

## **UNIT 1**

### **INTRODUCTION**

#### **1. A) What is 'Business Law'? What are the sources of Business Law?**

Law is a body of principles recognized and applied by the state in administration of justice the law is a system of rules that a society or government develops in order to deal with crime, business agreements, and social relationships. Law is not static.

Ignorance of law is not an excuse

#### **BUSINESSLAW/MERCANTILELAW**

It refers to those legal rules which govern and regulate business transactions (trade, commerce and industry).It deals with contractual situations and right and obligations arising out of mercantile transactions between mercantile persons. Business laws establish the rules that all businesses should follow.

#### **Sources of Business Law**

Indian mercantile law is based largely upon the English mercantile law.

- 1) English mercantile law
- a) Common law
- b) Equity
- c) Statute law
- d) Case Law
- e) Merchant law
- 2) Customs and usages
- 3) Statutory law
- 4) Case laws

#### **1) English Mercantile Law**

The English law is the most important source of Indian mercantile law. Many rules of English law have been incorporated into Indian law through statutes and judicial decisions. The sources of English law are:

#### **A) Common-law**

This law is known as judge made law. It is based upon customs and practices handed down from generation to generation. It is the oldest unwritten law. The English Courts developed these over centuries.

#### **B) Equity**

Equity is also unwritten law. It is based upon concepts of justice developed by the judges whose decisions become precedents. It grew as a system of laws supplementary to the common law and covered the deficiencies of the common law. Its rules were applied in cases where the rules of common law were considered harsh and oppressive.

#### **C) Case Law**

This is also an important source of the English mercantile law. It is built upon the decisions of the Judges. It is based on the principle that what has been decided in earlier case is binding in similar future case also unless that there is a change in the circumstances of the case.

#### **D) Law Merchant**

It is also one of the important sources of English mercantile law. It was that branch of law which was based on customs and usages prevalent amongst merchants and traders. It developed during the fourteenth and fifteenth centuries and was recognized.

### **E) Statute Law**

The Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Companies Act, 1956 are some of the examples of the statute law. The law making power in India is vested in Parliament and the state legislature.

### **F) Judicial Decisions**

Judicial decisions are also called as case laws. This is a source of law based upon previous judicial decisions which have to be followed in similar future cases. The Courts in deciding cases involving similar points of law also follow them.

1. **b) Describe briefly contracts Classified on the basis of their validity.**

**OR**

2. **C) Explain the different type of contracts.**

### **Classification of contracts**

Contract may be classified on the basis of their (a) validity, (b) formation, or (c) performance. They are briefly discussed as under:-

**Valid Contracts:** A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law when all the essential of a valid contract as laid in Section 10 are fulfilled.

**Void Contract:** An agreement which was legally enforceable when entered into but which has become void due to supervening impossibility of performance. For example, a contract between a citizen of Pakistan and India is a valid contract during peace but if war breaks out between the two countries, the agreement will become void contract.

**Void agreement:** According to Section 2(g), "An agreement which is not enforceable by law either of the parties is void". No legal right or obligations can arise out of a void agreement. It is void ab initio i.e., from its very inception, for example, an agreement without consideration or with a minor.

**Unenforceable Contracts :** It is a contract which is actually valid but cannot be enforced because of some technical defect (such as not in writing, under stamped). Such contracts can be enforced if the technical defect involved is removed.

**Example:** An oral agreement for arbitration is enforceable because the law requires that an arbitration agreement must be in writing. It is the oral agreement for arbitration is reduced to writing, it will become enforceable.

**Illegal Agreements:** An illegal agreement is one the object of which is unlawful. Such an agreement cannot be enforced by law. Thus, illegal agreements are always void ab initio (i.e. void from the very beginning). Thus, a contract to commit dacoit is an illegal contract and cannot be enforced at law.

### **Contract classified according to formation:**

**Express Contract:** Express Contract is one which is made by words spoken or written.

**Implied Contract:** Where the proposal or acceptance is made otherwise than in words, it is an implied contract. Implied contracts can be smelted out of the surrounding circumstances and the conduct of the parties who made them.

**Example:** A transport company buses on different routes to carry passengers. This is an acceptance by X. Now, there is an implied contract.

### **Classification on the basis of performance:**

Contract may be classified on the basis of their performance. Such contracts may be

**Executed Contract:** It is a contract where both the parties to the contract have fulfilled their respective obligations under the contract.

In other words, it is a completed contract.

Example: A sells a T.V. set to B for Rs. 20,000. B pays the price and A hands over T.V. set to B.

**Executory Contract:** It is a contract where both the parties to the contract have still to perform their respective obligations.

**Example:** Agreement to make furniture for B for Rs. 5,000. Mr A has yet to make furniture and Mr B has not made the payment. So, both A and B are yet to perform their obligations.

### **1.c) Distinguish between valid, void, voidable and illegal contracts with suitable illustrations.**

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**Differences between void and illegal agreement:**

- 1) All illegal agreements are void but all void agreements are not illegal.
- 2) Unlike illegal agreement, there is no punishment to the parties to a void agreement
- 3) Agreements collateral to void agreements are valid but agreements collateral to illegal agreements are void ab initio
- 4) Illegal agreements are void from the very beginning but sometimes a valid contract may subsequently become void

( OR )

**1a) "All agreements are not contracts. But all contracts are agreements" discuss.**

**1b) contract. State the essential elements of contracts.**

**Contract**

The Indian Contract Act, 1872 defines the term "Contract" under its section 2 (h) as "An agreement enforceable by law". In other words, we can say that a contract is anything that is an agreement and enforceable by the law.

**ESSENTIAL ELEMENTS OF A VALID CONTRACT**

**1. OFFER AND ACCEPTANCE.**

In order to create a valid contract, there must be a 'lawful offer' by one party and 'lawful acceptance' of the same by the other party.

Section 2 (a) of the Contract Act defines Offer as - 'when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make an offer'. Section 2 (b) of the Contract Act states that, 'when the person to whom the offer is made signifies his assent there to, the offer is said to be accepted.'

## **2 INTENTION TO CREATE LEGAL RELATIONSHIP.**

In case, there is no such intention on the part of parties, there is no contract. Agreements of social or domestic nature do not contemplate legal relations. Case:- Balfour vs. Balfour (1919) Mr. Balfour and his wife went to England for a vacation, and his wife became ill and needed medical attention. They made an agreement that Mrs. Balfour was to remain behind in England when the husband returned to Ceylon (Sri Lanka) and that Mr. Balfour would pay her £30 a month until she returned. This understanding was made while their relationship was fine; however the relationship later soured. The lower court found that there was sufficient consideration in the consent of Mrs. Balfour and thus found the contract binding, which Mr. Balfour appealed. Arrangements made between husbands and wives are not generally contracts as the parties do not intend to be legally bound by the agreements.

## **3 LAWFUL CONSIDERATION.**

At the desire of promisor, promisee or any other person has done or abstain from doing or does abstain from doing such act or promise is known as consideration. According to Blackstone "Consideration is recompense given by the party contracting to another." In other words of Pollock, "Consideration is the price for which the promise of one is brought

## **4 COMPETENCY OF THE PARTIES./CAPACITY TO CONTRACT.**

The parties to an agreement must be competent. If either of the parties does not have the ability to contract, the contract is not valid. The following persons are incompetent to contract. (a) Minor: A person less than age of 18 is minor. Case- Mohri Bibi vs Damodar Ghosh 1903 (b) Unsound mind person: Any person who is unable to understand the term and condition of contract

## **5 FREE CONSENT.**

"Consent" means the parties must have agreed upon the same thing in the same sense.

According to Section 14, Consent is said to be free when it is not caused by-

(1) Coercion (2) Undue Influence (3) Fraud (4) Mis-representation (5) Mistake. An agreement should be made by the free consent of the parties.

## **6. LAWFUL OBJECT.**

The object of an agreement must be valid. Object has nothing to do with consideration. It means the purpose or design of the contract. Thus, when one hires a house for use as a gambling house, the object of the contract is to run a gambling house. The Object is said to be unlawful if- (a) it is forbidden by law; (b) it is of such nature that if permitted it would defeat the provision of any law; (c) it is fraudulent;

## **8 POSSIBILITY OF PERFORMANCE.**

Condition for a contract should be capable for performance. If the act is impossible in itself, physically or legally, it cannot be enforced at law. For example: If A and B makes an agreement

that if B encloses a space with the help of two straight lines then A will pay him Rs. 1000 otherwise B will be liable for paying Rs. 500 to **9NOTDECLAREDTOBEVOIDORILLEGAL**.

The agreement though satisfying all the conditions for a valid contract must not have been expressly declared void by any law in force in the country. Agreements mentioned in Section 24 to 30 of the Act have been expressly declared to be void. For example agreements in restraint of trade, marriage, legal proceedings etc. That is : If A is not willing to marry with B, law can not enforce him/her.

## 10 LEGAL FORMALITIES.

An oral Contract is a perfectly valid contract, except in those cases where writing, registration etc. is required by some statute. In India writing is required in cases of sale, mortgage, lease and gift of immovable property, negotiable instruments;

### 6a) Distinguish between agreement and contract

BASIS FOR COMPARISON	AGREEMENT	CONTRACT
Meaning	When a proposal is accepted by the person to whom it is made, with requisite consideration, it is an agreement.	When an agreement is enforceable by law, it becomes a contract.
Elements	Offer and Acceptance	Agreement and Enforceability
Defined in	Section 2 (e)	Section 2 (h)
In writing	Not necessarily	Normally written and registered
Legal obligation	Does not create legal obligation	Creates legal obligation
One in other	Every agreement need not be a contract.	All contracts are agreement
Scope	Wide	Narrow

## **6.b) What is "Agreement"? State the essentials of agreement.**

### **Agreement**

**Definition:** In legal parlance, the word 'agreement' is used to mean a promise/commitment or a series of reciprocal promises which constitutes consideration for the parties to contract.

**Offer/Proposal:** A person makes an offer, when he/she expresses to another person his/her willingness to undertake an obligation, in exchange for a promise, act or abstinence. The person who expresses his/her willingness or the one who makes the offer is known as offeror or proposer, whereas the person to whom the offer is made, is regarded as the offeree.

**Acceptance:** As the name signifies, when the offeree gives his/her assent to the offeror, either expressly or impliedly to receive or undertake something which is proposed to him/her, it is considered as acceptance. It is required to be communicated to the person who makes the offer, in the prescribed mode, within a reasonable time. It must be unqualified and absolute.

### **Promise**

The party to the agreement, to whom the offer is given or proposal is made, gives his/her assent in this regard for mutual consideration, the offer is considered as accepted, which results in a promise.

### **Reciprocal Promises**

In the Contract Act, the word 'reciprocal' refers to 'mutual or give-and-take'. Hence, 'reciprocal promise' is the promise which results in consideration or part thereof, for the parties to the agreement.

### **Plurality of Persons:**

To constitute an agreement, at least two persons should be there, as one person cannot make an agreement with himself/herself.

### **Consensus ad idem:**

It is a Latin term, which implies Concurrence of Minds", i.e. when in an agreement there is a common understanding between the parties with respect to the terms and conditions of the agreement."

## **6.c) What do you mean by "obligation"? state the essential elements of obligation.**

A contract is an agreement creating and defining obligations between the parties. It consist of two connected elements namely obligation and agreement.

**Obligation:** obligation is also known as vinculum juries obligation is the legal tie bond a legal tie which imposes upon a person the necessity of doing or abstaining from doing a definite act or acts.

**Essentials of obligation:** 1) there must be two parties this is obvious since no one can be under obligation to him self.

2) obligation should be in respect of doing or not doing a definite act so the obligation should not be uncertain and indefinite.

3) the obligation must relate to legal matters and not to social affairs

### **Sources of obligation:**

Obligation arise not only from agreements but without agreements. The following are the important sources of obligation

1) Agreements

2) judgments of court

3) civil wrong or torts

4) quasi - contracts

5) Social affairs

6) Status obligations

Anson says a contract is that from of agreements which directly contemplates and creates an obligation. Hence a contract is defined as an agreements creating on obligations.

## **UNIT- II**

**2.a) What is an "Offer"? What are the characteristics of a valid offer.**

### **Essentials Of Valid Offer**

#### **1. Communication:**

It is one of the important essentials of valid offer and the offer must be communicated. To make it a valid offer there must a communication of offer as it is the most essential feature of a valid offer. There, is no specific provisions as it must be in writing or so this means it can be oral or in writing.

#### **2. Intention to Create Legal Obligation:**

A legitimate offer establishes a legal connection, implying that the offeror intends to labor under legal responsibility or to be legally bound by law rather than under social responsibility. According to Section 10 of the Indian Contract Act, 1872, the purpose to form legal relations is not a required part of a contract; however, this concept is regarded as a required part of an offer in English law. In the case of Balfour V. Balfour was about a case of a married couple within which the husband has promised to pay some remuneration to his wife but he failed to do so. The wife filed a suit for the enforcement of this contract but the contention of the wife was rejected on the ground that there was no intention to create legal relation and because of this the agreement was not valid.



### **3. An offer may be express or implied:**

An offer may be express or implied is another vital essentials of valid offer. An express offer is made in words, written or spoken, according to Section 3 of the Indian Contract Behavior, whereas an implicit offer is made by the offeror's act or behavior, according to Section 9 of the Indian Contract Act. In one of the landmarks cases of *Uptron Rural District Council V. Powell* the defendant has asked the plaintiff to do the services as he thought they will do it for free.

### **4. General offer need not be specifically accepted:**

A general offer is extended to the entire globe and can be accepted by anybody without having to inform the offeror. The defendants in the *Carlill V. Carbolic Smoke Ball Co.* the case was in the business of making some balls and placed an advertisement in the newspaper promising a prize if anybody caught influenza after using them. The plaintiff has contracted influenza after using it in a prescribed manner and thus sued the company for compensation and succeeded as the court the general offer is breached as soon as she contracted influenza.

### **5. Offer is different from Invitation to Offer:**

Offer is different from Invitation to Offer is the other essentials of valid offer. Section 2 of the Indian Contract Act of 1872 defines an offer. In contrast, the Indian Contract Act of 1872 makes no mention of an invitation to bid. The fundamental difference between the two is that an offer is made to enter into a contract, whereas an invitation to offer is issued to obtain an offer to enter into a contract.

### **2.b)How and On what Grounds can Offer be Revoked?**

An offer is made with a view to obtain the assent of the other party to it. If it is accepted, a valid agreement is made, But before being accepted the offer may lapse, may be revoked or may be rejected by the offeree. An offer may come to an end by any of the following ways stated in section 6 of the Indian Contract Act.

#### **By notice of revocation:**

A proposal is revoked by communication of notice of revocation by the proposer to the other party. Any time before acceptance, the offeror may revoke offer by sending a notice and this revocation must reach the offeree before he sends the acceptance.

#### **By lapse of time:**

A proposal is revoked by the lapse of the time prescribed in such proposal for acceptance, or, if no time is prescribed by the lapse of a reasonable time, without communication of the acceptance. Example. M made a offer to a company to purchase shares in that company by writing a letter on June 8. The company allotted him the shares on 23rd November. M refused the shares. Held that the offer lapsed as it was not accepted within a reasonable time.

#### **By non fulfillment of a condition precedent to acceptance:**

Sometimes, the offeror may ask the acceptor to fulfill certain conditions before acceptance. In such cases, the acceptance should be given by fulfilling these conditions. If these conditions are not fulfilled, the offer lapses. Example, A offered to sell his car to B for Rs. 1,00,000 on the condition that B should send an advance of Rs. 20,000 within a week, B accepted the offer without sending the advance. In this case, therefore, the offer lapses by no fulfillment of a condition precedent.

### **By death or insanity of the proposer:**

A proposal can be revoked by death or insanity of the proposer if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance. Death of the offeror revokes the proposal and if acceptance is made it has no effect. In addition to the modes stated in Section 6, an offer is also revoked in the following cases:

### **By Counter Offer:**

Counter-offer means an offer in response to an offer. In such cases where instead of accepting the offer, the acceptor gives his own offer, the first offer lapses. If counter-offer is rejected by offeror the offeree cannot accept the first offer unless it is revived by the offeror. Example. A makes an offer to B to sell his car for Rs. 2,00,000. B in return offers to purchase it for Rs. 80,000. Here B's offer terminates the original offer. So if after rejection B again agrees to purchase it for Rs. 2,00,000, there is no contract.

### **By acceptance not being accepted in the mode prescribed:**

If offeror has prescribed a mode of acceptance, it should be strictly followed by offeree. If offer is not accepted in the mode prescribed, the offeror can reject acceptance by giving notice to the offeree within a reasonable time that offer should be accepted in the mode prescribed and not otherwise.

### **By rejection of the offer by offeree:**

An offer also comes to an end when the offeree does not accept it and an offer once rejected cannot be revived again by him.

By subsequent illegality or destruction of subject matter of the offer:

An offer lapses if it becomes illegal or the subject matter is destroyed before its acceptance by offeree.

### **2.c) Define "Acceptance"? What are the essentials of a valid acceptance?**

The acceptance in contract law definition is given under section 2 (b) of the Indian Contract Act, Acceptance means, "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. The proposal when accepted becomes a promise."

**Example:** X makes an offer to buy Y's motorcycle for Rs. 50,000/- and B accepts this. Now, this is a promise and it cannot be revoked.

## **Essentials of a Valid Acceptance**

Here, we have discussed some essential elements of valid acceptance and legal rules of acceptance in contract law;

### **1. Acceptance must be given by the party to whom the offer was made**

The acceptance can be given only by the party to whom the offer is made. No other person can give that acceptance to offer to whom it is not made.

In case of a specific offer, the persons to whom the offer is made only he can accept that offer.

In the case of a general offer, who performs all the terms and conditions prescribed in the offer is considered as the acceptance to the offer.

Example: One charitable trust announces publicly that only handicapped students will be provided with educational laptops less than 80% of the market value. Therefore, only handicapped students may accept the offer and buy the laptop.

### **2. The acceptance must be communicated with the offeree**

When the offer is made to enter into a contract, the offeror's acceptance must be communicated with the offeror to constitute a valid contract. Without fulfilling conditions prescribed by the offeror there will not be a valid contract.

Example: A makes an offer to buy B's car for Rs. 5,00,000/-. B in his mind thinks and accepts the offer but does not communicate with the offeree.

### **3. Acceptance must be absolute and unconditional**

According to section 7 (a), to constitute an offer into a valid promise, the acceptance must be absolute and unconditional. This means the acceptance is given to the offer must be without imposing any condition which leads to a counter-offer to the original offer. Example: A makes an offer to sell his old house for Rs. 50 Lacs. B accepts the offer but with condition that he will pay 50% of the amount now and the other 50% next year. This amounts to the conditional acceptance and also counter offer.

### **4. Acceptance must be in the prescribed mode and prescribed time**

According to section 7 (b), the acceptance must be given in the prescribed mode and with the offeree's prescribed period.

Example: A buys a Rolex watch at a watch shop with the condition that the watch should be in the gift-wrapped box and shall be delivered in the next evening. But, the shop boy delivers the watch without gift wrapping. It amounts to a failure of the prescribed manner of acceptance.

### **5) Acceptance must be made before Revocation of offer**

Section 5 of the Indian Contract Act says that Offer can be revoked at any time before the communication of acceptance is posted but not afterwards. Therefore acceptance must be made before such revocation.

**6) Reasonable Time :** To be legally effective acceptance must be given within the specified time limit, and if no time is stipulated, acceptance must be given within a reasonable time. Because an offer cannot be kept open indefinitely.

## **2.a) What do you mean by “consideration”? What are the legal rules regarding consideration?**

### Consideration Meaning in Law

One of the essential elements of a valid contract is that it must be supported by some consideration. The term consideration is used in the sense of quid pro quo. It means that when a party to an agreement promises to do something, he must get something in return. This something which a party gets in return is the consideration.

### **1. Consideration has to Move as Per the Desire of the Promisor**

" The performance of the contract has to move as per the promisor and not any third party. The promisor doesn't need to always benefit from the consideration; it could be meant for a third party also. The significant thing is that there has to be a connection between the promisor's desire and the action of the promise. Another factor to note here is that what is done as part of the consideration is not voluntarily but at the promisor's behest. For example, if A's house is on fire and B rushes to save it at his own will, this is not a consideration. But if A asks B to do it, then it will be deemed as a consideration

### **2. Consideration May Move from the Person to Another Person**

As per consideration in law, if the promisor has no objection, consideration may move to a third party. For example, A can grant a house on rent to B and direct B to pay it to X. If B refuses to pay it to X, then the case could move to court and force B to pay X as there is enough consideration from A to make the payment to X.

### **3. Consideration Might be in the Past, Present, or Future**

Past Consideration - If the promise or act is performed before the contract was made, it is considered past consideration, and it holds good in Indian law. As an example, A's bike ran out of petrol on the way and A requests B to fill petrol for which he agrees to pay later. So, the promise of money is made for a past consideration of filling petrol. In English law, any past consideration is no

" Future Consideration - When a party makes a promise in exchange for the promise from the other party and the performance of the consideration is to be done after making the contract; then it

is a future consideration. For example, A promises to sell ten toy cars to B for which B is supposed to pay Rs.1000 at a future date. This is a future consideration.

#### **4.Consideration Does Not Need to be Adequate**

An agreement must be supported by consideration, but the consideration doesn't need to be equivalent to the promise. The parties are free to determine the appropriate consideration at the time of the bargain. Whether the promise is adequate or not is the lookout of the promisor and not the obligation of law or court to investigate the adequacy of the consideration.

For example, if A has a property worth Rs. 50,000, which he agrees to sell to B only for Rs. 5000, then the inadequacy of the transaction does not make the contract void. But if B pleads coercion, fraud, or under influence, then the consideration will be looked into with sufficient evidence.

#### **5.Consideration Must be Real and Not Illusory**

The legal rules of consideration state that consideration has to be certain, definitive, and competent. It cannot be vague, uncertain, or impossible. The transaction is rendered void in such a case. As an example, if A promises to find a treasure by magic if B pays him Rs. 10,000, then this is an illusory consideration and not considered valid.

#### **2.c) “A contract without consideration is void” Explain its exceptions?**

Consideration is an integral part of a contract. The rules of consideration state that it is essential to have consideration for a contract. But there are some specific exceptions to the "No consideration no contract" rule. Let us take a look.

Consideration

Can you make a legal agreement without consideration? No. As per Section 10 and Section 25 of the Indian Contract Act, 1872, consideration is essential in a valid contract. In simple words, no consideration no contract. Hence, you can enforce a contract only if there is a consideration.

Exceptions to the 'No Consideration No Contract' Rule

Section 25 also lists the exceptions under which the rule of no consideration no contract does not hold, as follows:

#### **Natural Love and Affection**

If an agreement is in writing and registered between two parties in close relation (like blood relatives or spouse), based on natural love and affection, then such an agreement is enforceable even without consideration.

Example, Peter and John are brothers. In his will, their father nominates Peter as the sole owner of his entire property after his death. John files a case against Peter to claim his right to the property

but loses the case. Peter and John come to a mutual decision where Peter agrees to give half of the property to his brother and register a document regarding the same.

### **Past Voluntary Services**

If a person has done a voluntary service in the past and the beneficiary promises to pay at a later date, then the contract is binding provided:

- " The service was rendered voluntarily in the past
- " It was rendered to the promisor
- " The promisor was in existence when the voluntary service was done (especially important when the promisor is an organization)
- " The promisor showed his willingness to compensate the voluntary service

Example, Peter finds John's wallet on the road and returns it to him. John is happy to find his lost wallet and promises to pay Peter Rs 2,000. In this case, too, the no consideration no contract rule does not apply. This contract is a valid contract.

### **Promise to pay a Time-Barred Debt**

If a person makes a promise in writing signed by him or his authorized agent about paying a time-barred debt, then it is valid despite there being no consideration. The promise can be made to pay the debt wholly or in part.

Example, Peter owes Rs 100,000 to John. He had borrowed the money 5 years ago. However, he never paid a single rupee back. He signs a written promise to pay Rs 50,000 to John as a final settlement of the loan. In this case, 'the no consideration no contract' rule does not apply either. This is a valid contract.

### **Creation of an Agency**

According to section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.

### **Gifts**

The rule of no consideration no contract does not apply to gifts. Explanation (1) to Section 25 of the Indian Contract Act, 1872 states that the rule of an agreement without consideration being void does not apply to gifts made by a donor and accepted by a donee.

### **Bailment**

Section 148 of the Indian Contract Act, 1872, defines bailment as the delivery of goods from one person to another for some purpose. This delivery is made upon a contract that post accomplishment of the purpose, the goods will either be returned or disposed of, according to the

directions of the person delivering them. No consideration is required to effect a contract of bailment.

### **Charity**

If a person undertakes a liability on the promise of another to contribute to charity, then the contract is valid. In this case, the no consideration no contract rule does not apply.

Example, Peter is the trustee of his town's charity organization. He wants to build a small pond in the town to enhance greenery and offer the residents a good place to walk around in the evenings. He raises a charity fund where he appeals to people to come ahead and contribute to the cause. Many people come forward as subscribers the fund and agree to pay Peter their share of the amount once he enters into a contract for constructing the pond.

### **2.c) “A contract without consideration is void” Explain its exceptions?**

#### **STRANGER TO CONTRACT**

The stranger to contract is a doctrine which means privity of contract. It means that a person, who is not a party to the contract, cannot sue for carrying out the promise made by the parties to the contract. That is, a person who is not a party to the contract cannot enforce a contract.

The underlying principle of the doctrine is that a contract is always a privity relationship between the parties who make it. No other person can acquire rights or incur liabilities under it.

Example: Manufacturer A supplied tyres to a wholesaler, B, on condition that any retailer to whom B resupplied the tyres should promise B not to sell them to the public below Manufacturer A's list price. B supplied tyres to C upon this condition, but nevertheless C sold them below the list price. Held, there was a contract between C and B, and a contract between Manufacturer A and B, but no contract between Manufacturer A and C. Therefore, Manufacturer A could not obtain damages from C.

#### **EXCEPTIONS**

There are, certain exceptions to the rule of privity of contract recognized both by the English Law and the Indian Law, under which a person, who is not a party to a contract can sue on it. The exceptions to the rule are:

#### **1. TRUST OR CHARGE**

Sometimes under contract, a benefit is given to a person who is not a party to the contract. This benefit can be given by creating a Trust or Charge in favour of such person. In such cases, the beneficiary under the trust or charge may enforce the contract even though he is not a party to it.

CASE: KHWAJA MOHD. VS HUSAINI BEGUM (1910)

A had a son S and B had a daughter D. A agreed with B that in consideration of the marriage of D with S, he would pay to D, his daughter in law an allowance of 5000 a month in perpetuity. He charged certain properties with the payment with the power to D to enforce it. In this case, court held that, D although no party to the arrangement, was clearly entitled to recover the arrears of the allowance.

## **2. MARRIAGE SETTLEMENT, PARTITION OR OTHER FAMILY ARRANGEMENTS**

Sometimes, an agreement is made in connection with marriage, partition or other family arrangements and a provision is made for the benefit of some person. In such cases, a person, for whose benefit the provision is made, can enforce the agreement though he is not a party to it.

EXAMPLE: J's wife deserted him because of his ill treatment. J entered into an agreement with his father in law to treat her property or else pay her monthly maintenance, subsequently, she was again ill treated and also driven out, here she was entitled to enforce the promise made by J to her Father.

## **3. ACKNOWLEDGEMENT OF PAYMENT**

Sometimes, one of the parties to a contract acknowledges the payment to a third party or otherwise constitutes himself as an agent of the third party. In such cases, the party incurs a binding obligation towards the third party who can enforce it. And if that party acknowledges the payment to the third person or constitutes himself as an agent of that third person, then the third person can recover the amount from such a party.

EXAMPLE: A receives some money from B to be paid over C. A admits of this receipt to C. C can recover the amount from A who shall be regarded as the agent of C.

## **4. AGREEMENTS AFFECTING THE LAND**

Sometimes, the owner of land is entitled to certain rights and obligations created by an agreement relating to the land. If such land is purchased by somebody with the notice of rights and obligations of the owner, then those rights and obligations shall bind the purchaser although he was not a party to the agreement.

EXAMPLE: Peter owned a piece of land which he sold to John under a covenant that a certain part of the land will be maintained as a public park. John abided by the covenant and eventually sold the land to Arjun. Though Arjun was aware of the covenant, he built a house in the specific plot. When Peter came to know of it, he filed a suit against Arjun. Although Arjun denied liability since he was not a party to the contract, the Court held him responsible for violating the covenant.

## **5. AGENCY**

A principal, even if concealed, may sue on a contract made by an agent. The third party cannot plead that there was no contract between him and the principal.



## **6. ASSIGNMENT**

The assignee of a debt or an actionable claim may sue the original debtor if the assignment is a legal one. It is important to note here that nominees of a life insurance policy do not have this right.

EXAMPLE: Where a bill of exchange is transferred to a third party, that a third party can enforce the bill of exchange even though he was not a party of it.

## **7. HOLDER IN DUE COURSE**

A holder in due course of a negotiable instrument is one who has obtained the negotiable instrument in good faith and for valuable consideration. He can sue prior parties to the negotiable instrument.

## **8. FUND IN HANDS OF A PARTY**

Where a fund is created in the hands of one of the contracting parties in favor of a third party, it may be possible to give the latter, a remedy in quasi-contract on the grounds that to allow the contracting party to keep the fund would be to allow unjust enrichment.

### **7a) "Past consideration is no consideration" comment**

#### **Past consideration**

Where the promisor had received the consideration before the date of the promise the consideration is termed as past consideration. it means a past act or forbearance.

#### **English law**

In English law consideration may be present or future but not past. past consideration is no consideration at all.

#### **Exemptions:**

There have a western examinations to the rule that passed consideration is no cancellation the examples are as follows

#### **1. Services rendered at the request of the promisor:**

when the consideration consists of services rendered at the request of the promisor it is a good consideration the request may be either express or implied

#### **2) promise to pay a time barred debt:**

Where a debt is barred by limitation the debtor can waive the benefit of that plea and promise to discharge the debt such a promise is enforceable

#### **3) Negotiable Instruments**

Very negotiable instrument is given in consideration of some past act that passed act will form as a good consideration for the issue of the negotiable instrument and the party who gets the instrument can validity enforce it

#### **4) Indian law**

In Indian law past consideration is a good consideration it is sufficient to support a promise.

## **7. b) Explain different kinds of offer**

An offer is the first step in the formation of a contract, it marks the beginning of contractual obligation between the parties. As is a known fact that Acceptance can only be made to a prior offer, an offer is essential for the formation of a contract.

### **Types of Offer**

#### **Specific Offer**

A specific offer refers to an offer made to a specific individual or group of individuals. It can only be accepted by the individual or group of individuals to whom it is directed.

#### **General Offer**

When an offer is made to the general public, it is called a general offer and can be taken up by any person who wishes to fulfill the terms of the offer. When an offer is accepted by the individual to whom it is directed, the offeror and the offeree enter into a contract.

#### **Counteroffer**

In the event that the offeree is only willing to accept the offer if certain modifications are made, he or she is offering a counteroffer. A counteroffer is itself an offer, and it is considered a rejection of the initial offer. It is a new offer that terminates the initial offer, making it impossible to be revived at a later time.

#### **Cross Offer**

A cross offer is made when two parties make the same offer to one another without knowing the other party has made an offer, and the terms of both offers are identical. In this situation, there will not be a contract because it cannot be construed that one party's offer is accepted by the other party.

#### **express offer**

An offer made through oral or written words is an express offer. The oral offer can be made face to face or via telephone. The written offer can be made via text messages, advertisements, letters or emails.

#### **implied offer**

An implied offer is one which is not made in words. It may be implied from:

- " Conduct of the parties
- " Circumstances of the case

## **7.C Explain the different types of considerations.**

definition of the Consideration has been provided under section 2(d) of the Indian Contract Act, 1872. Mainly, there three types of consideration as defined under the definition of consideration. But, we can see there are more kinds of considerations in the common law. So, in this article, we cover all kinds of considerations.

### **1. Executory (Future) Consideration**

The executory consideration or future consideration is the consideration where one or more parties make a promise that the consideration is to be performed in the

Example: A wants to gift it to his brother on his birthday. A purchased bike from B and asked to deliver it on his brother's birthday. Here, the delivery bike is to be performed in the future. This is an executory/future consideration example.

### **2. Executed (Present) Consideration**

The executed consideration or present consideration is the consideration where the parties are performed their promises.

Example: A goes to a stationery shop and purchased a pen for the cost of Rs. 20/-. Here, A pays Rs. 20 which is the consideration to the shop owner and A got the pen which is the consideration to A. Both, the considerations are completed. This is called executed/present consideration.

### **3. Past Consideration**

In a general contract, then consideration should be with the contract, but in the past consideration the act has been done already before making any promise then it is known as Past Consideration in the contract law.

Example: A has found a purse on the road and he searched the true owner of that purse i.e. B. A returns the purse to B. Then B gives him Rs. 500/- as a reward. This is the past consideration example.

### **4. Conditional Consideration**

The conditional consideration is the consideration where one party imposes a request or a condition with the offeree. This is called conditional consideration.

Example: A makes an offer to B to buy B's house for Rs. 50 Lacs. But, imposes a condition that he will pay the amount (consideration) in instalments. This is called conditional consideration.

### **5. Unreal or Illusionary Consideration**

When the consideration is impossible to perform or the consideration is illusionary or imaginary, then the consideration is called unreal or illusionary consideration.

### **6. Unlawful Consideration**

The unlawful consideration in the Indian Contract Act, when the parties make an agreement with unlawful consideration, the contract is an illegal contract or void contract.

**8)a) What are the differences between offer and invitation to offer?**

**Offer**

It is the expression of person to show their willingness to another to do something or not to do something. Offer must be certain, complete and define in their respects. Offer is legally bind and acceptance of offer results in valid contract.

**Invitation to offer**

Invitation to offer is step before offer. In this person includes another and make a offer to him/her. If the second person responds to invitation of offer made by first person then it leads to offer. In this terms and conditions are made clear. Acceptance of invitation of offer does not lead to contract, it leads to Offer only.

The major differences between an offer and an invitation to offer are as follows –

<b>Offer</b>	<b>Invitation to offer</b>
It is an expression of interest by a person to another person to do something or not for an approval.	It is an expression of interest by one person to another and to invite the other person to an offer.
It is stated in section 2 (a) of Indian Contract Act, 1872.	not defined in Indian Contract Act, 1872.
enters into a contract.	After negotiations, a contract is created.
essential to make an agreement.	not essential to make an agreement.
If offer is accepted, then it becomes an agreement.	If party/person responds to an invitation, then it becomes an offer.

**8.b) Consideration must be real and not illusory Explain.**

One of the essential elements of a valid contract is that it must be supported by some consideration. The term consideration is used in the sense of quid pro quo. It means that when a party to an agreement promises to do something, he must get something in return. This something which a

party gets in return is the consideration.

### **Unreal considerations**

The following are the not real consideration

#### **Physical impossibility**

If a person agrees to perform an impossible act for a consideration the promise is not enforceable the promises unreal.

Ex: A promise B to run at a speed of 200 miles an hour should B pay him rs 2,000 as promise is physically impossible of performance

#### **Legal impossibility**

Whenever the performance of a promise is legally impossible consideration is not real

A wins rs 500 to B he promises to pay rs 50 to C the servant of B. C in return promises to pay to discharge A from the Debt C promise is unreal because he being a servant cannot discharge a debt due to his master.

#### **Uncertain consideration**

Consideration is not real and is not enforceable if it is uncertain or ambiguity

Illusory consideration

An illusory consideration is not real and is unenforceable

Ex A promises to give B one ton of gold brought from the sun the consideration is illusory

#### **Pre existing legal application**

A promise to do what one is already bound to do either by General law or under an existing contract is not a good consideration for a new promise.

### **8.c) State the difference between English Law and Indian law in respect of consideration.**

There are certain differences between the English law and the Indian law in respect of consideration they are as under

#### **Consideration from promise**

Under the Indian law consideration may move from the promisee or any other person but under English law consideration must move from the promisee in other words a stranger to consideration can sue in India but not in England.

#### **Past consideration**

Under English law past consideration is no consideration except in few cases consideration may be present or future but Indian past consideration is a good consideration just like present and future considerations

#### **Natural love and affection**

In England consideration must have some value in the eyes of law natural love and affection is not sufficient to support a contract .but in India natural love and affection is considered to be good consideration and may support a contract

#### **Formal contract**

Under the English Law contracts are divided into formal contracts and simple contracts no such distinction in India.

## **UNIT-III**

### **Capacity of parties**

**3)a)What is capacity to contract? Briefly explain the various aspects.**

#### **Capacity to contract**

Capacity to contract means competency of the parties to enter into a valid contract. The party to enter into contract is very important to form a valid contract. Section 11 of the Indian Contract Act lays down three classes of persons disqualified from contracting. They are

1. Minor
2. Persons of unsound mind and
3. Persons disqualified by law to which they are subject

#### **Reasons for incapacity**

The incapacity of parties may arise either due to

- a) status
- b) mental deficiency
- c) unsoundness of mind

#### **a) incapacity through status**

The incapacity or incompetence may arise five legal status political or corporate status. Persons who lack capacity due to status entering into contract. Such persons are as follows:

##### **1) Alien enemy**

An alien means a person who belongs to a foreign state. An alien can be an enemy or a friend. When he is a citizen of any country which was against India in war, he is known as alien enemy. If any contract is entered into with alien enemy and the war breaks out with that country, the contract is suspended until the war is over.

##### **2) Foreign sovereign and any minors**

These persons are immune from the jurisdiction of local courts and less they voluntarily submit to its jurisdiction. These persons have a right to contract but can claim the privilege of not being sued.

##### **3) Convicts**

A convict is incapable of entering into a contract. Inability comes to an end on the expiration of the sentence or if he has been pardoned.

##### **4) Insolents**

An insolvent cannot enter into a contract as his property Vests in the official receiver or official assignee. This disqualification of an insolvent is removed after he his discharged.

##### **5) Corporations**

A corporation is an artificial person recognised by law. It exists only in the eyes of law. It is competent to enter into a contract only through its agents.

##### **6) Married women**

A woman is competent to enter into a contract. Marriage does not affect the contractual capacity of a woman.

#### **B) Incapacity arising from mental deficiency**

Minors suffer from mental deficiency. They have an immature mind and cannot think what is good or bad for them. Minors are often exploited and their property stolen. He can bind

others but is not bound by others. Some contracts of minors are void and some others valid.

### **C) Incapacity arising from unsoundness of mind**

Persons of unsound Mind have no contractual capacity. Soundness of Mind does not mean weakness of Mind or loss of memory. It means not only right of capacity to understand the terms of the contract but also lack of understanding to realise that effect of the terms of contract.

Ex: Idiots lunatics and drinkers are considered to be persons of unsound mind.

### **3) b) Discuss the law relating to the validity of contracts by Minors.**

#### **Minor**

Minor is a person who has not attained majority. According to section 3 of the Indian majority act 1875, a person is deemed to have attained majority as under.

Minor Under Indian law

the law regarding agreements by minors may be summarized as follows:

#### **1) An agreement with or by a minor is void**

A minor is not competent to contract. So an agreement with a minor is void from the very beginning. It is not only a void it is absolutely void.

Case: Mohori bibi vs DharmoDas ghose

#### **2) No ratification on attaining majority**

An agreement with minor is completely void. Minor cannot ratify the agreement even on attaining majority because a void agreement cannot be ratified.

#### **3) No estoppel against a minor**

Where a minor by misrepresenting his age has induced the other party to enter into a contract with him, he cannot be made liable on the contract. There can be no estoppel against a minor.

#### **4) No restitution for fraud**

Restitution means return or restoration of the benefit received under the agreement. The minor obtains property or goods by fraud he can be compelled to restore it to the person from whom he received it.

#### **5) No specific performance**

A minor contract being absolutely void, there can be no question of the specific performance of such a contract.

#### **6) Minors liability for torts**

A tort is a civil wrong. A minor is liable in tort unless the tort in reality is a breach of contract.

#### **7) Minor as an insolvent**

The minor can never enter into a contract and cannot create personal liability. therefore, he cannot be declared insolvent.

#### **8) Minor as a partner**

A minor being incompetent to contract cannot be a partner in a partnership firm but under Section 30 of the Indian Partnership Act he can be admitted to the benefits of partnership.

#### **9) Liability of minors parents**

Minors parents are not liable for the contracts entered into by a minor even if they are for necessities of life. Parents can be held liable where the minor acts as an agent of his

parents.

### **10) Minor as an agent**

A minor can be appointed as an agent but he is not personally liable for any of his acts.

### **3.c) What is assignment of Contracts? Explain the law relating to assignment of Contract.**

#### **Assignment meaning**

Assignment means transfer. A contract creates rights and obligations. The rights and liabilities of a party to a contract can be assigned under certain circumstances. Assignment of contract means "transfer of contractual rights and liabilities to a third party with or without the concurrence of the other party to the contract". Assignment may take place either by the act of parties or by operation of law.

#### **A) Assignment by the act of parties'**

Assignment is said to be take place by an act of the parties when they themselves make the assignment. This includes assessment of contractual liabilities and contractual rights.

#### **Assignment of contractual liabilities**

Liability or obligation under a contract cannot be generally assigned. This is subject to the following rules.

#### **1) A promisor cannot assign his liabilities obligations under a contract**

For example, If A owes B Rs. 100, he cannot transfer the liability to C, and force A to recover the money from C.

however the parties to a contract may agree to replace the by a new one under which the obligation of one of the parties is shifted to a new party. She is known as "Novation".

#### **2) contracts involving personal skill or ability**

where performance of a contract depends on the personal skill, ability, taste, credit etc., contract cannot be assigned.

#### **Assignment of contractual rights**

This is subject to the following rules:

#### **1) The rights and benefits under a contract, not involving personal still or ability, can be assigned.**

#### **2) The rights of a party under a contract may amount to an actionable claim or choose in action.**

Books debts and shares in a company are examples of actionable claims.

#### **B) Assignment by operation of law**

Assignment by operation of law takes place by intervention of law. By operation of law takes place in cases of death or insolvency of a party to the contract.

### **3.a) What is 'Contingent Contract'? State the rules regarding the enforcement of Contingent contracts.**

#### **Meaning of contingent contract**

A contract may be absolute contract or a contingent contract. It is also known as conditional contract.

According to Section 31 Indian Contract Act 1872, a contingent contract is a contract to do or not to do something if, some event, Collateral to such contract does or does not happen.

Ex: A contracts to pay B Rs.10,000 if B's house is burnt.

#### **Essential features of contingent contract**

#### **1) The performance of the contingent contract depends upon the happening on and happening of**



some future events.

2) The contingent contract is based upon the uncertainty of an event.

3) The event must be Collateral to the contract.

### **Rules regarding enforcement of contingent contract**

#### **1) contingent contract dependent on the happening of future uncertain event**

The contingent contract dependent on the happening of your future uncertain event can be enforced only when that uncertain event has happened. However if the event becomes impossible when such a contract becomes void and cannot be enforced.

**Ex:** A contract to pay B a sum of money when B marries C. C nice without being married to B. Then the contract becomes void.

#### **2) Contingent contract dependent on the non happening of future uncertain event**

The contingent contract dependent on the non happening of a future uncertain event can be enforced only that uncertain event becomes impossible as then that event cannot happen.

#### **3) Contingent contract dependent on the happening of specific and certain event within fixed time**

The content and contract event happening within a fixed time the contract can be enforced. The event does not take place or does not happen within a fixed time if it becomes impossible then such a contract become void and cannot be enforced.

#### **4) Contingent contract dependent on non happening of specified and certain even within Fixed time**

The contingent contract dependent on the non happening office space experiment within a fixed time can be enforced, if that event does not happen with any extra time or if it becomes obtained that such event will not happen.

#### **5) Contingent contract dependent upon impossible events**

the contingent contract dependent upon the happening of an impossible event is void and cannot be enforced. The contract is void because it can be enforced as the impossible event will never happen.

**Ex:** A agrees to pay B, Rs.1000 if two straight lines should enclose a space. The agreement is void.

### **3. b) State the various ways in which a contract may be said to be discharged.**

#### **Discharge of contract**

Discharge of a contract means termination of the contractual relation between the parties to a contract. If the contract is discharged the parties to it become free from any further liability.

#### **Modes of discharge**

##### **1) Discharge by performance**

Performance is the usual mode of discharge of contract. Performance may be actual or attempted performance.

##### **2) Discharge by agreement**

A contract can be discharged by mutual agreement in any of the following.

###### **a) Novation**

A Novation means a new contract is entered into in consideration of the old contract.

###### **b) Alteration**

Alteration of a contract means a change in one or more terms of the contract with the mutual consent of the parties.

###### **c) Recession**

The term rescission means the cancellation of the contract. Rescission may be total cancellation or partial cancellation of the contract.

**d) Remission**

Remission means concession or reduction that is granted by the promisee in favor of the promisor.

**e) Waiver**

Waiver means the abandonment ( giving up) right by the party under the contract no consideration is necessary for the waiver.

**3) Discharge by impossibility**

The impossibility of performance may be of two types. Namely

1. Initial impossibility
2. Subsequent impossibility

**4) Discharge by lapse of time**

Every contract and promise under the contract should be performed within a time limit. Contract is discharged if heat is not performed within a specified period called as the period of limitation.

**5) Discharge by operation of law**

The following circumstances the contract is discharged by the operation of law.

**a) Death**

Contracts involving personal skill or expertise after Rama sir terminates on his death.

**b) Insolvency**

When a promisor is declared insolvent, he is discharged from all his liabilities encouraged prayer to his adjudication.

**c) Merger**

The conversation of the inferior right in to Superior right is called as merger. It is also called as the vesting of rights and liabilities in the same person.

**6) Discharged by breach of contract**

It means the failure of a party to fulfill his obligation or promise under the contract. When there is a breach of contract, certain remedy or consequences are available to the aggrieved party.

**3. c) What remedies are available to an aggrieved party incase of breach of contract?**

**Breach of contract**

Parties to a lawful contract are bound to perform their respective obligations. One of the parties repudiates the contract by refusing to perform his obligations he is said to have committed a breach of the contract.

Incuse of breach of contract the Law provides the following remedies to an injured party.  
Remedies for breach of contract

**1) Cancellation of rescission of contract**

recession means termination of contract. When promise refuses or fails to perform his promise, promisee has a right to terminate the contract. A Person rightfully residing a contract climb compensation for any loss or damage sustained due to non fulfillment of contract.

Ex: A promises B make contract for 3 weeks continuously. A willfully absents on the third week. B rescinds the contract. B can claim compensation for the loss sustained due to non performance in third week.

## **2) Suit for specific performance**

For breach of certain contracts monetary compensation by way of damages may not constitute adequate remedy. The court may in such cases, direct the defaulting party to carry out the promise according to the terms of the contract. This is called specific performance of the contract.

## **3) Suit for injunction**

Injunction means an order of the court restraining a person from doing he promised not to do. When a party to the contract performs some act what he promised not to do i.e., what he promised to restrain from doing; the other party may approach the court to grant and order of injunction.

**Ex:** film actress agreed to act exclusively for W Parbhani yaar and fat no one else. During the year he contracted to act for Z.

## **4) Suit up on Quantum meruit**

Quantum meruit is a latin phrase. it means 'as much as is 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.

Following are the cases in which a claim on quantum meruit may arise:

- a) when a contract is discovered to be void
- b) when the contract is divisible
- c) when one party refuses to perform the contract.

## **5) Suit for damages**

A suit for damages lies along with the right of rescission. The aggrieved party is entitled to claim monetary compensation for the loss caused due to non performance of promise. The kinds of damages are:

- 1) Ordinary damages
- 2) Special damages
- 3) Vindictive/ punitive damages
- 4) Nominal damages

## **9. a) What do you mean by Novation of contract?**

Novation means that there being a contract in existence new contract is substituted for it, either between the same parties or between different parties; the consideration mutually being the discharge of old contract. It is your transaction by which with the consent of all parties concerned the old contract is revoked and substituted by a new contract.

Novation mainly occurs in two ways

1. New parties substituted for the old one
2. Parties Mein substitute new contract for the old one.

### **Essentials of Novation**

- 1) Novation occurs with the consent of all the parties
- 2) The new contract must be one which is capable of being enforced at law. If your contract is not enforceable, the parties shall be bound by the old contract.
- 3) The agreement to substitute the new contract for the old must be made before the expiry of the time of the performance of the original contract.

Examples:

1. In a partnership firm, the liabilities of an old firm are taken over by the new firm.
2. A lease agreement, where the tenant gives the lease to another party and makes him responsible for the obligations and responsibility arising from the lease agreement.
3. John owes 2 lakh rupees to Ram under a contract, Ram owes David 2 lakh rupees. Ram asked John to pay 2 lakh rupees to David in his place, but David does not agree and neither gives her consent to the agreement. Therefore, Ram still owes David 2 lakh hence, there is no new contract to enter.

### **9.b) What is wagering agreement? What are the essentials of wagering agreement?**

#### **Meaning and definition of wager**

Wager is a contingent contract. It is an agreement to pay money or Money's worth on the happening or Non happening of a specified uncertain event. The parties to a wagering agreement must agree that upon the determination of an uncertain event, one should win from the other.

#### **Essentials of a wagering agreement**

##### **1) Two person's**

Wagering agreement between two persons or two groups of parties. each party must stand to win or lose.

##### **2) Promise to pay money or Money's worth**

The wagering agreement should contain a promise to pay money or money's worth.

##### **3) Conditional promise**

The promise must be conditional on an event happening or not happening.

##### **4) Uncertain event**

The wagering agreement depends on an uncertain event. The performance of the agreement must depend upon the happening or not happening of an uncertain event.

##### **5) Each party must stand either to win or lose**

Each party to the wagering agreement must stand to win or loss upon the determination of the event.

### **9.c) State the differences between a contingent contract and wagering agreement.**

#### **Meaning of contingent contract**

A contract may be absolute contract or a contingent contract. It is also known as conditional contract.

According to Section 31 Indian Contract Act 1872, a contingent contract is a contract to do or not to do something if, some event, Collateral to such contract does or does not happen.

Ex: A contracts to pay B Rs.10, 000 if B's house is burnt.

#### **Meaning and definition of wager**

Wager is a contingent contract. It is an agreement to pay money or Money's worth on the happening or Non happening of a specified uncertain event. The parties to a wagering agreement must agree that upon the determination of an uncertain event, one should win from the other.

<b>Wagering Agreements</b>	<b>Contingent Contract</b>
1. A wagering agreement is void.	A contingent contract is valid.
2. A wagering agreement consists of reciprocal promises.	Contingent contract may not contain reciprocal promises.
3. In a wagering agreement the parties have no interest in the subject matter of the contract.	In a contingent contract either party may have interest in the subject matter of the contract.
4. In a wagering agreement the future event is the sole determining factor.	In a contingent contract the future event is only collateral and incidental.
5. Every wagering agreement is of a contingent nature.	Every contingent contract is not of a wagering nature.

**10.a) Explain who are the persons are incompetent to contract.**

**Capacity to contract**

Capacity to contract means competency of the parties to enter into a valid contract. The party to enter into contract is very important to form a valid contract. Section 11 of the Indian Contract Act lays down three classes of persons disqualified from contracting. They are

1. Minor
2. Persons of unsound mind and
3. Persons disqualified by law to which they are subject

Reasons for incapacity

The in capacity of parties may arise either due to

- a) status
- b) mental deficiency
- c) unsoundness of mind

**a) Incapacity through status**

The incapacity or incompetence may arise five legal status political or corporate status. Persons who lack capacity due to status entering into contract. Such persons are as follows:

- 1) Alien enemy
- 2) Foreign sovereign and any minors
- 3) Convicts
- 4) Insolents
- 5) Corporations
- 6) married women

**B) incapacity arising from mental deficiency**

Minors suffer from mental deficiency. They have an immature mind and cannot think what is good or bad for them. Minors are often exploited and their property stolen. He can bind others but is not bound by others. Some contracts of minors are void and some others valid.

**C) Incapacity arising from unsoundness of mind**

Persons of unsound Mind have no contractual capacity. Soundness of Mind does not mean weakness of Mind or loss of memory. It means not only right of capacity to understand the terms of the contract but also lack of understanding to realise that effect of the terms of contract.

**Ex:** Idiots lunatics and drinkers are considered to be persons of unsound mind.

## **b) Explain different kinds of damages allowed for breach of contract.**

### **Damages**

Damages means monetary compensation payable by the defaulting party to the aggrieved party in the event of breach of contract. The object of providing damages is to put the aggrieved party in the same position, so far as money can do, in which he would have been, had the contract been performed.

### **Types of damages**

#### **1) Ordinary damages**

These are damages which are payable for the loss arising naturally and directly as a result of the breach of contract. The purpose of ordinary damages says that the injured party is to be put in the same financial position as he would have been, if the contract had been performed according to the terms of the contract. Ordinary damages also known as the proximate damage or natural damage also known as General damage.

Ordinary damages = contract price- market price on the date of breach

#### **2) Special damages**

These are damages which are payable for the loss arising due to some special circumstances. It can be recovered only if the special circumstances which result in a special loss in the case of breach of contract and the party has a notice of such damage. If the defaulting party has no knowledge of the special circumstances he will be liable for special damages.

#### **3) Vindictive damages**

they are heavy in amount and are awarded by way of punishment only in the following cases:

- i) breach of contract to marry
- ii) designer account a customer's check by the bank without any proper reason

That awarded with the intention of punishing the defaulting party. They are of deterrent nature and their object is to prevent the parties from committing breach.

#### **4) Nominal damages**

These are awarded in case of breach of contract where there is only a technical violation of the legal right, but no material loss is caused there by. The damages may be very small, even a rupee.

## **C. What do you mean by Anticipatory breach of contract?**

### **Anticipatory breach of contract**

Anticipatory breach of contract is also known as anticipatory repudiation of contract. Anticipatory breach of contract meaning has been explained in the provisions of the contract law. Anticipatory breach of contract means that the contract has been repudiated even before the performance of the contract has actually commenced.

### **Constituents of an anticipatory breach of contract**

An anticipatory breach of contract happens in any of the following situations or ways:

(a) The defaulting party expresses to the other party, a positive and unconditional refusal: This is called expressed repudiation. This refusal should be clear, straightforward, and directed towards the innocent party. But in cases where the refusal is unqualified or ambiguous, the non-breaching party may request an assurance for performing from the other party and meanwhile may suspend his/her performance.

(b) The breaching party, because of a certain cause, is unable to perform: If the defaulting party voluntarily does something which makes his performance of contractual obligations impossible, it will also be considered as a repudiation of the contract.

(c) The transfer of the subject of the contract to someone else: In case of contracts involving the sale of property, if the property is transferred to a third party, the contract shall be considered to be repudiated.

### **Promisee's options after the anticipatory breach**

The innocent party is excused from the further performance of his or her contractual obligations in the first place. The original obligations under the contract come to an end and are now replaced by the operation of law under another obligation, namely payment of damages. The only remnant of legal nexus between the parties is the payment of the damages according to the old obligations under that contract. The two options available to the aggrieved party are:

#### **(1) Immediate Right of Action:**

The anticipatory breach of the contract entitles the injured party to either immediately sue for damages or wait for the time of performance of the contract. So, even in cases where the time for performance of contractual relation has not arrived, the aggrieved party may sue the repudiating party for damages.

#### **(2) Waiting for the Performance:**

The presence of words "signified, by words or conduct, his acquiescence" in section 39 means that when the innocent party affirms the continuance of the contract, the other party loses his/her right to repudiate. Affirmation may be expressed or implied especially as in cases where the innocent party does an act, which shows that he intends to continue the contract.

## **UNIT-IV**

### **Sale of Goods Act**

#### **4. a) Define Sale of Goods Act? Explain the essentials of contract of sale of goods.**

The sale of goods act came into force July 1st, 1930. A text into the hall of india accept the state jammu and kashmir.

Meaning of contract of sale

According to the sale of goods act( 1930 defines) a contract of sale means " a contact where the seller transfers or agrees to transfer the property in god's to the buyer for a price". Thus a contract of sale may be of two types:

#### **Essentials of a contract of sale**

definitions of a contract of sale can be summarized as follows:

##### **1) Two parties**

there must be two parties. A buyer and seller to constitute a contract of sale. The same person cannot be both a Purchase and seller.

##### **2) Contract.**

The word contract means an agreement enforceable by law. The agreement must be made for a lawful consideration and with a lawful object.

**3) Goods**

The subject matter of a contract of sale must be some goods. Goods means every kind of movable property stock and shares. Immovable property cannot be the subject matter of a contract of sale of goods. The seller must be owner of goods.

**4) Transfer of Property**

The object of a contract of sale must be transfer of ownership in goods from one party to another. Here property means ownership.

**5) Price**

Transfer of Property must take place for some money consideration called 'price'. Where there is no money consideration the transaction is not a contract of sale. Where Goods are exchanged for goods, it is not a sale but a barter.( exchange).

**6) Essential elements of a valid contract**

All Essential elements of a valid contract must be present in a contract of sale, like agreement, free consent competence of parties, consideration etc.,

**7) Mode of formation**

No particular form is necessary to constitute a contract of sale. It may be made in writing or by words of mouth or may be implied from the contract of the parties.

**4.b) Explain the differences between sale and agreement to sell.**

**Sale**

According to Section 4(3) of the sale of goods act" where under a contract of sale the property in the goods is immediately transferred from the seller to the buyer the contract is called sale".

**Agreement to sell**

According to Section 4(3) the sale of goods act" where under a contract of sale the transfer of ownership in goods is to take place at a future time or subject to the fulfillment of setting conditions" the contract is called agreement to sell.

**Differences between sale and agreement to sell**

SALE	AGREEMENT TO SELL
<p><b>Nature of contract</b> It is an executed contract. The Transfer of Property is done immediately.</p>	<p>It is an executory contract. It is to be performed in future.</p>
<p><b>Transfer of ownership</b> Transfer of ownership of goods taken place immediately.</p>	<p>Transfer of ownership of goods is to take place at a future date or subject to fulfillment of some condition.</p>
<p><b>Type of goods</b> A sale is made only in respect of specific and ascertained goods.</p>	<p>An agreement to sell may be made for future and contingent goods.</p>



<p><b>conveyance of property</b> Buyer becomes right in ram( right against property)</p> <p><b>Transfer of risk</b> Buyer becomes the owner of goods as soon as the contract is made. Hence the buyer bears the risk.</p> <p><b>Right to resell</b> Once an effective sale is made, seller cannot resell the goods, the property vests in the buyer.</p> <p><b>Rights of buyer</b> The buyer can show the seller for non-delivery of gods, when he has paid the price for it.</p> <p><b>Risk of loss of goods</b> If the goods are destroyed the loss is borne by the buyer even though the Gods are in the possession of the seller.</p> <p><b>Insolvency of seller</b> Buyer can claim the goods from the official receiver or assignee.</p> <p><b>Sales Tax</b> A sale is liable to sales tax.</p>	<p>Creates just in personal( right against person)</p> <p>Seller continues to be the owner till the agreement to sell becomes sale and hence the risk lies with seller only.</p> <p>Where seller makes a resale, the subsequent buyer, who takes the goods for consideration time without notice of the Prior agreement, gets a good title.</p> <p>The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.</p> <p>The loss false on the seller even though the Gods are in the possession of the buyer.</p> <p>Buyer can climb only ratable dividend for price paid and cannot claim The goods; it has not passed to him.</p> <p>An agreement to sell is not liable for sales tax unless it becomes a sale.</p>
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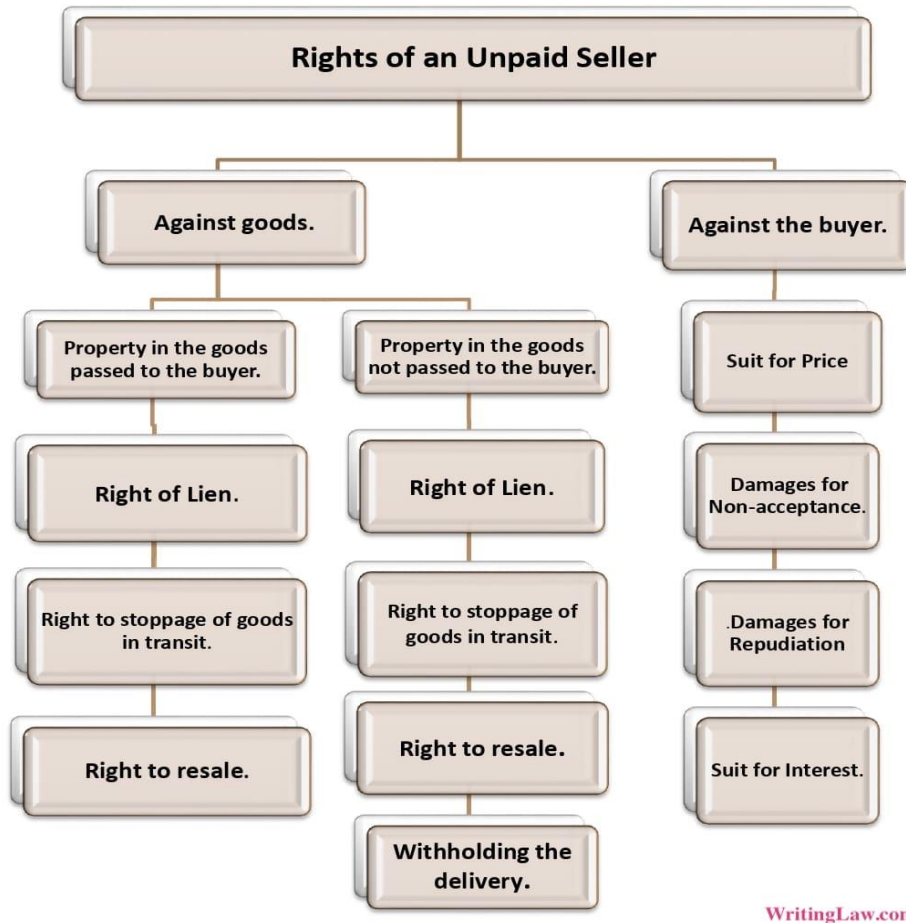
**4. c) Who is an unpaid seller? What are his rights against the goods and the buyer?**

**Unpaid seller sec 45(1)**

The seller to home the full price of the goods sold has not been paid by the price as known as an unpaid seller.

**Rights of an unpaid seller**

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



## I. Rights of unpaid seller against the goods

### A) When goods has been passed (ownership is transferred)

Where the ownership of the goods is transferred, the seller has the following rights available to him.

#### 1) Right of lien (Sec 47-49)

Lien means the right to retain the possession of goods until the full price is received. The right of lien can be exercised on the goods. The seller can exercise his right of lien on the following two conditions:

- \* He must be in possession of the goods
- \* He is an unpaid seller

seller cannot exercise his right of lien when

1. When the goods are in transport for delivery
2. When the seller waives his right of lien
3. When the price is paid by the buyer
4. When the goods are destroyed

## **2) Right of stoppage in transit (Sec 50-52)**

The right of stoppage in transit can be exercised by the unpaid seller where he has lost his right of The seller must have separated with the possession of goods.

2. The Goods Must Be in course of transit.

3. The buyer must have become insolvent.

## **3) Right of resale (Sec 46(1)(c) and 54)**

If the ownership of the goods is transferred to the buyer but the price is not paid and the goods are in possession of the seller, he can exercise the right of resale. The circumstances under which an unpaid seller can resell the goods are:

\* when the goods are of perishable nature

\* when the buyer commits a default in making the payment

\* when the notice has been served to the buyer about resale and the buyer does not buy within a reasonable time.

## **B) When goods has not been passed**

### **1. Withholding delivery (Sec 46(2))**

The right to with hold the delivery of goods means the seller refuses to delivery of goods to the buyer. The following conditions must be satisfied to exercise this right.

a) the seller is an unpaid seller

b) the ownership of goods has not been passed.

## **II. Rights of unpaid seller against the buyer (Sec 55 to 61)**

### **a. suit for price**

\* Property has been passed

If the buyer refuses to pay then the seller may sue for the price of the goods.

\* Property has not been passed

If the property is with seller but the payment is not made on the contracted date then the seller can sue for the price irrespective of the possession of goods.

### **b. Suit for damages Section 56**

When the buyer neglects or refuses to accept the goods is liable to pay the price to the seller and then the seller claim for the damages from the buyer.

### **c. Repudiation of contract section 60**

Where the buyer repudiates (cancel or reject) the contract before the due date of the delivery, the seller may immediately sue for damages.

### **d. Suit for interest section 61**

where the buyer does not pays the amount

\* If it is in the agreement that, the buyer needs to pay interest then buyer should pay interest.

\* If in absence of the agreement about the interest, when the seller can charge for the interest.

## **4. a) Explain the implied conditions and warranties in a contract of sale.**

Generally the time of sale, the seller makes some representations, statements or stipulations Pardi praise of goods. The stipulation maybe a condition or warranty depending upon its importance in relation to the contract.

### **Condition sec 12(2)**

The stipulation which is essential to the main purpose of a contract is known as condition.

Breach of condition gives the aggrieved party the right to terminate the contract.

### **Warranty sec 12(3)**

The stipulation which is Collateral to the main purpose of a contract is warranty. The breach of warranty gives rise to the aggrieved party the right to claim the damages but the contract cannot be terminated.

#### 1) Express conditions and warranties

These are expressly provided in the contract.

#### 2) Implied conditions and warranties

Conditions are said to be implied when the law deems in their existence in the contract even without their actual presence in the contract.

### **Implied conditions and warranties**

#### **1) Condition as to title section 14**

There is an implied condition on the part of the seller that

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

#### **2) Condition as to description Section 15**

In case of sale of goods by description, there is an implied condition that goods shall correspond with the description. The description may be in terms of the qualities or characteristics of the goods. This rule applies to all the case where the purchaser has not seen the goods but is relying on the description alone.

#### **3) Condition as to sample**

A contract of sale is a contract of sale by sample when there is yet term in the contract express or implied to that effect. In the case of contract for the sale of goods by sample there is an implied condition:

- a) that the bulk of goods shall correspond with the sample quality
- b) that the by air shall have reasonable opportunity of comparing the bulk with sample.
- c) Goods must be free from any latent defects, rendering them unmerchantable.

#### **4) Conditions as to quality or fitness**

Generally there is no implied condition as to quality or fitness of goods for any particular purpose except if:

- a) buyer has disclosed to seller the exact purpose for which goods are required
- b) buyer should rely skill and judgment of the seller
- c) seller's business is to sell goods of such description.

#### **5) Condition as to wholesomeness**

This condition applies in the case of provisions and foodstuffs. in such cases the goods supplied not only answer today's corruption and be merchantable but also be Wholesome.

### **Implied warranties**

#### **1) Warranty of quiet enjoyment or possession**

The buyer shall have and enjoy quiet possession. If the right of possession is disturbed by the seller or any other person, the buyer is entitled to sue for damages.

#### **2) Freedom from encumbrance**

Implied warranty that the goods purchased are not subject to any charge or encumbrance in favour of any third party. If the goods are found to be subject to a charge in favour of third party,

is liable to the buyer to pay damages.

### 3) Usage of trade

Implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

## b) What are the consumer Redressal agencies that are there at various levels in the country?

Consumer disputes redressal agencies (popularly known as Consumer Forums or Consumer Courts) are set up under the Act at District, State and National level to provide simple and inexpensive quick redressal against consumer complaints.

### **District Forum**

The District forum deals with complaints where the compensation sought is less than 23 lakhs. This limit is commonly known as the 'pecuniary jurisdiction' of the Consumer Redressal Forum.

### **State Forum**

The State Forum deals with the complaints where the value of the goods and services and compensation claimed does not exceed rupees one crore.

### **National Forum**

The National Forum entertains the complaints where the value of the goods or services and compensation claimed exceeds rupees one crore.

### **Jurisdiction of District Forum**

1. Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees one crore.
2. A complaint shall be instituted in a District Forum within the local 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 District Forum 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.

### **Jurisdiction of State Commission**

Subject to the other provisions of this Act, the State Commission shall have jurisdiction:-

- a) To entertain
  - i) Complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore but does not exceed rupees ten crore; and
  - ii) Appeals against the orders of any District Forum within the State; and
- b) To call for the records and pass appropriate orders in any consumer dispute

## **Jurisdiction of National Commission**

- (a) To entertain—
  - (i) Complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees ten crore; and
  - (ii) Appeals against the orders of any State mayor; and
- (b) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission. However, the Supreme Court of India has held that the jurisdiction of National Commission under Revision Jurisdiction is very limited and can only be exercised when State Commission exceeds its jurisdiction, fails to exercise its jurisdiction or there is material illegality in the order passed by State Commission.

## **c) Define the term consumer and also explain the rights of consumer as per consumer protection Act.**

The Consumer Protection Act, implemented in 1986, gives easy and fast compensation to consumer grievances. It safeguards and encourages consumers to speak against insufficiency and flaws in goods and services.

### **Consumer**

A consumer is defined as a person who buys any good or avails a service for a consideration. It does not include a person who obtains a good for resale or a good or service for commercial purpose. It covers transactions through all modes including offline, and online through electronic means, teleshopping, multi-level marketing or direct selling.

### **Rights of consumer**

#### **Right to safety**

Means right to be protected against the marketing of goods and services, which are hazardous to life and property. The purchased goods and services availed of should not only meet their immediate needs, but also fulfill long term interests. Before purchasing, consumers should insist on the quality of the products as well as on the guarantee of the products and services. They should preferably purchase quality marked products such as ISI, AGMARK, etc

#### **Right to choose**

Means right to be assured, wherever possible of access to variety of goods and services at competitive price. In case of monopolies, it means right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services. This is because unrestricted right of the minority to choose can mean a denial for the majority of its fair share. This right can be better exercised in a competitive market where a variety of goods are available at competitive prices

#### **Right to be informed**

Means right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices. Consumer should insist on getting all the information about the product or service before making a choice or a decision. This will enable him to act wisely and responsibly and also enable him to desist from falling prey to high pressure selling techniques.

#### **Right to consumer education**

Means the right to acquire the knowledge and skill to be an informed consumer throughout life. Ignorance of consumers, particularly of rural consumers, is mainly responsible for their exploitation. They should know their rights and must exercise them. Only then real consumer protection can be achieved with success.

### **Right to be heard**

Means that consumer's interests will receive due consideration at appropriate forums. It also includes right to be represented in various forums formed to consider the consumer's welfare. The Consumers should form non-political and non-commercial consumer organizations which can be given representation in various committees formed by the Government and other bodies in matters relating to consumers.

### **Right to seek compensation-**

The defines that the consumer has the right to seek redress against unfair and inhumane practices or exploitation of the consumer.

### **11.a) State the difference between sale and hire purchase system.**

#### **Sale**

According to Section 4(3) of the sale of goods act" where under a contract of sale the property in the goods is immediately transferred from the seller to the buyer the contract is called sale".

#### **Hire purchase system**

Hire purchase system is a system of purchase of goods where the buyer acquires the immediate possession of the goods an payment of Periodical installment (early, half- year, quarterly or monthly) but the ownership of such goods passes to the buyer hire purchase only an the payment of the last installment

#### **The main points of distinction between the 'sale' and 'hire-purchase' are as follows:**

1. In a sale, property in the goods is transferred to the buyer immediately at the time of contract, whereas in hire-purchase, the property in the goods passes to the hirer upon payment of the last installment.
2. In a sale, the position of the buyer is that of the owner of the goods but in hire purchase, the position of the hirer is that of a bailee till he pays the last installment.
3. In the case of a sale, the buyer cannot terminate the contract and is bound to pay the price of the goods. On the other hand, in the case of hire-purchase, the hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.
4. In the case of a sale, the seller takes the risk of any loss resulting from the insolvency of the buyer. In the case of hire purchase, the owner takes no such risk, for if the hirer fails to pay an installment, the owner has the right to take back the goods.
5. In the case of a sale, the buyer can pass a good title to a bonafide purchaser from him but in a hire-purchase, the hirer cannot pass any title even to a bonafide purchaser.
6. In a sale, sales tax is levied at the time of the contract whereas in a hire-purchase, sales tax is not leviable until it eventually ripens into a sale

#### **b) Define goods? Explain various types of goods.**

## Goods

According to section 2(7) of the sale of goods act goods means every kind of immovable property other than actionable claims and money and includes the following:

- a. Stock and shares
- b. growing crops, grass and thing attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

Types of goods

### Kinds of Goods -

There are three types of Goods which are as follows -

(a) Existing Goods

(b) Future Goods and

(c) Contingent Goods

**(a) Existing Goods** - In this types of goods, Goods are owned and possessed by the Seller at the time of the making of the Contract of Sale.

**Ex -**

A sells 5 bags of Sugar to B, which is laying down in the Godown... The Sugar Bags are called "existing goods."

Existing goods may be divided into specific goods and Uncertain Goods.

**i) Specific Goods** - Goods identified and agreed upon at the time of sale is made are called "specific goods"

**ii) Uncertain Goods** - Goods which are not identified at the time of making the contract of sale are called uncertain Goods.

**(b) Future Goods and -**

According to Section 2(6) of the said Act, "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.

**Ex -**

X agrees to Sell Y, the grass to be grown on his land next month.

**(c) Contingent Goods - Contingent** Goods means "goods" the acquisition of which by the seller depends upon a contingency of happening or non-happening of an event.

**Ex -**

"ABC" agrees to sell a land to "XYZ" if he wins the race. ABC's title is subject to the contingency of winning and hence the land is called Contingent Goods.

**c) What protection Councils are provided by the consumer protection act.**

**Consumer Protection Councils**



The Act establishes consumer protection councils to protect the rights of the consumers at both the national and state levels.

### **Central Consumer Protection Council**

Under Chapter 2 [Section 3](#) of the Consumer Protection Act, 2019 the Central Government shall establish the Central Consumer Protection Council which is known as the Central Council. It is an advisory body and the Central Council must consist of the following members;

1. The Minister-in-charge of the Department of Consumer Affairs in the Central Government will be appointed as the chairperson of the council, and
2. Any number of official or non-official members representing necessary interests under the Act.

The Central Council may meet as and when necessary, however, they must hold at least one meeting every year. The purpose of the Central Council is to protect and promote the interests of the consumers under the Act.

### **State Consumer Protection Councils**

Every state government shall establish a State Consumer Protection Council known as the State Council having jurisdiction over that particular state. The State Council acts as an advisory body. The members of the State Council are:

1. The Minister-in-charge of the Consumer Affairs in the State Government will be appointed as the chairperson of the council,
2. Any number of official or non-official members representing necessary interests under the Act, and
3. The Central Government may also appoint not less than ten members for the purposes of this Act.

The State Councils must hold at least two meetings every year.

### **District Consumer Protection Council**

Under [Section 8](#) of the Act, the state government shall establish a District Consumer Protection Council for every district known as the District Council. The members of the District Council are:

1. The collector of that district will be appointed as the Chairperson of the District Council, and
2. Any other members representing necessary interests under the Act.

## **12.a) Explain the different types of delivery of goods.**

### **Delivery of goods**

Delivery means "voluntary transfer of possession from one person to another". The essence of delivery is voluntary transfer of possession.

Ex: If B theft goods from A there is no delivery from A to B, though possession is transferred.

Thus, there are 3 characteristics of delivery:

- 1) a person has possession
- 2) he transfers that possession to another person
- 3) he does so voluntarily

### **Kinds of delivery**

The delivery of goods may be classified into three types. They are:

### **1) Actual delivery**

Actual delivery when seller physically hands over the goods to the buyer or his agent, it is called actual delivery. It is also called physical delivery. This is the most common mode of delivery.

### **2) Symbolic delivery**

Where some symbol of the real possession or control over the good handed over to buyer like handing over the keys of the house such delivery is said to be symbolic

### **3) Constructive delivery**

Delivery is said to be constructive where a person who is in possession half the goods, acknowledges holding the goods on behalf of the buyer.

### **b) What do you mean by service? Explain.**

The Consumer Protection Act, implemented in 1986, gives easy and fast compensation to consumer grievances. It safeguards and encourages consumers to speak against insufficiency and flaws in goods and services.

Service means any kind of service which is made available to the consumers for their use for payment of consideration. The definition can be divided into three parts: descriptive part, inclusive part and exclusionary part.

### **Banking**

Banking is a transaction dealing with money and there are a number of banks that have been set up to provide services relating to money, in the form of cheques or loans or accepting deposits, lockers facility, investment, etc. Any service which is provided by banks is not free of cost and there will be some percentage of transaction fees deducted by them.

### **Insurance**

Insurance is an agreement between one party, the insurer, to indemnify the insured in cases of any financial loss according to the terms and conditions of the contract. If the insurance company defrauds the insured or due to negligence from the company, the loss has been incurred by the beneficiaries, then the insurance company can be sued.

### **E-commerce**

E-commerce is a new concept that has been included in the CPA, 2019. E-commerce is buying or selling goods or utilizing services online through digital media or electronic service providers. The services provided by e-commerce entities may not be according to the quality assured by them and thus protection has to be given to the consumers.

### **Telecom sector**

There have been a number of disputes before the CPA, 2019 with respect to whether telecom disputes can be adjudicated by consumer fora. The Telecom Consumers Protection And Redressal Of Grievances Regulations, 2007 has provided that consumers can seek redressal for their grievances under Consumer Protection Act. There are many areas in which jurisdiction of consumer forum has been invoked, like the excessive billing of telephone carriers, administrative problems such as delay in the processing of the application for change of address of telephone line or telephone line is out of order, broadband services by telephone companies like BSNL,

fraudulent message received by the consumers due to default of telephone company like Bharathi Airtel etc.

**c) What are the objectives and features of Consumer protection act?**

The Salient Features of the Act are as under:

- i) The Act provides for establishing three-tier consumer dispute redressal machinery at the national, state and district levels.
- ii) It applies to all goods and services.
- iii) It covers all sectors, whether private, public or any person.
- iv) The Act provides for relief of a specific nature and also for compensation to the consumer as appropriate.
- v) The Act also provides for setting up of Consumer Protection Councils at the Central, State and District levels, which are advisory bodies to promote and protect the rights of the consumers.
- vi) The provisions of the Act are in addition to and not in derogation of the provisions of any other law for the time being in force

**Main Objectives of Consumer Protection Act, 1986**

The consumer protection Act, 1986 applies to all goods and services. The central government however by notification published in the Official Gazette exempts any goods (or) Services.

The objectives of the Consumer Protection Act, 1986 are as follows:-

**1. Better Protection of Consumers:**

The act seeks to provide for the better protection of the interest of consumers and for that purpose, makes a provision for the establishment of consumer councils and other authorities for settlement of consumer disputes and for matters connected therewith.

**2. Protection of rights of consumers:**

The Act seeks to promote and protect the rights of consumers such as:-

- a) The consumer has the right to be protected against the marketing of goods and services which are hazardous to life and property.
- d) The consumer has the right to education.

**3. Consumer protection Councils:**

The objectives of the Consumer Protection Act, 1986, are sought to be promoted and protected by the Consumer Protection Councils established at the central and state levels.

**4. Quasi-Judicial machinery for the speedy redressal of consumer disputes:**

The Act also seeks to provide speedy and simple redressal to consumer disputes. For this purpose, there has been set up quasi-judicial machinery at the district, state, and central levels.

**UNIT-V**  
**Cyber Law**

**5.(a). Describe the objectives of scope of Information Technology act 2000.**

**Ans.** The United Nations Commission on international trade law adopted the Model Law on electronic commerce in 1996. The General Assembly of United Nations by its resolution number 51/162 dated 30th January 1997 recommended that all states should give favourable consideration to the model law when they enact or revise their laws.

The Model Law provides for equal legal treatment of users of electronic communication and paper based communication in discharge of its international responsibility. Government of India enacted a new law in the year 2000, the Information Technology Act, 2000, which is the Indian Cyber Law.

**Essence of the act:**

1. Legal recognition of electronic documents.
2. Legal recognition of digital signatures.
3. Offences and contraventions.
4. Justices dispensation system for cybercrimes.

**Objectives of the act:**

Cyber law is the field of law dealing with computers and the Internet including such issues as intellectual property rights, freedom of expression and free access to information.

The passage of the Information Technology Act in October 2000 gave a fillip and legal sanctity to the efforts to spread e-commerce in the country.

**The objectives of the Act are:**

1. To grant legal recognition to transaction carried out by means of electronic data interchange and other means of electronic communications commonly referred to as "electronic commerce" in place of paper-based methods of communication.
2. To give legal recognition to digital signature for authentications of any information or matter which requires authentication under any law.
3. To facilitate electronic filing of documents with government departments,
4. To facilitate electronic storage of data.

5. To set up a licensing, monitoring and certifying authority to oversee issues like jurisdiction, origin, authentication, privacy protection on computer crimes.
6. To establish a cyber regulations Appellate Tribunal for hearing appeals against decisions of the adjudicating officers
7. To facilitate the giving of legal sections to electronic and transfer between banks and finance institutions
8. To give legal recognition for keeping books of account by bankers in electronic forms.
9. To support the admission of computer evidence in courts, arbitration proceedings

**Scope, commencement, and Application:**

The Information Technology Act 2008 has been made effective from 17th October 2009. It extends to the whole of India and in certain circumstances

- (a) Indian Penal Code (1860)
- (b) Indian Evidence Act (1872)
- (c) Bankers Evidence Act (1891)
- (d) Reserve Bank of India Act (1932)

**(b). Explain the provision regarding secure electronic records and secured digital signature**

Chapter 5 of the Act lays down the condition that would apply to equal qualify electronic records on digital signature as being secure. It contains section 14 to 16

**Secure electronic record:**

Section 14 provides for the security procedure which has to be applied to an electronic record for being treated. As a secure electronic record it improves that were any security procedure has been applied to an electronic record at a specific point of time then search record shall be deemed to be a secure electronic record from such point of verification.

**Secured digital signature:**

- a) The digital signature was unique to the person using it
- b) The digital signature was capable of identifying such person
- c) It was created in a minor or using a means under the exclusive control of the person using it.
- d) the digital signature is like to the electronic record in such a manner that if you the electronic record is alternated the digital signature will be invalidated

**Security procedure:**

- a) the nature of the transaction
- b) The level of sophistication of the parties with reference to their technological capacity

- c) the volume of similar transaction engaged in other parties
- d) Buy availability of alternatives offered to but rejected by any party
- e) The cost of alternative procedures and
- f) The procedures in general use of similar types of transactions or communications.

**(c) Define the following terms under the act**

**(1) Computer, (2) Data (3) electronic record (4) digital signature certificate (5) keypad**

**(1). Computer:** means any electronic, magnetic, optical, or other high-speed data processing device or system which performs logical, arithmetic and memory functions and includes all input, output processing, storage, computer software or communication

**(2). Date:** means a representation of information knowledge, facts, concept, or instructions which are being prepared in a formalised manner, and is intended to be processed, is being processed in a computer system or a computer network and may be in any form and stored internally in a memory of the computer

**(3) Electronic record:** Means data, record or data generated, image or sound stored, received or transmitted in an electronic form or micro film computer generated microfiche.

**(4) digital signature certificate:** Is an electronic file that is used to identify people and resources over Internet. it secures communication between the parties. A digital signature certificate securely binds the identity of the subscriber there is a 3rd party the certifying authority that issues the certificates

**(5) information technology Act:** recognises asymmetric crypto system where two separate keys are used to encrypt and discrete data respectively as asymmetric crypto system

**KEY PAIR** Means private key and

mathematically related public

key which is related that the public key can verify a digital signature created by the private key

**(a) Define the terms digital signature, state mode of authentication of an electronic record through digital signature.**

**Ans:** Digital signature means authentication of any electronic records by a subscriber by means of an electronic method or procedure. It is an electronic analogue of a written signature. Any tampering with the contents of the electronic record will immediately invalidate the digital signature. Secondly, the identity of the person affixing the digital signature is authenticated through the use of a private key which attaches itself to the message digest and which can be verified by any person who has the public key corresponding to the private key.

**The provision of Section 3 is given as under:**

1. Any subscriber may authenticate an electronic record by affixing his digital signature.
2. Any person by use of the public key of the subscriber can verify the electronic record.
3. The private key and public key and unique key to the subscriber constitute a function key pair.
4. The action of the electronic record shall be affected by the asymmetric cryptosystem and has functions which transform the initial electronic record into another electronic record.

**b) Write about electronic governance. Ans. Electronic governance:**

Chapter 3 of the Act is one of the most important chapters in the Act. This chapter specifies the procedure to be followed for sending and receiving of electronic records and the time and place of the dispatch.



and received the chapter contains sections for to 10.

**Legal recognition of electronic records:**

**a.** Rendered or made available in an electronic form. **b.** Accessible so as to be usable for a subsequent reference. **Legal recognition of digital signatures:**

Section 5 is the main provision which provides for the legal recognition of digital signatures as a substitute for handwritten signatures.

**Use of electronic records and digital signatures in government and its agencies:**

Section 6 lays down the foundation of electronic governance the filling of any form application or other documents creation retention or preservation of records issue or grant of any license or permit or receipt for payment in government offices and its agencies may be done through the means of electronic form.

The appropriate government may prescribe by rules:

- a.** The manner or method in which such electronic records shall be filled created or issued
- b.** The manner or method of payment of any fee or charges for filing creation or issue of any electronic record under above clause.

**Retention of Electronic records:**

Section 7 provides that where any law provides the documents required for information shall be returned for any specified. Then that requirement shall be deemed to have been satisfied if the same is returned in the electronic form certain requirements have to be satisfied for the retention of electronic records these are:

- a.** The information contained therein remains accessible so as to be usable for a subsequent reference.
- b.** The electronic record is retained in the format in which it was originally generated sent or received or in a format which can be

demonstrated to represent accurately the information or originally generated central received.

**C.** The details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

It is specifically provided that the above provisions shall not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

**c) Explain the procedure for appointment of the controller of controlling authorities' state his functions and duties**

**Section 17 – Appointment of the Controller and other officers.**

**Ans:**

- The Central Government may appoint a Controller of Certifying Authorities after notifying the Official Gazette. They may also **appoint Deputy Controllers and Assistant Controllers as it deems fit.**
- The Controller discharges his responsibilities subject to the general control and also of the Central Government.
- The Deputy Controllers and Assistant Controllers shall perform the functions assigned to them by the Controller under the general superintendence and also control of the Controller.
- The qualifications, experience and terms and conditions of service of Controller, Deputy Controllers, and Assistant Controllers shall be such as may be prescribed by the Central Government.
- The Head Office and Branch Office of the office of the Controller shall be at such places as the Central Government may specify, and these may be established at such places as the Central Government may think fit.
- There shall be a seal of the Office of the Controller.

- 2. Functions of Controller (Section 18)

A Controller performs some or all of the following functions:

- Supervise the activities of the Certifying Authorities and also certify their public keys
- Lay down the standards that the Certifying Authorities follow
- Specify the following:
  - a. qualifications and also experience requirements of the employees of all Certifying Authorities
  - b. conditions that the Certifying Authorities must follow for conducting business
  - c. the content of the printed, written, and also visual and of the digital signature and the public key
  - d. the form and content of a digital signature certificate and the key
  - e. the form and manner in which the Certifying Authorities maintain accounts
  - f. terms and conditions for the appointment of and their remuneration
- Facilitate the Certifying Authority to establish an electronic system, either solely or jointly with other Certifying Authorities and its regulation
- Specify the manner in which the Certifying Authorities deal with the subscribers
- Resolve any conflict of interests between the Certifying Authorities and the subscribers

- Lay down the duties of the Certifying Authorities
- Maintain a database containing the disclosure record of every Certifying Authority with all the details as per regulations. Further, this database is accessible to the public.

### **3. Recognition of Foreign Certifying Authority (Section 19)**

- A Controller has the right to recognize any foreign certifying authority as a certifying authority for the purpose of the IT Act, 2000. While this is subject to the conditions and restrictions which the regulations specify, the Controller can recognize it with the previous approval of the Central Government and notify in the Official Gazette.
- If a controller recognizes a Certifying Authority under sub-section (i), then its digital signature certificate is also valid for the purpose of the Act.
- If the controller feels that any certifying authority has contravened any conditions or restrictions of recognition under sub-section (i), then he can revoke the recognition. However, he needs to record the reason in writing and notify in the Official Gazette.

### **4. Controller to act as a repository (Section 20)**

- The Controller will act as a repository of all digital signature certificates under this Act.
- The Controller will—
  - a. Make use of secure hardware, software, and also procedures.
  - b. Observe the standards that the Central Government prescribes to ensure the secrecy and also the security of the digital signatures.

- The Controller will maintain a computerized database of all public keys. Further, he must ensure that the public keys and the database are available to any member of the public.

## 5. License to issue Digital Signature Certificates (Section 21)

(1) Subject to the provisions of sub-section (2), any person can apply to the Controller for a license to issue digital signature certificates.

(2) A Controller can issue a license under sub-section (1) only if the applicant fulfills all the requirements. The Central Government specifies requirements with respect to qualification, expertise, manpower, financial resources, and also facilities for the issuance of digital signature certificates.

(3) A license granted under this section is—

(a) Valid for the period that the Central Government specifies

(b) Not transferable or inheritable

(c) Subject to the terms and conditions that the regulations specify

## 6. Power to investigate contraventions (Section 28)

1. The Controller or any other Officer that he authorizes will investigate any contravention of the provisions, rules or regulations of the Act.

The Controller or any other Officer that he authorizes will also exercise the powers conferred on Income-tax authorities under Chapter XIII of the Income Tax Act, 1961. Also, the exercise of powers will be limited according

13.a) Write about cyber crimes.

Cyber Crimes:

**Ans:** The invention of the computer is no doubt technological development to make dramatic changes in the way people live on think. information technology has opened new Vista for business world as transmission of information advertising marketing retailing ordering and the other activities can be undertaken through Internet there is no doubt this technology changes brought benefit however it has also brought set and disadvantages known as cyber crimes. they include child sexual exploitation fraudulent scam hacking introducing viruses

Unauthorised access to information stored, disruptions, modifications, are distraction etc.

b) What are the Documents excluded from the Information Technology

### **13. Documents excluded from the information technology Act 2000**

The information technology Act 2000 is not applicable to the following: **1. negotiable instrument (other than cheque):**

Negotiable instrument means a promissory note, bill of exchange or cheque payable either to the order or to the bearer. A negotiable instrument can be transferred by delivery in the case of bearer instrument and by endorsement and delivery in the case of other instruments.

**A power of attorney:** Power of attorney is an instrument empowering the specified person to act for in the name of the person who executes it. Section 33 of the Indian Registration Act states that is the principle at the time of executing the power of attorney by the district registrar or sub-registrar within whose district or sub-district the principal resides.

### **A trust as defined in Section 3 of the Indian Trust Act 1882:**

A trust can be created by a will if the trustees created by will.

#### **1. A will:**

A will requires a testator to be at least 18 years of age and of sound mind. It must be in writing and signed by the testator in the presence of at least 2 witnesses. If executed by means of an electronic record, it may not be possible to get the attention of the 2 witnesses. Hence, Wills and codicils are rightly excluded from the purview of the Act.

2. Any contract for the sale or conveyance of immovable property or any interest in such property.

3. Any such class of documents or transactions as may be notified by the central government in the Official Gazette.

c) What are the Limitations of Information Technology Act?

**Answer:**

c) What are the Limitations of Information Technology Act?

Granting legal recognition to all transactions done through electronic data exchange, other means of electronic communication or e-commerce in place of the earlier paper-based communication.

- Providing legal recognition to digital signatures for the authentication of any information or matters requiring authentication.
- Facilitating the electronic filing of documents with different Government departments.

sandalsoagencies.

- Facilitatingtheelectronicstorageofdata
- Providinglegalsanctionandalsofacilitatingtheelectronictransferof funds between banks and financial institutions.Granted legalrecognition to bankers for keeping the books of accounts in anelectronic form. Further, this is granted under the Evidence Act,1891.







**ShortAnswersQuestions:**

