PGCM S2- 04 (DSC)

TWO YEAR MASTER'S DEGREE COURSE
(CBCS and Accordance with NEP 2020)

Business Laws

SEMESTER 2

COMMERCE

Maniram Dewan School of Management
KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

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MASTER OF COMMERCE

BUSINESS LAWS

DETAILED SYLLABUS

UNIT 1: Introduction to Business Law **Pages: 1-7**

Introduction, Meaning and Nature of Law, Sources of Indian Business Law, Indian Legal System, Mercantile Law

UNIT 2: Law of Contract **Pages: 8-23**

Introduction, Objectives, Definition of a Valid Contract, Offer and Acceptance, Capacity to Contract, Consent, Consideration, Performance of Contract, Discharge of Contract, Breach of Contract and Void Agreements, Quasi Contracts, Freedom to Contract

UNIT 3: Contracts of Guarantee and Indemnity **Pages: 24-34**

Introduction, Contract of Indemnity, Contract of Guarantee, Kinds of Guarantee, Creditor, Surety

UNIT 4: Contract of Bailment and Pledge **Pages: 35-44**

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UNIT 5: Law of Partnership **Pages: 45-63**

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UNIT 6: Law of Sales of Goods **Pages: 64-81**

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UNIT 10: Food Safety and Standards (Packaging and Labelling) Regulations, 2011 **Pages: 152-181**

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UNIT 11: The Companies Act, 2013 **Pages: 182-200**

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UNIT 12: The Consumer Protection Act, 1986 **Pages: 201-211**

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COURSE INTRODUCTION

This is the fourth course in M.Com 2nd semester. This course introduces us to the subject– Business Laws. This course is designed as an introduction to law in management. As such, it will provide us with an overview of the many regulations that takes place in business. It will discuss different Laws related to business. After going through this self learning material, learners will come to know about Business Law, Law of Contract, Law of Partnership etc. The course has following 14 units :

UNIT 1: Introduction to Business Law

UNIT 2: Law of Contract

UNIT 3: Contracts of Guarantee and Indemnity

UNIT 4: Contract of Bailment and Pledge

UNIT 5: Law of Partnership

UNIT 6: Law of Sales of Goods

UNIT 7: Law of Negotiable Instruments

UNIT 8: Formation of a Company

UNIT 9: Regulatory Framework for Insurance

UNIT 10: Food Safety and Standards (Packaging and Labelling) Regulations, 2011

UNIT 11: The Companies Act, 2013

UNIT 12: The Consumer Protection Act, 1986

UNIT 13: E-Governance

UNIT 14: Regulation to Information

Each unit of the course includes some along-side boxes to help you know some of the difficult, unseen terms. Some “EXERCISES” have been included to help you apply your own thoughts. You may find some boxes marked with: “LET US KNOW”. These boxes will provide you with some additional interesting and relevant information. Again, you will get “CHECK YOUR PROGRESS” questions. These have been designed to self-check your progress of study. It will be helpful for you if you solve the problems put in these boxes immediately after you go through the sections of the units and then match your answers with “ANSWERS TO CHECK YOUR PROGRESS” given at the end of each unit. you in making your learning more active and efficient. And, at the end of each section, you will get “CHECK YOUR PROGRESS” questions. These have been designed to self-check your learning.

UNIT 1: INTRODUCTION TO BUSINESS LAW

UNIT STRUCTURE

1.1 Learning Objectives

1.2 Introduction

1.3 Meaning and Nature of Law

1.4 Sources of Indian Business Law

1.5 Indian Legal System

1.6 Mercantile Law

1.7 Let Us Sum Up

1.8 Further Reading

1.9 Answers to Check Your Progress

1.10 Model Questions

1.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- explain meaning and nature of law
- explain sources of Indian Law
- describe about mercantile law
- explain essentials of law.

1.2 INTRODUCTION

Law cannot be static and with the development of the societies, it has to change and grow. Hence, the definition of law is also not static and it changes with the development of the societies. In this unit we are going to discuss about meaning and nature of law. After going through this unit, you will able to know sources of Indian Law. Through this unit, you will also understand the concept of mercantile law and you will able to know the brief concepts of business law.

1.3 MEANING AND NATURE OF LAW

People living in an organized society and has to obey certain common rules that help in peaceful living. Jurists have tried to define the term law at different times. But there is no single definition which is universally applied.

Broadly 'Law' is a national pattern of conduct to which actions do or ought to confirm. Law defined from different approaches like– i) its basis in reason, ethics or religion, ii) by its source in custom, legislation or precedent, iii) by its effects on the life of the society, iv) by the method of its formal expression or authoritative application, v) by the ends that it seeks to achieve.

According to Austin's definition of law, it must have the essential elements like—

1) Law emanates from sovereign i.e. to him sovereign is determinate person or body of persons who command the whole corpus of the law.
2) Law is Sovereign's command i.e. law are backed by power of force of the sovereign by which people are bound to obey laws.
3) Command implies a sanction i.e an enforcement of obedience and an evil acts like physical force applied in case of disobedience or a duty be broken.

According to Holland, Law is, "a rule of external human action enforced by the sovereign political authority."

According to Salmond, ''Law is the body of principles recognized and applied by the State in the administration of justice.

According to Gray's, "The law of the state or of any organized body of men is composed of the rules which the courts, that is the judicial organ of that body lays down for the determination of legal rights and duties."



CHECK YOUR PROGRESS

Q.1: Define Law.

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1.4 SOURCES OF INDIAN BUSINESS LAW

The sources of Indian business law are based upon Custom, Statute of Indian Legislature, English Mercantile Law, Indian Mercantile law, Precedents. The following are the sources from which Indian business law derived.

a) **Custom:** Custom is a habitual course of conduct observed uniformly and voluntarily by the people. It is one of the oldest forms of law making where human conduct was regulated by practices which grew up spontaneously and were later adopted by the people. The custom which are not contrary to justice, equity or good conscience or opposed to public policy or statute but, reasonable become legally recognized when it is accepted by court and incorporated in a judicial decision.

b) **Precedents:** A precedents means a previous instance or case which is or may be taken as an example or rule for subsequent cases. Precedents are based on practical experiences rather than logic. Article 141 of the Constitution of India provides that law declared by Supreme Court to be binding on all courts within the territory of India. The Judges of court explain statutes and interpret it. The judicial decisions or precedents are based on rules of equity and good conscience and thus when the law is silent on a point the judges has to decide the case according to his idea what is equitable and frequently referred the precedents.

c) **Statutes of Indian Legislature:** Custom played a significant role in ancient times lost much of its importance. At present customary laws have been incorporated in statutes. Now, the legislature is one of the main sources of law. In India the Central and State legislatures possess law making powers and have exercised their powers extensively. Moreover, the greater part of Indian commercial law is statutory.

d) **English Mercantile Law:** The English Mercantile Law is a mixture of diverse elements and originating from sources like Rules of Roman

Law, Rules of Equity, Rules developed by custom in England, statutes of British Parliament etc.



CHECK YOUR PROGRESS

Q.2: Mention the two sources of Indian business law.

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1.5 INDIAN LEGAL SYSTEM

The legal system is a part of social system of a country. It reflects the social, political, economic and cultural characteristics of the country. The Indian legal system consists: a) constitution, b) rights and liabilities spelt out of the citizens of the country in the laws, c) institutional structure and d) legal personal.

a) **Constitution:** It is a written document which distributes State power amongst different organs legislative, executive and judiciary. It is fundamental law of land. The constitution guarantees certain fundamental rights and gives certain directives.

b) **Laws:** All laws grouped into two categories based on remedies as civil and criminal law. Criminal laws concerned with wrong against the community as a whole which are prosecuted and punished by the State and civil law is related with rights, duties and obligation of individuals which includes law of contract, commercial laws, labour laws etc.

c) **Institutional Structure:** Courts are institutional structure which created by statutes wherein disputes are adjudicated and administered. The Supreme Court is the highest court of appeal.

The Supreme Court and High Court resolves the disputes between State and Union, State and State and State and Citizens. There are more subordinate courts where for criminal disputes Session Court, Magistrate Court and for civil disputes Munsiffs Court, Sub-Divisional Court and District Court. Besides these, there are certain Special Courts and Tribunals set up for different specific purposes.

d) **Legal Personal:** Judges and lawyers are the key legal personnel who assist in administration of justice. Judges are free to administer law and the lawyers are experts which assist the judges to find out unravel truth from the disputed issues.

1.6 MERCANTILE LAW

Mercantile law is a broad aspect. It is based on law, customs, statutes that deal matters relating to industry, trade and commerce. It includes the laws relating to contract, partnership, sale of goods, companies, negotiable instruments etc. There is no fixed line of division between mercantile laws and other branches of laws. When any mercantile suit files in a court of law the procedure of it not different from that suit related to other matters. The mercantile law is that part of law which regulates the transactions of the mercantile community.



1.7 LET US SUM UP

In this unit, we have discussed the following:

- According to Holland, Law is, “a rule of external human action enforced by the sovereign political authority.”
- The sources of Indian business law are based upon Custom, Statute of Indian Legislature, English Mercantile Law, Indian Mercantile law, Precedents.
- The Indian legal system consists: a) constitution, b) rights and liabilities spelt out of the citizens of the country in the laws, c) institutional structure and d) legal personal.



1.8 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.
2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.
5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



1.9 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: According to Salmond," Law is the body of principles recognized and applied by the State in the administration of justice.

Ans. to Q. No. 2: The two sources of Indian business law are:

A) Custom: It is one of the oldest forms of law making where human conduct was regulated by practices which grew up spontaneously and were later adopted by the people.

B) Precedents: It is previous instance or case which is or may be taken as an example or rule for subsequent cases. Precedents are based on practical experiences rather than logic.



1.10 MODEL QUESTIONS

Q.1: 'Law is a national pattern of conduct to which actions do or ought to confirm.' Define Law.

Q.2: Write short note on :

a) The Indian legal system

b) Mercantile Law

Q.3: Explain the Indian business law.

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UNIT 2: LAW OF CONTRACT

UNIT STRUCTURE

2.1 Learning Objectives

2.2 Introduction

2.3 Objectives

2.4 Definition of a Valid Contract

2.5 Offer and Acceptance

2.6 Capacity to Contract

2.7 Consent

2.8 Consideration

2.9 Performance of Contract

2.10 Discharge of Contract

2.11 Breach of Contract and Void Agreements

2.12 Quasi Contract

2.13 Freedom to Contract

2.14 Let Us Sum Up

2.15 Further Reading

2.16 Answers to Check Your Progress

2.17 Model Questions

2.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- define the meaning of a Contract and its essentials
- explain discharge of Contract
- explain about breach of contract and void agreements
- describe quasi contract.

2.2 INTRODUCTION

The urgency of passing the Indian Contract Act, 1872 was the English Common Law applicable in India. The use of English Common Law in judicial system of India has created lots of biasness. As a result, this Indian Contract

Act, 1872 was passed. The passing of this Indian Contract Act, 1872 helps the parties to enforce their rights and obligations which derived from a contract based on consequences in India. In this unit we are going to discuss about details of Indian Contract Act, 1872 and essentials of a valid contract. Through this unit, you will also able to know about discharge of contract. The unit discuss about the meaning of quasi contract, freedom to contract. Through this unit, you will also understand about the concept of breach of contract and void agreements. Thus, through this unit, you will able to know the objective of Indian Contract Act, 1872 and its different concepts stipulated under this Act.

2.3 OBJECTIVES

Initially when Court of Justice in three presidency towns Calcutta, Madras and Bombay were established, the English Common Law only was applicable. The use of English Common Law in India created lots of inconveniencies to Hindus and Mohammedans. As a result the Court of Justice in three presidency towns Calcutta, Madras and Bombay empowered by statute 1781 to determine the all matters of contract of Hindus and Mohammedans as per their bye laws. This continues till upto passing Indian Contract Act, 1872.

The law relating to contracts in India is contained in Indian Contract Act, 1872. The Act was passed by British India and is based on the principles of English Common Law which amended later many times. This Indian Contract Act, 1872 extends to whole of India except the State of Jammu and Kashmir. We all enter a numbers of contracts every day and each contract creates some rights and duties on the contracting parties. This Indian Contract Act, 1872 explains the all rights, power, liabilities and duties which can enforce on the parties.

2.4 DEFINITION OF A VALID CONTRACT

The term ‘Contract’ defines under Section 2(h) of Indian Contract Act, 1872. The definition clear it that all contracts are agreements but all

agreements are not contracts. It means every kind of agreement is not contract, an agreement creates legal rights, liabilities between the parties and which has some value in the eye of law are contract. Thus, valid contract can be define as the agreements that are enforceable at law. Such agreement is fully operative with the intention of the parties and has value in the eye of law. Such agreement has to satisfy the following essentials/ conditions for a valid contract under the Act :

i) **Offer and Acceptance:** To constitute a contract there must be an agreement. There must be two parties to an agreement where on party making offer (offeror) and the other party accept the offer (offeree). Thus, the offeror must communicated the offer to the offeree which is not an invitation and is should be certain (not vague) intend to create legal obligation. But the offer is said to be accepted when the person to whom the offer is made give his assent thereto.

ii) **Consideration:** Consideration is essential for a valid contract. A contract not supported by consideration is void. Consideration means something in return which may be cash, kind, an act or abstinence. The consideration should be real and lawful. It can be past, present or future.

iii) **Capacity to Contract:** The parties must be competent to contract parties. i.e they are not disqualified from contracting by any law to which they are subject. The parties should attain the age of majority and are sound mind.

iv) **Free Consent:** The agreement must have been made by the free consent of the parties. They must have agreed to something in the same sense and the consent of the party must not have been obtained by a.) Coercion, b.)Undue influence, c.)Fraud, d.) Mistake or e.) Misrepresentation.

v) **Performance of Contract:** The terms of contract must be certain and attainable. If it is not possible to ascertain than it is not enforceable at law and become not valid.

vi) **Not Declared as Void:** The agreement should not be declared as void under any law in the country. E.g: Certain agreements are

specifically declared as void agreement like: agreement by way of wager, agreement of immoral acts, agreement that is uncertain etc.

vii) **Lawful Object:** The object of the contract should not be illegal or unlawful.

viii) **Contract may Oral or Written:** A contract may be equally valid whether it may be oral or written.



CHECK YOUR PROGRESS

Q.1: Mention any three essentials for a valid contract under the Indian Contract Act, 1872.

i) .....

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ii) .....

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iii) .....

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2.5 OFFER AND ACCEPTANCE

Offer: Section 2(a) of the Indian Contract Act, 1872 defines an 'offer' as: "When one person signify to another his willingness to do or abstain from doing anything with a view to obtaining the assent of the other to such act or abstinence he is said to make a proposal." e.g.: Ram offer to Rita Rs. 70,000 to buy her car. The promise to pay Rs. 70,000 is binding as soon as Rita accepts the said proposal. But until than Ram is free to withdraw his offer.

There are certain essentials of a valid offer as follows:

i) The offer must give rise to legal consequences: It means the offerer must have intentions to create legal obligation and absence of such intention means there is no contract between the parties.

ii) *The terms of offer must be definite:* There is no contract between the parties if the offer is uncertain or vague. It must be certain.

iii) *An invitation is different from offer:* An invitation to offer by advertisement etc is not same as offer. e.g.: A send a letter to B "will you give any bumper sale on bed sheets in your shop?", and in reply B send a letter to A that "lowest price of bumper sale on bed sheets is Rs, 450". A replied that he agree to buy at Rs. 450 as asked by him. Here in a suit, A against B, it was held that mere statements at lowest price at which B would sell contained no implied offer at that price and it was no reply to agree to sell the bed sheets. And thus it is not concluded contract.

iv) *Every offer must be communicated to the offeree:* The offer must be communicated to the offeree or otherwise he will not have knowledge to that offer to accept.

Acceptance: According to Section 2(b) of the Indian Contract Act, 1872 defines an 'acceptance' as: "The proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise."

Thus the mode of acceptance may be:

a) By express
b) In writing
c) By conduct

Thus, an offer valid only when:

a) an acceptance is communicated to the offeror;
b) it must be by the party named in the offer;
c) it must be expressed in some usual manner and
d) it must be absolute and unqualified.

e.g.: A sends a letter to B to buy B's land for Rs. 10,00,000 and in reply B accepts and sends a letter to A. This is a formal acceptance. But silence is no acceptance. Although the person to whom the proposal is made need not reply, but silence cannot be regarded as an acceptance of the proposal.



CHECK YOUR PROGRESS

Q.2: Mention the mode of acceptance.

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2.6 CAPACITY TO CONTRACT

Section 11 of the Act specifies the capacity to contract as capacity to enter into a legal agreement. The basic element of valid contract here is that the parties must attain the age of majority and are sound mind. Certain classes of people who are not competent to enter into contract are like minors, people who are mentally incompetent.

Under Section 3 of Indian Majority, Act 1875, age of majority attain when he has completed the age of 18 years. But a contract entered with a minor is not voidable but void. It is because a minor is immature and is not supposed to be capable of judging what is good for him. The law granted a privileged position to a minor where a minor cannot compel to repay any money that he received under a contract.

Section 11 of the Act specifies that people who are mentally sound are competent to enter into a contract and who are 'unsound mind 'are incompetent. The contract entered by person of unsound mind is void.

2.7 CONSENT

Under section 13 of Indian Contract Act, 1872 two or more person are said to consent when they agree upon the same thing in the same sense. Under section 14 of the Indian Contract Act, 1872 a contract is not valid without free consent. A consent is said to be free when it is not caused by:

a) Coercion (as defined under section 15), or
b) Undue influence (as defined under section 16), or
c) Fraud (as defined under section 17), or
d) Misrepresentation (as defined under section 18), or
e) Mistake (subjects to provisions of under section 20, 21 and 22)

Coercion (under section 15) means–

a) committing or threatening to commit any act forbidden by Indian Penal Code (45 of 1860) or

b) threatening to detain any property of any person whatever,

c) with the intention of causing any person to enter into an agreement.

But a mere threat by a person to prosecute another would not amount to coercion. There must be a contract and that contract should be made under threat and avoided due to coercion.

Undue influence (under section 16) means–

1) the relation subsisting between the parties are that one party dominate the will of the other enter into a contract and thus obtain the unfair advantage over the other;

2) the relation subsisting between the parties are that one party dominate the will of the other enter into a contract:

   a) where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or

   b) where he contract with a person whose mental capacity temporarily or permanently affected by reasons o age, illness, mental distress.

3) the relation subsisting between the parties are that one party dominate the will of the other enter into a contract where from the face of the transaction and evidence alleged or the wrong made therein appears that the burden to proof that the contract is not made with an intention of undue influence fall on to the person whose will is dominated.

Fraud (under section 17) means–

Acts committed by a party or his connivance or by his agent to a contract with intent to deceive another party or his agent or to induce him to enter into the contract:

i) on a fat that which is not true

ii) active concealment of the fact by one having knowledge or belief of the fact

iii) a promise made without any intention of performing it

iv) any other act to deceive

v) any act or omission where law specifically declared to be fraudulent.

Misrepresentation (under section 18)–

It is a statement of fact made by one contracting party to the other on the basis of which the other party enters into a contract. Thus, essential elements of misrepresentation are:

a) making statements which are not true although the person making it believes to be true;

b) any breach of duty give advantages to the person who committing it thus thereby his act mislead the other;

c) the party do mistake as to the substance of the thing which is subject matter of the agreement.

Mistake (subjects to provisions of under section 20, 21 and 22) means–

It is an erroneous belief concerning something and a contract cannot be said as free if it is entered under a mistake. It may be mistake of law and mistake of fact. Under mistake of law, it is presumed that every man of the country knows the law of the country and ignorance of the same and enter into a contract under mistake must suffer him the consequences. Under mistake of fact, the contracts entered are void except both parties to the agreement are mistaken and the mistake is as to a fact important to the agreement.

2.8 CONSIDERATION

Section 2(d) of the Indian Contract Act, 1872 defines 'Consideration" as: "When at the desire of the promisor, the promise or any other person or abstained from doing, anything or does or abstains from doing or promises to do or to abstain from doing, something such act or abstinence or promise is called a consideration for the promise." e.g: P promise to pay Rs. 5,000 to Q after 3 month if R fails to pay it which he borrowed from Q. Q grants time to R. Here, the promise of each party is the consideration for the promise of the other.

The essential conditions for consideration under the Indian Contract Act, 1872 are:

a) Consideration is essential to every contract
b) Consideration must move at the desire of the promisor and from the promisee or any other person
c) Consideration need not be adequate
d) Pre-existing legal obligation
e) Consideration must be real and competent
f) It may be past, present and future
g) Consideration must be legal or lawful

2.9 PERFORMANCE OF CONTRACT

Section 37 of the Indian Contract Act, 1872 defines 'Performance of Contract' as 'The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this act, or of any other law.' Under the 'Performance of Contract', the legal obligations have to perform which creates during formation of the contract.

The following persons have to perform a contract:

a) Personal Performance: The contract creates obligations and if it involves personal skills, tastes etc than the promisor must himself perform the contract.

b) Performance by representatives: In all other cases the promisor or his representatives may employ a competent person to perform it.

c) Effect of performance from a third person: When promise is made to perform by a third person, he cannot enforce it against the promisor.

d) Death of a promisor: The personal cause of action dies with the promisor and his legal heirs or legal representatives are not bound to perform such contract.

e) Performance of joint promises: When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfill the promise.

2.10 DISCHARGE OF CONTRACT

The contract creates obligations and discharge of contract means this obligation comes to an end. This rules regarding the obligation comes to an end for any of the following reasons:

a) Termination by performance
b) Termination by mutual agreement
c) Supervening Impossibility
d) Termination by Operation of Law
e) Lapse of time
f) Termination by breach of contract
g) Termination by Material Alteration

a) Termination By Performance: When the obligation of the contract perform by the parties, it discharge contract.

b) Termination by mutual agreement: A contract may come to an end by mutual agreement in any one of the following reasons :

i) Novation: It means the new contract is substituted for an existing contract either between the same parties or between different parties.
ii) Alteration: It means change the terms of agreement. It is valid only when such changes made with the consent of all parties.
iii) Remission: Remission means the contract where the promisee accepts smaller amounts in comparison to the amount for which the contract entered.
v) Accord and Satisfaction: Accord means the contract where the promisee accepts smaller amounts due in the old agreement and such smaller payment made thereby is satisfaction.
vi) Rescission: Rescission means cancellation of all or any terms of the contract which may do by mutual agreement or when the parties fail to perform a contract.
vii) Waiver: It means abandonment of right.
viii) Merger: Merger means when the superior rights overlap the inferior right, the inferior right vanishes.

c) **Supervening Impossibility:** Supervening Impossibility may occur in any of the following ways:
   i) Destruction of Object
   ii) Change of law
   iii) Failure of pre-condition
   iv) Death
   v) Outbreak of war

d) **Termination by Operation of Law:** A contract may come to an end by termination by operation of law in case of death, insolvency and merger.

e) **Lapse of Time:** A contract may come to an end by lapse of time.

f) **Termination by Breach of Contract:** When a party breaks any obligation of a contract, the contract may come to an end by such termination of breach of contract.

g) **Termination by Material Alteration:** When the term of a contract is materially altered without the consent of other parties, the contract may come to an end.

2.11 BREACH OF CONTRACT AND VOID AGREEMENTS

Breach of Contract: When a party breaks any obligation of a contract, the contract may come to an end or it is free to the other parties to perform it. The breach of contract may arise for the following reason :

a) Anticipatory Breach of Contract: Anticipatory breach of contract occurs when any party repudiates his liability and his performance thereby remains due or by his own act disables himself from performing the contract.

b) By Actual Breach: When one party either fails or refuses to perform his obligation under the contract.

Under Section 73 of the Indian Contract Act, 1872 the injured party can claim for such damages–

- Compensation for loss or damages caused by breach of contract: It means due to breach of contract, who suffer is entitled to receive

from the party who has broken the contract compensation for any loss or damages caused to him thereby.

- Compensation for failure to discharge obligation resembling those created by contract: If any obligation resembling as created by contract has been incurred but has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had taken his contract.

Thus, under Section 73 the following elements should present for deciding about damages:

i) There is a breach of contract
ii) The party who made such breach of contract is liable to compensation
iii) The party who suffer for such breach of contract is entitled to receive compensation
iv) The loss or damages should be such that arose in usual course of thing from such breach or the party know that it will likely to happen from such breach of contract
v) Such compensation is not given for remote or indirect loss caused from the breach of contract
vi) If any circumstances exist to reduce the damages then it should try to reduce to that extent.

Void Contract: An agreement not enforceable by law is said to be void. It confers no legal obligation to any party. But an agreement which is legally enforceable by law may subsequently become void due to impossibility of performance, change of law or other reasons. An illegal agreement is void ad initio. But an agreement having uncertain terms is void but, not illegal.

2.12 QUASI CONTRACT

A quasi contract has been defined as "a situation in which law impose upon one person, on grounds of natural justice, an obligation similar to that which arises from a true contract, expressed or implied, which has in fact been entered into by him." Section 68 to 72 of the Act provide five kinds of quasi contractual obligations—

a) Supply of necessaries (Sec 68)
b) Payment by an interested person (Sec 69)
c) Liability to pay for non-gratuitous acts (Sec 70)
d) Finder of lost goods (Sec 71)
e) Mistake or coercion (Sec 72)

a) Supply of necessaries (Sec 68): It means if a person incapable of entering into a contract or anyone whom, he is legally bound to support is supplied by another person with necessaries required to his life, the person who has furnished such supplies is entitle to reimbursed from the property of such incapable person.

b) Payment by an interested person (Sec 69): A person who is interested in the payment of money which is bound to pay by the other person under law and who therefore pays it is entitled to reimburse by the other.

c) Liability to pay for non-gratuitous acts (Sec 70): It means the intention to enter into a contract of a person is absent but the law implies the contract. Thus, it should include the essentials—

- the act must lawfully done,
- the act must be done by a person not intending it to be gratuitous,
- the other person for whom the act is done must enjoy the benefit of it
- such person is bound to compensate.

e.g. P is a tradesman leaves goods at Q's shop by mistake. Q treats the goods as his own. He is bound to pay P for them.

d) Finder of lost goods (Sec 71): A person who finds goods belonging to another and takes them to custody is subject to the same responsibility as bailee i.e the finders of goods is liable to try and find out the true owner and to take due and proper care of the goods.

e) Mistake or coercion (Sec 72): A person to whom money has been paid or anything delivered by mistake or coercion must repay or return it.



CHECK YOUR PROGRESS

Q.3: Define quasi contract.

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2.13 LET US SUM UP

In this unit, we have discussed the following:

- Valid contract can be define as the agreements that are enforceable at law.
- An 'offer' means "When one person signify to another his willingness to do or abstain from doing anything with a view to obtaining the assent of the other to such act or abstinence he is said to make a proposal."
- An 'acceptance' means "The proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise."
- An agreement not enforceable by law is said to be void. It confers no legal obligation to any party.



2.14 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.

2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.

3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.

4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.

5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.

6) The Consumer Protection Act, 1986 (Bare Act).



2.15 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Three essentials for a valid contract under the Indian Contract Act, 1872 are:

i) **Offer and Acceptance:** The offeror must communicate the offer to the offeree which is not an invitation and is should be certain (not vague) intend to create legal obligation. But the offer is said to be accepted when the person to whom the offer is made give his assent thereto.

ii) **Consideration:** Consideration is essential for a valid contract. A contract not supported by consideration is void.

iii) **Capacity to Contract:** The parties must be competent to contract parties. i.e they are not disqualified from contracting by any law to which they are subject.

Ans. to Q. No. 2: The mode of acceptance may be:

a) By express b) In writing c) By conduct

Ans. to Q. No. 3: A quasi contract means ‘‘a situation in which law impose upon one person, on grounds of natural justice, an obligation similar to that which arises from a true contract, expressed or implied, which has in fact been entered into by him.”



2.16 MODEL QUESTIONS

Q.1: Define valid contract and the essentials of a valid contract.

Q.2: Define offer and the essentials of a valid offer.

Q.3: ‘A contract is not valid without free consent.’ Explain.

Q.4: 'Under the performance of contract, the legal obligations have to perform by certain person which creates during formation of the contract.' Explain.

Q.5: Mention the rules regarding discharge of contract.

Q.6: Mention the elements which should present for deciding about damages.

Q.7: Define quasi contract. What are the different kinds of quasi contract ?

Q.8: Discuss the reasons when a contract may come to an end by mutual agreement.

Q.9: Short Notes:

a) Consideration
b) Void Agreement
c) Valid Agreement
d) Breach of contract
e) Performance of contract.

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UNIT 3: CONTRACTS OF GUARANTEE AND INDEMNITY

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Contract of Indemnity

3.4 Contract of Guarantee

3.5 Kinds of Guarantee

3.6 Creditor

3.7 Surety

3.8 Let Us Sum Up

3.9 Further Reading

3.10 Answers to Check Your Progress

3.11 Model Questions

3.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- define the meaning of contract of indemnity and guarantee
- explain the kinds of guarantee
- define creditor
- describe about surety.

3.2 INTRODUCTION

The contract of indemnity and guarantee is a special type of contract which helps from protection against loss in the form of a promise to pay for loss of money or goods. This special type of contract discussed in Section 124 to 147 under the Indian Contract Act, 1872. In this unit we are going to discuss about contract of indemnity and guarantee. Through this unit, you will also able to know the kinds of guarantee. Through this unit, you will also understand about the concept of surety and creditor. Thus, through this unit, you will able to know the detail concept of special type of contract

indemnity and guarantee, surety, creditor stipulated under the Indian Contract Act, 1872.

3.3 CONTRACT OF INDEMNITY

The contract of indemnity is the compensation of security against loss of money or goods. The principles of general law of contract are equally applicable for it as under the Indian Contract Act, 1872. Under contract of indemnity the person who indemnifies or pays the loss is known as 'indemnifier' and in whose favor such promise is made to pay the loss is known as 'indemnified' or 'indemnity holder'. Under Section 124 of the Indian Contract Act, 1872 define a contract of indemnity as 'a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by conduct of any other person'. Thus, it is valid when–

- there is a promise
- to save another person from loss or make good the loss
- which may be caused by the conduct of the promisor himself or by the conduct of any other person
- the promisor undertakes to make good the loss
- it covers indemnity for loss caused by human only

P contract to indemnify sum of Rs. 5,000 to Q for the loss which may cause or any proceeding which may carried on by R against Q. This is contract of indemnity.

Hence, indemnity for loss caused due to fire or in the death of a person or expiry of stipulated period as in case in insurance is not fall under Sec 124 of the Indian Contract Act, 1872. It is because the life of a person cannot value and the question for amount of loss suffered by the assured does not arise.

Rights of indemnity holder–

It is explained under Sec 125 of Indian Contract Act, 1872 as the promisee is entitled to recover loss or compensation from the promisor when sued all damages, costs and all other sums which he have to pay under the terms of compromise in respect of any matters to which he promise to pay or indemnify under the contract of indemnity.



CHECK YOUR PROGRESS

Q.1: 'Insurance is not falling under Sec 124 of the Indian Contract Act, 1872'. Explain.

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3.4 CONTRACT OF GUARANTEE

The term 'contract of guarantee' defines under Section 126 of the Indian Contract Act, 1872 as–

"A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written."

It is a contract to discharge the liability of third person when the third person makes default to perform. The object of contract of guarantee is to provide additional security by the surety to the creditor in the form of promise to fulfill certain obligation if the principal debtor unable to perform it. e.g., P promise to pay Q Rs. 2,000 on behalf of R, if, R make default in returning Rs. 2,000 to Q, P will pay.

Here,

Q is creditor

R is principal debtor and

P is surety

Thus, for a contract of guarantee the following features must present—

- A contract of guarantee may be either oral or written
- There should be principal debt
- Benefit of the principal debtor is sufficient consideration
- Consent of the surety should not have been obtained by misrepresentation or concealment.

There are distinction between contract of indemnity and contract of guarantee:

Sl. No.	**Contract of Indemnity**	**Contract of Guarantee**
1	A contract of indemnity is defined as 'a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself o by conduct of any other person'.	A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default.
2	Under contract of indemnity, there are two parties 'indemnifier' and 'indemnity holder'.	Under contract of guarantee, there are three parties 'creditor', 'principal debtor 'and 'surety'.
3	The contract of indemnity protects the promisee from the loss.	The contract of guarantee is for the surety of the creditor.
4	In contract of indemnity, the primary liability is of the promisor.	In contract of guarantee, the primary liability is of principal debtor.
5	In contract of indemnity, there is only one agreement i.e the agreement between indemnifier and indemnity holder.	In case contract of guarantee, there three agreements i.e. viz. agreement between— 1) the creditor and the principal debtor; 2) the creditor and surety and 3) the principal debtor and surety.



CHECK YOUR PROGRESS

Q.2: Mention any three differences between contracts of indemnity and guarantee.

a) .....

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b) .....

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c) .....

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3.5 KINDS OF GUARANTEE

In case of contract of guarantee, surety has to perform the promise or discharge the liability of the principal debtor in case of his default. But this contract of guarantee may be specific guarantee or continuous guarantee.

Specific guarantee is a contract of guarantee where the surety guarantees against the conduct of the principal debtor in respect of a particular transaction. E.g.: A guarantee to pay B Rs. 15,000 on behalf of C as repayment of loan, if, C make default in returning the same to B. It is a specific guarantee where the surety 'A' guarantees against the default in returning the loan by the principal debtor 'C' in respect of the particular transaction to the creditor 'B'.

In case of continuous guarantee, the guarantee extends to a series of transactions. The continuous guarantee may extend to a series of transactions during a fixed period e.g for two years. E.g.: P guarantee (surety) to pay Q (creditor) the dealer of tea Rs. 1,000 for supply of tea from time to time within two year to R (principal debtor). R (principal debtor) paid Rs.

1,000 for the tea supplies to Q (creditor) within first year. Thus, P (surety) has to pay Q (creditor) Rs. 1,000 on default of payment by R. But say, in the second year Q (creditor) the dealer of tea supply tea from time to time to R (principal debtor) in Rs. 1,200. Now, P (surety) has to pay Q (creditor) Rs. 1,000 on default of payment by R not Rs. 1,200.

3.6 CREDITOR

Under contract of guarantee, there are three parties 'creditor', 'principal debtor 'and 'surety' and they enter three agreements viz creditor with the principal debtor, creditor with surety and principal debtor with surety to perform the promise, or discharge the liability, of the principal debtor in case of his default. The creditor has the right to sue either principal debtor or surety or both to recover the amount make default in payment by the principal debtor. In certain cases, the creditor shall not act upon the guarantee of the surety until another person joined as co-surety and the creditor has the right to sue either principal debtor or sureties as he prefer. But if creditor loss the securities taken at the time of contract of suretyship, the creditor entitled to recover the amount to that extent. Securities received by the creditor after the contract of guarantee, the sureties have no rights on those securities or otherwise the sureties has the rights on the securities which received by the creditor at the time of contract of suretyship entered for the payment made due to default made by the principal debtor.

3.7 SURETY

In case of contract of guarantee, the surety is the person who makes good the loss which may arise due to promise and default made by the principal debtor to the creditor. The Section 128 of the Indian Contract Act, 1872 define the liability of surety as– "The liability of surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract." It means the liability of surety is exactly the same as that of the principal debtor. The liability of the creditor can recover from the hand of surety all what he could recover from the principle debtor only. As stated example

above, P guarantee (surety) to pay Q (creditor) the dealer of tea Rs. 1,000 for supply of tea from time to time within two year to R (principal debtor). Thus, P (surety) has to pay Q (creditor) Rs. 1,000 only on default of payment by R.

The liability of principal debtor if reduce for any payment made to the creditor by the principal debtor than the liability of surety will also reduce accordingly. Now, say R paid Rs. 200 to Q, than the liabilities remain to pay Q on default of R by P is Rs. 800.

On the other hand, the liability arise for default caused to the creditor by the principal debtor for illegal contract which cannot enforceable at law, the surety cannot held liable.

Besides, if the principal debtor makes any default than the creditor has option to sue either principal debtor or surety or both.

Limit on surety's liability by contract: As stated above that the liability of surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract i.e if the contract between the parties so provides, the liability of the surety may less as that of the liability of the principal debtor if he make any default. E.g., P guarantee (surety) to pay Q (creditor) the dealer of tea Rs. 600 for supply of tea from time to time within a year to R (principal debtor) where R is liable to pay Rs. 1,500. Thus, P (surety) has to pay Q (creditor) Rs. 600 only on default of payment by R not Rs. 1,500.

Co-surety and its liability: In certain cases, the creditor shall not act upon the guarantee of the surety until another person joined as co-surety. Thus, in such contract surety can be made liable only if such co-surety join the contract, otherwise not. As stated above the liability of surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract i.e. this same principle is applicable and hence, the rights and liabilities of sureties are same and thus, if the contract between the parties so provides, the liability of the sureties may less as that of the liability of the principal debtor. Besides, if the principal debtor makes any default than the creditor has option to sue either principal debtor or sureties or all and the co-surety cannot insist the creditor to choose any of them for proceeding.

The rights of sureties:

- Rights of subrogation: When the surety makes payment upon default of principal debtor against guaranteed debt, he gets the all rights which the creditor has against the principal debtor.
- Right to indemnity: In every contract of guarantee, there is an implied promise of the principal debtor to indemnify the surety and the surety can recover from the principal debtor whatever sum rightfully paid under the said guarantee.
- Rights against co-sureties to contribute equally: When two or more person act as co-sureties for same debt or different, with or without knowledge of each other, in absence of any contract, they are liable to share equally whole debt or the unpaid part of payment has to made by the principal debt.

Discharge of surety from liability: The mode of discharge of surety from his liability may be:

- Revocation by the surety: The surety can revoked a continuing guarantee by giving notice to the creditor for the future transactions.
- By surety's death: A continuing guarantee revoked automatically from surety's death as to future transaction.
- By variance in the terms of contract: It is expected that the liability which is agreed to pay due to default of the principal debtor under certain terms, it should remain unchanged for that particular period and if it changes without consent of the surety, the surety discharged from the contract of guarantee.
- Discharge of principal debtor: As principal debtor discharge from his debt, the surety also discharged from the contract of guarantee.
- When creditor compounds with, gives time to or agrees not to sue the principal debtor: If the surety gives his assent on such contract where the creditor promise to give time to pay debt or agrees not to sue the principal debtor, the surety discharged from his liabilities.
- By loss of the securities by the creditor: When creditor loss the securities which the creditor taken at the time of contract of suretyship, the surety discharged from his liabilities to that extent.



CHECK YOUR PROGRESS

Q.3: Mention any three mode of discharge of surety from his liability.

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3.8 LET US SUM UP

In this unit, we have discussed the following:

- Under contract of indemnity the person who indemnifies or pays the loss is known as 'indemnifier' and in whose favor such promise is made to pay the loss is known as 'indemnified' or 'indemnity holder'.
- A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default.
- The liability of surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract.
- In every contract of guarantee, there is an implied promise of the principal debtor to indemnify the surety and the surety can recover from the principal debtor whatever sum rightfully paid under the said guarantee.
- When creditor loss the securities which the creditor taken at the time of contract of suretyship, the surety discharged from his liabilities to that extent.
- Specific guarantee is a contract of guarantee where the surety guarantees against the conduct of the principal debtor in respect of a particular transaction.

- In case of continuous guarantee, the guarantee extends to a series of transactions.



3.9 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.
2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.
5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



3.10 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Insurance is not falling under Sec 124 of the Indian Contract Act, 1872. Indemnity for loss in case in insurance caused due to fire or in the death of a person or expiry of stipulated period is not fall under Sec 124 of the Indian Contract Act, 1872. It is because the life of a person cannot value and the question for amount of loss suffered by the assured does not arise.

Ans. to Q. No. 2: The three differences between contracts of indemnity and guarantee are—

a) Under contract of indemnity, there are two parties 'indemnifier' and 'indemnity holder' and under contract of guarantee, there are three parties 'creditor', 'principal debtor' 'and 'surety'.

b) A contract of indemnity is defined as 'a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself o by conduct of any other person'. A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default.

c) In contract of indemnity, there is only one agreement i.e the agreement between indemnifier and indemnity holder. In case contract of guarantee, there three agreements entered i.e. viz. 1) the creditor and the principal debtor; 2) the creditor and surety and 3) the principal debtor and surety.

Ans. to Q. No. 3: The three mode of discharge of surety from his liability are—

a) Revocation by the surety: The surety can revoked a continuing guarantee by giving notice to the creditor for the future transactions.

b) By surety's death: A continuing guarantee revoked automatically from surety's death as to future transaction.

c) Discharge of principal debtor: As principal debtor discharge from his debt, the surety also discharged from the contract of guarantee.



3.11 MODEL QUESTIONS

Q.1: Define the contract of indemnity under The Indian Contract Act, 1872.

Q.2: Define contract of guarantee and mention its features.

Q.3: Distinguish between contract of indemnity and contract of guarantee.

Q.4: Discuss about co-surety and its liability.

Q.5: Who is surety under a contract of guarantee? Mention the rights of sureties.

Q.6: "The liability of surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract." Explain.

Q.7: What are the different kinds of contract of guarantee?

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UNIT 4: CONTRACTS OF BAILMENT AND PLEDGE

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Definition of Bailment

4.4 Kinds of Bailment

4.5 Bailor and Bailee

4.6 Termination of Bailment

4.7 Finder of Lost Goods

4.8 Pledge or Pawn

4.9 Pledge by Non-owners

4.10 Pledgor and Pledgee

4.11 Let Us Sum Up

4.12 Further Reading

4.13 Answers to Check Your Progress

4.14 Model Questions

4.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- define bailment and its kinds
- explain about pledge or pawn
- define pledgor and pledgee
- describe about termination of bailment.

4.2 INTRODUCTION

The chapter IX of the Indian Contract Act, 1872 deals with the contract of bailment where Section 148 defines the term bailment. In this unit we are going to discuss about contract of bailment and its kinds. Through in this unit, you will also able to know about bailor and bailee. Through this unit, you will also understand the concept of pledge or pawn. Thus, through this unit, you will able to know the detail concept of bailment, pledge or pawn.

4.3 DEFINITION OF BAILMENT

The contract of indemnity is the compensation of security against loss of money or goods. According to Section 148 of the Indian Contract Act, 1872 defines bailment as a bailment is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the “bailor”, the person to whom they are delivered is called the “bailee”. Thus, bailment involves two main essentials :

a) Delivery of goods by one person to another for some purpose upon a contract

b) When the purpose is accomplished the goods shall returned or otherwise disposed of according to the directions of the person delivering them

a) Delivery of goods by one person to another for some purpose upon a contract: It means goods delivered or transfer from one person to another. This delivery may or may not actual according to Section 148 of the Indian Contract Act, 1872. A person may possess the goods as bailee for another contract and the owner as bailor although the good is not delivered under bailment. For example, P sells his horse to Q. But P asked to keep for a month the horse with him on Q‘s behalf. Before this sale P keep the horse as owner, but now he keep the horse as bailee for Q.

b) When the purpose is accomplished the goods shall returned or otherwise disposed of according to the directions of the person delivering them: The delivery or transfer of goods from one person to another is only for some purpose or otherwise disposed of according to the directions of the person delivering them. Thus it is different from sale or gift. Here the goods have to be returned in same or altered form.



CHECK YOUR PROGRESS

Q.1: Mention the two essentials of bailment.

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4.4 KINDS OF BAILMENT

The bailment may be gratuitous or non gratuitous. In case of gratuitous bailment, it is the duty of the bailor to disclose the defects that involve with the goods in case use of it or extraordinary risk associated with it. He is bound to disclose the risk or faults involve with the good which he is aware. This duty is of gratuitous bailor or the bailor without reward.

The bailment may be non gratuitous. The bailor is liable for damage caused by the defective goods even though he is not aware of the defect in them. So, it is the duty of bailor to inform the bailee about the defects or probable risk which may associate with the goods bailed to him. If the goods bailed for hire, the bailor is responsible for the damages which may cause to the bailee although the bailor may or may not aware about the faults remain with the goods.

4.5 BAILOR AND BAILEE

In bailment, the person delivering the goods is called the “bailor”, the person to whom goods are bailed is called the “bailee”. According to Section 150 of the Indian Contract Act, 1872, the bailor has the following duties:

- The bailor is responsible to compensate the damages for the risk associated with the goods bailed to the bailee and should disclose faults in the goods which he is aware. The bailor should interfere with the use of such defect goods and expose the bailee from the extraordinary risk.

- The goods may be bailed for hire. In such case, the bailor shall be responsible for the damages although the bailor may or may not aware about the faults remain with the goods which may cause to the bailee.

In bailment goods are delivered by the bailor to the bailee for certain purpose. The bailee has the following duties under bailment:

- The bailee is responsible to take all reasonable care of the goods bailed by the bailor,
- The bailee is also responsible to return the profit which may arise from the goods bailed,
- The bailee should not mix with the goods bailed by the bailor with his own goods,
- The bailee should return the goods bailed to him after fulfillment of the purpose,
- It is the duty of the bailee not to make unauthorized use of goods bailed.

4.6 TERMINATION OF BAILMENT

According to Section 153 of the Indian Contract Act, 1872, the contract of bailment may be terminated for use of the goods bailed which is incontinent with the conditions of bailment. The bailor may claim back the goods bailed to the bailee and terminate the said bailment. For example : P lets to Q for hire a car for his own purpose. But, Q lets on hire to S. P can terminate the bailment. Thus, a contract of bailment terminates for the following circumstances:

a) Fulfillment of purpose: If the bailment for specific purpose, the bailment terminate when purpose is fulfilled.
b) Death: A gratuitous bailment terminates upon the death of either the bailor or the bailee.
c) Efflux of time: If the bailment for stipulated period, the bailment terminate when stipulated period expires.
d) Acts inconsistent with the terms of the bailment: If the bailee does any such act which is inconsistent with the terms of the contract of bailment, the bailment terminates.

e) Goods lent gratuitously: A gratuitous bailment can be terminated anytime. But if it is done prematurely and the bailee suffers any loss, than the bailor must indemnify the loss to the bailee.



CHECK YOUR PROGRESS

Q.2: Mention the two circumstances under which contract of bailment terminates.

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4.7 FINDER OF LOST GOODS

A finder of lost goods is in the position of a bailee if he takes the charge of goods under bailment. In such case the finder of lost goods has the following *rights*:

a) Sale: If the lost goods is the subject matter of sale and the owner refuse to pay the lawful charges of the finder or when the lost goods are perishable in nature and it losing its value or when the charges of the finder is two thirds of the value of the goods.

b) Reward: If the owner of the lost goods offered any rewards, than finder of lost goods has the rights to sue for such any awards which the owner might have offered for the return of goods lost.

c) Possession: The finder of lost goods can retain the lost goods from everybody except the owner of the goods.

d) Compensation and Lien: The finder of lost goods is entitled to be compensated for the trouble and all expenses incurred in preserving the said lost goods. He has the lien on the goods until these are paid.

A finder of lost goods has the following duties:

a) The finder of lost goods must try to find out the true owner of the said goods.

b) The finder of lost goods must mix the finder's goods with his own goods.

c) The finder of lost goods must not use the said goods for his own purpose.

d) He must take reasonable care of the goods.

e) He must return the goods to the owner.

f) If any accretion to the goods, it should return to the owner.

4.8 PLEDGE OR PAWN

The pledge is a particular kind of bailment. The bailment of goods as security for payment of a debt or performance of a promise is called Pledge or Pawn. The pledge has two parties Pledgor or the Pawnor and Pledgee or the Pawnee. The bailor in such bailment is called as Pledgor or the Pawnor and the bailee is called as Pledgee or the Pawnee.

The difference between pledge and other kinds of bailment lies in the purpose or objectives of the transactions. In case of pledge, the purpose of bailment of goods is to provide security for payment of a debt or performance of a promise and for the other kinds of bailment lies for different purposes like repair, safe custody etc.

In order to constitute of a valid pledge, the following requirements must satisfied:

a) There should be delivery of goods from one person to another i.e. bailment of goods.

b) The purpose of such delivery of goods from one person to another as security for payment of a debt or performance of a promise.



CHECK YOUR PROGRESS

Q.3: Define Pledge or Pawn.

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4.9 PLEDGES BY NON-OWNERS

A valid pledge always make by its real owner. But there are certain exceptions where a non-owner makes valid pledge.

a) Mercantile Agent: While acting in the ordinary course of business, a mercantile agent can make a valid pledge. A mercantile agent with the consent of the owner and in possession or title to the goods can make such valid pledge. But such valid pledge may be made in absence of authority of pledge by a mercantile agent if the pawnee acts in good faith and it is not notice during the time of pledge.

b) Possession under voidable contract: A person having possession of goods under voidable contract make a valid pledge. It is valid as long as the said contract is not rescinded. But pawnee gets goods title to the goods if the pawnee acts in good faith and it is not notice during the time of pledge.

c) Possession with the Co-owner: A good may have possession by several co-owners and with the consent of such co-owners, any co-owner may make a valid pledge of the goods.

d) Pawnor with a limited interest: A person may pledge a good where he has limited interest than in such case, the pledge is valid to the extent of that interest.

4.10 PLEDGOR AND PLEDGEE

Pledge or pawn is a kind of bailment of goods with a special purpose. Here, the goods that pledged serve as security for payment of a debt or performance of a promise. The person who pledged the goods is the pawnor or pledgor and the person with whom goods pledged known as pawnee or pledgee. This both pledgor and pledge has the following rights:

The Rights of Pawnor or Pledgor:

1) Maintenance and Preservation: The pawnor or pledgor can enforce the proper maintenance and preservation of the goods pledged.

2) Defaulting Pawnor's right to Rdeem: If time is stipulated for payment of a debt or performance of a promise where the pawnor make

default the same at the said stipulated time, than he may redeem the said goods pledged at any subsequent time before actual sale of it, but he must pay in addition any expanses which have arisen from his default.

3) Protection of debtors: The pledgor can avail various rights given to him by statute like under Moneylenders Act.

The Rights of Pawnee or Pledgee:

1) Right of retainer: The pawnee can retain the goods for payment of a debt or performance of a promise or interest of debt or other such expenses incurred by him in respect of possession or preservation of goods pledged.
2) Expenses: The pawnee is entitle to receive all other expenses incurred by him in respect of possession or preservation of goods pledged.
3) Retainer for subsequent advances: The pawnee cannot retain the goods for any other expenses other than for which goods are pledged as security except there is an expres contract. The pawnee may give fresh advances to the same debtor than it is presumed that the goods pledged create lien for fresh advances.
4) Pawnee's right where pawnor makes default: The pawnor may default in payment of debt or performance of a promise within stipulated time, than the pawnee can sue the pawnor or retain the goods pledged as collateral security or he may sell the thing pledged after giving notice to the pawnor.



4.11 LET US SUM UP

In this unit, we have discussed the following:

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

- The bailment may be gratuitous or non gratuitous.
- In bailment, the person delivering the goods is called the "bailor", the person to whom goods are bailed is called the "bailee".
- The bailment of goods as security for payment of a debt or performance of a promise is called Pledge or Pawn. The pledge has two parties Pledgor or the Pawnor and Pledgee or the Pawnee.



4.12 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.
2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.
5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



4.13 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Bailment involves two main essentials:

a) Delivery of goods by one person to another for some purpose upon a contract

b) When the purpose is accomplished the goods shall returned or otherwise disposed of according to the directions of the person delivering them

Ans. to Q. No. 2: A contract of bailment terminates for the following circumstances:

a) Fulfillment of purpose: If the bailment for specific purpose, the bailment terminate when purpose is fulfilled.

b) Death: A gratuitous bailment terminates upon the death of either the bailor or the bailee.

Ans. to Q. No. 3: The bailment of goods as security for payment of a debt or performance of a promise is called Pledge or Pawn.



4.14 MODEL QUESTIONS

Q.1: Define bailment and its two essentials.

Q.2: Define the two kinds of bailment.

Q.3: Mention the duties of bailor and bailee.

Q.4: Under which circumstances a contract of bailment terminates?

Q.5: Define pledge and mention the requirements which must satisfied for a valid pledge.

Q.6: What are the rights of a pledgor and pledge?

Q.7: "A valid pledge always make by its real owner. But there are certain exceptions where a non-owner makes valid pledge." What are the exceptions?

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UNIT 5: LAW OF PARTNERSHIP

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 Meaning and Nature of Partnerships

5.4 Registration of Firms

5.5 Partnership Deed

5.6 Relations of Partners to One Another

5.7 Relations of Partners to Third Parties

5.8 Changes in a Firm

5.9 Dissolution

5.10 Let Us Sum Up

5.11 Further Reading

5.12 Answers to Check Your Progress

5.13 Model Questions

5.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- explain meaning and nature of partnerships
- describe about registration of firms
- explain partnership deed
- explain about relations of partners to one another and to third parties
- describe about changes in a firm
- explain about dissolution.

5.2 INTRODUCTION

A partnership arises from a contract which is not governed only by Partnership Act but by the general law as well. It is a form of business where two or more persons join together and carry some business. In this unit we are going to discuss about meaning and nature of partnership. Through in this unit, you will able to know about registration of firms. Through this unit,

you will also understand partnership deed. In this unit we are going to discuss about relations of partners to one another and to third parties. Through in this unit, you will able to know about dissolution of a firm. Thus through this unit, you will able to know the brief concepts of partnerships.

5.3 MEANING AND NATURE OF PARTNERSHIPS

Section 4 of the Partnership Act defines a partnership as "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all." Thus, partnership as defined under this Act has three essential elements as :

1) There must be agreement between two or more persons.
2) The persons entered into the agreement have agreed to share the profits.
3) The business carried on by all or any of them acting for all.

The partnership firm is not a legal entity like company, but it is group of individual partners. A partnership can only arise as a result of an agreement express or implied between two or more persons. The existence of business is also important which may be any trade or occupations. The partnership business carried on by all partners or any of them acting for all and thereby every partner has the authority to act on behalf of all. The act of a partner binds all the partners of the firm. In partnership business, partners pools their resources and give efforts to start the business. But it is not essential that every partner invest some capital to start the partnership business.



CHECK YOUR PROGRESS

Q.1: Define partnership.

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5.4 REGISTRATION OF FIRMS

The registration of partnership firms are deals under Chapter VII (Sections 56 to 71). Section 58 and 59 deals with the procedures of

registration of a firm. The application for registration of firm has to make before Registrar of firms along with prescribed fees. The application must state the followings:

1) The name of the firm,
2) The place or principal place of business of the firm,
3) The date when each partner joined the firm along with their name and full addresses
4) Duration of the firm

A firm registered at any time after creation of partnership. The terms of the registered partnership may alter but it has to inform to the Registrar of firms along with prescribed fees. The registration of firm in India is entirely based on the discretion of the firm or partners concerned. Section 69 of Indian Partnership Act lays down the effects of non-registration as follows:

1) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of the firm against any third party.
2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered.
3) An unregistered firm cannot claim a set-off in a suit.



CHECK YOUR PROGRESS

Q.2: Mention the effects of non-registration of partnership firm?

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5.5 PARTNERSHIP DEED

The partners are free to choose any name as they desire for their partnership firm. But the name must not too identical or similar to the name of another existing firm doing similar type of business and the name must not contain the words like crown, emperor, empress, empire etc which imply approval of Govt. The document where the rights and liabilities of the partners of a partnership are written called the partnership deed. A partnership deed may be oral or written having certain features like:

a) Name and address of the firm as well as partner
b) Name of the business to be carried on
c) Duration of the partnership
d) Capital contribution by the partners
e) Profit sharing ration among the partners

FORMAT OF DEED OF PARTNERSHIP

THIS DEED OF PARTNERSHIP is made at ..... on this ..... day of ..... by and between:
Shri ..... aged about ..... years, son of Shri ..... resident of ..... (Hereinafter to be called the First Party);
Shri ..... aged about ..... years, son of Shri ..... resident of ..... (Hereinafter to be called the Second Party);
Shri ..... aged about ..... years, son of Shri ..... resident of ..... (Hereinafter to be called the Third Party);
Shri ..... aged about ..... years, son of Shri ..... resident of ..... (Hereinafter to be called the Fourth Party);
AND WHEREAS the parties to this deed have been carrying on the business of ..... under the name and style

of M/s. ..... with its principal place of business at ..... on the terms and conditions incorporated in the Partnership Deed executed on .....

AND FURTHER WHEREAS the parties to this deed have been carrying on the above said business in partnership on the terms and conditions orally and mutually agreed amongst themselves as aforesaid;

NOW, THEREFORE THIS DEED WITNESSETH as under, incorporating the aforesaid amendment/alteration in the terms and conditions of the partnership:

1) That the partnership business has been and shall continue to be carried on under the name and style of M/s. .....
2) That the partnership business has been and shall continue to be that of ..... with its principal place of business at ..... The parties by mutual consent may carry on business at such other place or places as they may deem fit and proper from time to time.
3) The initial capital of the Partnership shall be:
   a) i) The amount of ....., being the capital contribution made by ..... (First party) to the Partnership Firm and
      ii) The amount of ....., being the capital contribution made by ..... (Second party) to the Partnership Firm
      iii) The amount of ....., being the capital contribution made by ..... (Third party) to the Partnership Firm
      iv) The amount of ....., being the capital contribution made by ..... (Fourt party) to the Partnership Firm

   The initial capital so contributed by each of the Partners is credited to the capital account ("**Capital Account**") of each Partner. The following provisions of this Section 3.1 shall apply in respect of the capital contributions of the Partners:
   b) the capital funds of the Partnership shall belong to the Partners in the proportion contributed by each Partner;
   c) any further contribution of capital required by the Partnership may be contributed to the Partnership by any one of the Partners and

4) That interest at the rate of 18% per annum or as may be prescribed under section 40(b)(iv) of the Income-tax Act, 1961 or any other applicable provisions as may be in force in the income-tax assessment of the partnership firm and shall be paid to the partners or credited to the partners on the amount standing to the credit of the account of the partners.

   Such interest shall be considered as an expenditure of the firm and shall be debited to the Profit & Loss Account of the firm.

5) That Shri ....., Shri ..... and Shri ..... the parties of the ..... parts have agreed to keep themselves actively engaged in conducting the affairs of the business of the partnership firm. The said partners shall be working partners. It is hereby agreed to that in consideration of the said parties keeping themselves actively engaged in the business of the partnership firm and working as working partners, shall be entitled to remuneration.

   The remuneration payable to the said working partners shall be computed in the manner laid down or deduction under section 40(b)(v), read with Explanation 3 of the Income-tax Act, 1961 or any other applicable provision as may be in force in the following proportion:

   A) Shri .... per cent of such amount
   B) Shri .... per cent of such amount
   C) Shri .... per cent of such amount

   The partners shall be entitled to increase or reduce the above remuneration as the case may be.

6) That the parties hereto shall be true and faithful to each other and shall not do or cause to be done anything which may be detrimental to the interest of the firm.

7) That the parties shall keep or cause to be kept proper books of account and documents and shall make entries and each partner shall have a right to have access to and to inspect and take copy of the same.

8) That the partnership has been and shall be a partnership at will.

9) That the net profit of the partnership firm after deduction of all expenses including rent, salaries, other establishment expenses, interest and

remuneration payable to the partners in accordance with this deed of partnership or any supplementary deed as may be executed by the partners from time, to time, shall be divided and distributed amongst the partners in the following proportion:

Sr. No.	Name of Party	Share in profits
1)		
2)		
3)		
4)		

The losses, if any, including loss of capital suffered in any year shall also be apportioned in the above said proportion.

10) That the bank account or accounts have been and shall be maintained in the name of the firm and shall be operated singly or jointly by the partners.

11) That the books of account shall be closed on 31st day of March each year. The net profit or loss after deducting all expenses, interest, remuneration, outgoings shall be divided between the parties in proportion to the sharing ratio referred to hereinabove.

12) That notwithstanding anything contained in the Indian Partnership Act it is hereby mutually agreed to by and between the parties that in case of death of any one or more partners, the firm shall not be dissolved but shall continue to be carried on by and between the surviving partners and legal heirs and/or representatives of the deceased partner, as a continuing concern.

13) That the partners to this deed are partners in their individual capacity/ representing HUF styled as M/s. .....
The parties do not represent any other person.

14) All bonds, bills, notes, bills of exchange, hundies or promissory notes or other securities given on behalf of the partnership (except cheques) shall be signed, endorsed, accepted or executed jointly by all the partners and the firm against payment thereof and against all actions, proceedings, costs, charges, expenses, claims and demands in respect thereof.

15) That the parties of ..... part are not working partners but are only financing, dormant and sleeping partners. The

parties of ..... part need not be in charge of, responsible to the firm for the conduct of the business of the firm and need not take interest in day-to-day working and business of the partnership firm.

16) That the partners shall be entitled to modify the above terms of this deed of partnership.

17) That all disputes and questions in ..... connection with the partnership or this deed arising between the partners or between any one of them shall be referred to the arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 then in force.

IN WITNESS WHEREOF the parties to this deed have set their hands on the day and year first above written and in the presence of:

WITNESSES:

1) _____

(First Party)

2) _____

(Second Party)

3) _____

(Third Party)

4) _____

(Fourth Party)

5.6 RELATIONS OF PARTNERS TO ONE ANOTHER

Chapter III (Sections 9 to 17) of Indian Partnership Act contains the provisions of relations of partners to one another. The mutual rights and duties of the partners of a firm may be determined by contract between the partners which may be expressed or may be implied. There are two general rules regarding the conduct of the partners under the Indian Partnership Act as follows:

a) General duties of the partners: Under section 9 “Partners are bound to carry on the business of the firm to greatest common advantage, to be just and faithful to each other, and to render true accounts and

full information of all things affecting the firm to any partner or his legal representative."

b) Indemnity: Under section 10 "Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm."

The rights and duties of the partners contained in sections 12 to 17 are 'subject to contract between the partners'.

Rights of the partners:

1) Right to take part in the conduct of the business: Every partner is entitled to take part in the business of the partnership firm. But it is depending that the terms in the partnership agreement who among the partners take active participation in the business of the partnership firm and who will not.
2) Right to express opinion: There may be difference in the opinion of the partners. The matter of difference may be related to the ordinary matters of business of partnership firm than it can be resolved by the decision of the majority of the partner. But if the matter of difference is of fundamental importance consent of all partners is required.
3) Right to have access to books of the firm: Both active and dormant partners have right to access the books of the firm.
4) Right to share profits: Every partner is entitled to share profits. If there is absence of partnership agreement, the partners are to share the profits equally.
5) Right to interest on capital and advances: Usually the partners are entitled to share profits. In case the partners agree that interest on capital is to be give, such interest shall be payable only out of profits.
6) Right to indemnity: The partners make certain payments and also certain losses. Thus, the partners can claim indemnity for the act done for the partnership firm.

Section 9 to 10 of Indian Partnership Act contains certain duties of partners.

Duties of the partners:

1) To carry the business of the partnership firm to the greatest common interest: The partners have to carry the business of the partnership

firm to the greatest common interest that no partners carry any personal advantage in the cost of the other. If any partner makes any secret profit out of any transaction of the partnership firm, it is duty of the partner to return that profit to the firm.

2) To be just and faithful to each other: The partners have to carry the business to the greatest interest of the partners. The partners have to provide all information to all partners and render true accounts which have to be just and faithful to each other.
3) To render true accounts: Every partner has the right to access, inspect and copy the books of accounts of the partnership firm. Every partner has to spent the funds of the partnership firm properly and maintains all records of such expenditures.
4) To render full information of all things affecting the firm: Every partner has to disclose all material information that related to the partnership firm. Any concealment of any facts by a partner renders him liable to others.
5) Duty to indemnify for fraud: Every partner has to indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.
6) Duty to be diligent: Every partner has to do his duties diligently since negligent in the performance of his duty cause loss not only to the partners but also to the firm. If any partner or firm suffer any loss for willful neglect of a partner, than he has to indemnify the firm for such loss.
7) Duty to properly use the property of the firm: The partners have used the properties of the firm for the purpose of the firm. If any partner carry any personal advantage from use of the properties of the firm than it is duty of the partner to return the same to the firm.

5.7 RELATIONS OF PARTNERS TO THIRD PARTIES

Chapter IV (Sections 18 to 30) of Indian Partnership Act contains the provisions of 'relations of partners to third parties' under following heads:

A) Nature and extent of liability of the firm for the acts of a partner
B) Doctrine of holding out
C) Rights of transferee of a partner's interest
D) Position of a minor admitted to the benefits of partnership

A) Nature and extent of liability of the firm for the acts of a partner:

A partner is an agent of the firm and all the partners of the firm become liable for the act done by any partner for the firm. The liability of all the partners are joint and several that is the liability of the firm may compensate to all partner for the act of the firm or may be done by any one partner. Any act or omission which create right enforceable is an act of the firm. All partners are equally liable for wrongful act of any partner as they would liable for a contract entered into by one of them on behalf of the firm.

The partners are liable for the following different acts:

i) Liability for the acts done within the authority which may be express or implied
ii) On rectification of partner's act
iii) Acts in emergency
iv) Liability for the admission made by a partner
v) Liability for torts and wrongly acts
vi) Liability for the misapplication of property of the firm:
vii) Liability on notice to an acting partner

i) Liability for the acts done within the authority which may be express or implied: The acts done to carry the business of the firm by the partner may be under express or implied authority. The express means when it is given by words or written whereas implied authority inferred from the circumstances or from an act.
ii) On rectification of partner's act: The act done by the partner as agent may be without prior authority of the principal and later it mat ratify by the principal or the partner. This act binds the all partner for such acts.
iii) Acts in emergency: The partners have the authority to do all acts under emergency to protect the firm for any losses and such acts binds the firm.

iv) Liability for the admission made by a partner: The partner may enter into contract or execute document or may pay money etc on behalf of the firm to the third party. Such admission is done by the partner in ordinary course of business. Such admission is done by the partner with the third party act as evidence against all other partners.

v) Liability for torts and wrongly acts: The partners along with the firm are liable for any wrongful act done by the partner in ordinary course of business or injury caused to any third party.

vi) Liability for the misapplication of property of the firm: A partner may receive any property under apparent authority from a third party and misapplies it or the firm may receive any property from a third party and misapplies it by the partners. But in both case the firm is liable to make good loss.

vii) Liability on notice to an acting partner: The partners are the agent of the firm and any notice to the partner who habitually do business of the firm means notice to the firm.

B) Doctrine of holding out: Every partner is liable for all acts of the firm while he is a partner and the firm cannot make liable for the acts of the firm to the person who is not a partner. But a person who is not a partner may be liable for the acts of the firm if he deemed himself as a partner or knowingly permitted somebody else to represent that he is a partner of the firm and third party acted on the faith of such representation given credit to the firm.

Section 28 of Indian Partnership Act makes the following liability under doctrine of holding out:

1) Anyone who by words spoken or written or by conduct represent himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the be representation has reached the person so giving credit;

2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal be representative or his estate liable for any act of the firm done after his death.

Thus in nutshell the following are essential under doctrine of holding out:

a) Representation

b) Third party acted on the faith of the representation and given credit to the firm

a) Representation: A person himself represents or knowingly permitted somebody else to represent that he is a partner of the firm. This representation may be made by express or implied.

b) Third party acted on the faith of the representation and given credit to the firm: The third party acted on the faith of the representation made by a person or knowingly permitted somebody else to represent that he is a partner of the firm and the third party on faith of that representation given credit to the firm. But the person made liable under the doctrine of holding out only when the third party is not aware about such representation.

C) Rights of transferee of a partner's interest: The partnership is based on mutual trust and confidence between the partners and the existing partners never like to assign his share in a way which may substitute an outsider in his place. During the continuance of the partnership business the rights of transferee of a partner's interest does not entitled him to interfere in the conduct of the business of the firm. Besides, he neither entitles to inspects books of accounts nor requires accounts of the firm. He cannot interfere in the conduct of the business of the firm. He is only entitled to receive the share of profit of that transferring partner.

He is not entitled in share of properties of the firm until the firm is dissolved. Final settlement of accounts made after dissolution of the

firm. At that time only, the transferee is entitled to the share of the assets of the transferring partner.

D) Position of a minor admitted to the benefits of partnership: Section 30 contains the following provisions regarding position of a minor admitted to the benefits of partnership firm:

i) Minor's admission to the benefits of partnership: Admission of a minor to the benefits of partnership can be done only with the consent of the all partners. A guardian is allowed to receive the benefits on behalf of the minor.

ii) Minor's position during minority: Every partner is jointly and severely liable for all the acts done to the firm whereas the minor is not liable for the acts. The minor entitle for the accounts only. He is not entitled to access or inspect or copy of books of account. He is also entitled in share of profits and property of the firm as agreed upon by all the partners. But the minor cannot sue the partners for an account or payment of his share or property.

iii) Option on attaining majority: At any time within six month of attaining majority or his obtaining knowledge that he had been admitted to the benefits of partnerships, whichever date is later, such person may give public notice that he has elected to become or he has elected not to become a partner in the firm and such notice shall determine his position as regards the firm. But if he fails to give such notice, he shall become a partner in the firm on the expiry of the six month.

iv) His position if he becomes a partner: Where such partner becomes a partner his rights and liabilities of the minor continue upto the date on which he becomes partner but he also become personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnerships. Besides, his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

v) Minor's position if he elects not to become a partner: When a partner not elects to become a partner his rights and liabilities of the minor continue to be same as minor.

5.8 CHANGES IN A FIRM

The constitution of partnership firm may be changed. These changes may be any of the following reasons:

1) Death of partner
2) Introduction of new partner
3) Retirement of a partner
4) Insolvency and expulsion of partner
5) Transfer of a partner's share to an outsider

1) Death of partner (Sec 35): The death of partner may dissolve the partnership firm. But the partners may agree to continue the firm.
2) Introduction of new partner (Sec 31): A new partner can be introduced only with the consent of all partners. The share of profit is fixed at the time when he becomes a partner and he is liable for all debts of the firm.
3) Retirement of a partner (Sec 32): A partner may retire with the consent of all partners; as per terms of agreement of the partnership firm; where the partnership is at will by giving notice in writing to all partners about his intention to retire.
4) Insolvency and expulsion of partner (Sec 34): The partner may be adjudicated as insolvent and the partnership firm may dissolve or may continue. If the partnership firm dissolved, the procedure of dissolution is adopted and if continue, the share of insolvent partner may be transferred to the Official Assignee of the Official Receiver.
5) Expulsion of a partner (Sec 33): A partner can be expelled for the following conditions:
   a) When the contract of partnership firm contain the provision of expulsion
   b) The majority of partners expel any partner in good faith.
   c) The expelled partner has given notice of his charges against him and he has given an opportunity to answer the charges.
6) Transfer of a partner's share to an outsider (Sec 29): A partner may transfer his share to an outsider. The transferee does not become

the partner of the firm. He is only entitled to receive the share of profit. He is also entitled to receive the share of assets when the partnership firm is dissolved or the transferring partner ceases to be a partner.

5.9 DISSOLUTION

Chapter VI of Indian Partnership Act contains the provisions of dissolution of firm which means the end of a firm by ceasing the relation of partnership between all the partners. A firm may be dissolved for the following reasons:

a) By agreement
b) Compulsory dissolution
c) Contingent dissolution
d) Dissolution by notice
e) Dissolution by court

a) By Agreement: A partnership firm is created by contract and dissolved at any time as with the consent of all partners.

b) Compulsory Dissolution: A partnership firm may be dissolved for adjudication of all partners or declaration of any partner as insolvent or happening of an event which makes the business of the firm unlawful.

c) Contingent Dissolution: The following reasons may dissolve a partnership firm :

i) By death of a partner,
ii) By adjudication of all partners or declaration of any partner as insolvent,
iii) If the partnership firm formed for certain fixed term and the term get expiry,
iv) If the partnership firm formed to carry out one or more undertakings and completion of the same.

d) Dissolution By Notice: If the partnership firm is at will than by giving notice in writing to all partners by any partner about his intention to dissolve the partnership firm.

e) **Dissolution By Court:** On any of the following ground, a partnership firm may dissolved by order of a court :

i) Insanity: If the partner has become unsound mind.

ii) Guilty conduct: If the partner is guilty of conducts which affect the business of the partnership firm.

iii) Permanent incapacity: If the partner becomes permanently incapable of performing his duties as a partner of the partnership firm.

iv) Just and equitable clause: If the court considers just and equitable to dissolve the partnership firm.

v) Loss: In such situation where court found that it is impossible to make profit by the partnership firm.

vi) Transfer of whole interest: If the partner transfers of whole interest to an outsider of the partnership firm.

vii) Breach of agreement: If the partner willfully commits breach of agreement of the partnership firm.



CHECK YOUR PROGRESS

Q.3: Mention the two reasons of dissolution of partnership firm.

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5.10 LET US SUM UP

In this unit, we have discussed the following:

- The partnership firm is not a legal entity like company, but it is group of individual partners. A partnership can only arise as a result of an agreement express or implied between two or more persons.

- A firm registered at any time after creation of partnership.
- The document where the rights and liabilities of the partners of a partnership are written called the partnership deed.
- A partner is an agent of the firm and all the partners of the firm become liable for the act done by any partner for the firm.
- Admission of a minor to the benefits of partnership can be done only with the consent of the all partners.



5.11 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.
2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.
5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



5.12 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Section 4 of the Partnership Act defines a partnership as "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all."

Ans. to Q. No. 2: Section 69 of Indian Partnership Act lays down the effects of non-registration as follows:

1) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of the firm against any third party.

2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered.
3) An unregistered firm cannot claim a set-off in a suit.

Ans. to Q. No. 3: The two reasons for dissolution of partnership firm are:

A) By Agreement: A partnership firm is created by contract and dissolved at any time as with the consent of all partners.
B) Compulsory Dissolution: A partnership firm may be dissolved for adjudication of all partners or declaration of any partner as insolvent or happening of an event which makes the business of the firm unlawful.



5.13 MODEL QUESTIONS

Q.1: Explain the position of a minor admitted to the benefits of partnership firm?

Q.2: What are the effects of non-registration of partnership firm?

Q.3: What are two general rules regarding the conduct of the partners under the Indian Partnership Act?

Q.4: Explain the rights and duties of partner in a partnership firm.

Q.5: Short Notes:

a) Partnership
b) Partnership deed
c) Doctrine of holding out
d) Rights And Duties of partner
e) Rights of transferee of a partner's interest

Q.6: What are the rights of transferee of a partner's interest?

Q.7: 'A firm registered at any time after creation of partnership'. Explain.

Q.8: 'A partner is an agent of the firm and all the partners of the firm become liable for the act done by any partner for the firm.' Explain.

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UNIT 6: LAW OF SALES OF GOODS

UNIT STRUCTURE

6.1 Learning Objectives

6.2 Introduction

6.3 Contract of Sale

6.4 Sales and Agreement to Sell

6.5 Meaning of Price

6.6 Conditions and Warranties

6.7 Passing of Property in Goods

6.8 Transfer of Title by Non-owners

6.9 Performance of a Contract of Sale

6.10 Unpaid Seller and His Rights

6.11 Remedies for Breach of Contract

6.12 Let Us Sum Up

6.13 Further Reading

6.14 Answers to Check Your Progress

6.15 Model Questions

6.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- define financial leverage
- define contract of sale, goods, price
- explain about conditions and warranties
- explain passing of property in goods
- describe transfer of title by non-owners
- explain about performance of a contract of sale
- explain about remedies for breach of contract.

6.2 INTRODUCTION

Originally the law relating to the sale of goods was spelt in Chapter VII of the Indian Contract Act which subsequently repealed. Now the Sale

of Goods Act, 1930 is defined and amends. This Act extends to whole of India except the State of Jammu and Kashmir. In this unit we are going to discuss about the definition of contract of sale, goods, price, conditions and warranties.

Through in this unit, you will also able to know about passing of property in goods. Through this unit, you will also understand the concept of transfer of title by non-owners, performance of a contract of sale. Thus, through this unit, you will able to know the detail concept contract of sale and all relevant terms like goods, price, conditions and warranties, passing of property in goods etc.

6.3 CONTRACT OF SALE

According to Section 4(1) defines contract of sale as "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price." Thus the following are the essentials constitute the contract of sale :

a) The contract must have two parties one is seller and the other is buyer.
b) 'Goods' is the subject matter of the contract.
c) The seller agree to transfer or transfer the goods to the buyer.
d) The seller agree to transfer or transfer the goods to the buyer is for price.

a) The contract must have two parties one is seller and the other is buyer: It is contract where two different parties has to present one is buyer who agree to buy and the other is seller who agree to sell the goods for consideration i.e for price. There should be two different parties. The same person cannot be the buyer and the seller.

b) 'Goods' is the subject matter of the contract: According to Section 2 (7) defines goods as every kind of movable property other than actionable claims and money; and includes stock and share, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

Certain things are included as goods like stock and share, growing crops, grass and things attached to or forming part of the land. But other certain things are excluded as goods like actionable claim, money etc. The goods are classified into the following categories:

i) Existing or Future goods: Existing goods are goods which are owned or possessed by the seller at the time of making of contract. Future goods are the goods which are manufactured or produced or acquired by the seller after making of the contract of sale.

ii) Specific or Unascertained goods: Specific goods are goods which are identified and agreed at the time of the contract of sale by the parties. E.g X agrees to sell 5 packets of sweets having yellow color design to Y at the time of making his contract and then he earmarked it. Unascertained goods are goods if it is not identified and agreed at the time of the contract of sale by the parties. E.g X agrees to sell 5 packets of sweets to Y.

c) The seller agrees to transfer or transfer the goods to the buyer: The seller agrees to transfer or transfer the goods to the buyer where such transfer of property may be either at the time of making of the contract or at a later time. Here the ownership in the goods from the seller to the buyer is the essence of the contract.

d) The seller agrees to transfer or transfer the goods to the buyer is for price: The seller agree to transfer or transfer the goods to the buyer for price and it should be in terms of money. The contract may be other than that of sale if such consideration is made other than money.



CHECK YOUR PROGRESS

Q.1: Define 'Goods'.

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FORMAT OF AGREEMENT FOR SALE

THIS AGREEMENT FOR SALE is made and executed on this the ..... day of ....., 2017

BETWEEN

Sri ..... S/o ..... aged ..... years residing at hereinafter called the ‘‘SELLER’’ (which expression shall mean and include her legal heirs, successors, successors-in-interest, executors, administrators, legal representatives, attorneys and assigns) of ONE PART.

AND

Sri ..... S/o ..... aged ..... years residing at hereinafter called the ‘‘PURCHASER’’ (represented by his power of attorney) which expression shall mean and include his heirs, successors, executors, administrators, legal representatives, attorneys and assigns of the OTHER PART.

WHEREAS THE SELLER is the absolute owner in possession and enjoyment of the more fully described in the schedule hereunder and hereafter called the ‘‘SCHEDULE PROPERTY’’.

WHEREAS the SELLER being in need of funds has decided to sell the property more fully described in the Schedule hereunder and the PURCHASER has offered to purchase the same.

WHEREAS the SELLER offered to sell and transfer the schedule property to the PURCHASER for a sale consideration of Rs. ..... (Rupees ..... only) and the PURCHASER herein has agreed to purchase the same for the aforesaid consideration on the following terms and conditions:

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1) The Sale consideration of the Schedule Property is fixed at Rs. ..... (Rupees ..... only)
2) The PURCHASER has paid a sum of Rs. ..... (Rupees ..... only)

by cash / cheque / D.D. bearing No. ..... drawn on ..... dated ..... as advance, the receipt of which sum the SELLER hereby acknowledges.

3) The balance payment of Rs. ..... (Rupees ..... only) will be paid by the PURCHASER to the SELLER at the time of execution of the absolute Sale Deed and thus completing the Sale transaction.
4) The parties herein covenant to complete the Sale transaction and to execute the Absolute Sale Deed by the end of .....
5) The SELLER confirms with the PURCHASER that he/she has not entered into any agreement for sale, mortgage or exchange whatsoever with any other person relating to the Schedule Property of this Agreement.
6) The SELLER hereby assures the PURCHASER and he / she has absolute power to convey the same and there are no encumbrances, liens, charges, Government dues, attachments, acquisition, or requisition, proceedings etc.
7) The SELLER agrees to put the purchaser in absolute and vacant possession of the schedule property after executing the sale deed and registering the same in the jurisdictional Sub-Registrar's office.
8) The SELLER covenants with the purchaser that he/she shall not do any act, deed or thing creating any charge, lien or encumbrance in respect of the schedule property during the subsistence of this Agreement.
9) The SELLER has specifically agreed and covenants with the PURCHASER that he/she shall do all acts, deeds and things which are necessary and requisite to convey absolute and marketable title in respect of the schedule property in favour of the PURCHASER or his nominee.
10) It is agreed between the parties that all expenses towards Stamp Duty and Registration charges shall be borne by the PURCHASER only.
11) The PURCHASER shall have the right to nominate or assign his right under this agreement to any person / persons of his choice and the

SELLER shall execute the Sale Deed as per terms and conditions of this Agreement in favour of the PURCHASER or his nominee or assignee.

12) The SELLER has agreed to get consent deed duly executed to this Sale transaction from his wife/her husband, sons and daughters on or before date of registration of Sale Deed and assured that they all join to execute sale deed in favour of the purchaser.

13) It is hereby expressly provided and agreed by the parties here to that both parties are entitled to enforce specific performance of the agreement against each other in case of breach of any conditions mentioned in this Agreement.

14) The original of the ‘‘AGREEMENT’’ signed by both the parties shall be with the PURCHASER and copy of the same similarly signed shall be with the SELLER.

SCHEDULE

1)

2)

IN WITNESS WHEREOF the SELLER and the PURCHASER have signed this Agreement of Sale on the day month and year herein above mentioned in the presence of the witnesses:

WITNESSES:

1) SELLER

2) PURCHASER

6.4 SALES AND AGREEMENT TO SELL

A contract of sale may be either sale or agreement to sell. Sale means when goods transferred from the seller to the buyer under contract of sale. But in case of agreement to sell goods transferred from the seller to the buyer at a future time or subject to some condition to be fulfilled later. The sale is different from agreement to sell like–

a) Transfer of ownership: In case of sale, goods transferred from the seller to the buyer. But in case of agreement of sale, the goods remain with the seller until expiry of the future agreed time or fulfillment of agreed conditions.

b) Transfer of risk: In case of sale, goods transferred from the seller to the buyer and the goods remain in the hand of the buyer. So, the risk of the goods remains in the hand of the buyer. But in case of agreement of sale, the goods remain with the seller until expiry of the future agreed time or fulfillment of agreed conditions.

c) Remedial measures: In case of sale, the unpaid seller has the remedy like stoppage in transit of goods etc and in case of agreement of sale, suit for damages.

d) Nature of contract: Sale is an executed contract and agreement of sale is executory contract.



CHECK YOUR PROGRESS

Q.2: Mention two distinctions between sale and agreement to sale?

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6.5 MEANING OF PRICE

According to Section 2(10) price means the money consideration for a sale of goods. The price may be fixed at the time of contract by the

parties or by course of dealing later by the parties. It may be conditional and fixed after valuation. Where the price is not fixed, the buyer must pay a reasonable price.

6.6 CONDITIONS AND WARRANTIES

In a contract of sale, there may be various terms like conditions and warranties. Condition means it is stipulation or terms essential to the main purpose of contract, the breach of which gives rise to a right to treat the contract as repudiated. On the other hand, the warranty means stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for the damages but not a right to reject the goods and treat the contract as repudiated.

The condition is different from warranties.

a) In case of condition, it is essential to the main purpose of contract whereas warranty collateral to the main purpose of the contract.
b) The breach of condition gives rise to a right to treat the contract as repudiated. On the other hand, the breach of warranty gives rise to a claim for the damages but not a right to reject the goods and treat the contract as repudiated.
c) The breach of condition gives rise to warranty, but breach of warranty cannot gives rise to condition.



CHECK YOUR PROGRESS

Q.3: Distinguish between conditions and warranties.

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6.7 PASSING OF PROPERTY IN GOODS

Goods transferred from the seller to the buyer for price under the contract of sale. The following rules are laid down under the Sales of Goods Act when the goods pass from the seller to the buyer:

i) Property transferred as intended: The goods are transferred from the seller to the buyer at the time when the parties intend to pass. It is for the ascertained and specific good.

ii) Specific goods in a deliverable state: The deliverable state of goods is the state when the buyer is bound to take the delivery of them.

iii) Specific goods not in a deliverable state: In case of contract of sale of specific goods, the seller is bound to do something with the goods for the purpose of putting them into deliverable state. Such goods are not transferred from the seller to the buyer until such things are done and the buyer notices the same.

iv) Specific goods to be weighted, tested etc by the seller: In case of contract of sale of specific goods, the seller is bound to weight, test, measured or do something with the goods for the purpose of ascertaining the price. Such goods are not transferred from the seller to the buyer until such things are done and the buyer notices the same.

v) Goods delivered on approval or on sale or return: Under Section 24 goods are delivered on approval or on sale or return under contract of sale, 'When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property therein passes to the buyer–

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

   b) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, if a time has been fixed for the return of the goods, on expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.'

Goods are sold on approval or on sale or return basis under contract of sale to the buyer, but it does not means the goods are transferred to the buyer until the following conditions are fulfilled:

i) When the buyer signifies to the seller his approval or accepted the goods.

ii) The goods passes to the buyer when the buyer adopts the transactions.

iii) When the buyer does not signifies to the seller his approval or accepted the goods. But retains the goods without giving notice of rejection to the seller and if on expiration of fixed time of return and, if no time has been fixed, on the expiration of a reasonable time, than it is supposed that the goods passes to the buyer.

6.8 TRANSFER OF TITLE BY NON-OWNERS

The owners only can transfer a better title and sale the goods to the buyer, none can give who does not himself possess. In the following cases, a person who is not an owner can give to the transferee a valid title to the goods:

i) Estoppel: Sometimes the law of estoppels may apply against the owner of the goods and he may not be allowed to deny seller's authority to sell. The owner did not have the right to stop the seller from selling the goods even though the seller did not have any right title of the good.

It is happen when the owner of the goods by his act or omission makes the buyer to believe that the seller of those goods has a right to sell subsequently, he cannot deny the existence of such a right in the seller.

ii) Sale by a mercantile agent: In following conditions, sale by a mercantile agent may pass good title to the buyer–

a) The agent possess the title or documents of the good

b) The possessions of the goods with the agent is with the consent of the owner

c) The agent sale the goods in ordinary course of business

d) The buyer belief on such sale without notice that the agent has no authority to sale the goods.

iii) Sale by one of several joint owners: Several joint owners can sale the good by the permission of the co-owners to any person and such transfer passes the title of the goods to the buyer and the buyer beliefs on such sale without notice that such joint owners has no authority to sale the goods.

iv) An unpaid seller: An unpaid seller are such seller of goods who may not get the whole price for the goods or receive any negotiable instrument as conditional payment which later dishonor. Such an unpaid seller can re-sale the goods to the buyer and thereby the good title possess by the buyer.

v) Sale by the seller in possession of goods after sale: The seller may continue to have after sale the title or possession of goods and subsequently, there may transfer the title or possession of goods by way of sale on pledge to other buyer. The buyer possesses good title by such transfer if the buyer beliefs on such sale without notice and had no knowledge of the seller's want of title. The buyer can obtain damages from such sale. But the buyer cannot recover the goods from the second buyer.

vi) Sale of goods obtained under voidable agreement: Sale of goods obtained under voidable agreement but such agreement is not rescinded at the time of sale, the buyer possesses good title by such transfer if the buyer beliefs on such sale without notice the defect of the seller's title.

vii) Seller has certain rights of the goods possess by the buyer: Seller may have certain rights of the goods possess by the buyer and the buyer may sell, pledge etc the goods to third party and thereby passes good title under the following conditions:

a) The possessions of the goods with the first buyer is with the consent of the seller

b) The transfer made by the buyer

c) The person who receives the goods acts in good faith and without notice the seller's rights of the goods.

viii) Sale under the Contract Act: Under pledge the pawnee may sale the goods to the pawnor or finder of lost goods can sale the goods and there by the buyer gets a good title.

6.9 PERFORMANCE OF A CONTRACT OF SALE

Under contract of sale, it is the duty of the seller to deliver the goods at a time and place, in a manner agreed upon and the buyer has to accept the same and pay accordingly to the seller. Here, delivery means voluntary transfer of possession from one person to another. The delivery may be actual or symbolic or constructive delivery. The following are the rules regarding delivery of goods concerning the performance of the contract of sale:

i) Possession of buyer: The delivery of goods to the buyer may be anyway as the parties agreed for delivery

ii) Place of delivery: Goods are delivered at a place by the seller to the buyer as they agreed under the contract of sale.

iii) Time of delivery: Goods are delivered at a time by the seller to the buyer as they agreed under the contract of sale. But if there is not any time fixed than within a reasonable time.

iv) Effect of part delivery: Under contract of sale, sometimes the parties may agree that the goods would pass when the goods are delivered. According to section 34 effect of part delivery means–

   1) A delivery of parts of the goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.
   2) When the delivery of the part is not made in progress of the delivery of the whole, but it is made with an intention of serving the part from the whole that does not operate as a delivery of the remainder.

v) Application for delivery: The seller is not bound to deliver goods to the buyer until buyer applies for delivery.

vi) Possession of a third party: The goods may be in possession with the third person at the time of contract of sale and there is no delivery

of such goods take palce by the seller to the buyer until the third person acknowledges that he possesses the goods on his behalf.

vii) Expanses of delivery: Unless otherwise agreed, the expanses of the delivery of goods shall be borne by the seller.

viii) Buyer is not bound to return the rejected goods: Buyer is not bound to return the rejected goods where goods are delivered by the seller, but it is sufficient to intimate the seller that he refuse to accept the said goods.

ix) Delivery of the wrong quantity: The seller may deliver less or more goods to the buyer as agreed under the contract of sale. If deliver less amount of goods than the buyer has the option to reject them the whole or if accepts the goods than he has to pay for the same. On the other hand, if the seller deliver more goods than agreed with the buyer, the buyer may rejects the whole or accept only those quantities of goods that agreed under the contract of sale and reject the rest.

Besides, the seller may deliver the goods mix with different description of goods not included in the contract, the buyer may accepts the goods which are in accordance with the contract and reject the rest or may reject the whole.

x) Delivery to the carrier: Unless otherwise authorized by the buyer, the seller has to enter contract with carrier for delivery of goods and if it is not doing so and the goods are lost than the seller is responsible for damages or the buyer may refuse the goods from accepting or the risk with the seller during goods remain in transit.

xi) Examining the goods: The buyer can examine and ascertain the conformity of the goods with the contract of sale.

xii) Acceptance: On intimation by the buyer to the seller that the goods are accepted deemed it that it is accepted by the buyer.

xiii) Liability to the buyer: The buyer is liable for any loss for his neglect or refusal of goods to the seller.

xiv) Installment delivery: Usually the buyer is not bound to accept the goods delivered under installment unless otherwise agreed with the

seller. The buyer may accept the delivery of goods and separate payment for each of such installment as agreed. But if any party fails to perform his obligation, it may repudiate the contract or damages may be claimed for the same.

6.10 UNPAID SELLER AND HIS RIGHTS

Under contract of sale, the seller is any person who is in position of a seller and the buyer is the person who can buy and pay for the goods. An unpaid seller are seller of goods who may not get the whole price for the goods or he receive any negotiable instrument as conditional payment which later dishonor. The unpaid seller has the following certain rights–

a) Sellers' lien: The unpaid seller can exercise his lien when the goods are not sold on credit or credit period is getting expired or buyer become insolvent and possess the goods as agent or bailee for the buyer. The unpaid seller can also exercise his lien for non-payment of price, for the balance of goods not delivered if part delivery is made. The seller can abandoned his lien when he desire and does not lose his lien by reason only that he obtained a decree for the price of the goods.

b) The right to stoppage in transit: The unpaid seller has the right to stop while the goods are delivered to the carrier and remain in transit. This right comes to an end as soon as the goods are delivered. This right may also come to an end if the carrier wrongfully refuses to deliver the goods to the buyer.

c) Suit for prices: The unpaid seller has the right to sue the buyer if the buyer neglect or refuse to pay for the goods as agreed under the contract of sale.

d) The right of resale: The unpaid seller has the right to resale the goods if the goods are perishable in nature without any notice to the buyer or if notice is give and the buyer fail to pay the amount as agreed within that time.

e) Suit for damages: The unpaid seller has the right to sue for damages if the buyer neglect or refuse to pay for the goods as agreed under the contract of sale.

f) Claim for interest and special damages: The unpaid seller has the right to claim for interest and special damages for the goods as wherever it can be recoverable.

6.11 REMEDIES FOR BREACH OF CONTRACT

The contract of sale has two parties one is seller and the other is buyer. Both parties can sue to each other for breach of such contract and claim for damages.

Suits by the seller against the buyer:

a) Suits for price: The buyer has the duty to pay the seller for the goods delivered to him as agreed under the contract of sale. But if the buyer neglect or refuse to pay for the goods as agreed under the contract of sale and the goods delivered to him by the seller, the seller can sue against the buyer for price. This, there must be deliver of goods by the seller and the buyer neglect or refuse to pay. But if the goods are sold on credit, the seller can sue for price only when such credit period is expired.

b) Suit for damages: The buyer may wrongfully neglect or refuse to accept or pay for the goods as agreed under the contract of sale. The seller may sue for damages for non-acceptance of the goods.

Suits by the buyer against the seller:

a) Damages for non-delivery: The seller may wrongfully neglect or refuse to deliver the goods to the buyer as agreed under the contract of sale. The buyer may sue for damages for non- delivery of goods.

b) Suits for specific performance: Section 58 entitles the buyer to bring an action of specific performance and instead of retain the goods or pay for damages for non-delivery of goods by the seller, the court may pass a decree in favour of the buyer and direct the seller to specifically perform the contract i.e deliver the goods as agreed.

c) Remedy for breach of warranty: Under contract of sale, the buyer has to accept the goods and pay for the delivery of goods by the seller. When the buyer accepts the goods or a part thereof the buyer is bound to treat the breach of condition of contract of sale as breach

of warranty and notice the same to the seller. In such case, the buyer can sue for damages.



6.12 LET US SUM UP

In this unit, we have discuss the following:

- Contract of sale means “A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price.”
- Agreement to sale goods transferred from the seller to the buyer at a future time or subject to some condition to be fulfilled later.
- Condition means it is stipulation or terms essential to the main purpose of contract, the breach of which gives rise to a right to treat the contract as repudiated.
- Warranty means stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for the damages but not a right to reject the goods and treat the contract as repudiated.
- An unpaid seller are seller of goods who may not get the whole price for the goods or he receive any negotiable instrument as conditional payment which later dishonor.



6.13 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.
2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.

5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



6.14 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Under Section 2(7) of The Sales of Goods Act, 1930, goods means every kind of movable property other than actionable claims and money; and includes stock and share, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

Ans. to Q. No. 2: The sale is different from agreement to sale like—

a) Transfer of ownership: In case of sale, goods transferred from the seller to the buyer and in case of agreement of sale, the goods remain with the seller until expiry of the future agreed time or fulfillment of agreed conditions.

b) Transfer of risk: In case of sale, goods transferred from the seller to the buyer and the goods remain in the hand of the buyer. So, the risk of the goods remains in the hand of the buyer. But in case of agreement of sale, the goods remain with the seller until expiry of the future agreed time or fulfillment of agreed conditions.

Ans. to Q. No. 3: The condition is different from warranties:

a) In case of condition, it is essential to the main purpose of contract whereas warranty collateral to the main purpose of the contract.

b) The breach of condition gives rise to a right to treat the contract as repudiated. On the other hand, the breach of warranty gives rise to a claim for the damages but not a right to reject the goods and treat the contract as repudiated.

c) The breach of condition gives rise to warranty, but breach of warranty cannot gives rise to condition.



6.15 MODEL QUESTIONS

Q.1: Define contract of sale and its essentials.

Q.2: Define goods and its classifications.

Q.3: Define condition and warranties. Distinguish between condition and warranties.

Q.4: Distinguish between sale and agreement to sale.

Q.5: Mention the rules when the goods passed from the seller to the buyer under the Sales of Goods Act.

Q.6: When a person who is not an owner can give to the transferee a valid title to the goods?

Q.7: Mention the rules regarding delivery of goods concerning the performance of the contract of sale.

Q.8: Define unpaid seller and his rights.

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UNIT 7: LAW OF NEGOTIABLE INSTRUMENTS

UNIT STRUCTURE

7.1 Learning Objectives

7.2 Introduction

7.3 Object of the Act

7.4 Negotiable Instruments, Promissory Notes, Bill of Exchange, Cheques

7.5 Negotiation, Presentment, Dishonour

7.6 Crossing of Cheques

7.7 Paying Banker

7.8 Let Us Sum Up

7.9 Further Reading

7.10 Answers to Check Your Progress

7.11 Model Questions

7.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- explain the meaning of Negotiable Instrument
- learn the object of the Negotiable Instrument Act,1881
- describe the concept of negotiation, Promissory Note, Bill of Exchange and Cheques
- describe the importance of Crossing of Cheques, Dishonour, Presentment and obligation of Paying Bankers.

7.2 INTRODUCTION

Negotiable Instruments are basically the 'Instrument of Credit', which can be converted into money and also passable from one hand to another. A person who takes a negotiable instrument in good faith becomes its true owner and it is not affected even if the title of the person from whom he has taken is imperfect.

The Negotiable Instruments Act, 1881 is an important piece of legislation which came into existence to legalize the Indian system under which the negotiable instrument pass from hand to hand in negotiation like ordinary goods. This Act is not an exhaustive one and does not cover either all kinds of negotiable instruments or even all matters relating to them. Wherever the Act is silent, the Law Merchant including mercantile usage is a relevant consideration.

Considering the loopholes of the Negotiable Instruments Act, 1881 the Parliament has amended the Act several times. Recently, the Negotiable Instruments (Amendment) Act, 2015 came into force with retrospective effect. The Amendment makes changes in provisions relating to the territorial jurisdiction for filing Cheque dishonor Cases in the Negotiable Instrument Act.

7.3 OBJECT OF THE ACT

The main object of the Act is to legalize the system by which the instruments contemplated by it could pass from one hand to another by negotiation, like any other good.

The purpose of enactment was to present an orderly and authoritative statement of the leading principles of law.

7.4 NEGOTIABLE INSTRUMENTS, PROMISSORY NOTES, BILL OF EXCHANGE, CHEQUES

Negotiable Instruments: The word 'Negotiable' means transferable by delivery and the word 'Instruments' means written document. The Negotiable Instruments entitles a person to a certain sum of money. Thus the term Negotiable Instruments means a written document which creates a right in favour of some persons and which is freely transferable. According to Section 13(1) of the Act Negotiable Instruments means a Promissory Note, bill of exchange or Cheque payable either to order or to bearer.

A Negotiable Instrument thus posses two qualities:

a) The right of ownership contained in the instrument can be transferred from one person to another by mere delivery or sometimes by indorsement and delivery;

b) The transferee who takes the negotiable instrument in good faith and for consideration (known as holder) gets a good title to the same even though the title of the transferor is defective.

A currency note possesses these two qualities but for obvious reasons the Act expressly excludes a currency note from the purview of the Act.

The important characteristics of negotiable instruments are :

- It must be writing
- It must be unconditional
- Easily transferable from one person to another
- The amount of instrument is payable on demand
- It is always payable in terms of money
- It can be easily used for the payment of debt
- A cheque or Note gives the right to the creditors to recover the written amount from the debtor
- It is an exception to the general rule that 'nobody can transfer a better title than that of his own'. Here the title of the transferor becomes immaterial if the transferee takes in good faith
- Specified amount is written on the instrument.

Promissory Note: A Promissory Note is a promise in writing by a person to pay certain sum of money to a specified person or to his order or to the bearer.

Section 4 of the Negotiable Instruments Act defines a Promissory Note as 'a Promissory Note is an instrument in writing (not being a bank note or currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.'

Illustrations: A signs instruments in the following terms

a) I promise to pay B or order Rs. 500

b) I promise to pay B Rs. 500 and all other sums which shall be due to him

The instrument marked (a) is a promissory note but (b) is not.

No particular form of word is required to constitute a promissory note. Following are the essential characteristics of a promissory note:

i) It must be in writing
ii) Signed by the maker
iii) Undertaking or promise to pay
iv) Undertaking to be unconditional
v) Promise to pay sum of money only
vi) Certainty of sum payable
vii) Certainty of the maker of the instrument, who have also to affix his signature
viii) Certainty of the payee.



CHECK YOUR PROGRESS

Q.1: What are the essential characteristics of a promissory note?

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Bill of Exchange: Section 5 of the Act defines Bill of Exchange as 'a Bill of Exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain sum of money, only to, or to the order of, a certain person or to a bearer of instrument'.

A Bill of Exchange requires three parties namely–

The drawer: The person who is the maker of the bill and gives the order.

The drawee: The person who is directed to pay the bill and who on affixing his signature becomes the acceptor.

The payee: The person to whom or to whose order the amount of the instrument is payable, unless the bill is payable to bearer.

The three parties should be indicated in the bill along with reasonable certainty.

In Punjab & Sind Bank vs. Vinkar Sahakari Bank Ltd. [(2001) 7 SCC721, 2002CrLJ, 93, (2002) 36 SCL 286] it has been held by the court that it cannot be said that in every bill of exchange there must necessarily be three parties, the maker, the payee and the person to whom direction is given to pay. The Court thus held a pay to be cheque although it had only two parties.



CHECK YOUR PROGRESS

Q.2: Define Bill of Exchange.

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Cheque: A cheque is a bill of exchange drawn on a specified banker and is payable only on demand.

Section 6 of the Act defines cheque as 'A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes electronic image of a truncated cheque and a cheque in the electronic form'. The definition of 'Cheque 'has been enlarged by the Amendment Act of 2002.

A cheque is a bill of exchange with the following qualifications:

i) It is always drawn on a specified bank and

ii) It is always payable on demand.

iii) After the Amendment Act of 2002, a cheque may also be in 'electronic' form.

All cheques are bill of exchange but all bills are not cheque.

Distinction between a Cheque and a Bill of Exchange:

1) The Drawee, in case of cheque is always a bank, but in case of Bill of Exchange, drawee could be any person.

2) A cheque is always payable on demand, but a bill of exchange may be either a time bill or it may be payable on demand.

3) In a Bill of Exchange acceptance by the drawee can be there. But a cheque is always payable on demand. So there is no system of acceptance of a cheque.
4) There is a system of crossing cheque but a bill of exchange cannot be crossed.
5) A Bill of Exchange cannot be made payable to bearer as well as on demand. A cheque is always payable on demand and it may be payable to bearer also.

7.5 NEGOTIATION, PRESENTMENT, DISHONOUR

Negotiation: When the holder of a negotiable instrument i.e., the person who is entitled to receive its payment transfers the negotiable instrument to another person so that the transferee now becomes entitled to receive the payment, the instrument is said to have negotiated. According to Section 14 of the Act, when a Promissory Note, bill of exchange or Cheque is transferred to any person, so as to constitute that person holder thereof, the instrument is said to be negotiated. Thus it is necessary that transfer of the instrument must have been made with an intention to transfer the rights. For example, If A delivers a bearer cheque to his servant foe safe custody, he will not be entitled to receive the payment of the same and he cannot be called the holder of the cheque. But if the cheque is delivered to the servant for his services, the servant will become holder.

Therefore in negotiation two conditions must be fulfilled:

i) There must be a transfer of instrument to another person.
ii) The transfer of the instrument must be made in such a manner as to constitute the transferee the holder of the instrument.

A negotiable instrument can be negotiated in two ways:

a) If the instrument is the bearer instrument, the rights in it can be transferred by mere delivery from one person to another. However it is necessary to have been made with an intention to transfer the ownership. (Section 47)
b) If the instrument is an order one, the rights in it can be transferred by indorsement and delivery. (Section 48)

The indorsement means signatures of the persons which are generally made at the back of the instrument for the purpose of transfer of rights to another person. (Section15)

A forged indorsement does not convey any title to the transferee of the negotiable instrument, even though the transferee may take the same in good faith and for value.

Presentment: Sections 61 to 77 of the Act deals with the presentment of a negotiable instrument.

The Act contemplates three kinds of presentment:

1) Presentment of a Bill of Exchange
2) Presentment of a Promissory Note for sight
3) Presentment of a Promissory Note, bill of exchange or cheque for payment.

To procure the payment, every negotiable instrument, a Promissory Note, bill of exchange or cheque has to be presented to the maker, drawee or acceptor.

Presentment for Acceptance: Only a bill of exchange is to be presented for acceptance. When a bill of exchange is expressed to be payable "after sight", it means that its payment is to be made only after acceptance. To fix the maturity of such bill of exchange its acceptance, which includes its presentment for acceptance, is absolutely necessary.

Every bill of exchange is not required to be presented for acceptance. The presentment is to be made by the holder of a bill of exchange. If any time or place for presentment is specified, it must be presented for acceptance accordingly.

Presentment of a Promissory Note for Sight: Sometimes a Promissory Note may be made payable at a certain period after sight. Such note must be presented to the maker for sight by a person entitled to demand payment within reasonable time after it is made and in business hours on a business day.

Presentment for Payment: All Promissory Note, bill of exchange and cheques are required to be presented when the payment becomes due. The presumption is that the payment is to be made at the debtor's place.

For electronic cheque, the drawee bank is entitled to demand any further information, regarding the truncated cheque from the bank holding the truncated cheque in case of reasonable suspicion.

Section 76 in the Negotiable Instruments Act, 1881:

When presentment unnecessary: No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or if the instrument not being payable at any specified place, he cannot after due search be found;
b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;
c) as against any party if, after maturity, with knowledge that the instrument has not been presented— he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part, or otherwise waives his right to take advantage of any default in presentment for payment;
d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Dishonour: A bill may be dishonoured by non acceptance or by nonpayment. Section 91 provides for the dishonor of bills of exchange by non acceptance. This provision is applicable to bills payable at the sight or on demand.

Dishonour by Non Acceptance:

Dishonour by Non Acceptance occurs:

a) When a bill is duly presented for acceptance and the drawee or one of the drawees, does not accept within forty eight hours from the time of presentment, the bill is deemed to be dishonoured.

b) Where presentment for acceptance is excused and the bill is not accepted, the bill is dishonoured.

c) Where the drawee is incompetent to contract.

Dishonour by non acceptance of a bill gives the holder an immediate right of action against the drawer and indorsers and there is no need to wait till the maturity of the bill or to present it for payment.

Dishonour by Non Payment: According to Section 92 of the Act a Promissory Note, bill of exchange or Cheque is said to be dishonoured by nonpayment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Notice of Dishonour: Notice of dishonour means information about the fact that the instrument has been dishonoured. It may be given to—

a) All persons whom the holder seeks to make liable

b) Authorised agents of such persons

c) Legal representatives in case the persons concerned have died.

d) Assignee, when the person has been declared an insolvent.

The Negotiable Instruments Act, 1881 is applicable for the cases of dishonour of cheque. This Act has been amended many times since 1881.

According to Section 138 of the Act, the dishonour of cheque is a criminal offence and is punishable by imprisonment up to two years or with monetary penalty or with both.

If payee decides to proceed legally, then the drawer should be given a chance of repaying the cheque amount immediately. Such a chance has to be given only in the form of notice in writing.



CHECK YOUR PROGRESS

Q.3: Discuss the rules of presentment of negotiable instruments.

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7.6 CROSSING OF CHEQUES

The practice of crossing cheques has been statutorily recognized to avoid, as far as possible, the losses, by getting into wrong hands. There are two types of cheques:

1) Open cheques or bearer cheques: They are payable in cash across the counter. Even a founder of a lost cheque or a thief may encash such a cheque.
2) Crossed cheque: Payment of a crossed cheque can be obtained only through a banker.

Types of crossing:

a) General crossing: Where a cheque is crossed generally the drawee banker must not pay it unless it is presented by a banker. For a general crossing there must be two parallel transverse lines on the face of the instrument either with or without the words 'any company'.

b) Special crossing: A special crossing is constituted when the name of a bank is added across the face of a cheque, either with or without the words 'not negotiable'. Payment of a specially crossed cheque can be obtained only through a specified banker.

c) Account payee crossing: It is now common practice to add the words 'account payee' or 'A/C payee only' to a crossing on cheques.

Such crossing expresses the intention that the cheque should only be collected for the account of the payee. Such crossing though not statutorily recognized has gained acceptance by course of banking operations and general practice.



CHECK YOUR PROGRESS

Q.4: Write a note on crossing of cheques.

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7.7 PAYING BANKER

Banker: A banker is one who does banking business. Section 5(b) of the Banking Regulation Act, 1949 defines banking as, ‘‘accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft or otherwise.’’ This definition emphasizes on the following:

1) That the primary function of a banker consists of accepting of deposits for the purpose of lending or investing the same;
2) That the amount deposited is repayable to the depositor on demand or according to the agreement. The demand for repayment can be made through a cheque, draft or otherwise, and not merely by verbal order.

Protection of Paying Banker (Sections 10, 85 and 128): Section 85 lays down that where a cheque payable to order purports to be endorsed by or on behalf-of the payee the banker is discharged by payment in due course. He can debit the account of the customer with the amount even though the endorsement turns out subsequently to have been forged, or the agent of the payee without authority endorsed it on behalf of the payee. It would be seen that the payee includes endorsee. This protection is granted because a banker cannot be expected to know the signatures of all the persons in the world. He is only bound to know the signatures of his own customers.

Therefore, the forgery of drawer’s signature will not ordinarily protect the banker but even in this case, the banker may debit the account of the customer, if it can show that the forgery was intimately connected with the negligence of the customer and was the proximate cause of loss.

In the case of bearer cheques, the rule is that once a bearer cheque, always a bearer cheque. Where, therefore, a cheque originally expressed by the drawer himself to be payable to bearer, the banker may ignore any endorsement on the cheque. He will be discharged by payment in due course. But a cheque which becomes bearer by a subsequent endorsement in blank is not covered by this Section. A banker is discharged from liability on a crossed cheque if he makes payment in due course.

Payment in due Course (Section 10): Any person liable to make payment under a negotiable instrument must make the payment of the amount due there under in due course in order to obtain a valid discharge against the holder.

A payment in due course means a payment in accordance with the apparent tenor of the instrument, in good faith and without negligence to any person in possession thereof.

A payment will be a payment in due course if:

a) it is in accordance with the apparent tenor of the instrument, i.e. according to what appears on the face of the instrument to be the intention of the parties;
b) it is made in good faith and without negligence, and under circumstances which do not afford a ground for believing that the person to whom it is made is not entitled to receive the amount;
c) it is made to the person in possession of the instrument who is entitled as holder to receive payment;
d) payment is made under circumstances which do not afford a reasonable ground believing that he is not entitled to receive payment of the amount mentioned in the instrument; and
e) payment is made in money only.

Under Sections 10 and 128, a paying banker making payment in due course is protected.

Paying Bankers Duties and Responsibilities: A banker on whom the cheque is drawn should pay the cheque, when it is presented for payment. It is his obligation by section 31 of the Negotiable Instrument Act. A banker is bound to honour his customer's cheque to the extent of the fund available and the existence of no legal bar for payment. The paying banker should use reasonable care and diligence in paying a cheque so as to abstain from any action likely to damage his customer's credit.

At the time of making payment of he should observe the following very carefully:

i) Verification of signature of the drawer.
ii) Verification of the genuineness of the instrument.

iii) Payment not stopped by the A/c holder.

iv) Holders title on the cheque is valid.

v) A/c is not dormant one.

vi) A/c holder is not bankrupt, deceased and insanse.

vii) A/c is not under subject of liquidation process.

viii) No. 'Guernsey Order' is issued by count.

ix) Properly endorsed.

x) Cheque is not drawn beyond limit fixed by the drawer is respect of amount.

xi) Instrument being presented is crossed.

xii) Instrument is not state or post dated.

xiii) No material alteration is made.

xiv) Sufficient balance in the A/c.



CHECK YOUR PROGRESS

Q.5: Write the duties and liabilities of paying bankers.

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7.8 LET US SUM UP

In this unit, we have discussed the following aspects:

- The Negotiable Instrument Act deals with only three kinds of instruments. They are– Promissory Notes, Bill of Exchange and Cheques.
- This important piece of legislation came into existence to legalise the transfer of negotiable instruments from one person to another.
- It provides for the essential characteristics of all the negotiable instruments.

- Negotiation by delivery and negotiation by indorsement and delivery are the two modes negotiation.
- Promissory Notes, bill of exchange or Cheques are required to be presented for payment respectively to the maker, acceptor or drawee therefore by the holder.
- A Promissory Note, bill of exchange or Cheque is dishonoured by non payment. Only a bill of exchange may be dishonoured by nonpayment or non acceptance.
- Section 138 of the Act made provisions for criminal prosecution for dishonor of cheque.
- The Act provides protection to the paying bankers.



7.9 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.
2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.
5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



7.10 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: The essential characteristics of a promissory note are:

A) It must be in writing

B) Signed by the maker

C) Undertaking or promise to pay

D) Undertaking to be unconditional

E) Promise to pay sum of money only

F) Certainty of sum payable

G) Certainty of the maker of the instrument, who have also to affix his signature

H) Certainty of the payee

Ans. to Q. No. 2: Section 5 of the Act defines Bill of Exchange as 'a Bill of Exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain sum of money, only to, or to the order of, a certain person or to a bearer of instrument'.

Ans. to Q. No. 3: The rules of Presentment are: To procure the payment, every negotiable instrument, a Promissory Note, bill of exchange or cheque has to be presented to the maker, drawee or acceptor.

i) Presentment for acceptance: Only a bill of exchange is to be presented for acceptance. When a bill of exchange is expressed to be payable "after sight", it means that its payment is to be made only after acceptance.

Every bill of exchange is not required to be presented for acceptance.

The presentment is to be made by the holder of a bill of exchange.

ii) Presentment of a Promissory Note for sight: Sometimes a Promissory Note may be made payable at a certain period after sight. Such note must be presented to the maker for sight by a person entitled to demand payment within reasonable time after it is made and in business hours on a business day.

iii) Presentment for payment: All Promissory Note, bill of exchange and cheques are required to be presented when the payment becomes due.

Ans. to Q. No. 4: Crossing of Cheques: The practice of crossing cheques has been statutorily recognized to avoid, as far as possible, the losses, by getting into wrong hands. There are two types of cheques:

1) Open cheques or bearer cheques: They are payable in cash across the counter. Even a founder of a lost cheque or a thief may encash such a cheque.
2) Crossed cheque: Payment of a crossed cheque can be obtained only through a banker.

Types of crossing:

a) General crossing: Where a cheque is crossed generally the drawee banker must not pay it unless it is presented by a banker. For a general crossing there must be two parallel transverse lines on the face of the instrument either with or without the words 'any company'.
b) Special crossing: A special crossing is constituted when the name of a bank is added across the face of a cheque, either with or without the words 'not negotiable'. Payment of a specially crossed cheque can be obtained only through a specified banker.
c) Account payee crossing: It is now common practice to add the words 'account payee' or 'A/C payee only' to a crossing on cheques.

   Such crossing expresses the intention that the cheque should only be collected for the account of the payee. Such crossing though not statutorily recognized has gained acceptance by course of banking operations and general practice.

Ans. to Q. No. 5: Paying Bankers duties and responsibilities: A banker on whom the cheque is drawn should pay the cheque, when it is presented for payment. It is his obligation by section 31 of the Negotiable Instrument Act. A banker is bound to honour his customer's cheque to the extent of the fund available and the existence of no legal bar for payment. The paying banker should use reasonable care and diligence in paying a cheque so as to abstain from any action likely to damage his customer's credit.



7.11 MODEL QUESTIONS

Q.1: All negotiable instruments are transferable instruments but all transferable instruments are not negotiable, why? (Hint : write characteristics of negotiable instruments)

Q.2: Distinguish between promissory note and bill of exchange.

Q.3: Write a note on Dishonour of Cheques.

Q.4: State and explain the protection offered by the Negotiable Instruments Act to the Paying Banker.

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UNIT 8: FORMATION OF A COMPANY

UNIT STRUCTURE

8.1 Learning Objectives

8.2 Introduction

8.3 Formation of a Company

8.4 Stages of Formation of Company

8.5 Documents Required for Incorporation

8.6 Types of Company

8.7 Meaning and Kinds of Company Meeting

8.8 Meaning of Minute

8.9 Recording and Signing of Minutes

8.10 Role of Chairman

8.11 Postal Ballot

8.12 Resolution and its Different Kinds

8.13 Let Us Sum Up

8.14 Further Reading

8.15 Answers to Check Your Progress

8.16 Model Questions

8.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- define and explain the formation of a company
- describe the stages of formation of company
- explain the documents required for incorporation of a company
- describe the certificate of incorporation
- explain the certificate of commencement of business
- explain the meaning of a company meeting and its different kinds
- define the meaning of a Minute
- elaborate the recording and signing of minutes
- explain the role of the Chairman and know about Postal Ballot
- describe the resolution and its different kinds.

8.2 INTRODUCTION

In this unit, we are going to discuss about the formation of a company and company meetings. Here, you will be able to know details about the documents required for incorporation of the formation of a company. This unit also encompasses the stages of formation of company. The unit discusses the certificate of incorporation and the certificate of commencement of business. Thus, you will able to understand through this unit, the basic concept of company, the essential document for formation of a company, stages, documents required for incorporation, certificate of incorporation and certificate of commencement of business.

And at the end of this unit you will be able to know about company meetings and recording of minutes and prospectus.

8.3 FORMATION OF A COMPANY

Before formation of a company, there must be an idea originated in the mind of a person or persons to form a company and do the necessary steps to convert it into reality. Such persons are called as 'Promoter'.

The term 'promoter' is not define anywhere in the Companies Act. According to Palmer, "A person who originate a scheme for the formation of the company, has the Memorandum and Article prepared, executed and registered, and finds the first directors, settles the terms of preliminary contracts and prospectus (if any), and make arrangements for advertising and circulating the prospectus and placing the capital, is a promoter."

An idea has to come to start a business and it should bring into existence. The promoter is a person who originates the idea to start a business and plan to bring it into reality. He has very wide powers relating to the formation of the company. He is neither a trustee nor an agent of the proposed company. The promoter stands in a fiduciary relationship towards the company.

Lord Justice Lindley, defines the company as, "A company is voluntary association or an organization of many persons who contribute money or monies worth to a common stock and employee it in some trade or business

and who share the profit or loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons, who contribute it or to whom it belongs, are members of the company. The proportion of capital to which each member is entitled, is his share. The shares are of fixed value and the whole capital of the company is divided into equal number of shares. The shares are generally transferable although under certain special circumstances, the right to transfer may be restricted."

8.4 STAGES OF FORMATION OF COMPANY

A company is nothing but an association of persons incorporated under Companies Act, having legal separate existence from its members. A company is formed under three stages, as—

1) Promotion of a company
2) Registration, incorporation and Commencement of a company and
3) Raising of capital

1) Promotion of a company: An idea has to come in the mind of certain persons to form a company. These persons are called promoter. He takes all necessary steps to form the company. The promoter may be an individual, association of persons, partners etc. who originate the scheme for formation of the company; get together the subscribers to the memorandum, gets the Memorandum and Article, prepared, executed and registered, finds the bankers, brokers and legal advisers, find the directors, settle the terms of preliminary contracts with vendors and agreement with underwriters and makes arrangement for preparation, advertisement and circulation of the prospectus and placement of the capital.
2) Registration, incorporation and commencement of a company: The following aspects have to decide before a company incorporate and commence its business :
   a) **Types of company:** Any two or more persons required to start a private company and 7 members for a public company, associated for a lawful purpose, by subscribing their names to

the memorandum of association in respect of registration, form an incorporated company, with or without limited liability.

b) **Application for availability of name of company:** The promoters choose at least five names apart from the main name of the company and make an application along with prescribed fee (presently Rs. 500) to the Registrar of Companies to ascertain the availability of the name. According to Section 20 of the Act, a company cannot be registered with the name which is undesirable in the opinion of Central Government or which is identical with or too nearly resembles the name of an existing company. The name of the company must end with the word "Limited" in the case of a public company and the words "Private Limited" in the case of a private company. The Registrar of Companies shall have to furnish the information regarding the availability of name within seven days. In case the name is undesirable, the registrar may reject the same or ask for resubmission of the application with new name or calls for further information, ordinarily within three days of receipt of the application.

c) **Preparation of Memorandum and Article of Association:** Memorandum of Association is the constitution of the company which specifies the area of the company, within which it can act. It contains clauses like, name clause, object clause, capital clause, liability clause, subscription clause and registered office clause. Article of Association is another important document which contains rules and regulations relating to the internal management of a company.

d) **Vetting of Memorandum and Articles, Printing, Stamping and Singing of the same:** The draft of the Memorandum and Articles of Association should be prepared and typed. But before printing the Memorandum and Articles Association it is desirable to get the draft vetted by the Registrar. This helps in avoiding mistakes and unnecessary delay in registration of the Company. It should be signed separately by the subscribers. It should be stamped.

e) **Power of attorney:** With a view to fulfill the various formalities that are required for incorporation of a company, the promoters may appoint an attorney empowering him to carry out the instruction/ requirement stipulated by the Registrar. This requires execution of a Power of Attorney on a non-judicial stamp paper of a value prescribed in the respective State Stamp Laws.

f) **Additional Documents Required:**

A) Consent of director: In case of public limited company having share capital, the director has to give written consent to act as director.

B) Notice of the Registered office: The notice of location of the registered office in the memorandum and article of association is necessary.

C) Particulars of directors: The persons who are to act as first directors may file their particulars to the Registrar at the time of registration.

g) **Statutory Declaration in e-Form No. 1:** Statutory Declaration for completing of all legal formalities should be signed by an advocate of High Court or Supreme Court or attorney or Chartered Accountant or by a person named in the Article as a director, manager, or secretary of a company and filed with the Registrar. The Registrar may accept such a declaration as sufficient evidence of such compliance.

h) **Payment of Registration Fees:** The fee prescribed for registration of company is required to be paid to the Registrar.

i) **Certificate of incorporation:** If all the documents mentioned above are complete and the Registrar of the Companies is satisfied that all requirements are complied with, the Registrar shall certify under his hand that the company is incorporated. The certificate of incorporation given by the Registrar and it is the conclusive evidence that all requirements of the Companies Act, 1956, have been complied with in respect of registration.

But, a public company cannot start its business until it gets certificate of commencement of business from Registrar of

Companies. To get the certificate of commencement of business a public company has to pass through capital subscription state i.e. raise sufficient capital to commence its business. There are two ways of raising capitals i.e. from private source and from the public.

3) Raising of capital: If a company raises capital from private source i.e. from director's members and their relations, it is required to file a statement in lieu of prospectus with the Registrar at least three days before the allotment of shares. Where the company wishes to invite public in subscription for its shares, it will have to issue a prospectus after filing a copy of it with the Registrar. On receiving the minimum subscription, the company can allot shares and thus raise the required capital.



CHECK YOUR PROGRESS

Q.1: Mention any three aspects that have to decide before a company incorporate and commerce its business?

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8.5 DOCUMENTS REQUIRED FOR INCORPORATION

There are certain necessary documents that have to file with the Registrar of companies for its incorporation:

1) The Memorandum of Association: It is a document that describes the object of the company for which it is form and it should be signed by all the persons necessary to form the company.
2) The Article of Association: It is the document which contains the rules and regulation of the company and should be signed by the all the persons necessary to form the company.

3) The agreement which the company propose to enter with any individual for appointment as company's managing director, or whole-time directors or manager: If the company is entered into an agreement with any individual for appointment as company's managing director, or whole-time directors or manager than copy of the same should be filed with the Registrar of the company.
4) The declaration that all the requirements of the Companies Act relating to the registration of the company have been compiled with: Such declaration must be signed by any one of the following person—
   a) A Chartered Accountant in the whole-time practice in India;
   b) A company secretary in whole-time practice in India;
   c) An advocate of the Supreme Court or High Court;
   d) An attorney or pleader entitled to appear before High Court;
   e) A person named in the article of association as a director, manager, or secretary of the company.
5) A written consent of such directors to act as director of the company: It should be signed by the director himself or by his agent authorized in writing.
6) A written undertaking by such directors to take and pay for their qualification shares if any: It should be signed by all directors.
7) A list of persons who have agreed to become the first directors of the company.



CHECK YOUR PROGRESS

Q.2: Mention any three necessary documents that have to file with the Registrar of companies for its incorporation?

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LET US KNOW

STATEMENT IN LIEU OF PROSPECTUS:

The statement in lieu prospectus contains similar particular as are required for a prospectus and should fulfil similar conditions as regards statements. It must be in the form set out in Schedule III. When a private company converts itself into a public company it must either issue a prospectus or file a statement in lieu of prospectus.

A certificate of incorporation is issued by the Registrar of company which certifies that the company is incorporated. A private company can start its business from the date of the certificate of incorporation. Thus, the legal effect of certificate of incorporation are stated as,

1) The company comes into existence having separate legal existence.
2) The company can start its business from the date of the certificate of incorporation.
3) The 'memorandum of association' and 'articles of association' binds upon the company as well as its members and it acquire perpetual succession.
4) The liabilities of the members become limited of company limited by shares.

Conclusiveness of the Certificate of Incorporation: The certificate of Incorporation is conclusive evidence that all the requirements of the Companies Act, 1956, complied with and it is conclusive that—

a) All the requirements of the Act have been complied with in respect of the registration.
b) The company is duly registered and,
c) That the company came into existence on the date mentioned in the certificate.

Thus, once a private company gets registered, it can begin its business.

8.6 TYPES OF COMPANY

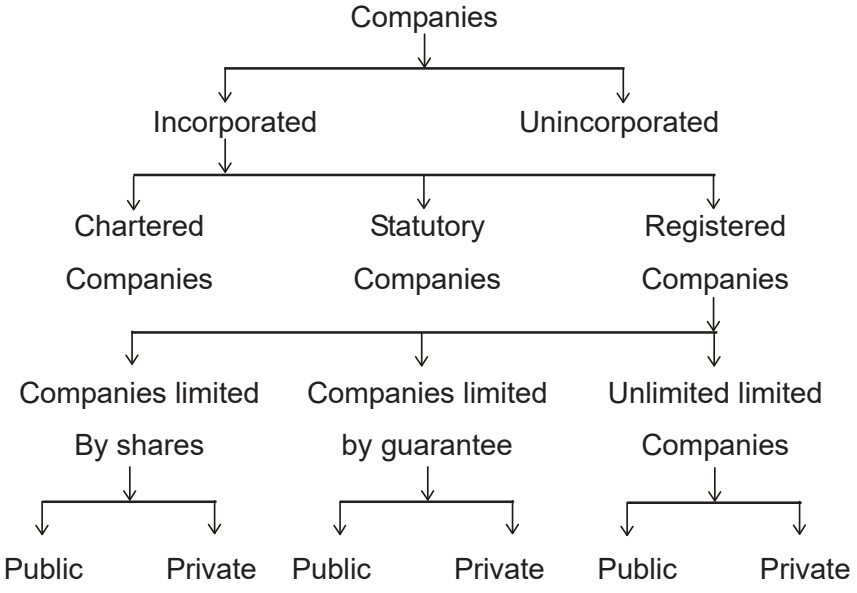
The word 'corporation' is derived from the Latin word 'corpus' which means anybody or any institution enjoying perpetual succession having own separate legal existence. It is divided into two parts :

a) A corporation sole;

b) Corporation aggregate.

A corporation sole means a single person constituted as a corporation in respect of some office or function, e.g., Governor, President etc; and corporation aggregate means a collection of individuals united into body having perpetual succession and an independent, e.g. trading and non-trading corporation.

The Companies Act, 1956, provides for a variety of companies which can be promoted and registered under the Act. The companies can be classified into the following categories, like:



A) Incorporated:

1) *Chartered Companies:* Chartered Companies formed under a special Royal Charter issued by the King or Queen. The Charter defined their powers and areas of operation.

2) *Statutory Companies:* Statutory Companies are formed under special Act like, RBI Act, LIC Act etc.

3) *Registered Companies:* Registered Companies are companies which are formed under the Companies Act, 1956. It may be—
   a) Companies limited by shares: A company that has the liability of its members limited by the memorandum to the amount, if, any unpaid on the shares respectively held by them is termed as a company limited by shares.
   b) Companies limited by guarantee: A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound up.
   c) Unlimited liability companies: In this type of company, the members are liable for the company's debts and their liability is unlimited.

A) Private Company: By virtue of section 3(1)(iii), a private company means a company, which has a minimum paid-up capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and by its articles:

i) Restrict the right to transfer its shares, if any;
ii) Limits the number of its members to fifty not including–
   a) persons who, are in the employment of the company; and
   b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continue to be the members after the employment ceased;
iii) Prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; and
iv) Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

Here it must be borne in mind that invitation is not prohibited but invitation to the public other than the members is prohibited. A private company can issue any number of debentures to its members but, not to the public in general. Similarly, the number of members is

limited to fifty and if two or more person holds one or more shares in a company jointly, it is treated as single member.

B) Public Company: By virtue of section 3 (1) (iv), a public company means a company which—

i) is not a private company,

ii) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital as may be prescribed;

iii) is a private company which is a subsidiary of a company which is not a private company.

There should be 7 members to start a public company, which is registered under the Act. In case of public company, invitation to subscribe shares and debentures is not prohibited. It may be listed its shares and debentures to the stock exchange.

Every public company existing on the commencement of the Companies (Amendment) Act, 2000, with a paid-up capital of less than five lakh rupees, was required to, within a period of two years from such commencement; enhance its paid-up capital to five lakh rupees. Where a public company failed to do so, such company was deemed to be a defunct company within the meaning of Section 560.

8.7 MEANING AND KINDS OF COMPANY MEETING

Company has a separate identity from its members. A company being an artificial person can not act on its own. It is however, constituted by the shareholders and express its decisions in the form of resolution in the meeting. Thus, a meeting has been defined as, “coming together of two or more persons face to face so as to be in each others’ presence or company”.

A meeting is a gathering or assembling of a numbers of persons for transacting any lawful business. It should be conducted under prescribed rules and regulation of the Companies Act, 1956. The shareholders and directors can take their decisions by calling the meeting.

The meeting of a company may be classified, as—

1) Meeting of the members (shareholders):
   i) Statutory Meeting
   ii) Annual General Meeting
   iii) Extraordinary General Meeting
   iv) Class Meeting
2) Meetings of the debentureholders.
3) Meetings of the creditors.
4) Meetings of the Board of Directors.

1) Meeting of the Members (Shareholders):

i) Statutory Meeting, (Section 165): According to section 165, of Companies Act, 1956, every company limited by shares or guarantee and having share capital, shall, within a period of not less than one month, but not more than six months from the date which the company is entitled to business, has to hold a general meeting of the members of the company. The meeting shall be called 'statutory meeting'.

The statutory meeting is held only once in the life time of the company. The Board of Directors are required to prepare a report, called 'statutory report'. The statutory report should be sent to each member at least 21 days before the day on which the meeting is to be held. A notice is also sent for the meeting to the members.

There are certain legal provisions relating to the statutory meeting, like—

1) The Board of Director has to prepare the 'Statutory Report' at least 21 days before the day the meeting is to be held.
2) The statutory meeting should be held within a period of not less than one month, but not more than six months from the date on which the company is entitled to business.
3) Statutory Report should be sent to the members of the company containing the particulars like total number of shares allotted and the total amount received from the same,

details of company's preliminary expenditures, particulars of company directors, managers, auditors ete.

4) The Statutory Report has to be certified by two directors. If the company has a managing director, then he has to certify the statutory report.

ii) **Annual General Meeting, Section 166 (1):** As the term denotes, annual general meeting is the meeting under section 166(1) which has to be held annually. It is the meeting of the members through which they get the opportunity to express their views on the management of the company. Through this meeting, the shareholders can exercise control over the affairs of the company. The 'Annual General Meeting' is sometimes called ''Ordinary General Meeting" as it usually deals with the so-called 'Ordinary Business'. The main purpose to hold this meeting are, like;

a) To submit the annual account, balance sheet, director's report and auditor's report.
b) To declare the dividend.
c) Special business— any other business to be transacted will be deemed special business likes:
   i) To increase share capital
   ii) To alter Article of Association
d) To appoint auditors and fix their remuneration.
e) To elect directors are that liable to retire by rotation.

Every company is required to hold this meeting. But, there are certain legal provisions which have to be followed, relating to the annual general meeting as contained in sections 166 to 168. There are:

a) The annual general meeting must be held once in each year in addition to other meeting.
b) The first annual general meeting must be held within 18 months of the incorporation of the company. The Registrar of Companies may extend this time period up to 3 months for special reasons.

c) The members of the company have to get at least 21 days before the meeting is held.

d) The meeting must be held during the business hours and on a day which should not be a public holiday.

e) The meeting must be held either at the registered office or at some place within the city, town or village.

As mentioned earlier, every company is required to hold this meeting according to the provision of the Companies Act. If any company fails to hold the annual general meeting the consequences are as follows:

A) As mentioned above, the annual general meeting provides the opportunity to the members to express views on the management of the company. Any member can apply to the Central Government for the failure of the company to call the meeting. The Central Government may give direction to the company for calling the meeting.

B) The company as well as every officer will become liable if they fail to held the meeting and shall be punishable with fine upto Rs. 50,000, and if the default continues , with a further fine of Rs. 2,500 for every day after the first day of default during which the default continues.

For example, 'ABC Private Ltd' was incorporated in February 2006. The first annual general meeting of the company was held in March 2007 and the next in July 2008.In this case, the company 'ABC Private Ltd' is not guilty of not holding the annual general meeting for the year 2006 or 2007. Because, the first annual general meeting was held within 18 months of incorporation of the company.

iii) Extraordinary General Meeting: A General meeting other than the statutory meeting and the annual general meeting is called 'Extraordinary General Meeting' (Clause 47 of Table A, Schedule I). Due to some urgent or special business purpose, the extraordinary general meeting is held between two consecutive

annual general meetings. Here, 'special business' means, all the business transacted at any meeting except in the annual general meeting. But, every 'Extraordinary General Meeting' has to be informed to the members through a notice accompanied by an 'Explanatory Statement', which explains the objective of the meeting. The 'Extraordinary General Meeting' can be convened by:

⟶ the Board of Directors of its own accord.

⟶ the directors on requisition.

⟶ the requisitionists themselves.

⟶ the Tribunal.

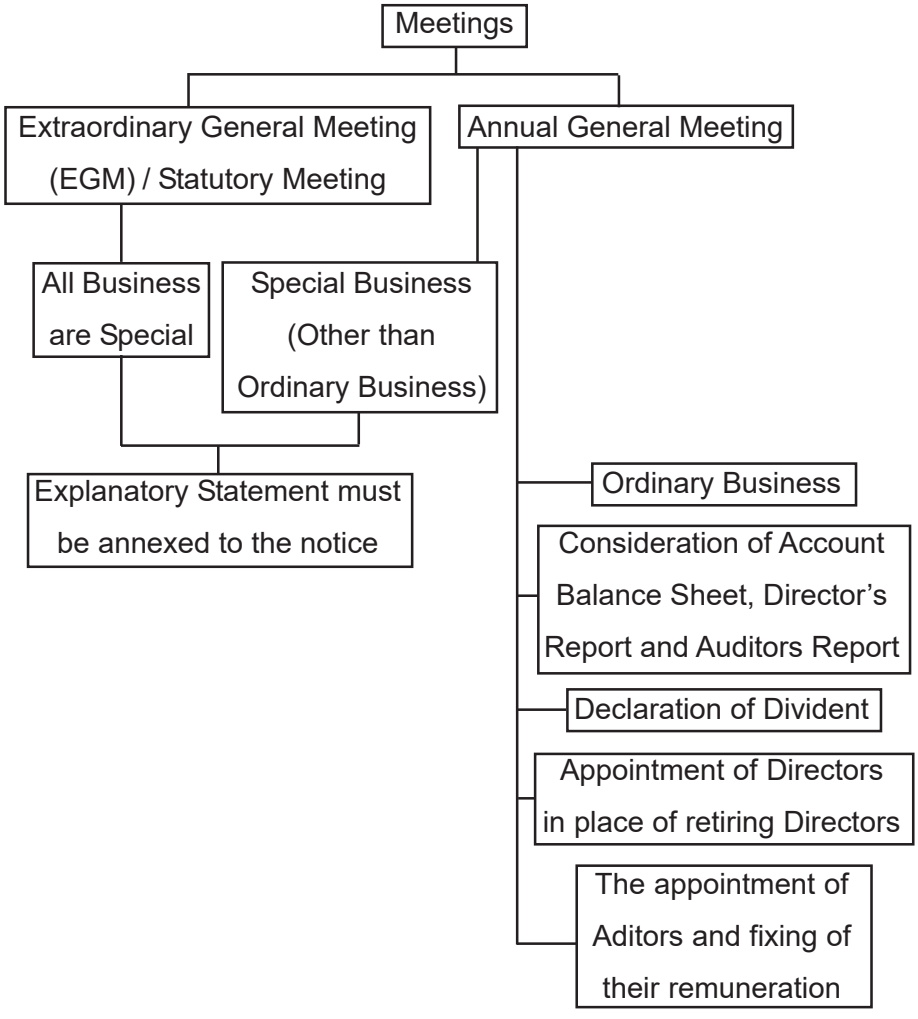
1) **Extraordinary general meeting convened by Board of Directors:** The Board of Directors under clause 48, table A, can call the extraordinary general meeting on its own whenever they like to call the meeting. However, they have to pass a resolution for convening such a meeting.
2) **The directors on requisition:** Under section 169, the extraordinary general meeting becomes necessary on the requisition of the members and the Directors are also become bound to call such a meeting.
3) **Extraordinary general meeting convened by requisitionists:** Some times, the Board of Directors fails to call the extraordinary general meeting though the members deposit a valid requisition. If the Board of Directors fails to call the extraordinary general meeting within 21 days from the deposit of valid requisition, a meeting may be called on a day not later than 45 days from the date of the deposit of the requisition, the meeting may be called by;
   a) the requisitionists themselves;
   b) the company having a share capital, by such of them as represent either a majority in value of the paid-up share capital held by all of them or not less than one tenth paid-up share capital of the company, whichever is less; or

c) a company not having share capital, by such of the requisitionists as represent not less than one tenth of the voting power of the members of the company.

Under section 169(7), the meeting must be held within 3 months of the deposit of valid requisition.

4) **Extraordinary general meeting convened by the Tribunal:** The tribunal under section 186 can call a meeting of the company. The tribunal may call the meeting either on its own motion or, on an application of any director, or, on an application of any member of the company entitled to vote at the meeting.

All Business at EGM are special business and Explanatory Statement must be annexed to the Notice:



v) **Class Meeting, Sections 106 and 107:** Class meeting are basically held for taking consent of a particular class of shareholders. Through this meeting, the rights and privileges of the shareholders can be altered, or conversion of one class to another can be done. If the article permits, the right of the different classes of the shareholders can be altered from the class of holder of that share, only when a resolution is passed in a separate meeting.

2) **Meetings of the debentureholders:** Meeting of the debentureholders are held according to the debenture trust deed to protect the interest of the debentureholders. Such type of meeting is held at the time of reconstruction, amalgamation, or winding up. The essential rules and regulations of valid meeting are contained in the debenture trust deed, like—

a) **Proper convening authority:** The meeting should be called by the proper authority. The proper authority in a company is the Board of Directors. Thus, if the Board of Directors makes default in calling the meeting, then the meeting can be called by the requisitionists or Company Law Board.

b) **Notice:** Previous notice should be given to every member about the holding of the meeting.

c) **Proxy:** Proxy is nothing but, an agent of the members authorized to give vote. Thus, proxy should be mentioned in the debenture trust deed.

d) **Voting by Poll:** Voting by showing hand is a general method in ascertaining the wishes of the members. But, sometimes a poll may be demanded by the chairman or by the members.

e) **Quorum:** According to the rule of the Companies Act, a minimum number of members should be present in the meeting. This is called the quorum for the meeting. For 'General Meeting' of a company, the quorum is laid down in the article of association of the company. But for Board Meeting, it is 1/3rd of the total number of the members or two directors, which ever is higher.

f) **Chairman of the Meeting:** There should be chairmen in the meeting. But, if no chairman is elected beforehand or the elected chairman can not come within 15 minutes of the fixed time, then any one director or a member can be elected as the chairman.

3) **Meetings of the Creditors:** Sometimes it becomes necessary to make certain arrangement with the creditors by the company. Usually, this type of meeting is held for such purposes only.

4) **Meetings of the Board of Directors:** As most of the power of the company is exercised by the directors of the company, it become necessary for then to interact frequently among them to review the management of company's affairs. Notice has to sent to every director about the meeting previously. The notice has to clearly mention the time, date and place of the meeting. The meeting of the Board of Directors of the company should be held—

i) at least once in every three months, and

ii) at least four such meetings shall be held in every year.



CHECK YOUR PROGRESS

Q.3: What do you mean by 'Extraordinary General Meeting'?

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8.8 MEANING OF MINUTES

A minute is nothing but a, written record of the proceedings of a meeting. Many important decisions are taken in the company general meeting and the Board meeting. Many new policies as well as existing policies are discussed in the meetings. It is necessary to record every decision taken in the meetings and a company has to keep a fair record of all the transactions and the resolutions arrived in a meeting in the form of 'minutes'. For this purpose, a book is maintained in every company and all the proceedings of each meeting should be recorded within 30 days.

Advantages of minute:

1) It is an official record of every meeting.
2) As it keeps the record of all the decisions taken in the previous meeting, it becomes an evidence of what new or prior decisions have been adopted or changed.
3) It helps the member who was absent in the previous meeting, in knowing the proceedings of that meeting and also enables him to review and understand the necessity of the meeting.
4) If the minutes are signed by the chairmen, it becomes a prima facie evidence of the proceedings of the meetings and the decisions recorded there are deemed valid.

Minutes to be Evidence: Minutes are constituted as the official records of all decisions, transactions, resolution made in a meeting. Care is always taken not to include any defamatory and detrimental statements in the minute. The minute books of the general meeting are signed by the chairman and on his death or absence by, any director authorized by the Board. On the other hand, in case of the Board meeting or meeting of the committee of the Board, the Chairman of the said meeting or the Chairman of the next succeeding meeting has to sign it. Thus, each proceeding of the minute of all meetings is recorded. Under section 194, all the records of the minutes of the different meetings of the company may act as evidence. 6.5



CHECK YOUR PROGRESS

Q.4: Mention three advantages of a minute.

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8.9 RECORDING AND SIGNING OF MINUTES

Every company is required to keep minutes of all meetings, such as—

a) All General Meetings;
b) Meeting of the Board of Directors;
c) Meeting of the Board of Directors.

But, there are certain legal obligations in maintaining the records in the form of minute:

1) All proceedings of each meeting should be recorded within 30 days from the conclusion of the meeting. [Section 193 (1)]
2) The minutes of each meeting must contains fair and correct records. [Section 193 (2)]
3) All the appointments and decisions made in the meeting must be included in the minutes. [Section 193 (3)]
4) In case of the Board Meeting and Committee of Board Meeting, the minute must record, [Section 193 (4)]
   i) The name of the each director present in the meeting.
   ii) If any resolution is passed in the meeting, the names of the directors who dissent or do not concur with the resolution of the meeting must be recorded.
5) The chairman of the meeting has the right to exclude any matter of the meeting, if he thinks it necessary.
6) The minute books are maintained at the registered office of the company.
7) In case of a general meeting of the company, minute books should be signed by the Chairman and on his death or in his inability to be present in the meeting any director can be sign the minute as permitted by the Board of Directors.
8) The pages of the minute books must be consecutively numbered.
9) If the minute is maintained properly, it shall be presumed that the meeting was duly held.

Every recording of the meeting in the minute should be signed and the last page should be dated and signed properly:

a) In case of the minutes of the Board meeting or meeting of the committee of the Board, thereof, these are to be signed by the chairman of the said meeting or the chairman of the next succeeding meeting.

b) In case of the minutes of a general meeting, minutes are to be signed by the Chairman of the same meeting or on his death or inability, by any director duly authorized by the Board.

8.10 ROLE OF CHAIRMAN

The Chairman is the person who has been elected to conduct the proceeding of the meeting. If the Article of association does not permit to elect the Chairman, than he is elected under Section 175. In this regards, the Section 175 lays down,

i) Unless the article of a company otherwise provides, the member personally present at the meeting shall elect one of them to be the Chairman.

ii) If a poll is demanded on the election of the chairman, it shall be taken forthwith. The Chairman elected on a show of hands shall exercise all the power of the chairman.

iii) If some other person is elected Chairman as a result of the poll, he shall be the Chairman for the rest of the meeting.

The Chairman is responsible for maintaining the proper rules and regulations and the decorum of the meeting. The chairman has to play a vital role in a company, like–

a) The chairman has to see that the meeting is properly convened and followed all the rules and regulations are followed in the meeting.

b) Sometimes the members raise their points in the meeting. The chairman has to interpret the rules regarding their points and the decision that is given by the chairman will be binding on the members.

c) He is responsible to observe whether all statutory rules, standing orders and regulations are followed in conducting the proceeding of the meeting.

d) He is also responsible for to giving opportunity to those who wish to speak and to express their views in the meeting.

e) The chairman has the duty on ruling over the points of order and all other emerging questions.

f) The minutes of the meeting should also be signed by the chairman. He has to check the records of the previous meeting whether they are properly entered, confirmed and duly signed.

g) The Chairman is also plays an important role in taking care that the sense of the meeting is properly ascertained with regard to any question before it. But, he can not adjourn the meeting or dispose it at his own choice.

h) The chairman has the right to cast vote as a member. But, he can cast vote in second time also if the rules expressly allow him to do.

i) He is to judiciously exercise his power of adjournment.

8.11 POSTAL BALLOT

The members of a company may be widely dispersed and it may be impossible for all to attend the meetings of the company. But, the company general meeting are required to be held during working hours. Thus, a listed company can pass resolution through postal ballot, where the members can give their consent easily. Under section 192(A)(1), the central Government may also empowers certain companies for passing resolution through postal ballot.

In case of listed companies, notice has to sent to all the members along with draft resolution explaining the reasons of the meeting and requesting them to give their assent within 30 days from the date of posting the notice. But, this notice has to be sent only Under Registered Post Acknowledgement Due or Under Certificate of Posting. In addition to that, an advertisement should be given in a leading English Newspaper and in any one vernacular Newspaper in the locality of the registered office. Thus, if the majority of the members have given their assent for passing the resolution, than it shall be deemed that the resolution has been duly passed at the general meeting.

8.12 RESOLUTION AND ITS DIFFERENT KINDS

Decisions are taken by the company by passing resolution. It is passed and prescribed by the majority of the members present at the meeting. It can be categorized into three types,

a) Ordinary Resolution
b) Special Resolution and
c) Resolution Requiring Special Notice

a) ‘‘Ordinary Resolution’’ means a resolution passed by the members of a company in general meeting by a simple majority of the votes cast in person or by proxy where proxies are allowed.
b) ‘‘Special Resolution’’ means a resolution passed by a majority of not less than 3/4 of the votes cast by those members of a company who, being entitled to do so, vote in person or by proxy where proxies are allowed at a general meeting of the company and, not being less than 21 days’ notice of the meeting specifying the intention to propose the resolution as a special resolution.
c) “Resolution Requiring Special Notice” means under section 190 of the Companies Act, 1956, where by any provision in this Act or in the article, special notice is required of any resolution, notice of the intention to move the resolution shall be given to the company not less than fourteen days before the meeting at which it is moved or deemed to be served and day of the meeting.

Section 192 of the Companies Act states that a copy of each of the following resolutions or agreement must within 30 days after the passing be printed or type written submitted to the Registrar who shall record the same.



LET US KNOW

SPECIMEN OF NOTICE OF ANNUAL GENERAL MEETING

PQR Ltd.

(Regd. Office)

Notice is hereby given that the 10th Annual General Meeting of the Company will be held at its Registered office at ..... At 2.00 P.M on ..... the day of ..... 2008 to transact the following business.

ORDINARY BUSINESS:

1) To receive and adopt the Balance Sheet as at.....and the Profit and Loss Account for the year ended..... And the Directors' and the Auditor's Report thereon.
2) To declare dividend.
3) To appoint director in place of Shri P, who retire by rotation and being eligible offers himself for re-appointment.

SPECIAL BUSINESS:

4) To consider and, if thought fit, to pass with or without modification, the following resolution as a SPECIAL RESOLUTION:
   Resoled that clause 5 of the Memorandum of Association of the Company be and is hereby substituted by the following clause 5:
5) "The Authorised Share Capital of the Company is Rs. 90,00,000 (Rupees ninety lakhs) divided into 30,000 (Thirty thousand) Preference shares of Rs. 100 (Rupees one hundred) each and 6,00,000 (Six lakhs) Equity Shares of Rs. 10 (Rupees ten each)."

By order of the Board of Directors
for PQR Ltd.
Sd/-
COMPANY SECRETARY

Dated :

Place :



LET US KNOW

SPECIMEN MINUTES OF

ANNUAL GENERAL MEETING OF MEMBERS

PQR Ltd.

Minutes of the 10th Annual General Meeting of the Company held at its Registered Office on ....., the date ..... at .....

Present: Mr. …… Chairman
Mr. …… Managing Director
Mr. ……. Director
Mr. ……. Director
Mr. ……. Director
Mr. ……. Director, and

…….. (Number) members present in person, and …… (Number) members represented by Proxies)

Also Present: Mr. ……. Company Secretary
Mr. …….. General Manager (Finance)
Mr. …….Auditor of the Company

1) CHAIRMAN

Pursuant to Article ..... of the Article of Association, the Chairman of the Board of Directors being present took the chair.

2) QUORUM

After satisfying himself that there was adequate quorum, the chairman declared the meeting to be duly constituted and commenced the proceedings.

3) WELCOME

The Chairman welcomed the members for the company‘s Annual General Meeting.

4) REGISTER OF DIRECTORS' SHAREHOLDINGS

The Chairman informed the members that the Register of the Directors' Shareholdings maintained under Section 307 of the act was available at the meeting for inspection by any member till the conclusion of the meeting.

5) NOTICE OF THE MEETING

With the consent of the members, the Chairman said that the notice sent to members calling the Annual General Meeting along with the other documents had been taken as read.

6) CHAIRMAN'S SPEECH

The Chairman addressed the members.

7) REAPPOINTMENT OF MR. .....

The following motion was moved, by Mr. .....

And seconded by Mr. .....

"That Mr. ..... who retires by rotation and who is eligible for reappointment, be and is hereby appointed a director of the Company."

This was put to vote and declared by the Chairman to have been carried.

The meeting terminated with a vote of thanks to the Chair,

Dated..... CHAIRMAN



8.13 LET US SUM UP

In this unit, we have discussed the following:

- Promoters are generally the persons who assume the primary responsibility of matters relating to promotion of a company.
- A company is formed under three stages, as promotion of a company, registration and incorporation of a company and commencement of business.

- The word 'corporation' is derived from the Latin word 'corpus' which means any body or institution enjoying perpetual succession having own separate legal existence.
- A public company can not start its business from the date of the certificate of incorporation. It will have to obtain a further document called as 'certificate to commencement of business'.
- A meeting can be defined as, "coming together of two or more persons face to face so as to be in each others' presence or company".
- The statutory meeting is held only once in the life time of the company.
- Annual general meeting is the meeting under section 166(1) which has to be held annually.
- Due to some urgent or special business purpose, the extraordinary general meeting is held between two consecutive annual general meetings.
- Class meetings are basically held for taking consent of a particular class of shareholders.
- Meetings of the debentureholders are held according to the debenture trust deed to protect the interest of the debentureholders.
- Chairman is the person who has been elected to conduct the proceeding of the meeting.
- Under section 194, all the record of minutes of the different meeting of the company acts as an evidence.



8.14 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.
2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.

3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.
5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



8.15 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Any three aspects that have to decide before a company incorporate and commence its business are—

i) Types of company,
ii) Application for availability of name of company and
iii) Preparation of Memorandum and Article of Association.

Ans. to Q. No. 2: Any three necessary documents that have to file with the Registrar of companies for its incorporation are—

i) The Memorandum of Association
ii) The agreement which the company propose to enter with any individual for appointment as company's managing director, or whole-time directors or manager and
iii) A written consent of such directors to act as director of the company.

Ans. to Q. No. 3: All General meetings other than the statutory meeting and the annual general meeting are called 'Extraordinary General Meeting' (Clause 47 of Table A, Schedule I).

Ans. to Q. No. 4: Three advantages of Minute are:

i) It is an official record of every meeting.
ii) As it keeps record of all decision taken in the prior meeting, it is become an evidence of what new or prior decisions have been adopted or changed.
iii) It helps the member who was absent in the prior meeting, to review and understand the necessity of the meeting.



8.16 MODEL QUESTIONS

Q.1: Define the company. What are the stages of formation of a company?

Q.2: Distinguish–

a) Private Company and Public Company

b) Corporation aggregate and corporation sole

Q.3: When a public limited company can commence its business?

Q.4: What are the various documents to be filled with the Registrar for incorporation of a company?

Q.5: "The 'certificate to commence business' is conclusive evidence in regards to start the businesses.'' Discuss.

Q.6: Define Meeting. What are the different type of meeting?

Q.7: Write short notes on:

a) Statutory Meeting

b) Extraordinary meeting

c) Minute

d) Postal Ballot

e) Role of chairman.

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UNIT 9: REGULATORY FRAMEWORK FOR INSURANCE

UNIT STRUCTURE

9.1 Learning Objectives

9.2 Introduction

9.3 Concept and Importance of Insurance

9.4 Evolution and Development of Insurance in India

9.5 Fundamental Principles of Insurance

9.6 Double Insurance and Re-insurance

9.7 Concept and Importance of Life Insurance

9.8 Concept of Marine Insurance

9.9 Concept and Features of Fire Insurance

9.10 Let Us Sum Up

9.11 Further Reading

9.12 Answers to Check Your Progress

9.13 Model Questions

9.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- discuss the concept and importance of insurance
- explain the evolution and stages of development of insurance in India
- explain the principles of insurance
- discuss the rights of insurer and policy holder
- differentiate between double insurance and reinsurance
- explain the concept and importance of Life, Marine and Fire Insurance.

9.2 INTRODUCTION

In our day to day life we all anticipate and face various kinds of risks. No one can foresee the loss he may suffer in future. He who walks on road,

works in office, fields, shops etc may anticipate variety of risks. Similarly, there can be loss due to floods, earthquakes, disease, fire etc. Every risk may result in loss of one or the other kind. Where ever there is uncertainty to a probable loss of one or of the other kind. If it is small, he may bear it. But if it is large he may not be in a position to bear it at its own. It is possible to take precautions again such events. Hence, it would be wise to adopt a device or plan to provide help to those who suffer a loss. Such a device is 'Insurance' which safeguards the person from various risks which he anticipates.

9.3 CONCEPT AND IMPORTANCE OF INSURANCE

The aim of all kinds of insurance is to provide help to those who happen to suffer a loss. Most of the losses can be identified in terms of money. The risk of loss can not be averted but loss occurred can be distributed among the agreed persons. Insurance is an assurance that if a particular kind of event happens, the insured person will be paid the money. The person who seeks such protection against such a risk is called the 'insured' or 'assured' and who undertakes to protect such person from financial loss or some mishappening is called the 'insurer' or 'assurer or 'underwriter', and the consideration collected by the insurer companies to provide such security is called the 'premium' or 'premia'. The document containing term and conditions of contract is called the 'policy' or 'insurance policy'.

It is the universally accepted phenomenon that what is created will be destroyed. No one can predict or foresee the time of destruction or loss he may suffer in future. Every risk result in loss of one or other kind. The risk cannot be eliminated but loss can be. This desire to protect a person from uncertain loss brings the business of insurance into existence.

The function of insurance is to protect the insured from variety of risks he anticipates by spreading the loss to persons who agreed to co-operate each other at the time of loss by making contributions to the common fund.

Illustration: In a town, there are 500 car owners. Each car can be valued Rs. 3,00,000. Every year 1 car is lost due to theft. If all the 500 car owners agree to come together and each one contribute Rs. 600 annually, the common fund would be Rs. 3,00,000 a year. This would be sufficient to pay Rs. 3,00,000 to the Contributor whose car is lost due to theft. Thus, the risk of one contributor is distributed amongst the 500 contributors of the town.

Definition of Insurance: The definition of insurance can be classified under two categories:

I) *Functional Definitions*: According to Allen C. Mayerson, "Insurance is a device for the transfer of certain risks of economic loss to an insured, that would otherwise be borne by the insured."

As per Disnadle, "Insurance is an instrument of distributing the loss of few among many."

II) *Contractual Definition:* According to E. W. Patterson, "Insuance is a contract by which one party, for a considertion called premium, assumes a particular risk of the other party and promises to pay to him or his nominee a certain or ascertainable sum of amount on a specified contingency."

According to MacLean "Insurance is a method of spreading over a large number of persons a possible financial loss too serious to be conveniently borne by an individual.

There are various Forms of Insurance. Such as—

I) Marine Insurance
II) Fire Insurance
III) Life Insurance and
IV) Miscellaneous Insurance.



CHECK YOUR PROGRESS

Q.1: Define insurance.

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Importance of Insurance: Human beings, his family and properties are always exposed to different kinds of risks. Risk involve the losses. Insurance is a tool which reduces the cost of loss or effect of loss caused by variety of risk. It accumulates funds to meet individual losses. It is not device to prevent unwanted event of happening or cause of loss but protects them against that loss by compensating which is lost. The role and importance of insurance are discussed as follows:

1) *Insurance provides security:* Insurance provides safety and security against the loss on a particular event. Life insurance provides security against death and old age sufferings. Fire insurance protects against loss due to fire while Marine insurance provides protection and safety against loss of ship and cargo. For personal accident and sickness insurance financial protection is given when the individual is unable to earn. In other insurance too, this security is provided against the loss at a given contingency.
2) *Insurance reduces business risk or losses:* In Business, commerce and industry, huge properties are employed. Because of slight negligence, the property may be turned in to ashes. A person may not be sure of his life, health and cannot continue the business up to the longer period to support his dependents. With the help of insurance, he can be sure of his earning, because the insurance company will pay a fixed amount at the time of death, damage by fire, theft, accident and other perils.
3) *Insurance provides peace of mind:* Insurance removes the tensions, fears, anxiety, frustration and weakness of the human mind associated with the future uncertainty. By providing financial support and promise to compensate losses arising out from various risk, it provides peace of mind and stimulates more and better work performance of an individual.
4) *Life insurance encourages saving:* In some specified life insurance policies, the insured has an he expiry of the term of policy. Life insurance encourages the habit of regular and systematic saving through premium and after a certain period, it would be a part of necessary saving of the insured person.

5) *Insurance accelerates the economic growth of the country:* To develop the economic growth of the country, insurance provides strong hand and mind, with protection against loss of property and capital to produce more wealth. It provides protection against different kinds of loss caused by risk. It accumulates the capital from the insured and utilizes for the development of country. Thus, the insurance meets all the requirements for the economic growth of a country.
6) *Insurance provides credit facilities:* The insured person can get loan by pledging insurance policy and the interest will not exceed the cash value of policy charged by insurer. In case of death of insured person, the policy can be utilized for setting of the loan with interest. Business person can take loan on the basis of insurance documents from the bank also.
7) *Insurance helps to reduce inflation:* Inflation created from over supply of money and on less production entities. Insurance can help to reduce the inflationary pressure in two ways. Firstly, it collects money as an amount of premium which controls over supply of money and secondly, it provides sufficient funds for increase production entities. Thus, it reduces the impact of inflation.
8) *Insurance makes security and welfare of employees:* The security and welfare of employees is the responsibility of employer. These security and welfare can easily be met by life insurance, accident and sickness benefit and pension which are generally covered by group insurance. The premium for group insurance is normally bear by the employer. Insurance is the simple method for employer to fulfill their responsibility. Due to these benefits, employees will devote their maximum capacities to complete their job.
9) *Other Importances of Insurance:*
    a) Insurance helps to promote foreign trade providing protection again trade risk.
    b) Insurance increases business efficiency eliminating the loss of damage, destruction, or disappearance of property of goods.

c) Insurance protects the social wealth providing protection against social evil.

d) Development of insurance business helps to solve the evil of unemployment, generating employment opportunity in the country.

e) The insured gets tax benefit in life insurance.



CHECK YOUR PROGRESS

Q.2: State the importance of insurance.

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9.4 EVOLUTION AND DEVELOPMENT OF INSURANCE IN INDIA

The development of insurance sector in India has been phenomenon. The insurance industry has undergone massive change over the last millennium extending to nearly 200 years. There are numerous private and governmental insurance companies in India that offered a diversified product portfolio and excellent services. As a result, many of the insurance companies in India have managed to make their presence into almost every Indian household by one way or the other.

In Indian scenario the roots of Insurance has their origin in the era of Sage Manu (Rishi Manu) and later in Maurya Dynasty in the era of Kautilya (i.e. Chanakya) who has written the rules of Arthshastra (Economics).

"Manav Dharma Shastra" (Laws of Manu) of Manu contained rules for "Sea-Form" contracts which were practised for doing international trade. In Kautilya's Arthshastra one of the chapters has mentioned about the protection of State to the people against any natural calamity, theft or any act of Anti-Social-Elements. In this way India has the origin of Insurance thousands of years back and later it has evolved in present codified form in the Influence of English Rule which was prevailing all over the world at one point of time.

To understand the Development of Insurance in India we have to look into the development of Insurance Laws in India. Since it's a necessity and compulsion on Business doers to evolve-conceptualize-amend their policies/strategies in accordance with the Laws of the Land to do hassle-free business.

The Indian Insurance Scenario has changed gradually in the following manner:

1938 – This is the year when a comprehensive Act called The Insurance Act, 1938 has been introduced.

1939 – In this year the Insurance Rules were framed for effectuating the Insurance Act.

1956 – This year has witnessed a huge change in the Indian Insurance Sector since the Government of India took over all life insurance companies.

1968 – In 1968 The Insurance Act, 1938 was amended to provide for social control, minimum solvency margin and a Tariff Advisory Committee (TAC) has also been established.

1972 – This year witnessed the Nationalization of General Insurance Companies and for this General Insurance Business (Nationalization) Act, 1972 was passed.

1973 – The General Insurance Corporation of India (GIC) came into existence as a Government Company.

1974 – A year later 107 insurers practising General Insurance business were grouped and merged to form four subsidiaries of GICs namely – National Insurance Co. Ltd., The New India

Assurance Co. Ltd., The Oriental Insurance Co. Ltd. and United India Insurance Co. Ltd.

1991 – The Public Liability Insurance Act 1991 and Public Liability Insurance Rules 1991 were introduced as another milestone in the series of Public Welfare Laws in India.1994 – The Malhotra Committee submitted its report in January 1994 (set up by Govt. in 1993 under Chairmanship of Shri R.N. Malhotra, former Governor of RBI, to examine potential reforms that could be undertaken in the insurance sector and complement them with reforms initiated in the other sectors) submitted its report in January 1994 and recommended establishment of a strong and effective insurance regulatory authority.

1998 – Insurance Ombudsman Redressal of Public Grievances Rules, 1998 were issued to provide Consumers a Forum with minimal formalities to get their grievances resolved.

1999 – This year has the great relevance in the history of Indian Insurance Sector because of establishment of the Insurance Regulatory and Development Authority (IRDA) to regulate, promote and ensure orderly growth of the insurance and reinsurance business in India on the basis of Malhotra Committee Report.

2001 – The year of 2001 brought another transformation in the Insurance Business of India because in addition to the existing Government insurance companies, Private Sector Companies were also licensed by IRDA to conduct general insurance business in India.

2002 – An important amendment was made in General Insurance Business (Nationalization) Amendment Act, 2002 by which the subsidiaries of GIC were restructured as independent companies and GIC was converted into National Re-insurer.

2003 – This year witnessed the introduction of Broker for first time in Indian Insurance Market to boost up the business in more widened manner.

2015 – The Insurance Laws (Amendment) Act, 2015 was passed to increase the Ceiling of FDI from 26% to 49% and in this manner the Insurance Business in India has been widely opened for Foreign Giants of Insurance.

9.5 THE FUNDAMENTAL PRINCIPLES OF INSURANCE

i) Principle of Utmost Good Faith:

A contract of insurance is based on the principle of utmost good faith to be observed by both the parties – the insured and the insurance company – towards each other. If one party conceals any material information from the other party, which may influence the other party's decision to enter into the contact of insurance; the other party can avoid the contract.

The principle of utmost good faith is equally applicable to both the parties. However, the onus (i.e. burden) of making a full and fair disclosure of all material facts usually rests primarily upon the insured; because the insured is supposed to have an intimate knowledge of the subject-matter of insurance.

The duty of disclosing material facts is not a continuing obligation i .e. the insured is under no obligation to disclose any material fact which comes to his knowledge after the conclusion of the contract of insurance.

ii) The Principle of Indemnity:

Except life insurance, all other contracts of insurance are contacts of indemnity; which means that in the event of the loss caused to the subject matter of insurance, the insured can recovery only the actual amount of loss-subject to a maximum of sum assured.

Suppose A insured his house against fire with an insurance company for Rs. 1, 00,000. The loss caused to the house due to fire is Rs. 80, 000 only. A can recovery only Rs.80, 000 from the insurance company.

iii) Principle of Insurable Interest:

The principle of insurable interest is the foundation of a contract of insurance. In the absence of insurable interest, the contract of insurance is a mere gamble and not enforceable in a court of law.

Insurable interest may be defined as follows:

A person is said to have insurable interest in the subject matter of insurance; when with respect to the subject matter he is so situated that he will benefit from its existence and lose from its destruction.

Insurable interest must exist in life, fire and marine insurances, as per the following rules:

1) In case of life insurance; insurable interest must exist at the time of making the contract.
2) In case of fire insurance; insurable interest must exist both at the time of making the contract and also at the time of loss.
3) In case of marine insurance; insurable interest must exist, at the time of loss.

iv) Principle of Contribution:

The principle of contribution applies in cases of double-insurance. In case of double insurance, each insurer will contribute to the total payment in proportion to the amount assured by each. In case, one insurer has paid the full amount of loss; he can claim proportionate contribution from other insurers.

Suppose, A insures his house against fire with two insurance companies, X and Y, for Rs. 40, 000 and Rs. 80, 000 respectively. If the houses catches fire and the actual loss amount to Rs. 48, 000, then

X will pay Rs. 16,000 to A

And Y will pay Rs. 32, 000 to a

i.e. the loss of Rs. 48,000 is divided between X and Y in the ratio of 40,000: 80,000 or 1:2.

If X pays the whole loss of Rs. 48,000 to A; it can recover Rs. 32,000 from Y. And if Y pays Rs. 48,000 to A; it can recover Rs. 16,000 from X.

The principle of contribution does not apply to life insurance; where each insurer will pay the full amount of policy to the insured; because life insurance is a sort of investment and life insurance contract is not a contract of indemnity.

v) *Principle of Subrogation:*

According to the principle of subrogation, after the insurance company has compensated for the loss caused to the insured; the insurance company steps into the shoes of the insured i.e. the insurance company acquires all the rights of the insured, in respect of the damaged property.

Suppose A insures his house for Rs. 2,00,000 against fire. The house is fully damaged by fire and the insurance company pays Rs. 2,00,000 to A. Later on, the damaged house is sold for Rs. 25,000. The insurance company is entitled to receive this sum of Rs. 25,000. Suppose further, it is found that someone tried to put the house on fire.

The insurance company can take action against that person also; ecause the insurance company acquires all the rights and remedies available to the insured i.e. Mr. A.

Implications of the principle of subrogation are:

1) The insurance company gets the rights of the insured, only after compensating for the loss caused to the insured.
2) This principle does not apply to life insurance.

vi) *Principle of Cause Proxima (i.e. the Proximate Cause):*

According to this principle, we find out the proximate cause or the nearest cause of loss to the insured property. If the nearest cause of loss is a factor which is insured against; then only the insurance company is liable to compensate for the loss, otherwise not. This principle is significant in cases when the loss is caused by a series of events.

Suppose X has taken a marine insurance policy against loss or damage to goods caused by sea water. During the voyage rats made a hole in the bottom of the ship, through which sea water seeped into the ship and caused damaged to the goods.

Here, the insurance company is liable to compensate for loss caused to goods; because the proximate cause of loss is sea-water against which insurance is affected. Making of a hole in the bottom of the ship by rats is only the remote cause of loss.

vii) *Principle of Mitigation of Loss:*

(Mitigation means making something less harmful). According to the principle of mitigation of loss, it is the duty of the insured to take all possible steps to minimize the loss caused to the property covered by the insurance policy. He should behave as a prudent person and must not become careless after taking the insurance policy.

Suppose a house is insured against fire and a fire breaks out. The owner must immediately inform the Fire Brigade department and do each and every thing to extinguish fire; as if the house were not insured. That is, he must make all efforts to minimize the loss caused by fire.



CHECK YOUR PROGRESS

Q.3: State the Principle of Utmost Good Faith.

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Q.4: State the Principle of Indemnity.

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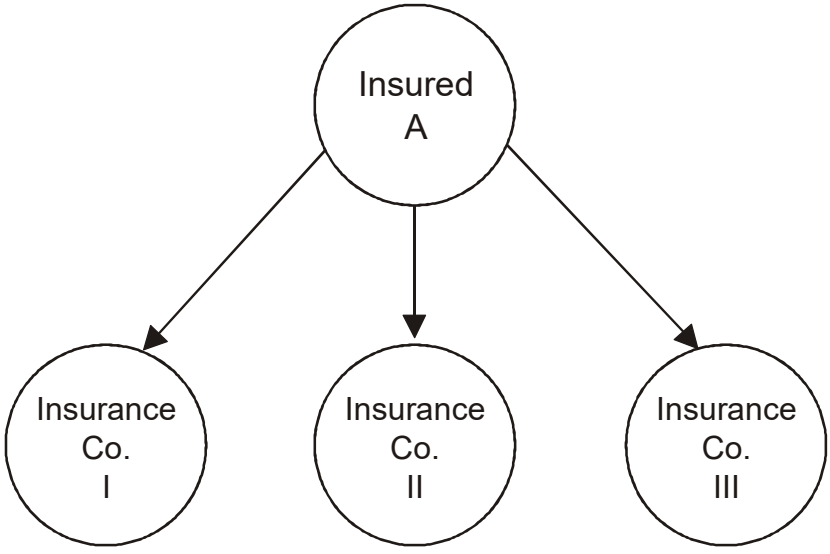
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9.6 DOUBLE INSURANCE AND RE-INSURANCE

It is quite possible for a person to take more than one insurance policy to cover the same risk. This is known as double insurance.



In the case depicted above, Mr. A, the insured has taken three insurance policies for the same subject matter of risk, with three insurance companies– I, II & III.

The implications of double insurance are:

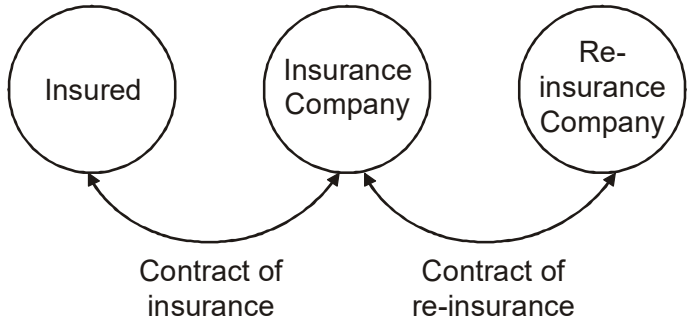
a) In Case of Life Insurance: In case of life insurance, the insured or his dependents can claim the full amount of policy from each insurance company. This is so because life insurance is a sort of investment; and a person can take any number of insurance policies on his life and claim full amount under each policy.

b) In Case of Other Types of Insurances: In case of fire or marine insurance, the insured cannot recover more than the amount of actual loss from al insurance companies, taken together; because he is not allowed to make any profit out of the transaction of insurance.

Suppose Mr. A insures his house against fire from three insurance companies– I, II & III for Rs. 50,000, 1,00,000 and 1,50,000 respectively. His house is destroyed by fire entailing a loss of Rs. 60,000. He can claim in all Rs. 60,000 the actual amount of loss in the ratio of 1:2:3 i.e. Rs. 10,000, Rs. 20,000 and Rs. 30,000 from insurance companies I, II and III respectively.

If he claims the full amount of loss i.e. Rs. 60,000 from Insurance Co. II then insurance company II can claim proportionate contribution from Insurance Co. I and III i.e. Rs. 10,000 from Co. I and Rs. 30,000 from Co. III.

Re-insurance: When an insurance company finds that the risk it has undertaken is too heavy for it; it may get itself insured with some other insurance company. This is called re-insurance.



In this case, there are two contracts of insurance:

i) One between the insured and the insurance company called the contact of insurance.

ii) The other between the insurance company and the re-insurance company called the contact of re-insurance.

The implications of re-insurance are:

1) The insured has no relationship with the re-insurance company. He can claim loss only from the insurance company, with whom he has entered into a contract of insurance.

2) The insurance company can claim loss (paid by it to the insured) from the re-insurance company.

Differences between Double Insurance and Reinsurance:

The concept of double insurance differs from the concept of reinsurance in the following respects:

a) MEANING: The reinsurance business is entered into by the original insurer with the other insurers. But in double insurance, the insured gets the same subject matter insured with more than one insurer or under more than one policy with the same insurer.

b) FILLING CLAIM: In reinsurance, the insured cannot claim any part of the loss from the reinsurer. But in the double insurance, the insured

can claim the actual loss from each of the insurers up to the amount insured with them.

c) CONTRIBUTION: In reinsurance, the reinsured will claim a part of the loss proportionate to the risk reinsured by the him with the reinsurers. But in double insurance, each insurer is liable to contribute on pro-rata basis towards the loss suffered by the insured.



CHECK YOUR PROGRESS

Q.5: What is reinsurance?

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Q.6: State two points of different between reinsurance and double insurance.

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9.7 CONCEPT AND IMPORTANCE OF LIFE INSURANCE

A life insurance policy is a contract with an insurance company. In exchange for premium payments, the insurance company provides a lump-sum payment, known as a death benefit, to beneficiaries upon the insured's death.

There is currently no statutory definition of life insurance. The Supreme Court of India held that although there is no statutory definition of Life insurance but it has been defined as a contract of Insurance whereby he insured agrees to pay certain sums, called premiums, at specified times, and in consideration thereof the insurer agrees to pay certain sums of money

on certain conditions and in specified way, upon happening of a particular event contingent upon the duration of human life.

In Dalby v. India and London life Assurance Co., the definition of life insurance is well explained as, “a contract to pay a certain sum of money on the death of a person in considering of the due payment of a certain annuity for his life calculated according to the probable duration of life.”

In Joseph v. Law Integrity Insurance Co., it was observed by Bunyon J., that, “A contract of life insurance may further be defined to be that in which one party agrees to pay a given sum of money upon the happening of a particular event contingent upon the duration of human life in consideration of immediated payment of a smaller sum or other equivalent periodical payment by the other.”

Nature and Scope of Life Insurance: It is impossible for a human being to foretell or prevent many serious hazards such as fire, disability and premature death etc. It is the function of insurance in its numerous forms to enable individuals to safeguard themselves against such misfortunes by spreading the loss to persons who agreed to co-operate each other at the time of loss by making contributions to the common fund.

Life insurance policy is required to protect against losses in death. Life insurance is a contract whereby for a stipulated compensation, called the premium, one party (the insurer) agrees to pay the other (the insured), or his beneficiary, a fixed sum upon the happening of death or some other specified event.

Although the basic nature of life insurance is to provide risk coverage, when the contract period extends over a long time, premium payments serves two- fold purposes-the immediate or short-range and the remote or long-range. The immediate purpose is served by paying a definite sum or amount at damage or death of the insured.

So, question may arise that, if the time of the death is non-speculative, isn’t the nature of life insurance amounts to gambling ? The justified answer can be-nothing is more uncertain than life and life insurance policy offers the sure method of changing the uncertainty into certainty. So, we can say that insurance is just opposite of gambling. In the gambling, a

person exposes himself to the risk, the risk of losing whereas in the insurance, the insured is always opposed to risk.

The second query that may come is whether the nature of life insurance is a charity or not. The answer is no, as the charity is given without consideration whereas in life insurance, consideration is given in the form of a contribution called the 'premium'.

9.8 CONCEPT OF MARINE INSURANCE

The basic principle of a contract of marine insurance is that the indemnity recoverable from the insurer is the pecuniary loss suffered by the insured under the contract in a manner and to the interest thereby agreed.

Section 3 of the Marine Insurance Act, 1963 gives a very comprehensive definition of "marine insurance" as: "A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure."

Types of Marine insurance Policies: There are various types of marine insurance policies which are offered to the clients by insurance companies so as to provide the clients with flexibility while choosing a marine insurance policy. The availability of a wide variety of marine insurance policies gives a client a wide arena to choose from, thus enabling him to get the best deal for his ship and cargo. The different types of marine insurance policies are detailed below :

i) **Voyage and Time Policy:** A voyage policy is that kind of marine insurance policy which is valid for a particular voyage irrespective of the time involved in it. In this case the risk attaches only when the ship starts on the voyage and terminates at the port of destination. It is mandatory to describe accurately in the voyage policy about the voyage risk insured, i.e., the limits of risk. It is generally done by specifying the port where the voyage is to commence (terminus quo) and the port where the voyage is concluded (terminus ad quem).

When the contract is to insure the subject matter for a definite period of time, the policy is called a time policy. A contract for both

voyage and time may be included in the same policy. A time policy which is made for any time exceeding twelve months is invalid.

ii) **Mixed Policy:** A marine insurance policy which offers a client the benefit of both time and voyage policy is recognised as a mixed policy.

iii) **Valued Policy:** In this type of policy, the value of the cargo and consignment is ascertained and is mentioned in the Policy document beforehand thus making clear about the value of the reimbursements in case of any loss to the cargo and consignment. The value is to be determined according to the rules provided in Section 18 of The Marine Insurance Act, 1963.

iv) **Un-Valued Policy:** In this type of marine insurance policy, the value of the cargo and consignment is not put down in the policy beforehand. Therefore, reimbursement is done only after the loss to the cargo and consignment is inspected and valued. In mordern practice, these policies are rarely in existence.

v) **Port Risk Policy:** This kind of marine insurance policy is taken out in order to ensure the safety of the ship while it is stationed in a port.

vi) **Wagering Policy:** A wagering policy is one where there are no fixed terms of reimbursement mentioned. If the insurance company finds the damage worth the claim then the reimbursement are provided, else there is no compensation offered.

vii) **Floating Policy:** A marine insurance Policy where only the amount of claim is pecified and all other details are omitted till the time the ship embarks on its journey, is known as floating policy.



CHECK YOUR PROGRESS

Q.7: Define marine insurance.

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9.9 CONCEPT AND FEATURES OF FIRE INSURANCE

Fire insurance means insurance against any loss caused by fire. Section 2(6A) of the Insurance Act defines fire insurance as follows: "Fire insurance business means the business of effecting, otherwise than incidentally to some other class of business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policies."

What is 'Fire'?

The term fire in a Fire Insurance Policy is interpreted in the literal and popular sense. There is fire when something burns. In English cases it has been held that there is no fire unless there is ignition. *Stanley v. Western Insurance Co*. Fire produces heat and light but either o them alone is not fire. Lighting is not fire. But if lighting ignites something, the damage may be covered by a fire-policy. The same is the case with electricity.

Characteristics of Fire Insurance:

- Fire insurance is a *contract of indemnity*. The insurer is liable only to the extent of the actual loss suffered. If there is no loss there is no liability even if there is a fire.
- Fire insurance is a contract of good faith. The policy-holder and the insurer must disclose all the material facts known to them.
- Fire insurance policy is usually made for one year only. The policy can be renewed according to the terms of the policy.
- The contract of insurance is embodied in a policy called the fire policy. Such policies usually cover specific properties for a specified period.
- A fire policy is valid only if the policy-holder has an insurable interest in the property covered. Such interest must exist at the time when the loss occurs. In English cases it has been held that the following persons have insurable interest for the purposes of fire insurance-owner; tenants, bailees, including carriers; mortgages and charge-holders.
- In case of several policies for the same property, each insurer is entitled to contribution from the others. After a loss occurs and

payment is made, the insurer is subrogated to the rights and interests of the policy-holder. An insurer can reinsure a part of the risk.

- Fire policies cover losses caused proximately by fire. The term loss by fire is interpreted liberally. Example: A women hid her jewellery under the coal in her fireplace. Later on she forgot about the jewellery and lit the fire. The jewellery was damaged. Held, she could recover under the fire policy.
- Nothing can be recovered under a fire policy if the fire is caused by a *deliberate act* of policy-holder. In such cases the policy-holder is liable to criminal prosecution.
- Fire policies generally contain a condition that the insurer will not be liable if the fire is caused by riot, civil disturbances, war and explosions. In the absence of any specific expectation the insurer is liable for all losses caused by fire, whatever may be the causes of the fire.
- Assignment: According to English law a policy of fire insurance can be assigned only with the consent of the insurer. In India such consent is not necessary and the policy can be assigned as a chose-in-action under the Transfer of Property Act. The insurer is bound when notice is given to him. But the assignee cannot recover damages unless he has an insurable interest in the property at the time when the loss occurs. A stranger cannot sue on a fire policy.
- **Payment of Claims:** Fire policies generally contain a clause providing that upon the occurrence of fire the insurer shall be immediately notified so that the insurer can take steps to salvage the remainder of the property and can also determine the extent of the loss. Insurance companies keep experts on their staff of value the loss. If in a policy there is an international over valuation of the property by the policy-holder, the policy may be avoided on the ground of fraud.



CHECK YOUR PROGRESS

Q.8: State two characteristics of fire insurance.

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9.10 LET US SUM UP

In this unit, we have discussed the following aspects:

- The aim of all kinds of insurance is to provide help to those who happen to suffer a loss.
- In a contract of insurance, there are mainly two parties- 'insured' – who seeks the protection against a risk and 'insurer' - who undertakes to protect such person from financial loss on some mishappening.
- The consideration collected by the insurer to provide security is called the 'premium'. The document containing terms and conditions of the contract is called the 'insurance policy'.
- Insurance is important as it provides security, reduces business risk or losses, it accelerates the economic growth of the country etc.
- Insurance is based on certain principles like, Principle of Utmost Good Faith, The Principle of Indemnity, Principle of Insurable Interest, Principle of Contribution, Principle of Subrogation, Principle of Cause Proxima, Principle of Mitigation of Loss.
- The differences between reinsurance and double insurance.
- The importance of life, marine and fire insurance.



9.11 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.
2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.
5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



9.12 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Insurance is to protect the insured from variety of risks he anticipates by spreading the loss to persons who agreed to co-operate each other at the time of loss by making contributions to the common fund.

Ans. to Q. No. 2: a) Insurance provides security: Insurance provides safety and security against the loss on a particular event. Life insurance provides security against death and old age sufferings. Fire insurance protects against loss due to fire while Marine insurance provides protection and safety against loss of ship and cargo.

b) Insurance reduces business risk or losses: In Business, commerce and industry, huge properties are employed. Because of slight negligence, the property may be turned in to ashes. A person may not be sure of his life, health and cannot continue the business up to the longer period to support his dependents.

By the help of insurance, he can be sure of his earning, because the insurance company will pay a fixed amount at the time of death, damage by fire, theft, accident and other perils.

Ans. to Q. No. 3: A contract of insurance is based on the principle of utmost good faith to be observed by both the parties – the insured and the insurance company – towards each other. If one party conceals any material information from the other party, which may influence the other party's decision to enter into the contact of insurance; the other party can avoid the contract.

The principle of utmost good faith is equally applicable to both the parties. However, the onus (i.e. burden) of making a full and fair disclosure of all material facts usually rests primarily upon the insured; because the insured is supposed to have an intimate knowledge of the subject-matter of insurance.

Ans. to Q. No. 4: Except life insurance, all other contracts of insurance are contacts of indemnity; which means that in the event of the loss caused to the subject matter of insurance, the insured can recover only the actual amount of loss-subject to a maximum of sum assured.

Ans. to Q. No. 5: When an insurance company finds that the risk it has undertaken is too heavy for it; it may get itself insured with some other insurance company. This is called re-insurance.

Ans. to Q. No. 6: The reinsurance business is entered into by the original insurer with the other insurers. In double insurance, the insured gets the same subject matter insured with more than one insurer or under more than one policy with the same insurer.

In reinsurance, the insured cannot claim any part of the loss from the reinsurer. In double insurance, the insured can claims the actual loss from each of the insurers up to the amount insured with them.

Ans. to Q. No. 7: According to Section 3 of the Marine Insurance Act, 1963 Marine insurance is "A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure."

Ans. to Q. No. 8: a) Fire insurance is a *contract of indemnity*. The insurer is liable only to the extent of the actual loss suffered. If there is no loss there is no liability even if there is a fire.

b) Fire insurance is a contract of good faith. The policy-holder and the insurer must disclose all the material facts known to them.



9.13 MODEL QUESTIONS

Q.1: Define insurance.

Q.2: Discuss the importance of insurance.

Q.3: Discuss the principles of insurance.

Q.4: Discuss the importance of life insurance.

Q.5: Differentiate between double insurance and reinsurance.

Q.6: Discuss the characteristics of fire insurance.

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UNIT 10: FOOD SAFETY AND STANDARDS (PACKAGING AND LABELLING) REGULATIONS, 2011

UNIT STRUCTURE

10.1 Learning Objectives

10.2 Introduction

10.3 Short title and Commencement

10.4 Definitions under the Act

10.5 Product Specific Requirements

10.6 Labelling

- 10.6.1 General Requirements of Labelling
- 10.6.2 Labelling of Pre-packaged Foods

10.7 Manner of Declaration

- 10.7.1 General Conditions
- 10.7.2 Principal Display Panel

10.8 Specific Requirements / Restrictions on Manner of Labelling

- 10.8.1 Labelling of Infant Milk Substitute and Infant Food
- 10.8.2 Labelling of Edible Oils and Fats
- 10.8.3 Labelling of Permitted Food Colours

10.9 Specific Restrictions on Product Labels

10.10 Exemptions from Labelling Requirements

10.11 Let Us Sum Up

10.12 Further Reading

10.13 Answers to Check Your Progress

10.14 Model Questions

10.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- discuss the various terms used in the Act
- discuss about rules with regards to packaging
- explain the various requirements in the labels of the packages

- describe the different ways of labeling different categories of food products
- explain the different restrictions on product labels.

10.2 INTRODUCTION

The link between food packaging and consumer protection is of high significance. A package is a vehicle of safety and achieves the objective of delivering safe, wholesome, nutritious food to the consumer. To safeguard the interests of the consumer and the society at large, Packaging Laws and Regulations have been introduced by the Government. The Indian Regulatory System falls under the category of compulsory legislations formulated by the various ministries and voluntary standards framed by various organizations to serve the country.

10.3 SHORT TITLE AND COMMENCEMENT

These regulations may be called the Food Safety and Standards (Packaging and labelling) Regulations, 2011. These regulations shall come into force on or after 5th August, 2011.

10.4 DEFINITIONS UNDER THE ACT

In these regulations unless the context otherwise requires:

1) "**Best before**" means the date which signifies the end of the period under any stated storage conditions during which the food shall remain fully marketable and shall retain any specific qualities for which tacit or express claims have been made and beyond that date, the food may still be perfectly safe to consume, though its quality may have diminished. However the food shall not be sold if at any stage the product becomes unsafe.
2) "**Date of manufacture**" means the date on which the food becomes the product as described;
3) "**Date of packaging**" means the date on which the food is placed in the immediate container in which it will be ultimately sold;

4) "**Infant**" means a child not more than twelve months of age;

5) "**Lot number**" or "**code number**" or "**batch number**" means the number either in numericals or alphabets or in combination thereof, representing the lot number or code number or batch number, being preceded by the words "Lot No" or "Lot" or "code number" or "Code" or Batch No" or "Batch" or any distinguishing prefix by which the food can be traced in manufacture and identified in distribution.

6) "**Multipiece package**" means a package containing two or more individually packaged or labelled pieces of the same commodity of identical quantity, intended for retail either in individual pieces or packages as a whole.

7) "**Non-Vegetarian Food**" means an article of food which contains whole or part of any animal including birds, fresh water or marine animals or eggs or products of any animal origin, but excluding milk or milk products, as an ingredient;

8) "**Prepackaged**" or "**Pre-packed Food**", means food, which is placed in a package of any nature, in such a manner that the contents cannot be changed without tampering it and which is ready for sale to the consumer.

Note: The expression "package" wherever it occurs in these Regulations, shall be construed as package containing pre-packed food articles.

9) "**Principal Display Panel**" means that part of the container/package which is intended or likely to be displayed or presented or shown or examined by the customer under normal and customary conditions of display, sale or purchase of the commodity contained therein.

10) "**Wholesale Package**" means a package containing —

a) a number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to an intermediary and is not intended for sale direct to a single consumer; or

b) a commodity of food sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity of food to the consumer in smaller quantities.

10.5 PRODUCT SPECIFIC REQUIREMENTS

1) Packaging Requirements for Milk and Milk Products:

a) Bottling or filling of containers with heat-treated milk and milk product shall be carried out mechanically and the sealing of the containers shall be carried out automatically.

b) Wrapping or packaging may not be re-used for dairy products, except where the containers are of a type which may be re-used after thorough cleaning and disinfecting.

c) Sealing shall be carried out in the establishment in which the last heat-treatment of drinking milk or liquid milk-base products has been carried out, immediately after filling, by means of a sealing device which ensures that the milk is protected from any adverse effects of external origin on its characteristic. The sealing device shall be so designed that once the container has been opened, the evidence of opening remains clear and easy to check.

d) Immediately after packaging, the dairy products shall be placed in the rooms provided for storage.

2) Packaging Requirements for Fruits and Vegetables Products:

i) Every container in which any fruit product is packed shall be so sealed that it cannot be opened without destroying the licensing number and the special identification mark of the manufacture to be displayed on the top or neck of the bottle.

ii) For Canned fruits, juices and vegetables, sanitary top cans made up of suitable kind of tin plates shall be used.

iii) For Bottled fruits, juices and vegetables, only bottles/ jars capable of giving hermetic seal shall be used.

iv) Juices, squashes, crush, cordials, syrups, barley waters and other beverages shall be packed in clean bottles securely sealed. These products when frozen and sold in the form of ice shall be packed in suitable cartons. Juices and Pulps may be packed in wooden barrels when sulphited.

v) For packing Preserves, Jams, Jellies, and Marmalades, new cans, clean jars, new canisters, bottles, chinaware jars, aluminium containers may be used and it shall be securely sealed.

vi) For Pickles, clean bottles, jars, wooden casks, tin containers covered from inside with polythene lining of 250 gauge or suitable lacquered cans shall be used.

vii) For Tomato Ketchups and Sauces, clean bottles shall be used. If acidity does not exceed 0.5% as acetic acid, open top sanitary cans may also be used.

viii) Candied fruits and peels and dried fruits and vegetables can be packed in paper bags, cardboard or wooden boxes, new tins, bottles, jars, aluminium and other suitable approved containers.

ix) Fruits and Vegetable products can also be packed in aseptic and flexible packaging material having good grade quality conforming to the standards laid down by BIS.

3) Packaging Requirements for Canned Meat Products:

i) New sanitary top cans made from suitable kind of tin plate shall be used. The cans shall be lacquered internally; they shall be sealed hermetically after filling. The lacquer used shall be sulphur resistant and shall not be soluble in fat or brine.

ii) Cans used for filling pork luncheon meat shall be coated internally with edible gelatin, lard or lined with vegetable parchment paper before being filled.

iii) Meat products packed in hermetically sealed containers shall be processed to withstand spoilage under commercial conditions of storage and transport.

4) Packaging Requirements for Drinking Water (Both Packaged and Mineral Water): It shall be packed in clean, hygienic, colourless, transparent and tamperproof bottles/containers made of polyethylene (PE) (conforming to IS : 10146 or polyvinyl chloride (PVC) conforming to IS : 10151 or polyalkylene terephthalate (PET and PBT) conforming to IS : 12252 or polypropylene conforming to IS : 10910 or foodgrade polycarbonate or sterile glass bottles suitable for preventing possible adulteration or contamination of the water.



CHECK YOUR PROGRESS

Q.1: Define Principal Display Panel.

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Q.2: Mention the packaging requirements for Drinking Water.

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10.6 LABELLING

10.6.1 General Requirements of Labelling

1) Every prepackaged food shall carry a label containing information as required here under unless otherwise provided, namely,—
2) The particulars of declaration required under these Regulations to be specified on the label shall be in English or Hindi in Devnagri script: Provided that nothing herein contained shall prevent the use of any other language in addition to the language required under this regulation.
3) Pre-packaged food shall not be described or presented on any label or in any labelling manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect;
4) Label in pre-packaged foods shall be applied in such a manner that they will not become separated from the container;

5) Contents on the label shall be clear, prominent, indelible and readily legible by the consumer under normal conditions of purchase and use;
6) Where the container is covered by a wrapper, the wrapper shall carry the necessary information or the label on the container shall be readily legible through the outer wrapper and not obscured by it;

10.6.2 Labelling of Pre-packaged Foods

In addition to the General Labelling requirements, every package of food shall carry the following information on the label, namely—

1) The Name of Food: The name of the food shall include trade name or description of food contained in the package.

2) List of Ingredients: Except for single ingredient foods, a list of ingredients shall be declared on the label in the following manner:

a) The list of ingredients shall contain an appropriate title, such as the term “Ingredients”;

b) The name of Ingredients used in the product shall be listed in descending order of their composition by weight or volume, as the case may be, at the time of its manufacture;

c) A specific name shall be used for ingredients in the list of Ingredients;

d) Where an ingredient itself is the product of two or more ingredients, such a compound ingredients shall be declared in the list of ingredients, and shall be accompanied by a list, in brackets, of its ingredients in descending order of weight or volume, as the case may be :

Provided that where a compound ingredient, constitutes less than five percent of the food, the list of ingredients of the compound ingredient, other than food additive, need not to be declared;

e) Added water shall be declared in the list of ingredients except in cases where water forms part of an ingredient, such as, brine, syrup or broth, used in the compound food and so declared in the list of ingredients:

Provided that water or other volatile ingredients evaporated in the course of manufacture need not be declared; Provided further that in the case of dehydrated or condensed food, which are intended to be reconstituted by addition of water, the ingredients in such reconstituted food shall be declared in descending order of weight or volume as the case may be, and shall contain a statement such as "Ingredients of the product when prepared in accordance with the directions on the label";

f) Every package of food sold as a mixture or combination shall disclose the percentage of the ingredient used at the time of the manufacture of the food (including compound ingredients or categories of ingredients), if such ingredient–

i) is emphasised as present on the label through words or pictures or graphics; or

ii) is not within the name of the food but, is essential to characterise the food and is expected to be present in the food by consumers, and if the omission of the quantitative ingredient declaration will mislead or deceive the consumer.

Provided that where the ingredient has been used as flavouring agent, the disclosure of such ingredient is not required:

Provided further that where the drained net weight is indicated on the label as required or in case of such food products where specific provisions are stipulated under these Regulations or where a pictorial representation of a serving suggestion is made for consumer information and use, the disclosure of such ingredient is not required.

Provided further that in case of any bottle containing liquid milk or liquid beverage having milk as an ingredient, soft drink, carbonated water or ready-to-serve fruit beverages, the declarations with regard to addition of fruit pulp and fruit juice shall invariably appear on the body of the bottle.

3) **Nutritional Information:** Nutritional Information or nutritional facts per 100 gm or 100ml or per serving of the product shall be given on the label containing the following :

i) energy value in kcal;

ii) the amounts of protein, carbohydrate (specify quantity of sugar) and fat in gram (g) or ml;

iii) the amount of any other nutrient for which a nutrition or health claim is made:

Provided that where a claim is made regarding the amount or type of fatty acids or the amount of cholesterol, the amount of saturated fatty acids, monounsaturated fatty acids and polyunsaturated fatty acids in gram (g) and cholesterol in milligram (mg) shall be declared, and the amount of trans fatty acid in gram (g) shall be declared in addition to the other requirement stipulated above;

iv) Wherever, numerical information on vitamins and minerals is declared, it shall be expressed in metric units;

v) Where the nutrition declaration is made per serving, the amount in gram (g) or milliliter (ml) shall be included for reference beside the serving measure;

Provided that the food claimed to be enriched with nutrients, such as, minerals, proteins, vitamins, metals or their compounds, amino acids or enzymes shall give the quantities of such added nutrients on the label. Provided that—

i) the nutritional information may not be necessary, in case of foods such as raw agricultural commodities, like, wheat, rice, cereals, spices, spice mixes, herbs, condiments, table salt, sugar, jaggery, or non-nutritive products, like, soluble tea,

coffee, soluble coffee, coffee-chicory mixture, packaged drinking water, packaged mineral water, alcoholic beverages or fruit and vegetables, processed and pre- packaged assorted vegetables, fruits, vegetables and products that comprise of single ingredient, pickles, papad, or foods served for immediate consumption such as served in hospitals, hotels or by food services vendors or *halwais,* or food shipped in bulk which is not for sale in that form to consumers.

ii) The compliance to quantity of declared nutrients on the label shall be according to the established practices.

Explanation– For the purpose of this provision, at the time of analysis, due consideration, based on shelf-life, storage, and inherent nature of the food shall be kept in view in case of quantity declared nutrients;

iii) The food, in which hydrogenated vegetable fats or bakery shortening is used shall declare on the label that 'hydrogenated vegetable fats or bakery shortening used- contains trans fats; Provided further that, a health claim of 'trans fat free' may be made in cases where the trans fat is less than 0.2 gm per serving of food and the claim 'saturated fat free' may be made in cases where the saturated fat does not exceed 0.1 gm per 100 gm or 100 ml of food.

4) Declaration regarding Veg or Non-Veg:

i) Every package of "Non Vegetarian" food shall bear a declaration to this effect made by a symbol and colour code as stipulated below to indicate that the product is Non-Vegetarian Food. The symbol shall consist of a brown colour filled circle having a diameter not less than the minimum size specified in the Table mentioned in the regulation.

ii) Where any article of food contains egg only as Non-Vegetarian ingredient, the manufacturer, or packer or seller may give declaration to this effect in addition to the said symbol.

iii) Every package of Vegetarian Food shall bear a declaration to this effect by a symbol and colour code as stipulated below for this purpose to indicate that the product is Vegetarian Food. The symbol shall consist of a green colour filled circle, having a diameter not less than the minimum size specified in the Table below, inside the square with green outline having size double the diameter of the circle.

iv) Size of the logo:

Sl. No.	Area of principal display panel	Minimum size of diameters in mm
1	Up to 100 cms. Square.	3
2	Above 100 cms. Square up to 500 cms square.	4
3	Above 500 cms square up to 2500 cms square.	6
4	Above 2500 cms. Square.	8

The symbol shall be prominently displayed:

i) on the package having contrast background on principal display panel;

ii) just close in proximity to the name or brand name of the product;

iii) on the labels, containers, pamphlets, leaflets, advertisements in any media;

Provided also that the provisions of regulation regarding veg. or non-veg. item shall not apply in respect of mineral water or packaged drinking water or carbonated water or alcoholic drinks, or liquid milk and milk powders.

5) Declaration Regarding Food Additives: For food additives falling in the respective classes and appearing in lists of food additives permitted for use in foods generally, the following class titles shall be used together with the specific names or recognized international numerical identifications.

Acidity Regulator, Acids, Ant caking Agent, Antifoaming Agent, Antioxidant, Bulking Agent, Colour, Colour Retention Agent, Emulsifier, Emulsifying Salt, Firming Agent, Flour Treatment Agent, Flavour Enhancer, Foaming Agent, Gelling Agent, Glazing Agent, Humectant, Preservative, Propellant, Raising Agent, Stabilizer, Sweetener, Thickener.

6) Name and Complete Address of the Manufacturer:

i) The name and complete address of the manufacturer and the manufacturing unit if these are located at different places and in case the manufacturer is not the packer or bottler, the name and complete address of the packing or bottling unit as the case may be shall be declared on every package of food;

ii) Where an article of food is manufactured or packed or bottled by a person or a company under the written authority of some other manufacturer or company, under his or its brand name, the label shall carry the name and complete address of the manufacturing or packing or bottling unit as the case may be, and also the name and complete address of the manufacturer or the company, for and on whose behalf it is manufactured or packed or bottled ;

iii) Where an article of food is imported into India, the package of food shall also carry the name and complete address of the importer in India.

Provided further that where any food article manufactured outside India is packed or bottled in India, the package containing such food article shall also bear on the label, the name of the country of origin of the food article and the name and complete address of the importer and the premises of packing or bottling in India.

7) Net quantity:

i) Net quantity by weight or volume or number, as the case may be, shall be declared on every package of food; and

ii) In addition to the declaration of net quantity, a food packed in a liquid medium shall carry a declaration of the drained weight of the food.

Explanation 1: For the purposes of this requirement the expression "liquid medium" include water, aqueous solutions of sugar and salt, fruit and vegetable juices or vinegar, either singly or in combination.

Explanation 2: In declaring the net quantity of the commodity contained in the package, the weight of the wrappers and packaging materials shall be excluded:

iii) Where a package contains a large number of small items of confectionery, each of which is separately wrapped and it is not reasonably practicable to exclude from the net weight of the commodity, the weight of such immediate wrappers of all the items of the confectionery contained in the package, the net weight declared on the package containing such confectionary or on the label thereof may include the weight of such immediate wrapper if the total weight of such immediate wrapper does not exceed–

a) eight per cent, Where such immediate wrapper is a waxed paper or other paper with wax or aluminium foil under strip; or

b) six per cent. In case of other paper of the total net weight of all the items of confectionery contained in the package minus the weight of immediate wrapper.

8) Lot / Code / Batch Identification: A batch number or code number or lot number which is a mark of identification by which the food can be traced in the manufacture and identified in the distribution, shall be given on the label. Provided that in case of packages containing bread and milk including sterilized milk, particulars under this clause shall not be required to be given on the label.

9) Date of Manufacture or Packing: The date, month and year in which the commodity is manufactured, packed or pre-packed, shall be given on the label. Provided that the month and the year of manufacture, packing or pre-packing shall be given if the "Best Before Date" of the products is more than three months. Provided further that in case any package contains commodity which has a short shelf life of less than three months, the date, month and year in which the commodity is manufactured or prepared or pre-packed shall be mentioned on the label.

10) Best Before and Use By Date:

i) the month and year in capital letters upto which the product is best for consumption, in the following manner, namely–

"BEST BEFORE ..... MONTHS AND YEAR

OR

"BEST BEFORE ..... MONTHS FROM PACKAGING

OR

"BEST BEFORE ..... MONTHS FROM MANUFACTURE

(Note: blank be filled up)

ii) In case of package or bottle containing sterilised or Ultra High Temperature treated milk, soya milk, flavoured milk, any package containing bread, dhokla, bhelpuri, pizza, doughnuts, khoa, paneer, or any uncanned package of fruits, vegetable, meat, fish or any other like commodity, the declaration be made as follows:

"BEST BEFORE ..... DATE/MONTH/YEAR"

OR

"BEST BEFORE ..... DAYS FROM PACKAGING"

OR

"BEST BEFORE ..... DAYS FROM MANUFACTURE"

Note: *a)* blanks be filled up

b) Month and year may be used in numerals

c) Year may be given in two digits

iii) On packages of Aspartame, instead of Best Before date, Use by date/recommended last consumption date/expiry date shall be given, which shall not be more than three years from the date of packing;

iv) In case of infant milk substitute and infant foods instead of Best Before date, Use by date/recommended last consumption date/expiry date shall be given, Provided further that the declaration of best before date for consumption shall not be applicable to:

i) wines and liquors

ii) alcoholic beverages containing 10 percent or more by volume of alcohol.

Provided further that above provisions except net weight/ net content, nutritional information, manufacturer's name and address, date of manufacture and "best before" shall not apply in respect of carbonated water (plain soda and potable water impregnated with carbon dioxide under pressure) packed in returnable glass bottles.

11) Country of Origin for Imported Food:

i) The country of origin of the food shall be declared on the label of food imported into India.

ii) When a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

12) Instructions for Use:

i) Instructions for use, including reconstitution, where applicable, shall be included on the label, if necessary, to ensure correct utilization of the food.

10.7 MANNER OF DECLARATION

10.7.1 General Conditions

1) Any information or pictorial device written, printed, or graphic matter may be displayed in the label provided that it is not in conflict with the requirements of these Regulations.
2) Every declaration which is required to be made on package under these regulations shall be :
   i) Legible and prominent, definite, plain and unambiguous
   ii) Conspicuous as to size number and colour,
   iii) as far as practicable, in such style or type of lettering as to be boldly, clearly and conspicuously present in distinct contrast to the other type, lettering or graphic material used on the package, and shall be printed or inscribed on the package in a colour that contrasts conspicuously with the background of the label.

   Provided that—
   a) Where any label information is blown, formed or moulded on a glass or plastic surface or where such information is embossed or perforated on a package that information shall not be required to be presented in contrasting colours :
   b) Where any declaration on a package is printed either in the form of a handwriting or hand script, such declaration shall be clear, unambiguous and legible.
3) No declaration shall be made so as to require it to be read through any liquid commodity contained in the package.
4) Where a package is provided with an outside container or wrapper, such container or wrapper shall also contain all the declarations which are required to appear on the package except where such container or wrapper itself is transparent and the declarations on the package are easily readable through such outside container or wrapper.

5) Labels not to contain false or misleading statements : A label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive value or in relation to the place of origin of the said food :

Provided that this regulation shall not apply in respect of established trade or fancy names of confectionery, biscuits and sweets, such as, barley,sugar,bull's eye, cream cracker or in respect of aerated waters, such as, Ginger Beer or Gold-Spot or any other name in existence in international trade practice.

10.7.2 Principal Display Panel

The information required under these Regulations shall be given on the principal display panel of the package or container and such information may be given in the following manner.

a) All information should be grouped together and given at one place.

OR

The pre-printed information be grouped together and given in one place and,

b) Online information or those not pre-printed be grouped together in another place.

1) Area of the principal display panel:

The area of principal Display panel shall not be less than—

a) In the case of a rectangular container, forty percent of the product of height and width of the panel of such container having the largest area;

b) In case of cylindrical or nearly cylindrical, round or nearly round, oval or nearly oval container, twenty percent of the product of the height and average circumference of such container; or

c) In the case of container of any other shape, twenty percent of the total surface area of the container except where there is label, securely affixed to the container, such label shall give a surface area of not less than ten percent of the total surface area of the container.

Provided that in the case of package having a capacity of five cubic centimeters or less, the principal display panel may be card or tape affixed firmly to the package or container and bearing the required information under these regulations.

10.8 SPECIFIC REQUIREMENTS/RESTRICTIONS ON MANNER OF LABELLING

10.8.1 Labelling of Infant Milk Substitute and Infant Food

1) An article of infant milk substitutes /infant foods, whose standards are not prescribed under Food Safety and Standards (Food Products standards and Food Additives) Regulations, 2011 shall be manufactured for sale, exhibited for sale or stored for sale only after obtaining the approval of such articles of food and its label from the Authority.
2) Without prejudice to any other provisions relating to labelling requirements contained in these regulations, every container of infant milk substitute or infant food or any label affixed thereto shall indicate in a clear, conspicuous and in an easily readable manner, the words “IMPORTANT NOTICE” in capital letters and indicating there under the following particulars, namely:
   i) a statement “MOTHER’S MILK IS BEST FOR YOUR BABY” in capital letters. The types of letters used shall not be less than five millimeters and the text of such statement shall be in the Central Panel of every container of infant milk substitute or infant food or any label affixed thereto. The colour of the text printed or used shall be different from that of the background of the label, container as the case may be. In

case of infant food, a statement indicating "infant food shall be introduced only (after the age of six months and upto the age of two years)" shall also be given;

ii) a statement that infant milk substitute or infant food should be used only on the advice of a health worker as to the need for its use and the proper method of its use;

iii) a warning that infant milk substitute or infant food is not the sole source of nourishment of an infant;

iv) a statement indicating the process of manufacture (e.g spray dried) except in case of infant foods, instruction for appropriate and hygienic preparation including cleaning of utensils, bottles and teats and warning against health hazards of inappropriate preparations, as under;

"Warning/ caution-Careful and hygienic preparation of infant foods/infant milk substitute is most essential for health. Do not use fewer scoops than directed since diluted feeding will not provide adequate nutrients needed by your infant. Do not use more scoops than directed since concentrated feed will not provide the water needed by your infant".

v) the approximate composition of nutrients per 100 gms. of the product including its energy value in Kilo Calories/Joules;

vi) the storage condition specifically stating "store in a cool and dry place in an air tight container" or the like (after opening use the contents within the period mentioned or the expiry date whichever is earlier);

vii) the feeding chart and directions for use and instruction for discarding leftover feed;

viii) Instruction for use of measuring scoop (level or heaped) and the quantity per scoop (scoop to be given with pack);

ix) indicating the Batch No. Month and Year of its manufacture and expiry date

x) the protein efficiency ratio (PER) which shall be minimum 2.5 if the product other than infant milk substitute is claimed to have higher quality protein;

xi) the specific name of the food additives, if permitted, shall be declared in addition to appropriate class names.

3) No containers or label referred to in this regulation relating to infant milk substitute or infant food shall have a picture of infant or women or both. It shall not have picture or other graphic materials or phrases designed to increase the saleability of the infant milk substitute or infant food. The terms “Humanised” or “Maternalised” or any other similar words shall not be used. The Package and/or any other label of infant milk substitute or infant food shall not exhibit the words, “Full Protein Food”, “energy Food”, “Complete food” or “Health Food” or any other similar expression.

4) The containers of infant milk substitute meant for (premature baby (born before 37 weeks)/low birth weight infant (less than 2500gm) or labels affixed thereto shall indicate the following additional information, namely:

i) the words [PREMATURE BABY (BORN BEFORE 37 WEEKS) LOW BIRTH WEIGHT (LESS THAN 2.5 KG] in capital letters along with the product name in central panel;

ii) a statement “the low birth weight infant milk substitute shall be withdrawn under medical advice as soon as the mother’s milk is sufficiently available’; and

iii) a statement “TO BE TAKEN UNDER MEDICAL ADVICE” in capital letters.

5) The product which contains neither milk nor any milk derivatives shall be labelled “contains no milk or milk product” in conspicuous manner.

6) The container of infant milk substitute for lactose or lactose and sucrose intolerant infants or label affixed thereto shall indicate conspicuously “LACTOSE-FREE or SUCROSE-FREE or LACTOSE and SUCROSE-FREE” in capital letters and statement “TO BE TAKEN UNDER MEDICAL ADVICE” and shall also bear the following statements, namely:

"Lactose free Infant Milk Substitute should only be used in case of diarrhea due to lactose intolerance. The lactose free/sucrose free Infant Milk Substitute should be withdrawn if there is no improvement in symptoms of intolerance".

7) The container of infant milk substitute meant for infants with allergy to cow's /buffalo's milk protein or soy protein or label affixed thereto shall indicate conspicuously "HYPOALLERGENIC FORMULA" in capital letters and statement "TO BE TAKEN UNDER MEDICAL ADVICE".
8) Declaration to be surrounded by line: There shall be a surrounding line enclosing the declaration where the words "unsuitable for babies" are required to be used.
   i) Distance of surrounding line: The distance between any part of the words "unsuitable for babies" surrounding the line enclosing these words shall not be less than 1.5 mm.

10.8.2 Labelling of Edible Oils and Fats

1) The package, label or the advertisement of edible oils and fats shall not use the expressions "Super-Refined", "Extra-Refined", "Micro-Refined", "Double-Refined", Ultra-Refined", "Anti-Cholesterol", "Cholesterol Fighter", "Soothing to Heart", "Cholesterol Friendly", "Saturated Fat Free" or such other expressions which are an exaggeration of the quality of the Product.
2) Every container in which solvent-extracted oil or de-oiled meal or edible flour is packed for sale shall, at the time of sale by the producer, bear the following particulars in English or Hindi (Devnagri script):
   i) the name, trade name, if any, or description of the solvent-extracted oil or de-oiled meal or edible flour, as the case may be;
   ii) in the case of oil not conforming to the standards of quality for "refined" grade solvent extracted oils specified in

regulation 2.2.6(1) of Food Safety and Standards (Food Products Standards and Food Additive) Regulation, 2011 for Edible vegetable oil/Vanaspati, a declaration in a type-size of not less than 50 mm, as follows shall appear on the label:

a) "NOT FOR DIRECT EDIBLE CONSUMPTION", in the case of oils complying with the requirements for the "semi-refined" or "raw-grade 1" grades of oil specified in regulation 2.2.6(1) of Food Safety and Standards (Food Products standards and Food Additive) Regulation, 2011

b) "FOR INDUSTRIAL NON-EDIBLE USES ONLY", in the case of oils not complying with the requirements under item (a) above;

iii) the name and business particulars of the producer;

iv) the net weight of the contents in the container;

v) the batch number, month and year of manufacture.

Provided that where solvent extracted oils are transported in bulk in rail tank-wagons or road tankers, or where de-oiled meal or edible flour is transported in bulk either for storage in silos or transferred to ship for bulk shipment, it shall be sufficient if the aforesaid particulars are furnished in the accompanying documents.

3) Every container in which solvent is packed shall, at the time of sale by the manufacturer or dealer thereof, bear the Indian Standards Institution certification mark.

4) Every container in which vanaspati, margarine, bakery shortening, blended edible vegetable oils, mixed fat spread and refined vegetable oil is packed in addition to other labelling requirements provided in these regulations shall bear the following particulars in English or Hindi in Devnagri script:

a) The name/description of the contents, "free from Argemone Oil";

b) The mass/volume of the contents;

5) Every container of refined vegetable oil shall bear the following label, namely—

Refined (name of the Oil) Oil

Provided that the container of imported edible oil shall also bear the word, “Imported”, as prefix.

6) Every package containing an admixture of palmolein with groundnut oil shall carry the following label, namely—

BLEND OF PALMOLEIN AND GROUNDNUT OIL Palmolein ..... per cent Groundnut oil ..... per cent

7) Every package containing an admixtu‘re of imported rape-seed oil with mustard oil, shall carry the following label, namely:

BLEND OF IMPORTED RAPE-SEED OIL AND MUSTARD OIL Imported rape-seed oil.....per cent Mustard oil.....per cent

8) Every package of vanaspati made from more than 30 percent of Rice bran oil shall bear the following label, namely:

This package of vanaspati is made from more than 30 per cent Rice bran oil by weight

9) Every package containing Fat Spread shall carry the following labels namely:

Milk Fat Spread:

Use before .....

Date of packing .....

Total Milk Fat Content Per cent by weight .....

Mixed Fat Spread:

Use before .....

Date of packing .....

Per cent by weight .....

Milk Fat Content .....

Total Milk Fat Content Percent by weight .....

Vegetable Fat Spread:

Use before .....

Date of packing .....

Total Fat Content Per cent by weight .....

10) A package containing annatto colour in vegetable oils shall bear the following label namely:

Annatto colour in oil (Name of oil/oils) used

11) Every package containing an admixture of edible oils shall carry the following label, namely :

This blended edible vegetable oil contains an admixture of:

i) .....% by Weight ii) .....% by Weight

(Name and nature of edible vegetable oils i.e. in raw or refined form)

Date of Packing .....

There shall also be the following declaration in bold capital letters along with the name of product on front/central panel—

NOT TO BE SOLD LOOSE

10.8.3 Labelling of Permitted Food Colours

1) No person shall sell a permitted synthetic food colours for use in or upon food unless its container carries a label stating the following particulars:
   i) the words “Food Colours”;
   ii) the chemical and the common or commercial name and colour index of the dye-stuff.
2) No person shall sell a mixture of permitted synthetic food colours for use in or upon food unless its container carries a label stating the following particulars:
   i) the words “Food Colour Mixture”;
   ii) the chemical and the common or commercial name and colour index of the dye stuff contained in the mixture.

3) No person shall sell a preparation of permitted synthetic food colours for use in or upon food unless its container carries a label stating the following parti culars:
   i) the words “Food Colour Preparation”;
   ii) the name of the various ingredients used in the preparation.

10.9 SPECIFIC RESTRICTIONS ON PRODUCT LABELS

1) **Labels not to contain reference to Act or rules or regulations contradictory to required particulars:** The label shall not contain any reference to the Act or any of these regulations or any comment on, or reference to, or explanation of any particulars or declaration required by the Act or any of these regulations to be included in the label which directly or by implication, contradicts, qualifies or modifies such particulars or declaration.
2) **Labels not to use words implying recommendations by medical profession:** There shall not appear in the label of any package, containing food for sale the words “recommended by the medical profession” or any words which imply or suggest that the food is recommended, prescribed, or approved by medical practitioners or approved for medical purpose.
3) **Unauthorized use of words showing imitation prohibited:**
   a) There shall not be written in the statement or label attached to any package containing any article of food the word ‘imitation’ or any word, or words implying that the article is a substitute for any food, unless the use of the said word or words is specifically permitted under these regulations.
   b) Any fruit syrup, fruit juice, fruit squash, fruit beverages, cordial, crush or any other fruit products standardised under Food Safety and Standards (Food Products standards and Food Additives) Regulations, 2011 which does not contain the prescribed amount of fruit juice or fruit pulp or fruit content shall not be described as a fruit syrup, fruit juice, fruit squash, fruit beverages, cordial, crush or any other fruit product as the case may be.

c) Any food product which does not contain the specified amount of fruit and is likely to deceive or mislead or give a false impression to the consumer that the product contains fruit, whether by use of words or pictorial representation, shall be clearly and conspicuously marked on the label as 'ADDED (NAME OF THE FRUIT) FLAVOUR'.

d) Any food product which contains only fruit flavours, whether natural flavours and natural flavouring substances or nature identical flavouring substances, artificial flavouring substances as single or in combination thereof, shall not be described as a fruit product and the word "ADDED" (NAME OF FRUIT) FLAVOUR shall be used in describing such a product;

e) Carbonated water containing no fruit juice or fruit pulp shall not have a label which may lead the consumer into believing that it is a fruit product.

f) Any fruit and vegetable product alleged to be fortified with vitamin C shall contain not less than 40 mgms. of ascorbic acid per 100 gm. of the product.

4) Imitations not to be marked "pure": The word "pure" or any word or words of the same significance shall not be included in the label of a package that contains an imitation of any food.

5) Labelling prohibitions for Drinking Water (Both Packaged and Mineral Water):

i) No claims concerning medicinal (preventative, alleviative or curative) effects shall be made in respect of the properties of the product covered by the standard Claims of other beneficial effects related to the health of the consumer shall not be made.

ii) The name of the locality, hamlet or specified place may not form part of the trade name unless it refers to packaged water collected at the place designated by that trade name.

iii) The use of any statement or of any pictorial device which may create confusion in the mind of the public or in any way mislead the public about the nature, origin, composition, and properties of such waters put on sale is prohibited.

10.10 EXEMPTIONS FROM LABELLING REQUIREMENTS

1) Where the surface area of the package is not more than 100 square centimeters, the label of such package shall be exempted from the requirements of list of ingredients, Lot Number or Batch Number or Code Number, nutritional information and instructions for use, but these information shall be given on the wholesale packages or multi piece packages, as the case may be.
2) The 'date of manufacture' or 'best before date' or 'expiry date' may not be required to be mentioned on the package having surface area of less than 30 square centimeters but these information shall be given on the wholesale packages or multipiece packages, as the case may be;
3) In case of liquid products marketed in bottles, if such bottle is intended to be reused for refilling, the requirement of list of ingredients shall be exempted, but the nutritional information specified in regulation regarding veg. or non-veg. items these regulations shall be given on the label.

   Provided that in case of such glass bottles manufactured after March 19, 2009, the list of ingredients and nutritional information shall be given on the bottle.
4) Iin case of food with shelf-life of not more than seven days, the 'date of manufacture' may not be required to be mentioned on the label of packaged food articles, but the 'use by date' shall be mentioned on the label by the manufacturer or packer.
5) In case of wholesale packages the particulars regarding list of ingredients. Date of manufacture/ packing, best before, expiry date labelling of irradiated food and, vegetarian logo/non vegetarian logo, may not be specified.



CHECK YOUR PROGRESS

Q.3: Mention one item which do not require labeling.

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Q.4: What declaration the seller should give in the container in case he use synthetic food colours in the product?

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10.11 LET US SUM UP

In this unit, we have discussed the following aspects–

- Packaging requirements for Milk and Milk Products.
- Packaging requirements for Fruits and Vegetables Products.
- Packaging requirements for Canned Meat Products.
- Packaging requirements for Drinking Water Both Packaged and Mineral Water.
- Labeling requirements of Pre-packaged Foods.
- Items or products exempted from labeling requirements.



10.12 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.

2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.
5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



10.13 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: "Principal Display Panel" means that part of the container/ package which is intended or likely to be displayed or presented or shown or examined by the customer under normal and customary conditions of display, sale or purchase of the commodity contained therein.

Ans. to Q. No. 2: Package drinking water shall be packed in clean, hygienic, colourless, transparent and tamperproof bottles/containers made of polyethylene (PE) or food grade polycarbonate or sterile glass bottles suitable for preventing possible adulteration or contamination of the water.

Ans. to Q. No. 3: Food with shelf-life of not more than seven days, the 'date of manufacture' may not be required to be mentioned on the label of packaged food articles, but the 'use by date' shall be mentioned on the label by the manufacturer or packer.

Ans. to Q. No. 4: In case he use synthetic food colours in the product, its container carries must carry a label stating the following particulars:

i) the words "Food Colour Mixture";

ii) the chemincal and the common or commercial name and colour index of the dye stuff contained in the mixture.



10.14 MODEL QUESTIONS

Q.1: Define Wholesale package.

Q.2: List the General Requirements of labelling.

Q.3: Discuss the procedure of Labelling of edible oils and fats.

Q.4: What are the Nutritional Information's or nutritional facts to be declared on the label of a product in case of pre-package foods?

Q.5: Discuss the Packaging requirements for Fruits and Vegetables Products.

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UNIT 11: THE COMPANIES ACT, 2013

UNIT STRUCTURE

11.1 Learning Objectives

11.2 Introduction

11.3 Object and Scope

11.4 Important Definitions

11.5 Formation of a Company

11.6 Memorandum of Association

11.7 Articles of Association

11.8 Prospectus, Shares, Directors

11.9 General Meetings and Proceedings

11.10 Auditor

11.11 Winding up of a Company

11.12 Let Us Sum Up

11.13 Further Reading

11.14 Answers to Check Your Progress

11.15 Model Questions

11.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- explain the object and scope of the Companies Act
- define the different definitions
- describe the formation of a company, appointment of directors, proceedings and meetings, about auditors and winding up of a company.

11.2 INTRODUCTION

The Companies Act, 1956 was passed to deal with the laws relating to companies. It had been in force for about 55 years and had faced many amendments to meet the requirement of the present context. Its main purpose was to regulate business and protect common people from being defrauded.

In this unit we are going to discuss about the Companies Act, 1956 along with the Amendment Act of 2013. This unit also encompasses different definitions. Through this unit you will able to know about the formation of a company, its proceedings and winding up. Thus, you will able to understand through this unit, the object and reason behind passing of this Act.

11.3 OBJECT AND SCOPE

The Companies Act, 1956 was enacted with the object to consolidate and amend the law relating to companies and certain other associations. But due to vast changes in the national and international economic environment and also due to the expansion and growth of economy of our country, the Central Government decided to repeal the Act of 1956 and enact a new legislation to cope up with the present economic scenario. Thus the Companies Bill, 2011 have been passed by the both houses of the Parliament and received President's assent on 29th August, 2013, which is now known as the Companies Act, 2013. The new Act introduced some new concepts relating to companies. It should be noted that the provisions of the Companies Act, 1956 are still in force. The new Act has replaced it in a partial manner.

11.4 IMPORTANT DEFINITIONS

Section-2: Definitions: In this Act, unless the context otherwise requires:

1) "Abridged prospectus" means a memorandum containing such salient features of a prospectus as may be prescribed;
2) "Articles'' means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act, including, so far as they apply to the company, the regulations contained, as the case may be, in Table B in the Schedule annexed to Act No. 19 of 1857 or in Table A in the First Schedule annexed to the Indian Companies Act, 1882 (6 of 1882), or in Table A in the First Schedule annexed to the Indian

Companies Act, 1913 (7 of 1913), or in Table A in Schedule I annexed to this Act;

3) "Board of directors'' or "Board'', in relation to a company, means the Board of directors of the company ;
4) "Body corporate'' or "corporation'' includes a company incorporated outside India but does not include
   a) A corporation sole;
   b) A co-operative society registered under any law relating to co-operative societies; and
   c) Any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf;
5) "Book and paper'' and "book or paper'' include accounts, deeds, vouchers, writings, and documents;
6) "Branch office'' in relation to a company means
   a) any establishment described as a branch by the company; or
   b) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company; or
   c) any establishment engaged in any production, processing or manufacture, but does not include any establishment specified in any order made by the Central Government under section 8;
7) "Company'' means a company as defined in section 3;
8) "Company Law Board'' means the Board of Company Law Administration constituted under section 10E;
9) ''The Court'' means,
   a) with respect to any matter relating to a company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10;
   b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence;

10) ‘‘Debenture’’ includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not;
11) “Director’’ includes any person occupying the position of director, by whatever name called;
12) “District Court’’ means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction;
13) “Dividend” includes any interim dividend;
14) “Document’’ includes summons, notice, requisition, order, other legal process, and registers, whether issued, sent or kept in pursuance of this or any other Act or otherwise;
15) “Financial year” means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not:

    Provided that, in relation to an insurance company, “financial year’’ shall mean the calendar year referred to in sub-section (1) of section 11 of the Insurance Act, 1938 (4 of 1938);
16) “Limited company’’ means a company limited by shares or by guarantee;
17) “Manager’’ means an individual (not being the managing agent) who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not;
18) “Member’’, in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 114;
19) “Memorandum’’ means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act;

20) "Officer'' includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act;
21) "Private company'' means a private company as defined in section 3;
22) "Prospectus'' means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate;
23) "Public company'' means a public company as defined in section 3;
24) "Registrar'' means a Registrar, or an Additional, a Joint, a Deputy or an Assistant Registrar, having the duty of registering companies under this Act;
25) "Share'' means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

Section-3 in The Companies Act, 1956: Definitions of ''Company", ''Existing Company", ''Private Company" and ''Public Company".

1) In this Act, unless the context otherwise requires, the expressions ''company", ''existing company", ''private company" and ''public company" shall, subject to the provisions of sub-section (2), have the meanings specified below:
   i) "company" means a company formed and registered under this Act or an existing company as defined in clause (ii);
   ii) "existing company" means a company formed and registered under any of the previous companies laws.
   iii) "private company" means a company which, by its articles,
      a) restricts the right to transfer its shares, if any;
      b) limits the number of its members to fifty not including—
         i) persons who are in the employment of the company, and
         ii) persons who, having been formerly in the employment of the company, were members of the company while in

that employ-ment and have continued to be members after the employment ceased

c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company : Provided that where two or more persons hold one or more shares, in a company jointly, they shall, for the purposes of this definition, be treated as a single member;

iv) "public company" means a company which is not a private company.

Some new concept introduced by the Companies Act, 2013 are—

- One person Companies
- Women Directors
- Corporate Social Responsibility
- Rotations of Auditors etc.



CHECK YOUR PROGRESS

Q.1: Define 'Private Company' under the Companies Act, 1956.

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11.5 FORMATION OF A COMPANY

Company is a socio-economic institution which has a responsibility towards the development of society. The Companies Act was passed to protect the interest of common people.

Broadly formation of a company involves three stages:

i) Promotion of a company
ii) Incorporation
iii) Commencement of business

In the first stage, some persons known as 'promoters' take initiative to start up the business and make necessary arrangements like collection of Capital or assets, go by the formalities of incorporation and registration.

In second stage, the company gets legal recognition only after it is incorporated from the Registrar of Companies. It is incorporated by registering certain documents and paying certain fees and stamp duties. Certain procedures has to be followed to incorporate a company and after that the company receive its Certificate of Incorporation from the Registrar.

The third stage is the commencement of business, which can be started as soon as the company receives the Certificate of Incorporation. A private company or a public company not having share capital may commence business as soon as the company receives the Certificate of Incorporation. But for the public company having shared capital can commence its business only after obtaining the Certificate to commence business, which is also called Trading Certificate.

Every person who is responsible for doing business without obtaining the Trading Certificate shall be liable for punishment with fine not exceeding Rupees 5,000/- per day during the period of default.

11.6 MEMORANDUM OF ASSOCIATION

Memorandum of Association is the fundamental document of a company which is essential for the formation of a company.

Memorandum of Association contains the fundamental conditions upon which the company formed and registered. It must contain the following six clauses—

1) Name clause that contains the name of the company.
2) Registered office clause that contains the name of the state in which the registered office of the company is situated.

3) Object clause deals with the object of the company. Object to protect creditors and investors.
4) Liability clause means whether the company is limited by shares, limited by guarantees and an unlimited company.
5) Capital clause is necessary only in case of limited company.
6) Subscription clause is also known as Association clause. This is subscriber's declaration clause.

According to section 12(1) there must be at least seven persons in case of public company or two persons in case of a private company and they must all subscribe for at least one share each.

Memorandum shall be signed by each subscriber in the presence of at least one witness, attesteting the signature and address of the subscriber.

A company is authorized to do only such acts which it has been to do through the Memorandum and it cannot do the acts which are outside its powers.(i.e. ultra vires)

A company though get registered may change its name or registered office by following certain procedures.

11.7 ARTICLES OF ASSOCIATION

An Article of Association is that document which describes the rules and regulations for the administration of a company. For example appointment of Directors, their powers, issues like transfers of shares, alteration of capital, borrowing powers, dividend, accounts, general meetings, winding up etc.

It is important to note that for registration of a company, along with the prescribed documents and fees, the application must be accompanied by the Memorandum of Association and Articles of Association of the company (if any).

The rules and regulations of a company mentioned in the Article of Association can be altered as it is considered as the statutory power of every company.

To alter the Article of Association a special resolution has to be taken by a company. By altering the Article of Association a private company can be converted into a public company. The public company can also be converted into a private company, only with the approval of the Tribunal.

The Memorandum of Association and Articles of Association when registered, bind the company and the members, as if they had been respectively signed by the company and by each member.

11.8 PROSPECTUS, SHARES AND DIRECTORS

Prospectus means any document in the form of a circular or news paper advertisement or pamphlet containing information with a view to invite the general public to make investment to the company in question.

According to L. B. Curzon, prospectus means, "any document containing information about securities". Therefore, it has the following essentials:

i) It must contain an invitation for deposit or an invitation to purchase shares or debentures of the company and

ii) The invitation must be made to the public.

Conditions of a valid prospectus:

i) It must be dated: The date of publication of the prospectus is considered as the date of prospectus.

ii) It must be signed by the directors or proposed directors or his authorized agents.

iii) Registration of prospectus is essential on or before the date of publication.

In case of default for any prospectus, the company and every person who is knowingly a party to the issue of prospectus are punishable with fine.

Contents of a prospectus: A prospectus must contain the name, address of the registered company, Company Secretary, Directors etc., the capital structure of the company, its financial performance in the past, details about Director's appointment, remuneration etc.

Mis-Statement in Prospectus: (Civil and Criminal Liability) The Companies Act 1956 imposes Civil liability under Section 62 for the Mis-

Statement in Prospectus whereas Section 63 imposes Criminal liability for the Mis-Statement in Prospectus.

Section 447 of the Companies Act, 2013 deals with the punishment for fraud.

Shares: In the context of Company law, the expression 'Share' means a typical movable property which for all practical purposes can be sold, mortgaged, and bequeathed.

A 'Share' is a right to a particular amount of the Share Capital of a Company carrying with it certain rights and liabilities, while the company in going concern and winding up. Further the Share Certificates are issued, are evidence of the true Prospectus.

Kinds of Shares:

i) Equity Shares or Ordinary Shares: Section 85(2) of the Act means it with reference to any such company, all share capital which is not preferred share capital.

ii) Preference Share: According to Section 85(1) the term Preference Share means with reference to any company limited by share, a fixed rate of dividends or premium is payable over the equity share holders or ordinary share holders as specified in the Memorandum of Association or Articles of Association. Even in case of winding up of the company the preferred share holders are entitled to be paid as priority.

There are certain Statutory Restrictions imposed under the Companies Act, while making allotment of shares.

Transfer of Shares: The shares or debentures of companies are freely transferable. It is to be noted that bthe word 'share' has been replaced by the 'share or debentures' by the companies (Amendment) Act, 1999.

Directors: A company being an artificial person, has to be managed and controlled by natural persons. These natural persons are called Directors of company.

Appointment of Directors: Section 253 of the Companies Act provides that no body corporate, association or firm shall be appointed as director of the company and only an individual shall be so appointed. The Companies (Amendment) Act, 2006 added a proviso to this section stating

that no company should appoint or re appoint any individual as director unless he has been allotted a Director Identification Number (DIN).

The subscribers to the Memorandum of Association are regarded as the first directors of a company. Other than that the directors can be appointed by the members in General Meeting, by nomination, by voting by a single resolution at annual general meeting, by Board and by the Tribunal.

Qualification and Disqualification of Directors: The Companies Act does not prescribe any qualifications for appointment as a director. But Rule 66 of Table A of the Act requires that Director must hold at least one share in the company.

A minor cannot be a director as he or she is not competent to enter into contract.

The following grounds are considered as the disqualification:

a) If he has been found to be of unsound mind by a competent Court.
b) If he is an undischarged insolvent.
c) He has applied to be adjudicated as an insolvent and his application is pending.
d) If he has been sentenced to at least six months of imprisonment for an offence involving moral turpitude.
e) If he has not paid any call on his shares within the stipulated period.
f) If the Court disqualified him.



CHECK YOUR PROGRESS

Q.2: What is Prospectus? Write the conditions of a valid Prospectus.

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11.9 GENERAL MEETINGS AND PROCEEDINGS

The meetings of the members of a company are three types:

1) Statutory Meeting (Section 165(1))
2) Annual General Meeting (Section 166-168)
3) Extraordinary General Meeting (Section 169)

Statutory Meeting: Every company limited by shares and limited by guarantee and having a share capital is required to hold the first meeting of the company after one month but within the period of six months.

Annual General Meeting: Every company is required to hold a general meeting each year to be known as annual general meeting. There should not be more than 15 months gap between one general meeting and the next.

If there is default in holding the meeting of its own, the company and every officer of the company who is in default shall be punishable with fine.

Extraordinary General Meeting: The meeting other than the annual general meeting is known as the extraordinary general meeting. The directors may call for a meeting other than an ordinary general meeting whenever they think fit.

Conduct of Meetings: A general meeting of a company may be called by giving at least 21days notice in writing. A shorter notice may also be given with the consent of all the members entitled to vote (in case of annual general meeting) and with the consent of those holding 95% share capital or having 95% voting power (in case of extraordinary general meeting).

Content and Manner of Service of Notice: Every notice should specify the place, date and hour of meeting. Also it should contain a statement of business to be transacted there at.

A proper notice should be served to the following persons:

a) Every member of the company
b) The legal representatives of the deceased or assignee of the insolvent member
c) Auditor or auditors of the company

Quorum for Meeting: Quorum means the minimum number of persons without whom a meeting cannot be held. According to Section 174 of the Companies Act, unless the Articles of the Company provide for a larger number, the quorum for the public company is five members personally present and two members personally present in case of a private company.

If within half an hour from time of appointed for holding a meeting a quorum is not present, the meeting shall be adjourned to the same day in the next week. The time and place remains the same as fixed earlier. In case of requisitioned meeting, for the want of quorum within half an hour, the meeting shall stand dissolved.

Chairman of Meeting: Chairman may be appointed in accordance with the provisions of the Articles of the company. If the Articles do not provide, the members present at the meeting shall elect one of themselves to the chairman of the meeting.

Minutes of the Meeting: Every company is required to maintain minutes of all the proceedings of every general meeting and all proceedings of every meeting of the Board of Directors.

Resolutions: In a meeting the members present can vote for passing a resolution. There are two kinds of resolutions : Ordinary Resolution and Special Resolution.



CHECK YOUR PROGRESS

Q.3: Discuss different types of meetings in a company.

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11.10 AUDITOR

The auditor or auditors of a company shall be appointed by the Board of Directors within the one month of the date of registration of the company. If the Board fails to appoint, the company in general meeting may appoint the first auditor or auditors.

Except for the first time, the auditor or auditors are appointed at the annual general meeting and they hold office from the time of their appointment until the conclusion of the next annual general meeting.

An auditor cannot accept auditor ship of more than 20 companies.

An auditor once appointed can be re appointed when certain conditions are fulfilled and in certain specified cases an auditor can be appointed only by a special resolution.

Removal of Auditors: An auditor may be removed from his office before the expiry of his term only by the company in general meeting, after obtaining the previous permission of the Central Government.

Qualifications and Disqualifications of Auditors: Only a chartered accountant can be appointed as an auditor of a company.

A body corporate, an officer or employee of a company, a partner or who is in employment and a person who is indebted to the company for an amount exceeding Rs. 1000/- or a person who has given guarantee of a third person to the company for an amount exceeding Rs. 1000/- are not qualified to be an auditor of the company.

The auditors of a company have the right to have access to the books, accounts and voucher of a company. They have the power to inquire into the financial transactions of the company.



CHECK YOUR PROGRESS

Q.4: Write the qualification and disqualification of an Auditor of a company.

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11.11 WINDING UP OF A COMPANY

Winding up of a Company is of three kinds:

1) Winding up by the Court
2) Voluntary winding up. It may be—
   a) Member's Voluntary winding up
   b) Creditor's Voluntary winding up
3) Winding up subject to the supervision of the Court.

1) Winding up by the Court (Section 433-483):

Circumstances of Winding up by the Court (Section 433)

a) If the company has resolved by the special resolution that the company be wound up by the court.
b) If there is default in delivering the statutory report or in holding the statutory meeting.
c) If the company does not commences its business within a year from incorporation or suspended the business for the whole year.
d) If in a public company the number of member is reduced below seven and that of a private company below two. (Companies Act 2013 introduced one Person Company as private Company)
e) If the company is unable to pay its debts.

A petition for winding up of a company may be presented to the court by the following: The Company, any creditor or creditors, any contributory, the Registrar, and the Central Government.

For winding up, a resolution has to be passed by the company before presenting the petition for winding up to the court. The winding up of the company shall be deemed to have commenced at the passing of the resolution, unless court finds any proof of fraud or mistake.

In any other case, the winding up of a company by the court shall be deemed to commence at the time of presentation of the petition.

Where a court makes an order for the winding up of a company, the court shall set forth with cause intimation thereof to send to the Official Liquidator and the Registrar.

2) **Voluntary winding up:** A company may be wound up voluntarily when–

1) a) The period (if any), fixed for the duration of the company by the Articles has expired or due to occurrence of any event for which the article provide that the company is to be dissolved. And

b) The company in general meeting passes a resolution requiring the company to be wound up voluntarily.

2) If the company passes a special resolution that the company be wound up voluntarily.

When the directors of the company make the declaration of solvency then it is known as Member's Voluntary winding up and if no such declaration is made it is known as Creditor's Voluntary winding up.

3) **Winding up subject to the supervision of the Court:** At any time after a company has passed a resolution for voluntary winding up, the court may order that the voluntary winding up shall continue but subject to such supervision of the court.

The process of winding up involves realizing the assets of the company. That is realizing what is due to the company from any source whatever, and then satisfying the debts and liabilities of the company.



11.12 LET US SUM UP

In this unit, we have discussed the following aspects–

- The Companies Act, 1956 was passed to consolidate and amend the law relating to companies and other associations.
- Now, this Act has been repealed and a new legislation came into existence known as the Companies Act 2013. But the repealed Act replaced the old one in a partial manner only.
- This Act provides for the creation, continuation and winding up of a company.

- The Act deals with the rules and regulations of a company.
- It also specifies the appointment, qualification and disqualification, removal and liabilities of Directors.
- It provides for the rules relating to the general meetings and proceedings.
- The Companies Act provides for the appointment, qualification and removal of Auditors.
- This Act empowered the members, creditors and the court for the winding up of a company.



11.13 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.
2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.
5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



11.14 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: According to Section 3, ‘‘private company” means a company which, by its articles,

a) Restricts the right to transfer its shares, if any;
b) Limits the number of its members to fifty not including–
   i) persons who are in the employment of the company, and

ii) persons who, having been formerly in the employment of the company, were members of the company while in that employ-ment and have continued to be members after the employment ceased.

c) Prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company: Provided that where two or more persons hold one or more shares, in a company jointly, they shall, for the purposes of this definition, be treated as a single member.

Ans. to Q. No. 2: According to L. B. Curzon, prospectus means, "any document containing information about securities". Therefore, it has the following essentials:

i) It must contain an invitation for deposit or an invitation to purchase shares or debentures of the company and

ii) The invitation must be made to the public.

Conditions of a valid prospectus:

a) It must be dated: The date of publication of the prospectus is considered as the date of prospectus

b) It must be signed by the directors or proposed directors or his authorized agents.

c) Registration of prospectus is essential on or before the date of publication.

Ans. to Q. No. 3: The meetings of the members of a company are three types:

1) Statutory Meeting (Section165(1))

2) Annual General Meeting (Section 166-168)

3) Extraordinary General Meeting (Section 169)

Statutory Meeting: Every company limited by shares and limited by guarantee and having a share capital is required to hold the first meeting of the company after one month but within the period of six months.

Annual General Meeting: Every company is required to hold a general meeting each year to be known as annual general meeting. There

should not be more than 15 months gap between one general meeting and the next.

If there is default in holding the meeting of its own, the company and every officer of the company who is in default shall be punishable with fine.

Extraordinary General Meeting: The meeting other than the annual general meeting is known as the extraordinary general meeting. The directors may call for a meeting other than an ordinary general meeting whenever they think fit.

Ans. to Q. No. 4: Qualification of an auditor in a company: Only a chartered accountant can be appointed as an auditor of a company.

Disqualification: A body corporate, an officer or employee of a company, a partner or who is in employment and a person who is indebted to the company for an amount exceeding Rs. 1000/- or a person who has given guarantee of a third person to the company for an amount exceeding Rs. 1,000/- are not qualified to be an auditor of the company.



11.15 MODEL QUESTIONS

Q.1: How a company can be formed under the Companies Act?

Q.2: What is called Memorandum of Association?

Q.3: What is Share? Discuss different kinds of shares under the Companies Act.

Q.4: What are the different modes of winding up of a company? Discuss the procedure for winding up of a company.

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UNIT 12: THE CONSUMER PROTECTION ACT, 1986

UNIT STRUCTURE

12.1 Learning Objectives

12.2 Introduction

12.3 Object and Scope

12.4 Important Definitions

12.5 Rights of Consumers

12.6 Nature and Scope of Complaints

12.7 Remedies available to Consumers

12.8 Let Us Sum Up

12.9 Further Reading

12.10 Answers to Check Your Progress

12.11 Model Questions

12.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- explain the object and scope of Consumer Protection Act,1986
- define the different definitions
- describe rights of consumers
- explain nature and scope of complaints as well as remedies available to consumers.

12.2 INTRODUCTION

The Consumer Protection Act, 1986 is an important milestone in the history of consumer movement in India. The Act was enacted to provide protection and promotion of consumer rights through the establishment of Consumer Councils and quasi- judicial machinery. In this unit, we are going to discuss about the Consumer Protection Act, 1986 and details about its object and scope. This unit also encompasses different definitions. Through this unit you will be able to know about the rights of the consumers and

remedies available to them. This unit discusses about the meaning of complaint. Thus, you will able to understand through this unit, the basic object of passing of the Act and the redressal of the plight of the consumers.

The Consumer Protection Act, 1986 has been amended several times. For removing the obstacles in efficient implementation of the Act and securing effective functioning of the institutions established under the Act, the parliament introduced subsequent amendments vide the Consumer Protection (Amendment) Acts of 1991, 1993 and 2002.

12.3 OBJECT AND SCOPE

The Supreme Court in its decision in *Lucknow Development Authority v M K Gupta* [(1994) 1SCC 243,253], noted that the word 'consumer' is a comprehensive expression. It extends from a person who buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use for private or public services.

The Consumer Protection Act, 1986 was enacted to provide for better protection of the interest of the consumers and for the purpose to make provisions for the establishment of consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith. It seeks, inter-alia, to promote and to protect the rights of consumers.

The object is also to provide speedy and simple redress to consumer disputes. Quasi judicial bodies are set up at the District, State and National level and have been empowered to give relief of specific nature and to award, wherever appropriate compensation to consumers. Penalties for non compliance of orders given by quasi-judicial bodies have also been provided.



CHECK YOUR PROGRESS

Q.1: Mention one objective of the Consumer Protection Act, 1986.

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12.4 IMPORTANT DEFINITIONS

Some important definitions are given below—

a) **"Complainant"** means—
   i) a consumer; or
   ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or
   iii) the Central Government or any State Government; or
   iv) one or more consumers, where there are numerous consumers having the same interest;
   v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

b) **"Complaint"** means any allegation in writing made by a complainant that—
   i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider
   ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;
   iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
   iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—
      a) fixed by or under any law for the time being in force;
      b) displayed on the goods or any package containing such goods;
      c) displayed on the price list exhibited by him by or under any law for the time being in force;
      d) agreed between the parties;
   v) goods which will be hazardous to life and safety when used are being offered for sale to the public,
      a) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;

c) **"Consumer"** means any person who,

i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose];

d) **"Consumer dispute"** means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

e) **"Defect"** means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or [under any contract, express or implied, or] as is claimed by the trader in any manner whatsoever in relation to any goods;

f) **"Deficiency"** means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

g) **"District Forum"** means a Consumer Disputes Redressal Forum established under clause (a) of section 9;

h) **"Goods"** means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);

i) **"Manufacturer"** means a person who—

   i) makes or manufactures any goods or parts thereof; or

   ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or

   iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer;

j) **"Member"** includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;

k) **"National Commission"** means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;

l) **"Person"** includes—

   i) a firm whether registered or not;

   ii) a Hindu undivided family;

   iii) a co-operative society;

   iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;

m) **"Restrictive trade practice"** means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

   a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;

b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services;

n) **"State Commission"** means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9;



CHECK YOUR PROGRESS

Q.2: Define the term 'Consumer' under the Consumer Protection Act, 1986.

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12.5 RIGHT OF CONSUMERS

The Act recognizes six fundamental rights to every Indian consumer. These rights are mentioned in Section 6 of the Act and are as follows :

1) Right to be protected against the marketing of goods and services which are hazardous to life and property;
2) Right to be informed about quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumers against unfair trade practices;
3) Right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
4) Right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forum;
5) Right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
6) Right to consumer education.

The United Nation Guidelines on Consumer Protection had stressed upon the importance of recognizing these consumer rights and as India is a signatory of the UN General Assembly Resolution, adopted these guidelines in the Consumer Protection Act, 1986.



CHECK YOUR PROGRESS

Q.3: Discuss the reasons behind enumerating different rights of consumers under the Consumer Protection Act, 1986.

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12.6 NATURE AND SCOPE OF COMPLAINTS

Consumer Dispute is a kind of tort and it can only be initiated by filing a complaint by the consumers. A consumer court can not initiate proceedings against the opposite party unless a formal 'complaint' is made.

The complaint must be made in writing and it must contain the name, description and address of the complainant as well as the opposite party. Also, it must contain the facts and the relief sought, supported by documents, if any. Under the Consumer Protection Act, 1986 it was necessary that the complainant must have suffered loss/damage as a result of an unfair trade practice. But, the Amendment Act of 1993 had removed the anomaly and a complaint can be made in respect of any unfair or restrictive trade practice, whether the complainant has suffered loss or damage or not.

The definition of complaint has been expanded under Section 2(1)(c) by the 2002 Amendment.

Now a complaint can be made not only against the traders but also service providers for adopting unfair trade practices, deficiency in service etc. Thus, a complaint can be given in respect of defective goods or deficient services. No complaint can be given without asking a relief provided by the Act.

If any complaint made in consumer dispute redressal cannot be satisfactorily decided in time bound proceedings, the complainant should prosecute the remedy in civil court.

Similarly, when a matter is pending before a competent civil court, the consumer courts will not entertain a petition in respect of the identical subject matter.

12.7 REMEDIES AVAILABLE TO CONSUMERS

Section 14 of the Consumer Protection Act deals with the remedies available to the consumers. The reliefs can be granted to a complainant by the District Forum. However, the State Commission under Section 18 and the National Commission under Section 22 read with Rule 14(5) of the Consumer Protection Rules 1987 also have the similar power to grant the reliefs, enumerated herein.

By the Amendment of 2002, the scope of relief has been increased. Now the District Forum can direct the opposite party to pay punitive damage, cease manufacture of hazardous good and desist from offering services which are hazardous in nature etc.

Under the Consumer Protection Act, the District Forum is empowered to grant the following reliefs:

a) Removal of Defects: The Forum may direct the opposite party to remove the defect pointed out by the appropriate laboratory, from the goods.

b) Replacement of Goods: Where it is not possible to remove the defects alleged, the Forum may direct to replace the goods with new goods of similar description, which are free from similar defects.

c) Return of Price: For the goods of sub standard quality or deficiency in service, the Forum may order the opposite party to return the price or the charges paid by the complainant.

d) Compensation: If the consumer suffers any loss or injury due to the negligence of the opposite party, the District Forum may issue an order to pay such amount as compensation.

e) Removal of Defects/Deficiencies: The district Forum has been empowered to direct the opposite party to remove the defect or deficiency in the service in question.

f) Discontinuance of Unfair / Restrictive Trade Practice: When the opposite party is found guilty 'prima facie' of indulging unfair or restrictive trade practices, the Forum may direct it to discontinue or not to repeat it.

g) Not to offer Hazardous Goods for Sale: The District Forum has been empowered to order or direct the opposite party, not to offer the hazardous goods for sale.

h) To withdraw hazardous Goods: To protect the public in general and consumers in particular, the District Forum has power to direct the opposite party to withdraw the hazardous goods from being offered for sale.

i) To provide adequate costs to parties: The District Forum is empowered to award costs to complainants in fit cases.

Prior to the 1993 Amendment, the District Forum had the power to grant only the reliefs in clauses (a) to (d) above. But, 1993 Amendment inserted clauses (e) to (i) in Section 14(1) of the Act. These clauses vest the consumer courts with greater power.



CHECK YOUR PROGRESS

Q.4: Under what circumstances a Consumer Forum can award compensation to the complainant?

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12.8 LET US SUM UP

In this unit, we have discussed the following aspects–

- The Consumer Protection Act, 1986 is an important milestone in the history Consumer Movement in India.
- The Act provide quick and cheaper mode of disposal of disputes.
- The Act enumerated six fundamental rights to consumers.
- An aggrieved consumer can file a written complaint to the District Forum to get relief.
- The District Forum, State Commission or the National Commission has power to grant the relief to the aggrieved consumer.



12.9 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.
2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
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5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



12.10 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: The main objective of the Consumer Protection Act, 1986 is to provide speedy and simple redressal to consumer disputes.

Ans. to Q. No. 2: Section 2(1)(d) of the Act defines the 'Consumer' as a person who buys any goods for a consideration or hires or avails of any services for a consideration.

Ans. to Q. No. 3: The United Nations General Assembly had adopted certain guidelines for the protection of interests of consumers. As India is a signatory of the UN General Assembly Resolution, becomes bound to incorporate those guidelines in domestic law. Therefore the different rights are enumerated for the consumers under the Consumer Protection Act.

Ans. to Q. No. 4: A Consumer Forum can Award any compensation under the Act when the following circumstances are satisfied :

a) The consumer must have suffered some loss or injury;

b) The loss or injury must have been caused due to the negligence of the opposite party.



12.11 MODEL QUESTIONS

Q.1: Explain the following terms under the Consumer Protection Act, 1986.

a) Complaint

b) Consumer dispute

Q.2: Write the nature and scope of the Consumer Protection Act, 1986

Q.3: How and where a complaint can be filed by a complainant?

Q.4: What are the different remedies available to a consumer?

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UNIT 13: E-GOVERNANCE

UNIT STRUCTURE

13.1 Learning Objectives

13.2 Introductions

13.3 Concept of E-Governance

13.4 Director Identification Number

13.5 Corporate Identification Number

13.6 Digital Signature Certificate

13.7 Important Features

13.8 e-Form

13.9 Importance of MCA 21 Projects

13.10 Let Us Sum Up

13.11 Further Reading

13.12 Answers to Check Your Progress

13.13 Model Questions

13.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- discuss the Concept of E-Governance
- explain the Director Identification Number
- explain the Corporate Identification Number
- explain the Digital Signature Certificate
- learn the filing e-Form.

13.2 INTRODUCTION

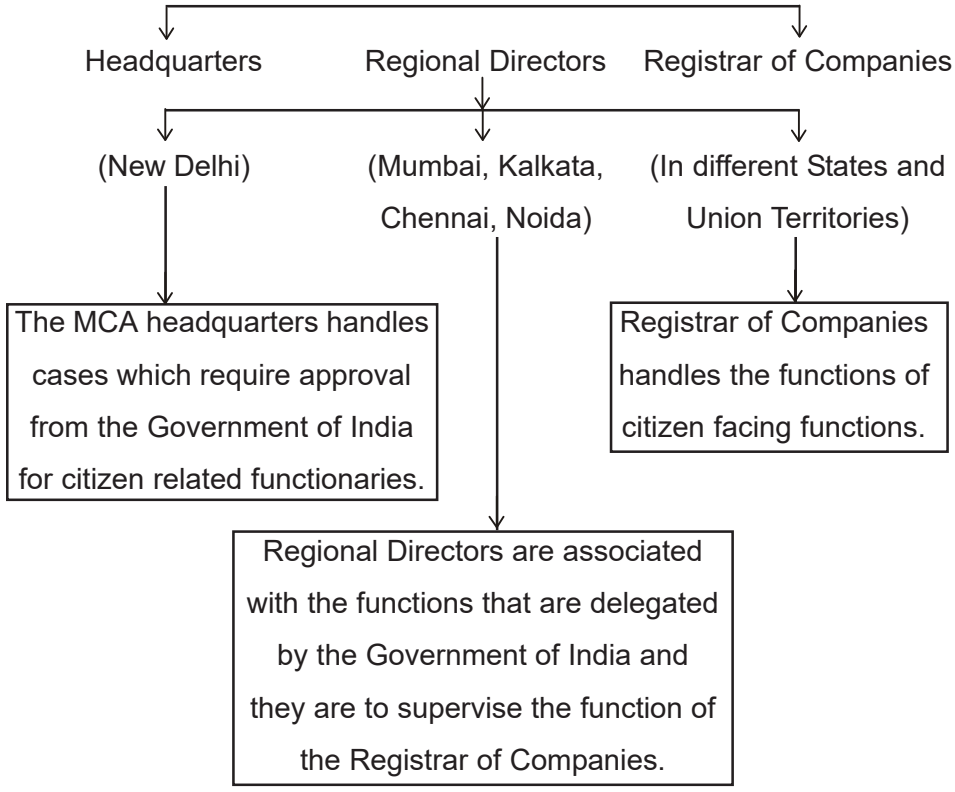
The MCA-21 stands for Ministry of Company Affairs (MCA) in the 21st century. E-Governance is the application of information technology to the Government functioning in electronic form to bring simple and transparent governance. This unit encompass the Director Identification Number (DIN) as well as Corporate Identification Number (CIN), Digital Signature Certificate, filing e-Form. Thus, in this unit you will gain knowledge about DIN, CIN,

Digital Signature Certificate and filing e-Form which are the important segments of E-Governance.

13.3 CONCEPT OF E-GOVERNANCE

Under the Companies Act, 1956, the filing and registration of document of the companies are a statutory requirement. The Ministry is concerned with the administration of the Companies Act, 1956 and other allied Acts for regulating the functioning of the corporate sector in accordance with law. We must first understand the three tire organizational set up of MCA as shown below:

Three tire organizational set-up of MCA



MCA-21 helps in easy and secure online access to all the services being provided by the Ministry of Company Affairs, including registration and filing of documents throughout the country. It takes less time and the corporate houses can use it in a manner that best suits them. The programme is based on the quality of services, to various stakeholders concerned with the corporate sector in the country. It also provide transparency, cost effective

and speedy disposal of different services. To protect the interest of the investors Government takes different initiatives in this regards. The complaints of the investor are acknowledged within 48 hours. Many Investor Protection Cells are opened not only for Ministry but also for all and Regional Directors and Registrars of Companies and Nodal Officers.



CHECK YOUR PROGRESS

Q.1: What is the three tier organizational set-up of MCA?

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The e-governance projects are involving two components namely front office and back office.

Front Office: It represents the interface of the corporate and public users with the MCA-21 system. Its implantation is done in two ways as Virtual Front Office (VFO) and Registrar's Front Office.

Virtual Front Office (VFO): The VFO is what citizen has in front while accessing the MCA-21 portal. It represents a computer facility available to the stakeholders for statutory filing with ROC Offices across the country. It represents computer facility for the filing of digitally signed e-forms by accessing the MCA portal. It also helps in converting documents into PDF format and scanning the documents. The VFO provide different services like tracking transaction status, requesting certified copies, registering investor complaint etc.

Registrar's Front Office: The Registrar's Front Office facilitate the service related to change over from the Physical Document Filing to Digital Document Filing. It consists of trained manpower, scanner, printer etc. It helps the stakeholders for statutory filing with ROC Offices across the country.

Back Office: It represents the office of the Registrar of Companies, Regional Directors and Headquarters. The e-forms along with the attachments that are stored in the electronic depository are viewed and

processed by the staff of the MCA. It provides quicker response to the investor grievances. It checks, provides guidance and alerts when the tasks are not carried out within stipulated period. It also stores all approved documents, record of the shareholders etc.



CHECK YOUR PROGRESS

Q.2: What do you mean by front office?

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Q.3: What are the two components of the e-governance project?

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13.4 DIRECTOR IDENTIFICATION NUMBER

All the people who want to be the director of the company are required to obtain the Director Identification Number (DIN) within the prescribed time-frame. The concept of a Director Identification Number (DIN) has been introduced for the first time with the insertion of Sections 266A to 266G of Companies (Amendment) Act, 2006. Only one DIN is required for an individual irrespective of the number of directorships held by him. It is a unique identification number. This number is valid for life time.

It is mandatory for the director of Indian Companies who are not citizens of India. But it is not applicable for the directors of foreign companes having branch offices in India.

The process to be followed by the applicant is as under:

i) **Obtain Provisional DIN:** The applicant is required to fill-up and submit the form DIN-1 online for obtaining on the homepage of MCA portal.

ii) **Pay DIN Application Fee:** 'DIN application fee' option has to select and enter the provisional DIN. Fee can be paid by the applicant using any of three modes of payment available on MCA portal. As the DIN application fee is paid, the Form DIN-1 will be processed.

iii) **Dispatch DIN Application to MCA DIN Cell: The following documents are** required along with the **DIN application while the DIN application is ready to dispatch to MCA DIN Cell:**

1) A print-out of application Form DIN. Sign the DIN application form manually and fill up the Service Request Number (SRN) of the fee paid.
2) A resolution.
3) The photocopies of the 'Proof of Identity'
4) The 'Proof of Residence' days from the date of generation of provisional DIN online.

The DIN application form and all attached documents are scrutinized as these are received by MCA DIN Cell. If it is found to be in order the provisional DIN is approved and activated in the system. On the other hand, if any defect is found the provisional DIN is rejected.

13.5 CORPORATE IDENTIFICATION NUMBER

Every company is identified by its Corporate Identification Number which is found from the MCA-21 portal. It can be searched on MCA-21 portal either by ROC Registration number or by the name of the company or the old name of the company or the inactive CIN.



CHECK YOUR PROGRESS

Q.4: What is the difference between Corporate Identification Number and Director Identification Number?

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13.6 DIGITAL SIGNATURE CERTIFICATE

To ensure security and authenticity of the documents submitted in electronic form Digital Signature is required under the Information Technology Act, 2000. Thus, all filings done by the companies under MCA21 e-Governance programme are required to be filed with the use of Digital Signatures by the person authorised to sign the documents. It is an electronic analogue of a written signature. Four types of persons are identified as users of Digital Signature and required to obtain the digital signature :

a) MCA (Government) Employees.
b) Authorised signatories of the company including Managing Director, Directors, Manager or Secretary.
c) Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers).
d) Representatives of Banks and Financial Institutions.

There are a total of seven Certification Agencies authorized which can issue the Digital Signature Certificates (DSCs) under the provisions of IT Act, 2000. The Digital Signature Certificates are issued with one year validity and two year validity and renewable on expiry of the period of initial issue.



CHECK YOUR PROGRESS

Q.5: Who are the identified users of Digital Signature?

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13.7 IMPORTANT FEATURES

The Director Identification Number, Corporate Identification Number and Digital Signature Certificate are the important features under e-

governance mode. But some other important features under e-governance mode are also essential like Certified Filling Centre (CFC), Service Request Number (SRN), stamp duty, mode of payment etc.

Certified Filling Centre (CFC): Certified Filling Centre is managed by the professional. The different stakeholders do the statutory filling with ROC office across the world. These are managed and operated by the professional like Secretaries, Chartered Accountants, and Cost Accountants on user charge basis. There are more than 550 Certified Filling Centres approved all over India.

Service Request Number (SRN): A user can check the status of the document or transaction through the SRN which is generated on filling an e-Form.

Stamp Duty: Stamp duty is payable on Memorandum and Articles of Association of every company.

Mode of Payment: The statutory fees can be paid under MCA-21 system in different modes i.e.

A) Off-line Payment: Through the help of challan in the counter of notified Bank.

B) On-line Payment: Through Internet Banking or Credit Card.



CHECK YOUR PROGRESS

Q.6: Mention any three features of e-governance?

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13.8 E-FORM

The Ministry of Company Affairs has introduced the MCA21 e-Governance programme. The MCA21 e-Governance programme provide all services relating to ROC offices on-line in e-Governance mode. Each e-Form contains form reference and the description. It also contains particular section of the Companies Act or relevant rules and regulations.

For the purpose simpler functioning the proposed e-Forms have been grouped under the following categories:

a) *Company Registration:* All the forms that are required in incorporating the companies e.g. Form 1A, 1, 18 etc.

b) *Compliance Related Filling:* All the statutory filings of e-Forms are grouped in this category e.g. Annual Return, Notice of appointment etc.

c) *Charge Management:* There are different charges applicable and it requires the filing of particulars for registration of charge created or modified.

d) *Change Services:* It relates to the change of authorised capital, capital structure, situation of registered office etc.

e) *Investor Services:* A separate e-Form is prescribed for filling the complaint.

f) *Informational services:* There are many informational services are provided for the purposes of filing documents in ROC e.g. resolution and agreement, declaration of solvency etc.

g) *Provisions relating to Management personnel:* This should include change in the number of directors, their appointment, remuneration, payment of commission etc.

h) *Approval of services:* The Regional Director is required to follow some matters like issue of licence, approval of contract, appoint-ment or removal of auditors etc.

13.9 IMPORTANCE OF MCA 21 PROJECTS

The MCA 21 fulfils the requirements of the different persons involved in different sectors like Corporate, Profession, Public Financial Institutions and Banks, Government etc. The importance of MCA 21 projects are:

a) Simplified and easy mode of filling of Forms or Returns.

b) Registration and verification of charges.

c) Timely redressal of investor grievances.

d) On-line incorporation of companies.

e) Transparency.

f) Easy customer relationship building.

g) Inspection of public document.

h) More qualitative analysis can be expected.



13.10 LET US SUM UP

In this unit, we have discussed the following aspects–

- MCA-21 helps in easy and secure online access to all the services being provided by the Ministry of Company Affairs, including registration and filing of documents throughout the country.
- The VFO is what citizen has in front while accessing the MCA-21 portal.
- The Registrar's Front Office facilitates the service related to change over from the Physical Document Filing to Digital Document Filing.
- Back Office represents the office of the Registrar of Companies, Regional Directors and Headquarters.
- To ensure security and authenticity of the documents submitted in electronic form Digital Signature is required under the Information Technology Act, 2000.
- A user can check the status of the document or transaction through the SRN which is generated on filling an e-Form.
- Each e-Form contains form reference and the description. It also contains particular section of the Companies Act or relevant rules and regulations.
- The statutory fees can be paid under MCA-21 system in different modes i.e. through Off-line payment and On-line Payment.



13.11 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.

2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.
5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



13.12 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: The three tier organizational set-up of MCA–
(1) Headquarters, 2) Regional Directors, (3) Registrar of Companies

Ans. to Q. No. 2: Front Office represents the interface of the corporate and public users with the MCA-21 system.

Ans. to Q. No. 3: The two components of the e-governance project are front office and back office.

Ans. to Q. No. 4: The difference between Corporate Identification Number and Director Identification Number is that every company is identified by its Corporate Identification Number and the every director isidentified by its Director Identification Number except the director of the foreign company having branch offices in India.

Ans. to Q. No. 5: The identified users of Digital Signature are—

i) MCA (Government) Employees.
ii) Authorised signatories of the company including Managing Director, Directors, Manager or Secretary.
iii) Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers)
iv) Representatives of Banks and Financial Institutions.

Ans. to Q. No. 6: Three features of e-governance are:

i) Certified Filling Centre (CFC),

ii) Service Request Number (SRN),

iii) Stamp duty.



13.13 MODEL QUESTIONS

Q.1: Fill in the blanks:

a) The MCA-21 stands for ..... in the 21st century.

b) ..... are associated with the functions that delegated by the Government of India and supervise the function of Registrar of Companies.

c) ..... implantation is done in two ways as Virtual Front Office and Registrar's Front Office.

d) The concept of a Director Identification Number (DIN) has been introduced for the first time with the insertion of Sections ..... to ..... of Companies (Amendment) Act, 2006.

e) There are more than ..... Certified Filling Centres approved all over India.

Q.2: Explain the term Corporate Identification Number.

Q.3: Write short note on:

a) Director Identification Number

b) Digital Signature Certificates

c) Certified Filling Centre

d) Service Request Number

Q.4: What is meant by Digital Signature Certificates? Who are the persons that are identified as users of Digital Signature?

Q.5: Mention two modes through which statutory fees can be paid under MCA-21 system?

Q.6: What is the process to be followed by the applicant to get Director Identification Number?

Q.7: "The e-governance project involves two components as front office and back office." Explain.

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UNIT 14: REGULATION TO INFORMATION

UNIT STRUCTURE

14.1 Learning Objectives

14.2 Introduction

14.3 Right to Information Act, 2005

14.4 Information Technology Act, 2000

14.5 Electronic Governance and Secure Electronic Record

14.6 Digital Signatures and Digital Signature Certificates

14.7 Cyber Regulations Appellate Tribunal

14.8 Offences

14.9 Limitations of the Information Technology Act, 2000

14.10 Let Us Sum Up

14.11 Further Reading

14.12 Answers to Check Your Progress

14.13 Model Questions

14.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- explain the Right to Information, Act 2005 and the Information Technology Act, 2000
- explain the concept of E-Governance, Digital Signature and Digital Certificates
- describe the functioning of Cyber Regulations Appellate Tribunal
- describe the limitations of the Information Technology Act, 2000.

14.2 INTRODUCTION

The Information Technology Act, 2000 came into existence as a response to the United Nations General Assembly recommendation that all states should give favourable consideration to the Model Law on Electronic Commerce when they enact or revise their laws, for uniformity of the law of International Trade.

The main object of the law has been two folds:

1st – that the enactment of such a nature should not ignore the national or municipal perspectives on information technology and

2nd – that the enactment to have an international perspective as advocated by the Model Law on Electronic Commerce.

This Act applies to any offence or contravention committed outside India by any person, irrespective of his nationality, if such act or contravention involves a computer, computer system or computer located in India.

The Act is enacted to protect and provide a means of redressal even to owner of a single computer, computer system or computer network located in India.

Moreover, this Act further amends the Indian penal Code, 1860, the Indian Evidence Act, 1872, the Banker's Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934.

The Right to Information Act, 2005: The Act provides for the setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. To provide information the Act came into force on 15th June, 2005 and it becomes effective on 13th Oct. 2005.

By enacting this law, the Parliament of India gave a powerful tool to the citizens to get information from the Government as a matter of right.

The main object of the Act is to empower the citizens of India to keep vigil on the instruments of Governance. It also promotes transparency and accountability in the working of the Government.

Under this Act citizens can ask the Public Information Officer any information which is related to the administration only. The information asked for must relate to public affairs and shall not be associated with private matters.



CHECK YOUR PROGRESS

Q.1: Write two main objects of the Information Technology Act, 2000.

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14.3 THE RIGHT TO INFORMATION ACT, 2005

Object of the Right to information Act

The basic object of the Right to information Act is to empower the citizens, to promote transparency and accountability in the working of the Government, to contain corruption, and to enhance people participation in democratic process thereby making our democracy work for the people in a real scene. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

What is Information

Information is any material in any form. It includes rcords, documents, memos, e-mail, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form. It also includes information relating to any private body which can be accessed by the public authority under any law for the time being in force.

What is a Public Authority

A “public authority” is any authority or body or institution of self-government established or constituted by or under the Constitution; or by any other law

made by the Parliament or a State Legislature or by notification issued or order made by the Centra Government or a State Legislature, or by notification issued or order made by the Central Government or a State Government. The bodies owned, controlled or substantially financed by the Central Government or State Government are also public authorities. Non -Government organisations substantially financed by the Central Government or a State Government also fall within the definition of public authority. The substantial financing by the Central Government or a State Government may be direct or indirect. The Act does not define substantial financing. Various courts/ Information Commissions have been deciding on this issue on case to case basis, depending upon the merits of each case.

Responsibilities of Public Authority :

Section- 4(1) (a) : Every Public Authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates the Right to Information under this Act. and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to the availability of resources, computerised and connected through a network all over the country on difference systems so that access to such records is facilitated. Section -4 (1) (b) : Public Authority shall publish the following information within 120 (One Hundred and Twenty) days from the enactment of this Act:

(i) The particulars of its organisation, functions and duties;

(ii) The powers and duties of its officers and employees;

(iii) The procedure followed in the decision making process, including channels of supervision and accountability;

(iv) The norms set by it for the discharge of its functions;

(v) The rules, regulations, instructions, manual and records, held by it or under its control or used by its employees for discharging its functions;

(vi) A statement of the categories of documents that are held by it or under its control;

(vii) The particulars of any arrangement that exists for consulation with, or

representation by, the members of the public in relation to the formulation of its policy or implimentation thereof;

(viii) A statement of the boards, council, commitees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meeting of those boards, councils, commitees and other bodies are open to the public, or the minutes of such meetings are accessible for public.

(ix) A directory of its officers and employees;

(x) The monthly remunaration received by each of its officers and employees, including the system of compensation as provided in its regulations.

(xi) The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) Particulars of recipients of concessions, permits or authorizations granted by it.

(xiv) Details in respect of the information, available to or held by it, reduced in an electronic form.

(xv) The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(xvi) The names, designations and other particulars of the Public Information Oficers;

(Section-4 (1) (c) : Public Authority shall publish all relevant facts while formulating important policies or announcing the decisions which affect public.

Section - 4 (1) (d) : Public Authority should provide reasons for its administrative or quasijudical decisions to affected persons.

Section - 4(2) It shall be a constant endeavor of every Public Authority to take steps in accordance with the requirements of clause (b) of sub-section (1) of section-4 to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

Public Information Offer

Public authorities have designated some of its officers as Public Information Officers. They are responsible to give information to a person who seeks information under the RTI Act.

Right to Information under the Act

Request for obtaining information

(1) A person, who desire to obtain any information under this Act. shall make a request in writing or through electronic means in English or Hindi or in the official languages 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 provided that where such request can not be made in writing the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) 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.

(3) Where an application is made to a public authority requesting for an information-

(i) Which is held by another public authority or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practiciable but in no case later than five days from the date of receipt of the application.



CHECK YOUR PROGRESS

Q.2: Write is the aim behind passing of the Right to Information Act, 2005.

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14.4 INFORMATION TECHNOLOGY ACT, 2000

In May 2000, both the houses of the Indian Parliament passed the Information Technology Bill. The Bill received the assent of the President in August 2000, which is known as the Information Technology Act, 2000. Cyber laws are contained in the IT Act, 2000.

This Act provides the legal infrastructure for e-commerce in India. It also aims to provide for the legal framework to all electronic records and other activities carried out by electronic means to get the legal sanctity. The Act states that unless otherwise agreed, all communications done through electronic means have legal validity and enforceability. Some highlights of the Act can be stated as below :

Chapter-II of the Act specifically stipulates that any subscriber may authenticate an electronic record by affixing his digital signature. It further states that any person can verify an electronic record by use of a public key of the subscriber.

Chapter-III of the Act deals about Electronic Governance and states that where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is— rendered or made available in an electronic form and accessible so as to be usable for a subsequent reference.

The said chapter also details the legal recognition of Digital Signatures.

Chapter-IV of the said Act gives a scheme for Regulation of Certifying Authorities. The Act envisages a Controller of Certifying Authorities who shall perform the function of exercising supervision over the activities of the Certifying Authorities as also laying down standards and conditions governing the Certifying Authorities as also specifying the various forms and content of Digital Signature Certificates. The Act recognizes the need for recognizing foreign Certifying Authorities and it further details the various provisions for the issue of license to issue Digital Signature Certificates.

Chapter-VII of the Act details about the scheme of things relating to Digital Signature Certificates. The duties of subscribers are also enshrined in the said Act.

Chapter-IX of the said Act talks about penalties and adjudication for various offences. The penalties for damage to computer, computer systems etc. has been fixed as damages by way of compensation not exceeding Rs. 1,00,00,000 to affected persons. The Act talks of appointment of any officers not below the rank of a Director to the Government of India or an equivalent officer of state government as an Adjudicating Officer who shall adjudicate whether any person has made a contravention of any of the provisions of the said Act or rules framed there under. The said Adjudicating Officer has been given the powers of a Civil Court.

Chapter-X of the Act talks of the establishment of the Cyber Regulations Appellate Tribunal, which shall be an appellate body where appeals against the orders passed by the Adjudicating Officers, shall be preferred.

Chapter-XI of the Act talks about various offences and the said offences shall be investigated only by a Police Officer not below the rank of the Deputy Superintendent of Police. These offences include tampering with computer source documents, publishing of information, which is obscene in electronic form, and hacking.

The Act also provides for the constitution of the Cyber Regulations Advisory Committee, which shall advice the government as regards any rules, or for any other purpose connected with the said act.

14.5 ELECTRONIC GOVERNANCE AND SECURE ELECTRONIC RECORD

Electronic Governance is the application of Information and Communication Technology for delivering Government services, exchange of govt. information, communication, transactions, integration of various stand alone systems and services between govt. to customer, govt. to business, govt. to govt. as well as back office processes and interaction within the entire govt. framework. In simple words it can be said that E-Governance facilitate a much faster, convenient, transparent and dynamic interaction between the government and its people.

Chapter III of the Act gives legal recognition to the E-Governance. E-governance or Electronic Governance is dealt with under Sections 4 to 10A of the IT Act, 2000.

Section 4 of the Act provides for the legal recognition of E-record and made it as a functional equivalent of writing or type written or printed form.

Section 5 provides for legal recognition of Digital Signatures. Where any law requires that any information or matter should be authenticated by affixing the signature of any person, then such requirement shall be satisfied if it is authenticated by means of Digital Signatures affixed in such manner as may be prescribed by the Central Government.

Section 6 lays down the foundation of Electronic Governance. It provides that the filing of any form, application or other documents, creation, retention or preservation of records, issue or grant of any license or permit or receipt or payment in Government offices and its agencies may be done through the means of electronic form.

Section 7 provides that the documents, records or information which is to be retained for any specified period shall be deemed to have been retained if the same is retained in the electronic form.

Section 8 provides that where any law requires the publication of any rule, regulation, order, bye-law, notification or any other matter in the Official Gazette, then such requirement shall be deemed to be satisfied if the same is published in an electronic form.

Section 9 of the Act provides that the conditions stipulated in sections 6, 7 and 8 shall not confer any right to insist that the document should be accepted in an electronic form by any Ministry or department of the Central Government or the State Government.

The e-governance has made the system more transparent, by cutting down the practice of red-tapes, corruption by the officials, as now the government can reach the citizens directly. E-governance brings the benefit of improving the revenue collections, and helps the government to gain higher revenue for enhancing the welfare of citizens.

Secure Electronic Records : The Act is concerned with the application of the security procedures at the user's level.

Sections 14 to 16 of the Act deals with securing electronic records and electronic signatures.

According to Section 14, where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

Here the presumption is that an electronic record is a secured one from that specific point of time when any security procedure has been applied to it to the time of its verification at the recipient's end, till the recipient proves it otherwise.

Section 15 provides for the security procedure to be applied to Digital Signatures for being treated as a secure digital signature.

Section 16 provides for the power of the Central Government to prescribe the security procedure in respect of secure electronic records and secure digital signatures.



CHECK YOUR PROGRESS

Q.3: What is Secure Electronic Records?

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14.6 DIGITAL SIGNATURES AND DIGITAL SIGNATURE CERTIFICATES

Digital Signature (As Amended in 2008): Section 3 gives legal recognition to electronic records and digital signatures.

The digital signature is created in two distinct steps.

First the electronic record is converted into a message digest by using a mathematical function known as “hash function” which digitally freezes the electronic record thus ensuring the integrity of the content of the intended communication contained in the electronic record. Any tampering with the contents of the electronic record will immediately invalidate the digital signature.

Secondly, the identity of the person affixing the digital signature is authenticated through the use of a private key which attaches itself to the message digest and which can be verified by anybody who has the public key corresponding to such private key. This will enable anybody to verify whether the electronic record is retained intact or has been tampered with since it was so fixed with the digital signature. It will also enable a person who has a public key to identify the originator of the message.

Digital Signature Certificates (DSC): A Digital Signature Certificates (DSC) is an important instrument of trust identifying the subscriber over the networks. The DSC creates a binding linkage between the subscriber and the issuer. The binding linkage comes to an existence between the issuer and the subscriber, as and when a DSC is issued to the subscriber by the issuer.

Section 35: Certifying Authority to issue Digital Signature Certificate:

- Any person may make an application to the Certifying Authority for the issue of a Digital Signature Certificate.
- Every such application shall be accompanied by the prescribed fee.
- Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.

- On receipt of an application the Certifying Authority may, after consideration of the certification practice statement or the other statement and after making such enquiries as it may deem fit, grant the Digital Signature Certificate.

Provided that no Digital Signature Certificate shall be granted unless the Certifying Authority is satisfied that—

- The applicant holds the private key corresponding to the public key to be listed in the Digital Signature Certificate.
- The applicant holds a private key, which is capable of creating a digital signature.
- The public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the applicant.

Provided further that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

Section 36: Representations upon issuance of Digital Signature Certificate: A Certifying Authority while issuing a Digital Signature Certificate shall certify that—

- It has complied with the provisions of this Act and the rules and regulations made there under.
- It has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it.
- The subscriber holds the private key corresponding to the public key, listed in the Digital Signature Certificate.
- The subscriber's public key and private key constitute a functioning key pair.
- The information contained in the Digital Signature Certificate is accurate, and
- It has no knowledge of any material fact, which if it had been included in the Digital Signature Certificate would adversely affect the reliability of the representations made in clauses (a) to (d).

Section 37: Suspension of Digital Signature Certificate: The Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate—

i) On receipt of a request to that effect from—
   - The subscriber listed in toe Digital Signature Certificate, or
   - Any person duly authorized to act on behalf of that subscriber

ii) If it is of opinion that the Digital Signature Certificate should be suspended in public interest
   - A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.
   - On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Section 38: Revocation of Digital Signature Certificate:

i) A Certifying Authority may revoke a Digital Signature Certificate issued by it—
   - Where the subscriber or any other person authorized by him makes a request to that effect, or
   - Upon the death of the subscriber, or
   - Upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

ii) Subject to the provisions of sub-section (3) and without prejudice to the provisions of sub-section (1), a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that—
   - A material fact represented in the Digital Signature Certificate is false or has been concealed.
   - A requirement for issuance of the Digital Signature Certificate was not satisfied.
   - The Certifying Authority's private key or security system was compro-mised in a manner materially affecting the Digital Signature Certificate's reliability.

- The subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.
- A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.
- On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Section 39: Notice of suspension or revocation: Where a Digital Signature Certificate is suspended or revoked under section 37 or section 38, the Certifying Authority shall publish a notice of such suspension or revocation.



CHECK YOUR PROGRESS

Q.4: How Digital Signature can be created?

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14.7 CYBER REGULATIONS APPELLATE TRIBUNAL

The Act has established the Cyber Regulations Appellate Tribunal having appellate jurisdiction both on facts and in law over a decision or order passed by the Controller of Certifying Authorities or the Adjudicating officer.

According to Section 48 of the Act the Central Government shall by

notification, establish one or more appellate tribunals to be known as Cyber Regulations Appellate Tribunal. But Rule 13 of the Cyber Regulations Tribunal (Procedure) Rules, 2000 makes it clear that there shall be only one tribunal and it shall hold its sittings at New Delhi.

By the Amendment Act of 2008:

Section 49: The Tribunal shall consist of a Chairperson and members selected by the Central Govt.and Chief Justice of India.

Section 50: Qualification for appointment as chairperson and member: The Chairperson should have qualification to be a judge of a High Court.

Section 51: Terms of office for Presiding Officer:

- Chairperson or member shall hold office for a term of 5 years or to the age of 65 years
- Chairperson or member should have no financial or other interest that could be prejudicial
- The Central govt. or State govt. officers must leave service first to be chairperson or member.

Section 54: Resignation or removal: A Chairperson or member can resign from office with 3 months notice or appointment of his successor, whichever is earlier.

Under Section 58, The Tribunal is vested with the same power as a Civil Court.

14.8 OFFENCES

Cyber offences deal with computer, computer system or computer network related to serious offences. Here the offender has to face criminal prosecution. The offender is punishable with imprisonment for a term or fine or with both.

Chapter XI of the Act classified certain kinds of offences which can be enumerated as follows:

1) Tampering with computer source documents (Section 65)
2) Hacking with computer system (Section 66)

3) Publishing of information which is obscene in electronic form (Section 67)
4) Power of the Controller to give direction (Section 68)
5) Directions of Controller to a subscriber to extend facilities to decrypt (Section 69)
6) Protected system (Section 70)
7) Penalty for misrepresentation (Section 71) and Breach of confidentiality and privacy (Section 72)
8) Penalty for publishing Digital Signature Certificate false in certain particulars (Section 73)
9) Publication for fraudulent purpose (Section 74)
10) Failing to surrender license (Section 33)



CHECK YOUR PROGRESS

Q.5: What is Cyber Offence?

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14.9 LIMITATIONS OF THE INFORMATION TECHNOLOGY ACT, 2000

Though the Act has been successful in setting down the frame work of regulations in Cyber Space and addresses a few pressing concerns of misuse of technology, it suffers from a few limitations.

1) Provisions in Section 1 (2) is not clearly drafted, as to how and in what particular manner, the Act shall apply to any offence or contravention there under committed outside India by any person.
2) The Information Technology Act does not discuss the issue of spamming at all.
3) The Act does not deal with any issues concerning the protection of

Intellectual Property rights in the context of the online environment.

4) Phishing is typically carried out by e-mail and often directs users to enter personal and financial details at a website. Phishing is an example of social engineering technique used to fool users. There is no law against phishing in the Information Technology Act though the Indian Penal Code talks about cheating, it is not sufficient to check the activity of phishing.
5) The IT Act excludes the Negotiable Instruments from its applicability.
6) Functions of adjudicatory officers are not clearly defined under this Act.
7) This Act is silent about the issues of online credit card payments, misuse and misappropriation of credit card numbers online.
8) In chapter XI, from section 65-78, there is no categorical mention as to whether the offences prescribed under these sections are bail able or not.



14.10 LET US SUM UP

In this unit, we have discussed the following aspects–

- Cyber laws are contained in the IT Act, 2000. This Act provides the legal infrastructure for e-commerce in India. It got amended in the year 2008.
- The Right to Information Act aims to provide the transparency and accountability of the workings of the government department and empowers the citizens of India to get information.
- E-Governance facilitates a much faster, convenient, transparent and dynamic interaction between the government and its people.
- Chapter III of the Act gives legal recognition to the E-Governance. Electronic Governance is dealt with under Sections 4 to 10A of the IT Act, 2000.
- A Digital Signature Certificates is an important instrument of trust

which creates a binding linkage between the subscriber and the issuer.

- The Cyber Regulations Appellate Tribunal has power like a Civil Court.



14.11 FURTHER READING

1) Arun Kumar Sen and Jitendra Kumar Mitra (1977). *Commercial Law (including Company Law and Industrial Law)*. World Press Private Limited.
2) R. P. Maheshwari and S. N. Maheshwari (2014). *Principles of Mercantile Law*. New Delhi: Himalaya Pub. House.
3) N. D. Kapoor (2014). *Elements of Mercantile Law*. Sultan Chand & Sons.
4) K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014). *Mercantile Law*. Kalyani Publishers.
5) V. K. Sareen, Mukesh Sharma & K. C. Garg (2015). *Business Law*. Kalyani Publishers.
6) The Consumer Protection Act, 1986 (Bare Act).



14.12 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: The main object of the Act has been two folds—

1st – that the enactment of such a nature should not ignore the national or municipal perspectives on information technology and

2nd – that the enactment to have an international perspective as advocated by the Model Law on Electronic Commerce.

Ans. to Q. No. 2: The aim behind passing the Right to Information Act is to provide the transparency and accountability of the workings of the government department and also to empower the citizens of India

to get information.

Ans. to Q. No. 3: According to Section 14, where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

Ans. to Q. No. 4: The digital signature is created in two distinct steps.

First— the electronic record is converted into a message digest by using "hash function" which digitally freezes the electronic record thus ensuring the integrity of the content of the intended communication contained in the electronic record.

Secondly— the identity of the person affixing the digital signature is authenticated through the use of a private key which can be verified by anybody who has the public key corresponding to such private key.

Ans. to Q. No. 5: Cyber offence is the specific criminal violation that resulted from the unauthorized access to a computer, computer system or computer network.



14.13 MODEL QUESTIONS

Q.1: What is meant by E-Governance?

Q.2: What is Digital Signature?

Q.3: Write some utility of E-Governance.

Q.4: How a member or the Chairperson can be removed from the Cyber Regulations Appellate Tribunal?

*** ***** ***



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2) Chandra, Prasanna (2011). *Financial Management: Theory and Practice*. (8th edition). McGraw Hill Education.
3) Gupta, S. K. & Sharma, R. K. (2016). *Financial Management: Theory and Practice*. (8th Edition). Kalyani Publishers.
4) Jain, P. K. & Khan, M. Y. (2014). *Financial Management: Text, Problems and Cases*. Mcgraw Hill Education.
5) Khan, M. Y. (2017). *Financial Management*. (7th Edition). McGraw Hill Education.
6) Pandey, I. M. (2010). *Financial Management*. (10th edition). Vikas Publishing House.
7) Shrivastava, Rajiv & Mishra, Anil (2011). *Financial Management*. (2nd Ediotion). Oxford University Press.
8) Shrivastava, R. M. (2010). *Financial Management And Policy*. Himalaya Publishing House.

Name of the Paper: .....
Course Code: .....

Centre for Internal Quality Assurance (CIQA)
Krishna Kanta Handiqui State Open University
City Office: Housefed Complex, Guwahati-781006

Learner's Feedback on Course

Dear Learner,

Regarding the course as mentioned above, we would like to know your opinions and comments so as to improve the quality of self learning materials in future. Please respond to the following statements by ticking the number you feel most reflect your opinion. After completion of the additional comments, please detach the page and send/mail the same to us at the address given below.

The Director, Centre for Internal Quality Assurance, KKHandiqui State Open University
Housefed Complex, Dispur, Guwahati-781006
(E-mail id: ciqa@kkhsou.in)

1) Approximately how many hours did you spend for studying the units in the course? ☐☐☐

2) Please give your opinions (by ✓ mark) to the following items based on your reading of the block:

Sl. No.	Statements	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I)	The SLMs of the course fulfil the learning objectives set out in the beginning of each unit					
II)	The units of the SLM could satisfy my academic needs and expectations					
III)	The Unit writers have excellent knowledge about the course contents					
IV)	Language and contents of the units were presented at a level which I could readily understand					
V)	Ample opportunity for participation in the activities provided in the units					
VI)	Used enough Illustrations (Diagrams, tables etc.) for conceptual clarity					
VII)	Quality of content is engaging, relevant, and up-to-date					
VIII)	The self check questions are very helpful					
IX)	The Possible/model questions and the answers to check my progress have benefited me a lot					

Additional Comments: *(Please feel free to provide your open comments)*

1) Which aspects of the SLM, according to you, worked well?

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2) What sort of changes/improvements do you feel KKHSOU could implement to improve the overall quality of the SLM?

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Thank you for taking the time to complete this form.