BBA (G) 4th semester
GGS Indraprastha University
BBA 210: Business Law

Unit I

Indian Contract Act, 1872 (Fundamental Knowledge) Essentials of valid contract, discharge of contract, remedies for breach of contract. Contracts of Indemnity, Guarantee, Bailment, Pledge and Agency.

Unit II

Sale of Goods Act 1930 Meaning of Sale and Goods, Conditions and Warranties, Transfer of Property, Rights of an unpaid seller.

Unit III

The Negotiable Instruments Act 1881 – Essentials of a Negotiable instruments, Kinds of Negotiable Instrument Holder and Holder in Due Course, Negotiation by endorsements, crossing of a cheque and Dishonour of a cheque.

Unit IV

The Companies Act 1956 (Basic elementary knowledge) Essential characteristics of a company, types of companies, memorandum and articles of association, prospectus, shares – kinds, allotment and transfer, debentures, essential conditions for a valid meeting, kinds of meetings and resolutions. Directors, Managing Directors-their appointment, qualifications, powers and limits on their remuneration, prevention of oppression and mismanagement.

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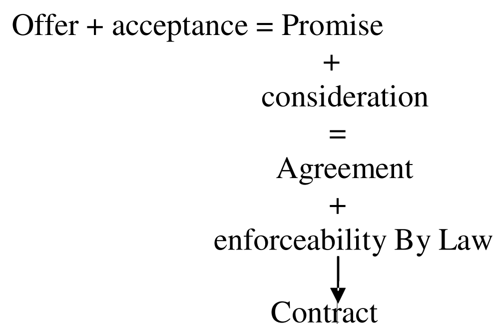
ESSENTIALS OF A VALID CONTRACT

"All agreements are contracts, if they are made –
by free consent of the parties, competent to contract,
for a lawful consideration and
with a lawful object, and
not hereby expressly declared to be void." - Sec.10.

ESSENTIALS OF VALID CONTRACT



1. Proper offer and proper acceptance with intention to create legal relationship.
   Cases;- A and B agree to go to a movie on coming Sunday. A does not turn in resulting in loss of B's time B cannot claim any damages from B since the agreement to watch a movie is a domestic agreement which does not result in a contract.

   In case of social agreement there is no intention to create legal relationship and there the is no contract (Balfour v. Balfour)

   In case of commercial agreements, the law presume that the parties had the intention to create legal relations.
   [an agreement of a purely domestic or social nature is not a contract]

2 Lawful consideration :- consideration must not be unlawful, immoral or opposed to the public policy.

3. Capacity:- The parties to a contract must have capacity (legal ability) to make valid contract.
   Section 11:- of the Indian contract Act specify that every person is competent to contract provided.
   (i) Is of the age of majority according to the Law which he is subject, and
   (ii) Who is of sound mind and
   . (iii) Is not disqualified from contracting by any law to which he is subject.

   Person of unsound mind can enter into a contract during his lucid interval.
   An alien enemy, foreign sovereigns and accredited representative of a foreign state. Insolvents and convicts are not competent to contract.

4. Free consent :- consent of the parties must be genuine consent means agreed upon samething in the same sense i.e. there should be consensus – ad – idem. A consent is

said to be free when it is not caused by coercion,undue influence, fraud, misrepresentation or mistake.

5. Lawful object

The object of agreement should be lawful and legal.

Two persons cannot enter into an agreement to do a criminal act.

Consideration or object of an agreement is unlawful if it

(a) is forbidden by law; or
(b) is of such nature that, if permitted, would defeat the provisions of any law; or
(c) is fraudulent; or
(d) Involves or implies, injury to person or property of another; or
(e) Court regards it as immoral, or opposed to public policy.

6. Possibility of performance:

The terms of the agreement should be capable of performance.

An agreements to do act, impossible in itself cannot be enforced.

Example : A agrees to B to discover treasure by magic. The agreement is void because the act in itself is impossible to be performed from the very beginning.

7. The terms of the agreements are certain or are capable of being made certain [29]

Example : A agreed to pay Rs.5 lakh to B for ultra-modern decoration of his drawing room. The agreement is void because the meaning of the term " ultra – modern" is not certain.

8. Not declared Void

The agreement should be such that it should be capable or being enforced by law.

Certain agreements have been expressly declared illegal or void by the law.

9. Necessary legal formalities

A contract may be oral or in writing.

Where a particular type of contract is required by law to be in writing and registered, it must comply with necessary formalities as to writing, registration and attestation.

If legal formalities are not carried out then the contract is not enforceable by law.

Example : A promise to pay a time. Barred debt must be in writing.

Agreement is a wider term than contract where as all contracts are agreements. All agreements are not contracts.

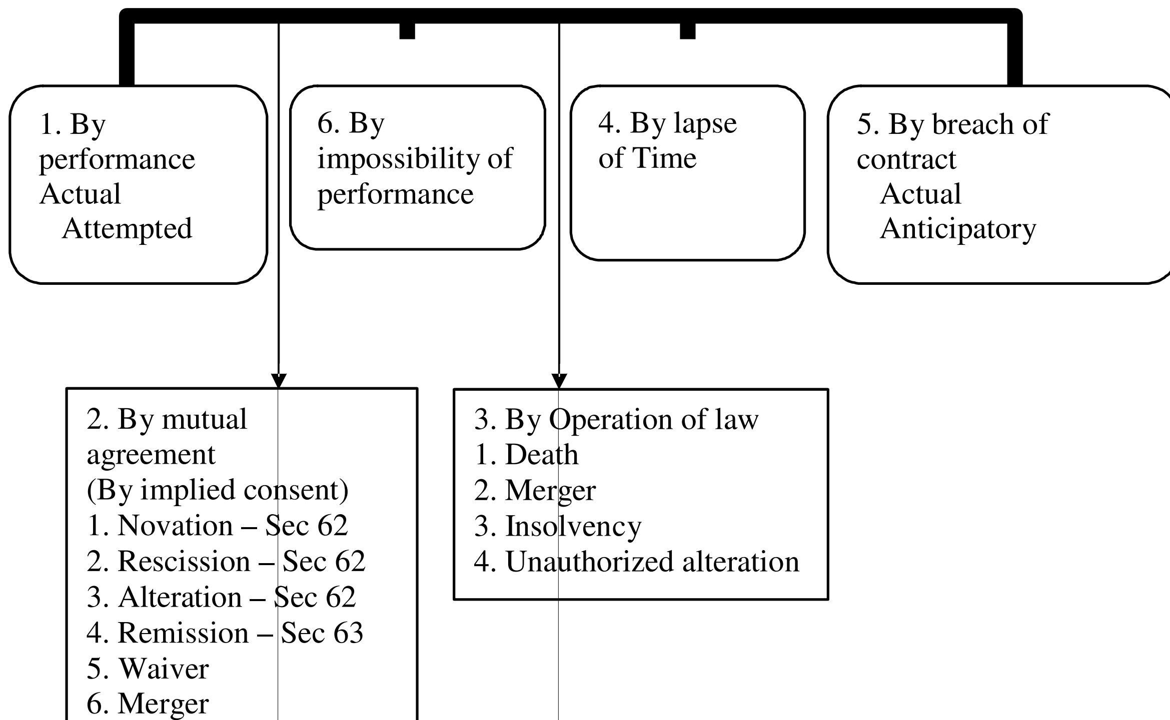
All Contracts are Agreements, but all Agreements are not Contracts

The various agreements may be classified into two categories:

Agreement not enforceable by law	Agreement enforceable by law
Any essential of a valid contract is not available.	All essentials of a valid contract are available

Discharge of a contract means termination of contractual relation between the parties to a contract in other words a contract is discharged when the rights and obligations created by it are extinguished (i.e. comes to an end).

DISCHARGE OF A CONTRACT



Discharge by performance

fulfillment of obligations by a party to the contract within the time and in the manner prescribed in the contract.

(a) Actual performance – no party remains liable under the contract. Both the parties performed.

(b) Attempted performance or tender.:- Promisor offers to perform his obligation under the contract but the promise refuses to accept the performance. It is called as attempted performance or tender of performance
But the contract is not discharged.

Discharge by mutual agreement

(a) Novation [Sec 62] – Novation means substitution of a new contract in the place of the original contract new contract entered into in consideration of discharge of the old contract. The new contract may be.
Between the same parties (by change in the terms and condition)
Between different parties (the term and condition remains same or changed)

Following conditions are satisfied :-

(1) All the parties must consent to novation

(2) The novation must take place before the breach of original contract.

(3) The new contract must be valid and enforceable.

Example:

A owes B Rs.50,000. A enters into an agreements with B and gives B a mortgage of his estate for Rs.40,000 in place of the debt of Rs.50,000. (Between same parties)
A owes money Rs.50,000 to B under a contract. It is agreed between A, B & C that B shall henceforth accept C as his Debtor instead of A for the same amount. Old debt of A is discharged, and a new debt from C to B is contracted. (Among different parties)

(b) Rescission [62]:- Rescission means cancellation of the contract by any party or all the parties to a contract. X promises Y to sell and deliver 100 bales of cotton on 1st oct his go down and Y promises to par for goods on 1 Nov. X does not supply the goods. Y may rescind the contract.

(c) Alteration [62] :- Alteration means a change in one or more of the terms of a contracts with mutual consent of parties the parties of new contracts remains the same.
Ex:- X Promises to sell and delivers 100 bales of cotton on 1 oct. and Y promises to pay for goods on 1st Nov. Afterwards X and Y mutually decide that the goods shall be delivered in five equal installments at is godown . Here original contract has been discharged and a new contract has come into effect.

(d) Remission [63]:- Remission means accepting a lesser consideration than agreed in the contract. No consideration is necessary for remission. Remission takes place when a Promisee-

(a) dispense with (wholly or part) the performance of a promise made to him.
(b) Extends the time for performance due by the promisors
(c) Accept a lesser sum instead of sum due under the contract
(d) Accept any other consideration that agreed in the contract

A promise to paint a pictured for B. B after words for him to do so. A is no longer bound to perform the promise.

(e) Waiver:- Intentional relinquishment of a night under the contract.

(f) Merger :- conversion of an inferior right into a superior right is called as merger. (Inferior right end)

Basis	Novation	Alteration
1. Meaning	It is substitution of an existing contract with new one.	It is alteration to some of the terms and conditions of the original Contract.
2. Change in parties	It is made by – (a) change in the terms of the contract or (b) change in the Contracting Parties.	Terms of the contract may be altered by mutual agreements by the same contracting parties. So, there is no change in the parties.
3. New Contract	A New Contract comes into existence in place of the old one.	It is not essential to substitute a new contract in place of the old contract.
4. Performance	Old contract need not be performed New contract must be performed.	Old contract as per the altered terms shall be performed.

Discharge by operation of law

(a) Death :- involving the personal skill or ability, knowledge of the deceased party one discharged automatically. In other contract the rights and liability passed to legal represent. Example : A promises to perform a dance in B's theatre. A dies. The contract comes to an end.

(b) Insolvency:- when a person is declared insolvent. He is discharged from his liability up to the date of insolvency.
Example: A contracts to sell 100 bags of sugar to B. Due to heavy loss by a major fire which leaves nothing to sell, A applies for insolvency and is adjudged insolvent. Contract is discharged.

(c) By unauthorized material alteration – without the approval of other party – comes to an end – nature of contract substance or legal effect.
Example : A agrees upon a Promissory Note to pay Rs.5,000 to B. B the amount as Rs.50,000. A is liable to pay only Rs.5,000.

(d) Merger: When an inferior right accruing to a party in a contract mergers into a superior right accruing to the same party, then the contract conferring inferior right is discharged.

Example: A took a land on lease from B. Subsequently, A purchases that land. A becomes owner of the land and ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.

5. Rights and liabilities vest in the same person: Where the rights and liabilities under a Contract vest in the same person, the contract is discharged.
Example: A Bill of Exchange which was accepted by A, reaches A's hands after being negotiated and endorsed through 4 other parties. The contract is discharged.

Discharge by Lapse of time

Where a party fails to take action against the other party within the time prescribe under the limitation Act, 1963. All his rights to come end. Recover a debt – 3 Years recover an immovable property – 12 years
Ex.:- On 1st July 20X1 X sold goods to Y to Rs 1,00,000 and Y had made no payment till August 20X4. state the legal position on 1st Aug 20X4

(a) If no. credit period allowed
(b) If 2 month credit period allowed.

Discharge by Breach of contract

Failure of a party to perform his part of contract

(a) Anticipatory Breach of contract :- Anticipatory breach of contract occurs when the part declares his intention of not performing the contract before the performance is due .
    (i) Express repudiation: - 5 agrees to supply B 100 tunes of specified category of iron on 15.01.2006 on 31.12.2005. 5 express his unwillingness to supply the iron to B.
    (ii) Party disables himself: - Implied by conduct.
    Ex.:- 5 agrees to sell his fiat car to B on 15.01.2006 on 31.12.05 5 sells his fiat car to T.

(b) Actual Breach of contract :- If party fails or neglects or refuses to perform his obligation on the due date of performance or during performance. It is called as actual breach.

During performance – party has performed a part of the contact.
Consequences of Breach of contract:- The aggrieved party (i.e. the party not at face it) is discharged from his obligation and get rights to proceed against the party at fault. The various remedial available to an aggrieved party.

Discharge by Impossibility performance

(a) Effect of Initial Impossibility
(b) Effect of supervening. Impossibility

(a) Initial Impossibility – at the time of making contract
Both parties know – put life into deed body – void .
Both don't know – void.
One know – compensate to other party

(b) Effect of super vanity Impossibility:-
Where an act becomes impossible after the contract is made – void
Becomes unlawful, beyond the control of promisor – void
Promisor alone knows about the Impossibility – compensate loss.
When an agreement is discovered to be void or where a contract becomes void

Benefit must refund X - Sing Ad.1000 Y. y

Cases when a contract is discharged on the group of super vent Impossible

(a) Distraction of subject matter - Failure of the ultimate purpose of contract – king coronate process.

(b) Death of personal Incapacity Example : (Refer Classroom)

(c) Declaration of war Example : (Refer Classroom)

(d) change of Law Example : (Refer Classroom)

(e) Non existence or Non occurrence of a particular state of thing necessary for performance.

Example : (Refer Classroom)

No Super Impossibility – does not become void

Difficulty of performance – coal – transport

Commercial Impossibility

Default of a third party

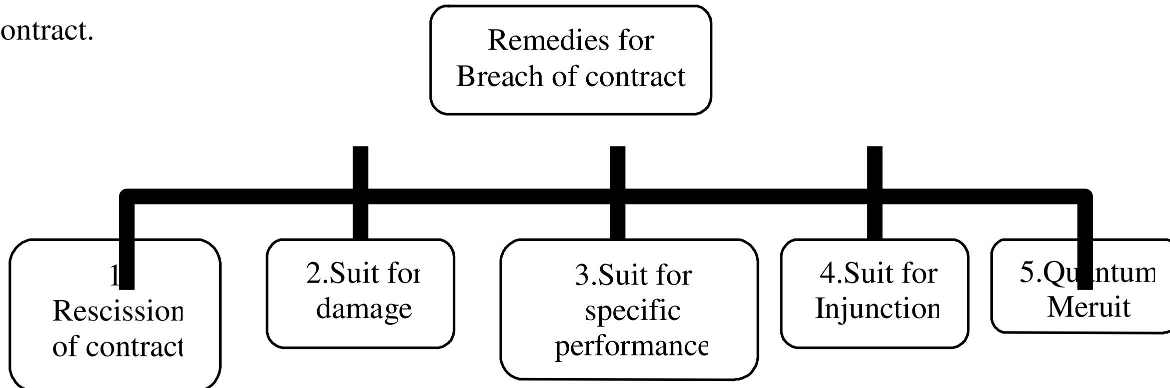
Strikes, knockout and civil disturbance.

Partial Impossibility – coronation of king and to sailing around the lake by boat.

REMEDIES FOR THE BREACH OF CONTRACT

A. REMEDIES

Remedy means course of action available to an aggrieved party when other party breaches the contract.



RESCISSION OF CONTRACT – SEC 39

It means right to party to cancel contract.
In case of breach of contract, other party may rescind contract.

Effect of Rescission of Contract

Aggrieved party is not required to perform his part of obligation under contract.
Aggrieved party claims compensation for any loss.
Party is liable to restore benefit, if any.

When can Court Grant Rescind Contract?

Court can rescind the contract in the following situation:
Contract is voidable.
Contract is unlawful.

SUIT FOR DAMAGES

It means monetary compensation allowed for loss.

Purpose is to compensate aggrieved party and not to punish party as fault.

In India, rules relating to damages are based on English judgment of Hadley vs Baxendale.

The facts of case were – H's mill was stopped due to the breakdown of the shaft. He delivered the shaft to common carrier to repair it and agree to pay certain sum of repair it and agree to pay certain sum of money for doing this work. H has informed to B that delay would result into loss of profit. B delivered the shaft after reasonable time after repair. H filed suit for loss of profit. It was held that B is not liable for loss of profit. The court laid down rule that damage can be recovered if party has breach of contract.

KINDS OF DAMAGES

The following are the different kinds of damages:

Ordinary damages

These are the damages which are payable for the loss arising naturally and directly as result of breach of contract. It is also known as proximate damage or natural damage.

Special damages

These are damages which are payable for loss arising due to some special circumstances. It can be recovered only if special circumstances which result in special loss in case of breach of contract and party have notice of such damage.

Example: A sends sample of his products for exhibition to an agent of a railway company for carriage to "New Delhi" for an exhibition. The consignment note stated: "Must be at New Delhi, Monday Certain." Due to negligence of the company, the goods reached only after the exhibition was over. Held, the company was liable for the loss caused by late arrival of the products because the company's agent was aware of the special circumstances.

Exemplary or punitive or vindictive damages

These damages are allowed not to compensate party but as mean of punishment to defaulting party. The court may award these damages in the case of:

Breach of contract to marry – loss based on mental injury.

Wrongful dishonor of cheque – smaller amount, larger the damage.

Nominal damages

Where party suffers no loss, the court may allow nominal damages simply to establish that party has proved his case and won. Nominal damage is very small in amount.

Damages for inconvenience

If party has suffered physical inconvenience, discomfort for mental agony as result of breach of contract, party can recover the damage for such inconvenience.

Example: A photographer agreed to take photographs at a wedding ceremony but failed to do so. The bride brought an action for the breach of contract. Held, she was entitled to damages for her injured feelings.

Liquidated damages and penalty

Party may specify amount at the time of entering into contract. The amount so specified may be (a) liquidated damage, or (b) penalty.

If specified sum represent, fair and genuine pre – estimate damages likely to result due to breach, it is called liquidated damage.

But if specified sum is disproportionate to the damages, it is called as penalty.

As regard the payment of liquidated damages and penalty court can't' increase amount of damages beyond the amount specified in the contract.

Example : A gives B, a bond for the repayment of Rs.1,000 with interest at 12 per cent, at the end of six months, with a stipulation that, in case of default, the interest shall be payable at the rate of 75 per cent, from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

Forfeiture of security deposit
Any clause in contract entitling the aggrieved party to forfeit security deposit in the nature of penalty and court may award reasonable compensation.

Payment of interest

It is permissible.
If interest is in nature of penalty, court may grant relief.
If no rate of interest is specified in contract party shall be liable to pay as per the law in force or as per custom or usage of trade.

Cost of suit or decree
The court has also discretion to award cost of suit for damages in addition to the damages for breach of contract.

Suit for Specific Performance

It means, demanding an order from court that promise agreed in contract shall be carried out.

When is specific performance allowed?

Where actual damages arising from breach is not measurable.
Where monetary compensation is not adequate remedy.

When specific performance is not allowed?

When damages are an adequate remedy.
Where performance of contract requires numbers of minute details and therefore not possible for court to supervise.
Where contract is of personal in nature.
Where contract made by company beyond its power. (ultra – vires)
Where one party to contract is minor
Where contract is inequitable to either party.

Example : A agree to sell B, an artist painting for Rs.30,000. Later on, he refused to sell it. Here B can file suit against A for specific performance of the contract.

Suit for Injunction

It means stay order granted by court. This order prohibits a person to do particular act. Where there is breach of contract by one party and order, of specific performance is not granted by court, injunction may be granted.
Example: Film actress agreed to act exclusively for W for a year and for no one else. During the year she contracted to act for Z.

MEANING OF INDEMNITY CONTRACT

An indemnity is a sum paid by A to B by way of compensation for a particular loss suffered by B. The indemnitor (A) may or may not be responsible for the loss suffered by the indemnitee (B). Forms of indemnity include cash payments, repairs, replacement, and reinstatement

The **Contracts of Indemnity** has been defined as: "A Contract whereby one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person, is called a **contract of indemnity**."

Indemnity, in simple words, is protection against future loss.

The person who promises to save the other is called the Indemnitor or Indemnifier and the person who is compensated is the Indemnitee, Indemnified or the indemnity-holder. An indemnity can be defined as a sum paid by A to B by way of compensation for a particular loss suffered by B. A, the indemnitor may or may not be responsible for the loss suffered by the B, the indemnitee. Forms of indemnity include cash payments, repairs, replacement, and reinstatement.

Contract of Indemnties should all satisfy the conditions of a valid contract.

All Contracts of Insurance are Contracts of Indemnity except life insurance

Rights of Indemnified or Indemnity Holder

- All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;
- all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

The indemnity holder can call upon the indemnifier to save him from loss even before the actual loss is incurred.

Rights of Indemnifier

- After compensating the indemnity holder, indemnifier is entitled to all the ways and means by which the indemnifier might have protected himself from the loss.

Distinguish or Difference between the Contract of Indemnity and Contract of Guarantee

Both contracts may be distinguished in the following cases:

1. Difference in Meaning:-

Contract of indemnity: In the contract of indemnity one person promises to save the other from any loss.

Contract of guarantee: In the contract of guarantee one person gives guarantee for the performance of the contract.

2. Difference in the Number of Parties:-

Contract of indemnity: Under the contract of indemnity there are two parties.

Contract of guarantee: Under the contract of guarantee there are three parties.

3. Difference in the Liability:-

Contract of indemnity: Under indemnity contract the basic liability falls on the indemnifies.

Contract of guarantee: In case of guarantee contract surety has the secondary liability.

4. Difference in the Number Of Contracts:-

Contract of indemnity: Under the indemnity contract there is one contract only.

Contract of guarantee: Under the contract of guarantee there must be at least three contracts.

5. Difference in the Nature of Interest:-

Contract of indemnity: In case of indemnity contract, indemnifies has the interest in earning commission and premium.

Contract of guarantee: In case of guarantor he has no any other interest except guarantee

6. Difference in the Right of Claim:-

Contract of indemnity: The indemnifies cannot sue the third party.

Contract of guarantee: Guarantor is entitled to proceed against the principal debtor in his own name. If he has paid the debt.

7. Difference in the Performance of Contract:-

Contract of indemnity: Contract of indemnity depends upon the possibility of risk or loss.

Contract of guarantee: In case of guarantee there is an existing debt or duty performance about which guarantee is given.

BAILMENT

MEANING/DEFINATION

Transfer of personal property by one party (the bailor) in the possession, but not ownership, of another party (the bailee) for a particular purpose. Such transfer is made under an express or implied contract (called bailment contract or contract of bailment) that the property will be redelivered to the bailor on completion of that purpose, provided the bailee has no lien on the goods (such as for non-payment of its charges). The bailee is under an obligation to take reasonable care of the property placed under its possession. Bailment contracts are a common occurrence in everyday life: giving clothes to a launderer, leaving car with an auto mechanic, handing over cash or other valuable to a bank, etc.

Bailment describes a legal relationship in common law where physical possession of personal property, or a chattel, is transferred from one person (the 'bailor') to another person (the 'bailee') who subsequently has possession of the property. It arises when a person gives property to someone else for safekeeping, and is a cause of action independent of contract or tort.

THE RIGHTS OF BAILOR

- The rights of Bailor under a contract of bailment are started as follows:

1. Rights of taking back the goods bailed:

The bailor has right to take back the goods bailed as soon as the purpose of bailment is completed. If the bailee defaults in so returning, the bailor has right to receive compensation.

2. Right in case of unauthorized use of goods:

The bailor is entitled to terminate the contract of bailment if the bailee makes the unauthorized use of the goods bailed.

3. Right to goods bailed before stated period:

The bailor may get back his goods before the time stated in the contract of bailment with the consent of the bailee.

4. Right to Dissolution of contract:

The bailor may dissolve the contract if the conditions of bailment are disobeyed by the bailee.

5. Right to Gratuitous goods:

The bailor has right it terminate the contract of gratuitous bailment at any time even before the specified time, subject to the limitation that where such a termination of bailment causes loss in excess of benefit, the bailor must compensate the bailee.

6. Right in share of Profit:

The bailor has share in the increase or profit gained from the goods bailed if there is provision in the contract.

Right of Bailee

1. Right to recover damages:

A bailee has right to recover damages from the bailor if he suffers any loss due to defects of the goods bailed.

2. Right to receive compensation:

A bailee is entitled to receive compensation from the bailor for any loss resulting from the defect in the bailor's title.

3. Right of Legal Action:

A bailee may take necessary legal action against the person who wrongfully deprives him of the use of goods bailed or does them any injury (Sect. 180)

4. Right to recover Bailment Expenses:

Bailee is entitled to be reimbursed for all legitimate expenses incurred for any purpose of bailment.

5. Right of Lien:

Where the bailee has rendered any service for the purpose of bailment, he has right to retain such goods bailed until he receives due remuneration for his services in absence of contract to the contrary. (Sect. 170)

6. Right of Indemnity:

The bailee has right to receive the amount of indemnity from bailor for any loss which he may sustain by reason that the bailor was not entitled to make the bailment or to receive back the goods, or to give directions respecting them. (Sect. 164)

Duties and Liabilities of Bailor

1. To disclose Facts:

The important duty of the bailor is to disclose the faults in the goods bailed in so for as they are known to him; and if he fails to do that he will be liable to pay such damages to the bailee as may have resulted directly from the faults. (Sect. 150)

X hires a carriage of Y. The carriage is unsafe, though Y is not aware of it, and X is injured. Y is responsible to X for the injury.

2. Payment of Extraordinary Expenses:

Section 158 provides that all the necessary expenses incurred by the bailee in connection with the bailment, must be paid by the bailor.

3. To Indemnity Bailee:

The bailor is bound to pay the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment. (Sect. 164)

4. Warning to the Bailee:

When the things are is danger i.e explosive goods, the bailor must give extraordinary warning to the bailee.

Duties and Responsibilities of Bailee

1. To take care of goods bailed:

The bailee is bound to take as much care of the goods entrusted to him as a man of ordinary prudence. (Sect. 151)

2. To avoid the inconsistent act:

A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment (Sect. 153)

3. The authorize use of goods:

If the bailee makes any unauthorized use of the goods bailed, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them. (Sect. 154)

4. Not to mix bailor's goods:

The bailee is bound to keep the goods of the bailor separate from his own where the mixture without the consent of the bailor is inseparable, the bailor is entitled to be compensated by the bailee for the loss of the goods. (Sect. 155, 156, 157)

5. To return the goods:

It is the duty of the bailee to return, or deliver the goods bailed according to the bailor's directions. (Sect. 160)

6. Responsibility in case of default:

If the goods are not returned, delivered or tendered due to default of the bailee, he is responsible to the bailor for any loss of the goods from that time. (Sect. 161)

7. To return any profit from the goods:

The bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed. (Sect. 163)

8. Not to set up adverse title:

The bailee has no right to deny the bailor's title or set up against the bailor his own title or the right of a third party.

UNIT-2

DEFINITION OF 'GOODS' AND 'SALE'

According to section 2(7) of the Sale of Goods Act, 1930, Goods means every kind of movable property, other than actionable claims and money; and includes stocks, shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Thus we can define goods as every kind of movable property except actionable claims and money.

Types of Goods

a) Specific Goods,

b) Future goods and

c) Generic Goods

a) Specific Goods: means goods identified and agreed upon at the time of a contract of sale is made. They are also called existing goods or ascertained goods.

b) Future goods: means goods to be manufactured or produced or acquired by the seller after making the contract of sale.

d) Generic Goods are unascertained goods that are not specifically identified at the time of a contract of sale is made. E.g. 50 kg of rice out of 500 kg of rice.

Sale

Sale: When under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale.

Agreement to sell: The transfer of property in the goods that is to take place at a future time, or subject to some conditions, thereafter to be fulfilled, it is called an agreement to sell. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Distinguish between a sale and an agreement to sell.

Sale	Agreement to sell
1. Property or ownership is of goods is transferred immediately to the future time or subject to certain buyer.	1. Ownership is to be transferred at a conditions to be fulfilled.
2. If the buyer fails to pay for the goods the seller may sue for price.	2. The seller can sue only for the damages and not for the price.
3. If the goods are destroyed the loss falls upon the buyer.	3. If the goods are destroyed the loss falls upon the seller unless otherwise agreed.
4. The seller cannot resell the goods.	4. The seller can resell the goods.
5. A sale is an executed contract.	5. Agreement to sell is an executing contract.

Distinguish between Agreement to sell and Hire-Purchase Agreement

Agreement to sell Hire purchase Agreement

a) An agreement to sell can be in writing or oral

a) Hire purchase agreement must be in writing.

b) Possession: the buyer may or may not get the possession of the goods.

b) Possession: The buyer gets the possession of the goods and enjoys it.

c) Generally businessmen and consumers may enter into an agreement to sell with the purpose of resale of goods or to enjoy them.

c) Consumers without sufficient money, but interested in the goods, enter into hire-purchase agreement for the purpose of enjoying the goods.

d) Under this, if a person buys any goods and subsequently sells them to a third party, the third party acquires a good title.

d) A hire-purchaser is not entitled to sell the goods until all the installments are paid because until then the ownership lies with the vendor.

e) Under this, a buyer is entitled to claim implied conditions and warranties.

e) A hire-purchaser cannot claim the benefits of implied conditions and warranties given by the law as sale is not completed.

f) An agreement to sell imposes a legal obligation on the buyer to purchase it.

f) A hire-purchaser has liberty to opt whether to continue to pay the installments or put an end to it.

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a) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives a right to treat the contract as repudiated.

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

b) Condition is essential to the main purpose.

b) Warranty is incidental or collateral to the main purpose.

c) Breach of a condition may be treated as breach of warranty.

c) Breach of warranty cannot be treated as breach of condition.

Difference between condition and warranty with an example.

X sells food-stuff to Y. The contract between X and Y states that the food to be sold should be fit for consumption and this is the essential term in the contract. So, if it contains any poisonous substance, Y is entitled to reject the food-stuff **and to repudiate the contract this** essential term is called a condition.

On the other hand, if the contract stipulates that the food-stuff should be packed in 1 kilo box but the seller packs it in half-kilo box, only an auxiliary or minor term of the contract is broken, Y may be able to claim compensation in respect of its breach, but not avoid the contract. Such an auxiliary term is called warranty.

The importance of the distinction between a condition and a warranty is that the breach of a "condition" normally entitles the innocent party to terminate the Contract and claim damages; while the breach of a "warranty" normally entitles the innocent party to only claim damages.

An example of a "condition" is a term that entitles the Buyer to vacant Possession of the property. If the Seller is unable to deliver vacant possession and is in breach of the condition, then the Buyer may have the right to affirm the Contract and sue for damages for default and/or sue for specific performance and/or terminate the Contract.

The remedies available to the Buyer may be set out in detail in the Contract and may oblige the Buyer to first issue a default notice requiring the breached condition to be fulfilled within a certain time period before exercising its further rights. A Buyer who terminates a Contract after a breach of a condition by the Seller will normally be entitled to recover the deposit and any other moneys paid under the Contract.

An example of a "warranty" is where the Seller warrants or agrees that at Settlement the property will be in the same state and condition it was in immediately before the date of the Contract. There may be a change in a physical feature of the property between the date of the Contract and settlement that the Seller is not willing to rectify. In this instance the Buyer normally does not have a right to terminate or delay settlement unless the Contract provides otherwise.
Rather, the Buyer must settle and separately pursue a claim for damages/ Compensation from the Seller.

A party should always seek legal advice so it can correctly identify the nature of a term of a Contract and ascertain what remedies are available in each particular Case. Depending on the type of term, the remedies for breach are likely to be quite different and the strategies to deal with the breach are also likely to be Different.

When is condition treated as a warranty?

In certain circumstances, a condition may be treated as a warranty:

a) Election in the hands of the buyer-Where a seller failed to fulfill a condition in a contract of sale; the buyer has a right to waive such condition or elect to treat the breach of condition as a breach of warranty. It depends upon the consent of the buyer, not the seller.

b) If a contract of sale is not severable and the buyer has accepted the goods partly, this is called part-performance. In such a case, it cannot be treated as a breach of condition by the seller but it can be treated as a breach of warranty.

However, if the parties have an express contract, the seller is liable for the breach of condition and not for breach of warranty.

c) Impossibility of performance: If the seller is unable to perform his contract due to impossibility, then also a condition is treated as a warranty.

PASSING OF PROPERTY/TRANSFER OF PROPERTY BETWEEN BUYER AND SELLER:

Transfer of property is the process of transferring the property in goods to the buyer for a price. It is the essence of a contract of sale.

Rules:

a. Sale of specific goods:

i) Passing of property at the time of contract.

ii) Goods to be weighed or measured for ascertaining price.

b. Sale of unascertained goods:

i) Goods must be ascertained.

ii) Goods must be appropriated.

c .Sale of approval:

i) Acceptance.

ii) Failure to return.

B**. Goods Delivered on Approval or Sale on return basis.**

TRANSFER OF TITLE/NEMO DOT QUOD NON HABET

This means No person can pass a better title than what he has.

The object of the maxim Nemo Dot Quod Non Habet is to protect the property from mishandling. The owner of the property is entitled to transfer his title. A person, who is not the owner of the property, is not entitled to sell it.

As per Sec. 27, no one can sell the goods and convey a better title thereof unless he is the owner. Therefore when the goods are sold by a person who is not the owner thereof and who does not

sell them under the authority or without the consent of the owner, the buyer acquires no better title than the seller had.

The exceptions are:

a) Estoppel by owner: - This states that unless the owner of the goods is by his conduct precluded from denying the sellers authority to sell gives the right to a third person to sell a property not of his own by estoppel of the owner.

E.g. A son sells his mothers jewellery in presence of his mother who does not object to the sale. The buyer gets a good title due to estoppel by mother.

b) Sale by mercantile agent:-provides that where a sale by a mercantile agent on behalf of the owner is valid.

E.g. A share broker obtains the signature of the share-holder on original share certificates and sells them on behalf of the share-holder. Here the broker is the mercantile agent.

c) Sale by one of joint owners:- The third exception to the maxim, Nemo Dot Quod Non Habet lays down that if one of the several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person to any person who buys them of such joint owners in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

E.g. A, B and C are joint owners of a horse. A who is in sole possession of it, sells it to X who purchases it in good faith. The sale is valid. B and C cannot claim the horse back.

d) Sale by a person in possession under voidable contract:- When the seller of the goods has obtained possession thereof under a voidable contract (a contract involving coercion or undue influence or fraud results in a voidable contract) but the contract has not been rescinded at the time of sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the sellers defect of title.

e) Seller in possession after sale: A person having sold the goods, continues to be in possession of the goods or document of title to the goods, the delivery or transfer by that person of the goods or document of title under any sale or pledge to any person receiving the same in good faith and without notice of previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

E.g. A, a seller sells some goods to Z, a buyer. Z keeps the stock of goods with A for some time due to lack of warehouse facility. A sells the same goods to another buyer, X. The buyer, X gets a good title. Z has a legal remedy against A for the recovery of the price paid and damages if any.

f) Buyer in possession: Under a contract of sale of goods, a buyer is allowed to take the possession of the goods even though he has to pay theprice for it.

Eg. A purchases certain goods from B by issuing a cheque and takes the delivery of the goods from B. A, thereafter sells the goods to C. B has a right to claim for the price of the goods and damages from A. However, C gets a bona fide title on the goods.

RIGHTS OF AN UNPAID SELLER AGAINST GOODS

An unpaid seller is one who is not paid for the goods sold by him. Any seller would be deemed to be an unpaid seller if:

A. The whole price is not paid or tendered.

B. The credit period allowed has passed and the payment is due.

C. The negotiable instrument issued against payment has been dishonoured.

D. The buyer is declared insolvent.

His rights against goods are:

a. Rights when the property is passed to the buyer:

i) Right of lien.

ii) Right of stoppage in transit.

iii) Right of resale.

b. Rights when the property has not passed to the buyer

i) Right of withholding delivery.

ii) Right of stoppage in transit**.**

Rights of an unpaid seller against the buyer.

If the goods are delivered to the buyer, the unpaid seller has a right to sue the buyer for recovery of price, including costs of suit, customary interest and damages, if any.

If the buyer takes the delivery of the goods from the seller, by issuing a cheque and later the cheque gets bounced, the unpaid seller can sue the buyer under the Negotiable Instruments Act, 1881. Such a buyer is liable for punishment with imprisonment or a fine.

Sellers lien

Seller's lien refers to the seller's right to retain the possession of goods until certain charges due in respect of them are paid. The unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases:

Where the goods have been sold without any stipulation as to credit;

Where the goods have been sold on credit but the term of credit has expired;

Where the buyer becomes insolvent.

Stoppage in Transit

Stoppage in transit is one of the rights of an unpaid seller. This right consists of stopping the goods while they are in the possession of a carrier or lodged at any place in the course of transmission to the buyer. The seller can resume the possession of the goods and retain until the price is tendered or paid.

Rights of an unpaid seller to stop the goods in transit. They are:

a) The buyer of goods must have become insolvent.

b) The goods should be in possession of a middleman or some person intervening between the vendor who has parted with the goods and a buyer who has not received them.

c) The goods must be in transit or in possession of a middleman for the purpose of transit.

d) The seller's right of stoppage in transit can be exercised as long as the goods are in transit and

not yet delivered to the buyer.

e) The seller may retain the goods until price is tendered or paid.

Right of Resale by a Seller

When a seller exercises his right of lien or right of stoppage in transit over goods, he cannot resale them as he wishes because of the existence of the original contract between the seller and buyer. The buyer has the right to pay for the goods and have them. If the seller resells them without notice of the buyer, he has to give the profit accrued on the resale to the buyer. Therefore the seller has limited right to resell the goods.

The seller can resell the goods that are under his lien or stopped in transit in the following cases:

If the goods are perishable in nature; the seller has given a notice to the defaulting buyer granting reasonable time for the payment. The buyer fails to pay the price within the specified time; the seller can sell the goods and also retain the profits, if any.

The original contract can provide the right to resale in case the buyer fails to pay the price and in such a case the seller need not send a notice to the buyer.

UNIT-3

NEGOTIABLE INSTRUMENT ACT

KINDS OF NEGOTIABLE INSTRUMENT

Types / Kinds of negotiable instrument:
According to Sec (13) of negotiable instrument act 1881, a negotiable instrument includes.
(a) A bill of exchange.
(b) A promissory note or.
(c) A cheque.

Above three types of negotiable instrument are mentioned in the said section. however of instrument to be treated as negotiable instrument.
(i) If it is in such a form which entitles the holder to sue in his own name.
(ii) If it is transferable.

Examples:
(i) Bill of exchange.
(ii) Promissory notice.
(iii) Cheques.
(iv) Divident warrants.
(v) Share warrants.
(vi) Bearer debentures.
(vii) Bank drafts.
(viii) Railway receipts.

Documents **which are not considered negotiable instruments:**
Following documents are not considered negotiable instruments:
(i) Money orders.
(ii) Postal orders.
(iii) Deposit receipts.
(iv) Share certificate.
(v) Bill of lading.
(vi) Fixed deposit.
(vii) Dock warrant.

Conditions:
(i) The instrument should be freely transferable.
(ii) The person who obtains it in good faith and for gets it free from all defects and is entitled to sue upon.

ESSENTIALS OF A NEGOTIABLE INSTRUMENT

CHARACTERISTICS/ ESSENTIALS OF A NEGOTIABLE INSTRUMENT:

I. Written:
Negotiable instrument is in writing.
II. Transferable:
Negotiable instrument is transferable from one person to another. The right of ownership is transferred from one person to another person.
III. Rights of the holder:
Negotiable instrument gives the rights to the creditor to recover something from debtor. The creditor can recover himself or he can transfer his right to another person.
IV. Unconditional promise:
Negotiable instrument contains an unconditional promise or order to pay.
V. Certain amount:
In the negotiable instrument, the promise or order is made for payment of certain amount. The sum payable may be certain notwithstanding that it includes further interest or it is payable at a indicated rate of exchange.
VI. Payable in money:
Negotiable instrument is always payable in money.
VII. Discharge of debt:
It can be conveniently in the discharge of debts.
VIII. Transferee can sue in his name:
The transferee of the negotiable instrument can sue the debtor in his own name in case of dishonor.
IX. Title:
A holder in due course of negotiable instrument is free from all defects. The term holder in due course means the bonafied transferee for values of a negotiable instrument who takes it in good faith and before majority. The title of holder in due course is not in any way affected by defective title of the transferor or any party.
X. Presumptions:
Certain legal presumptions are applicable to all the negotiable instrument. the presumptions are regarding consideration, time, date, stamp and holder in due course.
Parties to Negotiable Instrument:
Following are the parties to the negotiable instrument.
(i) Drawer
(ii) Endorser

HOLDER AND HOLDER IN DUE COURSE

A holder is an individual who is in possession of an instrument that is either payable to him or her as the payee, endorsed to him or her, or payable to the bearer. Those who obtain instruments after the payee are holders if such instrument is either payable to the bearer or endorsed properly to their order. The party in possession is not considered to be the holder in a case in which a necessary endorsement has been forged.

Introduction:

The holder of a promissory note bill of exchange or cheque means any person entitled in his own name to the possession there of and to receive or receive the amount due. Thus a person who is in possession may or may not be a holder. However in due course means any person who for consideration becomes the possessor of a negotiable instrument.

Definition of holder:

According to Sec 8.

"Holder of a promissory note, a bill of exchange or cheque means the payee or endorsee who is in possession of it or the bearer there of but it does not include a beneficial owner claiming through a Benamidar.

Conditions to be holder:

(i) He must be entitled to the possession.
(ii) He must be entitled to receive the amount.
(iii) He must be entitled to negotiate.
(iv) He must be entitled to sue.

Definition **of holder in due course:**

According to Sec 9.

'Holder in due course means any person who for consideration becomes the possessor of a promissory note bill of exchange or cheque if payable to bearer, or the payee, or endorsee thereof, if payable to order, before it becomes overdue, without notice that the title of the person from whom derived his own titled was defective.

Conditions to be holder in due course:

Following are the condition to be holder in due course.

I. Holder:

Holder in due course must be entitled to the possession of the instrument in his own name under a legal title.

II. Lawful consideration:

He must be the holder of the instrument against the lawful consideration.

III. Complete instrument:

Instrument must be complete in all respects.

IV. Before maturity of the instrument:

In order to become holder in due course he must possess the instrument before its date of maturity.

V. Good faith:

Holder in due course must get the instrument in good faith. under the belief that the title of the transferee is not defective.

Rights and privileges of a "holder in due course".

Following are the right and privileges of a holder in due course.

I. Better title:

A holder is due course gets better title than the transferor while a holder cannot get a better title.

II. Transfer of good title:

A holder in due course also transfers a good title to the subsequent holders.

III. Incomplete stamped instrument:

If unstamped instrument is transferred to the holder in due course, he can claim the whole amount.

IV. Free from all defects:

As the instrument passes through the hands of a holder in due course to the subsequent holders, it become free from all defects.

V. Validity of instrument:

Executor of a negotiable instrument and acceptor of a bill of exchange for the honour of the drawer cannot deny the validity of the instrument.

VI. Fictitious bill:

An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not exempted from liability to any holder in due course by reason and such name being fictitious one.

VII. Conditional instrument:

When one instrument is delivered for special purpose and not for the transfer of ownership this does not affect the holder in due course.

VIII. Payee's incapacity:

Maker of a note and acceptor of a bill payable order cannot deny the payee's capacity, at the date

of the note or the bill to endorsed it in a suit by holder in due course.

IX. Capacity of prior party:

No endorser of a negotiable instrument shall in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract for any prior party to the instrument.

NEGOTIATION BY ENDORSEMENTS

Meaning

Easy transferability is one of the important characteristics of a negotiable instrument. An instrument may be transferred:

1. By assignment, or

2. By negotiation.

Transfer by assignment:

A negotiable instrument can also be transferred by assignment. Assignment means transfer of ownership by a written document under the provisions of the Transfer of Property Act, 1882.

Example:

A executed a promissory note in favour of B. B sold this note by assignment under a sale deed to C. C sued A to recover the amount. A contended that since C was not a holder in due course, no suit was maintainable. The Court held, although C was not a holder in due course, yet he is a holder within the meaning of Sec. 8 as he is in possession of the note and as an assignee, entitled to recover the amount in his own name. Hence an instrument can be transferred by assignment. But a transferee acquires only those rights which the transferor had at the time of assignment and no more. [Narshing Panda v. N. Narsimha Murthy.]

Transfer by negotiation (Sec. 47):

When a note, bill or cheque is transferred to any person, so as to make that person holder of the instrument, the instrument is said to be negotiated.

INDORSEMENTS

Indorsement: A signature, with or without additional words or statements (e.g., "for deposit only," "payable to Jane Smith," "payable from acct. # 000001," etc.), made by the ***indorser*** in order to transfer his or her rights to the
indorsee.

Blank Indorsement: An indorsement that **specifies no particular indorsee** and can consist of a **mere signature**.

Special Indorsement: An indorsement that indicates the specific person to whom the indorser intends to make the instrument payable -- i.e., the indorsee.

Qualified Indorsement: An indorsement which **disclaims any contract liability** on the instrument (e.g., "without recourse").

Restrictive Indorsement: Any indorsement on a negotiable instrument that requires the indorsee to comply with certain instructions regarding the funds involved.

Indorsement for Deposit or Collection: *"For deposit only."*

Difference between Negotiation And Assignment

The various points of distinction between negotiation and assignment are discussed below:-

1. Negotiation requires delivery only to constitute a transfer, whereas assignment requires a written document signed by the transferor.

2. Consideration is always presumed in the case of transfer by negotiation. In the case of assignment consideration must he proved.

3. In case of negotiation, notice of transfer is not necessary, whereas in the case of assignment notice of the transfer must be given by the assignee to the debtor.

4. The assignee takes the instrument subject to all the defects in the title of the transferor. If the title of the assignor was defective the title of the assignee is also defective. However, in case of negotiation the transferee takes the instrument free from all the defects in the title of the transferor. A holder in due course is not affected by any defect in the title of the transferor, He may therefore have a better title than the transferor.

5. In case of negotiation a transferee can sue the third party in his own name. But an assignee cannot do so.

Effect of negotiation:

Negotiation involves transfer of ownership of the instrument from its holder to the other person. When the instrument has been transferred by negotiation the holder who has taken it for value gets good title to the instrument notwithstanding any defect in the title of the transferor, except in the case of forgery because forgery conveys no title. Thus, where the title of any prior endorser is defective by virtue of fraud, coercion or misrepresentation, the bonafide holder who has taken the instrument, in good faith gets a good title. Negotiation thus conveys a better title to the transferee than the transferor, when the holder is a holder in due course

CROSSING OF CHEQUES

A **crossed cheque** is a cheque that has been marked to specify an instruction about the way it is to be redeemed. A common instruction is to specify that it may only be deposited directly into an account with a bank and cannot be immediately cashed by a bank over the counter. The format and wording varies between countries, but generally two parallel lines and/or the words 'Account Payee' or similar may be placed either vertically across the cheque or in the top left hand corner. By using crossed cheques, cheque writers can effectively protect the cheques they write from being stolen and cashed.

From the above discussion, it should be clear that a cheque can be made safe by crossing it. To cross a cheque, two transverse parallel lines are drawn on the left hand corner of the cheque. It is also usual to write the words "& Co", in between these two lines. However, it is not necessary to write these words. A crossing is a direction to the paying banker not to pay the money to the holder at the counter.

Crossing of cheques

Cheques can be of two types:-

1. Open or an uncrossed cheque
2. Crossed cheque

Open cheque

An open cheque is a cheque which is not crossed on the left corner and payable at the counter of the drawee bank on presentation of the cheque.

Crossed cheque

A crossed cheque is a cheque which is payable only through a collecting banker and not directly at the counter of the bank. Crossing ensures security to the holder of the cheque as only the collecting banker credits the proceeds to the account of the payee of the cheque.

When two parallel transverse lines, with or without any words, are drawn generally, on the left hand top corner of the cheque. A crossed cheque does not affect the negotiability of the instrument.

Types of Crossing:

Crossings are of the following types:

(1) General crossing;

(2) Special crossing;

(3) However, there is yet another type of crossing which is recognized by usage and custom, called restrictive crossing:

(4) Not negotiable crossing.

1. General Crossing:

In a general crossing, simply two parallel transverse lines, with or without the words 'not negotiable' in between, may be drawn. Such a cheque is crossed generally.

The effect of general crossing is that the payment of the cheque will not be made at the counter; it can be collected only through a banker.

2. Special Crossing:

In a special crossing, the name of a banker with or without the words 'not negotiable' is written on the cheque. Such a cheque is crossed specially to that banker.

It should be noted that two transverse parallel lines are necessary for a general crossing, whereas for a special crossing, no such lines are necessary.

The effect to special crossing is that the paying banker will be the amount of the cheque only through the bank named in the cheque.

3. Restrictive crossing:

Besides the two statutory types of crossing discussed above, there is one more type of crossing namely; restrictive crossing. This type of crossing has been recognised by usage and custom of the trade.

In a restrictive crossing the words 'Account Payee' or Account Payee Only' are added to the general or special crossing.

The effect of restrictive crossing is that the payment of the cheque will be made by the bank to the collecting banker only for the account payee named. If the collecting banker collects the amount for any other person, he will be liable for wrongful conversion of funds.

It should be noted that the duty of the paying banker is only to ensure that the payment is made through the named bank, if there is any. He is not liable, in case the collecting banker collects the cheque for any other person than the account payee. In that case collecting banker will be liable to the true owner.

4. Not negotiable Crossing (Sec. 130):

A person taking is cheque crossed generally or specially, bearing in either case the words 'not negotiable' shall not be able to give a better title to the holder than that of the transferor.

The effect of a not negotiable crossing is that the cheque can be transferred but the transferee will not acquire a better title to the cheque. Thus a cheque is deprived of its essential feature of negotiability.

The object of "not negotiable" crossing is to protect the drawer against loss or theft in the course of transit.

Example:

A cheque was drawn in favour of a firm B & Co. The cheque was crossed 'not negotiable'; one of the partners, A in fraud of his Co-partner B, endorsed the cheque to P who encashed it. Held that B, who under the terms of the partnership agreement was entitled to the cheque could recover the amount from P as A could not transfer better title than he himself had [Fisher v. Roberst]

Who may cross a cheque? As a rule, it is the drawer who can cross a cheque. However, Sec. 125 provides that even a holder can cross the cheque. It further provides that a banker can cross the cheque specially for collecting to another banker as his agent for collection.

Discharge from liability

The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon-

(a) By cancellation-to a holder thereof who cancels such acceptor's or endorser's name with intent to discharge him, and to all parties claiming under such holder,

(b) By release- to a holder thereof who otherwise discharges such maker, acceptor or endorser, and to all parties deriving title under such holder after notice of such discharge;

(c) By payment-to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.

The term 'discharge' in relation to negotiable instruments is used in two senses: (1) discharge of an instrument, and (2) discharge of one or more parties.

1. Discharge of an instrument:

An instrument is discharged when all the rights under it are extinguished so that the instrument ceases to be negotiable. For example, when the party primarily liable on the instrument, i.e. the maker or the acceptor is discharged, the instrument is also discharged. After an instrument is discharged all the parties are also discharged from their liabilities even holder in due course cannot claim the amount of the instrument from any party to the instrument.

2. Discharge of one or more parties:

When one or more parties are discharged, the instrument continues to be liable and the undercharged parties remain liable on the instrument. For example when the name of the endorser is cancelled, the drawer and acceptor continue to be liable.

It may be pointed out that the term 'discharge of instrument' is wider than the term 'discharge of party (ies).' When an instrument is discharged, all the parties to the instrument are also discharged automatically. However, discharge of one or more parties does not necessarily discharge the instrument.

DISHONOUR OF NEGOTIABLE INSTRUMENTS.

Introduction:

If negotiable instrument is presented for acceptance, sight or payment before the acceptor, maker, drawer or other party liable thereon by or on behalf of the holder but such persons refused to accept it or to make payment upon it.

Types of discharge of negotiable instrument:

A negotiable instrument may be dishonoured in two different way.

(i) Non-acceptance.

(ii) Non-payment.

I. Non-acceptance:

A bill of exchange is non accepted in the following cases.

I. When the drawer or one of several drawers fails to accept the bill within 42 hrs of its due presentment for acceptance.

II. When the presentment is exceed and the bill remains unaccepted.

III. Where the drawee has not capacity to contract.

IV. Where the drawee gives the conditional acceptance.

V. Where a drawee in case of need is named in a bill of exchange, or any endorsement thereon, the bill not dishonoured until it has been dishonoured by such drawee.

II. Dishonour by non-payment:

A promissory note, bill of exchange or cheque is said to be dishnoured by nonpayment when the maker of the note, acceptor of the bill or drawee of the being duly required to pay the same.

Effect of dishonour:

The drawer and all the endorsers of the bill become liable to the holder if the bill is dishonoured either by non-payment provided that he gives them notice of such dishonour.

4. Notice of dishonour:

The holder must give a notice of dishonour to all parties against whom he wants to file suit.

Persons who can give notice :

The following persons can give notice of dishonour.

(i) The holder of the instrument.

(ii) The authorized agent of the holder.

(iii) The party receiving the notice of dishonour to all prior parties to make them liable.

Persons to whom notice is given:
Notice can be given to the following persons.
(i) All the parties of negotiable instrument.
Exception:
Maker of a note acceptor of a bill or drawee of a cheque.
(ii) In case of persons jointly liable, notice to any one of them is sufficient.
(iii) To the official assignee if the person has been declared insolvent.

Form of notice:
It may be (i) oral (ii) written.

Time of notice :
Notice must be given within reasonable time.

Effect of notice:
(i) When the party to whom notice of dishonour is dispatched is dead, the party dispatching the notice is ignorant of his death, the notice is sufficient.
(ii) If the notice is duly directed and sent by the post and miscarries, such miscarriage does not render the notice invalid.

Cases when notice of dishonour is unnecessary:
Notice of dishonour is unnecessary in the following cases.
(i) When it is dispensed with by the party entitled to notice.
(ii) In order to charge the drawer, when he has countermanded payment.
(iii) When the party charged could not suffer damage for want of notice.
(iv) When the party entitled to notice cannot after due search, be found.
(v) To charge the drawers, when the acceptors is also a drawer.
(vi) In case of promissory note.
(vii) When after knowing the facts, the party entitled to notice promises to pay unconditionally.

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Meaning of Company: The term company is a voluntary association of persons formed and registered for certain common persons under the present provisions of company law. It exists in the contemplation (eye) of law. It is an artificial person having separate entity from its members with perpetual succession and common seal. The liability of the members is limited. The capital of the company is divided into transferable shares and shareholders are called members.

Definition of the Company: Company may be defined under three main heads:

A) Definition given under law
B) Definition given by professors/prolific writers
C) Definition given by judges

(A) **Definition according to Law:** According to the companies Act 1956, a company means "A company formed and registered under the companies Act 1956 or an existing company[Section 3(1)(i)]. An existing company means a company formed and registered under any of the former Companies Acts."
This definition is not clear about the elements of a company. Hence definitions given by Professors can be explained.

(B) **Definitions by Famous Writers:** Professor Haney defined ...." A company is an artificial person created by law", having separate entity, with a perpetual succession and common seal."

(C) **Definition:** Definition given by Judges. According to Justice (C.J) Marshall "A company is an artificial person created by law, having separate entity, with a perpetual succession and common seal."

To conclude, a company may be defined as an incorporated association of persons, which is an artificial legal person in the eye of law, having an independent legal entity, with a perpetual succession, a common seal, a common capital comprising transferable shares and carrying limited liability. Sometimes it is also called Corporation.

Characteristics of a Company:

(1) **Voluntary Incorporated Association:** For the formation of a company ;registration is compulsory under the Company Act otherwise it will become illegal association of persons. It is voluntary and statutory association; hence it is also called body corporate. It is formed by consensus.

(2) **Number of Members/Subscribers:** For incorporation/registration of a company, minimum seven persons in case of public company and two in case of private are required. The maximum number of members in case of private company may be 50 but for a public company, no limit of members.

(3) **Artificial Personality:** A company is an artificial, invisible and intangible person, it exists in the eye of law. It is not natural person because it has no physical body, no soul and no conscience.

(4) **Separate Legal Entity:** A decision is given in case of Soloman v. Soloman & Co.(1877) that a company has distinct legal entity from its members. It has its own legal existence independent of its members. It has its own name, can sue and be sued by its members and even by outsiders. A member can enter into contract with his company in the same manner as other individuals.

(5) **Perpetual Succession:** Company is created and wind up by law alone. Its existence is; not affected by the lanacy, retirement, death or lunacy of its members. Man may come, man may go but company goes on forever like water of river may change but the river like the Ganga still exists.

(6) **Common Seal:** Company is an artificial person, hence cannot sign like a natural person, and thus the common seal which is engraved should be affixed on any documents for authentication and legally binding on the company.

(7) **Limited Liability:** The Principle of limited liability for business debts is one of the principal advantages of doing business under the corporate form of business organization. In case of a company limited by shares, the liability of a member is limited to the nominal value of the shares held by him. In case of company limited by guarantee will be liable to pay the amount at the time of winding up of the company.

(8) **Share Capital:** Every company have to require share capital according to law Section 3(1) of Indian Company – a public company is; required to have a minimum paid up capital of Rs.5 lakh and a private company must have Rs. One lakh. But, in case of companies engaged in promotion of commerce, art, science, religion, etc. need not require to have minimum paid up capital.

(9) **Transferability of Shares:** Section 82 of the companies Act, 1956, provides that "the shares; or other interest of any member shall be movable property, transferable in a manner provided for in the articles of the company. Therefore, a member may – (A) sell his shares in the open market, or (B) transfer his shares to anybody he likes in a public Limited company as per conditions laid down in the articles of the company. However, there are certain restrictions on the transfer of shares in respect of private limited companies as the very nature of the company indicates, namely private

(10) **Separation of Ownership and Management:** A company has a right to own and transfer property since it is a legal entity. A shareholder has no proprietary right in the property of the company but merely to their shares. Therefore, the claims of the company's creditors will be against the company's property and not that of the shareholders. A Company can sue and is being sued for enforcement breach of legal rights as the case may be. The decision was given in the case of Gramophone & Typewriter Co Ltd., vs. Stanley (1908),

(11) **A Company is not a Citizen:** A company on incorporation assumes a legal personality distinct from its members, but it cannot claim to be a citizen of a country under the constitution of India or the citizenship Act, 1955. Hence, the company cannot claim the fundamental rights guaranteed under

the constitution. However, it has certain rights protected under our constitution as a legal entity which is guaranteed to all persons whether holding the citizenship or not. The company is mere abstraction or creation of law on the other hand, the company is deprived of citizenship, has a nationality, domicile and residence. Its domicile is the place of its registration and it is attached to it as long as it is in existence. This establishes the residence of a company at that place where central control and Management of its business is located or exercised. This residence business is located or exercised. This residence of the company gives jurisdiction to the taxation.

(12) **Separate Property:** The property of the company is not the property of share holders. It can acquire and keep it in its own name. No member has either individually or jointly a right to the assets of a company during its life or on its winding up. If all the shares be taken by one man, the man cannot insure the property of a company because he does not have insurable interest.

(13) **Act within Intra Vires:** A company cannot work beyond the scope of memorandum of association. Acts made beyond the scope of memorandum result into ultra vires.

(14) **Democratic Management:** It is managed by the board of directors, elected by the members of the company. Day to day decisions is taken by the concerned Managers. The shareholders cannot take part in the decision process directly.

(15) **Governance by Majority:** Company is managed by rule of majority decision is taken by simple or special majority.

(16) **Statutory Obligations:** A company is required to comply with various statutory obligations regarding management. For instance, filling balance sheets, maintaining proper accounts books, registers and filing annual return and P & LA/CS duly audited are statutory obligations of a company.

(17) **Separate Name:** Every company must have specific name which must be registered. Once company's name is registered. It must be painted or affixed on the outside of every officer or place of business.

(18) **Raising of Capital on a Large Scale :** A company can raise the capital on the large scale by selling its shares to the public at large.

(19) **May Assume Enemy Character :** Company exists in the eye of law as legal person hence it cannot become a friend nor an enemy. A company may be regarded as enemy company if the persons in control of its affairs are residents in the enemy country or are acting in accordance with directions or instructions of the enemy.

Types of companies

1. **Private company** is defined in **section 3(1)(iii)** of the Act and it means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles,

a. restricts the right to transfer its shares, if any

b. limits the number of its members to fifty (50) 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 employment and have continued to be members after the employment ceased; and

c. prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company;

2. **Public company** is defined in **section 3(1)(iv)** of the Act and it means a company which

a. is not a private company;

b. has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;

c. is a private company which is a subsidiary of a company which is not a private company.

3. **Government company** is defined in **section 617** of the Act and it means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined.

4. **Foreign company** is defined in **section 591** of the Act and it means a company which

a. is incorporated outside India and

b. has established a place of business within India

5. **Company limited by guarantee** is defined in **section 12(2)(b)** of the Act and it means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.

6. **Unlimited Company is** defined in **section 12(2)(c)** of the Act and it means a company not having any limit on the liability of its members. The liability of a member extends to the whole amount of company's debts and liabilities but the member will be entitled to claim contribution from other members.

7. **Holding & Subsidiary Company**

According to **Sec. 2(19)** "holding company" means a holding company within the meaning of section 4 of the Act

According to **Sec. 2(47)** "subsidiary company" or "subsidiary" means a subsidiary company within the meaning of Section 4 of the Act.

Sec. 4 of the Act states,

1. For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if—

a. that other controls the composition of its Board of directors

Or

b. that other —

i. where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;

ii. where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or

c. the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

Memorandum of association

The formation of a public company involves preparation and filing of several
Essential documents. Two of basic documents are :
1. Memorandum of Association
2. Articles of Association

1. Memorandum of Association

It is the main document of the company which defines its objects and lays down the fundamental conditions upon which alone the company is allowed to be formed. It is the charter of the company. It governs the relationship of the company with the outside world and defines the scope of its activities.

Contents of Memorandum

1. **Name clause**

Promoters of the company have to make an application to the registrar of Companies for the availability of name. The company can adopt any name if :
i) There is no other company registered under the same or under an identical name;
ii) The name should not be considered undesirable and prohibited by the Central Government (Sec. 20). A name which misrepresents the public is prohibited by the Government under the Emblems & Names (Prevention of Improper use)
Act, 1950 for example, Indian National Flag, name pictorial representation of Mahatma Gandhi and the Prime Minister of India, name and emblems of the U.N.O., and W.H.O., the official seal and Emblems of the Central Government and State Governments Where the name of the company closely resembles the name of the company already registered, the Court may direct the change of the name of the company.
iii) Once the name has been approved and the company has been registered, then
a) the name of the company with registered office shall be affixed on outside of the business premises;
b) if the liability of the members is limited the words "Limited" or "Private Limited" as the case may be, shall be added to the name.

2. Registered office

Memorandum of Association must state the name of the State in which the registered office of the company is to be situated. It will fix up the domicile of the company. Further, every company must have a registered office either from the day it begins to carry on business or within 30 days of its incorporation, whichever is earlier, to which all communications and notices may be addressed. Registered Office of a company is the place of its residence for the purpose of delivering or addressing any communication, service of any notice or process of court of law and for determining question of jurisdiction of courts in any action against the company. It is also the place for keeping statutory books of the company.
Notice of the situation of the registered office and every change shall be given to the Registrar within 30 days after the date of incorporation of the company or after the date of change.

3. Object clause

This is the most important clause in the memorandum because it not only shows the object or objects for which the company is formed but also determines the extent of the powers which the company can exercise in order to achieve the object or objects.
In the case of companies which were in existence immediately before the Commencement of the Companies (Amendment) Act. 1965, the object clause has simply to state the objects of the company. But in the case of a company to be registered after be amendment, the objects clause must state separately.

i) Main Objects: This sub-clause has to state the main objects to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of main objects.
ii) Other objects: This sub-clause shall state other objects which are not included in the above clause.
While drafting the objects clause of a company the following points should be kept in mind.

i) The objects of the company must not be illegal, e.g. to carry on lottery business.
ii) The objects of the company must not be against the provisions of the Companies Act such as buying its own shares (Sec. 77), declaring dividend out of capital etc.
iii) The objects must not be against public, e.g. to carry on trade with an enemy country.

4. Capital clause

In case of a company having a share capital unless the company is an unlimited company, Memorandum shall also state the amount of share capital with which the company is to be registered and division thereof into shares of a fixed amount.

5. Liability clause

In the case of company limited by shares or by guarantee, Memorandum of Association must have a clause to the effect that the liability of the members is limited. It implies that a shareholder cannot be called upon to pay any time amount more then the unpaid portion on the shares held by him. He will no more be liable if once he has paid the full nominal value of the share. The Memorandum of Association of a company limited by guarantee must further state that each member undertakes to contribute to the assets of the company if wound up, while he is a member or within one year after he ceased to be so, towards the debts and liabilities of the company as well as the costs and expenses of winding up and for the adjustment of the rights of the contributories among themselves not exceeding a specified amount.

6. Subscription clause

In this clause, the subscribers declare that they desire to be formed into a company and agree to take shares stated against their names. No subscriber will take less than one share. The memorandum has to be subscribed to by at least seven persons in the case of a public company and by at least two persons in the case of a private company. The signature of each subscriber must be attested by at least one witness who cannot be any of the subscribers. Each subscriber and his witness shall add his address, description and occupation, if any. After registration, no subscriber to the memorandum can withdraw his subscription on any ground.

Alteration In MOA

Change in name clause

By ordinary resolution. If through inadvertence or otherwise, a company is registered by a name which, in the opinion of the Central Government, is identical with or too nearly resembles the name of an existing company, it may change its name by an ordinary resolution and with the previous approval of the Central Government signified in writing. [Sec. 22(1) (a)]. Registration of change of name. Within 30 days passing of the resolution, a copy of the order of the Central Government's approval shall also be field with the Registrar within 3 months of the order. The Registrar shall enter the new name in the Register of Companies in place of the former name and shall issue a fresh certificate of incorporation with the necessary alterations.

Change in registered office clause

For effecting this change a special resolution must be passed and a copy there of must be filed with the Registrar within thirty days. Special resolution must be passed in a duly convened meeting.

Change in object clause

The Company may alter its objects on any of the grounds (I) to (vii) mentioned in Section 17 of the Act. The alteration shall be effective only after it is approved by special resolution of the members in general meeting with the Companies Amendment Act, 1996, for alteration of the objects clause in Memorandum of Associations sanction of Central Government is dispensed with.

A company shall file with the registrar a special resolution within one month from the date of such resolution together with a printed copy of the memorandum as altered. Registrar shall register the same and certify the registration

Change in capital clause

The procedure for the alteration of share capital and the power to make such alteration are generally provided in the Articles of Association If the procedure and power are not given in the Articles of Associational, the company must change the articles of association by passing a special resolution. If the alteration is authorized by the Articles, the following changes in share capital may take place :

1. Alteration of share capital
2. Reduction of capital
3. Reserve share capital or reserve liability
4. Variation of the rights of shareholders
5. Reorganization of capital

Change in liability clause

Ordinarily the liability clause cannot be altered so as to make the liability of members unlimited. Section 38 states that the liability of the members cannot be increased without their consent. It lays down that a member cannot by changing the memorandum or articles, be made to take more shares or to pay more the shares already taken unless he agrees to do so in writing either before or after the change. Section 32 provides that a company registered as unlimited may register under this Act as a limited company.

Articles of association

Articles of Association are the rules, regulations and bye-laws for governing the internal affairs of the company. They may be described as the internal regulation of the company governing its management and embodying the powers of the directors and officers of the company as well as the powers of the shareholders. They lay down the mode and the manner in which the business of the company is to be conducted.

Contents of Articles of Association

Articles generally contain provision relating to the following matters; (1) the exclusion, whole or in part of Table A; (ii) share capital different classes of shares of shareholders and variations of these rights (iii) execution or adoption of preliminary agreements, if any; (iv) allotment of shares; (v) lien on shares (vi) calls on shares; (vii)forfeiture of shares; (viii) issue of share certificates; (ix) issue of share warrants; (x) transfer of shares; (xi) transmission of shares; (xii) alteration of share capital; (xiii) borrowing power of the company; (xiv) rules regarding meetings; (xv) voting rights of members; (xvi) notice to members; (xvii) dividends and reserves; (xviii) accounts and audit; (xix) arbitration provision, if any; (xx) directors, their appointment and remuneration; (xxi) the appointment and reappointment of the managing director, manager and secretary; (xxii) fixing limits of the number of directors (xxiii) payment of interest out of capital; (xxiv) common seal; and (xxv) winding up

Alteration of Articles

Section 31 grant power to every company to alter its articles whenever it desires by passing a special resolution and filing a copy of altered Articles with the Registrar. Alteration of the articles shall not violate provisions of the Memorandum. It must be made bonafide the benefit of the company.

Prospectus

The promoters of a public company will have to take steps to raise the necessary capital for the company, after having obtained the Certificate of Incorporation. A public company may invite the public to subscribe to its shares or debentures. Prospectuses are to be issued for this purpose. To issue a prospectus is very essential for a public company. If the promoters of the company are confident of raising the required capital privately from their friend or relatives, they need not issue a prospectus. In such a case, a statement in lieu of prospectus must be filed with the Registrar.

Definition: Section 2(36) defines a prospectus an "any document described as issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits

from the public or inviting orders from the public for the subscription or purchase of any share in, or debentures of, a body corporate"

Contents of prospectus

Section 56 lays down that every prospectus issued (a) by or on behalf of a company, or (b) by on behalf of any person engaged or interested in the formation of a company, shall:
1. State the matters specified in Part I of Schedule II, and.
2. Set out the reports specified in Part II or Schedule II both Part I and II shall have effect subject to the provisions contained in Part III of that
Schedule II.

Mis- statement in prospectus

A prospectus is an invitation to the public to subscribe to the shares or debentures of a company. Every person authorizing the issue of prospectus has a primary responsibility to seed that the prospectus contains the true state of affairs of the company and does not give any fraudulent picture to the public. People invest in the company on the basis of the information published in the prospectus. They have to be safeguarded against all wrongs or false statements in prospectus. Prospectus must give a full, accurate and a fair picture of material facts without concealing or omitting any relevant fact. This is known as the 'Golden Rule' for framing prospectus.

A statement included in a prospectus shall be deemed to be untrue, if
• The statement is misleading in the form and context in which it is included; and
• The omission from a prospectus of any matter is calculated to mislead
(Section 65).

Statement in lieu of prospectus

A company having a share capital which does not issue a prospectus or which has issued a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures, unless at least three days before the allotment of shares or debentures, this has been delivered to the Registrar for registration a 'statement in lieu of prospectus' signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, In the form containing the particulars set out in Part I of Schedule III and setting out the reports specified in Part II of Schedule III subject to the provisions contained in Part III of that Schedule.

What is a share?

A share is the interest of a shareholder in a definite portion of the capital. It expresses a proprietary relationship between the company and the shareholder. A shareholder is the proportionate owner of the company.

"A share is the interest of a shareholder in the company, measured by a sum of money, for the purpose of liability in the first place, and of interest the second, but also consisting of a series of mutual covenants entered into by all the shareholder inter se in accordance with the companies act".

Types of shares

According to section 86 of the companies act, a company can issue only two types of shares:

(a) Preference shares; and

(b) Equity shares.

Preference shares:

A preference share must satisfy the following two conditions:

I) It shall carry a preferential right as to the payment of dividend at a fixed rate; and

II) In the event of winding up, there must be a preferential right to the repayment of the paid up capital.

These are two dominant characteristics of preference shares. So preference share may or may not carry such other right as:

(a) A preferential right to any arrears of dividend;

(b) A right to share in surplus profits by way of additional dividend;

(c) A right to be paid a fixed premium specified in the memorandum; and

(d) A right to share in surplus assets in the event of a winding up, after all kinds of capital have been repaid.

Equity shares:

All shares which are not preference shares are equity shares. Equity shareholders have the residual rights of the company. They may get higher dividend than preference shareholders if the company is prosperous or get nothing if the business of the company flops. In the winding up,

the equity shares are entitled to the entire surplus assets remaining after the payment of the liabilities and the capital of the company; unless the articles confer right on the preference shares a right to participate in the distribution of surplus assets.

1. Cumulative and non-cumulative preference shares:

With regard to the payment of dividend, preference shares may be cumulative or non-cumulative. In the case of cumulative preference shares, if the profits of the company in any years are not sufficient to pay the fixed dividend, on the preference shares the deficiency must be made up out of the profits of subsequent years. The accumulated arrears of dividend must be paid before anything is paid out of the profits to the holders of any other class of shares. In the case of non-cumulative preference shares, the dividend is only payable out of the net profits of each year. If there are no profits in any year, the arrears of dividend cannot be claimed in the subsequent years. Preference shares are presumed to be cumulative unless expressly described as non-cumulative.

2. Participating and Non-participating Preference Share:

Participating preference shares are those shares which are entitled, in addition to preference dividend at a fixed rate, to participate in the balance of profits with the equity shareholders after they get a fixed rate of dividend on their shares. The participating preference shares may also have the right to share in the surplus assets of the company on its winding up. Such a right must be expressly provided in the memorandum or the articles of association of the company.

Non-participating preference shares are entitled only to a fixed rate of dividend and do not share in the surplus profits. The preference shares are presumed to be non-participating, unless expressly provided in the memorandum or the articles or the terms of issue. A mere fact that the articles of a company confer on the preference shareholders a right to participate with the equity shareholders in the surplus profits does not necessarily mean that the preference shareholders are entitled to participate in the surplus assets also.

3. Redeemable preference shares:

According to section 80, a company limited by shares, if so authorized by its articles, may issue redeemable preference shares. Such shares may be redeemed either after a fixed period or earlier at the option of the company. In the case of irredeemable shares, the capital is to be returned on the winding up of the company. The redeemable preference shares can be redeemed, only subject to the following conditions:

i) Such shares must be fully paid

ii) Such shares shall be redeemed out of distributable profits or out of the proceeds of a fresh issue made for the purposes of redemption.

iii) Any premium to be paid on redemption of such shares must be paid out of profits or out of the share premium account.

iv) Where shares are so redeemed out of profits, a sum equal to the nominal value of the shares redeemed must be transferred to the 'capital redemption reserve account'. This amount shall be treated as capital of the company and the provisions as regards reduction of capital shall apply. The amount credited to the account cannot be paid out to the shareholders as dividend. But it can be used to pay up unissued shares to be issued as fully paid bonus shares.

Redemption of redeemable preference shares shall be notified to the registrar within one month of redemption. Where redeemable preference shares have been issued, the balance sheet must contain a statement specifying what part of the capital consists of such shares and the earliest date on which the company has power to redeem the shares.

Procedures regarding Allotment of Shares

(1) Fulfillment of statutory conditions which need to be fulfilled: The company secretary has to see that the statutory conditions regarding the allotment of shares are fulfilled before the Board proceeds to allot the shares.

The following are the statutory conditions which need to be fulfilled:
(i) Valid offer and acceptance: There should be a valid offer and acceptance for the allotment to be a valid one. Here the company is the offertory and the acceptors are the general public. If there is no company to offer then there would be no public to accept.

(ii) Unconditional Allotment: The allotment must be absolute and unconditional and also as per the terms and conditions mentioned in the application. The allotment should be unbiased, and not according to the caste, creed, religion. It is not that rich shareholders pay more on the shares and the poor share holders pay less on the shares. All have to pay the same price on the shares.

(iii) Collection of minimum subscription amount: The minimum subscription amount as noted in the prospectus has been received within 120 days of the issue of prospectus.

(iv) Receipt of application money: Not less than 5% of the nominal value of the share has been secured and has been received along with the applications.

(v) Deposition of application of money in a scheduled bank: All application money received along with the applications must be deposited in a scheduled bank. It cannot be withdrawn until the company gets trading certificate or where such certificate is already received or till the minimum subscription amount is received.

(vi) Filing of prospectus with the registrar: A copy of the prospectus or statement in lieu of prospectus has been duly filed with the registrar and at least three days have elapsed after such filing before the allotment is taken up.

(vii) Time of allotment: No allotment of shares can be effected until the beginning of the fifth day from the date of issue of prospectus. The subscription list must be opened for at least 3 days as disclosed in the prospectus.

(viii) Proper communication: The allotment must be duly communicated to the applicant through post i.e. registered post with necessary details.

(ix) Allotment strictly as per documents issued: The Board of Directors have to make the allotment of shares strictly as per the documents issued which include the prospectus and the application form. The provisions made in the Memorandum of Association and the Articles of Association must also be given due consideration.

(x) SEBI nominee: If the issue is over subscribed, the shares are allotted on a proportionate basis. SEBI's nominee is associated while finalizing the basis of allotment. The purpose is to see that the allotment is done on a fair and just basis. The allotment also needs to be approved by a leading stock exchange.

(2) Appointment of allotment committee: The secretary informs the Board, that the share applications are received and are ready for allotment. If the issue is just subscribed or under subscribed, the Board will do the allotment of shares, but if the issue is over subscribed, the Board appoints an allotment committee to do the allotment work. The allotment committee will study the problem, prepare a report and submit to the Board.

(3) Board meeting for finalization of allotment formula: A meeting of the Board of Directors will be called to finalize the allotment formula, which is being prepared by the allotment committee. If the shares are listed, the allotment formula is to be finalized with the approval of the concerned Stock Exchange Authorities.

(4) SEBI's association with allotment work: A representative of SEBI need to be associated while finalizing the allotment formula. For this, the company has to request SEBI to nominate a public representation for allotment work. SEBI's nominee is necessary when the issue is over subscribed.

(5) Signature of chairman on application and allotment list: The secretary has to see that every sheet of application and allotment list is signed by the chairman. The secretary also has to sign the application and allotment lists.

(6)Resolution of the Board for allotment: The secretary has to see that the Board passes a resolution regarding the allotment of shares and authorizing him to issue letters of allotment and letters of regret.

(7) Issue of letters of allotment and letters of regret: After the Board's resolution to allot shares, the secretary prepares the allotment list. Then he will send allotment letters to those who

have been allotted shares and regret letters to those who could not be allotted shares.

(8) Refund / Adjustment of application money: The secretary has to make suitable arrangement for the repayment of application money sent by the applicant. The refunded application money is made to those share holders who could bot be allotted shares. The refund order is sent along with the letters of regret. If an applicant has been allotted a smaller number of shares than the number applied for, the secondary has to adjust the excess amount with the amount due on allotment.

(9) Collection of allotment money: The secretary has to make suitable arrangements with the Company's Bankers for collection of allotment money against the allotment letters.

(10) Arrangement relating to letters of renunciation: To renounce means to give up. Certain applicants who are being allotted shares do not want them, so they return the shares back to the company. this is known as renunciation. The blank form of letter of renunciation and letter of request for allotment along with the letter of renunciation duly executed and the original letter of allotment from the renounces, the secretary has to make necessary changes in the Application of Allotment list in order to enter the names of the new allot-tees.

(11) Arrangement relating to splitting of allotment letters: Splitting means putting the shares in one or more names. In case any allottee requests for a split of the allotment letter, the secretary places such a request before the Board for approval. Once the Board approves the splitting of the allotment letter, the secretary has to enter the details of the split in a separate list of split allotments and issue the necessary 'split' letters.

(12) Submission of return of Allotment: Every company whether public or private and having a share capital, within 30 days of allotment is required to send to the Registrar, a document known as the "Return of Allotment". The return of allotment contains various details on allotment of shares such as the nominal value of shares allotted, names and addresses of allotees, amount paid or payable on each share and particulars of bonus shares and shares issued at discount. The secretary has to see that these documents are prepared and submitted in time to the Registrar.

(13) Preparation of Register of members and issue of share certificates: The secretary has to prepare the Register of members from the Application and Allotment lists. He has to see that the shares certificates are properly printed, sealed, signed and distributed to all the allot-tees within three months after the allotment of shares. He has also to see that the share certificates are issued against the letters of allotment.

Debentures

A debenture is a document that either creates a debt or acknowledges it, and it is a debt without collateral. In corporate finance, the term is used for a medium- to long-term debt instrument used by large companies to borrow money. In some countries the term is used interchangeably with bond, loan stock or note. A debenture is thus like a certificate of loan or a loan bond evidencing the fact that the company is liable to pay a specified amount with interest and although the money raised by the debentures becomes a part of the company's capital structure, it does not become share capital.[1] Senior debentures get paid before subordinate debentures, and there are varying rates of risk and payoff for these categories.

Debentures are generally freely transferable by the debenture holder. Debenture holders have no rights to vote in the company's general meetings of shareholders, but they may have separate meetings or votes e.g. on changes to the rights attached debentures. The interest paid to them is a charge against profit in the company's financial statements.

Types of debentures

1. Types of Debentures On The Basis Of Record Point Of View

a. Registered Debentures
These are the debentures that are registered with the company. The amount of such debentures is payable only to those debenture holders whose name appears in the register of the company.

b. Bearer Debentures
these are the debentures which are not recorded in a register of the company. Such debentures are transferable merely by delivery. Holder of bearer debentures is entitled to get the interest.

2. Types of Debentures On The Basis Of Security

a. Secured Or Mortgage Debentures
These are the debentures that are secured by a charge on the assets of the company. These are also called mortgage debentures. The holders of secured debentures have the right to recover their principal amount with the unpaid amount of interest on such debentures out of the assets mortgaged by the company.

b. Unsecured Debentures
Debentures which do not carry any security with regard to the principal amount or unpaid interest are unsecured debentures. These are also called simple debentures.

3. Types of Debentures On The Basis Of Redemption

a. Redeemable Debentures

these are the debentures which are issued for a fixed period. The principal amount of such debentures is paid off to the holders on the expiry of such period. These debentures can be redeemed by annual drawings or by purchasing from the open market.

b. Non-redeemable Debentures
these are the debentures which are not redeemed in the life time of the company. Such debentures are paid back only when the company goes to liquidation.

4. Types of Debentures On The Basis Of Convertibility

a. Convertible Debentures
These are the debentures that can be converted into shares of the company on the expiry of pre-decided period. The terms and conditions of conversion are generally announced at the time of issue of debentures.

b. Non-convertible Debentures
The holders of such debentures cannot convert their debentures into the shares of the company.

5. Types of Debentures On The Basis Of Priority

a. First Debentures
These debentures are redeemed before other debentures.

b. Second Debentures
These debentures are redeemed after the redemption of first debentures.

Issue of debentures

By issuing debentures means issue of a certificate by the company under its seal which is an acknowledgment of debt taken by the company. The procedure of issue of debentures by a company is similar to that of the issue of shares. A Prospectus is issued, applications are invited, and letters of allotment are issued. On rejection of applications, application money is refunded. In case of partial allotment, excess application money may be adjusted towards subsequent calls. Issue of Debenture takes various forms which are as under :

1. Debentures issued for cash
2. Debentures issued for consideration other than cash
3. Debentures issued as collateral security.

Further, debentures may be issued
(i) At par, (ii) at premium, and (iii) at discount

Kinds of Meeting

Company law covers different meetings as under: Meetings of members; Meetings of board of directors and Meetings of lenders or a class of lenders, preference share holders, debenture holders, etc.

1. Meetings of members

There are three kinds of meetings of the members of a company:

Statutory meeting: which is to be held not less than one month and not more than six months from the date of incorporation of the company? The statutory meeting is held only once in the lifetime of the company. This provision is applicable only to a public limited company.

Annual general meeting (AGM) : to be held not later than six months from the date of the Balance Sheet. The gap between one AGM and another cannot be more than 15 months.

Any meeting other than the AGM is termed an **extraordinary general meeting** (EGM)

2. Meetings of board of directors

The board of directors should meet at least once in three months to comply with the requirements of law. S.292 specifies certain matters that can be transacted only at a meeting of the board of directors. Rest of the procedures can be carried out by a committee constituted by the board of directors or by way of a circular resolution.

3. Meetings of class of people

Class of people represents a class of those who have a stake in the company. The class could be preference share holders, debenture holders, deposit holders, creditors, lenders, etc. When a particular class of persons feels that their interests are jeopardized, they may call for a meeting of the other members of that class. There is no time-frame for such meetings.

Kinds of resolution

The Companies Act 2006 provides two kinds of member's resolutions:

Sec282 Ordinary resolutions

(1) An ordinary resolution of the members (or of a class of members) of a company means a

resolution that is passed by a simple majority.
(2) A written resolution is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of eligible members.
(3) A resolution passed at a meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of-
(a) the members who, being entitled to do so, vote in person on the resolution, and
(b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.
(4) A resolution passed on a poll taken at a meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of members who (being entitled to do so) vote in person or by proxy on the resolution.
(5) Anything that may be done by ordinary resolution may also be done by special resolution.

283 Special resolutions

(1) A special resolution of the members (or of a class of members) of a company means a resolution passed by a majority of not less than 75%.
(2) A written resolution is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of eligible members.
(3) Where a resolution of a private company is passed as a written resolution-
(a) the resolution is not a special resolution unless it stated that it was proposed as a special resolution, and
(b) if the resolution so stated, it may only be passed as a special resolution.
(4) A resolution passed at a meeting on a show of hands is passed by a majority of not less than 75% if it is passed by not less than 75% of-
(a) the members who, being entitled to do so, vote in person on the resolution, and
(b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.
(5) A resolution passed on a poll taken at a meeting is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of the members who (being entitled to do so) vote in person or by proxy on the resolution.
(6) Where a resolution is passed at a meeting-
(a) the resolution is not a special resolution unless the notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution, and
(b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

Essentials/Requisites of Meeting

The following are essential for any valid meeting to be recognized as such by law: Notice; Agenda; Quorum; Proxy; Resolutions and Minutes.

Notice is a legal communication about the day, date, time and venue of the meeting. Under Company law, there should be a 21-day clear notice to hold a meeting of the members of the company, whereas a seven-day notice is required to ho ld a meeting of the board of directors.
In the case of joint holders, notice is sent to the address of the first joint holder. The company is not obliged to send notices to other joint holders.
Under certain circumstances, the members may decide for a notice of less than 21 days also.
The onus on the company is to send the notice, (normally by ordinary post). It is not necessary for the company to ensure that the same is received by the member.

Agenda refers to the business to be transacted at the meeting. In the case of meeting of members, there would be a few matters to be discussed. Therefore, the agenda is built into the notice itself. The agenda for a meeting of shareholders could be ordinary business or special business. The agenda for an annual general meeting is well set. The agenda for other meetings is to be drafted to cover the points to be discussed. A note 'any other item with the permission of the chair' is added to permit taking up any last-minute inclusions.
But in the case of meetings of board of directors, there could be several items to be deliberated upon. Therefore, a separate note containing the details of business to be transacted (the agenda) is sent, along with the notice of meeting, to each of the directors at the address available with the company. To apprise the directors of the deliberations, support papers, notes and briefs, are also sent with the notice.
There should be a notice and an agenda for the meetings of various committees of board of directors, meetings of a class of people, etc.

Quorum: There should be a reasonable number of persons to deliberate and take decisions at meetings. The number of persons to be present in person to constitute a valid meeting is called a quorum. The Articles of Association of the co mpany generally contains a clause regarding the quorum. The chairman of the meeting should wait for a reasonable time for quorum before calling the meeting to order. If a quorum is not formed within half an hour after the scheduled commencement of the meeting, the meeting gets adjourned to the same day of the next week at the same time and at the same venue. At such an adjourned meeting, there is no need for a quorum and even one person present in person shall constitute a valid meeting.

Proxy: Where a member is not able to personally attend a meeting, he can depute another person to attend the meeting on his behalf. The member is required to fill in a form giving the particulars of his share holding and of the proxy. Proxy forms are to be deposited with the company sufficiently in advance before the commencement of the meeting These proxies have restricted rights and are not to be counted for quorum.

Resolutions: A resolution is the legal form of a decision taken at a meeting. There are different types of resolutions. In the case of a meeting of shareholders, it could be an ordinary or a special resolution. Certain matters of importance are to be resolved by a postal ballot.
Any decision taken with a simple majority at a meeting of shareholders is called an ordinary resolution. Certain matters of greater importance, such as amendments to the Articles of Association, fresh issue of capital, etc, can be done only by passing a special resolution..

Minutes: This is a record of the proceedings of the meeting. A Minutes book should be maintained separately for meetings of the members and of the board of directors.
The chairman of the meeting should initial each page of the Minutes book and affix his full signature at the end of each meeting.
Minutes of the previous meeting are read out at each meeting to provide continuity of the procedures. Any director dissenting from the minutes can insist upon his dissent being recorded in the Minutes book.

Appointment of Directors

Section 253 of the Indian Companies Act, 1956 states that only an individual can be appointed as a Director in a company. It follows that a partnership firm or an incorporated body cannot work as a Director. The Indian Companies Act provided the following provisions regarding the appointment of Directors :

The modes/methods of appointment of directors: The directors may be appointed by the following ways.

(1)Appointment of First Directors
(2)Appointment by the Member/Company
(3)Appointment by Board of Directors
(4)Appointment by the Third Parties
(5)Appointment by Proportional Representation
(6)Appointment by the Central Government

(1)**Appointment of First Directors**
The first directors are appointed by the promoters of the company. They are appointed by the subscribers of the memorandum. If the articles do not provide for the appointment of first directors and table A is excluded, the signatories of the memorandum must be deemed to be first directors of the company's articles. According to section 254, such directors shall act as director till the directors are duly appointed at the first general meeting after incorporation of the company

(2)Appointment at the General Meeting of the Members of the Company
According to Section 255, at least two third of the total number of directors of a public company or of a private company must be appointed by the company in general meeting. So far as public company or private company, which is a subsided of a public company, at least two thirds of the total number are called Rotational Directors and shall be appointed ;by the shareholders in general meeting. Only 1/3 directors out of the total number of directors hold permanent directorship.

(3)Appointment of the Directors by the Board of Directors:
Board of director of a company may appoint directors of the following nature:

(i) Additional Director :

According to Section 262, if the articles so permit, Board of directors may appoint additional directors subject to maximum number of fixed in the articles of the company who shall hold office only up to the date of next Annual General Meeting.

(ii) Casual Vacancies :

Section 262(i) empowers Board of directors that a casual vacancy occurring amongst the directors may be filled up by the Board of directors itself unless the articles provide a different procedure but the persons so appointed shall hold office only up to the time his predecessors would ;have continued.

(iii) Alternative Directors :

According to Section 313, if it is permitted by the articles of the company or by the company's resolution at the general meeting may appoint an alternative director. Such an alternative director has to act for the original director during his absence for a period of more than three months from the State in which the meetings of the company are held. The alternative director can continue as director only for the period for which the original Director was eligible Further, on the return of the original director, the alternative director may vacate the office of the directorship.

(4)Appointment of the Directors by the Third Party:
Sometimes the articles give a right to financial corporation, debenture holders and banking companies which have lent money to the company to nominate directors on the board of the company with a view to ensuring that the funds advanced by them are used by the company for the purpose for which they were borrowed. The number of directors so nominated should not exceed one third of the total strength of the board and they are not to retire by rotation.

(5)Appointment by Proportional Representation:
Normally directors are appointed on a straight vote of the members of the company. But section 265 of the act allows a public company or a private company which is subsidiary of a public company to provide in its articles for the appointment of not less than 2/3 majority of the total number of directors by the Principle of proportional re presentation either by a single transferable note or according to the principle of cumulative voting or otherwise. If the company decides to appoint directors, under this method, the director may be appointed for a period of three years at a time.

(6)Appointment made by the Central Government:
According to Section 408, the Central Government may appoint such number of directors when the company law board decides that it is necessary to safeguard the interests of the company or its shareholders or the public if :

i) Not less than 100 members of the company apply to company law board to make such an appointment.

(ii) Member holding not less than one tenth of the total voting power to make an application to the company law board for making such an appointment.

(iii) On its initiative.

(iv) The directors appointed by the government may or may not be the shareholders of the company. They are appointed to prevent the oppression of the minority of the shareholders or to prevent mismanagement of the company or in the public interest. They are appointed for a maximum period of three years. They are not required to hold qualification shares and are not liable to retire by rotation but they may be removed by the central government at any time and other persons may be appointed by it in their place. Considered for the purpose of reckoning $2/3^{rd}$ or any other proposition of the total number of directors of company [Section 408(3).

Director's remuneration

In the case of a public company or a private company which is a subsidiary of a public company, the remuneration payable is subject to the provisions of the Companies Act, and may be determined either by the Articles or, if the Articles so provide, by a special resolution of the company in general meeting.
The word "remuneration" is defined in the Explanation appended to Section 198 of the Companies Act, 1956. Accordingly, for the purposes of Sections 198, 309, 310, 311, 381, 387, remuneration shall include the following:—

(a) Any expenditure incurred by the company in providing any rent free accommodation, or any other benefit or amenity in respect of accommodation, free of charge, to any of the company's directors and manager;

(b) Any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the company's directors and manager;

(c) Any expenditure incurred by the company in respect of any obligation or service, which, but for such expenditure by the company, would have been incurred by any of the company's directors and manager; and

(d) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for, any of the company's directors and manager or his spouse or child.

TOTAL CEILING OF MANAGERIAL REMUNERATION

1. Section 198(1) limits the overall maximum managerial remuneration. The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its manager in respect of any financial year shall not exceed 11% of the net profits of the company for that financial year.
Articles

2. Net profits shall be computed in a manner laid down under sections 349 and 350, except that the remuneration of the directors shall not be deducted from the gross profits.

3. However such limit is exclusive of the sitting fee payable to the directors for attending the Board meeting.

Qualification of Directors

The Companies Act does not prescribe any qualifications for Directors of any company. An Indian company may, therefore, in its Articles, stipulate qualifications for Directors. The Companies Act does, however, limit the specified share qualification of Directors which can be prescribed by a public company or a private company that is a subsidiary of a public company, to be five thousand rupees (Rs. 5,000/-).

Disqualifications for Managing and Whole-time Directors

An individual cannot be appointed as a Managing or a Whole-time Director of a company if he or she:

1. is an undischarged insolvent, or has at any time been adjudged an insolvent;

2. suspends, or has at any time suspended, payment to his or her creditors, or makes, or has at any time made, a composition with them; or

3. Is, or has at any time been, convicted by a court of an offence involving moral turpitude.

These requirements are not only more stringent than the requirements for an ordinary Director, but are also of an absolute and mandatory nature.

POWERS

The directors' Powers are normally set out in the articles. The shareholders cannot control the way in which the Board of Directors act provided its actions are within the powers given to the Board.

Section 291 of Companies Act, 1956 provides for general powers of the Board of directors. It mandates that the Board is entitled to exercise all such powers and do all such acts and things, subject to the provisions of the Companies Act, as the company is authorized to exercise and do. However, the Board shall not exercise any power and do any act or things which is required whether by the Act or by the memorandum or articles of the company or otherwise to be exercised or done by the company in general meeting. Power of the individual directors. Unless the Act or the articles otherwise provide, the decisions of the Board are required to be the majority decisions only. Individual directors do not have any general powers. They shall have only such powers as are vested in them by the Memorandum and Articles.
Section 292(1) of the Companies Act, 1956 provides that the Board of directors of a company shall exercise the following powers on behalf of the company and it shall do so only by means of resolution passed at meeting of the Board:
(a) The power to make calls on shareholders in respect of money unpaid on their shares;
(b) The power to issue debentures;
(c) **T**he power to borrow moneys otherwise than on debentures;
(d) The power to invest funds of the company; and

(e) The power to make loan

Oppression

The Oppression of small/minority shareholders take place by majority shareholders who controls the company. It is understood as an act or omission on the part of management which implies majority, who holds or controls the management. The law, however, has not defined what is oppression but certain prominent case laws has defined the term "Oppression."

Mismanagement

Mismanagement is not uncommon in companies. It means mismanagement of resources by following means:

1. Absence of basic records of the company
2. Drawing considerable expenses for personal purposes by directors/management of the company.
3. Not filing documents with The Registrar of Companies relating to compliances under The Companies Act,1956
4. Misuse of companies finances/funds
5. Sale of assets at very low prices
6. Violation of provisions of law and memorandum or article of association of the company.
7. Making Secret Profits
8. Diverting company funds for personal use of directors
9. Continuation in office by director beyond the specified term and not holding any qualification shares.

The acts of mismanagement may not necessarily be of majority but can be by any person in the day to day management of the company.

Legal Aspects

Oppression and Mismanagement is governed by section 397/398 of The Companies Act,1956. It plays a crucial role in prevention and remedying the oppression and mismanagement. The small and medium sized companies especially family owned are most affected as the father wants his son to takeover certain business irrespective of the other family members which leads to oppression in some form or other and most of these disputed lands for remedy before courts/company law board.

Legal Remedies

Section 397, 398 and 399 of the Companies Act 1956 covers the remedies for preventing Oppression and Mismanagement:

Section 397:

Application to Company Law Board for relief in cases of oppression:

1. Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Company Law Board for an order under this section, provided such members have a right so to apply in virtue of section 399.

2. If, on any application under sub-section (1) the Company Law Board is of opinion (a) That the company's affairs are being conducted in a manner prejudicial top public interest or in a manner oppressive to any member or members: and

(b) That to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up;

the Company Law Board may with a view to bringing to an end the matters complained of make such order as it thinks fit.

Section 398:

Application to Company Law Board for relief in cases of mismanagement:

1. Any members of company who complain-

(a) That the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company, or

(b) That a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management of control of the company whether by an alteration in its Board of Directors, or managers or in the ownership of the company's shares or if it has no share capital in its membership, or in any other manner whatsoever and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interest of the company.

May apply to the Company Law Board for an order under this section, provided such members have a right so to apply in virtue of section 399.

2. If, on any application under sub-section (1) the Company Law Board is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Company Law Board may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit

Section 399

Right to apply under sections 397 and 398 -

(1)The following members of a company shall have the right to apply under section 397 or 398: -

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(2) For the purposes of sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

(4) The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorize any member or members of the company to apply to the Company Law Board under section 397 or 398, notwithstanding that the requirements of clause (a) or clause (b), as the case may be, of sub-section (1) are not fulfilled.

(5) The Central Government may, before authorizing any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable, for the payment of any costs which the Company Law Board dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.

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