification of Agents

- General Agent
- Special Agent
- Mercantile Agent

1. General Agent:

The principal appoints a general agent to do anything within his authority in all transactions or in all transactions relating to a specific trade, business or matter. The principal grants the authority to the agent to act on his behalf.

It may be assumed by the third party that such an agent has the authority to do all that is usual for a general agent to do. Any private restrictions on the agent's authority do not affect the third party.

2. Special Agent:

He is the one who is appointed or employed to do or perform only a specific act, task or function. Outside of this special act, task or function, he has no authority or power. In this case, the third party cannot assume that the agent has unlimited authority. Thus, any act of the agent outside his authority cannot bind the principal.

3. Mercantile Agent:

As per section 2(9) of the Sale of goods act, 1930, a mercantile agent is a person who in the customary course of business has an agent's [authority](#) either to sell or consign the goods for the purpose of sale or to buy goods or to raise money on the security of goods. Thus, this definition covers the following:

a. Factors:

A factor is a person who is appointed to sell goods which are put in his possession or to buy goods for his principal. He is the evident owner of the goods in his custody and can thus sell them in his own name and receive payment for them.

He also has an insurable interest in the goods in his custody and a general lien regarding any claim that he may have to arise out of the agency.

b. Brokers:

A broker is a person whose [business](#) is to make contracts with the other parties for the sale and purchase of goods or securities for brokerage.

He does not have the possession of the goods and acts in the name of the principal. Also, he has no lien over goods because he has no possession of goods.

c. Del Credere Agent:

A del credere agent is a person who ensures or guarantees his principal that the creditors of goods will pay for the goods they buy for extra remuneration. In the case of failure to pay by the third party, he needs to pay the due amount to his principal.

d. Bankers:

The relation between a banker and a customer is basically that of a debtor and creditor. However, when a banker buys or sells securities or collects cheque, dividends, interests, bills of exchange or promissory notes on behalf of his customer, he becomes the agent of his customer. Thus, he has a general lien on all the securities in his possession regarding the general balance due to him by the customer.

e. Partners:

As per the Partnership Act, every partner is an agent as well as the principal of every other partner in a Partnership firm. Also, every partner is the agent of the firm for the business of the [firm](#).

f. Auctioneers:

An auctioneer is a person who sells the goods by auction. An auction is a process by which goods are sold to the highest bidder in a public competition. He cannot warrant his principal's title to the goods.

He is the agent of the seller until the goods are auctioned or knocked down. However, after the knockdown, he becomes the agent of the buyer. Also, he is evidence that the sale took place.

Rights, Duties and Liabilities of Agent and Principal –

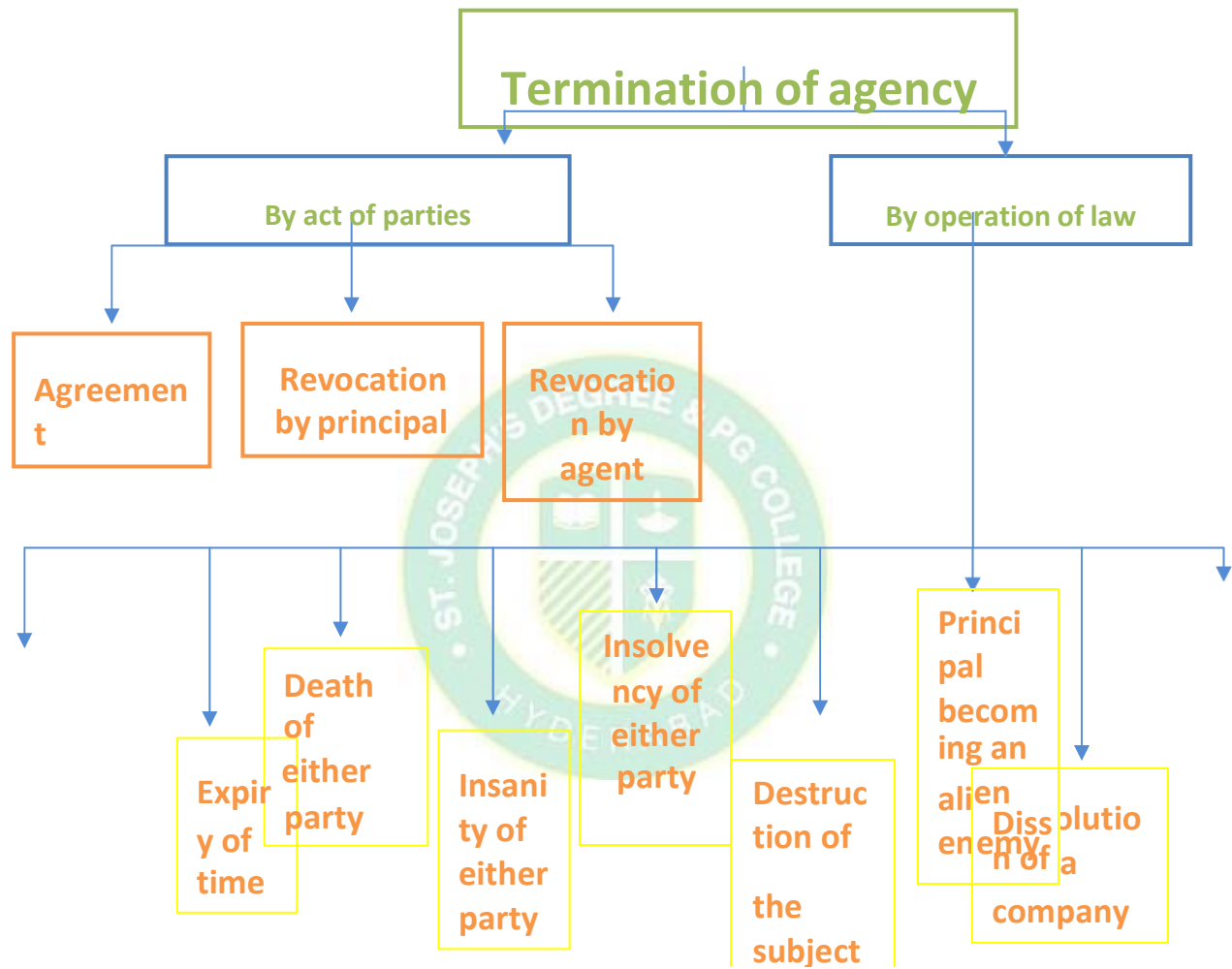
- i. Agent exceeding his authority in an emergency (sec 189)
 - Not in a position to communicate with the principal
 - Taken necessary steps to protect the interests of principal
 - Acted Bonafide

Principal is liable for the acts of agent

- To protect or preserve
- The authority is implied because of necessity

E.g. A horse was sent by train. When it arrived at the station of destination, nobody took the delivery. The railway Co. had to feed the horse. Held the rail Co. was an agent of necessity and could recover the amount spent on horse

Termination of Agency .



Unit III: Negotiable Instruments -

Concept - Characteristics- Promissory Note, Bill of Exchange, and Cheques - Types of Crossing; Contract of Sale of Goods - Definition- Essentials of a Contract of Sale – Contract of sale Vs Agreement to Sell - Rights of Unpaid Seller – Rules as to delivery of goods- -Conditions And Warranties-Types-Doctrine of Caveat Emptor- Distinction between Condition and Warranty.

Concept

A negotiable instrument is actually a written document. This document specifies payment to a specific person or the bearer of the instrument at a specific date. So we can define a bill of exchange as “a document signifying an unconditional promise signed by the person giving the [promise](#), requiring the person to whom it is addressed to pay on demand, or at a fixed date or time”.

Characteristics

1. **Must be in writing:** A mere verbal promise to pay is not a promissory note. The method of writing (either in ink or pencil or printing, etc.) is unimportant, but it must be in any form that cannot be altered easily.
2. **Must certainly an express promise or clear understanding to pay:** There must be an express undertaking to pay. A mere acknowledgment is not enough. The following are not promissory notes as there is no promise to pay.

Example: ‘Mr. B.I.O.U Rs. 10,000’. There is no promise to pay and therefore this is not a valid promissory note.

3. **Must be unconditional:** A conditional undertaking destroys the negotiable character of an otherwise negotiable instrument. Therefore, the promise to pay must not depend upon the happening of some outside contingency or event. It must be payable absolutely.

4. **Signed by the maker:** The person who promises to pay must sign the instrument even though it might have not been written by the promisor himself. There are no restrictions regarding the form or place of signatures in the instrument. It may be in any part of the instrument. It may be in pencil or ink, a thumb mark or initials.
5. **Must be certain:** The note self must show clearly who the person is agreeing to undertake the liability to pay the amount. In case a person signs in an assumed name, he is liable as a maker because a maker is taken as certain if from his description sufficient indication follows about his identity. In case two or more persons promise to pay, they may bind themselves jointly or jointly and severally, but their liability cannot be in the alternative.
6. **The payee must be certain:** The instrument must point out with certainty the person to whom the promise has been made. The payee may be ascertained by name or by designation.
7. **The promise should be to pay money and money only:** Money means legal tender money and not old and rare coins. A promise to deliver paddy either in the alternative or in addition to money does not constitute a promissory note.
8. **The amount should be certain:** One of the important characteristics of a promissory note is a certainty- not only regarding the person to whom or by whom payment is to be made but also regarding the amount.

Promissory Note

Section 4 of the Act defines, “A promissory note is an instrument in writing (note being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments.”

Bill of exchange is an instrument ordering the debtor to pay a certain amount within a stipulated period of time. Bill of exchange needs to be accepted in order to call it valid or applicable. And the bill of exchange is issued by the creditor.

Promissory Note, on the other hand, is a promise to pay a certain amount of money within a stipulated period of time. And the promissory note is issued by the debtor.

Bill of Exchange,

A bill of exchange is defined as 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. – Negotiable Instruments Act, 1881

Bill of exchange is an instrument ordering the debtor to pay a certain amount within a stipulated period of time. Bill of exchange needs to be accepted in order to call it valid or applicable. And the bill of exchange is issued by the creditor.

Promissory Note, on the other hand, is a promise to pay a certain amount of money within a stipulated period of time. And the promissory note is issued by the debtor.

Cheques

A **cheque** is a bill of exchange, drawn on a specified banker and it includes 'the electronic image of truncated cheque' and 'a cheque in electronic form'.

The cheque is always payable on demand. A cheque must contain all the characteristics of a bill of exchange.

Types of Crossing;

Basically, there are 3 **types of cheque crossing**:

General Crossing

In general crossing, the cheque bears across its face an addition of two parallel transverse lines and/or the addition of words 'and Co.' or 'not negotiable' between them.

In the case of general crossing on the cheque, the paying banker will pay money to any banker. For the purpose of general crossing two transverse parallel lines at the corner of the cheque are necessary.

Thus, in this case, the holder of the cheque or the payee will receive the payment only through a bank account and not over the counter. The words 'and Co.' have no significance as such.

But, the words 'not negotiable' are significant as they restrict the negotiability and thus, in the case of transfer, the transferee will not give a title better than that of a transferor.

Restrictive crossing

Restrictive crossing involves the crossing of a cheque through two parallel lines on the left corner of a cheque. The words A/c payee are inserted inside the parallel lines.

According to this crossing, the cheque can be collected by the bank only for the person, whose name is written on the cheque.

Contract of Sale of Goods –

- ¶ **A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.**
- ¶ **The term ‘ contract of sale ‘ is a generic term and includes both a ‘sale ‘and an ‘agreement to sell’.**

Definition

Contract of sale of goods is a contract, whereby, the seller transfers or agrees to transfer the property in goods to the buyer for a price. There can be a contract of sale between one part-owner and another.

Essentials of a Contract of Sale –

1. Two parties

There must be two distinct parties , i.e., a buyer and a seller, to the effect a contract of sale and they must be competent to contract.

Buyer means a person who buys or agrees to buy goods

2. Goods: The goods which form the subject-matter must be movable. Transfer of immovable property is not regulated by the Sale of goods act.

- Associated Hotels of India Vs Excise & Taxation Officer

- A hotel company provided residence and food making a consolidated charged for both the services. No rebate was allowed if food was not taken by the customers. Held, supply of foods was not sale of goods but simply a service as the transaction was an indivisible contract of multiple services and did not involve any sale of food.
- 3.Price
- Aldridge Vs. Johnson
- A agreed to exchange with B 100 quarters of Barley at \$2 per quarter for 52 bullocks valued at \$6 per bullock and pay the difference in cash. Held, the contract was a contract of sale
- 4.Transfer of general property: there must be a transfer of general property as distinguished from special property in goods from the seller to the buyer.
- If A owns certain goods, he has general property in the goods. IF he pledges them with B, B has special property in the goods.
- 5.Essential elements of valid contract:
- All the essential elements of a valid contract
- must be present in the contract of sale.

Contract of sale Vs Agreement to Sell –

<u>SALE</u>	<u>AGREEMENT TO SELL</u>
--------------------	---------------------------------

1. TRANSFER OF PROPERTY:

¶ The property in goods immediately passes from seller to buyer. Sale is an executed contract.

¶ Eg: A sold his car to B at Rs.7,00,000 & B pays the amount immediately to A. Here, the ownership is transferred from A to B.

¶ In this the property in goods transfer to the buyer in future or certain conditions to be fulfilled. This is an executory contract.

¶ A offers to sell his car to B at Rs.7,00,000. B agreed to take the car after one month. Here, the contract has not been completed.

Rights of Unpaid Seller –

The seller of goods is deemed to be an '**unpaid seller**' within the meaning of this Act

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

Rules as to delivery of goods- -

It is the duty of the seller to deliver the goods and the buyer to pay for them and accept them, as per the terms of the contract and the law on sales. The delivery of goods and payment of the price are concurrent conditions as per the law on sales unless the parties agree otherwise.

Conditions And Warranties-

The Sale of Goods Act, identifies the terms, “**Conditions and Warranties**” as being of a prime significance in a contract of sale.

- A stipulation which is essential to the main purpose of a contract is known as a condition.
- A stipulation which is collateral to the main purpose of the contract is a warranty.

Types

The conditions and warranties may be express or implied.

Express conditions and warranties are which, are expressly provided in the contract. Implied conditions and warranties are those which are implied by law or custom; these shall prevail in a contract of sale unless the parties agree to the contrary.

Implied Conditions

i) **Condition as to title** -- In every contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller, that :

1. In case of a sale, he has a right to sell the goods, and
2. In case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

The words 'right to sell' contemplate not only that the seller has the title to what he purports to sell, but also that the seller has the right to pass the property. If the seller's title turns out to be defective, the buyer may reject the goods.

ii) **Condition as to Description** -- In a contract of sale by description, there is an implied condition that the goods shall correspond with the description. The term 'sale by description' includes the following situation ;

1. Where the buyer has not seen the goods and buys them relying on the description given by the seller.
2. Where the buyer has seen the goods but he relies not on what he has seen but what was stated to him and the deviation of the goods from the description is not apparent.
3. Packing of goods may sometimes be a part of the description. Where the goods do not conform to be method of packing described (by the buyer or the seller) in the contract, the buyer can reject the goods.

iii) **Condition as to Quality or Fitness** -- Where the buyer, expressly or by implication, makes known the seller the particular purpose for which goods are required, so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether or not as the manufacturer or producer), there is an implied condition that the goods shall be reasonably fit for such purpose. In other words, this condition of fitness shall apply, if:

1. The buyer makes known to the seller the particular purpose for which the goods are required,
2. The buyer relies on the seller's skill or judgment ,
3. The goods are of a description which he sellers ordinarily supplies in the course of his business, and
4. The goods supplied are not reasonably fit for the buyer's purpose.

iv) **Condition as to Merchantability** -- Where the goods are bought by description from a seller, who deals in goods of that description (whether or not as the manufacturer or producer) there is an implied condition that the goods shall be of merchantable quality.

Merchantable quality ordinarily means that the goods should be such as would be commercially saleable under the description by which they are known in the market at their full value.

v) **Condition as to Wholesomeness** -- In case of sale of eatable provisions and foodstuff, there is another implied condition that the goods shall be wholesome. Thus, the provisions or foodstuff must not only correspond to their description, but must also be merchantable and wholesome. By 'wholesomeness' it means that goods must be for human consumption.

vi) **Condition Implied by Custom or Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In certain sale contracts, the

purpose for which the goods are purchased may be implied from the conduct of the parties or from the nature or description of the goods. In such cases, the parties enter into the contract with reference to those known usage. For instance, if a person buys a perambulator or a medicine the purpose for which it is purchased is implied from the thing itself; the buyer need not disclose the purpose to the seller.

vii) **Conditions in a Sale by Sample:** A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied to that effect. Usually, a sale by sample is implied when a sample is shown and the parties intend that the goods should be of the kind and quality as the sample is.

viii) **Conditions in a sale by Sample as well as by Description:** A vast majority of cases where samples are shown, are sales by sample as well as by description. In a contract for sale by sample as well as by description, the goods supplied must correspond both with the sample as well as with the description.

Implied Warranties

A condition becomes a warranty when --

- a) the buyer waives the conditions or opts to treat the breach of the condition as a breach of warranty ; or
- b) The buyer accepts the goods or a part thereof, or is not in a position to reject the goods.

1. **Implied Warranty of Quiet Possession** -- In every contract of sale, unless there is a contrary intention, there is implied warranties that the buyer's shall have and enjoy quiet possession of the goods. If the buyer's right to possession and enjoyment of the goods is in any way disturbed as consequences of the seller's defective title, the buyer may sue the seller for damages for breach of this warranty.
2. **Implied Warranty of Freedom from Encumbrances** -- The buyer is entitled to a further warranty that the goods shall be free from any charge or encumbrance in favor of any third party not declared or known to buyer before or at the time when the contract is made. If the buyer is required to discharge the amount of the encumbrance it shall be a breach of this warranty and the buyer shall be entitled to damages for the same.

Doctrine of Caveat Emptor

Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale...

The doctrine of '**Caveat Emptor**' means "**let the buyer beware**".

In other words, the buyer must take care of his own interest while purchasing the goods. While purchasing the goods the buyer should check the goods carefully.

If a buyer purchases the goods and after it, he comes to know that these are defective. In this case, the seller will not be responsible for this defect.

The object of this principle is to make the buyer more careful in purchasing. It is his duty that he should check the quality and fitness of the commodity which he needs.

Distinction between Condition and Warranty.

Condition	Warranty
<ul style="list-style-type: none">• A condition is a stipulation which is essential to the main purpose of the contract• If there is a breach of condition, the aggrieved party can repudiate the contract of sale• A breach of condition may be treated as a breach of a warranty	<ul style="list-style-type: none">• A warranty is a stipulation which is collateral to the main purpose of the contract.• If there is a breach of warranty, the aggrieved party can claim damages only.• A breach of warranty cannot be treated as breach of condition

Unit IV: Company Law:-

Company - Definition, Meaning, Features, Types of companies - Memorandum of Association, Articles of Association- Prospectus Share holders meetings - Company Management - Qualifications, Appointment, Powers, and legal position of Directors.

Company Act 2013

Definition

“In terms of the Companies Act, 2013 ‘company’ means a company incorporated under the Act, or under the previous company law” [Sec. 2(20)].

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

Features

Independent corporate existence The outstanding feature of a company is its independent corporate existence. It is a distinct legal person existing independent of its members. By incorporation under the Act, the company is vested with a corporate personality which is distinct from the members who compose it. A well-known illustration of this principle is the decision of the House of Lords in Salomon v. Salomon & Co. [(1898) AC 22].

Limited Liability The privilege of limiting liability for business debts is one of the principal advantages of doing business under the corporate form of organization. Where the subscribers exercise the choice of registering the company with limited liability, the members’ liability becomes limited or restricted to the nominal value of the shares taken by them or the amount guaranteed by them. No member is bound to contribute anything more than the nominal value of the shares held by him.

Perpetual succession An incorporated company never dies. It is an entity with perpetual succession. Perpetual succession, means that the membership of a company may keep changing from time to time, but that does not affect the company's continuity. The death or insolvency of individual members does not, in any way affect the corporate existence of the company. [Gopalpur Tea Co. Ltd. v. Penhok Tea Co. Ltd. (1982) 52 Comp. Cas. 238 (Cal.)] "Members may come and go but the company can go on forever". It continues to exist even if all its human members are dead. Even where during the war all the members of a private company, while in general meeting, were killed by a bomb, the company survived not even a hydrogen bomb could have destroyed it. [K'9 Meat Supplies (Guildford) Ltd., Re 1966 (3) All. ER 320.]

Separate property A company, being a legal person, is capable of owning, enjoying and disposing of property in its own name. The company becomes the owner of its capital and assets. The shareholders are not the several or joint owners of the company's property. The company is the real person in which all its property is vested, and by which is controlled, managed and disposed of [Bacha F Guzdar v. C.I.T. AIR 1955 SC 74.]. The property is vested in the company as a body corporate, and no changes of individual membership affect the title. The property, however much, the shareholders may come and to remains vested in the company, and the company can convey, assign, mortgage, or otherwise deal with it irrespective of these mutations. CORPORATE LAWS & COMPLIANCE 3

Transferable Shares When joint stock companies were established the great object was that their shares should be capable of being easily transferred. Accordingly, the Companies Act, 2013 in Section 44 declares: 'The shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company'. Thus incorporation enables a member to sell his shares in the open market and to get back his investment without having to withdraw the money from the company. This provides liquidity to the investor and stability to the company.

Common seal Since the company has no physical existence, it must act through its agents and all such contracts entered into by its agents must be under the seal of the company. The common seal acts as the official signature of the company. Prior to the Companies (Amendment) Act, 2015 the common seal is a seal used by a corporation as the symbol of its incorporation and also a statutory requirement for a

company. As a departure from this concept, the Companies (Amendment) Act, 2015 has deleted the requirement of having Common Seal compulsorily.

Types of companies

A company may be incorporated as a One Person Company (OPC) a new concept all together in the Companies Act, 2013, Private Company or a Public Company, depending upon the number of members joining it. Again it may either be an unlimited company, or may be limited by shares or by guarantee or by both. On the basis of control, companies can be classified as associate company, holding company and subsidiary company. Some other forms of classification of companies are: foreign company, Government Company, small company, dormant company, Nidhi Company and company formed for charitable objects.

Companies may be classified into various classes on the following basis:

On the Basis of Incorporation

- (a) Statutory companies These are the companies which are created by a special Act of the Legislature, e.g., the Reserve Bank of India, the State Bank of India, the Life Insurance Corporation, the Industrial Finance Corporation, the Unit trust of India and State Financial Corporations These are mostly concerned with public utilities, e.g. railways, tramways, gas and electricity companies and enterprises of national importance. The provisions of the Companies Act, 2013 do not apply to them unless the special act specifies such application. Banking Regulation Act, 1949 is a special legislation concerning banking companies.
- (b) Registered companies These are the companies which are formed and registered under the Companies Act, 2013, or were registered under any of the earlier Companies Acts.

On the basis of liability

(a) **Company limited by shares** Section 2 (22) of the Companies Act, 2013, defines that when the liability of the members of a company is limited by its memorandum of association to the amount (if any) unpaid on the shares held by them, it is known as a company limited by shares. It thus implies that for meeting the debts of the company, the shareholder may be called upon to contribute only to the extent of the amount, which remains unpaid on his shareholdings. His separate property cannot be encompassed to meet the company's debt.

(b) **Company limited by guarantee** Section 2 (21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the member of a guarantee company is limited up to a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

(c) **Unlimited company** Section 2 (92) of the Companies Act, 2013 defines unlimited company as a company not having any limit on the liability of its members. In such a company the liability of a member ceases when he ceases to be a member. The liability of each member extends to the whole amount of the company's debts and liabilities but he will be entitled to claim contribution from other members.

On the basis of members

(a) **One person company** (1) The Concept of One Person Company (OPC) The concept of One Person Company (OPC) has now been introduced in India, through Section 2 (62) of Companies Act, 2013 thereby enabling Entrepreneur(s) carrying on the business in the Sole Proprietor form of business to enter into a Corporate Framework. Though this concept is new in India but it is already a part of many other countries like China, Australia, Pakistan and UK etc. According to Section 2 (62) of the Companies Act, 2013 'One Person Company' means a company which has only one person as a member. A company formed under one person company may be either: a) A company limited by shares, or b) company limited by guarantee, or c) An unlimited company. One Person Company is a hybrid of Sole-Proprietor and Company form of business, and has been provided with concessional/relaxed requirements under the Act.

(b) **Private Company** [Section 2 (68)] According to Section 2 (68) of Companies Act, 2013 a 'private company' means a company having a minimum paid-up share capital as may be

prescribed, and which by its articles: (1) restricts the right to transfer its shares. (2) except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member;

Provided further that: (a) persons who are in the employment of the company, and (b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members, and (3) prohibits any invitation to the public to subscribe for any securities of the company. The Companies (Amendment) Act, 2015 has omitted 'of one lakh rupees or such higher paid-up share capital' from the definition of Private Company w.e.f. 25.05.2015. The impact of this amendment is that today one can have a company of paid up capital of mere ` Two (with each subscriber giving a rupee as subscription) for a private company and ` Seven for a public company.

(c) **Public company** [Section 2 (71)] According to Section 2 (71) of Companies Act, 2013 a 'public company' means a company which: (1) is not a private company. (2) has a minimum paid-up share capital, as may be prescribed: (3) Seven or more members are required to form the company.

(d) **Small Company** [Section 2 (85)] According to Section 2 (85) of Companies Act, 2013 a "small company" means a company, other than a public company: (1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees. Or (2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees: Provided that nothing in this clause shall apply to: a) a holding company or a subsidiary company. b) a company registered under Section 8, or c) a company or body corporate governed by any special Act.

On the basis of control

Holding company and Subsidiary company 'Holding' and 'Subsidiary' Companies are relative terms. A company is a holding company of another if the other is its subsidiary. According to Section 2 (46) of the Companies Act, 2013 'holding company', in relation to one or more other companies, means a company of which such companies are subsidiary companies.

According to Section 2 (87) of the Companies Act, 2013 'subsidiary company' or 'subsidiary', in relation to any other company (that is to say the holding company), means a company in which the holding company : (a) controls the composition of the Board of Directors, Or (b) exercises or

controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies: Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

On the basis of Listing in the recognised Stock Exchange

- (a) **Listed company (also widely held)** According to Section 2 (52) of the Companies Act, 2013, a 'listed company' means a company which has any of its securities listed on any recognised stock exchange. Whereas the word securities as per the Section 2 (81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956.
- (b) **Unlisted company** Unlisted Company means company other than listed company.
- (b) **Others**
 - (a) **Government Company** According to Section 2 (45) of the Companies Act, 2013, a 'Government company' means any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.
 - (b) **Foreign Company** According to Section 2 (42) of the Companies Act, 2013, 'foreign company' means any company or body corporate incorporated outside India which: (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode. And (b) conducts any business activity in India in any other manner.
 - (c) **Associate Company** According to Section 2 (6) of the Companies Act, 2013, 'associate company' in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. As per the Explanation given under the Section, the clause, 'significant influence' means control of at least twenty per cent of total share capital, or of business decisions under an agreement.
 - (d) **Dormant company** Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Memorandum of Association

A Memorandum of Association (MoA) represents the charter of the company. It is a legal document prepared during the formation and registration process of a company to define its relationship with shareholders and it specifies the objectives for which the company has been formed.

Content of the memorandum

The memorandum of a company shall state:

- (1) the name of the company with the last word 'Limited' in the case of a public limited company, or the last words 'Private Limited' in the case of a private limited company.
- (2) the State in which the registered office of the company is to be situated.
- (3) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name.
- (4) the liability of members of the company, whether limited or unlimited, and also state: a) in the case of a company limited by shares, that the liability of its members is limited to the amount unpaid, if any, on the shares held by them.
And b) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute: 1) To the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be, and 2) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves.
- (5) in the case of a company having a share capital: a) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share, and b) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name.

Articles of Association

Articles of association form a document that specifies the regulations for a company's operations and defines the company's purpose. The document lays out how tasks are to be accomplished within the organization, including the process for appointing directors and the handling of financial records.

Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association as follows: (a) Regulations for management: The articles of a company shall contain the regulations for management of the company.

(b) Inclusion of matters: The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.

(c) Contain provisions for entrenchment: The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(d) Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

(e) Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

(f) Forms of articles: The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

(g) Model articles: A company may adopt all or any of the regulations contained in the model articles applicable to such company.

(h) Company registered after the commencement of this Act: In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations

shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

Prospectus

The Companies Act, 2013 defines a prospectus under **section 2(70)**. Prospectus can be defined as “any document which is described or issued as a prospectus”. This also includes any notice, circular, advertisement or any other document acting as an invitation to offers from the public. Such an invitation to offer should be for the purchase of any securities of a corporate body. Shelf prospectus and red herring prospectus are also considered as a prospectus.

Essentials for a document to be called as a prospectus

For any document to be considered as a prospectus, it should satisfy two conditions.

1. The document should invite the subscription to public share or debentures, or it should invite deposits.
2. Such an invitation should be made to the public.
3. The invitation should be made by the company or on the behalf company.
4. The invitation should relate to shares, debentures or such other instruments.

Contents

For filing and issuing the prospectus of a public company, it must be signed and dated and contain all the necessary information as stated under **section 26 of the Companies Act, 2013**:

1. Name and registered address of the office, its secretary, auditor, legal advisor, bankers, trustees, etc.
2. Date of the opening and closing of the issue.
3. Statements of the Board of Directors about separate bank accounts where receipts of issues are to be kept.

4. Statement of the Board of Directors about the details of utilization and non-utilisation of receipts of previous issues.
5. Consent of the directors, auditors, bankers to the issue, expert opinions.
6. Authority for the issue and details of the resolution passed for it.
7. Procedure and time scheduled for the allotment and issue of securities.
8. The capital structure of the in the manner which may be prescribed.
9. The objective of a public offer.
10. The objective of the business and its location.
11. Particulars related to risk factors of the specific project, gestation period of the project, any pending legal action and other important details related to the project.
12. Minimum subscription and what amount is payable on the premium.
13. Details of directors, their remuneration and extent of their interest in the company.
14. Reports for the purpose of financial information such as auditor's report, report of profit and loss of the five financial years, business and transaction reports, statement of compliance with the provisions of the Act and any other report.

Share holders meetings -

The shareholders' meeting is the body that passes resolutions for joint-stock companies. The shareholders' meeting has such important tasks as approving the financial statements and the appointment of the board of directors. Basically the shareholders' meeting represents ownership claims, i.e. the company's shareholders.

Company Management

Management has been defined as “the process of planning, organizing, leading and controlling the efforts of company members and of using all company resources to achieve stated company goals.” Hence, the occupation of management is to maintain control over the company's actions and performance, and simultaneously to

Introduction

The supreme executive authority controlling the management and affairs of a company vests in the team of directors of the company, collectively known as its Board of Directors. At the core of the corporate governance practice is the Board of Directors which oversees how the management serves and protects the long term interests of all the stakeholders of the Company. The institution of board of directors was based on the premise that a group of trustworthy and respectable people should look after the interests of the large number of shareholders who are not directly involved in the management of the company. The position of board of directors is that of trust as the board is entrusted with the responsibility to act in the best interests of the company. Although the Board comprises individual directors, yet the actions and deeds of directors individually functioning cannot bind the company, unless a particular director has been specifically authorised by a Board resolution to discharge certain responsibilities on behalf of the company. The Companies Act, 2013 does not contain an exhaustive definition of the term “director”. Section 2 (34) of the Act prescribed that “director” means a director appointed to the Board of a company. A director is a person appointed to perform the duties and functions of director of a company in accordance with the provisions of the Companies Act, 2013.

Definition of an Independent Director – Section 149 (6) An independent director means a director other than a managing director or a whole-time director or a nominee director who does not have any material or pecuniary relationship with the company/ directors. Section 149(6) of the Act prescribes the criteria for independent directors which are as follows: (a) Who in the opinion of the Board, is a person of integrity and possesses relevant industrial expertise and experience; (b) Such individual shall not be a promoter or related to promoter of the company or its holding, subsidiary or associate company; (c) Such individuals must not have any material or pecuniary relationship during the two immediately preceding financial years or during the current financial year with the company or its promoters/directors/holding/subsidiary/associate company;

Appointment

APPOINTMENT OF DIRECTORS – Section 152 First Director The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed. In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member in accordance with the provisions of Section 152.

General provisions relating to appointment of directors

1. Except as provided in the Act, every director shall be appointed by the company in general meeting.
2. Director Identification Number is compulsory for appointment of director of a company.
3. Every person proposed to be appointed as a director shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act.
4. A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical form DIR-2 i.e. Consent to act as a director of a company. Company shall file Form DIR-12 (particulars of appointment of directors and KMP along with the form DIR-2 as an attachment within 30 days of the appointment of a director, necessary fee. {Rule8}
5. Articles of the Company may provide the provisions relating to retirement of the all directors. If there is no provision in the article, then not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement by rotation and eligible to be reappointed at annual general meeting. Further independent directors shall not be included for the computation of total number of directors. At the annual general meeting of a public company one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from 12 Appointment and Qualifications of Directors office.

The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment. At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto. If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless— (i) a resolution for the re-appointment of such director has been put to the meeting and lost; (ii) the retiring director has expressed his unwillingness to be so re-appointed; (iii) he is not qualified or is disqualified for appointment; (iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or (v) section 162 i.e. appointment of directors to be voted individually is applicable to the case.

Powers, and legal position of Directors.

Director is treated as trustees of the company, money, and property: and of the powers entrusted to and vested in them only as trustee and they have to use these powers for the benefit of the company. ... Section 197 of the Companies Act, expressly regards the director as a trustee in certain circumstances

Position of Directors

The position of a director of any corporate enterprise is a tough subject to explain (Ram Chand & Sons Sugar Mills Pvt. Ltd.v. Kanhayalal BhargavaAIR (1996) Cal). The position of a director has been given by L.J. Bowen in the case of Imperial Hydropathic Hotel Co Blackpool v. Hampson ((1883) 23 Ch D 1) the director has a versatile position in a corporate body. Directors are described as trustees, or as agents and sometimes even as managing partners. So the question that arises is what is the position of a director in the company whether he is a servant of the company or an agent or a trustee?

Are directors servants of the company?

Considering directors as a servant of the company will be wrong as these are professional men and women of the company who are hired to direct the affairs of the company. A more adequate way to describe them is as officers of the company. Furthermore, in the case of Moriarty v. Regent's Garage Co ((1921) 1 KB 423), it has been stated that a director is not a servant of the company rather a controller of the affairs of a company.

Directors as agents

It has been held that directors are agents of the company as the company is an artificial person it can act through directors only (Ferguson v. Wilson(1904) SLR 41 601). The relation of a director and the company is like an ordinary relation of principal and agent.

In the case of Indian Overseas Bank v. RM Marketing (AIR (2002) Delhi 344), it was held that the directors of a company could not be made liable merely because he is a director as he has not given any personal guarantee for a loan that has been taken by the company.

As directors are the agents of the company the company and agents share a relationship as such the directors are not personally liable for any transaction held on behalf of the company. Further, the directors have to disclose any personal interest vested in the company.

Directors as Trustees

Directors are not the trustees of the company, but they are treated as trustees where money and properties are involved as it is under their control. In the case of Ramaswamy Iyer v. Brahamayya & Co. (AIR (1965) Mad 176), it was held that in terms of their power of applying funds of the company and for misuse of power, the directors are liable as trustees and even after their death the liability remains as a cause of action survives against their legal representative.

Directors can be described as trustees due to their nature of the office as Directors are appointed to manage the affairs of the company for the benefit of shareholders. The director of a company is not a trustee in his true form as a trustee of will or marriage settlement. As the director of the company is a paid officer of a company.

Now the question that arises is if the directors are trustees are they a trustee to the shareholders or to the company. The directors are the trustees of the company and not of shareholders (Percival v. Wright (1902) 2 Ch 401) and hence hold no fiduciary duty towards the shareholders. (Peskin v. Anderson (2002) EWCA Civ 326)

Directors as organs of corporate body

It has been stated that the board of directors is the brain of the company and a company does its act through them (Bath v. Standard Land Co. Ltd.)

As a corporation has no mind or body of its own and its action is done by a person that is not merely an agent or trustee but by someone the company will be liable as his action is the action of the company itself. If a company is considered a human body, the directors are the mind and the will of the company as they control the actions of the company

Unit V: Consumer Protection Act:-

Definitions of Consumer, Goods, Service - Meaning of Consumer Dispute, Complaint - Unfair Trade Practices - Restrictive Trade Practices -Rights of Consumers - Consumer Redressal Agencies- Consumer councils. Laws relating to Intellectual Property Rights- Corporate Social Responsibility-Arguments for and against CSR.

Definitions of Consumer,

A consumer is a person or a group who intends to order, orders, or uses purchased goods, products, or services primarily for personal, social, family, household and similar needs, not directly related to entrepreneurial or business activities.

Service

Meaning of 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;

Complaint - Unfair Trade Practices –

An unfair 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 deceptive practice including any of the following:

1. False or misleading representation about quality , quantity and standard of goods.
2. Bargain price
3. Offering of gifts, prize and contest.
4. Non compliance of product safety standard
5. Hoarding or destruction of goods
6. Falsely represents any re-built, second-hand , renovated or old goods as new goods.
7. Represents that the goods or service have sponsorship, approval , performance uses or benefits which such goods or service do not have.

Makes a false representation

Restrictive Trade Practices

2(n) of the Consumer Protection Act, 1986, restrictive trade practice means a trade practice which tends to bring about manipulation of price or conditions of delivery or to affect flow of supplies in market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions

Rights of Consumers

The bill stated that every person has four basic consumer rights—the right to be informed, the right to choose, the right to safety, and the right to be heard. These rights received a lot of attention from the consumer movement, a movement to pass laws protecting consumers from unfair and unsafe business practices.

Consumer Redressal Agencies-

These are the three consumer redressal agencies, namely, the District Forum, the State Commission and the National Commission. Its significance is visible all across the country where all the grievances of the consumers are being tackled, upholding consumer interest

Consumer councils.

CONSUMER PROTECTION COUNCILS The interests of consumers are sought to be promoted and protected under the Act inter alia by establishment of Consumer Protection Councils at the Central, State and District Levels. Chapter II of the Consumer Protection Act, 1986 comprising Sections 4 to 8 deals with Consumer Protection Councils.

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Central Consumer Protection Council

Section 4 empowers the Central Government to establish a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council), consisting of the

Minister in charge of Consumer Affairs in the Central Government, as its Chairman, and such number of other official or nonofficial members representing such interests as may be prescribed. However, the Consumer Protection Rules, 1987 restrict the number of members of the Central Council to 150 members. Section 5 of the Act requires the Central Council to meet as and when necessary, but atleast once in every year. The procedure in regard to transaction of its business at the meeting is given in Rule 4 of the Rules.

State Consumer Protection Council

Section 7 provides for the establishment of State Consumer Protection Councils by any State Government (by notification) to be known as Consumer Protection Council for (name of the State). The State Council shall consist of a Minister incharge of Consumer Affairs in the State Government as its Chairman and such number of other official or non-official members representing such interests as may be prescribed by the State Government and such number of other official or non official members, not exceeding ten, as may be nominated by the Central Government. The State Council shall meet as and when necessary but not less than two meetings shall be held every year. The procedure to be observed in regard to the transaction of its business at such meetings shall be prescribed by the State Government.

District Consumer Protection Council

In order to promote and protect the rights of the consumers within the district, section 8A provides for establishment in every district of a council to be known as the District Consumer Protection Council .It shall consist of the Collector of the district (by whatever name called), who shall be its Chairman and such number of other official and non-official members representing such interests as may be prescribed by the State Government. The District Council shall meet as and when necessary but not less than two meetings shall be held every year. The District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

REDRESSAL MACHINERY UNDER THE ACT

The Act provides for a three-tier quasi-judicial redressal machinery at the District, State and National level for redressal of consumer disputes and grievances. The District Forum has jurisdiction to entertain complaints where the value of goods/services complained against and the compensation, if any claimed, does not exceed Rs.20 lakhs, the State Commission for claims exceeding Rs. 20 lakhs but not exceeding Rs. 1 crore; and the National Commission for claims exceeding Rs.1 crore.

District Forum

Section 9 of the Act provides for the establishment of a District Forum by the State Government in each district of the State. However, the State Government may establish more than one District Forum in a district if it deems fit to do so. Section 10(1) provides that each District Forum shall consist of: (a) a person who is, or who has been, or is qualified to be, a District Judge, who shall be its President; (b) two other members one of whom shall be a woman, who shall have the following qualifications, 168 EP-ECL namely: (i) be not less than thirty-five years of age, (ii) possess a bachelor's degree from a recognised university, (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration: Provided that a person shall be disqualified for appointment as a member if he— (a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government involves moral turpitude; or (b) is an undischarged insolvent; or (c) is of unsound mind and stands so declared by a competent court; or (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or (e) has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or (f) has such other disqualification as may be prescribed by the State Government. Every member of the District Forum shall hold office for a term of 5 years or upto the age of 65 years, whichever is earlier, and shall be eligible for reappointment for another term of five years or upto the age of sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 10(1)(b) and such re-appointment is also made on the basis of the recommendation of the Selection Committee. A member may resign his office in writing under his hand addressed to the State Government. Jurisdiction of District Forum Section 11 provides for the jurisdiction of the District Forum under two criteria pecuniary and territorial. Pecuniary limits Section 11(1) empowers the District Forum to entertain complaints where the value of goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs. Territorial limits Section 11(2) requires a complaint to be instituted in the District Forum within the local limits of whose jurisdiction the opposite party or the defendant actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint; or any one of the opposite parties (where there are more than one) actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint, provided that the other opposite party/parties acquiesce in such institution or the permission of the Forum is obtained in respect of such opposite parties; or the cause of action arises, wholly or in part. In the case of *Dynavox Electronic Pvt. Ltd. v. B.J.S. Rampuria Jain College, Bikaner* (Appeal No. 4/89 before the Rajasthan CDRC), it was held that where in a contract, the machinery was supplied and installed at a particular place, a part of cause of action would be deemed to have arisen at that place, therefore, the complaint could be instituted in the District Forum within whose jurisdiction that place falls. Lesson 3 Consumer Protection – Law and Practise 169 State Commission Section 16 of the Act

empowers the State Government to establish the State Consumer Disputes Redressal Commission consisting of: (a) a person who is or has been a judge of a High Court appointed by the State Government (in consultation with the Chief Justice of the High Court) who shall be its President. (b) not less than two and not more than such number of members, as may be prescribed, one of whom shall be a woman, who shall have the following qualifications, namely: (i) be not less than thirty-five years of age, (ii) possess a bachelor's degree from a recognised university, and (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration: It is required that not more than fifty per cent of the members be from amongst persons having a judicial background. "Persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level. A person shall be disqualified for appointment as a member if he— (a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government involves moral turpitude; or (b) is an undischarged insolvent; or (c) is of unsound mind and stands so declared by a competent court; or (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or (e) has in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or (f) has such other disqualification as may be prescribed by the State Government. Every appointment shall be made by the State Government on the recommendation of a Selection Committee consisting of the President of the State Commission, Secretary Law Department of the State and Secretary in charge of Consumer Affairs in the State. The proviso to this clause states that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman. Section 16(2) empowers the State Government to decide on the salary or honorarium and other allowances payable to the members of the State Commission and the other terms and conditions of service. Every member of the State Commission shall hold office for a term of five years or upto the age of sixtyseven years, whichever is earlier and shall be eligible for reappointment for another term of five years or upto the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 16(1)(b) and such re-appointment is made on the basis of the recommendation of the Selection Committee. 170 EP-ECL Jurisdiction of State Commission Section 17 of the Act provides for the jurisdiction of the Commission as follows: (a) the State Commission can entertain complaints where the value of the goods or services and the compensation, if any claimed exceed rupees twenty lakhs but does not exceed rupees one crore; (b) the State Commission also has the jurisdiction to entertain appeals against the orders of any District Forum within the State. However, under second proviso to Section 15 no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be

entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty percent of the amount or rupees twenty-five thousand, whichever is less; (c) the State Commission also has the power to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, if it appears to it that such District Forum has exercised any power not vested in it by law or has failed to exercise a power rightfully vested in it by law or has acted illegally or with material irregularity. A complaint shall be instituted in a State Commission within the limits of whose jurisdiction, - (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises The State Commission's jurisdiction may be original, appellate or revisional. In respect of (c) above, the State Commission may reverse the orders passed by the District Forum on any question of fact or law or correct any error of fact or of law made by the Forum. The National Commission in *Indian Airlines v. Consumer Education and Research Society* (1992) CPR 4 (NC) held that in respect of the original jurisdiction of the State Commission, Section 17 only prescribes pecuniary limits. No territorial limits have been fixed for the exercise of original jurisdiction under the Act though the provision contained in Section 11(2) of the Act apply mutatis mutandis in the matter of entertaining original complaints by the State Commission. The territorial jurisdiction of the State Commission therefore extends to the territorial limit of the State. In the exercise of its appellate jurisdiction, the State Commission may entertain appeals only against the orders of any District Forum within the State. Similar condition also applies in respect of the State Commissions power to revise orders of the District Forums - only orders of the District Forum within the State may be subject to revision by the State Commission. Transfer of Cases Section 17A empowers the State Commission on the application of the complainant or of its own motion to Lesson 3 Consumer Protection – Law and Practise 171 transfer, at any stage of the proceeding any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires. National Commission Section 9 empowers the Central Government to establish the National Consumer Disputes Redressal Commission, by notification in the Official Gazette. Section 20(1) provides that the National Commission shall consist of— (a) a person who is or has been a judge of the Supreme Court, to be appointed by the Central Government (in consultation with the Chief Justice of India), who shall be its President; (b) not less than four and not more than such number of members as may be prescribed one of whom shall be a woman, who shall have the following qualifications, namely:- (i) be not less than thirty-five years of age; (ii) possess a bachelor's degree from a recognized university; and (iii) be persons of

ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration: Provided that not more than fifty percent of the members shall be from amongst the persons having judicial background. "Persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level: A person shall be disqualified for appointment if he ☐ (a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the Central Government involves moral turpitude; or (b) is an undischarged insolvent; or (c) is of unsound mind and stands so declared by a competent court; or (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or (e) has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or (f) has such other disqualification as may be prescribed by the Central Government Every appointment by the Central Government is required to be made on the recommendation of a Selection Committee consisting of a Judge of the Supreme Court to be nominated by the Chief Justice of India, the Secretary in the Department of Legal Affairs and the Secretary in charge of Consumer Affairs in the Government of India. Section 20(2) empowers the Central Government to fix the salary/ honorarium and other allowances payable to the members as well as the other terms and conditions of their service. Every member of the National Commission shall hold office for a term of five years or upto seventy years of age, whichever is earlier and shall be eligible for reappointment for another term of five years or upto the age of seventy years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Section 20(1)(b) and such re-appointment is made on the basis of the recommendation of the Selection Committee.

Laws relating to Intellectual Property Rights

With the rapid globalisation and opening up of the Indian economy, "Intellectual Capital" has become one of the key wealth drivers in the present international trade. Intellectual property rights have become significantly conspicuous on the legal horizon of India both in terms of new statutes and judicial pronouncements. India ratified the agreement for establishing the World Trade Organization (the "WTO"), which contains the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Indian Statutes, enforcement provisions and methods of dispute resolution with respect to intellectual property (IP) protection are now fully TRIPS-compliant.

India has laws covering various areas of intellectual property as enumerated herein below:

- Trade Marks
- Patents
- Copyrights and Related Rights
- Industrial Designs

- Geographical Indications
- Layout Designs of Integrated Circuits
- Plant Varieties
- Information Technology and Cyber crimes
- Data Protection

Broadly, the following acts deal with the protection of intellectual property:

1. Trade Marks Act, 1999
2. The Patents Act, 1970 (as amended in 2005)
3. The Copyright Act, 1957
4. The Designs Act, 2000
5. The Geographical Indications of Goods (Registration and Protection) Act, 1999
6. The Semiconductor Integrated Circuits Layout Design Act, 2000
7. The Protection of Plant Varieties and Farmers' Right Act, 2001
8. The Information Technology Act, 2000

TRADEMARKS

Introduction

India's obligations under the TRIPS Agreement for protection of trademarks, inter alia, include protection to distinguishing marks, recognition of service marks, indefinite periodical renewal of registration, abolition of compulsory licensing of trademarks, etc.

With the globalisation of trade, brand names, trade names, marks, etc, have attained an immense value that require uniform minimum standards of protection and efficient procedures for enforcement as were recognised under the TRIPS. In view of the same, extensive review and consequential repeal of the old Indian Trade and Merchandise Marks Act, 1958 was carried out and the new Trade Marks Act, 1999 was enacted. The said Act of 1999, with subsequent amendments, conforms to the TRIPS and is in accordance with the international systems and practices.

The Trade Marks Act provides, inter alia, for registration of service marks, filing of multiclass applications, increasing the term of registration of a trademark to ten years as well as recognition of the concept of well-known marks, etc. The Indian judiciary has been proactive in the protection of trademarks, and it has extended the protection under the trademarks law to Domain Names as demonstrated in landmark cases of *Tata Sons Ltd. v Manu Kosuri & Ors* [90 (2001) DLT 659] and *Yahoo Inc. v Akash Arora* [1999 PTC 201].

India, being a common law country, follows not only the codified law, but also common law principles, and as such provides for infringement as well as passing off actions against violation of trademarks. Section 135 of the Trade Marks Act recognises both infringement as well as passing off actions.

Well-known Trademark and Trans-border Reputation

India recognises the concept of the "Well-known Trademark" and the "Principle of Trans-border Reputation". A well-known Trademark in relation to any goods or services means a mark that has become so to the substantial segment of the public, which uses such goods or receives such services such that the use of such a mark in relation to other goods and services is likely to be taken as indicating a connection between the two marks.

Trans-border Reputation concept was recognised and discussed by the Apex Indian Court in the landmark case of *N. R. Dongre v Whirlpool (1996) 5SCC 714*. The Trademark "WHIRLPOOL" was held to have acquired reputation and goodwill in India. The mark "WHIRLPOOL" was also held to have become associated in the minds of the public with Whirlpool Corporation on account of circulation of the advertisements in the magazines despite no evidence of actual sale. Hence, the trademark WHIRLPOOL was held to have acquired trans-border reputation which enjoys protection in India, irrespective of its actual user or registration in India.

Legal Remedies against Infringement and/or Passing off

Under the Trade Marks Act, both civil and criminal remedies are simultaneously available against infringement and passing off.

Infringement of trademark is violation of the exclusive rights granted to the registered proprietor of the trademark to use the same. A trademark is said to be infringed by a person, who, not being a permitted user, uses an identical/similar/deceptively similar mark to the registered trademark without the authorisation of the registered proprietor of the trademark. However, it is pertinent to note that the Indian trademark law protects the vested rights of a prior user against a registered proprietor which is based on common law principles.

Passing off is a common law tort used to enforce unregistered trademark rights. Passing off essentially occurs where the reputation in the trademark of party A is misappropriated by party B, such that party B misrepresents as being the owner of the trademark or having some affiliation/nexus with party A, thereby damaging the goodwill of party A. For an action of passing off, registration of a trademark is irrelevant.

Registration of a trademark is not a pre-requisite in order to sustain a civil or criminal action against violation of trademarks in India. In India, a combined civil action for infringement of trademark and passing off can be initiated.

Significantly, infringement of a trademark is a cognizable offence and criminal proceedings can be initiated against the infringers. Such enforcement mechanisms are expected to boost the protection of marks in India and reduce infringement and contravention of trademarks.

Relief granted by Courts in Suits for Infringement and Passing off

The relief which a court may usually grant in a suit for infringement or passing off includes permanent and interim injunction, damages or account of profits, delivery of the infringing goods for destruction and cost of the legal proceedings.

The order of interim injunction may be passed ex parte or after notice. The Interim reliefs in the suit may also include order for:

- a. Appointment of a local commissioner, which is akin to an "Anton Pillar Order", for search, seizure and preservation of infringing goods, account books and preparation of inventory, etc.
- b. Restraining the infringer from disposing of or dealing with the assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.
- c. The 'John Doe' order, known as "Ashok Kumar Orders" are injunction orders passed by a court of law against entities, whose identity is not known at the time of the issuance of

the order. These orders are an exception to the general rule which requires the defendant to be identified prior to the filing of a law-suit. The John Doe order, is important in cases of fly-by-night operators who do not operate from a fixed location. It allows the plaintiff to search the premises and deliver up evidence of infringement of the rights of the plaintiff against the unknown infringers.

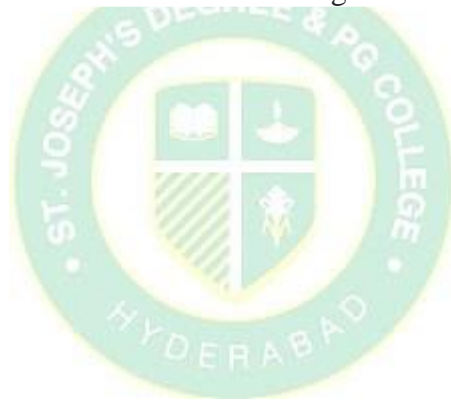
- d. A 'Norwich Pharmacal' order is a court order for the disclosure of information or documents against a third party. It is usually granted against a third party which has been innocently mixed up in wrongdoing, forcing the disclosure of documents or information. In the case of *Souza Cruz v N K Jain* (1995 PTR 97), the Court directed excise and customs commissioners to disclose the complete export records of infringing cigarettes to Ukraine by the Defendant.

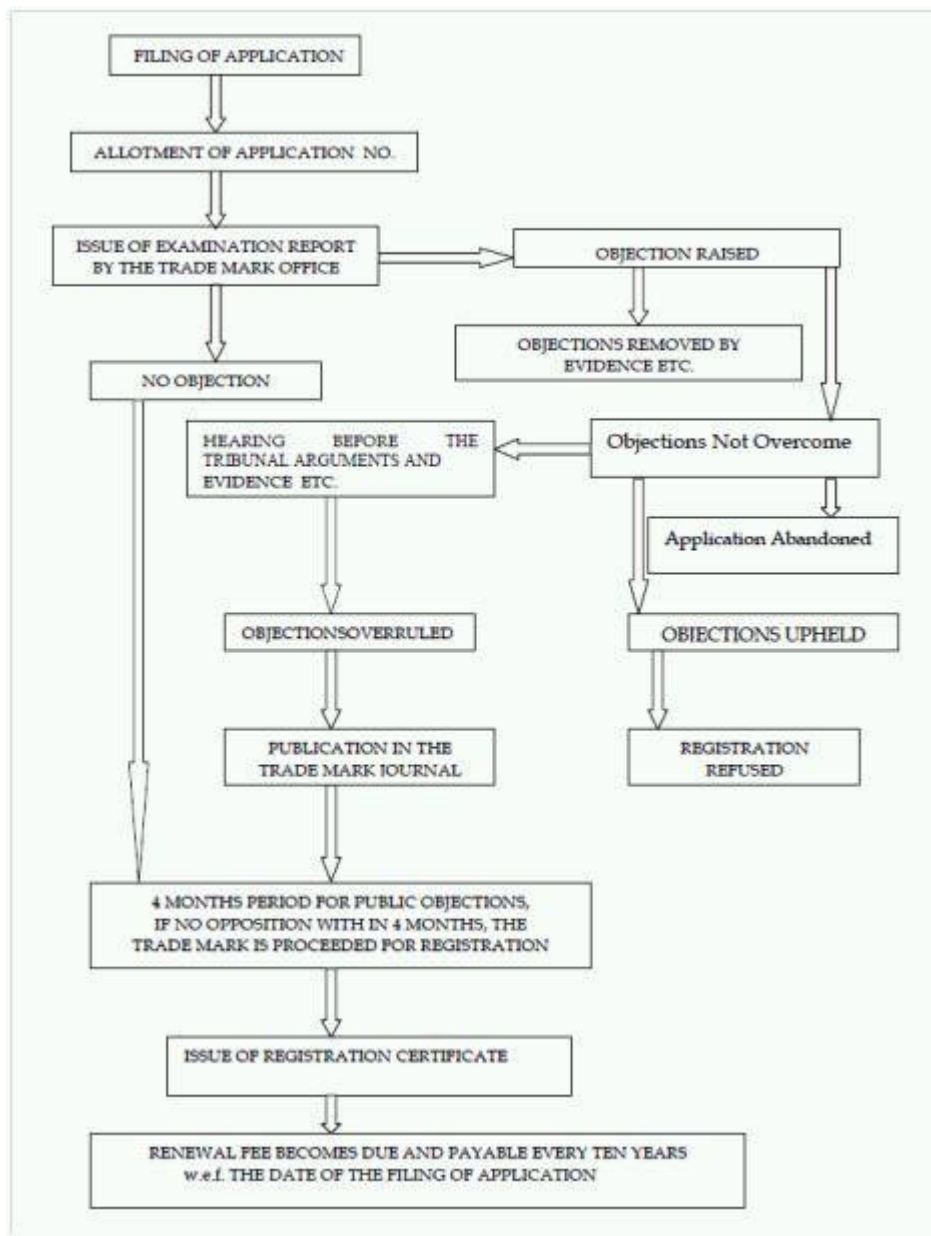
Offences and penalties

In case of a criminal action for infringement or passing off, the offence is punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and fine which shall not be less than Rs 50,000 (approx. US\$ 800) but may extend to Rs 2,00,000 (approx. US\$ 3,000).

Procedure of registration of trademark in India

The procedure for registration of a trademark in India is given below:





Convention applications

In order to fulfill the obligations of any treaty, convention or arrangement with a country or countries that are members of inter-governmental organisations, which accord to Indian citizens similar privileges as granted to their own citizens, the Central Government notifies such countries to be Convention Countries. In case of an application for registration of a trademark made in any of the Convention countries, a priority date can be claimed with regard to the application in India, provided that the application is made within six months of the application having been filed in the Convention country. The Government has notified and extended this privilege of priority to the members who have ratified the Paris Convention on Protection of Industrial Property.

Madrid Protocol

After the amendment in the Trade Marks Act in 2010, Chapter IV A was inserted, which contains the special provisions relating to protection of trademarks through international

registration under the Madrid Protocol. This amendment allows Indian entities to register their trademarks in 97 countries by filing a single application and in the same way also allows the foreign entities of the member countries of the Madrid Protocol to register their mark in India. India has joined the Madrid Protocol with effect from 8th July, 2013. As per the Amendment Act, from the date of the international registration of a trademark where India has been designated or the date of the recording in the register of the International Bureau about the extension of the protection resulting from an international registration of a trademark to India, the protection of the trademark in India shall be the same as if the trademark had been registered in India.

One of the major changes brought about by the 2010 amendment is inclusion of the words "**within eighteen months of the filing of the application**" in Section 23 of the Trade Marks Act. The said inclusion puts an obligation on the Registrar to complete the registration process for a mark in a time bound manner. This change will challenge every aspect of the registration process within trademark office in India, forcing deadlines at every stage of the registration procedure laid out under the Trade Marks Act and supplemented by the Trade Mark Rules in India.

Classification of goods and services

For the purpose of classification of goods and services for registration of trademarks, India follows the International Classification of Goods and Services (Nice Classification) published by World Intellectual Property Organization (WIPO). For the purpose of classification of the figurative elements of marks, India follows the Vienna Agreement.

Opposition proceedings

After advertisement of a trademark in the Trade Marks Journal, (which is available online at the website of Office of Registrar of Trademarks) an opposition challenging the application for registration can be filed by any person within a period of **4 months**.

Renewal of registration

The trademark is initially registered for a period of 10 years, which is calculated from the date of filing of the application and in case of convention application, from the date of priority. The registration is required to be renewed within 12 months before the date of expiry of the registration, ie, 10 years from the date of the application or subsequent renewals.

The failure in renewing the trademark within the stipulated period of time and a grace period of maximum one year granted for restoration of the trademark, automatically leads to removal of the trademark from the Register of Trademarks.

Rectification of Trademark

An aggrieved person may file an application before the Registrar of Trademarks or to the Intellectual Property Appellate Board (IPAB) for cancellation or varying the registration of the trademark on the ground of any contravention or failure to observe a condition entered on the Register in relation thereto.

The application for rectification can also be filed for removal of an entry made in Register, without sufficient cause or wrongly remaining on the Register and for correction of any error or defect in any entry in the Register.

Assignment, Transmission and Licensing of Trademarks in India

"Assignment" means an assignment in writing by an act of the parties concerned. While in case of licensing, the right in the trademark continues to vest with the proprietor, the assignment of the trademark leads to a change in the ownership of the mark. A registered trademark is assignable with or without the goodwill in respect of all or only some of the goods/services for which the mark is registered. India is a member to TRIPS and Article 21 of the TRIPS dealing with Licensing and Assignment mandates that "... the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs." Section 39 of the (Indian) Trade Marks Act, 1999 allows for the assignment of an unregistered trademark with or without the goodwill of the business concerned.

Indian law contains restriction on the assignments of trademark, whether registered or unregistered, whereby multiple exclusive rights would be created in more than one person which would result in confusion. However, the assignment with limitations imposed, such as goods to be sold in different markets, ie, within India or for exports are valid. The Registrar is authorized to issue a certificate of validity of the proposed assignment on a statement of case by the proprietor of a registered trademark who proposes to assign the mark. The said certificate as to validity is conclusive unless vitiated by fraud. The assignments, wherein exclusive rights are created with respect to different markets within India are also valid.

A trademark is a property which can be transferred by a document for consideration, subject to certain provisions in the relevant Act. An assignment of trademark has to be in writing by acts of the parties concerned. When an assignment of a trademark is made, the assignee must apply to the Registrar of Trade Marks to register his or her title. Until such an application is filed by the Assignee, the assignment shall be ineffective against a person acquiring a conflicting interest in or under the registered trademark without the knowledge of the assignment. Where the validity of an assignment is in dispute, the Registrar of Trade Marks may refuse to register the assignment, unless adjudicated by a competent court.



Corporate Social Responsibility

CSR in India is a result of the 2013, Companies Act. India is one of the few countries in the world to have a dedicated CSR act. In fact, it is the first to have brought about a legislation to implement CSR activities, followed by United Kingdom

CSR refers to the idea that companies need to invest in socially and environmentally relevant causes in order to interact and operate with concerned parties having a stake in the company's work. CSR is termed as "Triple-Bottom-Line-Approach", which is meant to help the company promote its commercial interests along with the responsibilities it holds towards the society at large. CSR is different and broader from acts of charities like sponsoring or any other

philanthropic activity as the latter is meant to be a superficial or surface level action as part of business strategy, but the former tries to go deep and address longstanding socio-economic and environmental issues[2].

Small or Medium Enterprises (SMEs) should be asked to promote CSR by taking into account their respective fiscal capacity and not over-stretching their rather limited resources. According to the United Nations Industrial Development Organization (UNIDO), CSR based on Triple Bottom Line (TBL) Approach, can help countries in the developing bracket to accelerate their socio-economic growth and help them become more competitive. TBL approach encourages private companies and institutions to align their activities in a socially, economically and environmentally viable way. This will help countries achieve Sustainable Development Goals (SDGs) in the long run. Companies should be encouraged to take up cost-effective CSR programmes that help the society and the environment according to the UNIDO



NEED OF CSR

CSR is responsible for generating a lot of goodwill to companies either directly or indirectly. These include[5]-



- Making employees more loyal and help companies retain them in the long run.
- Make companies more legitimate and help them in accessing a greater market share.
- Since companies act ethically, they face less legal hurdles.
- Bolster the goodwill of companies amongst the general public and help in strengthening their “brand value”.
- Help in the stabilization of stock markets in both the short and long run
- Help in limiting state’s involvement in corporate affairs as companies self-regulate and act as most ethical.

NEED OF CSR LAWS

CSR laws are meant to help in transferring excess capital from the haves to the have-nots via acts of charity. According to available data, CSR laws will help in increasing amount of monetary contribution from \$600 million to \$2 billion annually. This will help corporate undertakings to take up a lot more social, economic and environmental activities in order to help the general populace. This will also help corporates to have a direct stake in improving the society and drastically change their role from perceived exploiters of commerce to facilitators of development. They will be forced to contribute beyond the surface level and help in changing the society in a much deeper way[8].

CSR LAWS IN INDIA

The Companies Act, 2013, a successor to The Companies Act, 1956, made CSR a compulsory act. Under the notification dated 27.2.2014, under Section 135 of the new act, CSR is compulsory for all companies- government or private or otherwise, provided they meet any one or more of the following fiscal criterions[9]:

- The net worth of the company should be Rupees 500 crores or more
- The annual turnover of the company should be Rupees 1000 crores or more
- Annual net profits of the company should be at least Rupees 5 crores.

If the company meets any one of the three fiscal conditions as stated above, they are required to create a committee to enforce its CSR mandate, with at least 3 directors, one of whom should be an independent director[10].

The responsibilities of the above-mentioned committee will be[11]:

- Creation of an elaborate policy to implement its legally mandated CSR activities. CSR acts should conform to Schedule VII of the Companies Act, 2013.
- The committee will allocate and audit the money for different CSR purposes.
- It will be responsible for overseeing the execution of different CSR activities.
- The committee will issue an annual report on the various CSR activities undertaken.

- CSR policies should be placed on the company's official website, in the form and format approved by the committee.
- The board of directors is bound to accept and follow any CSR related suggestion put up by the aforementioned committee.
- The aforementioned committee must regularly assess the net profits earned by the company and ensure that at least 2 percent of the same is spent on CSR related activities.
- The committee must ensure that local issues and regions are looked into first as part of CSR activities.

FEATURES OF CSR LAWS

The broad and important features of the CSR laws are as follows:

- Quantum of money utilized for CSR purposes are to be compulsorily included in the annual profit-loss report released by the company[12].
- The CSR rules came into force on 1st April 2014 and will include subsidiary companies, holdings and other foreign corporate organizations which are involved in business activities in India[13].
- CSR has been defined in a rather broad manner in Schedule VII of Companies Act, 2013. The definition is exhaustive as it includes those specific CSR activities listed in Schedule VII and other social programmes not listed in schedule VII, whose inclusion as a CSR activity is left to the company's discretion[14].

CSR activities listed in schedule VII include[15]:

“eradicating hunger and poverty, promotion of education and employment, livelihood enhancement projects, promoting gender equality, women empowerment, hostels for women and orphans, old age homes, day care, environmental sustainability, protection of flora and fauna, contributions to PM relief fund, measures to benefit armed forces veterans, war widows and dependants, promotion of sports, and rural development projects”.

- Net profits are calculated on the basis of Section 198 of Companies Act, 2013. However, only domestic branches are included and dividend-related payments are left out of the final calculation of total net profits[16].
- Companies are allowed to implement CSR via any of the following means possible[17].
- Setting up a Trust or Society under Section 8 of the 2013 Companies act under its direct administrative control.
- Corporates can outsource the CSR tasks to established social enterprises- institutions engaged in CSR activities for 3 years or more. These institutions are meant to engage in not for profit activities. The corporates though are supposed to monitor the social enterprises meant to enforce their CSR mandate.
- Companies can collaborate with fellow companies and work out some arrangement based on the CSR rules.
- CSR activities should follow the below-mentioned rules[18]:
- Any familial activity or act of personal charity is not to be included as part of CSR activity.
- Any sort of contribution-fiscal or otherwise by political organizations is outside the purview of CSR activities as indicated under Section 182 of the 2013 Companies Act.
- All CSR activities are to be conducted in Indian territory to be considered valid.
- Companies can utilize a maximum of 5 percent of their total expenditure to help in capacity building of their society, trust or outsourced social enterprise.
- As stated before listed public companies are mandated to have up to 3 directors as part of their CSR committee- one of whom should always be independent. Unlisted and private companies are allowed to have at least 2 directors and no independent director[19].
- CSR reports are to be compulsorily published on an annual basis. The reports have a fixed format as designed by the CSR rules, which must include details like official CSR policy, the number of funds dedicated to CSR and its detailed utilization as well as a detailed explanation for non-utilization of funds if any. The said format and its constituents must be displayed on the official website of the company[20].
- CSR activities initiated by a foreign company has to be via its Indian subsidiary to be considered legitimate under Section 135 of the companies act[21].
- Trusts created by companies to carry out their mandated CSR tasks, are to be compulsorily registered in some states where it is mandatory under Income Tax, 1956[22].

- Companies are allowed to co-operate with their independent counterparts, provided the latter has a proper tracking and reporting system for CSR activities that may be undertaken[23].
- Companies are allowed to engage in capacity building by allotting up to 5 percent of all expenses to be incurred on CSR activities to be devoted to training and equipping of personnel to carry out CSR and related activities[24].
- Activities that cannot be considered as CSR include[25].
- Operational and administrative activities of the business.
- CSR activities that do not take place in Indian territory.
- Employee and familial welfare activities are strictly outside the purview of CSR tasks as well.
- Fiscal help rendered to political outfits is not considered as a CSR activity as well.
- Events like the marathon, award functions, fiscal help rendered to charitable institutions, sponsoring TV shows etc that are strict “one-off”-i.e. meant to happen just once in a while are not considered CSR.
- Companies cannot report lawful duties rendered under acts or regulation like Labour Act, Land act etc cannot be considered as CSR tasks.



CSR SPENDING IN INDIA IN 2017

According to data compiled by various NGOs, the total amount of money spent on CSR activities has increased by 20 percent in the year 2017, as compared to the year 2016. This data was compiled based on CSR spending done by top 100 companies, which contribute about one-third of all CSR spending in India as seen in the year 2017 and contribute at least one crore rupees. Governmental enterprises and Public Sector Undertakings (PSUs) were deliberately left out of the compiled data. Furthermore, as compared to 44 percent defaulters of CSR data in 2016, the number was 36 percent in 2017, a marked improvement. Actual CSR spending has also relatively increased from 86 percent in 2016 to 88 percent in 2017. About 33 percent of the companies have also spent more than their mandated spending of 2 percent of net profits. Companies spend more than half of their mandated CSR aid via their holdings and subsidiaries. About 33 percent of total CSR aid was utilized for literacy-related purposes and a similar amount of money was spent on rural welfare and on the health sector. An up and coming area for allocation of CSR resources is on improving the diet of those suffering from malnutrition and on environment protection[26].

However, since more than 1/3rd of the companies are not complying with CSR rules and releasing related data, as mentioned above and this shows that greater government regulation and aid is needed in setting up a thorough system to help them channelize and report their mandated CSR aid. Furthermore, the government must find a way to utilize unused fiscal aid from the past year. Companies have also been found to be less than efficient in allocating resources and tasks to their subsidiaries and holdings to carry out their transferred CSR tasks[27].

WHY CSR IN INDIA IS NOT WORKING?

Eminent scholars have claimed that companies while having enormous fiscal resources lack adequate knowledge of existing public problems and policy measures. As a result, their CSR efforts are misguided and do not help the public in the long run with sustaining benefits. For example- companies blinded with carrying out their mandated CSR activities might employ contractual workers with extremely low pay packages and virtually no other benefits. CSR activities carried out by companies often clash with their commercial and other vested interest which are prioritized over serving the society. Furthermore, it is also claimed by scholars that social issues often cannot be solved by money alone and most corporates do not want to look beyond fiscal measures to help the society. They also do not realize that money can often worsen existing problems[28].

As per section 135 of the Companies Act, 2013, CSR efforts will be equated with the money spent- which should be at least 2 percent of the net profit. However, companies are not very transparent in declaring their CSR income. Companies in the past have fudged figures to meet the mandatory CSR spending. Furthermore, companies that were spending more than 2 percent before the said law came into place, have started spending much less these days. According to available data, companies have engaged in selective CSR tasks that ultimately benefit their brand value and help them prosper rather than activities that genuinely help the society at large. According to some corporates, the mandated 2 percent CSR on net profit is also a way of extracting higher profits illegitimately via a “back-door” and force them to fill in areas where the government has not acted enough. Furthermore, the government’s action was unilateral and the corporates were not consulted before the government decided to implement this rule[29].

HOW TO MAKE CSR LAWS EFFECTIVE AND EFFICIENT?

CSR in India suffers from some serious infirmities- policy and procedure-wise. As a result, it can be argued that some more measures are needed to help implement CSR activities better like[30]:

- Specialization of companies should be utilized better. CSR should not be simply seen as the spending of fiscal resources, but the smart spending of CSR resources. For example- a multi-national company engaged in the production of packaged food should provide those below the poverty line with similar assets, telephone companies should set up telecom services in remote areas lacking such services. Section 135 of the Companies Act should be amended to include measures to allow companies to do CSR activities as per their strengths and specialties.
- CSR activities should be based on expert data. Companies should not blindly spend fiscal resources but rely on data and suggestions of research institutes so that their efforts result in actual eradication of pre-existing social problems. Therefore companies should collaborate with social enterprises and research institutes.
- Companies should collaborate with the people on the ground- those who are supposed to receive their CSR aid. This will help them realize what people actually need, what their actual problems are and accordingly they can humanize their CSR aid to help a number of people with greater efficiency.
- Companies must also compulsorily collaborate with specialist non-government institutions, who have acted in a particular field with specialist experience for at least three years, This will help them utilize their fiscal resources better as dedicated NGOs will guide them in effectively implementing their aid programmes.