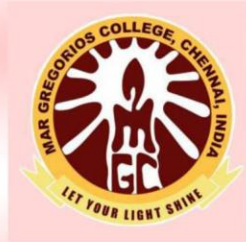


# **MAR GREGORIOS COLLEGE OF ARTS & SCIENCE**

Block No.8, College Road, Mogappair West, Chennai – 37

Affiliated to the University of Madras  
Approved by the Government of Tamil Nadu  
An ISO 9001:2015 Certified Institution



## **DEPARTMENT OF COMMERCE**

**SUBJECT NAME: BUSINESS LAWS**

**SUBJECT CODE: CPZ3B**

**SEMESTER: III**

**PREPARED BY: PROF.T.BALACHANDAR**

## CORE-VI: BUSINESS LAWS

Common to BCom(CS)-Sem-V, BCom(BM), BCom(MM) & BCom(CA)

### OBJECTIVES

To highlight the Provisions of Law governing the General Contract and Special Contract.  
To enable the students to understand the Legal Remedies available in the Law to the Business and other People.

### OUTCOME:

On the completion of the syllabus students will understand the basic provisions of Law, contract and legal remedies in the law.

### UNIT I:

Indian Contract Act -Formation-Nature and Elements of Contract – Classification of Contracts-Contract Vs Agreement.

### UNIT II:

Offer – Definition – Forms of offer – Requirements of a Valid Offer. Acceptance – Meaning - Legal rules as to a Valid Acceptance. Consideration – Definition – Types - Essentials. Capacity of Parties – Definition – Persons Competent to contract. Free consent – Coercion – Undue Influence – Fraud – Misrepresentation - Mistake. Legality of object - Void agreements Unlawful Agreements.

### UNIT III: Performance of Contract

Performance of Contracts – Actual Performance – Attempted Performance - Tender. Quasi Contract – Definition and Essentials. Discharge of Contract - Modes of Discharge – Breach of Contract – Remedies available for Breach of Contract.

### UNIT IV: Sale of Goods Act

Sale – Contract of Sale – Sale Vs Agreement to Sell – Meaning of Goods – Conditions and Warranty – Caveat Emptor – Exceptions of Caveat Emptor – Buyer and Seller of Goods - Unpaid Seller – Definition – Rights of an Unpaid Seller.

### UNIT V: Contemporary Issues in Business Law

Right to Information Act, 2005 - Meaning of 'Information', 'Right to Information' 35 -Need for Right to Information. Public Information - Request for obtaining information. Grounds for rejection of information. Central Information Commission - Constitution and powers. Information Technology Act - Purpose and significance. Cyber Crimes - Types of crimes, nature and punishment Intellectual Property Law - Patent, trademark, copyright and industrial design and laws of Insurance.

# BUSINESS LAWS

## UNIT-I

### Meaning of law

Law means a **set of rules**. It may be defined as the rules of conduct recognized and enforced by the state to control and regulate **the conduct of people, to protect their property and contractual rights with a view to securing justice, peaceful living and social security.**

#### ❖ Ignorance of law is no excuse.

Ex : 1

If X is caught traveling in a train without ticket, cannot plead that he was not aware of the rule regarding the purchase of ticket and therefore, he may be excused.

### Sources of Business Law

#### 1. English Mercantile Law:

English laws are the primary sources of Indian Mercantile Law. English laws are based on customs and usages of merchants in England.

#### 2. The Statute Law:

The various Acts passed by the Indian Legislature are the main sources of mercantile law in India, e.g. Indian Contract Act, 1872, The Sale of Goods Act, 1930, The Partnership Act, 1932, The Negotiable Instruments Act 1881, The Companies Act, 1956.

#### 3. The Common Law :

This source consists of all those unwritten legal doctrines embodying customs and traditions developed over centuries by the English courts. Thus, the common law is found in the collected cases of the various courts of law and is sometimes known as 'case law'. The common law emphasizes precedents.

#### 4. Customs and usages:

The customs and usages of a trade are also one of the sources of mercantile law in India. These customs and usages govern the merchants of a trade in their dealings both each other. Some Acts passed by the Indian Legislature recognizes the importance of such customs and usages.



## **OBJECT OF THE LAW OF CONTRACT**

The law of contract is that branch of law which determines the circumstances in which promises made by the parties to a contract shall be legally binding on them. In simple words, the purpose of law of contract is to ensure the realization of reasonable expectation of the parties who enter in to contract.

## **'JUS IN REM' & 'JUS IN PERSONAM'**

'Jus in rem' means, right against the world at large.

'jus in personam' means, the right against particular persons.

## **CONTRACT**

### **Definition of Contract:**

Section 2(h) of Indian Contract Act, 1872 defines a contract as "An agreement enforceable by law". So, a contract is an agreement made between two or more parties which the law will enforce.

**Contract = Agreement + Enforceability,      Agreement = Offer + Acceptance**

An **agreement** is defined as, "every promise and set of promises, forming consideration for each other" [Sec2(e)].

A **promise** is defined thus: "When the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. A proposal, when accepted, becomes a promise."

### **ESSENTIALS OF A VALID CONTRACT:**

#### **1. Offer and Acceptance:**

There must be two parties to an agreement, i.e., one party making the offer and the other accepting it

#### **2. Intention to create legal relationship:**

When two parties enter into an agreement, their intention must be to create legal relationship between them. If there is no intention on the part of the parties, there is no contract between them.

**E g.,** A husband promised to pay his wife a house hold allowance of 30 pounds every month. Later the parties separated and the husband failed to pay the amount. The wife sued for the allowance. Held, the agreement such as these were outside the realm of contract altogether (Balfour vs. Balfour)

#### **3. Lawful consideration :**

An agreement to be enforceable by law must be supported by consideration.

'Consideration' means advantage or benefit moving from one party to the other. It is the essence of a bargain.

In simple words, it means 'something in return'. A promise to do something and, getting nothing in return is usually not enforceable by law. Consideration need not be in cash or kind.

It may be an act or abstinence. It may be past, present or future. But it must be real and lawful

#### **4. Capacity of parties-Competency:**

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

Every person is competent to contract if he,

- (a) is of the age of majority,
- (b) is of sound mind, and
- (c) is not disqualified from contracting by any law to which he is subject.

**Not Eligible to enter into contract:** Minor, Lunatic, Idiot, Drunkard, etc.

#### **5. Free and genuine consent:**

It is essential to the creation of every contract that there must be free and genuine consent of the parties to the agreement. The parties are said to be of the same mind when they agree about the subject matter of the contract in the same sense and at the same time(Sec.13). There is absence of free consent if the agreement is induced by coercion, undue influence, fraud, misrepresentation and mistake(Sec.14).

#### **6. Lawful object:**

The object of the agreement must be lawful. In other words, it means that the object must not be

- (a) illegal, (b) immoral, or (c) opposed to public policy(Sec.23)

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

#### **7. Agreement not declared void:**

The agreement must not have been expressly declared void by law in force in the country under the provisions of sections 24 to 30 of the Indian Contract Act,1872. A void agreement is one which is not enforceable by law.

#### **8. Certainty and possibility of performance:**

The agreement must be certain and not vague or indefinite (Sec.29).

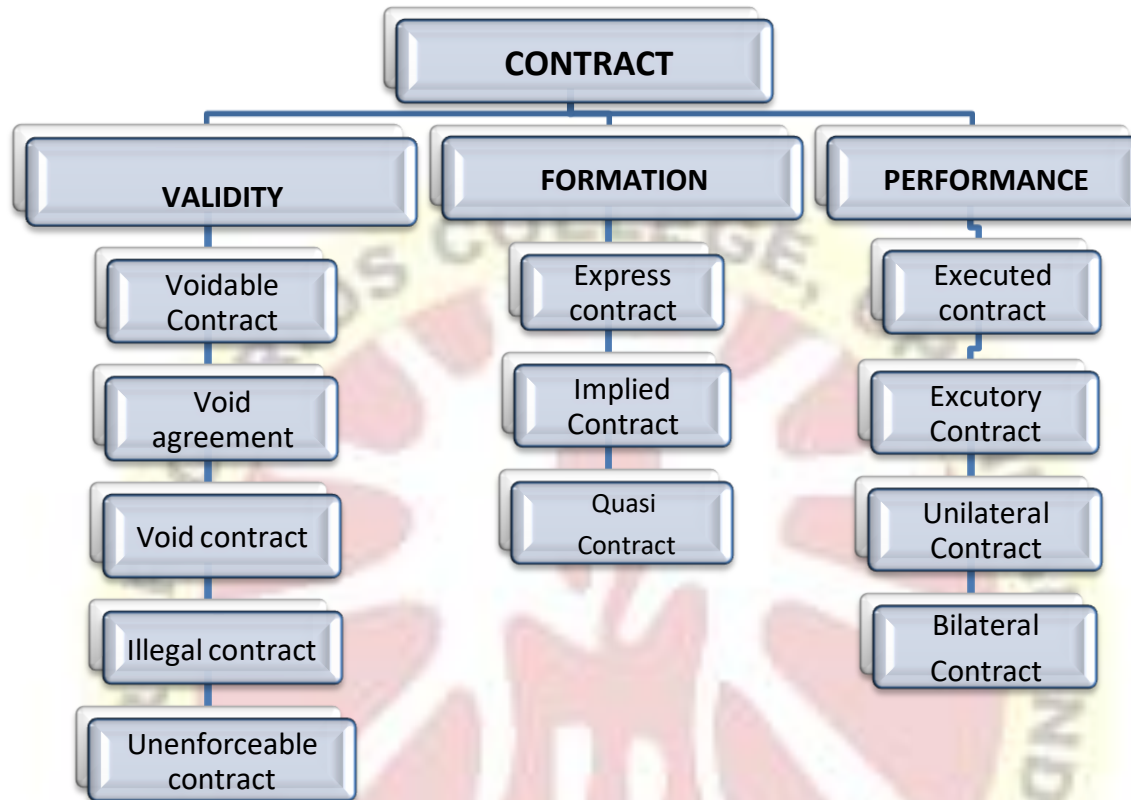
If it is vague and if it is not possible to ascertain its meaning, it cannot be enforced.

Ex. 'A' agrees to sell to 'B' "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void.

#### **9. Legal formalities:**

A contract may be made by words spoken or written. As regards the legal effects, there is no difference between a contract in writing and a contract made by word of mouth. It is however in the interest of the parties that the contract should be in writing.

## CLASSIFICATION OF CONTRACT:



### 1. Classification according to 'Validity':

#### i). Voidable contract:

An agreement which is enforceable by law at the option of one party but not at the option of the other or others is a voidable contract [Sec.2(i)].

Example of Voidable Contract: A promises to sell his car to B for rs. 2000. His consent is obtained by use of force. The contract is voidable at the option of A .He may avoid the contract or elect to be bound by it.

**ii] Void Agreement:**

An agreement not enforceable by law is said to be void [Sec.2(g)].Such agreements are void-ab-initio which means that they are unenforceable right from the time they are made E.g., An agreement with a minor or a person of unsound mind is void-ab-initio because a minor or a person of unsound mind is incompetent to contract

**iii] Void Contract:**

A contract which ceases to be enforceable by law is a void contract. [2 (j)].A void contract is a contract which was valid when entered into but which subsequently became void due to impossibility of performance, change of law or some other reason.

E.g., A contract to import goods becomes void, when war breaks out between the countries.

**iv] Illegal Agreement:**

An illegal agreement is one which is unlawful. Such an agreement cannot be enforced by law. Thus, illegal agreements are always void-ab-initio( i.e., void from the very beginning)

E g :An agreement to import prohibited goods. Example: X agrees to pay Y rs.1,00,000 if Y kills Z and claims rs.1,00,000. Y cannot recover from X because the agreement between X and Y is illegal as its object is unlawful

**v] Unenforceable Contract:**

An unenforceable Contract is one which cannot be enforced in a Court of law because of some technical defect such as absence of writing or where the remedy has been barred by lapse of time.

**2. Classification according to 'Formation'**

A contract may be (a) made in writing or by word of mouth, or (b) inferred from the conduct of the parties or circumstances of the cases. These are the modes of formation of contract.

**1. EXPRESS CONTRACT:**

If the terms and conditions of contracts are expressly agreed upon (whether words spoken or written) at the time of formation of contract, the contract is said to be 'Express Contract '.

Ex: X says to Y "will you buy my car for rs. 1,00,000?" Y says to X " I am ready to buy your car for Rs. 1,00,000".

**2. IMPLIED CONTRACT:**

One which is inferred from the acts or conduct of the parties or course of dealings between them. An implied contract is one which is not an express contract.

Ex: A transport company runs buses on different routes to carry passengers. This is an implied acceptance by X. Now, there is an implied contract and X is bound to pay the prescribed fare.



### 3. QUASI CONTRACT:

Strictly speaking Quasi Contract is not a contract at all. A quasi contract, on the other hand is created by law. It rests on the ground of equity that, “ a person shall not be allowed to enrich himself unjustly at the expense of another ”.

Ex: A finds some goods belonging to B, it is his duty to restore them to the rightful owner. These contracts are based on the principle of equity, justice and good conscience.

### 3. Classification according to ‘Performance’

#### (i) EXECUTED CONTRACT:

‘Executed’ means that which is done. An executed contract is one in which both the parties have performed their respective obligations.

Ex: X offers to sell his car to Y for rs. 1,00,000. Y accepts x’s offer. X delivers the car to Y and Y pays rs. 1,00,000 to x. It is an executed contract.

#### (ii) EXECUTORY CONTRACT:

‘Executory’ means that which remains to be carried in to effect. It is a contract where both the parties to the contract have still to perform their respective obligations.

► Ex: X offers to sell his car to Y for rs.1,00,000. Y accepts X’s offer. If the car has not yet been delivered by X and the price has not yet been paid by Y, it is an executory contract.

#### a. ONE-SIDED OR UNILATERAL CONTRACT

Performance of only one party is outstanding.

#### b. BILATERAL CONTRACT.

Performance of both the parties remains outstanding.



## UNIT-II

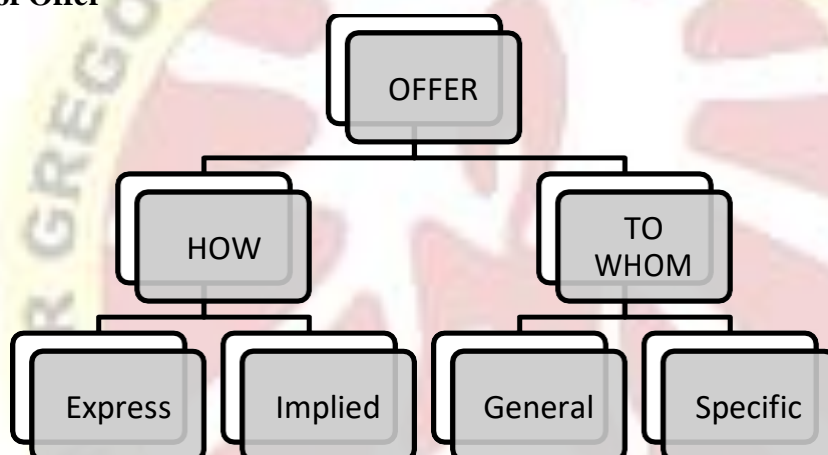
# OFFER [Proposal]

A person is said to have made a proposal, when, he signifies to **another** his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other, to such act or abstinence” [Sec.2(a)]

### PROMISOR-PROMISEE

The person making the offer is known as the, **offeror, proposer or promisor**, and the person to whom it is made is called **the, offeree or proposee, promisee**.  
When the offeree accepts the offer, he is called the acceptor or promisee [Sec.2(c)].

### Types of Offer



### How an offer is made

#### 1. Express offer

An offer may be made by express words, spoken or written. This is known as *Express offer*.  
E.g., When **A** says to **B**, “will you purchase my house at Meerut for Rs.5,00,000” ?

#### 2. Implied Offer.

An offer may be inferred from the conduct of the parties or the circumstances. This is known as Implied Offer. E.g., When a transport company runs a bus on a particular route, there is an *implied offer* by the transport company to carry passengers for a certain fare.

**3. Specific Offer:**When an offer is made to a particular person, it is called **specific offer**.  
E.g. **A offers to sell car to B [only] for Rs.1,00,000.**

#### 4. General Offer

When an offer is made to the world at large, it is called general offer. A general offer can be accepted by any person by fulfilling the terms of offer.

- MRS. CARLIL V. CARBOLIC SMOKE BALL CO.: Carbolic Smoke Ball Co. advertised in the newspaper that it would pay rs.1000 to anyone who contracts influenza after using the smoke ball of the company according to the printed instructions. Mrs. Carlil uses the smoke ball according to the printed directions but subsequently she contracted influenza. She filed a suit for the reward. It was held that she was entitled to recover the reward because she had accepted the offer by fulfilling the terms of the offer.

## LEGAL RULES AS TO OFFER

### 1. Offer must be such in law is capable of being accepted and giving rise to legal relationship.

Ex: Rose & Frank Company was appointed as selling agents in North America by Crompton Brothers by an agreement. One of the clauses in the agreement provided "this agreement is not entered into formal or legal agreement and shall not be subject to legal jurisdiction in the law courts". It was held that this agreement was not a legally binding contract because there was no intention to create legal relations.

### 2. Certain and Unambiguous Terms

The terms of the offer must be certain and unambiguous and not vague. If the terms of the offer are vague, no contract can be entered into because it is not clear as to what exactly the parties intended to do.

Ex 1: X offers to sell to Y "a 100 tons of oil". If X is a dealer in coconut oil or mustard oil, his **offer is not certain** because it is not clear that he wants to sell coconut oil or mustard oil. But if X is a dealer in coconut oil only, it is clear that he wants to sell coconut oil. Hence, the **offer is certain**.

### 3. An offer must be distinguished from;

- (i) A declaration of intention and an announcement.:

The offer must be distinguished from a mere declaration of intention. Such statement or declaration merely indicates that an offer will be made or invited in future,

**Ex 1:** A father wrote to his would be son-in-law that his daughter would have a share of what he left after the death of his wife.

- (ii) An invitation to make an offer or to do business.

An offer must be distinguished from an invitation to offer. In case of an invitation to offer, the person making an invitation invites others to make an offer to him.

Ex 1: Goods were displayed in the shop for sale with price tags attached on each article and self service system was there. One customer selected the goods.

#### 4. Offer must be communicated:

An offer must be communicated to the person to whom it is made. An offer is complete only when it

Lalman Shukla v. Gauri Dutt : 'G' sent his servant 'L' to trace his lost nephew. When the servant had left, G announced a reward of Rs.500 to anyone who traces the missing boy. 'L' found the boy and brought him home. When 'L' came to know about the reward, he filed a suit against 'G' to recover the reward. It was held that 'L' was not entitled to reward because he did not know about the reward when he found the missing boy.

#### 5. A statement of price is not an offer.

##### ► HARVEY Vs. FACEY, [1893]

E.g., Three telegrams were exchanged between Harvey and Facey.

1. "Will you sell your Bumper Hall Pen ? Telegraph lowest cash price-answer paid." [Harvey to Facey]

2. "Lowest price for Bumper Hall Pen 900 pounds." [Facey to Harvey]

The first telegram asked **two** questions;

- (i) the willingness of **Facey** to sell, and
- (ii) the lowest price. **Facey** replied only to the second question and gave his lowest price, i.e., he supplied mere information and no offer had been made by him to sell. There could be contract only if he had accepted **Harvey's** last telegram.

## Acceptance

Acceptance means giving consent to the offer. It is an expression by the offeree of his willingness to be bound by the terms of the offer.

According to sec 2(b) of the Indian Contract Act, 1872, "A proposal is said to have accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise".

#### An acceptance may be express or implied.

It is **express** when it is communicated by words, spoken or written or by doing some required act. It is **implied** when it is to be gathered from the surrounding circumstances of the cases or the conduct of the parties.

## LEGAL RULES AS TO ACCEPTANCE

### 1. It must be absolute and unconditional

An acceptance, in order to be binding, must be absolute and unqualified [Sec.7(1)] in respect of Examples: a) 'A' made an offer to 'B' to purchase a house with possession from 25 th July. The offer was followed by an acceptance suggesting possession from 1<sup>st</sup> August. Held, there was no contract. [ Rutledge Vs .Grant (1828)]

### 2. It must be communicated to the offeror

Examples:

A draft agreement relating to supply of coal was sent to the manager of a railway company for his acceptance. The manager wrote the word "approved" and put the draft in the drawer . Held, there was no contract. [Brogden Vs. Metropolitan Rail Co.(1877)].

### 3. It must be according to the mode prescribed or usual and reasonable mode.

The communication must be according to the mode prescribed [ Sec.7(2)]Eg. If the Offeror has sought the communication of acceptance from offeree by telephone it cannot be given by post.In case, the acceptance is made in a manner other than the mode prescribed but the offeror does not raise any objection within a reasonable time, the acceptance will be binding.

### 4. It must be given within a reasonable time

If any time limit is specified ,the acceptance to an offer must be given within a reasonable time. If it is not given within the reasonable time, the offer lapses.

**Eg: M** applied for the shares of **R & Co.** on 8 th June. But the Company did not intimate about allotment until November. **M** refused to take shares. **Held**, the offer was lapsed by unreasonable delay. In Ramsgate Victoria Hotel Ltd. Vs. Montefiore(1886)

### 5. It cannot precede an offer.

In a company shares were allotted to a person who had not applied for them. Subsequently when he applied for shares , he was unaware of the previous allotment. The allotment of shares previous to application is invalid.

### 6. It must show an intention on the part of the acceptor to fulfill terms of the promise.

If no such intention is present, the acceptance is invalid.

### 7. It must be given by the party or parties to whom the offer is made.

Acceptance must be communicated by the offeree himself or by a person who has the authority to accept. If acceptance is communicated by an unauthorized person, it will not give rise to legal relations.

Ex: 'P' applied for the post of a headmaster in a school. The managing committee passed a resolution approving P to the post but this decision was not communicated to P.

But one member of the managing committee in his individual capacity and without any authority informed P about the decision. Subsequently, the managing committee cancelled its



resolution and appointed someone else. 'P' filed a suit for breach of contract. It was held that P's suit was not maintainable because there was no communication of acceptance as he was not informed about his appointment by some authorized person. (Powell v. Lee)

#### **8. It must be given before the offer lapses or before the offer is withdrawn.**

The acceptance must be given before the offer lapses or is withdrawn. In other words, if an acceptance is made after the lapse or withdrawal of the offer, it will not give rise to legal relations.

Ex: X offered by a letter to sell his car for Rs.1,00,000. Subsequently, x withdrew his offer by a telegram which was duly received by Y. After the receipt of telegram, Y sent his acceptance to X. In this case, the acceptance is invalid because it was made after the effective withdrawal of the offer.

#### **9. It cannot be implied from silence.**

The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has by his previous conduct indicated that his silence means that he accepts. A wrote to B., I offer you my car for Rs.10,000. If I don't hear from you in seven days , I shall assume that you accept". B did not reply at all. There is no contract.

### **WHEN DOES AN OFFER COME TO AN END?**

#### **1. By communication of notice of revocation by the offeror at any time before its acceptance is complete as against him:**

Ex: At an auction sale, A makes the highest bid for B's goods. He withdraws the bid before the fall of the hammer. The offer has been revoked before its acceptance.

#### **2.. By lapse of time:**

If it is not accepted within the prescribed time, then it ends in revocation of offer. If no time is prescribed, it lapses by the expiry of a reasonable time.

Ex: On June 8 M offered to take shares in R company. He received a letter of acceptance on November 23. He refused to take the shares. Held, M was entitled to refuse as his offer had lapsed as the reasonable period during which it could be accepted had elapsed (Ramsgate Victoria Hotel Co. v. Montefiore)

#### **3. By non-fulfillment by the offeree of a condition precedent to acceptance:**

Ex: S, a seller, agrees to sell certain goods subject to the condition that B, the buyer, pays the agreed price before a certain date. If B fails to pay the price by that date, the offer stands revoked.

#### **4. By death or insanity of the offeror provided the offeree comes to know of it before acceptance.**

#### **5. If a counter-offer is made to it:**

#### **6. If an offer is not accepted according to the prescribed or usual mode:**

## CONSIDERATION

Consideration means “Something in return” Justice Patterson defines **consideration** in the following words: “Consideration means something which is of some value in the eye of law... **It may be some benefit to the plaintiff or some detriment to the defendant.**” [Thomas vs. Thomas(1842)]. There are two leading cases which explain this point.

Abdul Aziz vs. Masum Ali (1914): The secretary of a Mosque, Committee filed a suit to enforce a promise which the promisor had made to subscribe Rs.500 to the rebuilding of a mosque. Held, “**the promise was not enforceable because there was no consideration in the sense of benefit**”, as “the person who made the promise gained nothing in return for the promise made”, and the secretary of the Committee to whom the promise was made, suffered no detriment as nothing had been done to carry out the repairs. Hence the suit was dismissed.

### **1. It must move at the desire of the promisor:**

An act constituting consideration must have been done at the desire or request of the promisor. If it is done at the instance of a third party or without the desire of the promisor, it will not be a good consideration. Example: A saves B's goods from fire without being asked to do so. A cannot demand payment for his services.

### **2. It may move from the promisee or any other person.**

Consideration may move from promisee or any other person, i.e., even a stranger. This means that as long as there is consideration for a promise it is immaterial who has furnished it.

Example: An old lady, by a deed of gift, made over certain property to her daughter **D**, under the direction that she should pay her Uncle, **P** (Brother of the old lady), a certain sum of money annually. The same day **D** entered in an agreement with **P** to pay the agreed amount. Later, **D** refused to pay the amount on the plea that no consideration had moved from **P** to **D**. Held, **P** was entitled to maintain suit as consideration had moved from the old lady, sister of **P**, to the daughter. [Chinnayya vs. Ramayya(1882)]

### **3. It may be an act, abstinence or a return promise. (The following are good consideration for a contract)**

(1) Forbearance to sue: If a person who could sue another for the enforcement of a right agrees not to pursue his claim, this constitutes a good consideration for the promise by the other person. This results in a benefit to the person not sued and a detriment to the person who could sue.

**Example:** A borrows from B Rs.100 at 20 percent p.a., and fails to pay the amount. When B is about to file a suit, A agrees to pay a higher rate of interest. B, as a result, does not file the suit. This forbearance on the part of B to file a suit is a sufficient consideration and B can enforce the promise by A to pay the higher rate of interest.

#### **4. It may be past, present or future.**

##### **(1) Past Consideration:**

When consideration by a party for a present promise was given in the past, i.e., before the date of the promise, it is said to be past consideration. Example: A renders some service to B at latter's desire. After a month B promises to compensate A for services rendered to him. It is past consideration. A can recover promised amount.

##### **(2) Present or Executed Consideration:**

When consideration is given simultaneously with promise, i.e., at the time of promise, it is said to be present consideration. In case sale, for example, consideration is present or executed.

Example: A receives Rs. 50 in return for which he promises to deliver certain goods to B. The money A receives which he promises to deliver certain goods to B. The money A receives is the present consideration for the promise he makes to deliver the goods.

##### **(3) Future or executory consideration:**

When consideration from one party to the other is to pass subsequently to the making of the contract, it is future or executory consideration.

Example:

D promises to deliver certain goods to P after a week; P promises to pay the price after a fortnight. The promise of D is supported by the promise of P. Consideration in this case is future or executory.

#### **5. It need not be adequate.**

Consideration, as already explained, means "something in return". This something in return need not necessarily be equal to "something given". The law simply provides that a contract should be supported by consideration.

#### **6. It must be real, and not illusory.**

Although consideration need not be adequate, it must be real, competent and of some value in the eyes of the law. There is no real consideration in the following cases:

Physical Impossibility: A promises to put life in to B's dead wife and B should pay him Rs.500. A's promise is physically impossible of performance.

Legal Impossibility: A owes Rs 100 to B. He promises to pay Rs.20 to C, the servant of B, who in return promises to discharge A from the debt. This is legally impossible because C cannot give discharge for a debt due to B, his master [Harvey vs. Gibbons, (1675)].



**7. It must be something which the promisor is not already bound to do.**

A promise to do what is already bound to do, either by general law or under an existing contract, is not a good consideration for a new promise, since it adds nothing to the pre-existing legal or contractual obligation. Likewise a promise to perform a public duty by a public servant is not a consideration.

**8. It must not be illegal, immoral or opposed to public policy.**

The consideration given for an agreement must not be unlawful.

**“A CONTRACT WITHOUT CONSIDERATION IS VOID”- -Exceptions**

**1. Love and Affection** [Sec.25(1)]:

Such agreement made without consideration is valid if:

- (i) It is expressed in writing
- (ii) It is registered under the law
- (iii) It is made on account of love and affection, and
- (iv) It is between parties standing in a near relation to each other.

Examples:

By a registered agreement, **V** on account of natural love and affection for his brother, **R**, promises to discharge his debt to **B**. If **V** does not discharge the debt, **R** may discharge it and then sue **V** to recover the amount. [**Venkataswamy vs. Ramaswamy, (1903)**]

**2. Compensation for voluntary services.**[Sec.25(2)]

A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable, even though without consideration. In simple words, a promise to pay for a past voluntary service is binding.

Examples: (a) **A** finds **B**'s purse and gives it to him. **B** promises to give rs. 50 .There is a contract.

**3. Promise to pay a time barred debt:**

Such promise without consideration is valid if:

- (1) It is made in writing
- (2) It is signed by the debtor or his agent, and
- (3) It relates to a debt which could not be enforced by a creditor because of limitation.

**4. Completed Gift:**

The rule “ No consideration, no contract” does not apply to completed gifts..

e.g., X transferred some property to Y by a duly written and registered deed as a gift. This is a valid contract even though no consideration.

**5. Agency** [Sec.185]

No consideration is necessary to create an agency.



**6. Charitable Subscription:** Where the promisee on the strength of the promise makes commitments, i.e., changes his position to his detriment [Refer. Kedarnath Vs. Gauri Mohammad]

Abdul Aziz, V. Masum Ali: The secretary of a Mosque, Committee filed a suit to enforce a promise which the promisor had made to subscribe rs.500 to the re-building of a mosque. Held, “the promise was not enforceable because there was no consideration in the sense of benefit”, and the secretary of the Committee to whom the promise was made, suffered no detriment as nothing had been done to carry out the repairs. Hence the suit was dismissed.

## **CAPACITY TO CONTRACT**

The parties who enter in to contract must have capacity to do so. Capacity here means competency of the parties to enter in to contract. According to Sec.10 an agreement becomes a contract if it is entered in to between the parties who are competent to contract According to Sec.11 every person is competent to enter in to contract who

- (a) is of the age of majority.
- (b) is of sound mind, and
- (c) is not disqualified from contracting by any law to which he is subject.

Thus Section 11 declares the following persons to be **incompetent to contract**:

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

### **1.Minors:**

According to Indian Majority Act,1875, a minor is a person who has not completed 18 years of age. In the following two cases , he attains majority after 21 years of age.

(1) Where a guardian of a minor’s person or property has been appointed under the Guardians and Wards Act,1890 or

(2) Where the superintendence of a minor’s property is assumed by a Court of Wards.

Minor’s Agreements

### **1. An agreement with or by a minor is void and inoperative ab initio.**

**[Mohiribibi vs. Dharmodas Ghose,(1903)** Calcutta High Court]

In this case a minor mortgage his house in favor of a money lender to secure a loan of Rs.20,000 out of which the mortgagee (the money lender) paid the minor a sum of Rs.8000. Subsequently the minor sued for setting aside the mortgage, stating that he was underage when he executed the mortgage.Held, the mortgage was void and, therefore, it was cancelled. Further the money lender’s request for the repayment of the amount advanced to the minor as part of the consideration for the mortgage was also not accepted.

### **2.He can be a promisee or a beneficiary:**

Incapacity of a minor to enter in to a contract means incapacity to bind himself by a contract.

There is nothing which debars from becoming a beneficiary. Such contracts may be enforced at his option, but not at the option of the other party. [Sharafat Ali Vs. Noor Mohammed(1924)].

Example: (a) **M**, aged 17, agreed to purchase a second-hand scooter for Rs.5,000 from **S**. He paid Rs.200 as advance and agreed to pay the balance the next day and collect the scooter. When he came with the money the next day, **S** told him that he had changed his mind and offered to return the advance. **S** cannot avoid the contract, though **M** may, if he likes.

**3.His agreement cannot be ratified by him on attaining the age of majority.**

“Thus consideration given during minority is no consideration.If it is necessary a fresh contract may be entered in to by the minor on attaining majority provided it is supported by fresh consideration. [S.Shanmugam Pillai vs.K.S.Pillai (1973)SC].

**4.If he has received any benefit under a void agreement , he cannot be asked to compensate or pay for it.**

Sec.65 provides for restitution in case of agreements discovered to be void does not apply to a minor.

Example: **M**, a minor, obtains a loan by mortgaging his property. He is not liable to refund the loan. Not only this, even his mortgaged property cannot be made liable to pay the debt.

**5.He can always plead minority:**

Even ,if he has , by misrepresenting his age, induced the other party to contract with him, he cannot be sued in contract for fraud because if the injured party were allowed to sue for fraud, it would be giving him an indirect means of enforcing the void agreement.

Example: **S**, minor, by fraudulently representing himself to be of full age, induced **L** to lend him 400 POUNDS. Later on ,He refused to repay it and **L** sued him for the money .Held, the contract was void and **S** was not liable to repay the amount [Leslie vs. Shiell,1914Minor’s Agreements

**6.He cannot enter in to a contract of partnership.**

But he may be admitted to the benefits of an already existing partnership with the consent of the other partners.

**7.He cannot be adjudged insolvent.**

This is because he is incapable of contracting debts.

**8.He is liable for the ‘necessaries’ supplied or necessary services rendered to him or anyone whom he is legally bound to support.**

**9.He can be an agent.** An agent is merely a connecting link between his principal and third party. As soon as the principal and the third party are brought together, the agent drops out. A minor binds the principal by his acts without incurring any personal liability.

**10.A minor is liable in tort** (A civil wrong).But where a tort arises out of contract a minor is not liable in tort as an indirect way of enforcing a invalid contract.

## 2. Persons of Unsound Mind.

“ A person is said to be of sound mind, for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind but occasionally of sound mind, may make a contract when he is of sound mind.

Soundness of mind of a person depends upon two facts:

- 1.His capacity to understand the contents of the business concerned, and
- 2.His ability to form a rational judgment as to its effect upon his interests.

**LUNATICS.** A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. He suffers from intermittent intervals of sanity and insanity. **He can enter in to contract when he is of sound mind.**

**IDIOTS.** An idiot is a person who has completely lost his mental powers.

### **DRUNKEN OR INTOXICATED PERSONS.**

A drunken or intoxicated person suffers from temporary incapacity to contract, i.e. ,at the time when he is so drunk or intoxicated that he is incapable of forming a rational judgment. However, persons of unsound mind are liable for necessities supplied to them or to anyone whom they are legally bound to support .

### **PERSONS DISQUALIFIED BY LAW**

1. Alien Enemies, 2. Foreign Sovereigns,3. Convicts, 4. Insolvents, 3. Other persons

**ALIEN ENEMIES.** Contracts with alien enemy [an alien whose State is at war with the Republic of India] may be studied under two heads, namely-

- (a) contracts during the war, and
- (b) contracts made before the war

### **CORPORATIONS & COMPANY:**

A corporation is an artificial person created by law, having a legal existence apart from it's members. It may come in to existence by a special Act of Legislature registration under Companies Act, 1956.

### **INSOLVENTS:**

When a debtor is adjudged insolvent is deprived of his power to deal in that property. It is only the official Receiver or Official Assignee who can enter in to contracts relating to his property, and sue and be sued on his behalf.

### **CONVICTS:**

A convict when undergoing imprisonment is incapable of entering in to contract.

## Free Consent

Meaning of “**Consent**” [Sec.13]

Consent means acquiescence or an act of assenting to an offer.

“Two or more persons are said to **consent** when they agree upon the same thing in the same sense”.

Meaning of “**Free Consent**”[Sec.14]

A consent is said to be free when it is not caused by-

- 1.Coercion
- 2.Undue Influence
- 3.Fraud
- 4.Misrepresentation
- 5.Mistake,

### Coercion

When a person is compelled to enter in to a contract by the use of force by the other party or under a threat, “coercion” is said to be employed.

Eg:A threatens to kill **B** if he does not lend Rs.1,000 to **C**. **B** agrees to lend the amount to **C**. The agreement entered in to under coercion.

#### Threat to commit suicide-Does it amount to coercion?

Chikham Amiraju vs.Seshamma(1917)Madras HC.

In this case, a person held out a threat of committing suicide to his wife and son if they did not execute a release in favor of his brother in respect of certain properties. The wife and son executed the release deed under the threat.Held, “the threat of suicide amounted to coercion within Sec 15 and the release deed was, therefore, voidable”.

### UNDUE INFLUENCE

Definition: “A contract is said to be induced by ‘undue influence’

(a) where the relations subsisting between the parties are such that one of the parties is in a position to **dominate the will of other**

(b) and uses that position to obtain an unfair advantage over the other.”

### Difference Between Coercion and Undue Influence

| Coercion  | Undue influence   |
|---|---|
| <ul style="list-style-type: none"> <li>• 1.Threat of an offence</li> <li>• 2. Physical character</li> <li>• 3. Criminal act</li> <li>• 4.Intention of causing any pereson to enter into contract</li> </ul> | <ul style="list-style-type: none"> <li>• 1. Dominating the will of others</li> <li>• 2. Moral charcter</li> <li>• 3. No Criminal Act</li> <li>• 4.Obtaining benefit over other</li> </ul> |



### Examples of UNDUE INFLUENCE

1. A spiritual guru induced his devotee to gift him the whole of his property in return of a promise of salvation of the devotee. Held, the consent of the devotee was given under undue influence. [Mannu Singh vs. Umadat Pandey (1890)]

Undue Influence RELATIONSHIP : Parent and child, Doctor and patient, etc

## Misrepresentation

A statement of fact which one party makes in the course of negotiations with a view to inducing the other party to enter in to a contract is known as a representation. It may be expressed by words spoken or written or implied from the acts and conduct of the parties.

A representation when wrongly made, either innocently or intentionally, is a misrepresentation

**Meaning:** “Misrepresentation” is a misstatement of a material fact made innocently with an honest belief as to it’s truth or non-disclosure of a material fact, without any intent to deceive the other party.

### Examples of Misrepresentation

1. A while selling his mare to B, tells him that the mare is thoroughly sound. A genuinely believes the mare to be sound although he has no sufficient ground for the belief. Later on B finds the mare to be unsound. The representation made by A is a misrepresentation.

### FRAUD

“Fraud” exists when it is shown that,

- (1) a false representation has been made
  - (i) knowingly, or
  - (ii) with out belief in it’s truth, or
  - (iii) recklessly, not caring whether it is true or false, and
  - (iv) the maker intended the other party to act upon it.
- (2) there is a concealment of material fact.

### MISTAKE

Mistake is erroneous belief about something.

It may be a (1) Mistake of law, or (2) Mistake of fact.

| (1) Mistake of law:  | (2) Mistake of fact: Mistake of fact may be,         |
|--|--|
| (a) Mistake of law of the country<br>(b) Mistake of law of foreign country | (a) Bilateral Mistake, or<br>(b) Unilateral Mistake. |

### MISTAKE OF LAW

#### (1) Mistake of law of the country

A party cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of law. A mistake of law is, therefore, no excuse, and the contract cannot be avoided.

**E.g.**, A and B enter in to contract on the erroneous belief that a particular debt is barred by Indian Law of Limitation. This contract is not voidable.

**(2) Mistake of law of a foreign country**

Such a mistake is treated as mistake of fact and the agreement in such a case is void (Sec.21).

**Mistake of Fact**

**Bilateral Mistake:** Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void [Sec.20].It may be Bilateral or Unilateral Mistake

**Bilateral Mistake****(a) Subject matter**

(i) **Existence** (ii) **Price** (iii) **Quantity** (iv) **Quality** (v) **Identity** or (vi) **Title**.

**(b) Possibility of performance** :It may relate to,

(i) **Physical**, or **Legal impossibility**.

**Unilateral Mistake:**

Where only one of the parties is under a mistake as to a matter of fact, the contract is not voidable(Sec.22).

E.g., A offers to sell his house for Rs.44,000.By mistake he makes an offer in writing for Rs..40,000.He cannot plead mistake as a defense.

**void agreement**

A void agreement is one which is not enforceable by law. [Sec.2(g)]

The following agreements are declared to be void.

1. An agreement made by incompetent persons( Sec.11).
2. Agreement made under mutual mistake of fact (Sec.20)
3. Agreements the consideration or object is unlawful (Sec.23)
4. Agreements the consideration or object is unlawful in part.(Sec.24)
5. Agreement made without consideration is void ( Sec.25)
6. Agreement in restraint of marriage (Sec.26)
7. Agreement in restraint of trade (Sec.27)
8. Agreement in restraint of legal proceedings (Sec.28)
9. Agreement the meaning of which is uncertain ( Sec.29)
10. Agreement by way of wager (Sec.30)
11. Agreement contingent on impossible events(Sec.36)
12. Agreement to do impossible acts.(Sec.56)

**Wager or Wagering Agreement [Sec.30]**

A wager agreement is an agreement between two persons under which money or money's worth is payable, by one person to another on the happening or non-happening of a future uncertain event. Ex. X promises to pay rs.1,000 to Y if it rains on a particular day, and Y promises to pay rs.1,000 to X if it did not. Such agreement is a wagering agreement.

**Essentials of a wagering Agreement**

1. Promise to pay money or money's worth
2. Uncertain event

3. Each party must stand to win or lose.
4. No control over the event
5. No other interest in the event

**The following** transactions however are, **not wagers**

1. A crossword competition involving a good measure of skill for its successful solution
2. Games of skill, e.g., picture puzzles or athletic competitions
3. A subscription or contribution or an agreement to subscribe or contribute toward any event (a cup or other prize for a race or other contest), prize or sum of money of the value of Rs.500 or above to be awarded to the winner or winners of a horse race (Exception to Sec.30)
4. Share market transactions in which delivery of stocks and shares is intended to be given and taken.
5. A contract of insurance.

## **Contingent Contracts**

Contingent contract is a contract to do something, if some event, collateral to such contract, does or does not happen.

Characteristics of a contingent contract.

1. Its performance depends upon the happening or non happening in future of some event.
2. The event must be uncertain.
3. The uncertain future event must be collateral to the contract.

### **THREE ESSENTIAL ELEMENTS OF CONTINGENT CONTRACT**

1. Its performance depends upon the happening or non-happening in future of some event
2. The event must be uncertain
3. The event must be collateral. (incidental to the contract)

Example of the event must be collateral

There was a contract for the sale of American parachute cloth by A to B. The goods were to be delivered when they arrived. A failed to give delivery and B sued for damages for breach. A pleaded that the contract was a conditional one and as the goods had not arrived he had no obligation to give delivery. Held, the contract was an absolute one and the obligation of A was not contingent upon the arrival of the goods

Contracts of insurance, indemnity and guarantee

### **WAGERING AND CONTINGENT CONTRACT**

1. A wagering agreement consists of reciprocal promises whereas a contingent contract may not be of a wagering nature
2. A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a wagering nature
3. A wagering agreement is void whereas a contingent contract is valid
4. In a wagering agreement, the parties have no other interest in the subject-matter of the agreement except the winning or losing of the amount of the wager
5. In a wagering agreement the future event is the sole determining factor while in a contingent contract the future event is only collateral



## QUASI CONTRACTS

Quasi Contract is not a contract at all, but it is a contract.. A quasi contract is created by law without the essential elements, viz, offer and acceptance, free consent lawful object, consideration ,Capacity of the person,

### Types of Quasi Contract

#### 1. Claim for necessaries supplied:

Any amount, spent for necessary to the life of incapable person like minor/a Lunatic, can be claimed back.

For Example, A supplies B , A lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's Property.

#### 2. Payment by Interested person:

If a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

For Example: B holds land in Bengal on a lease granted by A, the Zamin thar. The revenue is payable by A to the Government. . Under the Revenue Law, the consequence of such a sale will be the annulment of B's Lease. B, to prevent the sale and the consequent Annulments of his own lease, pays the Government, the sum due from A. A is bound to make good to B, the amount so paid.

#### 3. Benefit of Non Gratuitous:

When a person lawfully does something for another person or delivers something to him, not intending to do so gratuitously, and the other person enjoys the benefit thereon, the latter is bound to make compensation to the former in respect of or to restore the thing so done or delivered.

For Example: A, a tradesman, leaves goods at B's House by Mistake. B treats the goods as his own. He is bound to pay for them.

#### 4. Responsibility of Finder of goods:

Generally, a person is not bound to take care of goods belonging to another left on a road or any other public place by accident or inadvertence. But, if he takes them into his custody, an agreement is implied by law.

#### 5. Money paid /Things delivered by Mistake or under Coercion :

A person to whom money has been paid or to whom anything has been delivered by mistake or under coercion, must return or repay it.

For Example: A and B jointly owe Rs. 1,000 to C. A alone pays the amount to C, and B not knowing this fact pays Rs.1,000 again to C. C is bound to repay the amount to B.



## UNIT-III

### PERFORMANCE OF CONTRACT

#### Who can demand performance ?

**(a) Promisee:** It is only the promisee himself. In case of his death, the legal representative, who can demand performance.

Ex: X promises Y to pay Rs.1000 to Z. It is only Y who can demand performance and not Z.

**(b) Joint Promisees:** In case of joint promisees, any of the joint promisees can demand performance. When all promisees die, the legal representatives of all the deceased persons can demand performance.

Ex: X promises Y and Z jointly to repay loan of Rs.1,000 on a specified day. Y's representative jointly with Z can demand the Performance from X on specified day. If Y and Z die before that specified day, the representatives of Y and Z jointly can demand the performance from X on specified day.

**(c) Third Party:** A third party can also demand the performance of the contract in some exceptional cases like beneficiary in case of trust, the person for whose benefit the provision is made in family arrangements.

**(d) Legal representative:** In case of death of the promisee, his legal representative can demand performance unless a contrary intention appears from the contract or the contract is of a personal nature.

Ex: X promises to marry Y on the specified day. Y dies before the specified day. The legal representatives of Y cannot demand performance of the promise from X because the contract is of personal nature.

#### Who must perform?

**(a) Promisor:** If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor.

Ex: X promises to paint a picture for Y. X must perform the promise personally,

**(b) Promisor's Agent:** If it was not the intention of the parties that the promise should be performed by the promisor himself, such contracts can be performed by the promisor himself or any competent person employed by him.

Ex: A promises to pay B a sum of money. A may perform this either by personally paying the money to B, or by causing it to be paid to B by another, and if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

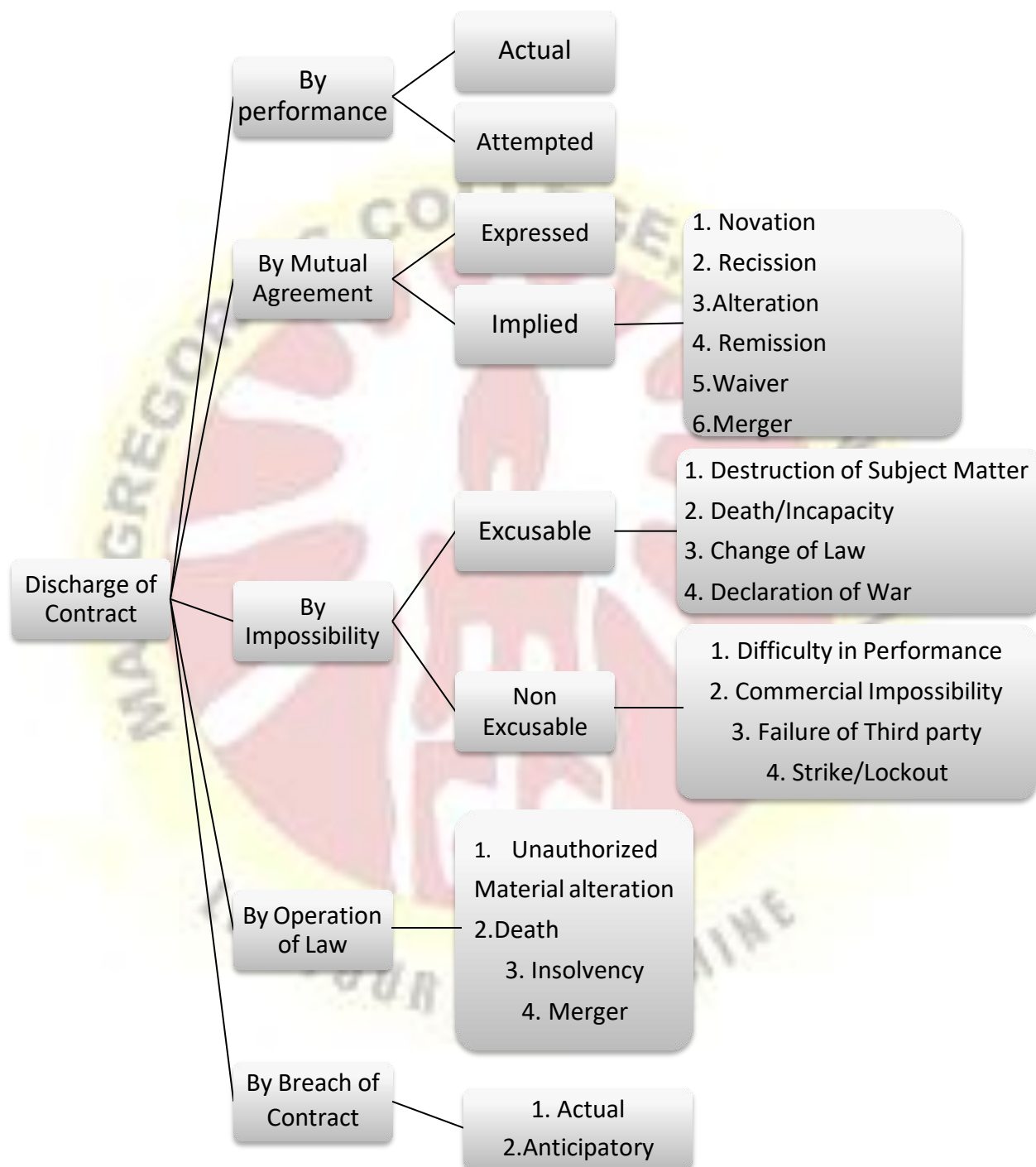
**(c) Legal Representatives:** In case of death of promisor, his legal representative can perform the contract unless a contrary intention appears or the contract is of personal nature.

Ex: X promises to marry Y. X dies. X's legal representatives cannot perform this promise.

**(d) Third Party**

**(e) Joint Promisors**

## DISCHARGE OF CONTRACT



Meaning: A contract is said to be discharged when the obligations created by it come to an end.

### **1. Discharge by performance:**

It takes place when the parties to a contract fulfill their obligations arising under the contract within the time and the manner prescribed.

### **2. Discharge by agreement or consent:**

The contract rests on the agreement of the parties. The parties may get discharged from the obligations of performance of contract by agreement or mutual consent.

**2. Discharge by agreement or consent:** The discharge by consent may be express or implied. Discharge by consent –

- (a) **Novation** : When a new contract is substituted for an existing one, either between the same parties or between the one of the parties and the third party.
- (b) **Rescission**: When all or some of the terms of contract are cancelled.
- (c) **Alteration** : When one or more terms of the contract is/are altered by the mutual consent of the parties to a contract.
- (d) **Remission**: Acceptance of a lesser fulfillment of the promise made
- (e) **Waiver**: Intentional relinquishment or giving up of a right by a party entitled thereto under a contract.
- (f) **Merger**: When an inferior right accruing to a party under a contract merges in to a superior right accruing to the same party under a new contract.

### **3. Discharge by impossibility:**

Impossibility of performance may be-

(1) Initial impossibility or (2) Supervening impossibility.

(1) **Initial impossibility**: An agreement to do an impossible act in itself is void.

(2) **Supervening impossibility**: Impossibility which arises subsequent to the formation of contract (which could be performed at the time when the contract was entered in to) is called supervening impossibility. The cases covered by of supervening impossibility include:

- (a) Destruction of the subject mater
- (b) Non-Existence or non-occurrence of a particular state of things
- (c) Death or incapacity for personal service
- (d) Change of law,
- (e) Outbreak of war

THE CONTRACT IS DISCHARGED IN THESE CASES.

**The following cases are not covered by supervening impossibility:**

- (a) Difficulty of performance
- (b) Commercial impossibility
- (c) Failure of a third person on whose work the promisor relied
- (d) Strikes, lock outs and civil disturbances
- (e) Failure of one of the objects

The contract is not- discharged in these cases.

**4. Discharge by lapse of time:**

If the contract is not performed within the period of limitation and if no action is taken by the promisee in a law court, the contract is discharged.

**5. Discharge by operation of law:**

This includes discharge by, (a) death (b) merger (c) insolvency (d) unauthorized alteration of the terms of a written agreement, and (e) rights and liabilities becoming vested in the same person.

**6. Discharge by breach of contract:**

If a party breaks his obligation which the contract imposes, there takes place breach of contract. Breach of contract may be, (a) Actual or (b) Anticipatory breach.

(1) Actual breach of contract may occur,

- (a) at the time when the performance is due, or
- (b) during the performance of the contract.

(2) Anticipatory breach of contract occurs when a party repudiates his liability or obligation under the contract before the time for performance arrives.



## Remedies for Breach of Contract

In case of breach of contract, the injured party has one or more of the following remedies:

1. **RESCISSION**: When there is breach of a contract by a party, the injured party may sue to treat the contract as rescinded. He is also absolved of all the obligations under the contract.

2. **DAMAGES**: Damages are monetary compensation awarded to the injured party by Court for the loss or injury suffered by him.

**Damages may be of four types:**

### 1. Ordinary Damages:

These are damages which actually arise in the usual course of things from the breach of a contract.

2. **Special Damages**: Damages which may reasonably be supposed to have been in the contemplation of both the parties at the time when they made the contract as the probable result of the breach of it, are known as special damages and may be recovered.

3. **Vindictive or Exemplary Damages**: These damages are allowed in case of the breach of a contract to marry or dishonor of a cheque by a banker wrongfully.

4. **Nominal Damages**: Where the injured party has not suffered any loss by reason of the breach of a contract, the Court may award a very nominal sum as damages.

### 3. QUANTUM MERUIT: [As much as earned]

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

This right is founded on the implied promise by the other party arising from the acceptance of a benefit by that party.

4. **SPECIFIC PERFORMANCE**: In certain cases the Court may direct the party in terms of the contract to actually carry out the promise, exactly according to the terms of the contract. This is called "specific performance of the contract".

5. **INJUNCTION**: It is a mode of securing the specific performance of the negative terms of a contract.

## UNIT IV

### SALE OF GOODS ACT

#### MEANING OF CONTRACT OF SALE

According to Section 4 of the Act, a contract of Sale means “a contract where the seller transfers or agrees to transfer the property in goods to the buyer for price”

**Contract of Sale may be of two types:**

#### 1. SALE :

It is a contract where the ownership in the goods is transferred by seller to the buyer immediately at the conclusion contract.

EXAMPLE: A sells his house to B for Rs. 10,00,000. It is a sale since the ownership of the house has been transferred from A to B.

#### 2. AGREEMENT TO SELL :

It is a contract of sale where the transfer of property in goods is to take place at a future date or subject to some condition thereafter to be fulfilled.

EXAMPLE: A agreed to buy from B a certain quantity of nitrate of soda. The ship carrying the nitrate of soda was yet to arrive. This is `an agreement to sale`. In this case, the ownership of nitrate of soda is to be transferred to A on the arrival of the ship containing the specified goods (i.e. nitrate of soda) [**Johnson V McDonald** (1842) 9 M & W 600, 60 RR 838]

#### DISTINCTION BETWEEN SALE AND AGREEMENT TO SELL

| BASIS                          | SALE   | AGREEMENT TO SELL  |
|--------------------------------|--|--|
| <b>1. Transfer of Property</b> | The property of goods passes from the seller to the buyer immediately. So the seller is no more owner of the goods sold. It is an executed contract. | The transfer of property of the goods is to take place at a future time or subject to certain conditions to be fulfilled. It is an executory contract. |
| <b>2. Type of goods</b>        | A sale can only be in case of existing and specific goods only.  | An agreement to sell is mostly in case of future and contingent goods .  |
| <b>3. Risk of loss</b>         | In a sale if the goods are destroyed, the loss falls on the buyer even though the goods are in the possession of the seller.                         | In an Agreement to Sell if the goods are destroyed the loss falls on the seller even though the goods are in the possession of the buyer.              |

|   |  |  |
|---|--|--|
| <b>4. Consequences Of Breach</b>          | In a sale the buyer fails to pay the price of goods (or) if there is a breach of contract by the buyer the seller can sue for the price even though the goods are still in his possession  | If there is a breach of contract by the buyer the seller can only sue for the damages and not for the price.   |
| <b>5. Right to re-sell</b>                | In a sale the seller cannot re-sell the goods.   | The buyer who takes the goods for consideration and without notice of the prior agreement gets him a good title. The original buyer can only sue the seller for damages.                   |
| <b>6. General and particular property</b> | The sale of contract plus conveyance and creates 'Jus in rem' i.e., gives right to the buyer to enjoy the goods as against the world and large including the seller.   | An agreement to sell is merely a contract pure and simple and creates 'Jus in personam' i.e., gives a right to the buyer against the seller to sue for the damages.                        |
| <b>7. Insolvency of buyer</b>             | In a sale if the buyer becomes insolvent before he pays for goods, the seller in the absence of the lien over the goods, must return them to the official receiver or assignee. He can only claim the ratable dividend for the price of the goods. | In an Agreement to Sell , If the buyer becomes insolvent and has not yet paid the price the seller is not bound to part with the goods until he is paid for.                               |
| <b>8. Insolvency of the seller</b>        | In a sale the seller becomes insolvent, the buyer being the owner is entitled to recover the goods from the official receiver of the assignee.   | If the buyer who has paid the price, finds that the seller has become insolvent he can only claim a ratable dividend and not the goods because property in them has not yet passed to him. |

## Essentials of Contract of Sale

**Two parties:** There must be two parties- a buyer and a seller to constitute a contract of sale.

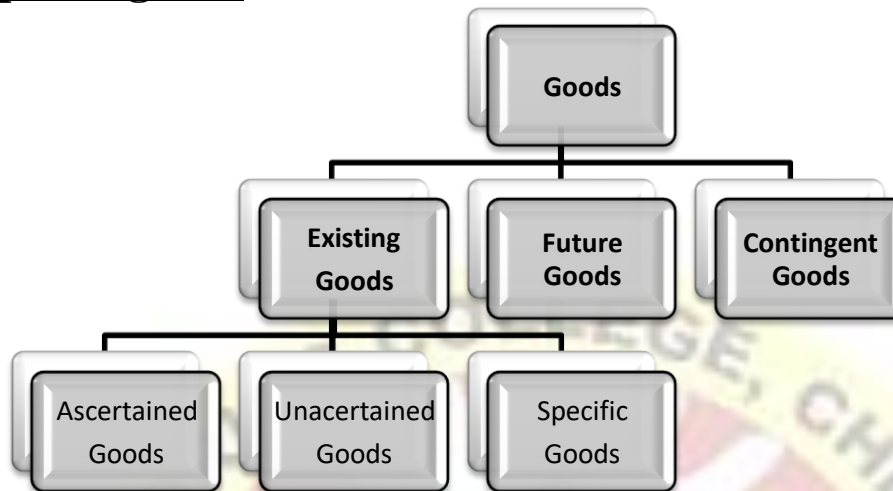
### **Goods:**

Contract of sale relates to goods i.e., movable property . Transaction involving purchase and sale of immovable property are out of the purview of the Sale of Goods Act.

### **definition:**

The subject matter of a contract of a sale must be goods . According to Section 2(7) the term 'goods' means "every kind of movable property other than actionable claims and money and includes stock and shares , growing crops , and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale"

## Types of goods:



**Existing goods:** These are the goods which are owned or possessed by the seller at the time of sale. Only existing goods can be the subject of a sale. The existing goods may be

- a) Specific goods: Goods identified and agreed upon at the time of making of the contract of sale of goods.
- b) Ascertained goods: Goods identified subsequent to the formation of the contract of sale. The terms ascertained and specific, are commonly used for same kind of goods.
- c) Unascertained or generic goods: Goods not identified or agreed upon at the time of making of the contract of sale. They are the goods defined for description only.

**Example:** 'A' who wants to buy a television set goes to a showroom where four sets of Janta model of Oscar television are displayed. He sees the performance of a particular set, which he agrees to buy. The set so agreed to be bought is a specific set. If after having bought one set he marks a particular set, the set so marked becomes ascertained. Till this all is done all sets are unascertained.

2. **Future goods:** Goods to be manufactured, produced or acquired after making of the contract are called future goods.

**Example:** 'A' contract, on 1<sup>st</sup> January, to sell B 50 shares in Reliance Ltd., to be delivered and paid for on the 1<sup>st</sup> March of the same year. At the time of making of the contract, A is not in possession of any shares. The contract is a contract for the sale of future goods.

3. **Contingent goods :** Goods, the acquisition of which by the seller ,depends upon an uncertain contingency are called 'contingent goods'. They are also a type of future goods.

**Example:** 'A' agrees to sell 100 units of an article provided the ship which is bringing them, reaches the port safely. This is an agreement for the sale of contingent goods.

### PERISHING OF GOODS

Perishing of goods before making of the contract(Sec. 7)



Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

### **PRICE**

Sec.2(10) defines price “as money consideration for a sale of goods”.

It forms an essential part of the contract.

It must be expressed in terms of money.

It is not essential that the price should be fixed at the time of sale. It must, however, be payable, though it may not have been fixed.

#### **Ascertainment of price**

Price in a contract of sale may be fixed by the contract itself, or left to be fixed in an agreed manner, or determined by the course of dealing between the parties [Sec. 9(1)]

In the absence of this, the buyer must pay to seller a reasonable price. What is the reasonable price is a question of fact dependent on the circumstances of each particular case [Sec. 9(2)]

#### **Agreement to sell at valuation**

Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided.

### **TRANSFER OF OWNERSHIP (General Property)**

A contract of sale of goods involves transfer of ownership from the seller to the buyer. Transfer of ownership or property in goods is in fact the main object of making a contract of sale.

#### **RULES REGARDING TRANSFER OF OWNERSHIP**

##### **For Specific goods** (Sec. 20 to 22)

##### **Passing of property at the time of contract** (Sec.20)

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made.

##### **Passing of property delayed beyond the date of the contract**

1. When Goods not in a deliverable state, Ownership is not passed to Buyer (Sec.21)
2. Where there is a contract for sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

##### **For unascertained/ 'future' goods** Sec.23

In the case of a contract for a sale of unascertained or future goods by description, property will pass from the seller to the buyer when the goods of the same description, in a deliverable state, are unconditionally appropriated to the contract by one party with the consent of the other.

## UNPAID SELLER AND HIS RIGHTS

**UNPAID SELLER:- Seller :-** A person who sells the goods or agrees to sell the goods is called seller.

**Unpaid :-** It means payment is not made or without payment. In simple words, "Unpaid seller" means a person who has sold the goods for a price but price has not been paid to him.

*Sales act defines the "unpaid seller" in the following words :*

### **Unpaid Seller Is A Person :-**

- i. To whom the whole price has not been paid or tendered.
- ii. And where a bill of exchange or other negotiable instruments has been accepted by him as a condition on which it was received has not been fulfilled by reason of dishonor of the instrument or otherwise.

**EXAMPLE:** Party A sells a car on cash basis to party B and the price has not been received yet.



# RIGHTS OF UNPAID SELLER

## Right against the goods

### A. When the property in the goods has been transferred

#### **1. RIGHT OF LIEN[Sec 46(1)(a) and 47 to 49]**

The right of lien means lawfully right to retain the goods possession until the full price is received. An unpaid seller can exercise his right of lien in following cases. Sec47-49

Where the goods have been sold on the cash basis.

Where the goods have been sold on credit basis and the term of credit has expired.

Where the buyer has become insolvent even if the period of credit has not been expired.

#### **2. RIGHT OF STOPPAGE IN TRANSIT[Sec. 50 to 52]**

It means stoppage of goods while they are in transit to take possession until the price is paid Unpaid seller can stop the goods in transit in the following cases.

While the buyer becomes insolvent.

While the goods are out of actual possession of seller, but have not reached buyer's possession

The unpaid seller can stop the goods in transit only for payment of the price of the goods and not for any other charges.

#### **3. RIGHT TO RE-SALE**

If a buyer fails to pay or offer the price within a reasonable time, the unpaid seller has the right to resell the goods in the following circumstances.

Where the goods are of perishable nature.

Where the unpaid seller has exercised his right of lien or stoppage in transit and gives a notice to buyer of his intension of resell the goods.

Where the unpaid seller has expressly reserved his right of resale.

Where seller gives notice to the buyer of his intension to resell and the buyer does not pay within a reasonable time, he can recover loss on resale of the goods, if any

### B. When the property in goods has not been transferred

#### **1. RIGHT OF WITHHOLDING DELIVERY**

If the property in the goods has not passed to the buyer, the unpaid seller cannot exercise right of lien ,but gets a right of withholding the delivery of goods, similar to and co-extensive with lien.

#### **2. RIGHT OF STOPPAGE IN TRANSIT[Sec. 50 to 52]**

It means stoppage of goods while they are not transferred. Unpaid seller can stop the goods in transit in the following cases.

## **RIGHTS AGAINST THE BUYER PERSONALLY**

There are some rights which an unpaid seller may enforce against the buyer personally. These rights are called RIGHTS IN PERSONAM

### **1. SUIT FOR PRICE[Sec. 55]**

Where ownership of the goods has passed to the buyer and the buyer refuses to pay the price according to the terms of the contract, the seller can sue the buyer for price, irrespective of delivery of the goods.(Sec. 55)

### **2. REPUDIATION OF THE CONTRACT:**

If the buyer is not paying the due amount for goods sold, the Seller may cancel or repudiate the contract

### **3. SUIT FOR DAMAGES FOR NON-DELIVERY[Sec.56]**

Where the buyer refuses to accept and pay for the goods, the seller may sue him for damages for non acceptance. The seller can recover damages only and not the full price (Sec. 56)

### **4. SUIT FOR SPECIAL DAMAGES AND INTEREST[Sec.61]:**

The seller can sue the buyer for special damages where the parties are aware of such damages at the time of contract. The unpaid seller can recover interest at a reasonable rate on the total unpaid price of goods, from the time it was due until it is paid. (Sec. 61)

## **REMEDIES FOR BREACH OF CONTRACT OF SALE**

### **Seller's suits**

- Suit for price(Sec. 55)
- Suit for damages for non-acceptance of the goods(Sec.56)
- Suit for interest[Sec. 61(2)(a)]

### **Buyer's suits**

- Suit for damages for non-delivery of the goods(Sec.57)
- Suit for specific performance(Sec.58)
- Suit for breach of warranty(Sec.59)
- Suit for interest[Sec.61(2)(a)]



## CONDITIONS AND WARRANTIES

### MEANING OF CONDITION AND WARRANTY

A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty [Sec. 12(1)].

#### Condition:

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. [Sec 12(2)]

#### Warranty:

A warranty is a stipulation collateral to the main purpose of the contract, breach of which gives rise to a claim for damages, but not a right to reject the goods and treat the contract as repudiated. [Sec 12(3)]

### Difference Between Condition And Warranty

| S.No. | Basis            | Conditions  | Warranties  |
|-------|------------------|---|---|
| 1     | <b>Nature</b>    | Condition is of a fundamental nature.   | Warranty is of a subsidiary of inferior character.  |
| 2     | <b>Value</b>     | Condition is essential to the main purpose of the contract. The main purpose of the contract cannot be fulfilled without the prior fulfillment of this stipulation. | Warranty is only collateral to the main purpose of the contract. Fulfillment of the main purpose of the contract does not depend up on the fulfillment of the warranty. |
| 3     | <b>Breach</b>    | If there is breach of condition, the aggrieved party can repudiate the contract.  | In case of breach of warranty, the aggrieved party can claim damages only.  |
| 4     | <b>Treatment</b> | A breach of condition may be treated as a breach of warranty. This would happen where the aggrieved party is contented with damages only.                           | A breach of warranty, however, cannot be treated as a breach of condition   |

### IMPLIED CONDITION (Secs. 14 to 17)

#### 1. Condition as to title [Sec. 14(a)]

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller that –

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

**Example:** R bought a car from D and used it for 4 months. D had no title to the car and consequently R had to hand it over to the true owner. *Held, R could recover the price paid* [Rowland v. Divall (1923) 2 K.B. 500]

## 2. Condition as to description (Sec. 15)

In sale by description there is an implied condition that the goods shall correspond with description.

This means “if you contract to sell peas, you cannot oblige the party to take beans.”

Hence if the description of the article tendered is different than the buyer may not buy the goods.

**Example:** A want to sell his typewriter. He says to B , intending buyer who has not have seen the machine, that it is a brand new machine. B agrees to purchase it . On delivery B finds that the machine is old and repaired. B can repudiate the contract.

## 3. Condition as to sample (Sec. 17)

A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

In a sale by sample, the following are the implied conditions:

1. The bulk shall correspond with the sample in quality;
2. That the buyer shall have a reasonable opportunity of comparing the bulk with the sample; &
3. That the goods shall be free from any defects rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

**Example:** Certain shoes were sold by sample for the French Army. The shoes were found to contain paper not discoverable by ordinary inspection. *Held*, the buyer was entitled to the refund of price plus damages.

## 4. Condition as to quality or fitness [Sec. 16 (1)]

Normally, in a contract of sale there is no implied condition as to quality or fitness of the goods for a particular purpose. The buyer must examine the goods thoroughly before he buys them in order to satisfy himself.

**Example:** An order was placed for some lorries to be used “for heavy traffic in a hilly area”. The lorries, supplied, were unfit and breakdown. There is a breach of condition as to fitness.

## 5. Condition as to merchantability [Sec. 16(2)]

Where goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods are of merchantable quality. This means goods should be such that they are commercially saleable, as per the description by which they are known in the market at their full value.

## 6. Condition as to wholesomeness

In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the good shall be wholesome.

**Example:** X purchased milk from Y , a milk dealer. The milk contained typhoid germs. X’s wife, on taking the milk, got infection and died. *Held*, X can entitled for damages.

## Warranty of quiet possession [Sec. 14(b)].

In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way disturbed in the enjoyment of the goods in consequence of seller’s defective title to sell, he can claim damages from the seller.

**Warranty of freedom from encumbrances**[Sec. 14 (c)].

The goods are not subject to any change or right in favour of a third party.

**Warranty as to quality or fitness by usage of trade** [Sec. 16 (4)].

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

**Warranty to disclose dangerous nature of goods**

Where a person sell goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

**DOCTRINE OF "CAVEAT EMPTOR"**

Caveat Emptor is a Latin phrase meaning "*let the buyer beware*".

**Let the buyer beware**: the principle that the seller of a product cannot be held responsible for its quality unless it is guaranteed in a warranty.

For example, you buy a used car which you are told is in perfect condition, but it immediately breaks down OR you buy a house, but it has termites.

**Under this doctrine** the buyer takes the risk on an item he purchases and cannot complain of a defect.

Unless there is either fraud or warranty (guarantee) by the seller, the rule applies to the sale of personal property.

The buyer and seller have equal access to information about the item and the buyer is able to make personal inspection

**Example**: Suppose Ram bought 10 cows from a cattle broker. Out of those 10, 2 cows had defects. However, Ram did not know this because he didn't check all 10 cows though he paid for them. Guess what happened? The 2 infected cows died within three days of the purchase. Now, as there was no tacit condition that the cows would be in great health at the time of the sale, Ram cannot hold the cattle broker as responsible or having sold him those infected cows. It was Ram's basic duty to check the health of those cows and not expect the cattle broker to state all the defects.

**Case study : Jones vs. Padgett**

The buyer bought cloth for making uniforms. However, the seller was not aware of the purpose of buying the cloth. Later, the buyer found that the cloth is not fit making uniforms. It was, however, fit for other normal purposes. The seller was not found guilty as the principle of 'caveat emptor' applied in this case.



## **EXCEPTION OF CAVEAT EMPTOR**

### **Implied condition as to quality or fitness.**

Where the buyer has made known to the seller the purpose for which he requires the goods and depends on the seller's skill and judgment, there is an implied condition that the seller will supply the goods which are fit for that purpose. Section 16(1)

Example: A buys a black yarn from B and finds that it has been damaged by white ants. The condition as to merchantable quality is broken and therefore, the doctrine of broken and therefore, the doctrine of caveat emptor does not hold good.

### **Sale of goods by description.**

Where the goods are purchased by description from a seller, who deals in such class of goods, there will be an implied condition that the goods shall be of merchantable quality.

Example: English sainfoin seeds, duly exhibited by a sample, are sold. The bulk corresponds to the sample but the seeds supplied are giant sainfoins and not English sainfoin. There is a breach of condition as to description of goods. So the doctrine of caveat emptor is not applicable.

### **Usage of trade**

An implied condition or warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, the rule of caveat emptor does not hold good.

Example: A dealer sells a refrigerator to Mohit. The refrigerator performs all other functions except making ice. This would amount to breach of an implied condition and thus the doctrine of caveat emptor will not work.

### **Consent by fraud.**

When the buyer relies on false representation of the seller and suffers damages, i.e., in a contract where the buyer's consent was obtained by the seller by fraud, the doctrine of caveat emptor will not hold good.

Example: A bought 3000 tins of preserved milk from U.S.A. The tins were labeled in such a way as to infringe the Nestlé's trademark. As a result, they were detained by the custom authorities. To get the clearance certificate from the customs, A had to remove the labels and sell them at a loss. Now A can hold the seller responsible for fraud and claim damages.

## **AUCTION OF SALE**

### **MEANING:**

Sale of auction is the public sale where the goods are generally sold to the highest bidder

### **RULES OF AUCTION SALE:**

The law on auction sales is contained in Sec.64 of the Sale of Goods Act. According to it, in the case of a sale of auction the following rules apply :

Where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;



## UNIT-V

### CONTEMPORARY ISSUES IN BUSINESS LAW

#### Right to Information Act, 2005

##### **Introduction:**

This legislation may be termed as one of the rarest legislations in the Indian Legal History which provides for setting out the practical regime of 'Right to Information' for Citizens to secure access to information under the control of public authorities and in order to promote transparency & accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

This Legislation will prove to be a 'Landmark', since it is enacted NOT for the people to follow but for the Government to follow.

Through this legislation, the Government has made an attempt to administer itself, be answerable to the people & penalize itself for lacking in providing the required information and regain people's lost confidence in the bureaucratic system and setup.

##### **Extent and Commencement:**

This Act extends to the whole of India except the State of Jammu and Kashmir. This Act of Parliament received the assent of the President of India on the 15th June, 2005.

##### **Some Important Definitions:**

###### **1. Information [Section 2(f)]:**

**Information** means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

###### **2. Record [Section 2(i)]:**

**Record** includes—

- (A) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not)
- (d) any other material produced by a computer or any other device.

###### **3. Right to Information [Section 2(j)]:**

**Right to Information** means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to —

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

#### **4. Public Authority [Section 2(h)]:**

**Public Authority** means any authority or body or institution of self- government established or constituted—

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any—
  - (i) body owned, controlled or substantially financed;
  - (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

#### **Exemption from disclosure of information [Section 8]:**

Like any other legislation, this Act also provides for exemptions to the Government from disclosure of information regarding information – which would cause a breach of privilege of Parliament or the State Legislature / harm the competitive position of a third party / endanger the life or physical safety of any person / impede the process of investigation or apprehension or prosecution of offenders / weaken confidence of the Foreign Government / Disclose the Records of deliberations of the Council of Ministers, Secretaries and other Officers / relates to personal information which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information / involve infringement of copyright.

**IMPACT:** To hide or avoid giving the required information demanded, the Officers of the concerned Public Authorities may resort to take advantage of these Exemptions. Hence it may be necessary for the 'Information Seeker' to be clear in his mind about the exact interpretation of the provisions and exemptions so that he may not be taken for a ride by the officials and can claim his Right to information rightfully.

### **Administration of the Act [Section 12]:**

A body to be known as the '*Central Information Commission*' is constituted to exercise the powers conferred on, and to perform the functions assigned to, it under this Act. The Central Information Commission shall consist of— *The Chief Information Commissioner* and such number of *Central Information Commissioners* as may be deemed necessary.

Every State Government shall constitute a body to be known as the \_\_\_\_\_ (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act. The State Information Commission shall consist of— *The State Chief Information Commissioner* and such number of *State Information Commissioners* as may be deemed necessary.

The Central Information Commission or State Information Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908.

Every public authority shall designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act. Every public authority shall designate an officer at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified or the Central Information Commission or the State Information Commission, as the case may be.

### **Timeframes within which the desired information should be made available by the concerned Public Authority:**

A person who desires to obtain any information shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

- (a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;
- (b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her.

An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

On receipt of a request the Central Public Information Officer or State Public Information Officer shall as expeditiously as possible, and in any case within Thirty Days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for a reason. If the Central Public Information Officer or State Public Information Officer fails to give decision on the request for information within the said period it shall be deemed to have refused the request. The person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified.



**IMPACT:** Making requests for information through electronic means may not be easy practically, since not all the Public Authority offices are fully computerized and may not have computer savvy staff. The urban class who may resort to make request through electronic means may get discouraged. Explanations like, 'Computer error', 'Server down' may be resorted to, for avoiding furnishing of information.

**Penalties for not making available the desired information:**

If without any reasonable cause, the concerned Officer refuses to receive an application for information or has not furnished information within the time specified or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees shall be imposed and / or disciplinary action against the concerned Officer may be taken. Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed or disciplinary action is taken against him.

**CONCLUSION:**

The enactment of the Right to Information Act, 2005 makes a noteworthy attempt to streamline the working of the Public Authorities in respect of providing information to the people. The Authorities will require being technology savvy, alert and need to imbibe in them the not before attitude, of being answerable to the citizens. The Public Authorities will now require tightening their belts so as to serve the people and truly contribute to the Information Technology era. As for the citizens, this Act makes them aware of their one of the Constitutional Rights – Right to Information and gives them the opportunity to exercise it in good faith.

## **INFORMATION TECHNOLOGY ACT, 2000**

The Information Technology Act, 2000 or ITA, 2000 or IT Act, was notified on October 17, 2000. It is the law that deals with cybercrime and electronic commerce in India. In this article, we will look at the objectives and features of the Information Technology Act, 2000.

In 1996, the United Nations Commission on International Trade Law (UNCITRAL) adopted the model law on electronic commerce (e-commerce) to bring uniformity in the law in different countries.

Further, the General Assembly of the United Nations recommended that all countries must consider this model law before making changes to their own laws. India became the 12th country to enable cyber law after it passed the Information Technology Act, 2000.



While the first draft was created by the Ministry of Commerce, Government of India as the ECommerce Act, 1998, it was redrafted as the 'Information Technology Bill, 1999', and passed in May 2000.

### **Objectives of the Act**

The Information Technology Act, 2000 provides legal recognition to the transaction done via electronic exchange of data and other electronic means of communication or electronic commerce transactions.

This also involves the use of alternatives to a paper-based method of communication and information storage to facilitate the electronic filing of documents with the Government agencies.

Further, this act amended the Indian Penal Code 1860, the Indian Evidence Act 1872, the Bankers' Books Evidence Act 1891, and the Reserve Bank of India Act 1934. The objectives of the Act are as follows:

- i. Grant legal recognition to all transactions done via electronic exchange of data or other electronic means of communication or e-commerce, in place of the earlier paper-based method of communication.
- ii. Give legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication
- iii. Facilitate the electronic filing of documents with Government agencies and also departments
- iv. Facilitate the electronic storage of data
- v. Give legal sanction and also facilitate the electronic transfer of funds between banks and financial institutions
- vi. Grant legal recognition to bankers under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934, for keeping the books of accounts in electronic form.

### **Features of the Information Technology Act, 2000**

- a. All electronic contracts made through secure electronic channels are legally valid.
- b. Legal recognition for digital signatures.
- c. Security measures for electronic records and also digital signatures are in place
- d. A procedure for the appointment of adjudicating officers for holding inquiries under the Act is finalized

- e. Provision for establishing a Cyber Regulatory Appellant Tribunal under the Act. Further, this tribunal will handle all appeals made against the order of the Controller or Adjudicating Officer.
- f. An appeal against the order of the Cyber Appellant Tribunal is possible only in the High Court
- g. Digital Signatures will use an asymmetric cryptosystem and also a hash function
- h. Provision for the appointment of the Controller of Certifying Authorities (CCA) to license and regulate the working of Certifying Authorities. The Controller to act as a repository of all digital signatures.
- i. The Act applies to offences or contraventions committed outside India
- j. Senior police officers and other officers can enter any public place and search and arrest without warrant
- k. Provisions for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government and Controller.

## CYBER CRIME

**Cybercrime**, also called **computer crime**, the use of a computer as an instrument to further illegal ends, such as committing fraud, trafficking in child pornography and intellectual property, stealing identities, or violating privacy. Cybercrime, especially through the Internet, has grown in importance as the computer has become central to commerce, entertainment, and government.

### Types of cyber crime

#### Hacking

Hacking is basically gaining unauthorized access to your system profit, protest, information gathering, or to evaluate system weaknesses. The provisions for hacking are given in IT Act, 2000 under section 43-A and 66 and section 379 & 406 of Indian Penal Code. The punishment for hacking is 3 years or shall be imposed with fine up to 5 lakhs.

#### Denial of Service

It brings down the server (any server). It is known as the flooding machine with requests in an attempt to overload systems. It also uses bots for tasks. The provisions are given under section 43(f) of IT Act with imprisonment up to 3 years or with fine up to 5 lakh rupees.

#### Virus Dissemination

It involves direct or search unauthorized access to system by introducing malicious programs known as viruses, worms etc. Virus needs host while worms are standalone. Provisions are provided under the IT Act, 2000 under sections 43-C, 66 and section 268 of the

Indian Penal Code.

### **Credit Card Fraud**

Card fraud begins either with the theft of the physical card or with the compromise of data associated with the account. Provisions of such fraud are given under Section 66 C and 66 D of IT ACT, 2000 and section 468 & 471 of Indian Penal Code, 1860.

### **Phishing**

A malicious individual or group who scam users. They do so by sending e-mails or creating web pages that are designed to collect an individual's online bank credit card, or other login information. The provisions to prosecute any person for phishing are given under section 66 C, 66 D and 74 of the IT Act with imprisonment up to 3 years or with fine up to 1 lakh rupees.

### **Cyber Stalking**

It can be defined as the use of electronic communications to harass or frighten someone, for example by sending threatening emails. The provisions are given under IT Act, 2008 under section 72 and section 354 C (voyeurism) of the Indian Penal Code. Also, section 67 provides imprisonment up to 3 years with fine.

## **WHAT LEADS TO THE COMMISSION OF CYBER CRIME?**

### **Breach Because of Mobile Devices**

In 2015, mobile devices had less than 1% infection rate, so they were considered safe. Now, more than three-fifths of IT security professionals report that it is either certain.

### **Embedding Malware Into Legitimate Applications**

Cyber criminals have embedded malware into legitimate applications and they are targeting poorly secured WiFi spots, stealing passwords, and more in their quest to steal information.

### **Exploiting Unauthorized Products**

In many cases, attackers like to exploit unauthorized products having weak security controls in the corporate cloud.

### **Unlimited Internet Access**

By using internet, we have given convenience in accessing without any limitations. This is the foremost factor which causes cyber crime.

## **INTELLECTUAL PROPERTY RIGHTS**

Over the decades, the scope of the subject of Intellectual Property Rights (IPR) has been expanded and grown to a great extent and has risen to a stature wherein it plays a major role in the development of the Global Economy. Since the early 1990s, many developed countries unilaterally strengthened their laws and regulations in this area, and many others were poised to do likewise.

### **Types of Intellectual Property- Origin and Development- An Overview**

As you are aware that the domain of intellectual property is quite vast. Among other domains of intellectual property, Copyrights, Patents Trademarks and Designs are known to have received recognition for a long time. Apart from this, newer forms of the protection are also emerging particularly stimulated by the exciting developments in scientific and technological activities.

#### **PATENTS**

Patent law is the branch of intellectual property law that deals with new inventions. Traditional patents protect tangible scientific inventions, such as circuit boards, car engines, heating coils, or zippers. However, over time patents have been used to protect a broader variety of inventions such as coding algorithms, business practices, or genetically modified organisms. Considering the significance of Patents and its positive image for the successful enterprises, there is a plethora of international treaties and national laws to regulate the process and operation of Patents worldwide

#### **TRADEMARKS**

A trade mark provides protection to the owner of the mark by ensuring the exclusive right to use it, or to authorize another to use the same in return for payment. The period of protection varies, but a trademark can be renewed indefinitely beyond the time limit on payment of additional fees. In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trade mark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating international trade.

#### **COPYRIGHT**

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright in an idea. Just as you would want to protect anything that you own, creators want to protect their works. Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity