MAR GREGORIOS COLLEGE
OF ARTS & SCIENCE

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DEPARTMENT OF COMMERCE
(ACCOUNTING & FINANCE)

SUBJECT NAME: CORPORATE & BUSINESS LAW

SEMESTER: IV

PREPARED BY: PROF.R.SELVI

OBJECTIVES:

1. To highlightthe provisionsoflaw governingtheGeneralContracts.
2. To helpthe studentstounderstandthesignificant provisionsofthe CompaniesAct,2013.

UNITI:
Indian Contract Act Formation - Nature and Elements of Contract - Classification of Contract - ContractVsAgreement

UNITII:
Offer - Definition - Forms of offer - Requirements of Valid Offer. Acceptance - Meaning - Legal Rules as to a valid acceptance. Consideration - Definition - Essentials - Legal Rulesrelatingtoconsideration-Contractswithoutconsideration

UNITIII:
Capacity of parties. Definition - Persons Competent to contract. Free consent - Coercion - UndueInfluence - Fraud — Misrepresentation — Mistake. Legality of object — void agreement - Unlawfulagreements-performanceofcontracts

UNITIV:
Company - Definition - Characteristics - Lifting of corporate veil - Advantages of Incorporation - Company Law Administration - NCLT & NCLAT - Classification of companies - Formation of aCompany-MemorandumandArticlesofAssociation.

UNITV:
Prospectus - Definition - Registration - Contents - Shelf Prospectus - Misstatement and theirconsequences - Share capital - Meaning - kinds - alteration of share capital - Dividend - provisionsfordeclarationofdividend -Meetings-KindsofCompanyMeetings.

SUGGESTEDREADINGS

1.Kapoor, N.D. Business Laws, Sultan Chand and Sons.2.Sreenivasan,M.R.BusinessLaws,MargamPublications
.
3.Dhandapani, M.V.BusinessLaws,SultanChandandSons.1.BadreAlam,S.&Sar avanavel,P.Mercanti!eLaw
1.Kapoor,N.D.ElementsofCompanyLaw,SultanChand andSons

E-RESOURCES
www.cramerz.comwww.digitalbusinesslawgroup.comhttp://swcu.libguides.com/buslawhttp://libguides.slu.edu/businesslaw

UNI T– I

Introduction

LAWANDITSORIGIN

Some knowledge of law is necessary for all persons. The day-to-day survival ofeachmemberofoursocietymustproceedtoagreaterextentinconformitywithrecognized rules and principles. Just as a game of football or cricket could not be playedjudiciously without rules and regulations to govern the players, life in general and thebusiness world in particular could not survive without law to regulate and the conduct ofpeople and to protect their property and rights. Without law, life and business wouldbecomeamatterofthesurvivalofthefittest.So,toprotecttheindividualsfromexploitation,sufficient amount of rulesand regulations arenecessary.

WHATIS LAW?

It is not possible to give one complete accurate definition of law. In the legal sense‘Law’ includes all the rules, regulations and principles which regular our relations withother individuals and with the State. The State regulates the conduct of its people by a setof rules. Such rules of conduct, if recognized by the State and enforced by it on people, aretermedas‘Law’.

In this sense,*Holland*, a jurist/defines law as “rules of external human actionenforced bythe State.”

According to Anson, rules regarding human conduct are necessary for peacefullivingas well as for progressand development. Anson observesas follows:

“The object of law is order, and the result of order is that men are enabled to lookaheadwith somesort of security asto thefuture. Although humanaction cannotbereduced to the uniformities of nature, men have yet endeavoured to reproduce by lawsomethingapproachingto thisuniformity”.

SOCIETYANDLAW

The term ‘society’ is used to mean a community or a group of persons living in anyregion, who are united together by some common interest (or) bond. The word commonbond can otherwise be called as social rules (or) rules of social behavior. These rules aremadebythemembersofthesociety.Disobedienceoftheserulesisfollowedbypunishmentin theform of social disapproval.

According to Salmond, "Law is the body of principles recognized and applied bythestate in the administration ofjustice".

Woodrow Wilson has defined law as "that portion of the established habit andthought of mankind which has gained distinct and formal recognition in the shape ofuniformrulesbackedbytheauthorityandpowerofthegovernment."Lawinthissense,isa bundle of rules and regulations and also a social machinery for securing justice in thecommunity.

Law is not too rigid. As the conditions in a society change, laws are modified to fitthe needs of the society. At any point of time, law prevailing in a society must be inconformitywiththegeneralfeelings, customs,traditions andaspirations ofitspeople.

In the changing economic scenario, the main object of law is considered to be "toestablish socio-economic justice and remove the existing imbalance in the socio-economicstructure". Law, in this sense, has to play a crucial role in the task of achieving the variousSocio-economicobjectives as enacted in ourconstitution.

In a social set up like ours, a great part of law is designed primarily to bring aboutall-round improvement and well-being of the public individually and collectively frommaterial and cultural view points, But 'Law' unlike social rules is enforced by the State,The objective of law is to bring order in the society with a view to enable its members toprogress and develop with somesort ofsecurityregardingthefuture.

TheStatemakeslaws.Disobedienceofstatelawsinvolvespenaltywhichisenforcedbythe governmentthroughthesovereigntyoftheState.Whateverisnot enforceableisnotlaw.Lawofthestateareapplicabletoallwithoutexceptioninidenticalcircumstances. Therecan beonlyonelawwithintheState.

RULEOFLAW

In earlier times, certain classes and individuals possessed special privileges andwere governed by special law. The modern view is to apply the same law over all personsin the State, and to give all persons equal rights and privileges for the protection of theirhuman liberties. Democracycanremain onlyin asocietyof equals.

TheconceptofequalityofallpersonsbeforelawisthebasisofwhatiscalledtheRulesoflaws. TheRulesaresummarized as follows:

1. Nooneshall bepunishedexceptfordefinitebreach oflaw.
2. Noman isabovelaw.
3. Ruleoflawistheresultofstatuesandjudicialdecisionsdeterminingtherightsofprivateper sons.

MEANINGOFLEGALPERSONALITY

A person in law means any entity which is accepted by law as having certaindefined rights and obligations. Such persons may be natural (human beings) or artificial(companiesorcorporations).

Example*:*TheCompanycanbesuedinitsownnameandsometimesbeprosecutedforcriminaloffences liketaxevasion etc.Similarlyitcansueothers inits own name.

LAWANDFACT

Lawyersalwaysdistinguishbetweenthelawinvolvedinacaseandthefactswhichthecourthas to considerin reachingits decision.

Example*:*Inasituation,thefactmaybeamurder.Butthejudgedecidesonpointsoflaw i.e.whethertheconductofaccusedamountstomurderintheeyesofthelaw.Hence,itisthedutyof theprosecutor to provebeforethecourt such fact to show

(i.)thatamurderhasbeencommitted,and

(ii.)Thattheaccused wastheperson whocommitted themurder

MERCANTILELAWORCOMMERCIALLAWANDITSSOURCES

Definition

The laws of a country relate to many subjects e.g .inheritance and transfer of property,relationship between persons, crimes and their punishment, as well as matters relating toindustry,tradeand commerce.

The term commercial law is used to include only the rules relating to industry, tradeandcommerce.

Commercial law or Mercantile law may therefore be defined as that part of law whichregulatesthe transactionsof themercantilecommunity.

Thescopeofcommerciallawislarge.Itincludesthelawsrelatingtocontract,partnership,negotiable instruments, saleof goods,companies etc.

SOURCESOFINDIANCOMMERCIALLAW

ThecommerciallawofIndiaisbaseduponstatuesoftheIndianlegislature,Englishmercantilelawand Indianmaritimeusages,modifiedandadaptedjudicialdecisions.

We are stating below the sources from which the rules of commercial law of Indiahavebeen derived.

1. **StatutesoftheIndianlegislatures**

The Statue law means Acts of Parliament. These are the most efficient and the mostusual way of bringing about changes in law today.The legislature is the main sources oflaw in modern times. In India, the Central and State legislatures possess law makingpowers and have exercised the powers extensively. The greater part of Indian CommercialLaw is statutory. The Contract Act, 1872 , the Sale of Goods Act, 1930, the PartnershipAct,1932, theCompanies Act, 1956, areinstancesof theStatute law.

2. **EnglishMercantileLaw**

Many rules of English Mercantile law have been incorporated into Indian Lawthrough statutes and judicial decisions. Indian mercantile law is, in the main, an adaptationof the English Law. It is incorporated in a number of Acts, which follow to a considerableextenttheEnglishmercantilelawwithsomereservationsandmodificationsnecessitatedbythepeculiarconditionsprevailinginIndia.ToascertainthesourcesofIndianMercantilelaw,wehave,therefore,totracethesourcesoftheEnglishMercantilelaw.The

sources of English Mercantile law are (a) Common Law (b) Equity (c) The Law Merchant,and(d) TheStatuteLaw.

(a) The Common Law: The common law consists of principles based on immemorialcustoms and principles enforced by courts. It is traditionally unwritten law, developed inEnglish courts during the period beginning with the thirteenth century and brought to ourcountry by the British rule of India. In simple, we can say Common Law is nothing butRulesdeveloped bycustom in England.

(b) Equity: Equity Law is also unwritten and grew as a system of Law supplementary tothe CommonLaw. It isbased uponconcepts of justice developed by judges.As theCommon Law was too stereotyped and very harsh the Law of Equity was developed inEnglish courts. In a sense, Equity covered the deficiencies of Common Law, especiallywherethe CommonLawworked veryrigidly.

(c)**The Law Merchant**: The Law Merchant or 'Les Mercatoria' was independent body ofcustoms and usagesgoverning commercial transaction of the Merchants and Traders of14th and 15th centuries, which have been ratified by the decisions of the Courts of Law.DuringthisperiodthebodycommercialusageswaspracticallyuniformthroughoutEurope.I nitsearlieststages,therefore,theLawMerchantwasakindofPrivateInternationalLawadminister edbytribunalsconsistingprincipallyofthemerchantsthemselves.The Law Merchant is the origin of much of the law relating to negotiableinstruments,trademarks,partnerships,contractsofInsuranceetc.InIndiatheLawMer chantiscodified,andthecourtsareleftonlywiththetaskinterpretingthelanguagesof the Acts. But where some principles of the Law Merchant (Indian trade customs andusages) are not covered by those Acts, the Indian courts generally apply the English Lawonthe subject.

(d) **Statute Law:** The Statute Law refers to the Law passed in the Parliament. It is superiorto any rule of the Common Law of Equity.The authority of the Parliament being supreme.It can pass anylaw it pleases, and is not bound byanyof its previous Acts.

Theothersourcesofthe EnglishMercantile Laware:

(i) **Roman Law:** If for any particular case the existing law fails to suit, a reference toRomanlawis made.

(ii)**Case Law**: This law is build upon previous judicial decisions. i.e. on the principle thatwhat has been decided in an earlier case is binding in a similar future case, unless there is achangein thecircumstances.

THEINDIANCONTRACTACT

The Indian Contract Act which was passed on 25th April,1872, came into effectfrom1stSep.1872.Itwaspassedwithanobjecttodefineandamendcertainportionsofthe laws relating to contracts. It lays down general principles of law relating to contracts. Itapplies to the whole of the country except the State of Jammu and Kashmir. It does notaffect the provisions of any Statue, Act or Regulation.Originally, the Act containedprovisions relating to sale of goods and partnership. In 1930, rules relating to sale ofgoods were taken out from this Act and incorporated in a new Act, namely "Sale of GoodsAct".Similarly in 1932, provisions relating to partnership were codified as a separate Actand The Indian Partnership Act, 1932 was passed in the parliament.The Indian ContractAct in its present status contains the general principles of contracts, (Section 1 to 75) andspecialtypes of contract(Sec124-238)

ObjectandScope

Law of Contract constitutes the most important branch of mercantile law. It is thenerve centre of trade and commerce.It is not only the business community which isconcerned with the law of contract, but it plays its role on every one's walks of life.Everyone of us enters into a number of contracts from dawn to dusk. When a person bringsnewspaper or rides a bus or goes to a hair-cutting saloon or purchases vegetables orborrowsaloanfromafriendetc.,heentersintoacontractthroughhemaynotbeconsciousof it. Such contracts createlegal rights and obligations.

The object of the law of contracts is to introduce definiteness in commercial andothertransactions.Howthisisdonecanbeillustratedbyanexample,Xenteredintoa contract to deliver 10 tons of iron oreon a particular date. Since such a contract isenforceable by the courts, Y can plan his activities on the basis of getting iron ore on thefixed date. If the contract is broken, Y will get damages from the court and will not sufferanyloss.

Sir William Anson observes in this regard that the law of contract is intended "toensure that what a man has been led to except shall come to pass and what has beenpromisedto him shall beperformed".

AgreementandContract

TheLaw deals with agreements which can be enforced through court of law.Acontract has been defined by Sir John Salmond as "an agreement creating and definingobligationsbetween theParties".

Sec.2(h) of the Indian Contract Act, provides that "An agreements enforceable

bylaw is a contract. “An agreement is thus regarded as a contract only when it is enforceableby law. There are various social religious and moral obligations which are not enforceablebylaw as contracts.

Example: A husband promised to pay his wife a household allowance of $30 every month.Later, the parties separated and the husband stopped the payment. The wife sued for theallowance, Held, agreements such as were termed, are mere social obligations and do notcreate legal relationship. As such they are not contracts. (Balfour Vs Balfour- 1919 ; 2K.B.571)

In the words of Lord Ackin, “the most usual forms of agreements which do notconstitute a contract are the agreements between husband and wife. They are not contractsbecausethepartiesdonot intend thattheyshouldbeattended bylegalconsequences”.

A Contract must specify two conditions (1) there shall be an agreement and, (2)suchan agreement should beenforceable bylaw which creates legal obligation.

AnagreementisdefinedunderSec.2(e)as“everypromiseandeverysetofpromises, forming consideration for each other”. A promise is defined under Sec.2(b)thus: “When the person to whom the proposal is made signifies his assent thereto, theproposal issaid to be accepted. A proposal when accepted, becomes promise”In anutshell, an agreement is an accepted proposal.Therefore, to form an agreement, theremust beaproposal oroffer byonepartyand acceptancebytheother.

Definitions

The word contract is derived from the Latin word contractum meaning “drawntogether”. It therefore denotes a drawing together of two or more minds to form a commonintentiongivingriseto an agreement.

According to Sir John Salmond, a contact means “An agreement creating anddefiningobligations between parties”.

Sir William Anson defines a contract as “A Legal binding agreement between two or morepersons by which rights are acquired by one or more acts or forbearance on the part of theotheror others”.

According to *Pollock,* an “Every agreement and promise enforceable at law is contract”.TheIndian Contact Act 1872,Sec2(h)defines acontractas follows:

“Anagreementenforceable bylawisacontract”.

ESSENTIALSOFAVALIDCONTRACT

Wehaveseenthatallagreementsarenotcontracts.Thelawofcontractisthelawof those agreements which create legal relationships and not simply moral or social ones.An agreement, which creates legal obligationsin order to be valid andbinding mustpossesscertain basic essentials.

Sec.10 of the ContractsAct has laid down certain basic essentials for a validcontact. According to this Section, "All agreements are contracts if they are made by thefree consent of parties, competent to contract, for a lawful consideration and with a lawobjectand arenot herebyexpresslydeclared to bevoid".

FromtherulestatedinSec.10theessentialelementsnecessaryconstituteavalidcontractarethefollowing:

(i.) Free consent of Parties
(S.13)(ii.) Competency of Parties
(S.11,12)(iii.) Lawful consideration
(SS.23,24)(iv.) Lawfulobject
(SS.23,24)
(v.) Not declared to be void byanylaw(24,30)
(vi.)
Theyshouldalsofulfilllegalformalitiespresentedbyanotherlawifany,viz.,writing, registrationetc.

According to English law, there is further requirement, namely "an intention tocreate legal obligation. "This principle is followed in India also. This may be treated as theseventhrequisite element.

Nowweshall discussindetail thevarious essential elementsof avalid contract.

1. **Proposal or offer** by one party and acceptance of the proposal or offer by anotherpartyresulting inan agreement.

A contract is a legally binding agreement. This agreement results when one person, theofferor or promisor, makes a proposal or offer and a person to whom the offer is made, theoffered or promise, accepts it. For an agreement to arise, there must be two or more partiesto the transaction. As it is imperative that there be a concurrence of at least two minds, it isimpossiblefor oneperson to makeanagreementwith himself.

Example:Whenapersoninhisofficialcapacityasgeneralmanagerofacompanymakesa promise tohimself asan individual, no agreement isformed by an acceptance inthelatter capacity. That there must be more than one person is an essential characteristic of anagreement. These persons must come to an understanding with a view to creating a rightin one partyand acorrespondingdutyon the other.

Consensus-Ad-Idem (or) Meeting of Minds: To constitute an agreement or a contract,theremustbeameetingofthemindsofthepartiesandbothmustagreetothesamethingin the same sense.If in a particular agreement we find a meeting of minds or identity ofwills of the parties in full and final then we can conclude that there must be consensus-ad-idem.

Example: Mr.Aravind who owns two Maruti cars of different colours namely red andwhite intends to sell his red car. But Miss, Athiral thinks she is purchasing the white car. Inthissituation, thereis no consensus-ad-idem and consequentlythereis no contract.

The terms of the offer and acceptance must be legal which means that they shouldconform to the rules laid down in the Contract Act regarding the valid offer and validacceptance i.e. the terms of the offer must be definite and the acceptance of the offer mustalso be absolute and unconditional. The acceptance must also be according to the modeprescribedand must be communication to thepromisor.

2. IntentiontocreateLegalRelationship:

The parties to the agreement must intend to create legal relations between them. Meresocialordomestic agreements arenotcontracts because theyarenotintendedto be binding i.e., an agreement to have a cup of tea at a friend’s house is simply a socialobligation.

Example: “X” offers to play cards with “Y” for pleasure and “Y” accepts. If later on,“X”refusestodo so,”Y”cannotgo to thecourt forenforcingthe promise.

3. LawfulConsideration:

Subject to certain exceptions an agreement legally enforceable only when each of theparties to itgives something andgets something.An agreement to dosomething fornothing is generally not enforceable at law.The something given or obtained is calledconsideration. The Consideration may be an act (doing something) (or) forbearance (notdoing something) or a promise to do or not to do something. Consideration may be past,presentor future.But it must be realand lawful.

Example:

“X” agrees to sell his car to “Y” for Rs.1,00,000.For “X”’s promise, the consideration is

Rs.100,000.For“Y”’spromisetheconsideration isthe car.

4. CapacityofParties:

The parties to an agreement must be legally capable entering into an agreement; otherwiseit cannot be enforced by a court. Want of capacity arises from minority, lunacy, idiocy,drunkenness are similar other factors.If any of the parties to the agreements suffers fromanysuch disability,theagreement isnot enforceablebylaw, exceptin somespecialcases.

5. FreeConsent:

The two parties to a contract must have agreed as to the particular subject matter in thesame sense. By Section 13 “two or more sections are said to consent when they agree uponthe same thing in the same sense “Such a meeting of minds creating an identity of opinionor will is carried to by using the term ‘Consensus-ad-idem’. The consent of parties not beaffected by any flaw.The consent is said to be free when it is not used by coercion, undueinfluence,fraud, mistake or misrepresentation.

Example: ’A’ threatens to beat “B” if he does not sell his land for a low price agrees to doso. Theagreement has been brought about bycoercion.

6. LegalityofObject:

An agreement is unlawful and therefore unenforceable when the object for which theagreement is made is forbidden by law, or if permitted would defeat the provisions of anyof the existing law or is fraudulent or involves an injury to the property of another or in theeyesof thecourt, is immoral, oropposed to public policy (Sec.23).

Thus an agreement will not become a contract or will remain unenforceable, if it is madeforan unlawful consideration and with an unlawful object.

Example: ‘A’, ’B’ and ‘C’ enter into an agreement for the division among them of gainsacquired or to beacquired bythem byfraud.The agreement is void.

7. CertaintyoftheTermsofthecontract:

Thetermsoftheagreementmustbedefiniteandcertainanditmustnotcontainanyambiguousinformation.

Example:‘A’agreestosellto‘B’ahundredtonsofoil”.Thereisnothingwhatevertoshowwhat kindofoilwas intended. Theagreement isvoid forwant of certainty.

8. PossibilityofPerformance:

Thetermsoftheagreementmustalsobesuchasarecapableofperformance.Anagreementto do

anact which is impossiblein practicecannotbeenforced.

Example:WhenAagreeswithBtofindatreasuretheagreementisvoidasitisimpossibleofperformance.

9. Voidagreements:

Theagreementsmustnothavebeenexpresslydeclaredtobevoid.Followingagreementsareexpreslydeclared tobevoid underthe IndianContract Act:

- **a.** Agreementinrestraintto marriage(Sec.26)
- **b.** Agreementinrestrainttotrade(Sec.27)
- **c.** Agreementinrestrainttolegalproceedings(Sec.28)
- **d.** Agreementhavinguncertain meaning(Sec.29)
- **e.** Wageringagreement(Sec.30)

10. Legalformalities:

The agreement may either be oral or in writing. But there are certain agreements which arerequired to be in writing e.g., lease, gift, sale, mortgage of immovable property, negotiableinstruments,certainmattersundertheCompaniesAct,1956.Suchagreementsmustbein writing, attested and registered, if so required by law. Registration of agreements or deedsis compulsory in cases of documents falling within the scope of Sec. 17 of the IndianRegistration Act, 1980. If the agreement does not comply with these legal formalities itcannot be enforced bylaw

CONTRACTUALRIGHTSANDOBLIGATIONS

The law of contract consists of a number of limiting factors subject to which thepartiesmaycreaterightsand duties for themselves which the lawwill enforce.

Itdealswithtworights:

(1) RightsinPersonam

(2) RightsinRem

RIGHTSINPERSONAM

Example: If ‘X’ has a right to get back a sum of Rs.5000 from ‘Y’ that right can beexercised only by ‘X’ but not by others because the right ‘X’ has against ‘Y’ is a right inpersonam.‘X’cannotenforcethat rightagainst anyoneelseexcept‘Y’.

RIGHTSINREM

If ‘A’ owns a plot of land and ‘B’ is the adjacent owner, the right of ‘A’ to haveuninterrupted possession and employment of that land is available not only against ‘B’ butagainst every member of the public. Similarly everyone except ‘A’ is under an

obligationnot to interfere with ‘A’s possession or enjoyment, because the rights of ‘A’ in respect ofthatland areRights in rem. Therights to propertyareall “Rights in Rem”.

CLASSIFICATIONOFCONTRACTS

Forthesakeofconveniencewecanclassifycontractsaccordingtotheir(1)Validity,(2) Formationand (3) Performance.Letus examinethem in detail.

1. **Classificationaccordingtovalidity**:Whenwecloselyanalysethedefinitionofacontract, it is found that the contract is based on agreement. An agreement enforceableatlawisacontract.Tomaketheagreemententorceableatlaw.Theessentialsstipulated in Sec. 10 of the element is missing then the contract may either be void,voidable,illegal, or unenforceable.

voidagreements:“Anagreementnotenforceable by law issaidto be void”- Sec.2(g). A void agreement has no legal effect. It confers no rights on any person andcreatesno obligations.

Examples: An agreement made by a minor, agreements without consideration (exceptcertaincases).Certainagreementsagainstpublicpolicy;etc., arevoidfrom thebeginning.

VoidContract:Therearecertainagreementswhicharevalidinthebeginningandsubsequently it becomes void due to impossibility of performance, change of law or otherreasons. When it becomes void the agreements ceases to have legal effect. This we call asvoid contract as per Sec 2(j) Example: A contract to export coffee to USSR. It maysubsequentlybecome void if theexportingcountrybanstheproduct from being exported.

Illegalagreement: AnillegalagreementisonewhichisagainstalawinforceinIndia.
Example:Anagreement tocommitmurder,theftorcheating.

Voidable contract: A voidable contract is one which can be avoidedby some of theparties to the agreement. Until it is avoided, it is a good contract. An agreement which isenforceable by law at the option of one or more of the parties thereto, but not at the optionoftheotherorothers,isavoidablecontractasperSec.2(i)Examplesofvoidablecontracts:Contracts brought about by coercion, under undue influence, misrepresentationetc.

Illustration: ‘P’threatens ‘Q’ to enter into a contact for the sale of ‘Q’s landed propertyto ‘P’. This contract can be avoided by ‘Q’. ‘P’ cannot enforce the contract. But ‘Q’, if hesodesires, canenforceitagainst‘P’.

Unenforceable agreement: The term unenforceable agreement is used in English law. Itmeans an agreement which cannot be forced in a court of law by one or both of the parties,because of some technical defect. E.g. want of registration or non-payment to requisitestampdutyor for want ofwritten form.

Differencebetweenvoidandvoidablecontract

	Void	Voidable
1	Not enforceable bylaw	Enforceable by law at the option ofoneof theparties tothecontract.
2	Ithas nolegallybindingeffect	It continues to be legal unless avoidedbythe party.
3	Inavoidcontract,thedefectsareincurabl e	Inavoidablecontract,thedefectiscur able
4	A third party who purchased goodswhich had been the subject of a voidcontractwillnotacquire goodtitle	Butinvoidablecontractthirdpartywillacq uiregood title.

Differencebetweenvoidcontractandillegalcontract

	Void	Illegal
1	Allvoidcontractsarenotnecessarily illegal	Allillegalcontracts arevoid
2	Allcollateralcontractstoavoidcontractar enot void	Butall collateral contractsto a illegal contractarevoid
3	Ground for the voidnesshastopro ved.	Court will, of its own motion, in be caseof an illegal contract, refuseto enforceit,eventhoughtheillegalityhasnotb eenpleaded.

Validcontract:Anagreementenforceableatlawisavalidcontract.Anagreementbecomes a contract when all the essentials of a valid contract stipulated in Sec. 10 arecompliedwith.

2. **Classification on the basis of Formation**: A contract may be created in three differentmethods:
    1. Itmaybein writing.
    2. It maybemadeorally, and
    3. Itmaybeinferredfromthecircumstances ofthe case.

Contracts can be classified according to the mode of their formation asExpress,ImpliedandQuasi contracts Express contracts are those in which the fact of the agreement can be proved bywords written or spoken which express the intention of the parties. Thus contracts inwritingandoral (byspoken words) can be collectivelycalled"expresscontracts."

In case of implied contracts or tacit or inferred contracts agreements would beinferredfrom conductoftheparties andthegeneralcircumstances ofeach case.

Examples: Mr. A takes a public bus or enters into a restaurant for a cup of coffee orobtainsaticket from anautomaticmachine.

Unlike other contracts, the quasi-contract does not fulfil such requirements and inthatstrict sense,is not acontract atall.Itrests onthe groundof equitythat,

"Apersonshallnotbeallowedtoenrichhimselfunjustlyattheexpenseofanother." In such a contract, rights and obligations arise not by any agreement between theparties but byoperation of law.

Example: 'A' a shopkeeper supplied groceries to 'B' by mistake. 'B' used the items as hisown.'B'is bound to pay.

In the above case there is no consensus, no offer, no acceptance; still the lawimpliesacontract. This is known as quasi-contract.

3. **Classificationaccordingtoperformance**:Contractscanagainbeclassifieddepending upon the extent to which it has been performed i.e. Executed and Executorycontracts. An executed contract is one wherein both the parties have performed their obligationsunderthecontract.

Example: 'A' agrees to sell his motorbike to 'B' for Rs.20,000. In this situation 'A' hasgiven the motorbike and got the money from 'B'. When both the parties perform their partoftheobligation under thecontract thecontractis said to be executed.

Anexecutorcontractisonewherebothethepartiesareyettoperformtheirobligations.Thusi ntheaboveexample,if'A'hasnotyetdeliveredhismotorbikeand'B' has not paid the price, the

contract is executed as to ‘A’ and executory as to ‘B’. Anotherclassificationofcontractson thebasis of performanceisas follows:

Unilateral or one-sided and Bilateral or two sided contract: In case of a unilateral orone-sided contract, one party to the contract has performed his part even at the time of itsformationand an obligation is outstandingonlyagainst the other.

Example: The promise to give a reward to the person who finds out a lost thing forms aunilateralcontractwhen thethingis actuallyfound out.Itcreatesan one-sidedobligation.

InTheBilateralcontractatthetimeofitsformation,therearetwooutstandingobligations.

Example: ‘A’ promises to paint a picture in one month in return for which ‘B’ promises topay Rs. 1000. Here there are two promises and each party is a promisor in respect of onepromiseandapromiseeinrespectoftheotherandassucheachcanholdtheotherliableforthebre ach of his promise

DIFFERENCE BEWEEN CONTRACT AND AGREEMENT

.No.	Agreements	Contracts
1.	Guarantees and commitments framing consideration for the parties to a similar assent are known as an agreement.	The agreement, which is lawfully enforceable is known as a contract.
2.	The definition of the agreement is characterized in Section 2 (e).	The definition contract is characterized in Section 2 (h) of the Indian Contract Act, 1872.
3.	Each agreement isn’t a contract.	Each contract is an agreement.
4.	The agreement doesn’t legitimately head or bound any party for the exhibition of contract.	In the contract, the individuals are undoubtedly bound to execute their part.

5.	The extent of the agreement is more extensive than a contract since it covers a wide range of agreement just as a contract.	The extent of a contract is moderately smaller than an agreement since it covers just those agreements which have lawful enforceability.

UNIT II

OFFER AND ACCEPTANCE

As discussed earlier, a contract is defined as a promise or agreement enforceable bylaw.So,twoelements namely,agreementandenforceability are essentialfor a validcontract.All contracts are made by the processof alawful offer by one party andthelawfulacceptanceof the offer bythe other party.

Example: If ‘X’ says to ‘Y’ “willyou buy my house for Rs. 5,00,000”? It is an offer. If‘Y’says“Yes”, theofferis accepted and acontract isformed.

An ‘offer’ involves the making of a proposal. The term proposal is defined underSec2(a)intheContractActasfollows:“whenonepersonsignifiestoanotherhiswillingness to do or to abstain from doing anything with a view to obtaining the assent ofthatotherto such act orabstinence, heissaid tomakeaproposal”

A proposal is also called an offer. The promisoror the person making the offer iscalledthe offeror. Theperson to whom theoffer is madeis called the offeree.

Promise and Acceptance: Sec.2(b) of the Act defines promise as “when the person towhom the proposal is made signifies his assent thereto, the proposal is said to be accepted.A proposal when accepted becomes a promise” Promisor and promise are defined underSec 2(c) as“The person making the proposal is called the ‘promisor’ and the personacceptingthe proposal iscalled the ‘promisee’– Sec.2(c).

A proposal or acceptancemaybemadein anyofthefollowingmanners:

- Byexpress words spoken,
- Inwriting.
- Byconduct.

Examples:

1. When A says to B: “will you buy this building for Rs.20 lakhs”? It is an expressoraloffer.
2. WhenA writesto Bstatingthe aboveoffer, thenit isan expresswritten offer.
3. Whenatransportcompanyrunsabusonaparticularroute,itistermedasanimpliedoffer or anofferbyconduct.

RULESREGARDINGVALIDOFFER

1. An offer may be express or may be implied from the circumstances:In so faras the proposal or acceptance of any promise is made in words, the promise is saidto be express. In so far as such proposal or acceptance is made otherwise in words,thepromiseis said to beimplied (Sec. 9).

2. An offer may be made to a definite person; to some definite class ofpersons;or to the world at large: An offer made to a definite persons or a definite class ofperson is called a specific offer. An offer sent to all persons (the world of public atlarge)is called aGeneral offer or Public offer.

Examples: Specific offer: 'X' offers to sell his motor cycle to 'Y' for Rs.10,000. This is aspecific proposal. This proposal is specifically given to 'Y'. Only 'Y' can accept thisproposal.

General offer: CarlillVs Carbolic Smoke Ball & Co (1893) The patent medicinecompany advertises that it would give a reward of $100 to anyone who contacted influenzaafter using the medicine namely smoke ball of the company for a certain period accordingto the specifications. Mrs. Carlill purchased the smoke ball and contacted influenza in spiteof usingitasperthe specifications.Sheclaimed therewardof $100.Theclaimwasrefused by the company on the ground that the offer was not made to her and that in anycase she hadnotcommunicated heracceptance of the offer. She fileda suitfor therecoveryofthe reward.

It was held that she could recover the reward as she had accepted the general offermadebythe companyaftercomplyingwith theterms of the offer.

3. Offer must be capable of creating legal relationship: The offer must be one which iscapable of creating a legal relationship. An invitation to a birthday party or an invitation toplaycardswillnotcratelegalrelationship.Thereforeanofferforsuchsocialeventswillnotconstit ute acontract.

Example: Balfour Vs Balfour (1919): A husband promised to send money to his wife, solongassheremainedawayfromhim.Itwasheldthatifthehusbandfailstopay,thewife

.could not sue for the amount on the ground that the promise made by the husband wasneverintended togiveriseto legalconsequences.

4. The terms of the offer must be definite and certain: The terms of the offer must bedefinite,unambiguousandcertainandnotlooseandvague.Toconstituteavalidcontract,it is essential that the proposal must be so certain, that the rights and obligations of thepartiesarisingoutofthecontractcanbeexactly fixed.Ifthetermsofanofferareuncertain, its acceptancecannot createany contractual relationship. According to Sec. 29of the Act, agreements, the meaning of which is not certain or capable of being madecertainarevoid.
Example: 'X' says to 'Y' "I will give you some money if you marry 'Z'". This is not anoffer which can beaccepted becausetheamount of moneyto bepaidis not certain.

5. A mere statement of intention is not an offer: Every expression of willingness toenter into a contract may not amount to an offer in the legal sense. It may be only a firstandpreliminarystepintheformationofacontract.Thusitbecomesnecessarytodistinguish between the offer on the one hand and (i) a mere declaration of intention (ii) aninvitationto makean offer, and(iii) auction sale,on theother hand.

A distinction is usually made between an 'offer' and "a statement of intention".Price lists and catalogues and enquiries from customers are merely statements of intention.Theyarenot regardedas offers but asinvitation to others tomakeoffers.
Harvey VsFacey: Harvey telegraphed to Facey asking to inform him whether he wouldsell Bumper Hall pen and if so at what price? Facey informed Harvey that the lowest pricewas$900butdidnotsaythathewaswillingtosellatthatprice.Harveytelegraphedthathewoul dbuy atthatprice.Facey gavenoreply tothetelegram.Held,therewasnocontract because facey did not say that he was willing to sell or not. Mere mentioning ofpriceis not an offer.

Similarly, in an auction sale, articles displayed in auction sale are displayed with anintention that the bidders present during the auction sale may bid for them. i.e. may makean offer for them. In an auction sale, a bid is an offer. It can therefore, be taken back at anytimebeforeacceptance ismadebythe auctioneeris effected bythefall of thehammer.

6. An offer must be communicated to the offeree: A person cannot accept an offerunlessheknows ofthe existenceof theoffer.

Example: 'P' offers a reward to anyone who finds his lost dog. 'Q' on finding the dogbringsitto 'P'without havingheard oftheoffer. Heldhe wasnotentitledto thereward.

LalmanVsGauriDutt:'G'senthisservant'L'insearchofhismissingnephew,subsequently'G'an nouncedarewardforinformationconcerningtheboy.'L'broughtback the missing boy, without having the knowledge of the reward. Held, there was nocontractbetweenLandGand the rewardcannotbeclaimed.

7. An offer may have certain conditions: A proposer is at liberty to make an offer subjecttocertainconditions.Itisimmaterialifthetermsarehardorridiculous.Conditionsattached to the offer must clearly be communicated to the offeree. The offeree must fulfilallthe conditions mentioned in theoffer.

8. Offer must not thrust the burden of acceptance: Offer should not contain the term"the non-compliance of which may be assumed to amount to acceptance". Thus a mancannot say that if he fails to hear from the other party within a week he would consider theoffer as being accepted. Similarly, if 'A' writes to 'B'. "I will sell you my house for Rs.5lakhs. If you do not reply. I shall assume that you have accepted the same. There is nocontracteven if 'B' doesnot reply.

LEGALRULESASTOACCEPTANCE

An offer unless accepted cannot become an agreement. Acceptance is essential toconvert an offer into an agreement. The acceptance of an offer to be legally effective mustsatisfythefollowingrequirements:

1. **It must be absolute and unqualified:** An acceptance to be effective must be absoluteandunqualifiedofallthetermsoftheoffer.Aconditionalacceptanceisnotanacceptan ce at all. If there is any variation, even of an unimportant point, there is nocontract. An acceptance with a variation is no acceptance but is a mere "counter offer"whichis forthe originalofferorto accept or not.

Example: Mr.'X' informed 'Y' his willingness to buy 'Y's'car for Rs.75,000. On receiptoftheoffer'Y'informed'X'thatheiswillingtosellhiscarforRs.1,00,000.Inthis

example, 'Y's'acceptance isnotunconditionalorunqualified.This isnotanacceptance.Itisonlyacounteroffer.If'X' acceptsfor Rs.1,00,000,then itwillbecome acontract.

2. **The mode of acceptance must be in some usual manner**: Except where the offerprescribed a particular mode of acceptance, the acceptance must be made in suchmanner that it may come to the knowledge of the proposer. If the proposer prescribes amodeofacceptance, theacceptancemust begiven accordingly.

Example:Iftheproposersays"Telephonicreply"andthereplywassentbypost,thenthereis no acceptanceofthe offer.

If the offeree fails to follow the prescribed mode of acceptance, the offeror may,within a reasonable time alter the acceptance as communicated to him, insist that theproposal be accepted in the prescribed manner. If he does not inform the offeree he isdeemed to have accepted the acceptance although it is not in the desired manner [Sec.7.(2)].

3. **Acceptance must be by the party named in the offer**: An offer made to a particularperson is to be accepted by him only. It cannot be assigned to anybody else. It cannot beaccepted by another without the consent of the offeror. However, in case of generaloffer,anymember of the publicmayaccept it.

4. **An acceptance must be communicated to the offeror**: Just as the offer should becommunicatedtothe acceptorshoulddo somethingto informhisintention toaccept. Incertaincasestheofferormayprescribeaparticularmodeofacceptance,thenallthattheacceptor has to do is to follow that mode.

5. **Acceptance must be within a reasonable time**: The acceptance must be made whileoffer is still in force. (i.e) before the offer lapses. Acceptance made after the offer hasbeen withdrawn is invalid. If any time limit is prescribed in the offer, it should beaccepted within that time. But if no time is prescribed it must be accepted within "areasonable time". What is a 'reasonable time' depends upon the circumstances of eachcase.

1. **Acceptance cannot be made in ignorance of the offer**: Acceptance cannot precede theoffernor doesanacceptancein totalignoranceof an offer resultin acontract.

2. **Clarification**: The seeking of clarification of offer neither amounts to the acceptance oftheoffer nor to themakingofacounter offer.

3. **Mental acceptance** or uncommunicated assent does not result in a contract: Nocontract is formed if the offeree remains silent and does nothing to show that he hasacceptedtheoffer.

Example: F offered to buy 'B's horse for $30 saying. "If I hear no more from you, I shallconsider the horse as mine at $30." 'B' did not reply. Held there was no contract becausetheother partywas not informed (FelthouseVsBindley)

4. **Whenacceptanceiscomplete:**Sec.4ofthecontractactlaysdownthatthecommunication of an acceptance is complete as against the proposer, when it is put in acourse of transmission to him; so as to be out of the power of the acceptor; and as againsttheacceptor,when it comes to theknowledgeofthe proposer.

Examples

(i) 'A'proposesbylettertosellahouseto'B'atacertainprince.Thecommunicationof theproposaliscompletewhen'B' receivestheletter.

(ii) 'B'accepts'A'sproposalbyalettersentbypost.Thecommunicationofthe acceptance is complete as against 'A'. When the letter is posted, asagainst 'B',when the letter is received by'A'.

COMMUNICATIONOFOFFERANDACCEPTANCE

Anoffermaybecommunicatedtotheoffereeorriffereesbywordofmouth,bywritingor byconduct. Awritten offer maybe contained in a letter or atelegram.

Sec.4states:"Thecommunicationofaproposaliscompletewhenitcomestotheknowledgeof thepersonto whomit ismade."

The acceptance must be expressed in some usual or reasonable manner. The offereemayexpress his acceptancebyword of mouth, telephone, telegram or bypost.

Mr. G applied for shares in a company. A letter of allotment was posted but theletter did not reach 'G'. held there was a binding contract and 'G' was shareholder of thecompany(HouseholdFireCo. Vs. Grant)

REVOCATIONOFOFFERANDACCEPTANCE

Revocation of an offer: An offer comes to an end and is no longer open to acceptanceunder thefollowingcases-Sec.6

1. Lapseoftime.
2. Afterexpiryof reasonabletime.
3. Anofferlapsesbythefailureoftheacceptortofulfilaconditionprecedenttoacceptance,wheresuchacondition hasbeen prescribed.
4. Anofferlapsesbythedeathorinsanityoftheproposer,ifthefactofhisdeathorinsanitycomes to theknowledgeof the acceptor beforeacceptance.
5. Whenthecounter-offerisgiven,theoriginaloffer lapses.
6. Aproposaloncerefusedisdeadandcannotberevivedbyitssubsequentacceptance.

Example: 'A' offers to sell his farm to 'B' for Rs.1,00,000.'B' replies offering to payRs.90,000. 'A' refuses. Subsequently 'B' writes accepting the original offer. There is nocontractbecausethe original offer has lapsed.

7. **By notice**: If the offeror gives notice of revocation to the other party, an offer may berevoked any time before acceptance but not afterwards. Once an offer is accepted there is abindingcontract.

Theacceptanceofanofferbecomesbindingontheofferorassoonastheacceptance is put in course of communication to the offeror so as to be out of the power oftheacceptor.But anytime beforethishappens, theoffer mayberevoked.

Example: A proposal is sent by 'X' to 'Y' and accepted by 'Y' by letter. The proposalmight have been revoked anytime before the letter of acceptance was posted but it cannotberevokedafter theletter is posted.

Thenoticeofrevocationdoesnottakeeffectuntilitcomeswithintheknowledgeoftheofferee.

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Thenoticeofrevocationdoesnottakeeffectuntilitcomeswithintheknowledgeoftheofferee.

RevocationofAcceptance:Anacceptancemayberevokedatanytimebeforethecommunicationo ftheacceptanceiscompleteasagainsttheacceptor butnotafterwards.

Example:'A' proposes by a letter sent by post to sell his house to 'B'. 'B' accepts theproposal by letter sent by post. 'A' may revoke his proposal at any time before or at themoment when 'B' posts his letter of acceptance but not afterwards. 'B' may revoke hisacceptance at any time before or at the moment when the letter communicating it reaches "A" but not afterwards.

CONSIDERATIONANDCAPACITYOFPARTIESCONSIDERATION

Meaning

Consideration is an essential element in a contract. It is the sign and symbol ofevery bargain subject to certain exceptions. An agreement made without consideration isvoid.Considerationisthenecessary evidence requiredby lawof theintentionof theparties to effect their legal relations. All contracts require consideration to support them.Consideration means the valuable considerations (i.e) the price paid for the other party'spromise. Contract results where one party promises to do in exchange for something inreturn.Considerationisotherwiseknownas"somethinginreturn."Inanutshell,considerationis the pricepaid bythe promise for theobligationofthe promisor.

Example

(i) 'P'agreestosellhislandforRs.2,00,000to'Q'.for'P'spromise,theconsiderationisRs.2, 00,000. For 'Q'spromise,theconsideration isthehouse.

(ii) 'X'promisesnottofileasuitagainst'Y'if'Y'payshimRs.10,000onaparticular date. 'X's act of not filing a case against 'Y' is the consideration for 'Y'and Rs.10,000 is the consideration for 'X'. if there is no consideration there is nocontract.

In an Allahabad case, a person subscribed Rs.500 to rebuild a mosque. It was held that thepromise was without consideration and the subscriber was not liable.(Abdul Aziz V.Masum Ali)

Definitions

Sec.2(d)of contractactdefinesconsiderationasfollows:

"when at the desire of the promisor, thepromisee or any other person has done orabstained from doing, or does or abstains from doing, or promises to do or to abstains fromdoing,suchact orabstinenceor promiseiscalled a considerationfor thepromise."

In the English case Currie V. Misa (1875) consideration was defined as, “someright, interest, profit or benefit accruing to one party for some forbearance, detriment, lossorresponsibilitygiven, suffered or undertakenbythe other.”

Example: ‘X’ engages ‘Y’ as a steno in his office for Rs.2000 per month. The monthlywageistheconsiderationreceivedby‘Y’.theservicesof‘Y’istheconsideration for ‘X’.

Theconsideration mayconsistof either:

(i) Anact (which oneis legallyboundto perform)

(ii) Anabstinenceorforbearancefrom doing

(iii) Areturnpromise.

TYPESOFCONSIDERATION

Considerationmaybeclassifiedas

1. Pastconsideration
2. Presentconsideration, and
3. Futureconsideration.

Past consideration: When the consideration of one party was given before the date of thepromise,it is said to be past.

For Example, ‘X’ does some work for ‘Y’ in the month of January and ‘Y’promised him to pay some money during February. Theconsideration of ‘X’ is pastconsideration. Under English law past consideration will make the contract invalid. Butunder Indian law a past consideration is good consideration because the definition ofconsiderationin Sec.2(d) includes thewords “hasdoneor abstainedfrom doing.”

Present consideration: Consideration which moves simultaneously with the promise iscalledpresent consideration orexecuted consideration.

Future Consideration: When the consideration is to move at a future date it is calledfutureconsideration orexecutoryconsideration.

ESSENTIALSOFVALIDCONSIDERATION

1. Consideration Must Move at the Desire of the Promisor: The act done or losssuffered by the promise must have been done or suffered at the desire of the promisor. Anact done without any request is a voluntary act and does not come within the definition ofconsideration.

The collector of a district asked ‘D’ to spend money on the improvement of a market andhe did so. ‘D’ cannot demand payment from the shopkeepers using the market for havingimprovedthe market.(DurgaPrasadVsBaldeo)

2. Itmustbearealconsideration:Theconsiderationmusthavesomevalueintheeyesoflaw.Itmust notbeillusory.Theimpossibleactsornon-existinggoodscannot

   support a contract. A contribution to charity is without consideration. A promise to payan existing debt within due date if the creditor gives a discount is without considerationandthe discount cannot beenforced.

3. Public Duty: “Where the promise is already under an existing public duty, an expresspromise to perform orperformanceof that dutywillnot amount to consideration.

   Example:Acontracttopayasumtoawitnesswhohasalreadyreceivedsomemoneyto appearat a trialis invalid.

4. Promise to a stranger: A promise made to a stranger to perform an existing contract,is enforceable because the promisor undertakes a new obligation upon himself whichcanbeenforced bythe stranger.

‘X’wrotetohisnephew‘B’,promisingtopayhimanannuityof150poundsinconsideration of his marrying ‘C’. ‘B’ was already engaged to marry ‘C’. Held that thefulfilment of B’s contract with ‘C’ was consideration to support X’s promise to pay theannuity.(Shadwell Vs Shadwell)

5. Consideration need not be adequate: Explanation 2 under Sec. 25 provides that “Anagreement to which the consent of the party is freely given is not void merely becausethe consideration is inadequate.” Law requires the presence of consideration, but doesnotinquireinto the adequacy.

Example: 'P' agrees to sell a house worth Rs.5,00,000 for Rs.1,00,000. P's consent to theagreementwasfreelygiven. Theagreementis validinspiteof inadequate consideration.

6. Theconsiderationmustnot beillegal,immoral oropposedto publicpolicy:
Iftheconsiderationoftheobjectoftheagreementisillegal,immoraloropposedtopublicpolicy,theagreement to contract is invalid.
Example:'X'agreedtopayRs.50,000to'Y'ifhekills 'C'.

7. Theconsiderationmaybepast, presentandfuture
Inthepastpromise,considerationhasalreadybeentakenplace.Inthepresentconsideration, it simultaneously moves with promise. In the future consideration, it passessubsequently

8. Theconsideration maymovefromthepromise orfromany otherperson:
A person has given some properties to his wife 'C' directing her at the same time to pay anannual allowance to his brother 'R'. 'C' also entered into an agreement with 'R' promisinghim to pay the allowance. This agreement can be enforced by 'R' even though no part ofconsiderationreceived by'C' moved from 'R'

"NOCONSIDERATIONNOCONTRAACT"–EXCEPTIONSTOTHISRULE

Considerationisessentialforthevalidityofacontract."Apromisewithoutconsiderationis agift;onemadeforaconsiderationisabargain"(SalmondandWindfield)
A promise without consideration is a gratuitous undertaking and cannot create a legalobligation. Under Roman law an agreement without consideration was called a 'nudumpactum' and was unenforceable. Under English law simple contracts must be supported byconsiderationbutspecialcontractsrequirenoconsideration.UnderIndianlaw,thepresenceof considerationis aruleessentialto thevalidityof contracts.

Exceptions:

1. Naturallove andaffection:An agreementwithoutconsideration isvalid underSection25(1) onlyif thefollowingrequirements arecomplied with:

(i) Theagreementis madebyawrittendocument
(ii) Thedemandisregisteredaccordingtothelawrelatingtoregistrationinforceatthat time.
(iii) Theagreementismadeonaccountofnaturalloveandaffection.
(iv) Thepartiestotheagreementstandinanear relationtoeachother.

Examples: An agreement entered into by a husband with his wife during quarrels anddisagreement, whereby the husband promised to give some property to his wife. Theagreement is void because, under the circumstances, there is no natural love and affectionbetweenthe parties. (RajlukhyDebeeV.Bhootnath;1900)

1. Voluntary Compensation: Sec.25(2) applies when there is a voluntary act by onepartyandthereisasubsequentpromise(bythepartybenefited)topaycompensation to the former. The term ‘voluntary’ signifies that the act was done,“otherwisethanatthedesireofthepromisor.”Thiskindofpromisewithoutany

considerationisvalid.Example:‘D’findsB’sbaggageandgivesittohim.‘B’promisesto give ‘D’Rs.100. thisis avalid contract.

2. Time-barrred debt: ’A’s promise to pay, wholly or in part, a debt which is barredby the law of limitation can be enforced if the promise is inwriting and issignedbythedebtororhisauthorisedagent.[Sec.25(3)]Example:‘D’owes‘B’Rs.10, 000 but the debt is barred by the limitation act. ‘D’ signs a written promise topay‘B’ Rs.5000 on account of thedebt. Thisis contract.
3. Agency:No considerationisrequiredtocreatean agency.(Sec.185).
4. CompletedGift: According toSec. 25‘Noconsideration nocontract’ rule doesnot applyto completedgifts.

If a person transfers certain property to another by a written and registered deed accordingto the provisions of Transfer of property Act, he cannot subsequently claim back thatpropertyon thegroundof lack ofconsideration.

Can a person who is stranger to consideration sue upon it?Normally, the rule is thatthe consideration must move from the promise and the party to a contract can sue. In otherwords,astrangertoaconsiderationcannotsue.UnderEnglishlaw,astrangertoaconsideratio ncannot sue.

Examples: Suppose ‘A’, a doctor, agrees to treat ‘B’, but as ‘A’ will not accept payment,‘B’ promises ‘C’ (A’s son) that he will pay him Rs.5,000, ‘C’ cannot maintain a suit on thepromise because he is a stranger to the consideration and the fact of C being the son of A willnot alterthe position.

UnderIndianlawconsiderationmaymovefromthe“promiseeoranyotherperson”.So it is clear that theconsideration can move from anyperson.

There are certain differences between the rights of a stranger to a contract and stranger toconsideration. A stranger to contract i.e. one who is not a party to it, cannot file a suit toenforceit. Acontract between ‘P’ and ‘Q’cannotbeenforcedby‘R’.

But a stranger to consideration can sue to enforce it provided he is a party to thecontract.Acontractbetween‘P’,‘Q’and‘R’whereby‘P’paysmoneyto‘Q’fordelivering goods to ‘R’ can be enforced by ‘R’ although he did not pay any part of theconsideration.

UNITIII:

CAPACITYOFPARTIES

Capacitydefined:

Accordingto Sec .10, an agreement becomes a contract if it is entered into between the parties who arecompetent to contract. ‘capacity’ referred to here, means competence of the parties to enterintoavalid contract. Capacityincludesphysical and mental capacity.

According to Sec.11: Every person is competent to contract who is of the age of majority,accordingtothelawtowhichheissubject,andwhoisofsoundmind,andisnotdisqualified from contractingbyanylawto whichheis subject.

Fromthisdefinitionwecometotheconclusionthatthefollowingarenotcompetentto contract:

1. Aperson whohas notattained theageofmajority.
2. Aperson whois ofunsound mind,e.g. lunaticor aninsaneperson.
3. Any other person who has been disqualified from contracting under any law, e.g. apersonwho has been adjudicated an insolvent.

Minor: Under Section 3 of the Indian Majority Act, 1875, a minor is one who has notcompleted eighteenth year of age. It may be stated here that a minor whose property hasbeen entrusted to a guardian by a court, attains the age of majority when he completestwentyoneyearsoflife.InEngland, minoritycontinuesuptothecompletion of21st year.

THELEGALRULESREGARDINGMINOR’SAGREEMENT

1. Minor’sagreementisVoid-ab-initio: (voidfromtheverybeginning):

Today an agreement with or by minor is void and inoperative. Formerly, the position

wasnot clear. The Indian Contract Act, does not expressly state whether a contract made by aminor is void or voidable. Sec.11 of the Act simply states that a minor is not competent tocontract. Following the English law, it was held formerly that a minor's contract wasvoidable but not void. The issue came up again in the case of MohoriBibeeVsDharmadasGhose(1903)

In this case, a minor executed an agreement for Rs.20,000 and received Rs.8,000from a mortgagee by way of earnest money. H sued for setting aside the mortgage. Thelenderwantedrefundofthesumwhichhehadactuallypaid.Heldanagreementbya minor was absolutely void and therefore, the question of refunding themoney did notarise.Hadtheagreementbeenonlyvoidable,thebenefitreceivedwouldhavebeenrefundedun derSections 64 and 65 ofthe Act.

2. A Minor can be a Promisee or a Beneficiary: During his minority, a minor cannotbind himself by a contract, but there is nothing in the contract act which prevents him frommaking the other party to the contract to be bound to the minor. Thus, a minor is incapableof making mortgage, or a promissory note. But he is capable of becoming a mortgagee, apayeeorendorsee. He can derivebenefit under thecontract.

3. A minor's Agreement cannot be Ratified by the Minor on his attaining Majority: Aminorcannotratifytheagreementonattainingtheageofmajorityastheoriginalagreement is totally void from the beginning, and, therefore, validity cannot be given to itlater on.
Example:IndiraRamasamyVAnthiappaChettiar.'A'aminormakesapromissorynotein favour of 'B'. on attaining majority, he makesout a fresh promissory note in place oftheold one. Neither theoriginal northefresh promissorynote is valid.

4. If a Minor has Received any Benefit Under a Void Contract he Cannot be Askedto Refund the same: We have already mentioned the facts in MohiriBibee's case. Inthat case, the lender could not recover the money paid to the minor. Also the propertymortgaged by the minor in favour of the lender could not be sold by the latter for therealisationofhis loan.

5. A Minor is Always Allowed to plead Minority: He is not prevented from this righteven where he had procured a loan or entered into some other contract by falselyrepresentingthathewasoffullage.Thus,anminorwhohasdeceivedtheotherpartyto the agreement by representing himself as of full age is not prevented from laterassertingthat he was minor at thetime heenteredinto agreement.

Examples: Leslie V Shiell (1914) In this case 'S', a minor, borrowed ₤ 400 from L, amoney lender, by fraudulently misrepresenting that he was of full age. On default by 'S','L' sued for return of ₤ 400 and damages for the crime. Held, 'L' could not recover ₤ 400,and his claim for damages also failed. Even on equitable grounds, the minor could not beaskedtorefund ₤400, asthe moneywasnot traceableastheminor hadalreadyspent it.

In the case of a fraudulentmisrepresentationofhisage bythe minor, inducing theother party to enter into a contract, if money could be traced. The court may awardcompensationto thatother partyunder Sections 30and 33oftheSpecific Relief Act,1963.

6. A Minor Cannot be a Partner in a Partnership Firm: He cannot become a partnerbut for the benefit of the partnership with the consent of all the partners he can beadmitted as a partner. Other partners cannot file a case against the minor partner if thelattercommits anyoffence.

7. A Minor's Estate is Liable to a Person Who Supplies Necessaries of Life to aMinor: However there is no personal liability on a minor for the necessaries of lifesupplied.

The term 'necessaries' is not defined in the Indian Contract Act, 1872.but the English Saleof Goods Act defines necessaries as "goods suitable to the condition in life of the minorandto hisactual requirementsat thetime ofsale and delivery".

Fromtheabovedefinitionitisveryclearthatinordertoentitlethesuppliertobereimbursedfrom theminor'sestate,thefollowing conditionsmust befulfilled:

- The goods are necessaries for that particular minor having regard to his status. Forexample, Purchase of a car may be a necessity for a particular minor and may not holdgood for theotherperson.
- Theminorneedsthe goodsbothatthetimeofsale anddelivery.

Example: Nash V Inman (1908): A minor, was studying B.C.S., in a college. He ordered11 fancy coats for about£ 45 with N, the tailor. The tailor sued him for the price. Hisfather proved that his son had already number of coats and had clothes suitable to hiscondition in life when the clothes made by the tailor were delivered. Held, the coatssuppliedbythetailor werenotnecessaries and therefore,tailor cannotgettheprice

The minor's estate is liable not only for the necessary goods but also for the necessaryservices rendered to him. The lending of money to a minor for the purpose of defending asuit on behalf of a minor in which his property is in jeopardy or for defending him inprosecution,orforsavinghispropertyfromsaleinexecutionofdecreeisdeemedtobea service rendered to the minor. Other examples of necessary services rendered to a minorare: provision of education, medical and legal advice, provision of a house on rent to minorforthe purposeof livingand continuinghis studies.

8. Minor's parents or guardians are not liable to a minor's creditors for the breach ofcontract by the minor, whether the contract is for necessaries or not. But the parents areliablewheretheminoris actingasan agent oftheparentsor theguardian.

9. A minor can act as an agent and bind his principal by his acts without incurring anypersonalliability.

10. No specific performance: An agreement by a minor being void, the court can neverdirectspecificperformanceof suchan agreementbyhim.

11. No Insolvency:A minor cannot be declared insolvent even though there are duespayablefrom the properties of theminor.

12. Company' shares to a minor: A minor cannot apply for and be a member of acompany. If a minor has, by mistake, been recorded as a member, the company canrescind the transaction and remove the name from the register. But where a minor wasmade a member and, after attaining majority, he received and accepted dividends, hewill be stopped from denying that he is a member. (Fazalbhoy V The Credit Bank ofIndia)

PERSONSOFUNSOUNDMIND

Definition of “Sound Mind” for a valid agreement it is necessary that each party to itshould have a sound mind. What is sound mind for the purpose of contracting is laid downinSec. 12 oftheIndiancontract act.

Section 12: A person is said to be of sound mind for the purpose of making a contract if atthe time when he makes it, he is capable of understanding it and of forming a rationaljudgementas to its effect upon his interests.

Apersonusuallyofsoundmind,butoccasionallyofunsoundmind,maynotmakea contract when he is of unsound mind. However, when he is of sound mind he is capableof becomingapartyto acontract.

Illustrations

(a) A patient in lunatic state of mind, who is at intervals of sound mind, may makeacontract duringtheseintervals.
(b) A sane man who is delirious from fever, or who is so drunk that he cannotunderstand the terms of a contract, or form a rational judgement as to its effecton hisinterests, cannot contract whilst such delirium ordrunkennesslasts.Unsoundness of mind may arise from insanity or lunacy, idiocy, drunkennessandsimilarfactors.

Idiocy: The term idiot is applied to a person whose mental powers are completely absent.Idiocyisacongenital defect caused bylackof development of the brain.

Insanity or Lunacy: This is a disease of the brain. A lunatic is one whose mental powersare so deranged that he cannot form a rational judgement on any subject. Lunacy cansometimesbecured.Idiocyis incurable.

Drunkenness:Drunkennessproducestemporaryincapacity.Thementalfacultiesarecloudedfor sometime, sothatno rational judgement can beformed.

EffectsofAgreementsMadebyPersonsofUnsoundmind

Agreements by persons of unsound mind are void. But an Agreement entered intoby a lunatic or a person of unsound mind for the supply of necessaries for himself or forpersons whom he is bound to support (e.g. his wife, children) is valid as a quasi-

contractunder Section 68 of the Act. Only the estate of such a person is liable. There is no personalliability.

The guardian of a lunatic can bind the estate of the lunatic by contracts entered intoon his behalf. The mode of appointments of such a guardian and his powers are laid downintheLunacyAct.

Example:InderSinghVParmeshwardhariSingh(1957)

A person agreed to sell a property worth Rs.25,000 for Rs.7000. his mother provedthat he was a congenital idiot and she pleaded for cancellation of the contract. The courtheldtheagreement to benull and void.

DISQUALIFIEDPERSONS

Aliens:Analienmeansacitizenofaforeignstate.Contractswithaliensarevalid.AnalienlivinginIndiaisfreetoenterintocontractswhichcitizensofIndia.Butthegovernment may impose certain restrictions. Certain types of transactions with aliens maybe prohibited. A contract with an alien becomes unenforceable if war breaks out with thecountryof which thealien concerned is a citizen.

ForeignSovereigns:Foreignsovereignsorgovernmentscannotbesuedunlesstheyvoluntarilysubmit to thejurisdiction of thelocal court(Mighell V Sultan ofJohore)

ProfessionalPersons:inEngland,barristersandmembersoftheRoyalCollegeofPhysicians are prohibited by the etiquette of their profession form suing for their fees. Butthey can sue and be sued for all the claims other than their professional fees. In India, thereisno such restrictions on barristersandphysicians.

FREECONSENT

Definitionoffreeconsent

An agreement is valid only when it is the result of free consent of all the parties toit. Sec. 13 of the Act defines the meaning of the term ‘consent’ and Sec. 14 of the Actspecifiesunder what circumstancesconsent is“free”.

Sec. 13 “Two or more persons are said to consent when they agree upon the same thing inthesame sense”.

Consent involves a union of the wills and an accord in the minds of the parties.When the parties agree upon the same thing in the same sense, they have consensus-ad-idem.For avalid contract thepartiesmust have“identityof mind”.

Sec.14 laysdown thatconsent isnot freeifit iscaused by

1. Coercion.
2. Undueinfluence,
3. Fraud,
4. Misrepresentationand
5. Mistake.

COERCION

Definition: Coercion is defined by Sec. 15 of the Act as follows: "Coercion is (1) thecommitting or threatening to commit, any act forbidden by the Indian penal code, or (2)Unlawful detaining, or threatening to detain, any property, to the prejudice of any personwhatever, with theintention ofcausinganypersonto enter into anagreement.

Examples:

1. A Hindu widow is forced to adopt 'X' under threat that her husband's dead bodywould not be allowed to be removed unless she adopts 'X'. the adoption is voidableashaving been inducedbycoercion.(RanganayakammaVsAlwarsetti)
2. 'A'threatenstokill'B'ifhedoesnottransferallhispropertyin'A'sfavourforaverylow price.The agreementis voidable for beingtheresultof coercion.

It is not necessary that coercion must have been exercised againstthe promisor only, itmaybedirected at anyperson.

Examples:

1. 'A'threatenstobeat'B'(C'sson)if'C'doesnotlethishouseto'A'theagreementis caused bycoercion.
2. 'X'threatenstokill'Y'ifhedoesnotsellhishouseto'B'ataverylowprice.Theagreementis causedbycoercionthough 'X' isastrangerto thetransaction.

Further, it is immaterial whether the Indian penal code is or is not in force in the placewherethecoercion is employed.

Example: 'A' on board an English ship on the high seas, causes 'B' to enter into anagreement by an act amounting to criminal intimidation under the Indian penal code. 'A'afterwardssues'B'forbreachofcontractatCalcutta.'A'hasemployedcoercion,although his act is not an offence by the law of England, and although the Indian penalcodewas not in forceat thetime orplacewheretheact wasdone.

Threattocommitsuicide–isitcoercion?

As per Section 15 "committing or threatening to commit any act forbidden by

theIndian Penal Code is coercion." As the act of suicide is forbidden by the IPC, a threat tocommitsuicide must betreatedas coercion.

Example:AmmirajuVsSeshamma

In this case, 'A' obtained a release deed from his wife and son under a threat ofcommittingsuicide. Thetransaction wasset asideon theground ofcoercion.

Duress: The English equal of coercion is Duress. Duress has been defined as causing, orthreatening to cause, bodily violence or imprisonment, with a view to obtain the consent oftheother partyto the contract. Duress differs from coercion on the followingpoints:

1. 'coercion' can be employed against any person whereas 'duress' can be employedonlyagainst the other partyto thecontract or members ofhis family.
2. 'Coercion' may be employed by any person, and not necessarily by the promisee.'Duress' can beemployed onlybythe partytothecontract or his agent.
3. 'Coercion' is wider in its scope and includes unlawful detention of goods also.'Duress' on the other hand does not include unlawful detention of goods. Onlybodilyviolenceor imprisonment is duress.

Consequences of coercion: Sec.19:When consent to an agreement is caused by coerciontheagreementiscontractvoidableattheoptionofthepartywhose consentwasso obtained. In other words, the affected party can have the contract cancelled or if he sodesiresto insist on its performancebythe other party.

Sec. 72: A person to whom money has been paid or anything delivered under coercionmust repayor return it.

Example: A railway company refuses to deliver certain goods to the consignee, exceptupon the payment of an illegal charge for carriage. The consignee pays the sum charged inorder to obtain the goods. He is entitled to recover so much of the charge as was illegallyexcessive.

UNDUEINFLUENCE

Definition:A contractis saidto beinduced byundueinfluencewhere,

(i) Oneof theparties is inaposition to dominatethewill of theother, and

(ii) HeusesthepositiontoobtainanunfairadvantageovertheotherSec.16(1)*Sec.16(2)providesthatundueinfluencemaybepresumedtoexistinthefollowingcases:*

1. Where one party holds a real or apparent authority over the other or where hestands in a fiduciary relationship to the other. Fiduciary relationship means arelationship of mutual trust and confidence, such a relationship is supposed toexist in the following cases – father and son; guardian and ward; solicitor andclient;doctor andpatient; saint anddisciple; trusteeand beneficiaryetc.
2. Whereapartymakesacontractwithapersonwhosementalcapacityistemporarily or permanently affected by reasonof age, illness or mental orbodilydistress.

Example:'F'havingadvancedmoney tohisson'B'during hisminority,uponB'scoming of age obtains by misuse of parental influence, a bond from B for a greater amountthanthesum advanced. 'F' employsundueinfluence.

Consequences of Undue influence: An agreement caused by undue influence is a contractvoidable at the option of the party whose consent was obtained by undue influence (Sec.19-A).

Example:amoney-lender,advancesRs.100to'B'anagriculturist,andbyundueinfluence induces 'B' to execute a bond for Rs.200 with interest at 6 percent per month.The court may set the bond aside, ordering 'B' to repay Rs.100 with such interest as mayseemjust.

Burden of proof [Sec. 16(3)]: If a party is proved to be in a position to dominate the willof another and the transaction appears on the face of it or on the evidence adduced to beunconscionable,theburdenofprovingthatthecontractwasnotinducedbyundueinfluence,lies on thepartywho wasin a position to dominatethewill of theother.

UndueInfluenceissuspectedinthefollowingcases.

1. Inadequacyof consideration.
2. Fiduciaryrelationshipbetweentheparties.
3. Inequalitybetweentheparties asregards age,intelligence, socialstatus,etc.
4. Absenceofindependentadvisorsfortheweakerparty.
5. Unconscionablebargains:Unconscionablebargainisonewhichisagainsttheconscience of reasonable persons and what shocks the public. If excessive profit ismadeit will also fall within this term.

High rates of Interest:It is usual for money lenders to charge 'High rates ofinterest'from needy borrowers can the court presume the existence of undue influence in suchcases?

Illustration: 'A' applies to a banker for a loan at a time when there is an acute shortage inthe money market. The banker declines to sanction the loan at the prevailing rate ofinterest. 'A' accepts the loan for a very high interest rate Held, this is a transaction in theordinarycourseofbusiness and thecontract is not induced byundueinfluence.

So a transaction will not be set aside merely because the rate of interest is high. Butif the rate is so high that the court feels it is unconscionable, the burden of proving thattherewas no undueinfluencelies on thecreditor.

Pardanishin Women:Women, who observe the custom of Parda i.e.seclusion fromcontact with people outside her own family, are peculiarly susceptible to undue influence.Therefore, Indian courts have held that a contract made by or with a pardanish in lady maybe set aside by her unless the other party to the contract satisfied the court that the terms ofthecontract werefullyexplained to herand that sheunderstood theirimplications.

DifferencebetweenUndueInfluenceandCoercion:Inbothundueinfluenceandcoercion,onepartyis under theinfluenceofanother.

1. In coercion the influence arises from committing or threatening to commit anoffence punishable under the IPC or detaining or threatening to detain propertyunlawfully. In undue influence, the influence arises from the domination of thewillof oneperson over another.
2. Cases of coercion are mostly cases of the use of physical forces. But in undueinfluenceit is a questionof mental pressure.

MISREPRESENTATION

Representation is a statement or assertion, made by one party to the other, before orat the time of the contract, regarding some fact relating to it. Misrepresentation arises whenthe representation made is inaccurate but the inaccuracy is not due to any desire to defraudtheother party. Thereisno intention to deceive.

Sec.18 of the Contract Act classifies cases of misrepresentation into three groups asfollows:

1. The positive assertion, in a manner not warranted by the information of thepersonmakingit,of thatwhich isnot true,thoughhebelieves it tobe true.

Example: 'X' learns from 'A' that 'Y' would be director of a company to be formed.

‘X’tells this to B’ in order to induce him to purchase shares of that company and ‘B’ does so.This is misrepresentation by ‘X’ though he believed in the truthiness of the statement andthere was no intent to deceive as the information was derived not from ‘Y’ but from ‘A’andwas merehearsay.

2. Any breach of duty which, without an intent to deceive, gives an advantage tothepersoncommittingit,(oranyoneclaimingunderhim)bymisleadinganother tohisprejudiceortotheprejudiceofanyoneclaiming underhim.Under this heading would fall cases where a party is under a duty to disclosecertain facts and does not do so and thereby misleads the other party. In Englishlawsuch casesareknownascasesof “constructivefraud”.
3. Causing however, innocently, a party to an agreement to make a mistake as tothesubstanceofathingwhich is thesubject of theagreement.

Consequence ofMisrepresentation:Incasesof misrepresentationtheparty aggrievedcan,

1. Avoidtheagreement,or
2. Insist that the contract be performed and that he be put in the position in whichhewould havebeen if therepresentation madehad been true.

Example: ‘A’ informs ‘B’ that his estate is free from encumbrance. B’ thereupon buys theestate in fact unknown to ‘A’, the estate is subject to mortgage. ‘B’ may either avoid thecontractor mayinsist on its being carried out and themortgagedebt beredeemed.

In case of misrepresentation the aggrieved party cannot claim compensation ordamagesfrom theother person.This however,is subject tocertainexceptions.

Theseare:

1. Breach of Warranty of authority by an agent: Where an agent believes that hehastheauthoritytorepresenthisprincipalwhileinfacthehasnosuchauthority,theagenti sliablefordamageseventhoughheisonlyguiltyofinnocentmisrepresentation.(Collen V. Wright)
2. Misstatement in prospectus: The directors of a company are liable for damagesunder Sec. 62 of the companies Act, 1956 for innocent misrepresentation made intheprospectus.
3. Negligentrepresentationmadebyonepersontoanotherbetweenwhomconfidentialrelati onshipexists. E.g. solicitorand client.

However, if the aggrieved party whose consent was caused by misrepresentation had themeans of discoveringthetruth with ordinarydiligence, hehas no remedy.

FRAUD

Definition: The term'fraud' includes allactscommitted by a personwith a view todeceive another person. To "deceive" means to "induce a man to believe that a thing is truewhichis false"

Sec.17of the contractactstatesthat'Fraud'meansandincludesany of thefollowing acts committed by a party to a contract (or with his connivance or by his agent)with intent to deceive another party thereto or his agent; or to induce him to enter into acontract.

1. False statement: "The suggestion as to a fact, of that which is not true by one whodoesnot believeit tobe true." Ifafalse statementis intentionallymadeitis fraud.
2. Active concealment: "The active concealment of a fact by one having knowledge orbelief of the fact." Mere non-disclosure is not fraud where the party is not under anydutyto disclose all facts.But activeconcealment is fraud.

Examples

(i) 'B' having discovered a vein of ore on the estate of 'A' decided to conceal theexistence of ore from 'A' with 'A's ignorance, 'B' contracted with 'A' to buy theestateat anunder value.Thecontract isvoidable at theoption of'A'.

(ii) 'A' sells by auction to 'B' a horse which 'A' knows to be unsound. 'A' saysnothing to 'B' about the horses' unsoundness. This is not because 'A' is under noduty to disclose the fact to 'B' but if between 'A' and 'B' there exists a fiduciaryrelationship(if'B'is'A'daughter)herearisestheduty todiscloseandnon-disclosureamounts to fraud.

3. Intentional non-performance: "A promise made without any intention of performingit"(e.g. purchaseofgoodswithout anyintention ofpayingforthem)is fraud.
4. Anyotheractfittedto deceive
5. Fraudulent act or omission: "Any such act or omission as the law specially declarestobefraudulent".Thisclausereferstoprovisionsincertainactswhichmakeitobligatory to disclose relevant facts. E.g. under Sec. 55 of the Transfer of Property Act,the seller of immovable property is bound to disclose to the buyer all material defects.Failureto do so amountsto fraud.

Fromtheanalysisof theabovewecansaythatforfraudto existtheremustbe:

(a) Arepresentationorassertion,and itmustbefalse.

(b) Therepresentationor assertionmust beofafact.

Example:'A'asellerofahorsesaysthatthehorseisa'Beauty'andisworthRs.5000.itismerely'A's

opinion.Itis not a matteroffact.

(c) The representation or statement must have been made with a knowledge of itsfalsityorwithout belief in its truth or recklessly.

Example:*ReeseRiversilverMiningCo.,VsSmith*

Acompany issueda prospectusgiving falseinformationaboutthe unboundedwealth of Neveda. A share broker who took shares on the faith of such information wantedto avoid the contract. Held he could do so since the false representation in the prospectusamountedto fraud.

Consequencesoffraud

A party who has been induced to enter into an agreement by fraud has the followingremediesopen to him: (Section 19)

i. Hecanavoidtheperformanceofthecontract.
ii. Hecaninsistthatthecontractshallbeperformedandthatheshallbyputinthepositionin which hewould havebeen iftherepresentation madehad been true.
iii. Theaggrieved partycansuefordamages.

DistinctionbetweenFraudandMisrepresentation

1. In case of fraud the party making a false representation makes it withtheintentiontodeceivetheotherpartytoenterintoacontract.Misrepresentationo n the other hand is innocent i.e., without any intention to deceive or to gain anadvantage.
2. In case of fraud, the aggrieved party can sue the person who made the falsestatement,fordamages.Butincaseofmisrepresentationexceptincertaincases,th e onlyremedyisrecession andrestitution.
3. In case of fraud the person who made the false statement cannot argue that theaggrieved person had the means of discovering the truth or could have done sowithordinarydiligence.

MISTAKE

Definition:Mistakemaybedefinedasanerroneousbeliefconcerningsomething. Consentcannotbesaidtobe‘free’ whenanagreementisenteredintounderamistake.

Mistake is of two kinds:

1. Mistakeoflaw
2. MistakeofFact

Mistakeoflaw:MistakeonapointofIndianlawdoesnotaffectthecontract.Mistakeonapoint of law in forceina foreigncountryis tobetreated as mistakeof fact

Example: ‘A’and ‘B’ make a contract based on the erroneous belief that a particular debtis barred by the Indian law of limitation. This is a valid contract. The reason is that everyman is presumed to know the law of his own country and if he does not he must suffer theconsequence of such lack of knowledge. But if in the above case, the mistake is related tothelawoflimitationof aforeign country,theagreementcould havebeenavoided(Sec.20)

MistakeofFact:An agreement induced bymistakeof fact is void. Mistakeoffact maybe

1. abilateralmistake
2. aunilateralmistake

Bilateral Mistake: When both the parties to the agreement are under a mistake of factessentialtotheagreement,themistakeiscalledabilateralmistakeoffactandtheagreementisvoid(Sec.20).FortheapplicationofSec.20thefollowingtwoconditionsareto befulfilled.

(i) Themistakemust bemutual

(ii) Themistakemust relateto amatteroffact essentialto theagreement.

Example:(1)andexample(2)

1. ‘A’ agrees to buy from ‘B’ a horse. It turns out that, the horse was dead at thetime of bargain, though neither party was aware of the fact, the agreement isvoid.
2. ‘A’ agrees to sell to ‘B’ a specific cargo of goods supposed to be on its wayfromEnglandtoBombay.Itturnsoutthat,beforethedayofthebargain,the shipcarryingthecargohasbeenwashedawayandthegoodslost.Neither partywasawareof the fact. Theagreement is void.

Mistake so as to render the agreement void, must relate to some essential matter, sometypicalcases ofmistakeinvalidatingthe agreement aregivenbelow:

1. Mistakeastothesubjectmatter:

(a) Mistake as to the Existence of Subject-matter: If both the parties believe that thesubject-matter ofthe contracttobe inexistence, which infactatthetime of thecontractis non-existent, thecontract is void.

Example: 'A' agreed to purchase 'B's car which was lying in 'B's garage. Unknown toeither party the car and the garage were completely destroyed by fire a day earlier. Theagreementis void.

(b) Mistake as to identity of the subject-matter: where the parties agree upon differentthings, i.e. one party intends to deal in one thing and the other intends to deal inanother.

Example: 'A' who owns three maruti cars of different colours, other to sell his whitecolour car Rs.1,00,000. 'B' accepts the other thinking 'A' is selling his green colour car.Thereis a mistake as to theidentityof thesubject-matterand henceno contract.

(c) Mistake as to Tile to the Subject Matter: where the parties believe that the seller isthe owner of the thing which he purports to sell, but in fact, he has no title to it, thecontractis void on theground ofmistake.

Example: A person took a lease of a fishery which, unknown to either party alreadybelongedto him. Held, theleasewas void[Cooper V. Phibbs.(1861)]

(d) Mistake as to the quality of the Subject-matter: If the subject matter is somethingdifferentfrom whattheparties thoughtit to be,theagreement isvoid.

Example: Table napkins were sold at an auction by a description, "with the crest ofCharlesI and the authentic property of that monarch." In fact napkins were Georgian.Held, the agreement was void as there was a mistake as to the quality of the subject-matter[NicholsonVenn V. Smith Marriott].

(e) Mistake as to the quantity of the subject-matter

Example:Henkel V.Pape (1870)

'P'wroteto 'H'enquiringthe priceofrifles and

Suggested that he might buy as many as 50. On receipt of the information, he telegraphed"Sendthreerifles".Butbecauseofthemistakeofthetelegraphauthoritiesthemessage transmitted was "send the rifles". 'H' despatched 50 rifles. Held, there was no contractbetween the parties. However, 'P' could be held liable to pay for three rifles on the basis ofanimplied contract

(f) Mistake as to the price of subject-matter: Where a contract of lease of a house wasagreed to at a lease of $230 but in written agreement, the figure $130 was inserted bymistake,the contract washeld to bevoid.

But an erroneous opinion as to the value of the subject matter of the agreement is not to bedeemedamistake as to amatterof fact.

Example: ‘A’ buys an article thinking it is worth Rs.10,000 while it is actually worthRs.500only.Theagreementcannot beavoidedonthe ground ofmistake

2. Mistakeastothepossibilityofperformingthecontract:

If boththeparties believethatanagreementiscapableofbeingperformed whenin factthisisnotthecase.Theagreement, insuchacase isvoidon thegroundof impossibility. Impossibilitymaybe

(i) Physical impossibility: Example: A contract for the hire of a room for witnessing thecoronation procession of Edward VII was held to be void because, unknown to thepartiesthe procession had alreadybeencancelled[GriffithV. Braymer(1903)].

(ii) Legal Impossibility: A contract is void if it provides that something share be donewhichcannot, as matterof law, bedone.

Unilateral Mistake: In case of unilateral mistake i.e where only one party to a contract isunder a mistake, the contract, generally speaking is not invalid. Sec. 22 reads, “A contractis not voidable merely because it was caused by one of the parties to it being under amistakeasto a matter of fact.”

Exception:Totheabove rule,therearecertainexceptions.

(a) Where the unilateral mistake is as to the nature of the contract: A contract is voidwhen one of the parties to it does not intend to enter into it, but through the fault ofanother and without any fault of his own, makes a mistake as to the nature of thecontract.*Example: Foster Vs V. Mackinnon (1869)* An old illiterate man was madeto sign a bill of exchange by means of a false representation that it was a guarantee.Held,thecontract was void.

(b) Mistake as to quality of the promise:In ScriuenVsHindley case an auction washeldforthesaleofsomelotsofhemp(qualitynaturalfibre)andsomelotsoftow

(brokeninferior fibre). Mr. B thinking that hemp was being sold, bid for a lot of towfor an amount which was not of propertied to it, and was only fair price for hemp.Held,contract could beavoided.

(c) Mistake as to the identity of the person contracted with: where 'A' intends tocontractwith'B'butbymistakeentersintoacontractwith'C'believinghimtobe'B' the contract is void on the grounds of mistake. *Example: CundyVs Lindsay & Co(1878)*: Mr. 'X' of Blenkarn, by imitating the signature of a reputedfirm calledBlenkiron and Co, induced another firm 'Y' to supply goods to him on credit. Thegoods were then sold to 'X' of Blenkarn. Held, there was no contract between 'X' ofBlenkarn and 'Y' because 'Y' never intended to supply to Blenkarn. Therefore 'X' ofBlenkarn obtained no title to the goods. But if the goods are sold for cash then that is avalidcontract.

Consequences of Mistake: Mistake renders a contract void and as such in case of acontractwhichisyettobeperformedthepartycomplainingofthemistakemayavoidit, i.e. need not perform it. If the contract is executed, the party who received any advantagemust restore it or make compensation for it, assoon as the contract is discovered to bevoid.

Legality of object

Introduction

"No polluted hand shall touch the pure fountains of justice."

Section 23 of the Indian Contract Act, 1872 ("Act"), specifies three issues, for example, consideration for the agreement, the object of the agreement and the agreement in essence. Section 23 makes a restriction on the freedom of an individual in connection to going into agreements and subjects the privileges of such individual to the overriding contemplations of public policy and the other provisions articulated under it. Section 23 additionally discovers its bearing from Section 264.

The word "Object" used in Section 23 indicates and signifies "purpose" and doesn't imply importance in a similar sense as "consideration". Therefore, despite the fact that the consideration of an agreement might be legal and genuine, that won't stop the agreement from being unlawful if the purpose (object) of the agreement is illicit. Section 23 limits the courts since the section isn't guided by the thought or motive, to the object of the exchange or transaction fundamentally and not to the reasons which lead to the equivalent.

Section 23 of The Indian Contract Act states that for a contract to be valid, there must be the legality of object and consideration. The object is the purpose for which the parties enter into a contract. The fulfilment of the object leads to the transfer of the consideration agreed from one party to the other. Let's look into the parameters under the legal object contract law that define what is a lawful object and consideration.

Lawful Object and Lawful Consideration

The legality of the object in contract law stipulates that the consideration and the object of a contract are considered legal except when:

- They are specifically forbidden by law.
- They are fraudulent in nature.
- The nature of the object and the consideration is such that it defeats the purpose of the law.
- They involve injury or harm to a person(s) or property.
- Are considered immoral by the court of law.
- Are against the public policy.

1. Forbidden by the Law

An object and/or a consideration prohibited by law are not considered legal and render a contract void. Unlawful consideration of the object means unlawful acts that are punishable by the law. The acts disallowed by the appropriate authority by means of their rules and regulations are also considered for determining the legality. However, if these rules and regulations are not in tandem with the law, they are not applicable.

Forbidden by law provision renders a contract void but all void contracts may not be illegal.

2. Fraudulent in Nature

The object and the consideration of the contract must not be fraudulent as then, the contract will become void.

Example - A enters into a contract with B where he agrees to pay B if he embezzles money from C. This is considered a fraudulent object and the contract is not valid.

3. Defeats the Purpose of the Law

If the purpose of entering into the contract is to go against any provisions of law, the contract will be deemed void. The contract is void if:

- The object of the contract is to perform an illegal act.
- The object of the contract is explicitly or in an implied manner prohibited by law.
- The completion of the contract is impossible without going against the provisions of the law.

Example - A enters into a contract with B whereby B promises to not pursue legal proceeding against A if A commits a robbery in B's house. This contract is against the provisions of the IPC law.

4. Involves Injury or Harm to Another Person or Property

The object of the contract must not cause any destruction to property or cause injury to another person.

Examples:

- Publishing a book on the life of a person without his consent.
- Destruction of a property.
- Violation of licenses.
- Violation of copyrights.

A enters into a contract with B whereby he agrees to pay a sum of money to B if he

Example - A lends money to B on the condition that B will divorce C, and later get married to A. If B does not divorce C, then A cannot pursue legal proceedings against B to recover the money. The basic premise of this contract is immoral so it will be deemed void.

6. Against the Public Policy

A lawful object in business law means that it should not be against public policy. The purpose of public policy is not to curtail any individual's rights but to maintain and protect the general welfare of the community. Let's see what kind of contracts are considered to be against the public policy:

1. Entering into an agreement with a party that belongs to a country with which India does not have peaceful relations, makes the agreement void.
2. Restraining from prosecution: A contract that prohibits a person from pursuing legal recourse is considered void.
3. Maintenance and Champerty: In a maintenance agreement, a person promises to maintain a lawsuit in which he has no vested interest. Champerty is when a person agrees to assist another party in litigation in return for a portion of the damages or proceeds received.
4. An agreement to indulge in trafficking in public offices.
5. Agreements to create monopolies.
6. An agreement to brokerage marriage as rewards.
7. An agreement to induce judiciary or state officials to act in a corrupt manner and interferes with legal proceedings.

Solved Questions on the Legality of the Object in Business Law

Q1. L lends some money to P to help him buy some goods from X who belongs to a country with which India is at war. Can L recover his money from P?

Ans. Any agreement for the purchase of goods between P and X will be considered void since entering into trade with the enemy is against public policy. Any agreement between L and P will also be void since it is collateral to the main agreement. So L cannot recover his money from P. However, If L did not know the reasons for P borrowing the money, he can enforce the contract for recovering money.

Void Agreement Definition:

A void agreement definition would be an agreement or contrac with no legal value. Legally, a void agreement means the contract or agreement is no longer enforceable. While precise definitions vary by jurisdiction, void agreements are generally categorized as being void from the beginning and were never valid at any point. On the other hand, void contracts are generally defined to have been valid at one time, but are now invalid. However, despite those precise definitions existing, the terms are most often used interchangeably.

A Void Agreement Never Valid

An agreement that was void from the beginning is said to be ab-initio. In order to be valid, the agreement must contain all of the elements listed in the Indian Contract Act of 1872, Section 10. Ab-initio agreements violated the Indian Contract Act from the beginning and are not valid. Examples of an agreement that would never be valid include those that:

- Cannot be executed, such as a street vendor selling the Brooklyn Bridge to a tourist
- Were made without consideration
- Require breaking the law
- Go against current public policy
- Include a party that is a minor, intoxicated, or legally insane at the time of signing

Essentially these agreements have no legal effects and in the eyes of the law they never existed.

A Void Contract Once Valid But No Longer

A void contract is a contract or agreement that ceases to have a legal effect. Unlike an ab-initio, these contracts did at one point contain the elements listed in the Indian Contract Act, and therefore at least initially are considered valid legal agreements binding to both parties. A few ways a contract could become legally void are:

- The contract becomes impossible to fulfill due to external circumstances
- Laws change since the initial agreement, and the agreement now requires breaking the law
- Fulfilling the contract will result in something unlawful
- The contract was contingent on circumstances that cannot come to pass
- One party failed to disclose key information or provided inaccurate information

Technically speaking, a fulfilled contract is also a void contract, as the parties involved are no longer bound by the contract and therefore it has no legal effect.

Examples of Void Agreements

The most straightforward type of void agreement is one that requires breaking the law. A gang of thieves may make an agreement to steal a valuable painting and split the proceeds evenly. But if one party in the agreement does not receive a fair share, he cannot take the others to court for not fulfilling the contract, since the contract is considered legally void.

A common example of a void contract is one in which a performer agrees to a set of shows, but then becomes injured and cannot perform after all. In these circumstances, the contract was valid initially, but is now impossible to fulfill.

Agreements Void Through Uncertainty

Another way agreements can be void is through uncertainty. If an agreement is uncertain in meaning, and cannot be clarified through legal or business proceedings, the agreement is void. Part of what makes a legally binding contract is the obligation being clear and therefore able to be fulfilled. If the language used cannot be interpreted by the parties involved or a third party, the contract has no legal effect.

An example of a void agreement through uncertainty is one that is vaguely worded: "X agrees to purchase fruit from Y." If there is no way to determine which type of fruit was agreed upon or intended, then the agreement is void. However, if party Y in the above agreement is a grapefruit farmer, then there is a clear indication of what type of fruit was intended and X would still be liable to make the purchase.

Void Agreements in the Future

Agreements that do not currently exist but are agreed to potentially exist in the future are also legally void, unless all items in the agreement are actually agreed. As an example: if X agrees to purchase grapefruit from Y at a price to be determined by market value at date C, then the market value at date C can be made certain. However, an agreement for X to purchase some kind of fruit from Y at some point in the future at a price to be determined would both be uncertain and entirely in the future, thus void.

Unlawful Agreements-Law Of Contract

According to the Indian Contract Act, “The consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy.

Unlawful Agreements

According to the Indian Contract Act (Sec. 23), “The consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy.
Let us see the provisions of Sec. 23 which make an agreement unlawful.

1. Forbidden by law: If the object of the agreement or the consideration of the agreement is the doing of an act which is forbidden by law, the agreement is void.

3. If it is of such a nature that, if permitted, it would defeat the provisions of any law: i.e. it would indirectly lead to a violation of the law.

4. If it is fraudulent: Any agreement whose object is to defraud others is void.

5. If it involves or implies injury to the person or property of another

6. If the Court regards it as immoral.
7. If the Court regards it as opposed to public policy: The following agreements have been held to be against public policy
8. Trading with Enemy:

b. Agreements for stifling prosecution: An agreement to suppress criminal charge is void because if a person has committed a crime, public policy requires that he should be prosecuted.

c. Agreements interfering with the Course of Justice: An agreement entered into with the object of exercising improper influence on judges or officers of justice is bad in law as opposed to public policy.

d. Agreements tending to an abuse of legal process: There may be two types of agreements under this head, one is Maintenance and the other is Champerty.

e. Agreement to vary the period of limitation: An agreement that reduces or increases the period of limitation as laid down by the law of limitation is opposed to public policy.

f. Traffic in Public Offices: An agreement whereby an appointment to a public office is procured for monetary consideration is against public policy because it would cause corruption in administration of the State.

g. Agreement creating an interest opposed to duty

h. Agreements restraining personal freedom

i. Agreements opposed to parental rights and duties: Father is supposed to be the guardian of his children and in the absence of the father their mother acquires this right as well as responsibility and this right cannot be bartered away.

j. Marriage Brokerage Agreements: Agreement to pay reward to a person for negotiating marriage is opposed to public policy.

The following agreements are also opposed to public policy.
i. Agreements in restraint of marriage.
ii. Agreements in restraint of trade.
iii. Agreements in restraint of legal proceedings.

PERFORMANCEOFCONTRACTS

What is Performance of Contract?

The term 'Performance of contract' means that both, the promisor, and the promisee have fulfilled their respective obligations, which the contract placed upon them. For instance, *A* visits a stationery shop to buy a calculator. The shopkeeper delivers the calculator and *A* pays the price. The contract is said to have been discharged by mutual performance.

Section 27 of Indian contract Act says that

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or any other law.

Promises bind the representatives of the promisor in case of the death of the latter before performance, unless a contrary intention appears in the contract.

Thus, it is the primary duty of each contracting party to either perform or offer to perform its promise. For performance to be effective, the courts expect it to be exact and complete, i.e., the same must match the contractual obligations. However, where under the provisions of the Contract Act or any other law, the performance can be dispensed with or excused, a party is absolved from such a responsibility.

Example

A promises to deliver goods to *B* on a certain day on payment of Rs 1,000. *A* expires before the contracted date. *A*'s representatives are bound to deliver the goods to *B*, and *B* is bound to pay Rs 1,000 to *A*'s representatives.

Types of Performance
Performance, as an action of the performing may be actual or attempted.

Actual Performance
When a promisor to a contract has fulfilled his obligation in accordance with the terms of the contract, the promise is said to have been actually performed. Actual performance gives a discharge to the contract and the liability of the promisor ceases to exist. For example, A agrees to deliver10 bags of cement at B's factory and B promises to pay the price on delivery. A delivers the cement on the due date and B makes the payment. This is actual performance.

Actual performance can further be subdivided into substantial performance, and partial Performance

Substantial Performance
This is where the work agreed upon is almost finished. The court then orders that the money must be paid, but deducts the amount needed to correct minor existing defect. Substantial performance is applicable only if the contract is not an entire contract and is severable. The rationale behind creating the doctrine of substantial performance is to avoid the possibility of one party evading his liabilities by claiming that the contract has not been completely performed. However, what is deemed to be substantial performance is a question of fact to be decided in both the case. It will largely depend on what remains undone and its value in comparison to the contract as a whole.

Partial Performance
This is where one of the parties has performed the contract, but not completely, and the other side has shown willingness to accept the part performed. Partial performance may occur where there is shortfall on delivery of goods or where a service is not fully carried out.

There is a thin line of difference between substantial and partial performance. The two following points would help in distinguishing the two types of performance.

Partial performance must be accepted by the other party. In other words, the party who is at the receiving end of the partial performance has a genuine choice whether to accept or reject. Substantial performance, on the other hand, is legally enforceable against the other party.
Payment is made on a different basis from that for substantial performance. It is made on quantum *meruit*, which literally means as much as is deserved. So, for example, if half of the work has been completed, half of the negotiated money would be payable. In case of substantial performance, the party that has performed can recover the amount appropriate to what has been done under the contract, provided that the contract is not an entire contract. The price is thus, often payable in such circumstances, and the sum deducted represents the cost of repairing defective workmanship.
Attempted Performance
When the performance has become due, it is sometimes sufficient if the promisor offers to perform his obligation under the contract. This offer is known as attempted performance or more commonly as tender. Thus, tender is an offer of performance, which of course, complies with the terms of the contract. If goods are tendered by the seller but refused by the buyer, the seller is discharged from further liability, given that the goods are in accordance with the contract as to quantity and quality, and he may sue the buyer for.breach of contract if he so desires. The rationale being that when a person offers to perform, he is ready, willing and capable to perform. Accordingly, a tender of performance may operate as a substitute for actual performance, and can effect a complete discharge.

In this regard, Section 38 of Indian Contract Act says:
'Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. For example, *A* contracts to deliver to *B*, 100 tons of basmati rice at his warehouse, on 6 December 2015. *A* takes the goods to *B*'s place on the due date during business hours, but *B*, without assigning any good reason, refuses to take the delivery. Here, *A* has performed what he was required to perform under the contract. It is a case of attempted performance and *A* is not responsible for non-performance of *B*, nor does he thereby lose his rights under the contract.'

DISCHARAGEOFCONTRACT

When the obligation created by a contract comes to an end, the contract is said to bedischargedor terminated.

Acontractmaybedischarged inanyof thefollowing ways:

1. By performance of the promise or tender: The common mode of discharge of acontract is by performance i.e. where the parties have done whatever was expected underthe contract, the contract comes to an end. Thus where 'A' contracts to sell his car to 'B'for Rs.75, 000 as soon as the car is delivered to 'B'. As soon as he delivered the car hereceivedthe pricefrom'B'. Thecontract comesto an end byperformance.

Theofferofperformanceortenderhasthesameeffectasperformance.Ifapromisor tenders performance of his promise but the other party refuses to accept, thepromisorstands discharged of his obligations.

2. By Mutual Consent cancelling the agreement or substituting a new agreement inplace of the old: By agreement of all parties, a contract may be cancelled or its termsaltered or a new agreement substituted for it. Whenever any of these things happen, the oldcontractis terminated.

"If the parties to a contract agree to substitute a new contract for it, or to rescind oralterit, theoriginal contract need not beperformed"(Sec. 62)

Termination bymutual agreement mayoccur inan oneof thefollowingways:

a. Novation: Novation occurs when a new contract is substituted for an existing contract,either between the same parties or between different parties. Novation may occur by twoways, i.e., change of parties and a substitution of a new contract in place of the existingone.

Example

1) ‘A’ is indebted to ‘B’ and ‘B’ is indebted to ‘C’. by mutual agreement B’sdebt to ‘C’ and A’s debt to ‘B’ are cancelled and ‘C’ accepts ‘A’ as hisdebtor. It is Novation.
2) ‘P’ lent ‘D’ Rs.20,000. afterwards the parties agreed that ‘D’ will repay to‘P’ Rs.10,000 and certain grams of gold at a particular date. The formeragreementis replaced bythe latter. Thereis Novation.

b. Recission: Recission means cancellation of all or some of the terms of the contract.Where parties mutually decide to cancel the terms of the contract. The obligations of thepartiesthereunder terminates.

c.Alteration: If the parties mutually agree to change certain terms of the contract, it hasthe effect of terminating the original contract.There is, however, nochange in theparties.

d. Remission Sec. 63 deals with remission: Remission is the acceptance of a lesser sumthan what was contracted for or a lesser fulfilment of the promise made. Example: ‘A’owes ‘B’ Rs.5000. ‘A’ pays to ‘B’ who accepts in satisfaction of the whole debt Rs.2000paidatthetimeandplaceatwhichtheRs.5000werepayable.Thewholedebtisdischarged.

e. Waiver: Waiver means relinquishment or abandonment of a right. Where a party waiveshis right under the contract, the other party is released of his obligations. Example: ‘A’promises to paint a picture for ‘B’. ‘B’ afterwards forbids him to do so. ‘A’ is no longerboundto perform the promise.

f. Merger: A contract is said to have been discharged by way of ‘Merger’ where aninferior right possessed by a person coincides with a superior right of the same person.Example: A man, who is holding certain property under a lease, buys it. His rights as alesseevanish.

3. By subsequent impossibility (Sec. 56):Impossibility in a contract may either beinherentinthetransactionoritmayhappenlaterbythechangeofcertaincircumstances

material to the contract. If it happens at a later stage we call it subsequent impossibility. InEngland this is referred to as ‘Doctrine of Frustration’. A contract is deemed to havebecomeimpossibleofperformanceand thusvoidunder thefollowingcircumstances:

i. Destructionofsubject-matterofthecontract.
ii. Bydeath or disablementof theparties.
iii. Subsequent illegality (e.g.) ‘A’ contracts to supply ‘B’ 100 bottles of wine.Before the contract is executed, dealings in all sorts of liquor are declaredprohibitedbythe Government; thecontract becomesvoid.
iv. Declarationofwar.
v. Non-existence or Non-occurrence of particular state of things. When certainthings necessary for performance cease to exist, the contract becomes void onthegrounds of impossibility.

Example:‘A’and‘B’contracttomarryeachother.Beforethemarriage,‘A’goesmad.Thecontractgets discharged.

Exceptions:

a) difficultyofperformance doesnotamounttoimpossibility.
b) Commercialimpossibilitydoesnotrenderacontract void.
c) Strikes,lock-outsandcivildisturbancesdonotterminatecontractsunlessprovidedforin thecontract.
d) Failureof oneof theobjects doesnot terminatethecontract.
e) Non-performanceofthirdpartydoesnotexoneratethepromisorfromhisliability.

4. ByOperation ofLaw*:Dischargeunder this headmaytakeplaceasfollows*:

a) Thedeathofthepromisorresultsinterminationofthecontractincasesinvolvingpersonalskill and ability.
b) TheinsolvencyActprovidesfordischargeofcontractswheneverthepromisorbecomesinsolvent.
c) Bymerger.
d) Bymaterialalteration without seekingtheconsentof theotherparty

BYBREACH OFCONTRACT

Acontractterminatesbybreachofcontract.Breachofcontractmayariseintwo ways:

a) AnticipatoryBreach
b) ActualBreach.

Anticipatory breach of contract occurs when a party repudiates it before the timefixed for performance has happened or when a party by his own act disables himself fromperforming the contract. Example: 'A' Contracts to marry 'B'. Before the agreed date ofmarriagehemarries'C'.'B' is entitledto sue'A'forbreach ofpromise.

Consequences of Anticipatory Breach: In case of anticipatory breach, the promisee mayeither;

a) rescind the contract and treat the contract as at an end, and at once sue for damages,or
b) he may elect not to rescind but to treat the contract operative and wait for the time ofperformanceandthenholdtheotherpartyliablefortheconsequencesofnon-performance.

Example:

'A' agreed to load a cargo of wheat on 'B's ship at Odessa by a particular date butwhen the ship arrived 'A' refused to load the cargo. 'B' did not accept the refusal andcontinued to demand the cargo. Before the last date of the loading had expired the Crimeanwarbrokeout,renderingtheperformanceofcontractillegal.Held,thecontractwasdischargedand 'B' cannot sue fordamages. [AveryV. Bowen]

b) ActualBreachofContract:Actualbreachofcontractoccurswhenduringtheperformance of the contract or at the time when the performance of the contract is due; oneparty either fails or refuses to perform his obligations under the contract. The refusal ofperformance may be express or implied. Example: 'D' agrees to deliver to 'B' 50 kilos ofGheeon 1st June. Hefails to do so on 1stJune.

CortV.AmbergateRailwayCo.(1851)

'A' contracted with a Railway Co., to supply it certain quantity of railway chairs ata certain price. The delivery was to be made ininstalments. After four instalments hadbeen supplied, the railway company asked 'A' to deliver no more. Held, A could sue forbreachof contract.

REMEDIESFORBREACHOFCONTRACT

When a breach of contract occurs, the aggrieved party or the injured party becomesentitledto thefollowingremedies or reliefs:

1. Rescission of the Contract: When a breach of contract is committed by one party, theaggrieved party is relieved from all his obligations under the contract.Example: 'A'promises 'B' tosupply10bagsof sugaronacertaindate and'B' promisestopaytheprice

on receipt of the goods. ‘A’ does not deliver the goods on the appointed day. ‘B’ needs notpaytheprice.

PartyRightfullyRescindingtheContractEntitledtoCompensation(Sec.75):Aperson who rightfully rescinds the contract is entitled to compensation for any damagewhichhehas sustained through thenon-fulfilmentof thecontract.

2. DamagesfortheLossSuffered: Damages,generallyspeaking,areoffourkinds.

i. Ordinarydamages:Ordinarydamagesarethosewhichnaturallyaroseintheusualcourseofthingsfromsuchbreach.Themeasureofordinarydamages is the difference between the contract price and the market price onthe date of breach. Example: ‘A’ contracts to deliver 100 bags of wheat atRs.800 a bag on a future date. On the due date he refuses to deliver; the priceon that day is Rs.900 per bag. The measure of damages is the differencebetween the market price on the date of breach and the contract price i.eRs.10,000.

The ordinary damages shall be available for any loss or damage which arises naturally inthe usual course of things from the breach and as such compensation cannot be claimed foranyindirect loss byreason of breach.

Example: A railway passenger’s wife caught cold and fell ill due to her being asked to getdown at a place other than the railway station. In a suit by the plaintiff or affected personagainst the railway company, held, that damages for the personal inconvenience of theplaintiff alone could be granted, but not for the sickness of the plaintiff’s wife, because itwasaveryindirect consequence.

ii. Special Damages: Special damages are claimed in case of loss of profit etc.when there are certain special or extraordinary circumstances present andtheir existence is communicated to the promisor, the non-performance of thepromise entitles the promisee to not only the ordinary damages but alsodamagesthat mayresult from it.

Example: ‘A’ a builder, contracts to erect and finish a house by the 1st of January so that‘B’maygivepossessionofitatthattimeto‘C’.towhom‘B’hascontractedtoletit.‘A’is informed of the contract between ‘B’ and ‘C’. ‘A’ builds the house so badly that, beforethe 1st January, it falls down and has too be rebuilt by ‘B’ who in consequence loses rentwhichhewastohavereceivedfrom‘C’,andisobligedtomakecompensationto‘C’for

thebreachofhiscontract.'A'mustmakecompensationto'B'forthecostofrebuildingthehouse, fortherent lost, and for thecompensation madeto 'C'.

NoticeoftheCommunicationoftheSpecialCircumstancesisaPre-requisitetotheClaimforSpecial Damages.

Example:HadleyV.Baxendale(1854)

'X's Mill was stopped due to the breakdown of a shaft. He delivered theshaft to'Y' a common carrier, to be taken toa manufacturer tocopy itand make a new one. 'X'did not make known to 'Y' that delay would result in a loss of profits. By some negligenceon the part of 'Y' the delivery of the shaft was delayed in transit beyond a reasonable time.As a result the mill remained idle for a longer time than otherwise would have been, hadtheshaft been delivered in time.

Held: 'Y' was not liable for loss of profits during the period of delay as the circumstancescommunicated to 'Y' did not show that a delay in the delivery of shaft would entail loss ofprofitto themill.

c) Vindictive(or)PunitiveorExemplaryDamages:Thesedamagesareawarded topunishthedefaulterthantoreallycompensatethe plaintiffandhavenoplaceinthelawofcontracts. But in thefollowingcases vindictivedamagesareawarded.

i) Breachofacontract tomarryand

ii) Wrongfuldishonour ofachequebyabanker.

d) Nominal Damages: This kind of damages is awarded when the injured party does notsuffer any damages. Yet this damage consisting of a very small amount, say, a rupee ortwo,is awardedforviolation ofalegal right.

3. Specific Performance: Where damages are not an adequate remedy, the court maydirect the party in breach to carry out his promise according to the terms of the contract.This is called 'Specific performance' of the contract some of the instances where court candirect specific performance are: a contract for the sale of a particular house or some rarearticleoranotherthingforwhichmonetary compensationisnotenoughbecausetheinjuredpartywill not beable to get an exact substitute in themarket.

Specificperformancewillnot begrantedwhere:

a. Monetarycompensation is anadequaterelief.

b. Thecontractis ofpersonal nature,e.g.acontract tomarry

c. Whereitisnotpossibleforthecourttosupervisetheperformanceofthecontract,e.g.ab uilding contract.

d. Thecontractismadebyacompanybeyonditsobjectiveaslaiddowninits Memorandu mof Association.

4. Injunction: Injunction means an order of the court. Where a party is in breach of anegative term of a contract (i.e. where he does something which he promised not to do) thecourtmay, byissuinganorder, prohibit him fromdoing.

Example:(i)Metropolitan ElectricSupplyCompanyV.Ginder(1901)

G agreed to buy the whole of the electricity required for his house from a certaincompany. He was therefore, restrained by an injunction from buying electricity from anyotherperson.

(ii) N, a film star, agreed to act exclusively for a particular producer, for one year.Duringtheyearshecontractedtoactforsomeotherproducers.Held,shecouldberestrained byan injunction.

5. Quantum Meruit:The phrase 'Quantum Meruit' means as much as merited' or 'asmuchasearned'.Thegeneralruleoflawisthatunlessapersonhasperformedhisobligations in full, he cannot claim performance from the other. But in certain cases, whena person has done some work under a contract, and the other party repudiated the contract,or some event happened which makes the further performance of the contract impossible,then the party who has performed the work can claim remuneration for the work he hasalreadydone.

Example: 'A' contracts with 'B' to deliver to him 500 kilos of butter before 1st May. 'A'delivers 200 kilos only before that date and none after. 'B' retains the 200 kilos after the 1stMay.'B' is bound to pay'A' for them

UNITIV
Company

Introduction

The origin of Indian company law can be traced back to the year 1850, when thefirst Indian companies Act providing for the registration of joint stock companies waspassed in the year 1850, on the lines of English Companies Act of 1844. During 1857another Act was passed on the lines of the English Companies Act of 1856. The principleof limited liability was first introduced in England by the Limited Liability Act of 1855under whichacompany wasentitledtoobtaincertificate of registrationwithlimitedliability. The English Companies Act, 1856 replaced both the Acts of 1844 and 1855. Theconceptof limited liabilityis not alien toIndia.

The growth of trading, commercial and later industrial activities in India in the laterhalf of the nineteenth century led to several changes in company legislation. ThefirstComprehensiveActprovidingfortheincorporation,regulationandwindingupofcompanies was passed in India in 1866, in the lines of English Companies Act, 1862. ThisAct was recastin 1882 to bring the Indian Company Law in conformity with the variousamendingActswerepassedin1887,1891,1895and1910,tillwehadaconsolidatingAct – the Indian Companies Act 1913 – which brought our law almost at par with the EnglishCompanies for the first time. Thereafter, some minor amendments to the Act were carriedout in 1914, 1915, 1920, 1926, 1930 and 1932. Extensive amendments were made by the'Indian Companies (Amendment) Act of 1936' which not only brought our law at par withthe English Companies Act of 1929, but which went a step further. This amending Act, forthe first time, introduced various provisions relating to the powers and limitations ofManaging Agentsand devoted a separate chapter for Banking Companies.Thischapterwas later taken out and incorporated in a separate Banking Companies Act. From 1936 to1946, the Actwas amendedseveraltimeswithminor changes arisingoutof specificneeds.

After the independence, some formal amendments were made by the Adaptation of lawsorder, 1950 which came into force on the26th January, 1950, the date on which theconstitutionalstatusofIndiawas changedintoSovereign DemocraticRepublic.

The growth of industrial activity during and after the second world war broughtabout a spurt in the formation of companies in India. Many changes had taken place in theorganization and management of joint stock companies. Need was felt for a thoroughrevisionoftheexistingActandenactmentofaComprehensiveCompaniesActandprovi de for the changed situation. In the meantime, the English Companies Act, 1948 waspassedprovidingfar-reachingchangesrecommendedbythecohenCommittee.Thegovernment of Indiaappointed on 25.10.1950, a committee of 12 members representingvariousinterestsunder thechairmanshipofMr.H.C.Bhalha.TheBhalhacommitteereported in 1952, made a thorough enquiry into the development of joint stock companiesin the country, the abuses of the Managing agency system, the loopholes in the existinglegislation and the social and economic requirements of the fast changing society after theindependence. A bill based mainly on the recommendations of the Bhalha Committee wasintroduced in Parliament in 1953 and after consideration by a joint select committee ofparliament, was passed in 1955.the Companies Act, 1956 came into force with effect fromApril1, 1956.

THECOMPANIESACT, 1956

The Companies Act, 1956 is a consolidating and amending act. It contains 658sections, 12 schedules and numerous forms. While Schedule XIII has been later added bytheAmendmentActof1974,ScheduleXIVhasbeeninsertedbytheCompanies(Amendment) Act, 1988.

This Act is based largely on the report of the company law committee, 1952. The Actapplies to the whole of India, except Jammu and Kashmir where it applies only in respectof banking, insurance and financial corporations. As regards Nagaland, it applies subject tomodifications, if any, notified by the Central Government. The Act was amended first in1960 and later in 1963, 1965 and 1969. The Amendment Act of 1969 brought a far-reaching change in that the managing agency system and the institution of Secretaries andtreasurers was abolished altogether with effect from April 3, 1970. The 1974 amendmentbroughtaboutfar-reachingchangesinthe1956Acttoplugtheloopholesleftover,togive

greaterpowertotheGovernmenttoregulateandcontrolcompanyactivitiesinpublicinterest.Since then theAct hasbeenfurtheramended in1977.19851988,2000 and2006.

Themainobjectivesunderlyingthecompaniesact,1956maybebrieflystatedas under:

(1) Toprotecttheinterestsofalargenumberofshareholdersasthereexistsseparationofownership from management in a joint stockcompany.
(2) Tosafeguardtheinterestsofcreditorsinviewofthelimitedliabilityfeatureofajointstockcomp any.
(3) Tohelp thegrowth ofcompanieson healthybusiness lines.
(4) To help the attainment of the ultimate ends of the social and economic policy of theGovernment,namely,establishingasocialisticpattern ofsociety.
(5) To equip the Government with necessary powers to intervene directly in the affairs ofcompanyinthepublicinterestsothattheinterestsofconsumers.Laborersandsuppliersof rawmaterials maybeprotected fromunscrupulous management.

MachineryfortheAdministrationoftheCompaniesAct,1956

TheCentralGovernmentischargedwiththeoverallresponsibilityforadministration and enforcement of the Companies Act. It acts through the Department ofCompany Affairs. Till recently the task of looking after the Department of CompanyAffairs was entrusted to the Ministry of Law, Justice and Company Affairs. On reshufflingof the Ministry in 1985, the Department of Company Affairs now forms a part of theMinistryofIndustryandCompanyAffairs.

THECOMPANY

Literally the word 'Company' means a group of business, charity, sports, researchetc. a company, in common parlance, means a group of persons associated together for theattainment of a common end, social or economic. The dictionary meaning of the word,"Company", includes a number of persons united for performing or carrying on anythingjointly. In this sense the word is applicable to ordinary partnerships. However, when theword is used in connection with 'Company Law' it has a somewhat different meaning. Thewordthenreferstoanassociationofpersonswhohaveformedthemselvesintoa

corporation or a body corporate. Quite often the word, “company” is used as part ofpartnershipfirmname,butthatdoesnotmakethefirmacompanyinthesenseinwhichtheword is used in CompanyLaw.

In the ordinary sense, ‘Company’ means a voluntary association of persons forsome common purpose. Such an association of persons may be registered or incorporatedor it may be unincorporated. If it is incorporated under the Companies Act, it acquires alegalpersonalityof its own distinct from theindividuals comprisingthe association.

Afterincorporationorregistration,acompanybecomesa‘bodycorporate’.Corporation or body corporate means an association of persons formed and authorised bylaw to act as a single person. One of the most important conceptions of jurisprudence is thecorporation,alegallyrecognizedperson.Consistingofagroupofpersonsactingincombination . The type of corporation or company may be a corporation aggregate asdistinguishedfrom a corporationsole.

A corporation sole is comprised of one person, who is the holder for the time beingof a perpetual office, or such an individual has a dual personality, one corporate and theother human or natural. The rights and liabilities which attach to him in his corporatecapacity are entirely distinct from those which attach to him in his capacity of a naturalperson.Acorporationaggregateconsistsofanumberofindividualswhobecomecontempo raneously associated in a group, so that in the eyes of law they enjoy the status ofasingle person,e.g.,alimited company,municipality, municipalcorporation.

Company–Definition

Section3(1)(i)oftheCompaniesActdefinesacompanyas,“acompanyformedand registered under this Act or an existing company”. As per Sec 3(1)(ii) an existingcompany means a company formed and registered under any of the former CompaniesActs.

Section2(7)oftheIndianCompaniesAct,1956definesabodycorporatetoincludeacompa nyincorporatedoutsideIndia,butdoesnotinclude(a)acorporationsole

(b) aco-operativesocietyregisteredunderanylawrelatingtoco-operativesocietiesand

(c) anyotherbodycorporate(notbeginacompanyasdefinedinthisAct)whichtheCentralGovern ment may. Bynotification, specifyinthis behalf.

In the words of Linsly, L.J. a company is defined as, “an association of manypersons who contribute money or money’sworth to a common stock and employ it insome common trade or business and who share the profit or loss arising there from. Thecommon stock so contributed is denoted in money and is the capital of the company. Thepersons who contribute it or to whom it belongs, are members. The proportion of capital towhich each member is entitled is his share. Shares are always transferable although therightto transfer themisoften moreorlessrestricted”.

According to Prof. Haney “a company is an artificial person created by law, havingseparateentity,witha perpetualsuccession and a common seal”.

It is thus quite obvious from the aforesaid definitions that a company comes intoexistence only when it is registered under the Act , An unregistered company has no suchseparate legalexistence. A company which is created by law, will be dissolved only bylaw.

CharacteristicfeaturesofACompany

A careful scrutiny of the aforesaid definitions would reveal the following essentialcharacteristicsofacompany:

1. *Incorporated Association:* A company must necessarily be incorporated and registeredunder the companies Act. Registration creates a joint stock company and it is compulsoryfor all associations or partnerships, having a membership of more than 10 in banking andmore than 20 inany other trading activity,formed forcarrying on a business with theobjectof earnings profits.

2. *Corporate Personality:* A company is in law different from its members. It has anindependent corporate existence. It has a legal personality of its won. It can make contractsopen a bank account, can sue and be sued by others: it can own property in its own name.Unlike a partnership firm, which has no existence apart from its member, a company is ajuristicperson independent of its members.

Thelawhasrecognizedthatevenifapersonholdsvirtuallyalltheshares,therightsandobligationsofthecompanyshallbedifferentfromitsmembers.Thecompany’s

money and property belong to the company and not to the shareholders. The member'spersonal property cannot be held liable to pay the creditors of the company. In S*olomon* V.*Solomon &Co.Ltd*., it was held that company is a different person altogether forms itsmembers. It is this feature of corporate personality that distinguishes it from other forms ofbusinessorganizations.

3. *Perpetual Succession:* Section 34(2) of the Act states that an incorporated company hasperpetual succession. The life of a company is not related to the life of its members. Lawcreates the company and the law alone can dissolve it. The existence of a company is notaffected by death, insolvency, retirement or transfer of shares of members. Members anycome and members may go, the company continues until it is dissolved. Gower, L.C.B inhis book has givenan interesting example.He says"During the war all the members ofone private company, while in general meeting, were killed by a hydrogen bomb. But thecompanysurvived, not evenahydrogen bomb couldhavedestroyed it."

4. *Limited Liability:* It is the most important advantage of a corporate form of businessorganization.Itmeansthattheliabilityofamembershallbelimitedtothenominalvalueof the shares held by him. Once he has paid the full amount on the shares held by him, hecannot be called upon to bear the loss from his personal property. In the case of a companylimited by guarantee, the liability of members is limited up to the amount guaranteed by amember. In case of partnership the liability of members is unlimited. It may, however, benoted that the benefit of limited liability accrues only to members and not to the companyassuch. Acompany, infact,incurs unlimited liability.

5. *Transferability of Shares:* The shares of a joint stock company are freely transferableexcept in the case f a private company. A shareholder can transfer his shares to any personwithout the consent of other members. A company cannot impose absolute restrictions onthe rights of members to transfer their shares. However, the articles shall lay down theprocedure of transfer of shares and it may also contain bonafide and reasonable restrictionsonthe rights of membersto transfer theirshares.

6. *SeparateProperty:*Becauseofitscorporatepersonality,acompanycanownandtransferprope rty initsownname.Althoughtheshareholdershavecontributedtothecapitalofthecompany,they donotbecomethepartownersofitsproperty.Propertyofthe

company should not be treated as members' property or vice versa. The property of thecompanyshouldbeusedforthecompany'sbusinessandnotforthepersonalbenefitofany shareholders. In *Gramaphone& Typewriter Co. Ltd.,* V. *Stanley*, it was held that theproperty of the company is not the property of the shareholders; it is the property of thecompany. Also in *Bacha F. Guzdar V. The commissioner of Income Tax Bombay and inperumalV.JohnDeauin*thecourtsheldthat"nomembercanclaimhimselftobetheowneroftheco mpany'spropertyduringitsexistenceor onitswindingup."

7. *Capacity to Sue:* A company being a juristic person, it can sue inn its own name and besued by others. In *Abdul Haq V. Das Mal*, an employee was not paid his salary for severalmonths. He filed a suit against the directors of the company for the recovery of the amountof salary due to him. It was held that he will not succeed because the remedy lies againstthecompanyand not against the directors ormembers ofthe company.

Advantagesof incorporation

1. *Perpetual succession: A* company is a legal person having perpetual succession(Section 34). The death or insolvency of individual members does not in any wayaffectits existenceor continuity.
2. *Limited liability:* In a limited company the liability of the members is limited. Nomember is bound to contribute anything more than the nominal value of the sharesheld byhim.

3. *Transferable shares:* The shares in a company as per Section 82 of the Act, are amovablepropertytransferableinthemannerprovidedbytheArticlesofthecompany, shares of public company can be listed on stock exchanges which makesthe selling or purchasing of shares extremely easy. This encourages investment offundsin shares.

4. *Publicparticipationingrowth:*Thereisnoupperlimitonthenumberofshareholders in a company. Thus by making large number of shareholders, thecompany can grow to the size of a giant as in the case of, say Hindustan Lever Ltd.Andcan contributealot tothecountry'sgrowth.

5. *Funds can be arranged from public:* Funds can also be arranged from public byissueof debentures or bywayof fixed deposits byapubliccompany.

6. *Capacity to sue:* Being a legal person a company can sue and be sued in its name.Thedirectorsor shareholderscannot besued fortheduesagainst a company.

7. *Flexibility and autonomy:* A company has an autonomy and independence to formitsownpolicies.Thisformoforganizationdislocatestheownershipfromthecontrolo fbusinessandthushelpspromoteprofessionalmanagementandefficiency.

8. *Separate property:* A company as a legal entity is capable of owning its funds andother assets. Even a member holding majority shares or a managing director of acompany is liable for criminal misappropriation of the funds of the company or itsproperty.

9. *Preference by creditors:* Persons who want to deal; with the company can have fullinformationaboutitsset-up,directors,shareholders,workingresultsetc.byinspecting the file of the concerned company in the office of the Registrar ofCompanies by paying a nominal fee of Rs. 10. Thus a company is preferred over afirm in this regard. Even banks and financial institutions prefer a company whilegivingcredit.

CorporateVeil

A company has a separate legal personality quite distinct from its members. Thefamous Solomon case well established the existence of the ‘veil of corporate personality’throughwhichtheidentity ofthememberscannotbeperceived.However,thereareexceptions to the fundamental principle of separate corporate personality where the veil isLiftedorPiercedandtheidentityofthemembersisrevealed.Thus,wherethelawdisregards the corporate entity and pays regard instead to the individual members behindthe legal façade. It is known as lifting the veil of corporate personality. The decisions onwhich the lawwill lift the corporate veilmaybebroadlystudyunder thefollowingheads.

A. UnderJudicialinterpretation
B. UnderstatutoryProvisions

A. UnderJudicialInterpretation

(1) For determining the character/status of a company: When it is suspected that thecompany isownedorcontrolledby enemiesofthecountry.Thecourtsmay liftthecorporate veil and examine the character of persons in the real control of the company[*DaimlerCo. Ltd., Vs.Continental Tyre&RubberCo. Ltd*.].

(2) For the protection of revenue: when a company is used as a means to evade tax, thecourts may disregard the corporate veil. In Commissioner of Income tax Vs Sri MeenakshiMills, Madurai, it has been held that the court is empowered to lift the corporate veil if acompanyis used as ameans to circumvent the obligations.

(3) To prevent fraud/improper conduct: The court may also lift the corporate veil of acompany where it appears that the company was formed only for some fraudulent purposeto defraud creditors or to avoid legal obligations [*Tata Engg. & Locomotive Co. Ltd., Vs.Stateof Bihaj*].

(4) Company acting as agent of the shareholders: Where a company is acting as the agentof the shareholders under an express or implied agreement. The corporate entity of thecompany will be disregardedand shareholderswill be held liablefor the acts of thecompany.[Smith,Store&KnightLtd.,Vs BirminghamCorporation].

*(5) Where the doctrine conflicts with public policy:*where the corporate veil conflictswith public policy, the court lifts the veil for protecting the public policy. [*Connurs Bros.Vs. Coonors*].

B. UnderStatutory Provisions

The Companies Act, 1956 itself has provided for certain cases making the members ordirectors personallyliable.

(1) Reduction in membership [Sec. 45]: If a company carries on business for more than 6months after the number of members has been reduced below 7 in the case of a publiccompany and 2 in the case of private company, every person who was a member duringthat time and knew of this fact. Shall be held severally liable for the debts of the companycontracted after 6 months.

(2)Misdescription of the company: If any officer of a company or any other person acts onits behalf and enters into a contract or signs a negotiable instrument without fully writingthe name ofthe company.Then such officer orperson shallbe personally liable. [Sec.147].

(3) Failure to refund application money [Sec. 69]: If the application money of thoseapplicantstowhomnoshareshavebeenallottedisnotrepaidwithin130daysofthedateof issue of the prospectus, then the directors shall be jointly and severally liable to repaythatmoneywith interest @ 15% p.a. aspertheguidelines issued bySEBI.

(4) Fraudulent trading [Sec. 542]: Where it appears that in the course of winding up of acompany that it had carried on business with the intent to defraud the creditors, the courtmay declare that persons who were knowledgeable parties to such fraud will be personallyliablefor thedebts of thecompany.

(5) Ultra vires acts: Directors of a company shall be personally liable for all such actswhich they have done on behalf of thecompany.If they are ultra vires the company orultravires the directorsand the companydoes notratifytheiracts.

CLASSIFICATIONOFCOMPANIES

Jointstockcompaniesmay beofvariouskindsofthemostcommontypeoscompanylimitedbyshares.Onthebasisofincorporation,therearethreetypesofcompanies:

(i) *CharteredCompanies*
(ii) *Statutory Companies*
(iii) *RegisteredCompanies*

(1) CharteredCompanies

A chartered company is one which is incorporated under a special charter grantedby the King or Queen of England. The East India Company and the Bank of England areexamples of charteredcompanies incorporated in England. The powers and nature ofbusiness of chartered company are defined by the charter which incorporated it. Afterindependencesuch companies find no placeinIndia.

(2) StatutoryCompanies

ThesecompaniesareincorporatedbyaspecialActofLegislature(i.e.,bytheActof

Parliament or State Legislature). Reserve Bank of India, Life Insurance Corporation ofIndia, Until Trust of India, Food Corporation of India, MMTC are examples of suchcompanies.Thespecialenactmentcontainsitsconstitution,powersandscopeofitsactivities. Such companies do not have any Memorandum or Articles of Association. TheyderivetheirpowersfromtheActswhichconstitutethem,changeinisstructureorpowersis possible only by a legislative amendment. Such companies are generally formed to carryon the works of some special public importance. The main objective of such companies istoservepublicinterest.

(3) RegisteredCompanies

Companies registered under the Indian Companies Act, 1956 or under any of theprevious Companies Acts are called ‘registered companies’. A registered company comesintoexistencewhenitisregisteredundertheCompaniesActandacertificateofincorporation is issued by the Registrar of Companies. Such companies derive their powersfromtheCompaniesActandfromtheMemorandumofAssociation.Thesearethecompaniescommonlyfoundin India.Aregisteredcompanymayeitherbeaprivatecompanyor apubliccompany.

Thesecompaniesmaybe:

(a) Companieslimitedbyshares;

(b) Companieslimited byguarantee; or

(c) Unlimitedcompanies.

(a) *Companies limited by shares:* Where the liability of the members of a company islimitedbytheMemorandumtotheamount,ifany,unpaidontheshares,suchacompanyis known as a company limited by shares [Sec. 12(2) (a)]. If the shares are fully paid, thenthe liability of the member is nil. On the other hand, in case of partly paid-up shares, hisliability will extend to the amount unpaid on shares held but him. The liability of themembers to pay the unpaid amount can be enforced during the existence of the companyfoundinIndia.

(b) *Companies limited by guarantee:* Where the liability of the members of a company islimited by the Memorandum to a fixed amount which the members undertake to contributeto the assets of the company in case of its winding up, the company is called a companylimitedbyguarantee[Sec. 12(2)(b)].

Suchcompaniesaregenerallynon–tradingcompanies,andtheyarenotformedfor the purpose of earning profits, rather they are formed for the promotion of art, science,sports, culture etc. Such companies may be registered with or without a share capital. TheArticles of such a company must state the number of members with the company is to beregistered[Sec. 27(2).]

(c) *Unlimited companies:* A company not having any limit on the liability of its membersis termed as an unlimited company [Sec. 12(2) (c)]. The members are personally liable forthe debts of the company. It should, however, be noted that because of separate legal entityof the company. The creditors of an unlimited company cannot sue the members directly.The creditors will have to ask the courtfor the winding up of the company and then themembers have to contribute their property and then theLiquidator shall use the funds inthe discharge of the debts of the company. Such companies may or may not have sharecapital.

The Articles of an unlimited company must state the number of members withwhichthecompanyistoberegisteredandifthecompanyhasasharecapital,theamountof share capital with which the company is to be registered [Sec. 27(1)]. Theunlimitedcompaniesmayalso beeither 'private' orpublic'companies.

Sec. 32 (1) (a) says that a company registered as unlimited may register under thisAct as a limited company. However, a special resolution must be passed to this effect,. There-registrationshallnotaffectanydebts,liabilities,obligationsorcontractsofthecompanybeforeorat thetime ofre-registration [Sec. 32(3)].

SuchCompaniesarevery few.Besidestheabove,thecompaniesmay alsobeclassifiedas:

(a) AssociationsnotforprofithavinglicenseunderSection25oftheAct;orlicensedcompanies;

(b) Governmentcompanies;

(c) ForeignCompanies;

(d) Holdingand subsidiarycompanies.

Some other types of companies which are referred to under the Companies Act are asfollows:

1. LicensedCompanies

Popularly known as Section 25 companies, these companies are also registered under theCompanies Act like any other Company but before they are registered, a license may beobtained from the Central Government. Any association formed for promoting commerce,art, science, religion, charity or any other useful object and which has no intention todistribute dividends to members but instead to apply its income in promoting its objects,can obtain a license from the Government and can get itself registered as a company withlimited liability. Onregistration, it enjoyscertainexemptions and privileges as comparedto an ordinary limited company, such companies may exclude the words 'limited' or'private limited' from their names. They are registered without paying any stamp duty ontheir memorandum and articles. These companies are also exempted from complying withthe provisions of Sections 147. 160(1)(aa), 166(2), 171(1), 209(4)(a), 257, 264(1), 285,287,299,301and302(2)oftheCompaniesActeitherwhollyorinpart,asper

Government of India Notification No. S.O.1578 dated 8 July 1961. The license may at anytime be revoked by the Central Government, if the fundamental conditions of the licenseare contravened; such companies may be public or private companies and may or may nothavesharecapital.

It is worth nothing that a partnership firm may be a member in a licensed companyin its firm name and it is only on the dissolution of the firm that its membership shall cease[Sec.25(4)].

2. One-manCompanyorFamilyCompany

Where one man holds Practically the whole of the share capital of a company andtakes a few more dummy members (usually family members) simply to meet the statutoryrequirement of the minimum number of persons (6 more persons in case ofa publiccompany), such a company is known as “one-man company”, such a company is perfectlyin order in the eyes of law and is regarded to have a separate entity, as distinct from themajorityshareholder (Salomon us. Salomon &Co.Ltd.).

3. ForeignCompany

A foreign company means a company incorporated outside India but having a placeofbusiness inIndia[Sec. 591(1)].

Within 30 days of the establishment of the business in India, a foreign company hastofurnish to the Registrar, thefollowingdocumentsas per Section 592;

(1) AcertifiedcopyoftheCharter,Statute,MemorandumandArticlesofthecompany, containing the constitution of the company. If the instrument is not in Englishlanguage,acertified translation thereof.

(2) ThefulladdressoftheRegistered,orPrinciple Officeofthecompany.

(3) A list of directors and secretary of the Company giving name in full,usualresidential address, nationality of origin, his business and particulars ofother directorshipsheld byhim.

(4) The names and address of any person or persons resident in India, authorized toacceptserviceof legal process andnotices on behalf ofthecompany.

(5) The full address of that office of the company in India which is to be deemed as itsprincipalplaceof business inIndia.

Whenanychangeoccursintheaboveparticularsthe Registrarmustbenotifiedaccordinglywithin the prescribed time (Sec. 593).

*Obligationregardingaccounts:*Theobligationsofaforeigncompanyinrespectofaccountsareal mostthesameasthoseofacompanyregisteredundertheIndianCompanies Act. Section 594 provides that every foreign company, unless exempted by thecentral Government, is required to file with Registrar every year three copies if its BalanceSheet and profit and Loss A/c and other documents, required under the Act, Along withthese documents, it must also send to the Registrar three copies of a list in the prescribedformof all the places ofits business inIndia [Sec.594(3)].

Other obligations [Sec. 595]: Everyforeign companyshall:

(i) State the name of the country of its incorporation in every prospectus invitingsubscriptionsinIndiaforitssharesordebentures.Itmaybenoted,however,thatafo reigncompanymayissueaprospectusevenifithasnoplaceofbusinessinIndia(Sec.603).

(ii)Conspicuouslyexhibitontheoutsideofeveryofficeorplaceofbusiness,itsnameandthe countryof incorporation inEnglish and inthe regional language;

(iii)Give the name of company and the country of incorporation in English language inall business letters, bill heads and letter paper and in all notices and other officialpublicationsof thecompany;and

(iv)State in every prospectus and in all official publications and exhibit outside everyofficeorplaceof business, whetherthe liabilityofthe members is limited.

Office where Documents to be delivered [Sec. 597]; Any document which any foreigncompany is required to deliver to the Registrar of Companies shall be delivered to theRegistrar having jurisdictionover New Delhiandalsotothe Registrarof the State inwhich the principle place of business of the company is situated. If any h foreign companyceases to have a place of business in India, it must forthwith give notice of the fact to theRegistrarsreferredtoabove,andasfromthedateonwhichnoticeissogiven,theobligationofthe companyto deliver anydocumentto the Registrars shallcease.

*Penalties:*If any foreigncompany fails to comply with any of the foregoing provisions,thecompany andevery officer oragentof thecompany,who isindefault,shallbepunishablewithfineextendinguptoRs.1,000andinthecaseofcontinuingoffe ncewith

an additional fine which may extend to Rs. 100 for every day during which the defaultcontinues (Sec. 598). Further, any such defiant foreign company shall not be entitled toenforceanycontractbywayofasuitorset–offorcounterclaimthoughitwillbeliabletobe sued in respect of anycontract itmayhaveentered into (Sec. 599).

Application of other provisions of the Companies Act: The provisions of Section 124 to145 relating to the registration of charges will apply to foreign companies in respect ofcharges on property created in India, The provisions of Section 118 relating to the rights ofmembers and debenture – holders to have a copy of the 'trust deed' for securing any issueofdebenturesofthecompanywillalsoapplytoforeigncompaniestotheextentofrequiring them to keep at their principle place of business in India the books of accountwith respect to moneys received and expended, sales and purchases made, and assets andliabilitiesin relation to theirbusiness inIndia. (Sec. 600).

The Companies (Amendment) Act, 1974 has made several other Sections of Actapplicableto foreign companies. Accordingly:

(i) The provisions of Section 159 relating to the filing of Annual Returns with theRegistrarshall,subjecttosuchmodificationsoradaptationsasmaybemadetherein bythe rules madeunder this Act, applytoaforeigncompany [Sec.600(3)(b)(i)].

(ii) The provisions of Section 209A (inspection of books of account, etc.,) Section233A (power of Central Government to direct special audit in certain cases),Section234to246(powerofRegistrartocallforinformationorexplanationandinv estigationofaffairsofcompanybyCentralGovernment)Shall,sofarasmaybe,applyonlyt oacompanyincorporatedinIndia[Sec.600(3)(b)(ii)and(iii)]Inrespectofforeigncompan ies,inwhichfiftypercentormoreofthepaid–upsharecapital(whetherequityorpreferenceorpartlyequityandpartlypreference)isheld byIndiancitizensand/orcompaniesincorporatedinIndia,suchotherprovisionsoftheAct asmaybenotifiedbytheCentralGovernmentwithregardtobusinesscarried on by theminIndia, willbecome applicable tosuch foreign companies astheyapplytoacompanyincorporated inIndia. [Sec. 591 (2)].

ItmaybeinferredfromtheabovementionedprovisionsthattheCompanies(Amendment) Act,1974intendstobringforeigncompaniesintotheambitoftheprovisionsapplicable toIndian companies.

4. GovernmentCompany

A Government company is defined in Section 617 as "any company in which notlessthan51percentofpaid-upsharecapitalisheldbytheCentralGovernmentorpartlyby the Central Government and partly by one or more State governments and includes acompanywhich is subsidiaryof aGovernmentcompanyasthus defined".

The special provisions of the Companies Act relating toGovernmentcompaniesareasfollows:

(1) Audit: (a) The auditor of a Government company shall be appointed or reappointed bythe Central Government on the advice of the comptroller and Auditor General of India,provided that the auditor so appointed or reappointed does not hold appointment as theauditorinmorethantwentycompanies,ofwhichnotmorethantencouldbecompanies with paid – up share capital of Rs.25 lakhs or more. In the case of an auditfirm so appointed the ceiling of twenty companies shall be per partner of the firm whoisnotinfull–timeemploymentelsewhere.TheAuditorGeneralwillhavethepowerto direct the company's auditor relating to the manner of audit and the performance ofhis duties. He shall also have the power to conduct a supplementary test audit of thecompany's accounts by persons appointed by him; and (b) The auditor is required tosubmit a copy of his audit report to the comptroller and Auditor General, who shallhave the right to comment upon the report. Any such comments shall be placed beforetheannualgeneralmeetingofthecompanyalongwiththeauditreport(Sec.619).Thus, it may be seen that the general provisions contained in Sections 224 to 233 of theActrelatingtoauditandappointmentofauditorsdonotapply toaGovernmentcompany.

(2) Annual report: (a) Where the Central Government is a member of a Governmentcompany; the Central Government shall prepare an annual report on the working andaffairs of the company within three months of its annual general meeting before which theaudit report is placed. The annual report is to be laid before both Houses of Parliamenttogetherwithacopy oftheauditreportandanycommentsthereupon,madeby theComptrollerand Auditor General ofIndia.

(b) Where in addition to the Central Government, any State Government is also amember of Government company, that State Government shall place a copy of the annualreport (prepared by Central Government) together with a copy of the audit report and thecomments(referredtoearlier)beforethe Houseor bothHousesoftheStateLegislature.

(c) Where the Central Government is not a member of Government company, everyState Government which is a member shall cause an annual report on the working andaffairs of the company to be prepared within the same time (as referred to above), and thensoon after lay it before the House or both Housesof the State Legislature with a copy oftheaudit report andcomments thereupon.

(3) Application of the Companies Act: A Government company is to be registered underthe Companies Act. It may be incorporated as a 'public' or 'private' company. The CentralGovernment may, however, by notification in the Official Gazette, direct that any of theprovisions of this Act shall not apply to any Government company or shall apply only withsuch exceptions, modifications shall be effective to the extent to which it is approved byParliament (Sec. 620). Subject to such notification, such companies are governed by theCompanies Act like any other limited company without any discrimination. The CentralGovernment has issued notifications (published in the Gazette of India, dated 11 Februaryand 4 March 1978) granting certain exempted from complying with the provisions ofSections 198, 259, 268, 269, 309, 310, 311, 387 and 388 relating to the appointment ofthem. Similarly, Section 255, 256and 257 pertaining to appointment and retirement ofdirectors, and Section 370 relating to making of loans, etc., to companies under the samemanagement shall not apply to such Government companies which are wholly owned bytheCentral or/and StateGovernment(s).

In a bid to streamline the functioning of Government companies and to cut downdelays,theCentralGovernmenthasagainissuedfivenotifications(publishedintheGazette of India, dated 16-7-85) granting exemption to Government companies from theapplicationofthe followingSections of theCompanies Act:

(i) Section165,187D,294,294AA(2) and(3).

(ii) Section108inrespect of sharesheld bynomineesof government,

it has further been notified that Sections 43A, 149 (2A), 205A, 205B, 263, 264,265, 266, 307, 308, 316, 317 and 386 of the Companies Act shall not apply to GovernmentcompanieswhollyownedbyCentral or/and StateGovernment(s).

A Government company, no doubt, has certain special features but it should not beplaced on the same footing as a State or Government, it basically remains a company in theordinary sense, having a legal entity of its own, separate from that of its shareholderswhoevertheymaybe.Itmakesnodifferencewhetherthe entiretyofthecapitalissubscribed by the Government or the Government holds only 51 per cent of the sharecapital. In no case a Government company is identified with the State and its employees donotbecomeGovernmentservants,holdersofcivilpostsundertheUnionorStateGovernments.

5. InvestmentCompanies

An investment company is a company, the main business of which consists inacquiring, holding and dealing in shares and securities. However, legal opinions as well asstatutory definitions differ as to the exact meaning and scope of the term, “Investmentcompany, While one view is that an investment company acquires and holds shares andsecuritiesonlyforearninganincometherefrombyholdingthem,theotherviewisthatitis one which acquires and holds shares and securities both for earning an income fordealingin them for makingaprofit.

With regard to statutory definition, the provision to Sec. 372(10) of the CompaniesAct 1956 defines an investment company as, “a company whose principal business is theacquisitionofshares,stocks,debenturesorothersecurities.Section2(10A)oftheinsuranceAct 1938alsodefinesaninvestmentcompany similarly.However,Section109(ii) of the Income tax Act 1961, has defined an investment company as one whosebusinessconsistswhollyormainlyindealinginorholdingofsecurities.Asageneralruleitcan be saidthatan investmentcompany should acquiresharesand securities etc. andholdthemforaconsiderableperiodoftimewiththeintentionofmakingprofitstherefrom.

6. FinanceCompanies

The Companies Act, 1956 does not define a ‘Finance Company’ although it doesnot preclude the formation and registration of a company under the Act with the object ofcarrying on the business of financing. However, the Companies (Acceptance of Deposits)Rules1975defineafinancialcompany.Accordinglya‘financialcompany’isdefinedas a

non-banking company which is a financial institution under the provisions of the RBI Act.In other words, financial institution means any non-banking institution which carries on asitsbusiness or part ofits business anyof thefollowing:

(i) Financingbusinesswhetherbywayofmakingloansoradvancesorotherwise.

(ii) The purchase of shares, stock, bonds, debentures or securities issued by a Governmentor local authority. (iii) The letting of goods on hire under a hire-purchase agreement.

(iv)Thecarryingonofanytypeofinsurancebusiness.(v)Managingorconductingorsupervising or in any other capacity, of chits or kuries. (vi) Collecting monies in lump sumor otherwise, by ways of subscription or by sale of units or other instruments or in anyother manner and awarding prizes, gifts, whether in cash or in kind or disbursing money inanyother wayto personsfrom whom monies are collected.

PublicCompaniesandPrivateCompanies

Companieslimitedbysharesorguaranteemaybedividedintotwocategories,depending upon the interest of the general public in the companies; (i) Public Companiesand(ii) Private Companies.

PrivateCompany

AccordingtoSec.3(1)(iii)oftheCompaniesAct,aprivatecompanyonewhichbyitsArticl es ofAssociation

(a) restrictstherighttotransferitsshares.

(b) limitsthemaximumnumberofitsmemberstofifty(excludingthepresentand/pastemplo yeemembers ofthe company),and

(c) Prohibitsanyinvitationtothepublictosubscribeforanysharesordebenturesofthecompa ny.Itisfurtherprovidedthatwheretwoormorepersonsholdoneormoresharesinacompanyjoi ntly;theyshallforthepurposeofthisdefinitionbetreatedasasinglemember.Aprivatecompan ymustincludethewords‘PrivateLimitedorabbreviationslike‘Pvt.Ltd.,’asthelastwordsofit sname.Privatecompaniesmayagainbe(i)independentprivatecompanies(ii)privatecompa nies

whicharesubsidiariesof Publiccompanies.

PublicCompany

As per Sec. 3(1) (iv) a Public company means a company which is not a privatecompany. Thus the maximum number of members in the public company is unlimited, thesharesofsuch companiesarefreelytransferableandtheycanissueinvitationtothe

general public to subscribe to their share capital. As the public is substantially interested intheaffairsofsuchcompanies theyarealso subjectto asomewhat strictlegalcontrol.

DifferencebetweenPrivateandPublicCompanies:

1. The minimum number of members to form a public company is seven. It is two incaseofaprivatecompany.
2. ThemaximumnumberofmemberscannotexceedfiftyincaseofaprivateCompany, but there is no restriction on maximum number of members for a publiccompany.
3. There should be atleast three directors for a public company. A private companymusthavetwo directors.
4. For taking up directorship of a public company a directorhas tofile a consent toact as such to the Registrar. Whereas, the directors of a private company need not doso.
5. Subscribe for the shares and debentures: A private company cannot make invitationto thepublic.
6. Membersofapubliccompanycantransfertheirsharesfreely,whereasthemembersof aprivate companycannot transfer theirshares.
7. The quorum for meeting of the members is five in case of public company and twoincaseofaprivatecompany.
8. Total managerial remuneration in a public company cannot exceed 11% of the netprofits.No such restriction applies toa privatecompany.

SpecialPrivileges ofa PrivateCompany:

A Private Company enjoys some special privileges which may be discussed undertwoheads:

***1.** ExemptionsavailabletoalI PrivateCompanies*

1. APrivateCompanymayhave onlytwomembers.
2. Itcanallotsharesbeforetheminimumsubscriptionispaid.
3. A Private company may allot shares without issuing a prospectus or delivering acopyof statement in lieuof prospectus.
4. When a public company issues new shares, it has first to offer these shares to theexisting equity shareholders pro rata, unlessthe members ingeneralmeetingdecideotherwise. Thereisno such provisionin caseof private companies.

5. Aprivatecompany mayissuesharecapitalofsuchkinds,insuchforms,andwithsuchvotingrights, as itmaythink fit.
6. Itcancommencebusinessimmediatelyonincorporation.
7. Aprivatecompanyneednotkeep andindexofmembers.
8. Itneed nothold statutorymeetingor filestatutoryreport withthe Registrar.
9. If the members personally present do not exceed seven, even one member candemand poll, and if the members personally present exceed seven two members candemand poll.
10. Managerial remuneration paid by a private company can exceed 11% of net profitsofthecompany.
11. Twodirectorsare enoughforaprivatecompany
12. The directors of a private company enjoy more rights when compared to thedirectorsofapubliccompany.
   a. Consentof adirector to actas suchneed not be filed withtheRegistrar.
   b. Adirectorisnotrequiredtoholdqualificationshares.
   c. Aninteresteddirector canvoteonacontract.

2. *Exemptions and privileges available to an independent private company*(i.e. onewhichis not a subsidiaryof apubliccompany)

1. An independent private company may give financial assistance for purchase of orsubscriptionforshares in thecompanyitself (Sec.77 (2)).
2. Itcan offer new shares toanyperson as it maythink fit.
3. The provisions as to kinds of share capital (Sec.85), new issues of share capital(Sec.86),votingrights(Sec.87),issuesofshareswith disproportionatelyexcessive
4. Rights (Sec.89) do not apply to an independent private company. An appeal cannotbemadebeforetheCompanyLawBoard againstrefusal bythe
5. Company to register a transfer of its shares (Sec.111 (3)). Provisions relating togeneralmeetingarenotapplicable toan independentprivatecompany.
6. An independent private company is not governed by the restrictions imposed bySec. 204 as regards appointment of a firm or body corporate to an office or place orprofit.
7. The members of such companies are entitled to inspect the profit and loss accountofthecompanyfiledwith theRegistrar.

8. The restriction as to the number of Companies of which a person may be appointedmanagingdirectorandprohibitionofsuchappointmentformorethanfiveyears atatime do not applyto it.
9. Itcanmake anyamountofloanto othercompanies.
10. UnderSec.372,itcansubscribeforsharesordebenturesofothercompaniesinthesamegrou p.
11. TheCompanyLawBoardcannotpreventthechangeintheBoardofdirectorsevenifit is prejudicial to theinterest of the Company(Sec. 409).
12. Theprovisionsnotapplicableintherelationtodirectorare:

a) Itneednothavemore thantwodirectors.

b) Thedirectorsneednotretirebyrotation.

c) Without Central Government approval, such companies can raise theirnumberof directors beyond the limit fixed byArticles.

d) Theprovisionrequiringthegivingoffourteendaysnoticebynewcandidatesse ekingelection as directors isnot applicable.

e) The provisions relating to the manner offilling upcasual vacanciesamong directors, and the requirements that the appointment of directorsshould be voted on individually and that the consent of each director shouldbefiled with Registrar, do not applyto it.

f) Thedirectorsneednotholdthequalificationshares.

h) It may provide special disqualification and ground for vacation of officeof adirector.

i) Aninteresteddirector mayparticipateinBoard'sproceedingsandvote.

Whendoesaprivate companybecome apubliccompany?

1. *Conversion by default (Sec. 43):* Where a private company permits free transfer of itsshares, or invites the public for subscription to its shares or the number of membersexceed fifty, then that private company will be deemed to be a public company. TheCompany Law Board may relieve the company, if it is of opinion that the non-compliancewasaccidental or duetoinadvertenceor other sufficient cause.

2. *Conversionbyoperationof law:*A privatebecomes apubliccompany:

a. Where not less than 25 per cent of its paid-up share capital is held by one or more bodiescorporate.

b. Where its annual turnover at any time is not less than Rs.10 crores for three consecutivefinancialyears.

c. Where itholdsnotlessthan25percentofthepaid-upshare capitalofapubliccompany,havingashare capital.

d. Whereitinvites,acceptsorrenewsdepositsfromthepublic,Acceptanceofdepositsbya private company from its members, directors, or their relatives is excluded from thepurviewofthis provision.

Privilege to Companies deemed to be public: The Articles of Association of a privatecompany, which has become public by virtue of Sec. 43-A, may continue to have theessential requirements (viz., restriction on transfer of shares, limitation of the number ofmembers to fifty and prohibition to the public to buy shares or debentures) which make it aprivatecompany.

Aprivatecompany whichbecomesapubliccompany by virtueofSec.43-Acontinues to be a public company until it has with the approval of the Central Governmentagainbecomeaprivatecompany.

3. *Conversion by Choice (Sec.44):* A private company may deliberately choose to becomea public company. The requirement of Section 3(1)(iii) may be deleted by passing aspecial resolution within 30 days of its becoming a public company, it shall file with theRegistrar a prospectus of a statement in lieu of prospectus along with a copy of the specialresolution.

Conversionofpubliccompanyinto aprivatecompany

A public company may be converted into a private company without resorting towinding up of the company. There is no statutory bar on the conversion of a publiccompanyintoaprivatecompany.AccordingtoSec.31oftheCompaniesAct,noalteration made in the Articles which has the effect of converting a public company into aprivate company into a private company shall have effect unless such alteration has beenapproved by the Central Government. The company must amend its articles by a specialresolution so as to include therein the necessary restrictions and file with the Registrarwithin thirtydays.

IllegalAssociations

The term "illegal association" means an association which is not formed accordingto the provisions of any law and wherein the maximum number of members exceeds thestatutory limit. According to Sec 11, no company, association or partnership consisting ofmore than 20 persons (10 in the case of banking business) can be formed to carry on anybusiness for profit unless it is registered under the Companies Act, 1956. However, Sec.11does not apply to foreign Companies, members of chit fund, charitable associations etc., Itshould be noted that once an association becomes illegal, it remains illegal until it isregistered under the Companies Act, or formed under some other law. This Section doesnot apply to a HUF even though the number of adult members may be more than twenty.But if two or more joint families carry on business with more than 20 adults, it will beillegal.

IllegalAssociation–Consequences:

(i) Itcannot enter intoanycontract.
(ii) Theliabilityof themembers becomes unlimited.
(iii) Thelawdoesnot recognizesuch existence.
(iv) Everymember shall beliableto fine upto Rs.1000.
(v) Itcannot sueanyofthe members / outsiders.
(vi) It cannot be wound up under the provisions of the Companies Act, 1956Holdingcompanyand Subsidiarycompany

Onthebasis of control, companies maybeclassified into:

(i) Holdingcompanies, and
(ii) Subsidiarycompanies

Whereonecompany controlsthemanagementofanothercompany theformeriscalledthe'HoldingCompany'andthelatteroverwhichthecontrolisexercisedisterme d asa'SubsidiaryCompany'. TheActdefinestheseterms asfollows:

Holding company: "A company shall be deemed to be the holding company of another, ifthatotheris its subsidiary"[Sec. 4(4)].

Subsidiary company: A company shall be deemed to be a subsidiary of another[Sec.4(1)].

(a) If that other company controls the majority composition of its Board of Directorswiththe soleobject of controllingits management; or

(b) If that other company holds more than half in nominal value of its equity sharecapital;or

(c) In the case of private company in respect whereof the preference shareholders andequity similar voting rights, if that other company is itself an independent privatecompanyand holds more than half ofits total votingpower; or

(d) Where a company is subsidiary of another company, which is itself subsidiary ofthecontrollingcompany,theformerbecomesthesubsidiaryofthecontrollingcompany.

Thus a subsidiary company is one whose composition of Board of Directors is controlledby another company by another company or whose more than half of the nominal value oftheequitycapital is heldbyanother company.

Advantages and Disadvantages of Incorporation of Company

Introduction – Incorporation of the Company

- Company, in general sense, can be defined as an association of persons coming together to carry out some business and earning profit or some income out of it.
- According to Section 2(20) of the Companies Act 2013, Company is defined as "a company which is formed & registered under the Companies Act 2013 or any previous company law."
- Incorporation of the Company alludes to the lawful procedure that is utilized to frame a corporate entity or a company. It turns into a corporate lawful entity totally separate from its owners.

Advantages of Incorporation of Company

1. Creates a Separate Legal Entity
2. Company has Perpetual Succession
3. Can Own Separate Property
4. Capacity to Sue and be sued
5. Capacity to raise finance

- *Creates a Separate Legal Entity:* It means a company is independent and separate from its members, and the members cannot be held liable for the acts of the company, even when a specific member owns majority of shares.

Case Law – *Salomon vs. Salomon & Co. Ltd. [(1897) AC 22]*[1]

Salomon moved his business of boot making, at first run as a sole proprietorship, to a company (Salomon Ltd.), fused with members including himself and his family. The price for such transfer was paid to Salomon by way of shares, and debentures having a gliding charge (security against debt) on the assets of the company. Afterwards, when the company's business fizzled and it went into liquidation, Salomon's right of recuperation (secured through floating charge) against the debentures remain before the claims of unsecured creditors, who would, thus, have recovered nothing from the liquidation proceeds.

The claims of certain unsecured creditors in the liquidation process of Salomon Ltd., where Salomon was the majority shareholder, was looked to be made personally liable for the company's debt. Subsequently, the issue was whether, regardless of the separate legal identity of a company, a shareholder/controller could be held liable for its debt, over and above the capital contribution, to open such member to unlimited personal liability. The House of Lords held that, as the company was duly incorporated, it is an independent person with its rights and liabilities appropriate to itself, thus, making Salomon & Co. Ltd liable, and not Salomon.

- *Company has Perpetual Succession:* Perpetual succession means continuous existence, which means that a company never dies, even if the members cease to exist. The membership of a company changes from time to time, but that has no effect on the existence of the company. The company only comes to an end, when it is ended up as indicated by law, according to the provisions of the Companies Act, 2013.

Case Law – *Re: Noel Tedman Holdings Pvt. Ltd. [(1967) Qd R 56]*[2]

- *Can Own Separate Property:* Since a company is termed as a separate legal entity in the eyes of law, it can hold property in its own name and the members cannot claim to be the owner of the company's property.

Case Law – *Bacha F. Guzdar vs. CIT Bombay [*AIR 740 (1955)*]*[3]
The Supreme Court held that a company being a legal person, in which all its property is vested and by which it is controlled, managed and disposed of a member cannot, ensure the companies property on its own name.

Case Law – *Macaura vs. Northern Assurance Co. Ltd. [(1925) AC 619]*[4]
A shareholder of a timber company, held all shares of the company however one. He likewise insured the timber (asset of the company) on his own name, which was pulverized in fire. At the point when he looked for compensation, it was held that they were not subject to pay any money to the shareholder, in lieu of the timber since he did not own the timber and that timber, which the company possessed was not insured.

- *Capacity to Sue and be sued:* The company has the capacity of suing a person or being sued by another person in its own name. A company, however, can be sued or sue in its own name, it must be spoken by a natural person and any grumbling which is not represented by a natural person is liable to be dismissed similarly in which an individual complaint is liable to be dismissed in the absence of the complainant.

Case Law – *Aspro Travel Ltd. vs. Owners Abroad plc. [(1996) 1 WLR 132]*[5]
It was held that just as a person has a right to his reputation, a company has also right to protect its name from being tarnished and can sue the third party for a defamatory statement made by him/her against the company.

- *Capacity to raise finance:* A company is in much better position to raise the finance for capital than any other form of business entity, since a company can issue shares or debentures to the public. It is facile for the company to get loans from banks and financial institutions. This enables the company the capacity to raise larger finances. Additionally, the company can create a floating charge on its assets as security for the money borrowed by it.

Disadvantages of Incorporation of Company

- Cost
- Double Taxation
- Loss of Personal Ownership
- Required Structure
- Ongoing Paperwork
- Difficulty Dissolving
- Lifting of Corporate Veil

1. *Cost* – The starting cost of incorporation comprises the fee needed to document our articles of incorporation, potential attorney or accountant fees, or the cost of using an incorporation

administration to help us with completion and documenting the paperwork. There are additionally ongoing fees for keeping a corporation.

2. *Double Taxation* – Some types of corporations such as a C Corporation, have the potential to turn into "double taxation." Double taxation happens when a company is taxed once on profits, and again on the dividends paid to shareholders.
3. *Loss of Personal Ownership* – If a corporation is a stock corporation, an individual doesn't sustain full control of the entity. The corporation is controlled by a board of directors who are nominated by the shareholders.
4. *Required Structure* – When we structure a corporation, we are needed to follow all of the rules stated by the state in which we filed. This incorporates the management of the corporation, operational requirements and the corporation's bookkeeping rehearses.
5. *Ongoing Paperwork* – Most corporations are needed to document annual reports on the financial status of the company. The ongoing administrative work additionally incorporates tax returns, bookkeeping records, meeting minutes and any necessary licenses and allows for conducting business.
6. *Difficulty Dissolving* – While perpetual existence is an advantage of incorporating, it can also be a disadvantage because it can need significant time and money to fulfill the necessary procedures for dissolution.
7. *Lifting of Corporate Veil* – From the juristic viewpoint, a company is a lawful person separated from its members. This principle may be alluded to as the 'Veil of incorporation'. The courts, in general, see themselves limited by this principle. The impact of this Principle is that there is an anecdotal veil between the company and its members. That is, the company has a corporate character that is distinct from its members. However, in various circumstances, the Court will penetrate the corporate veil or will disregard the corporate veil to reach the person behind the veil or to uncover the genuine structure and character of the concerned company. The reasoning behind this is mostly like that the law won't permit the corporate structure to be misused or abused. In those conditions wherein the Court feels that the corporate structure is being misused, it will tear through the corporate veil and uncover its genuine character and nature.

The **National Company Law Tribunal** is a quasi-judicial body in India that adjudicates issues relating to Indian companies.[1] The tribunal was established under the Companies Act 2013 and was constituted on 1 June 2016 by the government of India and is based on the recommendation of the V. BalakrishnaEradi committee on law relating to the insolvency and the winding up of companies.[2]

All proceedings under the Companies Act, including proceedings relating to arbitration, compromise, arrangements, reconstructions and the winding up of companies shall be disposed off by the National Company Law Tribunal. The NCLT bench is chaired by a Judicial member who is supposed to be a retired or a serving High Court Judge and a Technical member who must be from the Indian Corporate Law Service, ICLS Cadre.

The National Company Law Tribunal is the adjudicating authority for the insolvency resolution process of companies and limited liability partnerships under the Insolvency and Bankruptcy Code, 2016.

No criminal court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

The tribunal has sixteen benches, six at New Delhi (one being the principal bench) and two at Ahmedabad, one at Allahabad, one at Bengaluru, one at Chandigarh, two at Chennai, one at Cuttack, one at Guwahati, three at Hyderabad of which one is at Amaravathi,[3] one at Jaipur, one at Kochi, two

at Kolkata and five at Mumbai.[4] Of the two new benches approved to be set up, one each in Indore[5]and Amaravathi,[5] the Indore bench is yet to be notified. Except the Bench at Amaravathi, all the benches have been notified as division benches. Justice M.M. Kumar, a retired Chief Justice of the Jammu & Kashmir High Court has been appointed president of the tribunal.[1]

The National Company Law Tribunal has the power under the Companies Act to adjudicate proceedings:

1. Initiated before the Company Law Board under the previous act (the Companies Act 1956);
2. Pending before the Board for Industrial and Financial Reconstruction, including those pending under the Sick Industrial Companies (Special Provisions) Act, 1985;
3. Pending before the Appellate Authority for Industrial and Financial Reconstruction; and
4. Pertaining to claims of oppression and mismanagement of a company, winding up of companies and all other powers prescribed under the Companies Act.

Appeals[edit]

Decisions of the tribunal may be appealed to the National Company Law Appellate Tribunal, the decisions of which may further be appealed to the Supreme Court of India on a point of law. The Supreme Court of India has upheld the Insolvency and Bankruptcy Code in its entirety.[6

Meaning of NCLT & NCLAT

The NCLT or "Tribunal" is a quasi-judicial authority created under the *Companies Act, 2013* to handle corporate civil disputes arising under the Act. It is an entity that has powers and procedures like those vested in a court of law or judge. NCLT is obliged to objectively determine facts, decide cases in accordance with the principles of natural justice and draw conclusions from them in the form of orders. Such orders can remedy a situation, correct a wrong or impose legal penalties/costs and may affect the legal rights, duties or privileges of the specific parties. The Tribunal is not bound by the strict judicial rules of evidence and procedure. It can decide cases by following the principles of natural justice.

NCLAT or "Appellate Tribunal" is an authority provided for dealing with appeals arising out of the decisions of the Tribunal. It is formed for correcting the errors made by the Tribunal. It is an intermediate appellate forum where the appeals lie after order of the Tribunal. The decisions of Appellate Tribunal can further be challenged in the Supreme Court. Any party dissatisfied by any order of the Tribunal may bring an appeal to contest that decision. The Appellate Tribunal reviews the decisions of the Tribunal and has power to set aside, modify or confirm it.

Difference between NCLT and NCLAT

The NCLT has primary jurisdiction whereas NCLAT has appellate jurisdiction. NCLAT is a higher forum than NCLT. Evidence and witnesses are generally presented before NCLT for taking the decisions and NCLAT generally reviews decisions of NCLT and checks it on a point of law or fact. Fact finding and evidence collection is primarily a task of Tribunal whereas the Appellate Tribunal decide cases based on already collected evidences and witnesses.

Background of NCLT

NCLT was conceptualized by Eradi Committee. It was initially introduced in Companies Act, 1956 in 2002 but the provisions of Companies (Second Amendment) Act, 2002 were never notified as they got mired in litigation surrounding constitutionality of NCLT. 2013 Act was enacted and the concept of NCLT was retained. However, the powers and functions of NCLT under 1956 Act and 2013 Act are different. The constitutionality of NCLT related provisions were again challenged and this case was

finally decided in May 2015. The Apex Court upheld the constitutionality of the concept of NCLT but some of the provisions on constitution and selection process were found defective and unconstitutional.

Notification of NCLT:

Provisions for constitution of NCLT and NCLAT were notified on 1st June 2016. In the first phase powers of CLB are transferred to NCLT. In the next stage the government will move for second set of notifications by which powers of High Courts and BIFR will also be vested with NCLT. Along with transfer of powers to NCLT, new powers and functions are also vested in NCLT.

Transition from CLB to NCLT

The Act has set out in detail the procedure to deal with cases which are pending in various forums in Section 434. The Government has notified 1st June 2016 for transfer of matters from CLB to NCLT. On that date, all the pending proceedings before CLB will be transferred to NCLT and Tribunal will dispose of such matters in accordance with the provisions of law. Tribunal has discretion to take up the pending CLB proceeding from any stage. At its discretion, it can take up the matter at stage where it was left by CLB or start the proceedings afresh or from any stage it deems fit.

Powers vested in NCLT

Some of the important powers that are presently vested with NCLT are as follows:

1. Class Action:

Protection of the interest of various stakeholders, especially non-promoter shareholders and depositors, has always been the concern of company law. There were several frauds and improprieties that were noticed where the key losers were the shareholders and depositors. The shareholders who invested in listed companies saw their investments and savings drying up when the companies that they invested in cheated the investors.

The *Companies Act, 2013* has provided a very good combination of remedies where the offender will be punished and the people who are involved (whether it is the company or directors or auditor or experts or consultants) will be liable even for a civil action (namely class action), wherein they have to compensate the shareholders and depositors for the losses caused to them on account of the fraudulent practices or improprieties.

A class action is a procedural device that permits one or more plaintiffs to file and prosecute a lawsuit on behalf of a larger group, or “class”. It is in the nature of a representative suit where the interest of a class is represented by a few of them. A huge number of geographically dispersed shareholders/depositors are affected by the wrongdoings. It is a useful tool where a few may sue for the benefit of the whole or where the parties form a part of a voluntary association for public or private purposes, and may be fairly supposed to represent the rights and interests of the whole.

Section 245 has been introduced in the new company law to provide relief to the investors against a large set of wrongful actions committed by the company management or other consultants and advisors who are associated with the company.

Class action can be filed against any type of companies, whether in the public sector or in the private. It can be filed against any company which is incorporated under the *Companies Act, 2013* or any previous *Companies Act*. The Act provides only one exemption i.e. banking companies.

2. Deregistration of Companies:

The procedural errors at the time of registration can now be questioned at any time. The Tribunal is empowered to take several steps, including cancellation of registration and dissolving the company. The Tribunal can even declare the liability of members unlimited. Sec 7(7) provides this new way for de-registration of companies in certain circumstances when there is registration of companies is obtained in an illegal or wrongful manner. Deregistration is a remedy that is distinct from winding up and striking off.

3. Oppression and Mismanagement:

The remedy of oppression and mismanagement is retained in 2013 Act. The nature of this remedy has however changed to certain extent and it needs to be seen in light of the changes made to the Companies Act, 2013. The 2013 Act has reset the bar for oppression to a little lower level but has set the bar of mismanagement a little higher by applying the test “winding up on just and equitable grounds” even to mismanagement matters. The Act permits dilution of the eligibility criteria with the permission of Tribunal, where a member below the eligibility criteria can apply in deserving cases.

4. Refusal to Transfer shares:

The power to hear grievance of refusal of companies to transfer securities and rectification of register of members under Section 58 and 59 of the new Act were already notified and were being taken up by CLB. Now. The same are transferred to NCLT. The remedy for refusal to transfer or transmission were restricted only to shares and debentures under 1956 Act. The provisions for refusal to transfer and transmit under *Companies Act, 2013* Act extends to all securities. These sections gives express recognition to contracts or arrangements for transfer of securities entered into between two or more persons with respect to shares of a public company and thus clears any doubts about the enforceability of these contracts.

5. Deposits:

Chapter V dealing with deposits was notified in phases in 2014 and powers to deal with the cases under it were assigned in CLB. Now the said powers will be vested in NCLT. The law on deposits is quite distinct under the *Companies Act, 2013* as compared to the *Companies Act, 1956*. The provision for deposits under 2013 Act were already notified. Aggrieved depositors also have the remedy of class actions for seeking redressal for the acts/omissions of the company which hurt their rights as depositors.

6. Reopening of Accounts & Revision of Financial Statements:

Several instances of falsification of books of accounts were noticed under the *Companies Act, 1956*. To counter this menace, several measures have been provided in the *Companies Act, 2013*. One such measure is the insertion of Section 130 and 131 read with sec 447, 448 in the new Act. Section 130 read with sec 131 are newly inserted provisions that prohibit the company from *suomotu* opening its accounts or revising its financial statements. This can be done only in the manner provided in the Act. Section 130 and 131 provides the instances where financial statements can be revised/reopened. Section 130 is mandatory, where the Tribunal or Court may direct the company to reopen its accounts when certain circumstances are shown. Section 131 allows company to revise its financial statement but do not permit reopening of accounts. The company can itself approach the Tribunal under sec 131, through its director for revision of its financial statement.

7. Tribunal Ordered Investigations:

Chapter XIV provides several powers to the Tribunal in connection with investigations. The most important powers that are conferred to the Tribunal are:

a) power to order investigation: Under the *Companies Act, 2013*, only 100 members (as against 200 members required under the *Companies Act, 1956*) are required to apply for an investigation into the affairs of a company. Further, the power to apply for an investigation is given to any person who is able to convince the Tribunal that circumstances exist for initiating investigation proceedings. An investigation can be conducted even abroad. Provisions are made to take as well as provide assistance to investigation agencies and courts of other countries with respect to investigation proceedings.

b) power to investigate into the ownership of the company

c) power to impose restriction on securities: The restriction earlier could be imposed only on shares. Now, the Tribunal can impose restrictions on any security of the company.

d) power to freeze assets of the company: The Tribunal is given the power to freeze assets of the company which can not only be used when the company is under investigation, but can also be initiated at the insistence of a wide variety of persons in certain situations.

8. Conversion of public company into private company

Sections 13, 14, 15 and 18 of the *Companies Act, 2013* read with rules regulate the conversion of public limited company into private limited company. It requires approval from the NCLT. Approval of the Tribunal is required for such conversion. The Tribunal may at its discretion impose certain conditions subject to which approvals may be granted (sec 459).

9. Tribunal Convened AGM:

General meetings are required to assess the opinion of shareholders from time to time. The Act mandatorily requires one meeting to be called, which is termed as the "annual general meeting" or 'AGM'. Any other general meeting is termed as "extra ordinary general meeting" or 'EOGM'. If the AGM or EOGM cannot be held, called or convened in the manner provided under the Act or the Rules by the Board or the Member due to certain extraordinary circumstances, then the Tribunal is empowered under Section 97 and 98 of 2013 Act to convene general meetings under the *Companies Act, 2013*. The provisions for convening an annual general meeting and extra ordinary general meeting in the *Companies Act, 2013* are almost similar to the provision provided in the *Companies Act, 1956*. However, the draft rules have inserted an additional provisions that require intimation of such cases to be given to ROC.

10. Compounding of Offence:

Provisions of compounding under the 2013 Act were notified before the constitution of NCLT and were assigned to CLB. This power will now be vested with NCLT, and all compounding matters which are above the prescribed monetary limit will be approved by NCLT.

11. Change in Financial Year:

Section 2 (41) also has been already notified on 1 April 2014. The Act requires that every company or body corporate, new or existing, must have a uniform financial year ending on 31 March. It provides an exception where certain companies can apply to the Tribunal to have a different financial year. A company or a body corporate can make an application to the Tribunal. As the Tribunal was not notified at the time when this section was notified, the power to alter the financial year on application was granted to the CLB. The regulation provides the manner for making the application to CLB. The same has notified on the site of CLB vide order dated 28 January 2015. All the application that are not disposed of at the time when NCLT provisions are notified, will also be transferred to the Tribunal.

National Company Law Appellate Tribunal (NCLAT) was constituted under Section 410 of the Companies Act, 2013 for hearing appeals against the orders of National Company Law Tribunal(s) (NCLT), with effect from 1st June, 2016.

NCLAT is also the Appellate Tribunal for hearing appeals against the orders passed by NCLT(s) under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC), with effect from 1st December, 2016. NCLAT is also the Appellate Tribunal for hearing appeals against the orders passed by Insolvency and Bankruptcy Board of India under Section 202 and Section 211 of IBC.

NCLAT is also the Appellate Tribunal to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India (CCI) – as per the amendment brought to Section 410 of the Companies Act, 2013 by Section 172 of the Finance Act, 2017, with effect from 26th May, 2017.

Formation of company

INCORPORATION OF COMPANY

A Company is said to have been formed when it has been registered under theCompanies Act. However, there are several stages in the formation of a company. Thevariousstages in theformation of acompanyare:

(i) Promotion
(ii) IncorporationorRegistration
(iii) Capitalsubscription
(iv) CommencementofBusiness

Whileaprivatecompanycancommencecompanybusinessassoonasitisregistered or incorporated, a public company cannot commence its business unless it hasobtainedaCertificateofCommencementofBusiness.TheVariousstagesofformationofacompanyaredealt under thefollowingparagraphs:

PROMOTION

Promotionisthefirststageintheformationofacompany,AccordingtoGestemberg,"promotionreferstothediscoveryofbusinessopportunitiesandthesubsequent organization of funds properly managerial ability into-business concern for thepurpose of making profits there forms". A promoter may be an individual, a firm orassociation of persons or even a company. In simple words, a promoter is a person withexpertiseinthelineofdevelopingofabusinesspropositionandcarriesoutallthepreliminary work for the formation of a company to run the business.According to C.Cockburn, C.J in *Twycorssvs Grant,* a promoter is one who undertakes to form a companywith reference to a given project and to set it going project and to set it going, and whotakesthenecessarystepstoaccomplishthatpurpose.However,everyonewhoisconnected with the formation of a company may not be a promoter. For instance, under thecompanies

Act, persons acting in a professional capacity to assist persons engaged inprocuring the / formation of a company (solicitors, values, chartered Accountants) are notliableas promoters underthe companies Act.

Promoter–functions

Thefunctions of apromotermaybe divided into four stages:

(i) Discovery(ii) Investigation(iii)Assembly(iv)Incorporation.

The promoter after conceiving an idea of starting a business and having carried outadetailedinvestigationastothepossibilityandprofitabilityofformationofacompanywilldo the followingfunctions:

(i) Instructs and directs the solicitors to draft the Memorandum, Articles andotherdocuments necessaryforthe registration ofthecompany.

(ii) Arrange for the printing and filing of these documents with the Registrar ofCompanies.

(iv) decides aboutthename,locationofitsregisteredoffice,thebankers,auditors, legal advisers, brokers etc and arranges for minimum subscription to beraised (in case of public company) and obtains the certificate of commencementof business.

Promoter–Legalposition

The promoter's legal position is that he is neither an agent nor a trustee of thecompany he promotes, as he functions as a promoter are preformed at a time when thecompany has not yet come into existence and there is neither a principal nor a fiduciarytrust. However, the Companies Act, impose on him certain obligations which are fiduciaryin nature. Fiduciary position indicates a position full of trust and confidence. However, itmust be noted that although the fiduciary relation of the promoter begins only when thecompany is actually formed, the fiduciary obligation of the promoter begins as soon as hesets out to act as a promoter of that company. To conclude, a promoter is not entitled toretain any profit made directly or indirectly out of the promotion, whether made at theexpense of the company or otherwise, unless the company consents after full disclosure ofallthe facts.

DutiesofPromoter

1. To disclose secretprofits: Being in afiduciary position, the promoter mustnot makeany secret profit at the expense of the company he promotes. If he has made any secretprofit, it is his duty to disclose all the money secretly obtained by way of profit. If he failstodo so, the companymayrecover such profits from him.

Apromoterisnotforbiddentomakeprofitbuttomakesecretprofit.InGluckstein *V. Barnes,* the 'Old Olympia Co', was in difficulties and the debentures were worth verylittle. A Syndicate of persons was formed to purchase it for 1, 80,000. The Syndicate firstbought the debentures of the old Olympia Company at a discount. Then they bought thecompany itself for 1, 40,000. Out of this money provided by themselves the debentureswere repaid in full and a profit of 20,000 made thereon. They promoted a new companyandsoldOlympiatoitfor1,80,000.Theprofitof40,000wasrevealedintheprospectus

but not the profit of 20,000. It was held that 20,000 was a secret profit and since there wasnosufficient disclosure, thepromoters wereboundto payit to thecompany.

2. To disclose all material facts: The promoter should make full disclosure of all thematerial facts regarding the formation of a company. The promoter is not allowed to derivea profit from the sale of his own property to the company unless all material facts aredisclosed. Ifa promoter contracts to sell to the company, a property without making a fulldisclosure, and the property was acquired by him at a time when he stood in a fiduciarypositiontowardsthecompany,thecompanymayeitherrescinditoraffirmthecontractan dthenrecoverthesecretprofitsfromthepromoter.Thematerialfactmaybedisclosedtoanindepen dent and competent boardof director or tothe wholebodyof shareholders.

*3. Tomakegoodprofitsobtainedastrustee:*Thepromotermustmakegoodtothecompany what he has obtained as a trustee. A promoter stands in a fiduciary positiontowards the company. It is the duty of the promoter to make good to the company what hehasobtained as trusteeand not what he mayget atanytime.

4. Must not make an unfair use of his position: The promoter must make a fair andreasonableuseof his power and position. Hemust act honestly.

5. To act diligently: The promoter is under an obligation to discharge his duties diligentlyright from the point of the conception of the idea to the stage when the company receivesthecertificatetocommencebusiness.Hemustdisclosealltheprivatearrangementsresulti ngin profit bytheformation of thecompany.

LiabilitiesofPromoters

Apromoterhasthe followingliabilities:

1. Liability to account for the profits: The promoter stands in a fiduciary position to thecompany. He is liable to the company for all secret profits made by him. When he does notmakefull disclosureto thecompany, thecompanymayeither

(a) Rescind the contract and recover the purchase price where he sold his ownpropertyto thecompany,or

(b) Suethepromoterfortheamountofprofitandrecoverthesamewithinterest,or

(c) Claimdamagesforbreachoffiduciaryduties.Themeasureofdamageswillbethe differencebetweenthe marketvalueof thepropertyand the contract price.

2. *Liabilityformis-statementsintheprospectus:*Promoterisliabletotheoriginalallottees of shares for the untrue statements in the prospectus. Thus, it is clear that hisliabilitydoesnotextendtosubsequentallottees.Theallotteesmaysuehimforcompensation for loss or damage suffered by them. The promoter may also be punishedwithfineup to Rs.5,000 forsuch untruestatementin theprospectus.

3. *Personal liability:* The promoter is personally liable for all preliminary contracts madeby him for the company made by him for the company after its incorporation, adopts thesecontractsbyenteringintonewcontractscontainingthesametermasintheoriginalcontracts.T hedeathofapromoterdoesnotrelievehimfromliabilities.Thepropertyofthe deceased promoter shall be liable in an action by acompany for fraud or breach oftrust. Where there are more than one promoter, they are jointly and severally liable in anyactionagainst oneof them.

4. *Liability in course of winding up:* In the course of winding up of the company, on anapplication made by the official liquidator, the court may make a promoter liable formisfeasance of breach of trust. Further, where fraud has been alleged by the liquidatoragainstthe promoter, the court mayorder for his publicexamination.

5 *Curbs on promoters:* Where a promoter is convicted of any offence in connection withthepromotionofthecompany,orifinthecourseofwindingupofthecompany,itisfound that he is guilty of misfeasance or breach of trust, the court may debar him frombeing a director or forbid him from taking part in the promotion, formation or managementofacompanyforaperiodnot exceedingfiveyears withoutthe sanction ofthe court.

RemunerationtoPromoters

The promoters have to incur various expenses in connection with the formation of acompany; therefore, it is quite reasonable that they should get suitable remuneration fortheirservices.Butitisinterestingtonotethatthepromoterscannotclaimanyremuneration form the company as a matter of right. They are entitled to remuneration fortheirservicesonlyifthereisacontracttothateffect.InRe.*NationalMotorMail*Coach

Co. it has been held that, in the absence of an agreement. a company is not bound toreimburseapromoterin respect of registrationfees and stamp dutypaid byhim.

Intheabsenceofanyagreementwiththecompanyafteritsincorporation,apromoter cannot sue the company for the recovery of his remuneration and preliminaryexpenses. However, the Articles of Association of the company generally empower thedirectorstopayaspecifiedamounttothepromotersfortheirservicesbutthisdoesnotgive the promoters any contractual right to sue the company. This is simply an authorityvestedin thedirectors ofthe company.

However,thepromotersusuallybecomethedirectors,sothatinpractice,thepromotersarepaid their remuneration.

Theremuneration maybepaid inanyof thefollowingways:

(i) A commission on the purchase price of the business or property taken over by thecompanythrough him.

(ii) Thepromotermaybepaid a certain lump sum.

(iii) Hemaybegivenfullyor partlypaid shares in considerationofhis servicesrendered.

(iv) Hemaybegiven a commission at afixed rate on theshares sold.

(v) He may sell his own property to the company at a higher price and make profits.However,hemust make full disclosureof this fact.

(vi) Hemaybegiven anoptionto buythe shares of the companyatpar when theirmarketpriceis higher.

(vii) Hemaybeappointedaschairman of theBoard ofDirectorsofthecompany.

Whatever be the nature of remuneration, it must be disclosed in the prospectus if itis paid within the preceding two years from the date of the prospectus. This is to enableprospectivemembers to know about all such payments.

Pre-IncorporationContracts

Contracts which are made by promoters with parties to acquire some property orright for and on behalf of a company yet to be formed are termed as ‘pre-incorporation’ or‘preliminary’ contracts. Such contracts are not legally binding on the company even afteritsincorporation,becausetwoconsentingpartiesarenecessarytoacontractwhereasthe

companyisanon-entitybeforeitsincorporation.Thecompanyhasnolegalexistenceuntilitis incorporated. Thus, acompanycannot sueorbesuedforpre-incorporation contracts.

EffectsofPre-incorporation Contracts

1. *Notbindingoncompany:*Acompany,whenregistered,isnotboundbypre-incorporationcontracts,thereasonbeingthatatthetimeofmakingthecontractthecompany was not in existence. This is so even if the company has taken some benefit fromthe contract.In*Re. Englishand Colonial Produce Co. Ltd.*a solicitor prepared theMemorandum and Articles of Association and paid the necessary registration fees on theinstructionsof persons who later became directors. He claimed hisfeesand expensesonthe liquidation of the company. It was held, that the company was not liable to pay thesolicitor'scosts though ithad taken thebenefit ofhis work.

2. *Cannot ratify the agreement:* A company when registered cannot ratify or adopt thepre-incorporationagreements,becauseacontractcanberatifiedonlywhenitismadebyan agent for a principal who is in existence and is competent to contract at the time whenthe contract is made. Since company was not in existence, therefore, ratification is notpossible. However, after incorporation a company may enter into a new contract to carryintoeffect thecontract madebythepromoters beforeincorporation
3. *Promoters'personalliability:*Ifthepromotersundertookanyliabilityundertheagreement, they would be personally liable notwithstanding that they are described in theagreement as agent. In *Kelner V. Baxter,* an agreement was made between K and B; B wasacting on behalf of theproposed hotelcompany. Wine supplied under the contract wasused by the company which had ratified the agreement after incorporation. The companywent into liquidation before paying the debt.It was held that B was personally liable andnoratification could releasehim from hisliability.

4. *Company cannot sue:* The Company is also not entitled to enforce the preliminaryagreements. In *Natal Lan ci &Colortisation Co. Pauline Colliery Syndicate,* it was heldthat a company cannot benefit from a contract purporting to have been made on its behalfbefore the company came into existence. Thus, a company is neither bound by, nor canhavethe benefit of pre-Incorporation contracts.

5. *Position under Specific Relief Act:* Until the passing of the Specific Relief Act 1963,the promoters found it very difficult to carry out the work of incorporation. Since contractsprior to incorporation were void and also could not be ratified, people hesitated to eithersupply any goods or work for thecause ofincorporation. Promotersalso felt shy ofaccepting personal responsibility. The Specific Relief Act, 1963 came as a bigsigh ofrelief to the promoters of a company who have, before its incorporation, entered intocontracts for the purposes of the company and such contracts are warranted by terms ofincorporation. The contract may be specifically enforced by or against the company, if thecompany hasaccepted the contractandcommunicated such acceptance to the other partytothecontract

Section 19 of the Specific Relief Act provides that the other party can also enforcethe contract if the company has adopted it after incorporation and the contract is within thetermsof incorporation.

INCORPORATIONOFCOMPANY

Incorporationofacompanyisthesecondstageofthecompanyformation.Itiseffectedbyregistratio nwiththeRegistrarofCompanies.Thepromoterswillchooseafewappropriatenamesandapply totheROCtoascertainastowhichofthenamesisavailableforadoption.Inthemeantime,theywillal sohavetodecidetheobjectswhichthecompanyistocarryout,theplacewherethebusinessistobecar riedon,theextentoftheresponsibilityofeachmemberforlossesandtheamountoffundsconsidered necessarytocarryonthebusinessproperly.Theywillembodytheirdecisionsonthesemattersinado cumentcalledtheMemorandumofAssociation.Therulesandregulationsforthecompany's internal management will be embodied in Articles of Association.

The formalities to be gone through in registering a new company under the Act areenumeratedbelow:

1. An application in the prescribed form (Form IA) is to be made to the Registrar ofCompanies of the State in which the registered office of the proposed company is to besituated for information as to whether the intended name is available for adoption. A fee ofRs.500 in payable with the application [Rule 4A of the Companies Act (CentralGovernment'sGeneral 1Rules and Forms 1956].

2. Arrangement must be made for the preparation and printing of theMemorandum. and Articles of Association and for having them stamped according to theIndianStamp Act.

3. The Memorandum and Articles are to be signed by at least 7 or 2 subscribersdepending upon the nature of the company and each subscriber should add his address,description and occupation and the number of shares subscribed for; the documents shouldalsobedated.

4. Thepromotersofthecompanyshouldmakearrangementsforfilingthefollowingdocumentswiththe RegistrarofCompaniesandpayingthenecessaryfeesfortheincorporation ofthecompany.

(a) MemorandumofAssociation

(b) Articlesof Association

(c) Agreement if any, which the company proposes to enter into with anyindividualforappointmentasitsmanagingorwholetimedirector ormanager.

(d) Name availabilityletterreceived fromtheRegistrar

(e) In case the name of first directors are given in the Articles or in the Prospectus,then the written consent of the directors to act as such in Form No. 29. Suchpersons shall have to give a written undertaking to take up and pay for theirqualificationshares.

(f) A statutory declaration that all the requirements o the Act and the rulesthereunder in respect of registration have been complied with. The declaration maybesignedbyanyof the following:

(i) Anadvocate oftheSupreme Court orof aHighCourt

(ii) Anattorneyorpleader entitled tbappear beforeaHigh Court

(iii) AcharteredAccountantinwholetimepracticeinIndia

(iv) Acompanysecretaryinwhole timepracticeinIndia

(v) A person named in the Articles as a director, managing director, manager orSecretaryof the Company.

Thisdeclarationshouldbeonanon-Judicialstamppaperofappropriatevalue.

(g) Theprescribedfeeshouldbepaidalongwithapplication.Theamountoffeesdependsonthenominalcapitalofthecompanytobeincorporated.Thefeecanbe

paidtotheRegistrarofCompaniesincashorbypostalorderorbymoneyorderorbydemand draft orbycheque.

Once the required documents have been delivered and the prescribed fees paid, theRegistrar will scrutinise the documents and if satisfied that all the formalities have beendulycompliedwith,hewillissueacertificateofincorporation.Onreceivingthecertificate,the companybecomesabodycorporatewithperpetualsuccessionandacommon seal. The address of the registered office of the company has to be filed In formno.18within 30 days after thedate ofincorporation.

Certificate of Incorporation: If the Registrar is satisfied with the contents of thedocuments, he will register them and issue a certificate of incorporation, and under Section34 the company becomes a body corporate. with perpetual succession and a common seal,fromthedateon the certificate, evenif thatis notin factthedatewhen it wasissued.

Effect of certificate of incorporation: Section 35 provides that a certificate ofincorporation given by the Registrar In respect of any association shall be conclusiveevidence that all the requirements of the Act have been complied with in respect ofregistration and matters precedent and incidental thereto, and that the association is acompany authorised to be registered under the Act. If there has been any proceduralirritation in the incorporation of the company, it is immaterial and will not invalidate theregistrationofthe Company.

A company comes into existence as a legal person upon the issue of the date ofincorporation. Sec. 34(2) provides that from the date of incorporation, such of thesubscribers of the Memorandum and other persons be the members of the company. Thecompany shall be a body corporate by the name contained in the Memorandum, capableforthwithof exercisingall thefunctions of an incorporated company.

AccordingtoSection36oftheAct,onregistrationoftheCompany,thememorandum and articles of the company bind the company and its members to the sameextent as if they respectively had been signed by the company and by the members and thecontained covenants on its and their part to observe all the provisions contained in theMemorandumand Articles ofAssociation.

INVITINGSUBSCRIPTIONS

According to Sec. 69(1) of the Companies Act, no allotment shall be made of anyshare capital of a company offered to the public for subscription, unless the amount statedin the prospectus as the minimum subscription has been raised by the issue of share capitalinordertoprovideforthemattersspecifiedinclause5ofScheduleIIhasbeensubscribed, and the sum payable on application for the amount so stated has been paid toandreceivedbythecompany,whetherincashorbyachequeorotherinstrumentwhichhas been paid. The amount so stated in the prospectus shall be reckoned exclusively of anyamountpayableotherwisethaninmoney anditisknownasminimumsubscription.Besidestheamount,payableoneachshareshallnotbeless than5%ofthenominalamountoftheshare.AccordingtoSEBI'sGuidelinesondisclosureandinve stors'protection, if the company fails to receive 90% of issued amount from public subscriptionplus accepted devolvement from underwriters within 120 days from the date of opening oftheissue, thecompanyshall refundtheamount of subscription.

COMMENCEMENTOF'BUSINESS

A private company may commence its business immediately on incorporation but apublic company cannot commence business immediately after incorporation unless it hasobtainedacertificate of commencementofbusiness from theRegistrar.

If the company has a share capital and has issued a prospectus inviting the public tosubscribetoitssharesordebentures,Itcannotcommencebusinessuntil:

a. Sharespayableincashhavebeenallottedtotheextentoftheminimumsubscriptions:
b. Every director has paid in cash the application and allotment money on thesharestaken byhim.
c. No money is liable to be repaid to the applicants for failure to apply or obtainpermission for the shares or debentures to be dealt in on any recognised stockexchange.
d. A statutory declaration duly verified by one of the directors or the secretary orwherethecompanyhasnotappointedasecretary,asecretaryengagedinwhole

timepracticeintheprescribedformthattheaboveconditionshavebeencompliedwith has been filed withtheRegistrar [Section149 (1)].

If the company has a share capital but has not issued a prospectus to the public, it shallnotcommencethe business unless:

a. Statementinlieu ofprospectushas beenfiledwith theRegistrar.
b. Everydirectorhaspaidincashtheapplicationandallotmentmoneyonthesharestaken byhim.
c. A statutory declaration duly verified by one of the directors or the secretary orwhere the company has not appointed a secretary, a secretary in whole timepractice in the prescribed form that the above conditions have been complied withhasbeen filedwith theRegistrar (Section 149(2)).

On the above requirements being duly fulfilled, the Registrar, shall certify that thecompanyisentitledtocommencebusiness.Thecertificateisaconclusiveevidencethatthecom panyis so entitled (Section 149(3)).

The Companies Amendment Act, 1965, has introduced certain new conditions for thecommencementofbusinessbyacompany.IthadaddedtwonewSub-Sectionsto Section 149.Theseconditions arementionedbelow:

1. If a company (formed after the commencement of the Amendment Act 1965)having a share capital, whether or not it has issued a prospectus inviting the publictosubscribeforItsshares,wantstostartabusinessincludedinthe‘otherobjects’itsh all havetoobtain theauthorityof aspecial resolution ofits shareholders.
2. If an existing company (i.e. a company in existence before the commencement ofthe Amendment Act, 1965) wants to commence any business connected with theobjects stated in its memorandum, it shall have to obtain the authority of a specialresolution.
3. Inboththeabovecasesadeclarationhastobefiledby onedirectororthesecretary or, where the company hasnotappointeda secretary,a secretary inwhole time practice, with the Registrar that the requirement as to resolution hasbeencomplied with.

4. Where in cases (1) and (2) referred above, a special resolution has not been passedbut the votes cast in favour of the resolution exceed the votes cast against it, theCentral Government may, on an application by the board of directors allow thecompany to commence such business. It this case also, declaration has to be filedwiththeRegistrar (Section 149 (2B)).
5. If a company commences business In contravention of Section 149 (2A), everyperson who isresponsible for the contravention is liable to a fine which mayextendtoRs.500/- foreverydayduringwhichthecontraventioncontinues.Anycontractmadebythecompanybeforeithasobtainedthecertificateofcommencement Is provisional only and does not become binding on the companyuntilit has become entitled to commencebusiness.

Where forany reason,the company cannotobtainthe certificate ofcommencementand is not entitled to commence its business, the contract entered into after incorporationcannotbe enforced against the directors orthecompany.

A company Is bound to commence business within a year of its incorporation or else itis liableto be wound up bythecourt.

Where a company commences business or exercises borrowing powers incontravention of Section 149, every person who is responsible for contravention Is liableto a fine uptoRs. 5000 for every day during which the contravention continues. This is inaddition to anyotherliability(Section 149 (6)).

The provisionsofSection149donotapplytoaprivatecompanyevenIfitisasubsidiaryofapubliccompany.

MEMORANDUMOF ASSOCIATION

Introduction

In law, the word ‘Memorandum” means “document recording terms of contract,agreement, establishment of company, etc.”. Every company must have a memorandum ofassociation. A company’s memorandum of association is its most important

documentbecauseitisthememorandumthatdeterminesthepowersofthecompany.Thememorandum may be described as the company's charter, defining and limiting its powersand thereby helping to govern its relations with the outside world. The memorandum andother documentsfiled with the Registrar of companies areavailableforexamination byany member of the public and indeed it will be seen that since the facility is available,persons contemplating dealings with the company may be expected to avail themselves ofit. Itwould appear reasonable that members, debenture holders, creditors having investedin or entrusted to the company their hard earned capital, have the right to be assured of theactivitiesto bepursued and beable to relyon thatassurance.

MEMORANDUMOFASSOCIATION

*Definition:*Section2(28)oftheCompaniesActdefinesamemorandumas,"Thememorandum of association of a company as originally framed or as altered from time totime in pursuance of any previous Company Laws or of this Act". Lord Cairns in *AshburyCarriage Company Vs. Riche* observed that the Memorandum of association of a companyisits charter anddefinesthe limitationsof thepowersof acompany.

FormofMemorandum

According to Section 14 of the Companies Act, the memorandum of associationshould be in any one of the forms specified in Table B,C,D and E of schedule I to theCompanies Act, 1956, as may be applicable to it, or in a form as near thereto as thecircumstances permit. The forms specified in Table B,C,D and E are applicable to differenttypes of companies, viz., Table B for companies limited by shares, Table C for companieslimited by guarantee and not changing a share capital, and so forth . The company mayeither adopt any of these Tables applicable to it or may devise a form of its own whichIsasnear to theappropriateTable as the circumstancespermit.

The memorandum of Association must be (a) printed, (b) divided into paragraphs,numbered consecutively, and (c) signed by each subscriber who shall add his address,description and occupation in the presence of at least one witness who shall attest thesignatureand likewiseadd hisaddress, description and occupation(Sec.15).

ContentsofMemorandum

The memorandum of association of every company shall contain the followingclauses:

1. Nameclause
2. Situationclause
3. Objectsclause
4. Liabilityclause
5. Capitalclause,and
6. Association or Subscription clauseEachoftheseclausesis analysedbelow.

1. Name clause: Under this clause the corporate name- of the company is mentioned. Anysuitablename canbechosenbyacompany, subject,however,tothefollowingrestrictions:

(a) In the case of companies limited by shares or limited by•' guarantee, the word"Limited"or"PrivateLimited"mustbethelastwordinthenameofeverypublicorprivate company respectively. There is, however, one exception to this rule as provided inSection25oftheAct,whichpermits"charitablecompanies"formedtopromote

commerce, art, science, religion, etc., (prohibiting the payment of dividends and applyingall the profits to the promotion of their objects) under a licence granted by the CentralGovernment to register with limited liability, but without the word “limited” as part of Itsname. In the case of unlimited companies, only the name is to be given. It should be notedthatthe inclusion ofthe word“company”is not essential.

(b) As per Section 20 the name chosen must not be undesirable, in the opinion oftheCentralGovernment.TheActdoesnotstatewhatnamesshallbeconsideredundesirableanda ssuchgivesverywidediscretiontotheCentralGovernment.Ordinarilyanameisconsideredundes irableandthereforenotallowedifitiseither:

(i) tooidenticalorsimilartothenameofanotherexistingcompanyorfirm(whetherregiste red or unregistered) soas to lead toconfusion or

(ii) misleading.

However, if through inadvertence or otherwise, a company is registered by analmost identical name, the court will grant an injunction restraining it from using that name*(Ewing Vs. Buttercup Margarine Co. Ltd.).* The Central Government may also direct acompany within 12 months of its registration. to rectify the name if It is identical with ortoonearly resemblesthenameofanexistingcompany.Thecompany mustactaccordingtothedirection within 3 months of thedirection.

2. Situation clause: Every company shall have a registered office from the day on which itbegins to carry on business, or as from thirtieth day after the date of its incorporationwhicheveris earlier.Allcommunicationsandnoticesaretobeaddressedtothatregistered
• office. Notice of the situation of the registered office and every change shall be given tothe Registrar within thirty days after the date of incorporation of the company or after thedate of change. If default is made in complying with these requirements the company andevery officer who is in default shall be punishable with fine which may extend to Rs. 50foreverydayduringwhich thedefault continues.

3. Objects clause: Of all the clauses in the memorandum the object clause is the mostimportant.Itshould specify inunambiguous language the objects for which the companyis formed. Great care should be taken in drawing up this clause, as the company will not beallowed to do any business which is not specifically mentioned here. As it is difficult toalter the objects clause later, it is necessary that promoters should include in this clause allpossible types of business in which a company may engage in the future. Although itIsbest to state all powers in addition to the objects clause, yet If the company does anythingwhich is incidental to and consequential upon the powers specified, such an act will not beillegal. Thus a trading company under it's implied - power, though not mentioned in theobjectsclause,can borrow, draw and accept billsin theordinarycourseof business.

According to the amendment to the Companies Act made in 1965, the objectsclause of a company formed after the commencement of the Amendment Act mustcontain:

(i) Main Objects of the company and objects incidental or ancillary to theattainment ofthesemain objects;

(ii) Otherobjectsof thecompanynot includedabove.

A statement of the objects in the Memorandum has two fold operation: Itstates affirmatively the ambit and extent of vitality and power which by law are given tothe corporation, and it states, if it is necessary so to state, negatively that nothing shall bedone beyond that ambit, and that no attempt shall be made to use the corporate life for anyotherpurposethanthatwhichissospecified.Acompanywhichhasamainobjecttogetherwith a number of subsidiary objects cannot continue to pursue the subsidiary object afterthemain object has come.

*4. Liabilityclause:*Thisclausehastostatethenatureofliabilitythatmembersincur.Inthecaseofacompanylimitedbyshares,themembersareliableonlyuptotheamountpaid on the shares taken by them. In the case of a company limited by guarantee, themembers are liable to the amount undertaken to be contributed by them to the assets of thecompanyin theevent of its beingwound up.

Theliabilityclauseisomittedfromthememorandumofassociationofunlimitedcompanies. Any alteration in the memorandum compelling a member to take up moreshares, or which increases his liability would be null and void. According to Section 45 ofthe Act, if a company carries on business for more than six months while the number ofmembers is less than, in the case of public company and less than in case of a privatecompany, each member aware of this fact, is liable for all the debts contracted by thecompanyafter theperiod ofsixmonths has elapsed.

5. *Capitalclause:*Thememorandumofacompany limitedby sharesmuststatetheauthorised or nominal share capital, the different kinds of shares and the nominal value ofeach share. The capital of a company may be divided into shares of two different classes,namely preference and equity shares.. The power to issue capital in shares of differentclassesmay be taken inthe capitalclause of memorandumor itmay be taken inthearticles. A company u/s 95 of the Act, may alter the conditions of its memorandum withrespect to its share capital by ordinary resolution if authorised by the articles. According toSec. 100 a company limited by shares or a company limited by guarantee and having ashare capital may reduce its share capital by special resolution if authorised by the Articlesand confirmed bytheCourt.

6. *Subscription clause:* Subscribers to the Memorandum express their assent to form acompany and signify their agreement to associate for that purpose. The memorandum hasto be signed by each subscriber in the presence of at least one witness who must attest thesignatures. Under this clause we have the declaration of association which Is made by thesignatories of the memorandum under their signature duly attested by witnesses, that theydesire to be formed into a company and that they agree to the purchase of qualificationshares. There must be at least 7 signatories in the case of a public company and at least twoinrespectof a privatecompany.The subscribers usually actasfirstdirectorsof thecompany. In respect of a company which is limited by guarantee or is having unlimitedliability and which has no share capital, the legal provision regarding purchase of at leastonesharebyeach subscriber does not apply.

ALTERATIONOFMEMORANDUM

Section 16 provides that the company cannot alter the conditions contained inmemorandum except in the cases and in the mixes and to the extent for which expressprovisionhas been made in theAct.

Alterationof NameClause

A company may, by passing a special resolution and with the approval of theCentralGovernmentsignifiedinwriting,changeitsname.Butnosuchapprovalisrequiredincasesofadditionordeletionoftheword'Private'consequentontheconversion ofapubliccompanyinto aprivatecompanyand viceversa.

If, through inadvertence or otherwise, a company has been registered with a namewhich is identical with or which too closely resembles the name of an existing company,the company may change the name by passing an ordinary resolution and by obtaining theapprovalof theCentral Government in writing.

The change of name must be communicated to the Registrar of companies within30 days of the change. The Registrar shall then enter the new name on the register in theplace of the old name and shall issue a fresh certificate of incorporation with necessary'alterations [Sec. 23(1)]. The Registrar shall also make the necessary alterations in the'Memorandum of Association' of the Company [Sec. 23(2)]. The change of name becomeseffectiveontheissueoffreshcertificateofincorporation.

However it should be noted that the change of name shall notaffect any rights or obligations of the company or render defective any legalproceedingsbyor against it.

Changeof RegisteredOffice

This mayinvolve:

(a) Change of registered office from one place to another place in the same city, town orvillage.

(b) Changeofregisteredofficefromonetown toanothertownin thesamestate.

(c) Changeofregisteredofficefrom onestateto anotherstate.

Incase(a), notice is to be given within thirty days after the dateofthechangeto theRegistrar who shall recordthe same [Sec. 146(2)].

In case (b), special resolution is required to be passed at a general meeting of theshareholders and a copy of it is to be filed with the Registrar within thirty days. Thenwithin thirty days of the removal of the office, a notice has to be given to the Registrar ofthenew location ofthe office.

ChangeofRegisteredOfficefromoneStatetoanother[Sec.17]

A company may, by special resolution, alter the provisions of its Memorandum soas to change the place of its registered office from one state to another for certain purposesreferred to in Sec. 17(1). The alteration shall take effect only when it is confirmed by theCompany Law Board. (Procedure is similar to alteration ofobjects). The Board shallconsider the objections of persons whose interests will, in the opinion of the Board, beaffectedbythealteration(Sec. 17(3)).

Where the alteration involves a transfer of the registered office from one state toanother state, a certified copy of the order confirming the alteration shall be filed by thecompany with the Registrar of each of the states and Registrar of each state shall registerthe same. All the records of the company shall then be transferred to the Registrar of thestatein which theregistered officeof the companyistransferred [Sec.18 (3)].

Alterationof Objectsclause

Section 17 empowers a company by a special resolution duly confirmed by theCompanyLawBoard(CLB)toaltertheobjects(orto changetheplacesofits registeredofficefrom onestateto another) ifthe alteration isrequired to enable the company

1. tocarryonits businessmoreeconomicallyandmoreefficiently.
2. to attain its main purposebynew orimprovedmeans.
3. toenlargeor changethe localareaofits operation.
4. to carry on some business which under existing circumstance may beconvenientlyor advantageouslycombinedwith thebusinessof the company.
5. to sellor disposeof thewhole, or anypart oftheundertaking, or
6. torestrict orabandon anyof theobjects specified in thememorandum.
7. to amalgamate with anyother companyor bodyof persons.

A printed or a typewritten copy of the special resolution is required to be filed withthe Registrar of companies within thirty days of the passing thereof. Also a petition is to befiled to the CLB for confirmation of the special resolution. The CLB, being satisfied thatthe notice of the resolution was given to all persons whose interests are likely to beaffected.Bythealteration,includingtheRegistrarofcompaniesandtheStateGovernment,andh avingheard them,mayconfirmthealterationeitherwhollyorinpart.

A certified copy of the CLB's order together with a printed copy of the alteredmemorandummustbefiledwithinthreemonthsofthedateoftheorder,withtheRegistrar.T heRegistrarwillregisterthedocumentsandissue,withinonemonth,acertificatewhichwillbeconc lusiveevidencethateverythingrequiredhasbeendone(Section18).

ChangeinLiabilityclause

According to Sec. 38 of the Act, a company limited by shares or guarantee cannotchange its memorandum as to impose any additional liability on the members or to compelthem to buy additional shares of the company unless all the members agree in writing tosuchchangeeither beforeor after thechange.

Alterationof Capital

A company may alter its memorandum to increase the share capital (authorisedcapital) provided it Isauthorised by the Articles of Association. If the Articles do notauthorize such alteration, the Articlesmustfirstbe altered tothateffectbypassing aspecialresolution.Acompanymayalsoalteritssharecapitalbyconsolidationorsubdivision of shares, conversion of shares into stock and vice-versa and by cancellation ofun-issued capital. Consolidation is the process of combining of specified number of sharesintoonenewsharehavinganominalvalueequaltotheaggregateofthesharessoconsolidated . Subdivision of the shares is the process of subdividing shares or sum of theminto shares of smaller amount than provided in the memorandum, viz., subdivision of oneRs. 100 share into 10 shares of Rs. 10. Fully paid-up shares are converted into "stock" forthepurposeofitsdivisionintofractionsofanydenomination.Suchstockcanbereconverted into shares as and when found necessary V. A company may also diminish theamount of its nominal share capital by cancelling the shares which remain unissued at thedatesuch decision is taken.

Alterationofsharecapitalcanbeeffectedbythecompanybypassinganordinaryorspecial. resolutioningeneralmeeting,asprovidedintheArticlesofAssociation.Ifitisa special resolution, a copy of the resolution along with the explanatory statement must befiled within 30 days of the passing of the resolution. A notice of the alteration must then befiled with the Registrar within 30 days specifying the nature of the alteration. Thereupon,the Registrar records the notice and makes necessary changes in the Memorandum andArticlesofAssociation.

DOCTRINE0FULTRA-VIRES

Theterm‘ultra’means‘beyond’andtheterm, ‘vires’ means ‘powers’.Thus, ultra vires means ‘doing an act beyond the powers. Any activity done contrary to orin excess of the scope of activity of directors, Articles, Memorandum or Companies Actwillbeultra-vires.Theseactivitiescanbecategorisedasfollows:

(i) anactultra-viresthe directors
(ii) anactultra-viresthe ArticlesofAssociation
(iii) anactultra-viresthe MemorandumofAssociation
(iv) anactultra-viresthe CompaniesAct

If an act is ultra vires the directors, it is not altogether void, because this act can beratified by the general body of shareholders, and on such ratification the act becomesbindingonthecompany.However,actswhichareultraviresthe ArticlesofAssociationar e altogether void.In respect of Memorandumof Association when the company doesany act which is contrary to the objects clause of memorandum it shall be termed as ultraviresthememorandumanditshallbewhollyvoidorinoperative.Suchultraviresactivities cannot ‘be subsequently ratified or validated even by a unanimous resolution ofall the shareholders. The doctrine of ultra-vires was first applied in the case of *AshburyRailway Carriage Co. Vs Riche.* The court held that the whole body of shareholders cannotratify an ultra vires transaction. An ultra vires contract can never be made binding on thecompany.Itcannotbecomeintraviresbyreasonsofestoppel,lapseoftime,ratification

etc.(Thedecisionin*AttorneyGeneralVstheGreatEasternRailwaysCompany.)*

Consequencesoreffectsofultravirestransactions

1. *Personal liability of directors:* It is the duty of directors to see that the funds of thecompanyareusedonlyforlegitimate businessofthecompany.If directorsmakeanultravirespayment, then theycan becompelled tomakegood thefunds used.

2. *Actnullandvoid:*Acontractwhichisultraviresthecompanyiswhollyvoidab*initio* andofnolegaleffect.Itcannotevenberatifiedbythewholebodyofshareholders.

3. *Ultra vires acquired property:* If company's funds were used in acquiring some ultravirespropertry,the company hasthe righttoholdthe property andprotectitagainstdamagebyotherpersons.

4. *Injunction:* A company is bound strictly by the terms of its incorporation i.e. thememorandum. Hence, whenever a company goes beyond the scope of the objects clause,any of its members can get an injunction from the court to restrain the company fromundertakingtheultravires act.

5. *Ultra vires torts:* A company shall not be liable for torts committed outside its objects.The company can be made liable for torts or crimes of its employees if (a) the tort wascommitted in the course of an activity which is in the purview of company's memorandumand(b) it wascommitted bythe employeewithin the courseof his employment.

ARTICLES OFASSOCIATION

Definition

Section2(2),oftheCompaniesActdefinesthe'articles'as,"thearticlesofassociation of a company as originally framed or as altered from time to time in pursuanceof any previous company law or of this Act including, so far as they apply to the company,the regulations contained in Table A in schedule-I of this Act".The articles of association of a company and its by-laws are regulations which govern themanagement of its internal affairs and the conduct of is business. They define the duties,rights,powersandauthorityoftheshareholdersandthedirectorsintheirrespectivecapaciti

es and of the company. And the mode and form in which the business of thecompany is to be carried out. The Articles of association of a company have a contractualforce between the company and its members as also between the members' interest inrelationto theirrights assuch members.

REGTRATIONOFARTICLESOFASSOCIATION

According to Sec. 26, a public company limited by shares may register the articlesof association signed by the subscribers to the memorandum. If however, it does notregisteritsownarticlesthenthearticlesgiveninTableAofscheduleIbecomesapplicable.Further,evenifitdoesregisterarticlesofitsown,TableAwillapplyautomaticallyunlessithasbeenexcludedormodified.Thearticlesofacompanymustbe:

(i) printed (ii) divided into paragraphs numbered consecutively (iii) signed by subscribersto the memorandum in the presence of at least one witness who shall attest the signatures.Thearticlesaretobestampedwithrequisitestampandbefiledalongwiththememorandum.

ContentsofArticles

Thearticles ofacompanyusuallydealwith the followingmatters:

(1) The business of the company, the amount of capital issued and the classes ofsharesinto which the capital is divided; the increase and reduction of sharecapital.

(2) The rights of each class of shareholders and the procedure forvariationoftheirrights.

(3) Theexecution oradoption ofapreliminaryagreement.

(4) Theallotmentofshares, callsandforfeitureof sharesfornonpaymentofcalls.

(5) Transferandtransmissionofshares

(6) Company'slien onshares

(7) Exerciseofborrowingpower

(8) Generalmeetings,notices,quorum,proxy,poll,voting,minutes.

(9) Number appointmentandpowersofdirectors.

(10) Dividends,

(11) Accountsandaudit

(12) Keepingof books bothstatutoryand others.

Inadditionto theforegoingregulationsmanycompanies includeother matterslike

1. givingthe companypower to adoptcontracts entered into bypromoters.

2. settingouthowcapitalistobedividedintosharesoftwoclasses.

3. giving the directors power to appoint one or more of their body to the office ofmanagingdirectorand whole timedirector.

RestrictionsonContentsof Articles

The Articles of association shall not contain anything which (1) contravenes any oftheprovisions of theActor (ii)alters or extends theterms ofthememorandum.

AlterationofArticles

Subject to the provisions of the Act and to the conditions contained in itsmemorandum, a company may, by special resolution, alter its articles. The term alterincludes additions and omissions. A copy of the alteration must be filed with the Registrarwithin 30 days of passing the said resolution. The alteration will be effective from the dateofregistration bythe Registrar. However, the companycannotin any mannerdepriveitself ofthestatutorypower to alter its own Articles.TheArticles maybealtered in such a way as to have effect retrospectively. This flexibility of the company toalterits articles is however, subjectto certain limitations.

Limitations*toAlterationinArticles*

1. The alteration must not be inconsistent with the provisions of theCompanies Act oranyother statute.
2. The alteration must not be inconsistent with the conditions contained in thememorandum.
3. Thealteration must not depriveanyperson of hisrights underacontract.
4. Thealterationmustnotcontainanythingwhichisillegaloragainstpublicpolicy.
5. Thealteration must be bonafideforthebenefit of the companyasawhole.

DistinctionbetweenMemorandum andArticlesofAssociation

1. The Memorandum is the charter of the company which defines its objects andpowers. The Articles are by-laws of the company for the internal management of theaffairsforachievingtheobjects set outin the Memorandum.
2. The Memorandum is the supreme document of the company, while the Articles aresubordinate to the Memorandum. If there is any conflict between the Memorandum andArticles,thememorandum shall prevail.
3. Memorandum of Association should not contain any provisions contrary to theCompaniesAct.Articlesmustnot includeanyprovisionscontrarytoCompaniesct aswellasMemorandum of Association.
4. Every company must have its own Memorandum. But a public Company limited byshares may or may not have its own Articles. It may adopt Table A of Schedule I of theAct.
5. TheMemorandum defines therelationship between thecompanyand the outsiders,whiletheArticles definethe relationshipbetweenthecompanyandits members andamongmembers themselves.
6. Anew companymustprepareits Memorandumand file it withtheRegistrar beforetheregistrationofthe companyiseffected.ButArticlesarenotrequiredto be filed forthe purpose of registration. A company can adopt Table ‘A’ if it does not prepare its ownArticles.
7. Any act of the company which is ultra vires the Memorandum is wholly void andcannotbe ratified evenbythe wholebodyof shareholders.But anyact whichis ultraviresthe Memorandumcan beratified byshareholders bypassingaspecialresolution.
8. TheMemorandumcannotbe alteredeasily.TheprocedurelaiddownintheAct

mustbefollowed foralteringthevarious clausesof the Memorandum.Insome cases the

approvaloftheCompanyLawBoardisrequired.But,alterationof Articles is notdifficult. Articles can be altered by passing a special resolution andthe approval of theCompanyLaw Board isnot necessary.

LEGALEFFECTSOF MEMORANDUMANDARTICLES

AccordingtoSection36(1)oftheCompaniesAct,theMemorandum and Articles of a company, when registered, bind the company and its members as if theyrespectively had been signed by the company and each member, and contained covenantson its and their part to observe all the provisions of the Memorandum and of the Articles.The Memorandum and Articles of Association constitute a binding contract between thecompanyand its each member.

This means that the Articles bind the company to its members and members to thecompany and members to each other, but do not bind the company or its members tooutsiders.TheeffectandImplicationofthisSectionmaybebetterunderstoodbyconsideringho wfarthey-dobind:(1)thememberstothecompany;(2)thecompanytotheemembers;(3)themembersinterse; and(4)thecompanytotheoutsiders.

1. Members to the company: Every member of the company is bound to observe theprovisions of the Memorandum and the Articles as if each member had signed the same*(Hanuman Prasad* Gta*Vs. Hiralal).* A company can sue its members for the enforcementof these provisions and- the members may also be restrained by court from committing thebreachof provisions of thesedocuments.

In *Boreland Trustees Vs. Steel Brothers & Co.* Ltd., the Articles of the companyprovided that the shares of any member who became bankrupt should be sold to someother persons at a price to be fixed by directors. B became bankrupt and his trustee inbankruptcy claimed that he was not bound by the Articles of Association and could notclaimthesharesagainst the company.

In *Boreland Banking Company Vs. Briggs,* the Articles provided that the companyshall have a first charge on the shares for debts due to the company by the shareholders.Oneoftheshareholdersowingmoneytothecompanyborrowedmoneyfromabanko n

the security of the shares. The bank gave a notice of deposit of shares to the company. Itwas held that the shares deposited with the bank were bound by articles and the companywillhaveprioritybecauseof this provision in thearticles ofthecompany.

Each member is not only bound by the covenants of Memorandum and Articles asoriginally framed but as altered from time to time in accordance with the provisions of theCompaniesAct.

Shareholders cannot among themselves enter into an agreement which is contrarytoor inconsistent with theArticles ofAssociation of thecompany.

*2. Companytothe members:*TheCompanyisalsoboundtoItsmembersbytheprovisions of the Articles of Association. Any member is entitled to sue the company orobtainaninjunctionrestrainingthecompany fromcommittinganybreachoftheArticlesor from doing an illegal act. The company is bound to each member in respect of theirrights as members. Where a right is conferred by the Articles on a shareholder to record hisvoteat acompanymeeting,thechairmanof themeetingcannotdeprivehimof thisright.

In *HohnsonVs. Lyttle's Iron Agency,* a forfeiture of shares, irregularly effected bya company, was set aside at the instance of the aggrieved member as the company did notcomplywith theprovisions of theArticles.

In*WoodVs.OdessaWaterWorksCompany,*theArticlesofAssociationempowered the company at general meeting. Instead of paying the dividend in cash, aresolution was passed whereby the dividend was to be paid by issue of debenture bonds. Amember filed a suit restraining the company from acting on the resolution. The courtgranted an injunction restraining the company from acting on the resolution.

It must be noted that these documents bind the company to members and vice versainrespectoftheirmembershiprightsandnotcontractualrightsofotherkinds.

3. The members inter se: As between the members themselves, they are bound by theprovisions of the Articles. The Memorandum and Articles of Association do not constituteexpress agreement among the members of the company, but each member Is bound bythesedocuments onthebasisof theimplied contract. Thearticlesregulatetheir rights *inter*

se. But such rights can be enforced only through the company. Lord Herschel in *WeltonVs.Saffrey*observed,'Itisquiteclearthatthearticlesconstituteacontractbetween eachmember and the company and there is no contract in clear terms between the individualmembers of the company, but the Articles regulate their rights inter se. Such rights canonly be enforced by or against a member through the company or through the liquidatorrepresentingthecompany'.

4. Company to outsiders: The Articles of Association create no contract between thecompany and outsiders, even though outsiders are named in the Articles in some capacityotherthanofamember.Anoutsidercannottakeadvantageoftheprovisionsofthe Articles becauseheisnotapartytothecontractand,therefore,hecannotsuethecompany. An outsider is not entitled to enforce the Articles against the company for anybreach of right that is conferred on him by the Articles. In *Browne Vs. La Trinidad,* theArticles provided that B was to be appointed as director till 1888. But he was removedearlier. The court held that Articles do not constitute a contract between the company andoutsiderandthereforeBwasnotentitledtobringanyactionagainstthecompany.Similarly,wh eretheArticlesprovidedforremunerationtobepaidtopromoters,itwasheld that the promoters had no right of action against the company. Even a member cannotenforceprovisions of Articles in some capacityother than amember.

DOCTRINE OFCONSTRUCTIVENOTICE

The Memorandum and Articles of Association of every company are required to beregistered with the Registrar of Companies. Section 610 provides that on registration, thesedocuments become public documents. These documents are available for public Inspectioneither in the office of the company or in the office of the Registrar of Companies onpayment of one rupee for each inspection. Every person who deals with the companywhethershareholderoranoutsiderispresumedtohavereadthesedocumentsandunderst ood them in their true perspective. This is known as 'Doctrine of ConstructiveNotice'. Even if the party dealing with the company does not have actual notice of thecontents, it is presumed that he has constructive notice' of them.

Every person dealing with the company must inspect these documents and makesurethathiscontractisinconformitywiththeirprovisions.Whetherheactuallyreads

them or not, he is presumed to have read and understood them. A party, subsequently,cannot plead ignorance of the contents of these documents and seek exemption from beingliable. In *KortalVertkatswamyVs. Ram MurthL*the Articles provided that all deeds, etc.were to be signed by the managing director, secretary and a working director. A deedsigned by the working director and secretary was held to be inoperative and the party wasnotallowedtoseekexemptiononthepleathathehadnotreadtheArticles.

Lord Hatherley observed in *Mahoney Vs. East Holyford Mining Co.,* "Every jointstock company has its Memorandum and Articles of Association open to all who aremindedtohavebydealingswhatsoeverwiththecompanyandthosewhosodealwiththemmustb eaffectedwith noticeofallthatis containedinthesetwodocuments".

Accordingly, if a person deals with a company and the transaction turns out to bebeyond the powers ofthe company or its officers as contained in these documents, hecannotenforceitagainstthecompanyandheshallbepersonallyliabletobeartheconsequencesof such dealings.

However, the above doctrine of constructive notice is subject to one exception, thatis, so far as the internal proceedings of the company are concerned, outsiders dealing withthe company can safely assume that everything has been regularly done.This rule isknownasthe"doctrineofindoormanagement"whichisexplainedbelow:

DOCTRINEOFINDOORMANAGEMENT

Memorandum and Articles of Association, when registered with the Registrar ofCompanies, assume the character of 'public documents' under Section 6l0 of the Act andevery persondealingwiththecompany isdeemedtobecoveredbythedoctrineofconstructivenotice.

The doctrine of indoor management is an exception to the rule of constructivenotice.Thedoctrineofindoormanagementimposesanimportantlimitationonthedo ctrineofconstructivenotice.Personsdealingwiththecompanyshouldreadthesedocumentsandsa tisfythemselvesthatthecompanyhasthepowertoenterintothecontract, and they are required to do no more. He is not required to examine whether theinternal proceedings have been complied with or not. The details of internal procedure arenotopentopublicinspectionastheMemorandumandArticlesare.Thus,everyperson

dealing with the company is entitled to assume that everything has been done regularly sofar as the internal proceedings of the company are concerned. In other words, outsiders cansafely assume that provisions of the Articles have been complied with by the company initsinternalworking.Thisdoctrineseekstoprotecttheoutsidersagainstthecompany.

If the Articles of the company give powers to borrow with the sanction of anordinary resolution in a general meeting, a lender need not enquire whether the generalmeeting was convened on proper notice, or whether a proper quorum was present at themeeting, or whether the necessary resolution was properly passed. He is entitled to assumethat what has been done has been done regularly and can hold the company liable even ifinternal formalities are found not to have been complied with, the contract shall be bindingon the company and it shall be liable to outsiders. This rule is known as the doctrine ofindoormanagement

The rule was first laid down in The *Royal British Bank v. Turquand.*In this case,the directors of a company issued a bond to T. They had the power to issue such bonds butonly subject to the resolution passed at a general meeting of the company. In this case nosuch resolution had been passed. It was held that T could recover the amount of the bondfrom thecompany onthegroundthat hewasentitled to assume that theresolution hadbeen passed. Lord Hatherly observed' "Outsiders are bound to know the external positionofthecompany,butarenotboundtoknowitsindoormanagement".

The doctrine of indoor management is of great practical value. This rule is based onbusinessconvenienceandjustice.First,nobusinesscouldpossiblybecarriedonifaperson before dealing with the company was required to find out whether all the internalrules and regulations have been duly complied with. Secondly, an outsider dealing with thecompany is presumed to know the constitution of the company, but not what may or maynothavetaken placewithin thedoors that are closed to him.

In *Premier Industrial Bank Ltd Vs. Corlton Mfg. Co. Ltd.,* the doctrine of indoormanagement was summed up as under: "If the directors have power and authority to bindthe company, but certain preliminaries are required to be gone through on the part of thecompany before that power can be duly exercised, then the person contracting with thedirectors is not bound to see that all these preliminaries have been observed. He is entitledtopresumethat thedirectors are actinglawfullyinwhat theydo".

ExceptionstotheDoctrine

Thedoctrineof indoormanagement is subjecttothefollowinglimitations:

1. *Knowledge of irregularity:* The protection under the rule of indoor management cannotbe claimed by a person who has the knowledge of the irregularity or constructive notice ofirregularity*[NarayandasSomaniVs.SangliBankLtd.].InHowardVs.PatentIvoryManufacturing Co.,* the directors had the power under the Articles to borrow on behalf ofthe company up to 11,000. And for any amount exceeding this sum, the sanction of theshareholders in the general meeting was required. The directors themselves lent 3,500 tothe company without the sanction of the shareholders in the general meeting. It was heldthatthe companywas liable for 1,000 only.

2. *Negligence on the part of the outsider:* Where the circumstances are of a suspiciousnature as to invite further inquiry and the person has failed to enquire into it, he shall notbe entitled to protection under this rule. Where a director deposited cheques drawn infavour of the company in his own account, the bank was held liable because the act of thedirectorwas of anunusual nature, which shouldhaveput thebank onalert.

Similarly, where the transaction is of an unusual nature, the outsider must makedetailedinquiries.In*AnandBihariLcd,Vs.Dinshaw&Co.*theplaintiffacceptedatransfer of the company's property from its accountant; the transfer was held void. Theplaintiff should have seen the power ofattorney executed in favour of the accountant bythecompany.

3. Forgery: The protection under this doctrine shall not be available where the outsidershave relied upon a forged document, because forgery is a nullity. A company is not liablefor forgeries committed by its officer. In *Ruben Vs. Great Fingall Ltd.,* the secretary of thecompany issued a share certificate by forging the signature of two directors under the sealof the company. The holder of that share certificate claimed to be a registered member ofthe company, but the company refused to accept him as a member of the company. Rubenclaimed damages relying on the Turquand rule. It was held that he could not do so becausetherule did not applywherethe document was forged.

4. *No Knowledge of the Articles:* The doctrine of indoor management cannot be invokedinfavourof aperson whohad noknowledgeof theArticles of associationofthecompany.

The Turquand's rule is based on the principle of estopped and, therefore, it cannot beapplied in favour of a person who did not in fact consult the Memorandum and Articles ofthe

companyandconsequentlydid not act on relyingonthesedocuments.

In *Rama Corporation Ltd. Vs. Proved Tin and General Investments Ltd.,* T was adirector in the investment company. He proposing to act on behalf of the company enteredinto a contract with the Rama Corporation and took a cheque from the latter. The Articlesof the company did contain a clause that the directors could delegate their powers to one ofthem.ButRamaCorporationneverreadtheArticles.Lateritwasfoundthatthedirectorsof the company did not delegate their power to T. Plaintiff relied on the rule of indoormanagement. It was held that a person who at the time of entering into a contract with acompanyhasnoknowledgeofcompany'sArticles,hecannotrelyonthoseArticles.

5.Acts outside apparent authority: An outsider will not be protected by the rule laid downin Turquand's case if the act of an officer of a company is one which would not ordinarilybe within his powers simply because under theArticles power to do the act could havebeen delegated to him.In*Kreditbank Cassel* Vs. *Schenkers*Ltd., the branch manager ofthe bank drew and endorsed some bills of exchange on behalf of the company withouthaving received any authority from the company. It was held that the company was notliableon thesebills of exchange.

UNITV
PROSPECTUS

Definition

A prospectus as per Section 2(36) and along with Sec. 58A means any documentdescribed (or) issued as prospectus and includes anynotice, circular, advertisement orotherdocument invitingdepositsfrom thepublicorinvitingoffers fromthepublicforthesubscription or purchaseof anyshares in, or debentures of, abodycorporate.

Thus, a prospectus is not merely an advertisement; it may be a circular or even anotice.A documentshallbecalledaprospectus ifit satisfies twothings;

1. Itinvitessubscriptionstosharesordebenturesorinvitesdeposits;and
2. Theaforesaidinvitation ismadeto thepublic.

Section 67 lays down two-way criteria as to what shall constitute an invitation to thepublic:

1. An invitation to the public shall include an invitation to any section of the public,whether selected as members or debenture holders of the company concerned or as clientsof the person issuing the prospectus or in any other manner. However, a document by wayof Invitation to existing members or debenture holders to subscribe to shares, ordebentures bywayof right is not prospectus[Sec.56(5)].

2. An invitation shall not be an invitation to the public if it cannot be calculated to resultdirectly or indirectly, in the shares or debentures becoming available for subscription orpurchase by persons other than those receiving the invitation. Thus, it willnot be aninvitation to public where B, a friend of A who receives the invitation, also desires tosubscribe, but his offer shall be refused because he was not invited to make the same. Onthe other hand it will become an invitation to public where his (B's) offer shall also beaccepted.

Anydocumenttobeconstrued asprospectusshouldhavethefollowingessentials:

(a) Theremust bean invitationofferingto thepublic,

(b) The invitation must be made by or on behalf of the company or in relation to anintendedcompany

(c) Theinvitation mustbe to subscribeorpurchase;

(d) Theinvitationmust relatetoshares ordebentures.

Aprospectusisrequiredtomeetthefollowinglegalrequirements:

1. IssueafterIncorporation

Aprospectus isgenerallyissuedafter incorporationof thecompany. However, *Section55*permitstheissueofaprospectusInrelationtoanintendedcompany.

2. DatingofProspectus

[Sec. 55]: A prospectus must be dated and that date, unless the contrary is proved,shallbetaken as the dateofpublication ofthe prospectus.

3. RegistrationofProspectus

Section 60 provides that no prospectus shall be issued by or on behalf of acompany or In relation to an intended company unless on or before the date of itspublication, there had been delivered to the Registrar for registration, a copy thereof. Thecopy of the prospectus so delivered must be signed by every person who is named thereinasadirector orproposeddirector ofthecompanyorbyhis agent authorised inwriting.

Thecopyof theprospectus should be accompaniedbythefollowingdocuments:

1. Consent ofthe expert to theissue, if astatement madebyhim is to bepublished.
2. Written consent of all those persons whose names are mentioned in the prospectus asauditors,legal advisers, solicitors, bankers, brokers etc.
3. A copy of every contract appointing or facing remuneration of a managing director ormanager.
4. Acopyofeveryothermaterialcontractnotbeingacontractenteredintointheordinary course of the business carried on or intended to be carried on by the companyoracontract entered intomorethan 2.years before thedate oftheprospectus.
5. A written statement by the persons making any report required by part II of schedule IIrelating to the adjustments, if any, as regards the figures by any profits or losses orassets and liabilities dealt with by the report set out in the prospectus in pursuance ofpart IIof scheduleII,givingreasonstherefore..
6. Consent of Director under Sec. 266 to act in that capacity. It is relevant in case of newdirectorsonly.
7. Acopyof theunderwritingagreement, if any.
8. Where a prospectus is issued in more than one language, a copy of it as issued in eachlanguageshould bedelivered to Registrar of companies.
9. The prospectus must be issued within 90 days after the date on which a copy thereofhas been delivered for registration. If a prospectus is issued subsequently after theexpiry of this period, it shall be deemed to be a prospectus, and if a copy of wh4ch hasnot been delivered to the Registrar and the company, as well as every person who

isknowingly a party to such an issue of prospectus shall be liable to a fine which mayextend to Rs.5,000[Sec. 60].

10. Expert to be unconnected with the information or management of the company [Sec.57]: A prospectus must not include a statement purporting to be made by an expert.Unless the expert is a person who is not, and hasn't been, engaged or interested in theformationor in themanagement, of thecompany.

Terms of contract mentioned in prospectus not to be varied with the legal act.Acompany cannotvary the termsof acontractreferredtointheprospectusexceptsubject to the approval of, or except on authority given by, the company in generalmeeting. CONTENTSOFA PROSPECTUS

Section 56 of the companies Act lays down that the matters and reports stated inSchedule II to the Companies Act must be included In a prospectus. The format ofschedule II was revised by the Government vide its notification dated 3.10.1990. Therevisedformatof prospectusrequires theprospectus tobedividedinto threeparts.

Inthefirstpartparticularsaretobegiven aboutmattersdetailedbelow:

PartI ofSchedule II

1. Generalinformation: Underthishead,informationisgivenabout

1. Nameand addressofregisteredofficeofthecompany.
2. Name(s)ofstockexchange(s)whereapplication forlistingismade.
3. Declaration about refund of the issue if minimum subscription is not received,within90 days from closureof theissue..
4. Declaration about the issue of allotment letters/refund within a period of 10weeksandinterest incaseof anydefaultin refund atthepresribed rateunderSec.73.
5. Dateofopeningof the issue.
6. Date ofclosingof theissue.
7. Nameandaddressof auditorsandleadmanagers.
8. Whether rating from CRISIL or any rating agency has been obtained for theproposed debentures /preference shares issue.
9. If no rating has been obtained thisshouldbeanswered as'No'.
10. Namesandaddresses oftheunderwritersandtheamount underwrittenbythem.

2. CapitalStructureof thecompany:

1. Authorised,issued,subscribedandpaid-upcapital.
2. Size of the present issue, giving separately reservation for preferential allotmentto promotersand others.

3. Termsofthepresentissue

1. Termsofpayment.
2. Howtoapply
3. Anyspecial taxbenefits

4. Particularsoftheissue

1. Objects
2. Projectcost
3. Meansof Financing(Includingcontributionof Promoters)

5. Companymanagementandproject

1. Historyand main objects and present businessof thecompany
2. Promotersandtheirbackground
3. Locationoftheproject
4. Collaborations,ifany
5. Natureoftheproduct(s),exportpossibilities.
6. Futureprospects
7. Stockmarketdata.

6. *Certain prescribed particulars in regard to the company* and other listed companiesunderthesame management which madeanycapitalissueduringthe last 3 years.

7. *Outstanding litigations relating to financial matters* or criminal proceedings againstthecompanyor directorsunder ScheduleXIII.

8. *Management perception of risk factors* (e.g. sensitivity to foreign exchange ratefluctuations, difficulty in availability of raw materials or in marketing of products,cost/timeover-run etc.)

PartIIof ScheduleII

Requires the company to give detailed information. This part Is further sub-dividedinto three parts, viz., General information, financial information and statutory and otherinformation.

GeneralInformation shallincludeinformationonmatterslike

1. Consent of directors, auditors, solicitors, managers to the issue, Registrars to theissue,Bankers ofthecompany,Bankers to theissueand experts.
2. Change,ifanyindirectorsand auditorsduringthelast3years andreasonsthere for.
3. Procedureandtimeschedulefor allotmentandissueofcertificates.
4. Namesandaddresses ofcompanysecretary,legal advisor, lead managers,co-managers,Auditors, BankerstotheissueandBrokerstotheissue.

Financialinformationincludes

1. Reports of the auditors of the company with respect to its profits and losses andassets and liabilities and the dividends paid during the five financial years immediatelyprecedingthe issue of prospectus.
2. Report by the accountants on the profits or losses for the preceding five financialyears and on the assets and liabilities on a date which must not be more than 120 daysbeforethedate oftheissueoftheprospectus.

Statutoryandother informationincludes informationabout

1. Minimumsubscription
2. Expensesof theissue
3. Underwritingcommissionandbrokerage.
4. Previouspublicorrightsissuegivingparticularsaboutdateofallotment,refunds, premium/discountetc.
5. Issueofsharesotherwisethanforcash.
6. Particularsaboutpurchaseofproperty,ifany.
7. Revaluationofassets, ifany.
8. Material contracts and time and place where such documents maybeinspected.

Part Ill of the Schedule Gives explanation of certain terms and expressions usedunderPart -Iand Part —IIof theschedule.

IstheIssueofProspectusCompulsory?

No.Issueofprospectus by acompanyisnot compulsory in thefollowingcases:

1. Aprivatecompanyis notrequired toIssueaprospectus.
2. Even a public company need not Issue a prospectus if the promoters or directors feelthat they can mobilise resources through personal relationship and contacts. In suchcases the company is required to file a statement called “statement in lieu ofprospectus’with the Registrar ofcompanies.
3. As per the Amendment Act, 1988 a company may issue any form of application forshares or debentures of a company accompaniedby a memorandum containing theprescribed salient features of a prospectus(instead of a prospectus). However, in suchacase,acopyof theprospectus must be made available to any person on request[Sec.56(3)].
4. Where the application form is issued in connection with .a bonafide invitation to aperson to enter into an underwriting agreement with respect to the shares ordebentures[Sec. 56(3)]
5. Where the application form is issued in relation to shares or debentures not offered tothepublic [Sec. 56(3)].
6. Where the shares or debentures are offered to existing holders of shares or debentures(i.e. rights issue) with or without the right of remuneration in favour ofother persons[Sec. 56(5)].
7. Where the issue relates to shares or debentures which are to be uniform in allrespects with shares or debentures previously issued and dealt in or quoted on arecognisedstockexchange[Sec. 56(5)].
8. Where invitation to the public for subscription to the shares or debentures of acompany is made in the form of an advertisement ordinarily called as ‘prospectusannouncement’[Sec. 66].

AbridgedProspectus

The Central Government had vide SR No.6 14 (E) dated October 3, 1991prescribed the memorandum containing the salient features of abridged prospectus byadding Form 2A to the Companies (Central Government’s) General Rules and Forms1956. The Department of Companies Affairs has videF.No. 1/6188 - CCV, circular No1/92 dated January 9, 1992 notified that share application forms should be a part ofabridgedprospectus beingattached to italongaperforated line. Theprospectiveinvestors

are guided, as it provides an opportunity to study the contents of the abridged prospectusbefore submission to the designated bankers/same company. The particulars that arerequired to be furnished in the prescribed format Form 2A according to rule 4CC ofCompanies(CentralGovernment) GeneralRules&Forms1956,areenumeratedbelow;

1. General information; (2) capital structure of the company; (3) Terms of thepresent issue; (4) particulars of the issue; (5) company management and projects; (6)scheduleofimplementationoftheproject,(7)productstobemanufactured,futureprospectsetc. ,(8)payment!refunds.(9particularsofcompaniesunderthesamemanagement;(10)Management s perception ofrisk factors.

RefusalGoodsforRegistrationofProspectus

The Registrar isempoweredtorefuse registrationof the prospectusunderthefollowing grounds: (I) if the prospectus is not dated; (ii) if the prospectus contains astatement purported to be made by an expert without a statement that he has given and hasnot withdrawn his consent; (iii) if it does not contain consent in writing of directors; (iv) ifacopyof thedocumentsmentioned u/s 60(1)hasnot been filed.

VoluntaryDisclosure

Theprospectusisthewindowthroughwhichaninvestorcanlookintothesoundness of the company's venture. The prospective buyer of shares is entitled to all truedisclosures in the prospectus. It should not conceal any matter which ought to be revealed.In a nutshell the prospectus shall tell the truth, the whole truth and nothing but the truth.This ruling is called 'the golden rule' for framing a prospectus. This ruling was laid downby*V.C.Kindersley*in*NewBrunswickandCanadaRailwayandLandcompanyVs.Muggeridge (1860)*

DeemedProspectus

According to Sec. 64, an offer for sale is a prospectus and it is deemed to have been issuedby the company.Sec. 64 provides that where a company allots or agrees to allot anyshares or debentures of the company with a view to allot any of those being offered forsaleto the public, thedocument bywhich theofferofsale to the public is madeshall for purposes be deemed to be a prospectus issued by the company.Unless the contrary isproved, it is evidence that an allotment of, or an agreement to allot shares/debentures wasmade with a view to, allot the shares/debentures being offered for sale to the public, if it isshow

(a) that an offer for sale was made within 6 months of allotment or agreement forallotments, OR

(b) that at the date of the offer for sale, the company had not received the wholeconsiderationfor theshares/debentures.

Thedocumentcontainingtheofferforsalemustcontainthefollowingparticulars;

(i) the net amount of the consideration received or to be received by the company inrespectof theshares/debentures offeredforsale.

(ii) The place and time at which the relevant contracts may be inspected. The personsmaking the offer for sale to the public are to be deemed directors of the company for thepurposeof registration ofthe prospectus.

StatementinLieuof Prospectus(Section70)

If a public company makes a private arrangement for raising its capital, then it mustfile a statement in Lieu of Prospectus with the Registrar at least three days before anyallotmentof shares or debentures can bemade.

ScheduleIIIcontainsamodelformofastatementinlieuofprospectusinpursuance of Section 70; Schedule IV contains a model form of a statement in lieu ofprospectus when a private company is converted into a public company in pursuance ofSection 44. If allotment of shares or debentures is made without filing the document, theallottee may avoid it within two months after the statutory meetings or where no suchmeeting is to be held, within two months of the allotment. Contravention also renders thecompanyand everydirector liableto a fine uptoRs. 1,000.

MIS-STATEMENTINPROSPECTUS

According to Sec 62(3), the offer for sale must set out all the details required to beinserted in a prospectus. It should also specify the net amount of consideration received bythe company on the shares or debentures to which the offer relates, and specify the placeand time at which the relevant contracts may be Inspected. As all the provisions whichapply to prospectus issued by a company apply to such a document, it must discloseeverything truthfully. When a prospectus contains false/fraudulent statement of facts, it canbe termed as mis-statement In prospectus. According to Section 65 of the Act, a statementIncluded in a prospectus shall be deemed to be untrue, If the statement is misleading in theform and content in which it is included. It also provides that where the omission from aprospectusof any matter iscalculated tomislead, the prospectusshallbe deemed, inrespectofsuchomissiontobeaprospectusinwhichanuntruestatementisincluded.

Liabilityformis-statementinProspectus

A person who makes the offer will be liable for any mis-statement in that document in thesame manner as persons who authorise the Issue of a false prospectus. When there is mis-statementofmaterial factin a prospectus, theremayarise

(1) Civil Liability (ii) Criminal Liability: Every person who Is a director of the company atthe time of the issue of the prospectus, every promoter of the company and every personincludinganexpert, who has authorised theissueof aprospectus shall beliable.

For any untrue statement or mis-statement in the prospectus, a person who hassubscribed for any shares or debentures on the faith of the prospectus and has sustainedanyloss or damagemaysueforcompensation all or anyof thefollowing:

(i) the company (ii) every director (iii) every person whose name appeared in theprospectus as a proposed director (iv) every promoter (v) V every person who hasauthorisedtheissueof theprospectus.

TheGoldenRule

It is the duty of those who issue the prospectus to be truthful in all respects. ThisGoldenRulewasenunciatedbyKindersley,V.C.in*NewBrunswick,*etc.,coVs.*Muggeridge*a nd has cometo beknown as thegolden legacy.

The burden of proof in a suit by an allottee that he has been misled by the mis-statementin theprospectuslies on the allottee.Hemust provethe following:

(i) themis-representationwasafact

(ii) itwasinrespectofamaterial fact.

(iii) heactedonthemisrepresentationand

(iv) hehassuffereddamagesinconsequence.

CivilLiability

A person who has been induced to subscribe on the faith of an untrue statement inthe prospectus has remedies against the (i) Company (ii) the directors and promoters andexperts.

Remedies for mis-representation in prospectus: A company is responsible for a statementin prospectus only if it is shown that the prospectus was issued by the company. Thecompany is liable if though the prospectus is issued by the promoters, the Board ratifiesandadopts the issue, fortheprospectus is the basisof thecontract forshares.

Remediesagainstthecompany

(i) *Rescissionofthecontract:* Whereaprospectuscontainsmis-statementwhetherinnocent or fraudulent, the agreement to take up shares is voidable at the option of theaggrieved shareholder. He may apply to the court for r the contract to be set aside, and hisnameto bestruck off fromtheRegister of members. Hemayalsoclaim his money

(ii) *Action for damages:* The allottee may recover damages from the company for any losshe may have suffered ifthe invitation to buy theshares is emanating from the companyand the persons making it on behalf of the company have fraudulently misrepresentedmaterial facts. Damages are generally claimed from the directors, promoters and otherpersonswho authorised theissueof theprospectus.

RemediesagainstDirectors, PromotersandExperts

(i) *Damages for misrepresentation:* According to Section 62, every director, promoter orany other person who authorised the issue of the prospectus is liable to compensate anymislead allottee of shares for any loss sustained by him because of the untrue statement inthe prospectus. However, the directors will not be liable for damages for mis-statement iftheybelieved them to betrue.

(ii) *Liability for omission:* An omission from a prospectus of a matter required to be statedunder Section 56 may give rise to an action for damages at the instance of a

subscriber forshares, despite the omission does not make the prospectus misleading. However, a directororother person sued u/s. 56 maydefend himself byproving

(i) that hehad no knowledgeof thematternot disclosed, or

(ii) thatthecontraventionaroseoutofanhonest mistakeoffact.

LiabilityundertheGeneralLaw

Persons who authorise a false or misleading prospectus can also be held liable inaction for deceit under general law as provided in the Contract Act. The aggrievedsubscriber can claim full compensation for the loss sustained by him but be should provethepoints mentioned below:

(i) Therewasafraudulentmis-statement.

(ii) Therepresentationrelatedtomaterialfact.

(iii) Theaggrieved partyi.e. theoriginal allotteeactuallyrelied onthemis-statementand was actuallydeceived.

Howevercivilliabilitycanbeavoidedunderthefollowingcircumstancesasspecifiedu/s62(2)of theCompaniesAct, if heproves:

(a) that having consented to become a director, he withdrew hisconsent before the issue of prospectus and it was issued without hisconsent.

(b) thatthe prospectuswas issued withouthis knowledgeor consent and on becoming aware of its issue he immediately gavereasonablepublicnoticeof that fact.

(c) He withdrew his consent after the issue of the prospectus butbefore allotment and publicnoticewasgiven.

(d) He had reasonable ground to believe that the statements weretrueand believed them to betrue.

CriminalLiabilityformis-statementinProspectus

According to Section 63 of the Companies Act, where *a* prospectus Includes anyuntrue statement, every person who has authorised the issue of the prospectus shall bepunishable with (a) imprisonment for a term which may extend to 2 years or (b) fine up toRs. 5,000 or both, But he can escape from the liability if he can prove that the statementwasimmaterialorthathehadreasonablegroundforbelievingthatitwastrue.

Penalty for fraudulently inducing to invest money: According to Section 68, any personguilty of fraudulently inducing persons to invest money in a company shall be punishablewithimprisonment up to5years or fineup toRs. 10,000 or both.

Prohibition of allotment of shares in fictitious names: Section 68A makes the followingactspunishablewith imprisonment foratermextendingto 5years:

(a) making an application to a company for acquiring or subscribing for any sharestherein under fictitious name or (b) inducing a company to allot or register any transfer ofsharestherein to him or anyother person in afictitious name.

- It is obligatory for every company to prominently display the above provisions ineveryissueofaprospectusaswellasintheformsofapplicationforshares.

- *SEBI now authorised to institute prosecution:* The Department of Company Affairs hasby its two notifications issued on November 24, 1993 and February 15, 1994 authorisedthe Securities and Exchange Board of India (SEBI) to institute prosecutions in respect ofcertainoffences under Sections56, 57 and 58ofthe Companies Act,1956.

Share capital

***Meaning of Share Capital*:**

The term capital usually means a particular amount of money with which a business is started. In Indian Companies Act, it has been used in different senses in various parts of the Act, but in general it means the money subscribed pursuant to Memorandum of Association of the Company. Capital, in fact, represents the assets with which the undertaking is carried on.

The sum total of nominal value of shares of a company is known as its share capital. In case of companies, the terms ‘capital’ and ‘share capital’ have been held to be synonymous. Capital to be stated in the Memorandum of Association and Articles of Association of the Company.

Types/Nature of Share Capital:

The share capital of company may be of the following types:

1. Registered, Authorised or Nominal Capital:

The Memorandum of Association of every company has to specify the amount of capital with which it wants to be registered. The capital so stated is called Registered, Authorized or Nominal Capital. The Registered Capital is the maximum amount of share capital which a company can raise by way of public subscription.

2. Issued Capital:

The company may not issue the entire authorised capital at once. It goes on raising the capital as and when the need for additional fund is felt. So, issued capital is that part of Authorised/Registered or Nominal Capital which is offered to the public for subscription in the form of shares.

3. Unissued Capital:

The balance of nominal capital remaining to be issued is called Unissued Capital.

4. Subscribed Capital:

It is that part of "issued capital" for which applications are received from the public. The subscribed capital is allotted to the respective subscribers as per resolution passed by the directors of the company.

5. Called up Capital:

It is that part of subscribed capital which has been called up by the company. A company does not call at once the full amount on each of the shares it has allotted and therefore, calls up only such amount as it needs.

6. Uncalled up Capital:

It is the uncalled portion of the allotted capital and represents contingent liability of the shareholders on the shares.

7. Paid up Capital:

It is that part of called up capital against which payment has been received from the members on their respective shares in response to the calls made by the company.

8. Reserve Capital or Reserve Liabilities

By Reserve Capital we mean that amount which is not callable by the company except in the event of the company being wound up. The company cannot demand the payment of money on the shares to that extent during its life time. Reserve capital may be created by means of a special resolution passed by the company in its General Meeting by three-fourths majority of those voting on it.

When once the Reserve Capital has been so created the company cannot alter its Articles of Association so as to make the reserve liability available at any time. The Reserve Capital cannot be charged as security for loans by the directors. It cannot be turned into ordinary capital without the order of the court. It cannot be cancelled at the time of reduction of capital.

9. Fixed Capital:
The fixed capital of a company is what the company retains in the shape of fixed assets such as land and buildings, plant and machinery, furnitur

10. Circulating Capital:
The circulating capital is a part of subscribed capital which is circulated in business in the form of using goods or other assets such as book debts, bill receivables, cash, bank balance, etc.

Classes of Share Capital:
The share capital of a company limited by shares may be of the following two kinds:
1. Preference share capital, an

2. Equity share capital.

1. Preference Share Capital:
It means that part of the capital of the company which:
(a) Carries a preferential right as to payment of dividend at fixed rate during the life time of the company.

(b) Carries, on the winding up of the company, a preferential right to be repaid the amount of the capital paid up.

2. Equity Share Capital
It means with reference to a company, limited by shares, all share capital which is not preference share capital.

ALTERATION OF SHARE CAPITAL

Increase or decrease of authorized share capital of a company is known as alteration of share capital.There two type of share capital of a company:- equity share capital and preference share capital. Power of a company to alter its share capital is defined and explained in section 61 of the Companies Act, 2013. It can be done by ordinary resolution of the company, thus it is not necessary to confirm the alteration of the share capital of the company from the tribunal.

The Companies Act 2013 allows the companies to alter and make some changes in its authorized share capital with certain specified procedures for alteration of share capital is specifically mentioned in the

Companies Act, 2013. Alteration in the share capital can be done only if it is so authorized by its Articles of Association to alter the capital clause of its Memorandum of Association.

Basic and Mandatory Rules Necessary to Follow

First step: It is important for a company to check and evaluate whether the company on the first face is authorized by the Articles of Association to increase the share capital if company's Article of Association does not permit or authorize, then it is to be done with the objective of altering them.

Second step: The company has to take the confidence of other individuals. The board meeting has to be conducted for enabling the board to call for the extraordinary general meeting, it is mandatorily required to get approval from the shareholders for increasing the authorized share capital.

Third step: The company then calls for an extraordinary general meeting of the shareholders of the company by sending them a notice with clear agenda and proper explanatory statements, explanation, with a proper reasoning along with the resolutions to be passed to alter the Memorandum of Association and Articles of Association which are to be altered for the purpose of increasing the authorized share capital.

Fourth Step: Thereafter, resolutions for increasing the authorized share capital of the company and corresponding alterations in the Memorandum of Association and Articles of Association by resolution. After completing the whole procedural part, the company authorizes the board to file necessary forms and resolutions with ROC having jurisdiction.

The company, if thinks necessary and suitable for the growth, can increase its share capital by issuing new shares. A company may consolidate and divide all or part of its share capital into shares of a large amount. A company may also sub-divide its shares of lower denomination. It may cancel those shares which have not been taken by any person and reduce its share capital. Thus, the right to alter share capital must be given in the article of association of the company.

Procedure for alteration of share capital:

- Authorized by article
- By resolution
- Notice to registrar

Notice To Registrar

Notice of alteration is required to be given from the hands of the company to the registrar within a period of 30 days, if the company fails to do there are provisions for a hefty penalty under the statute.

Alteration of Share Capital with Different ways of Journal Entries

Increase in share capital by making a fresh issue of shares, if a company wants to increase the share capital beyond the amount of share capital, it must increase its authorized capital by the number of new shares. The company can convert all or any of fully paid up shares into stock or reconvert stock into fully paid up shares of any denomination.

Provisions Relating to Alteration

The capital clause can be altered if the Article of Association contains the provision for such alteration otherwise, the first basic step is to alter Article of Association by passing a special resolution. The basic principle for alteration is that the alteration of share capital be bonafide& in the interest of the company. Generally, ordinary resolution is enough to alter the capital clause, thus notice of alteration to be given to the ROC, when share capital automatically stands increased. Loan taken from central government also increases the capital of a company.

Condition for Alteration of Share Capital

The company should be limited by shares, the company limited by guarantee having a share capital, the Article of Association must permit the company for alteration of share capital.

Alteration of Share Capital can be done by

Alteration of share capital can be done by issuing new shares of the company in the market, by consolidating the shares, the company can do the alteration in its capital by the conversion of previous shares, the company can subdivide its share in the market, the company can cancel its unused shares from the market.

Share Capital may Automatically be Increased

When government by its order states that any debenture issued to any government by a company or any part under such circumstances, the debenture be converted into shares on the transfer of capital issued by the company.

Reduction of Share Capital

After confirmation by the tribunal on an application by the Company, limited by shares and guarantee, having a share capital and share capital of a company can be reduced by special resolution. The reduction of share capital is governed by Section 66 of the Companies Act, 2013. It is necessary to confirm it by the decision of the tribunal in writing.

For reduction of share capital, the company is required to conduct the board meeting, a notice for the general meeting is necessarily required to be given to every shareholder and concerned person

Every notice of a meeting shall specified by mentioning the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting. A notice is required to be proper and elaborate, the material facts concerning each item of special business to be transacted at a general meeting, such as the nature of concern or interest, financial or otherwise to every director and the manager every other key managerial personnel and their relatives.

A notice which is given to the concerned person should itself be self-explanatory

After the notice, the Extraordinary General meeting is called and the concerned members vote in favor or against of the authorized share capital of the company. The votes of the members play a crucial role in taking appropriate decision. Thus, during the course of meeting the members decide the alteration in the memorandum of association. Thus, after considering all the facts in the welfare of company, the board members by utilizing their powers pass an ordinary resolution.

Reduction in Share Capital Not Allowed

Reduction in share capital is not allowed in the case where there are arrears in the repayment of interest and thereon. The creditor of a company has a right to object against the reduction in its share capital. For reduction in the share capital of the company, the registrar shall issue a certificate to the company for reduction.

Reason for Reduction in Share Capital of a Company

There are many reasons for the reduction of share capital of a company some are as follows.

- If there is a returning of surplus capital of a company.
- The company wants to smooth its capital structure by simplifying it.
- Sufficient reserve is also one of the reasons for the reduction in share capital.

Assets of the company also play a vital role in the variation of the share capital of the company.

Altering the Memorandum of Association and Articles of Association

Section 61 of the Companies Act, 2013 states about Power of limited company to alter its share capital, sub-clause further states that (1) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to— increase its authorised share capital by such amount as it thinks expedient. A company can increase its authorised share capital by altering the

memorandum of association. Section 13 of the Companies Act deals with altering the memorandum of association and section 14 of the above-said act deals with altering the articles of association.
Section 13 of the Act states that as provided in Section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.

If there is no provision to alter the provision of section 14 of the companies act, 2013, then the company is required to make suitable application to the concerned stock exchange, where the company is listed in a prescribed form.

Ratio

Powers to alteration must be exercised in the interest of the company and not for the welfare of some particular members

Conclusion

The company is bind to follow each and every part of the procedure as explained and mentioned in the statute failing which, the company shall be punishable with a hefty penalty. The procedural part mention in the statute for alteration of share capital also give security to its shareholder.

However, the increase in capital of the company, in the long run, benefit its investors in the form of increased return on equity through capital gains, an increase in dividend payouts or both.

Bank also usually prefer to give a loan to the company depending upon the authorized capital. Thus, authorized capital is also helpful for a company in growth. It is helpful in avoiding unnecessarily implications.

YOUR LIGHT SH

DIVIDENDS

The profits of a company, which can be legally distributed among its shareholders,are called dividends. Dividends are that portion of profits of the company to be distributedto shareholders in proportion to their shares held by them. The term ‘dividend’ is notdefined in the Companies Act, 1956. Out of the profits of the Company, the divisibleprofits are determined subject to the provisions of the Companies Act and the Articles ofAssociation. The law does not give the meaning of profit. It also does not state that onlytrueprofitscanbedistributed.However,Sec.205(2A)oftheCompaniesAct,providesthat no dividend should be declared or paid out of the profits of the company arrived atwithoutprovidingfordepreciation.Thedepreciationshouldbeprovidedaspertherequirement of sub sec. (1) of Sec. 205 of the Companies Act and as per the Sec. 350.Dividend can be declared by a company for any financial year only after the transfer to thereserves of the company of such percentage as prescribed by the Central Govt. Rules 1975,[Sec.205(2A)].Butthetransferofprofitstothereservesofthecompanyshouldnotexceed10 %.However,itcantransferhigherpercentageofprofitalso.Paymentofdividenddependsprimaril yuponacompany’sprofitsofthecurrentyearoroftheundistributed profits of the previous years, dividends can also be declared out of the funds,provided for the purpose of declaring dividends by the Central or State Governments inpursuanceoftheguaranteegivenbysuchgovernments.

Dividendtobedeclaredatthe annualgeneralmeeting

The companies Act does not grant any specific power to the companies registeredthere under to declare and pay any dividend. The Articles of Association generally regulatethe method in which dividends are to be declared. Generally the dividend is recommendedby the directors as per the articles of association [Sec. 173(1)(a)]. It is approved anddeclaredintheannualgeneralmeetingbytheshareholders[ReghunadanNewtiaV.Swadeshi, cloth dealers Ltd. (1964), 34.com. cos. 574(cal)] only when there is adequatedivisible profit, and the financial position of the company is sound [KantilalManilal V.Commr.of Income Tax(1957)26. com. cas.57(Bom)].

The declaration of dividend is the internal matter of the company. It is subject tocertainlegalrequirementsandtheprovisionsoftheArticlesofAssociationofthecompany.Even thecourtdoesnothavepowertointerferewiththeauthority ofthe directors and shareholders [Burland V. Arle.(1902) A.C. 831. But dividend shall not bepaidout of capital.

When the profit of the company is inadequate the dividend can be declared out ofthe accumulated profits of the company and transferred to its Reserve Account, under Sec.205A(3). This declaration should be made as per the rules, prescribed for the purpose bythe government. The same procedure can be adopted for the declaration in the case ofabsenceof profits bythecompanyin anyyear.

DeclarationofDividendonPreferenceand EquityShares

(i) *Dividend on preference shares:* The dividend can be declared on the preference sharesaccording to the provision of the Companies Act, the Rules, articles of association and theterms and conditions of the issue. The preference shareholders shall have preferential rightfor the payment of dividend over the equity shareholders. The preferential right in respectof dividend may be either for a fixed amount or fixed rate as agreed upon. When nodividend is declared in any year these holders have to go without any dividend. But thecumulative preference shareholders have the right to demand even the unpaid dividend ofany year, during the subsequent years or in any year at which profits are available fordistribution.

(ii) *Dividend on equity shares:* The equity shareholders do not have the right for fixedamount or fixed rate of dividend for their shares as the preference shareholders. Thedirectors have discretion to recommend declaration of any dividend, which they thinkreasonable under Section 217(1)(c). Sometimes they may refuse to declare any dividend tothe equity shareholders. In such case, the shareholders cannot insist on the payment ofdividend [Board V. Barrow Haematite Steel Co. (1902)(1)ch.3531. A company which failsto comply with the provisions of 80A i.e have not redeemed the redeemable preferenceshares,shouldpaydividendtillthedefaultcontinuesforequityshares.

Once the dividend is declared it becomes a debt payable by the company to theshareholders[BatchaF.GuzdarV.Commr.ofIncomeTax,Bombay,(1955,1.SCR.876:AI R.1955. Sec. 74 (1955) 25 corn.cos 1]. The shareholders have theright to recover the declared dividend within three years from the date of declaration whenanycompanyhasdeclareddividendinrespectofanyyearatitsannualgeneralmeeting.No further dividend, for the same year can be declared by the company IBiswanath PrasadKhaitan V. New Central Jute Mills (co) Ltd. (1961) 31 comp. cas. 1251. A company whichcould not declare dividend at any annual general meeting can do so at the subsequentgeneralmeeting.

Special provisions have been made for the payment of dividends under Sections 93and 205 to 207 for the payment of dividends. The Act provides that the dividend shall bepaid only incash. The Central Government may ifit thinks necessary to do so, in thepublic interest allow the company to declare and pay dividend for any financial year or anypreviousfinancialyearswithout providingdepreciation.

Sec.205Aand205Barethetwonewprovisionsrelatingtothepaymentofdividend introduced in the Companies Act 1974 through Amendment.Sec. 205A deals with the transfer of unpaid dividends within 7 days of the expiring of 42days from the date of declaration of the dividend to a special account with a scheduledBankunderthename'UnpaidDividendAccountofCo.Ltd/Co.PrivateLtd.Ifthecompany fails to transfer the amount of unpaid dividends within the given time, it has topay an interest at the rate of 12 percent per annum. Any such amount transferred to theUnpaid Dividend Account and which remains unpaid or unclaimed for a period of threeyears from the date of such transfer shall be transferred to the "General Reserve Account".All the claims must then be made to the Central Government. After this transfer the centralgovernmentwill settlesuch claims.

On failure of complying with any of the above requirements, the company or anyofficer who is at fault is punishable with a fine up to Rs. 500 for every day oi which thedefaultcontinues.

Liabilitiesof DirectorsIncaseof Paymentoutofcapital

When the company has wrongly paid the dividend out of capital, It may reduce thecapital. The directors who are responsible for such payment are jointly and severally liableto repay the amount to the company with interest. However the directors are entitled torecovertheamountfromtheshareholderswhoreceivedthedividend.

PaymentofDividendtoRegisteredholders

Dividend can be paid only to the registered shareholder or to his order or to hisbankers or to the producers of coupons in respect of share warrants.

The declared dividendistobepaidbythecompany,within42daysfromthedateofdeclarationtothe shareholders. If there is any default, the director, who has knowingly failed to pay, is liable forImprisonment upto 7 daysand with afine,under Sec. 207.

Thefollowing aresomeof theimportant provisions regardingdividends:

1. Dividends can be paid for any financial year only out of the profits of the currentyearorpreviousyear.
2. Dividends can be paid only in cash, but during the capitalisation of profits or reserves,the bonus share can beissued as fullypaid up.
3. The capital profits can be distributed by way of dividend when: (i) the assets arerevalue, (ii) the capital profits remain after the revaluation of all the assets; and(iii)thedistribution ofadividend ofsuch profits is allowed bythe Article ofthe company.
4. The company must transfer certain percentage of profit not exceeding 10 percent or asmay be prescribed by the Central Govt. to the reserves of the company before thedeclarationandpaymentofdividend.Howevertheymayalsotransferanhigherpercentage of profits voluntarily to the reserves (Sec. 205).Ifthe proposed dividend islessthan 10% no transferis necessary.
5. The company must provide for depreciation, including for arrears before declaringdividend[Sec. 205(3)].
6. A company which fails to redeem the irredeemable preference shares cannot declaredividendtill the redemption [Sec. 80A].
7. In case of absence of or inadequacy of profits in any year, the dividend can be declaredout of the accumulated profits and reserves in accordance with Rules framed by theCentralGovt.
8. Theshareholdersdeclarethedividendintheannualgeneralmeeting,whichisrecommended bytheboard ofdirectors.
9. The payment of dividends should be made or the dividend warrants are to be posted toshareholderswithin 42daysfrom thedate ofdeclaration (Sec. 207).
10. The directors are empowered under its articles to declare Interim dividends with theconsultationofthe auditors.
11. According to company law only the registered shareholders of a companyare eligibleto receive dividend and offers for rights or bonus shares. In the case

oftransfer ofshares the transferor should take - a mandate to the transfer as per theCompanies(Amendment) Act, 1988 of Sec. 206A. In the absence of suchmandate, itisobligatory on the part of the company to transfer the dividends accruing on such sharestotheUnpaidDividendAccount.Therightalonewillbekeptinabeyancetilltheti tletotheshares is decided.

12. Sec. 208 provides an exception to Sec. 205 which enables the company to declaredividend only out of profits. It provides that where shares are issued to raisemoney todefray the cost of worksof building or plant which cannot be made profitable for along period the company may pay at the rate of 4% interest on the amount of capitalpaidupin respectofsuch sharesas peritsarticlesandwithsanctionofCentral Govt.
13. After the declaration of dividend by the company if it has not been paid orclaimedbefore 42 days from the date of declaration the company has to transfer suchdividend to a special account within 7 days from the date of expiry of the 42 dayswithanyscheduledbank(Sec.205A(1)].Theamountcanbeclaimedbytheshareh olderswithin aperiodof 3years fromthe date oftransfer.
14. In case of failure by the company for the transfer of the unclaimed dividend to the“Unpaid Dividend Account’, the company shall pay interest at the rate of 12percentperannum [Sec. 205A(4)].
15. On completion of three years from the date of transfer, which remains in the“UnpaidDividend Account” shall be transferred to the general revenue account ofthe CentralGovt. The person entitled for the dividend can claim from the CentralGovt. [Sec.205-B].
16. Thecompanyshouldgivethefollowinginformationinthestatement.whenittransfers to the general revenue account: a) the nature of the amount, b) thenames andaddressofthepersonsentitledforthedividend,c)theentitlementofeachpersonand d) the nature of his claim thereto and such other particulars as may be prescribed (Sec.205-A(6)].
17. If the co. fails to follow any of the requirements of Sec. 205A, the company and everyofficer who is at fault shall be punishable with a fine up to Rs.500 for every day duringwhichthe failurecontinues [Sec. 205-A(8)].
18. The dividend shall be paid only to the registered shareholder, to his agent or to hisbanker.When sharewarrant hasbeen issued the payment canbemadeto the

bearerofsuch warrant or to hisbankers [Sec. 206(1)].

Penalty for defaulting directors: When the directors of the company fail to pay thedividendorpost thewarrantwithin42daysfrom thedateofdeclaration,everydirector atdefault is liable for a punishment of simple imprisonment up to 7 days and with a fine[Sec. 207].

Generally the capital profit will not be distributed amongst shareholders, asdividend. The non-trading profits are capital profits. But in certain cases the capital profitcan also be declared as dividend and paid to the shareholders of the company (Lubbock V.BritishBank of South America(1892)].

Meetings-KindsofCompanyMeetings.

Meeting is not defined under any provisions of **Companies Act of 2013**, but taking references from common business and market parlance and also from some of the decided case laws like Sharp vs. Dawes, as decided in 1971, and through citations of various renowned authors, we can gather that a 'Company Meeting' is basically coming together of at least two persons to either transact any ordinary or special business for lawful purposes.

Therefore they are broadly classifies as follows:

1. Statutory meeting:

Statutory meeting is the meeting of shareholders of a company. According to Sec 165 of the companies act, every public limited by sharesor limited by guarantee, having share capital must hold this meeting. This meeting is held once in the lifetime of a company. A private company need not hold this meeting.

Objectives of meeting :

1. *To comply with the provision of section 165 of the companies act 1956*
2. *To approve the statutory report*
3. *To inform the shareholders about the formation of company and made by the company.*
4. *To inform the shareholders about preliminary expenses made by promoters before incorporation of company*
5. *To inform the shareholders of any contract entered into by the company.*
6. *Appoint office bearers.*

2. Shareholders Meeting:

a. Annual General Meeting – This is defined u/s 96 of CA'13, wherein every company, whether public or private, except One Person Company, is required to convene first AGM within 9 months from the end of first Financial Year to decide the overall progress of the company as well as to plan future courses of action.

Place: Such meeting is called at Registered Office of the Company or any other such place in the city where such Reg. Office is situated.

Time Hours: Between 9.00 am – 6:00 pm., and not on any public holiday as so declared by Central or State Government.

Quorum: **In case of Public Company**–

5 if members are less than 1000

15 if between 1000-5000

30 if more than 5000 members

In case of Private Company, then only 2 that are present will be the quorum.

Time Gap: Gap between two meetings not more than 15 months, and after conducting first AGM, the subsequent AGMs need to be conducted within 6 months from the end of Financial Year, and if there any urgent circumstances or emergency situations arises, when company wasn't able to conduct the AGM, then the Tribunal may grant the extension of 3 months, but said extension not available in first AGM, and therefore first AGM must be conducted within 9 months from end of F.Y.

Power of NCLT: May call or direct to conduct such meeting u/s 97 of CA'13, when an application is filed by a member if meeting not conducted in due time.

Punishment on default: u/s 99 – For Company and every such defaulting Officer – Rs. 1 Lakh, and if default continues then Rs. 1000 per day.

b. Extraordinary General Meeting: Certain matters are so much important that they require an immediate attention of the members, and that's where the Board has been granted to call for such EGM u/s 100 of CA'13.

It can be called through the following ways:

By Board, on suo-moto basis, and the same can be held at any parts of the country.

By requisition of eligible members, wherein the company if having Share Capital, then members holding at least 1/10th of such Share Capital, and if not having Share Capital, then

members holding at least 10% of the total voting powers in that company can request to call for such meeting. Such notice has to be well written and specify the nature of business, and duly signed by all the members or any one authorized person acting on behalf of all. And Board need to call meeting within 21 days of getting such request or maximum of 45 days, by giving such notice to such members prior to 3 days of conducting such meeting.

By Requisionist (provided if Board fails to do so), if Board failing to conduct meeting within 45 days, then the members can call for meeting within 3 months of from the original request made to Board at first instance, and here the members have all the rights to have their name on the main list of members and Board can't deny this, and also need to accept such changes that might have occurred between 21st to 45th day of date of notice provided to Board at first instance.

By Tribunal u/s 98, whereby it can conduct meeting on its own or on any request received by the member of such company.

Place: At Reg. Office or any such place in the city where such Reg. Office is situated

Notice: To all the members in writing or through an electronic mode of at least 21 Clear Days before convening such meeting, and one important thing here is that if meeting is called up by the requisionists, then there's no formality of attesting explanatory statement to it

c. Class Meeting: Such meeting is convened by a particular class of shareholders only and only if they think that their rights are being altered or if they want to vary their attached rights, as mentioned u/s 48 of CA'13, and u/s 232 also, if under Mergers and Amalgamation scheme, meetings of particular shareholders and creditors can be convened if their rights/privileges are being varied to their interests in such company.

2. Directors Meeting:

a. Board of Directors Meeting: As per Sec. 173 of CA'13, every company needs to convene first board meeting within 30 days of its incorporation, and then minimum four meetings in each calendar year, with time gap of not more than 120 days(at present it is 180 days because of COVID-19) between two board meetings

In case of OPC, Dormant Company, Small Company, Sec. 8 Company or any private company(Start-Up), then required to hold two board meetings in each half of calendar year with time gap of at least 90 days.

In case of Specified IFSC Private & Public Company, then to hold first board meeting within 60 days of incorporation and then hold one meeting in each half of calendar year.

Meeting can be attended by directors either in person, or through audio-visual mode or through video conferencing, subject to the nature of meeting being discussed and after complying with necessary formalities as specified in Sec.173 r/w such rules.

Here notice of **at least 7 days** is necessary to be given to directors at their registered address with company and also to be provided through e-means, if not possible hand delivery or post delivery, and there is one exception wherein a shorter notice can be called off for transacting a very urgent matter provided one independent director is present at such meeting.

Quorum: 1/3rd of total directors or two directors, whichever is higher

In case of OPC, 1/4th of total strength or 8 members, whichever is higher

Matters that can't be dealt here: E.g. Approving Prospectus/ Boards Report/ Annual Financial Statements, scheme of Merger, Amalgamation, Demerger, etc.

3. Other Meetings:

Creditors Meeting (Sec. 230) / Debenture Holders Meeting with the Board of Directors

Audit Committee Meeting (Sec. 177)

Nomination and Remuneration Committee Meeting (Sec. 178)

Any other committee meetings with the respective Board of Directors of the Company, as and here specified under Companies Act of 2013