NAAC ACCREDITED

तेजस्वि नावधीतमस्तु

ISO 9001:2008 & 14001:2004

FAIRFIELD

Institute of Management & Technology

'A' Grade Institute by DHE, Govt. of NCT Delhi and Approved by the Bar Council of India and NCTE

Reference Material for Five Years

Bachelor of Law (Hons.)

Code : 035

Semester – II

FIMT Campus, Kapashera, New Delhi-110037, Phones : 011-25063208/09/10/11, 25066256/ 57/58/59/60

Fax : 011-250 63212 Mob. : 09312352942, 09811568155 E-mail : fimtoffice@gmail.com Website : www.fimt-ggsipu.org

INDEX

Five Years

Bachelor of Law (Hons.)

Code : 035

Semester – II

LAW OF CONTRACT

SUBJECT CODE: 102

Q1 Explain the concept of Indemnity, Guarantee and Agency in detail.

Answer - Indemnity can be treated as a sub-species of compensation and a Contract of Indemnity is a species of contracts. The obligation to indemnify is a voluntary obligation taken by the Indemnifier. The mere possibility of loss occurring will not make the indemnifier liable. The loss to the indemnity holder is essential, otherwise, the indemnifier cannot be held liable. Plus, the loss must arise due to the conduct of the indemnifier or any other person related. Strictly speaking this does not cover the acts of God; otherwise, various insurance transactions will be rendered untenable. Under Indian law, the definition of contract of indemnity is restricted to cases wherein the loss is caused by human agency. Losses from other causes are covered in other chapters of the Indian Contract Act, 1872.

Contract of Indemnity should have all the essentials of a valid contract like free consent, the legality of an object, etc. Consideration, in this case, can be anything done, or any promise made which serves as a motivation behind the contract. It is sufficient inducement that the person for whom the indemnifier has promised indemnity has received a benefit or that the indemnity holder has suffered an inconvenience of doing what the indemnifier asks. A contract of indemnity is one of the species of contracts.

So, we can say that if one person promises to save other from the loss caused to him by the conduct of the promisor himself or by the conduct of any other person subject to the condition if promisee (indemnity holder) work within the scope of the promisor. But in the case of Agency, Agency is a special type of contract. The concept of agency was developed as one man cannot possibly do every transaction himself. Hence, he should have the opportunity or facility to transact business through others like an agent. So, in agency one person employs another person to represent him or to act on his behalf, in dealing with the third person.

Concept of indemnity

Meaning:

The general meaning of indemnity is ‘protection against losses’ It means it is security or compensation against loss. So, we can say that if one person promises to save others from the loss caused to him by the promisor. It means “The obligation resting on one person to make good any loss or damage another has incurred or may incur by acting at his request or for his benefit, or a right which inures to a person who has discharged a duty which is owed to him but which, as between himself and another, should have been discharged by the other.”

Definition:

The term indemnity defined under ‘section 124’ of the Indian Contract Act, 1872- “a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person”. So, we can see this provision incorporates a contract where one party promises to save the other from the loss which may be caused, either:

1. By the conduct of the promisor himself; and

2. By the conduct of any other person.

Essentials:

1. There must be a contract between the parties;

2. There must be two parties;

3. There must be a promise to save the other party from some loss: This is the most important element of a contract of indemnity. One party must promise to save the other party from any loss which he may suffer;

4. The loss may be due to the conduct of the promisor himself or any other person.

We have to refer to Section 124 of the Contract Act; the indemnity may be for the loss which a party may sustain due to the conduct of the promisor himself or of any other person. As stated earlier, this provision restricts the scope of contracts of indemnity as it covers the loss caused by a human agency only, i.e., by the conduct of the promisor or of any other person. However, the general definition of the contract of indemnity is much wider and it also covers the losses caused by the acts other than human beings. In other words, the losses, arising from accidents or events which do not losses arising from accidental fire, perils of the seas, etc. Thus, the contracts of fire insurance and marine insurance also fall in the category of the contract of indemnity.

Rights of indemnity-holder:

The rights of the indemnity-holder are dependent on the terms of the contract of indemnity as a general rule. Section 125 of the Indian Contract Act, 1872 comes into play when the indemnity holder is sued i.e., under a specific situation.

The indemnity holder is entitled to recover the: if the act of indemnity holder is within the scope of indemnifier or according to him-

All the damages that he may have been compelled to pay in any suit in respect of any matter to which the promise of the indemnifier applies.

For example, if a contract to indemnify B against the consequences of any proceedings which C may take against B in respect of a particular transaction? If C does institute legal proceeding against B in that matter and B pays damages to C, A will be liable to make good all the damages B had to pay in the case.

All the costs of suits that he may have had to pay to the third party provided he acted as a man of ordinary prudence and he did not act in contravention of the directions of the indemnifier or if he had acted under the authority of the indemnifier to contest such a suit.

In the case of *Adamson vs. Jarvis*18274 BING 66, Adamson was entitled to recover the money he had to pay to the true owner of the cattle as well as any expenses incurred by him to get a legal counsel, etc. Actually, in this case, Adamson was an auctioneer who was given cattle by Jervis. Adamson followed the instruction of Jervis and sold the cattle. But, Jervis was not a real owner of that particular cattle. And thereafter the real owner filed a suit against Adamson.

Held– It was held that the defendant was liable for loss of plaintiff and compel to compensate him as per Section 125 of the 2nd rule.

All the sums that he may have paid under the terms of any compromise of any such suit provided such compromise is not contrary to the indemnifier's orders and was a prudent one or if he acted under the authority of the indemnifier to compromise the suit.

Rights of indemnifier

The rights of the indemnifier have not been mentioned expressly anywhere in the Act. In Jaswant Singh vs. Section of State, it was decided that the rights of the indemnifier are similar to the rights of a surety under Section 141 where he becomes entitled to the benefit of all securities that the creditor has against the principal debtor whether he was aware of them or not.

Where a person agrees to indemnify, he will, upon such indemnification, be entitled to succeed to all the ways and means by which the person originally indemnified might have protected himself against loss or set up his compensation for the loss.

The principle of subrogation i.e., substitution is founded in equitable principles. Once the indemnifier pays for the loss or damage caused, he will step into the shoes of the indemnified. Thus, he will have all the rights with which the original indemnifier protected himself against loss or damage. The principle of subrogation is applicable due to both the ICA, 1872 itself and principles of equity.

In India, there is no specific provision which states when a contract of indemnity is enforceable. There have been confliction judicial decisions throughout. In Osmal Jamal & Sons Ltd vs. Gopal Purushotam, was amongst the first Indian cases where the right to be indemnified before paying was recognised. But now, a consensus of sorts has been formed in favour of the opinion of Equity Courts. In *K Bhattacharjee vs. Nomo Kumar*, *Shiam Lal vs. Abdul Salal,* and *Gajanand Moreshwar*,case, it has been decided that the indemnified may compel the indemnifier to place him in a position to meet liability that may be cast upon him without waiting until the promisee (indemnified) has actually discharged it.

Indemnity requires that the party to be indemnified shall never be called upon to pay. Thus, the liability of the indemnifier commences the moment the loss in form of liability to the indemnified becomes absolute.

Concept of Agency

The nature of agency –

Agency- A relationship that exists when one party represents another in the formation of legal relations;

Agent– a person who is authorized to act on behalf of another;

Principal– a person who has permitted another to act on her or his behalf.

Agency by agreement:

Agency normally involves the principal authorizing an agent to act on her behalf and the agent agreeing to do so in return for some fee;

Actual authority – the power of an agent that derives from either express or implied agreement;

Apparent authority – the power that an agent appears to have because of conduct or statements of the principal.

Agency by estoppels:

An agency relationship created when the principal acts such that third parties reasonably conclude that an agency relationship exists.

Agency by Ratification:

An agency relationship created when one party adopts a contract entered into on his or her behalf by another who at the time acted without authority.

Agent and principal defined

An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal" [section 182].

WHO MAY EMPLOY AN AGENT

Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent. [section 183]. – – Thus, any person competent to contract can appoint an agent.

WHO MAY BE AN AGENT

As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained. [Section 184]. – – The significance is that a Principal can appoint a minor or person of unsound mind as an agent. In such a case, the Principal will be responsible to third parties. However, the agent, who is a minor or of unsound mind, cannot be responsible to the Principal. Thus, Principal will be liable to third parties for acts done by Agent, but the agent will not be responsible to the Principal for his (i.e. Agent's) acts.

CONSIDERATION NOT NECESSARY

No consideration is necessary to create an agency [Section 185]. Thus, payment of agency commission is not essential to hold the appointment of Agent as valid.

Duties of Agent

1. Must perform in accordance with the principal's instructions, or failing instructions, then performance must meet the standards of the industry;

2. Fiduciary duty – a duty imposed on a person who has a special relationship of trust with another

Duties of Principal

1. pay the agent a fee or percentage for services rendered;

2. assist the agent in the manner described in the contract;

3. reimburse the agent for reasonable expenses; and

4. indemnify against losses incurred in carrying out the agency business.

Indemnity in agency

Section 222 talks about indemnity in the agency-

Agent to be indemnified against consequences of lawful acts- The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in the exercise of the authority Conferred upon him.

Illustrations

i) B, at Singapore, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

ii) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

In the case of *Adamson vs. Jarvis*1827] 4 BING 66, Adamson was entitled to recover the money he had to pay to the true owner of the cattle as well as any expenses incurred by him to get a legal counsel, etc. Actually in this case Adamson was an auctioneer who was given cattle by Jervis. Adamson followed the instruction of Jervis and sold the cattle. But, Jervis was not a real owner of that particular cattle. And there after the real owner filed a suit against Adamson.

Held– It was held that the defendant was liable for loss of plaintiff and compel to compensate him.

Guarantee

According to Section 126 of the Indian Contract Act, 'A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the principal debtor'; and the person to whom the guarantee is given is called ‘the creditor'. A guarantee may be either ora1.m written. For example, if A, and his friend B enter a trader's shop, and A asks the trader, "supply the articles required by B, and if lie does not pay you. I wiJ1.l' It is a contract of guarantee. The primary liability to pay is that of R but if he fails to pay, A becomes liable to pay. On the other hand, if A says to the trader, "let him (B) have t!le goods, 1 will sec you are paid", the contract is one of indemnity and not a contract of guarantee.

From the above-mentioned definition of guarantee you will notice that in a contract of guarantee, there are three parties known as creditor, principal debtor and surety. A contract of guarantee is forn~cd when all the three agree. Let us take an example, A and B enter in a shop, and A orders to deliver certain goods to B on credit, The shopkeeper says "I can give goods on credit provided A gives the guarantee for the payment". A promises to guarantee the payment. In this example, B is the principal debtor, A is the surety and the shopkeeper is the creditor and the contract is a contract of guarantee.

A contract of guarantee is an agreement and as such all the essentials of n valid contract must be present. For instance, the contracting parties should be competent to contract. Suppose in the above-mentioned example B is a minor i.e., incompetent

Indemnity and Guarantee

In a situation of specific contracts A would be regarded as the principal debtor and he will become personally liable to pay. Thus, the incapacity of the principal debtor does not affect the Validity of a contract of guarantee. The requirement is that the creditor and the surety must be competent to contract.

Now you may ask that if a contract of guarantec should have all the essentials of a contract then what is the consideration between surety and the principal debtor. It is not necessary that there should be direct consideration between the surety and the creditor i.e., the surety need not be benefited. It is sufficient (for the purposes of consideration) that something is being done or some promise is made for the benefit of principal debtor. It is presumed that the consideration received by principal debtor is the sufficient consideration for the surety. You would appreciate it if you go through the provision of Section 127, which says: Any thing done, or any promise made for. the benefit of the principal debtor, may be a sufficient considerntion to the surety for giving the guarantee.

On examining the definition of contract of guarantee, you would find that as there are three parties, the. . are three contracts as well. One contract is between the creditor and the principal debtor, out of which the guaranteed debt arises. Second contract is between the surety and the principal debtor which implies that the principal debtor shall indemnify the surety, if the principal debtor fails to pay and the surety is asked to pay. The third contract is between the surety and the creditor by which surety undertakes (guarantees) to pay the principal debtor's liabilities (debt) if the principal debtor fails tp pay.

For a valid contract of guarantee, it is essential that there must be an existing debt or a promise whose performance is guaranteed. In case there is no such debt or promise, there can be no. valid guarantee. In fact, a contract of guarantee pre-supposes the existence of a IiabiIity enforceable by law. For example, A gives the guarantec to B for the payment of a time-barred debt due from C. This is not a valid contract of guarantee because the primary liability between B and C is not enforceable bylaw. In case A pays the amount, he cannot recover it from C.

An interesting aspect of the contract of guarantee is that though it is not a contract of uberritnae fidei (a contract of absolute good faith) and therefore, it is not necessary foi the principal debtor or the creditor to disclose all the material facts to the surety before he enters into a contract. However. the facts which are likely to affect the surety's decision must be truly represented to him. Section 142 of the Act provides that arty guorantee which lzas been obtained by means of misrepresentation made by the creditor., or with his knowledge and assent, concerning a moterialpart of the transaction, is invalid.

You should also note that not only there should be no misrepresentation but it is also essential that the guarantee must not be obtained by concealing some facts. Section 143 provides that any guarantee which the creditor has obtained by means of keeping silence to material circumstances is invalid. For example, A employs B as clerk to collect money for him. B fails to account for some of his receipts, and A, in consequence, calls upon him (B) to furnish security for his duly accounting.-C gives the guarantee for B's duly accounting. A did not inform C about B's previous conduct. B, dterwards, makes default. Here the guaranted given by C is invalid because it was obtained by concealment of facts by A.

From this discuss~on, let us summarise the essential features of a contract of guarantee as follows :

i) Existence of a debt, for which some person other than the surety should be primarity liable. ii) Consideratio~l, but it is not necessary that the surety should be benefited. iii) All the essentials of a valid contract should be present.

iv) Creditor and surety must be competent i.e., principal debtor need not be Competent to contract. v) Surety's liability is dependent on principal debtor's default. -r.i) Guarantee must not be obtained by misrepresentation. vii) Guarantee must not be obtained by concealment of material facts

Conclusion

After all, we have seen in this present project Simply put, indemnity requires that one party indemnify the other if certain expenses spoken of in the contract of indemnity are incurred by him. For example, car rental companies stipulate that the person hiring will be responsible for damage to the rental car caused by his reckless driving and will have to indemnify the rental company.

Most attention of late has been given to the development of indemnity contracts in the IT industry. There are some circumstances in which the existence of an indemnity would make a significant difference while in others, a contract of indemnity will have little or no role to play. Another new concept called ‘Indemnity Lottery’ can be found in the law of contract that implies that in civil cases of indemnity results can never be predicted. Brazilian jurist Leonardo Castro is credited for coining the term.

A simple indemnity clause is not the answer to liability issues. The law leans disfavouably towards for those who try to avoid liability or seek exemption from liability of their actions. The underlying reasoning is that a negligent party should not be able to completely shift all claims and damages made against it to another, non-negligent party. For example, many a times a ticket to an amusement park may claim that a person entering the park will not hold the management liable. Rarely will such a defense work in a court of law because it is not based on a contract. Most people hurt on an amusement park ride are able to sue for damages quite successfully.

Q2 Explain the differences between Indemnity and Guarantee.

Answer - In its broadest meaning an indemnity is an undertaking to perform an obligation or pay a debt of another, and therefore encompasses all contracts of guarantee and many contracts of insurance. For the purposes of this article it is therefore necessary to define indemnity more narrowly. The term "contract of indemnity" will be used to denote an independent promise by a third party to indemnify a creditor against any loss that may be suffered in the course of a transaction with a principal debtor. Primary liability is assumed by the indemnifier by way of security given for the performance of an obligation or the payment of a debt. The liability is therefore wholly independent of any obligation of the principal debtor. "Contract of guarantee" will refer to the obligation of a third party either to ensure that the principal debtor performs his obligations or to repay the debt herself. The liability of the guarantor may therefore be described as secondary as it will arise only upon the default of the principal debtor on his primary obligation to the creditor.

In every case of guarantee there are at least two obligations, a primary and a secondary. The secondary - the guaranty - is based upon the primary, and is enforceable only if the primary default.

The obligation assumed by the guarantor is to answer for the default of another. "Surety" will be used as a general term to cover both guarantors and indemnifiers. Both a contract of guarantee and a contract of indemnity must be valid contracts: there must be offer and acceptance, intention to create legal relations, and good consideration. There is, however, a difference in the obligation undertaken

An indemnity is a contract by one party to keep the other harmless against loss, but a contract of guarantee is a contract to answer for the debt, default or miscarriage of another who is to be primarily liable to the promise.

There are no hard and fast rules for determining whether a contract is an indemnity or a guarantee. In each case the courts will look at the specific terms of the agreement and in some cases the surrounding circumstances. Thus the central concern is construction, and the courts will base their decision on the substance of the agreement as opposed to its form or description. The fact that a document is described as either a "guarantee" or an "indemnity" is taken as a guide by the courts, but is by no means conclusive.

Ultimate Object

A document will be construed by the courts in accordance with what is seen to be the "ultimate object"6 of the agreement. The intention of the parties will be central to interpretation. Therefore, in commercial agreements, for example, the courts will have regard to such factors as how the parties intended to regulate their dealings by way of the agreement, and the commercial benefits arising out of the agreement. In Direct Acceptance Finance Ltd v Cumberland Furnishing Pty Ltd7 construction was held to be the key to interpretation. Although the ultimate object of the document must govern its interpretation, "[ilt is the method by which that object is attained which decides the class to which the document belongs".8

Terms of the Agreement

The court must start by looking at the terms of the agreement. A guarantor's liability is generally taken to be co-extensive with that of the principal debtor, and therefore if the principal debtor defaults on his primary obligation to the creditor, the creditor may recover from the guarantor whatever sum she could have recovered from the principal debtor.9 The liability of a guarantor must not be different in kind or extent from that of the principal debtor. If it is potentially greater then the contract will be one of indemnity. The courts must therefore ascertain whether the document was intended to be a mere contract of guarantee by asking what is the extent of the protection that the creditor has been promised by the surety. Therefore not be a guarantee if the obligation assumed by the surety is not just the money due at the time of the default of the principal debtor, but is the amount that would have become payable if the transaction had run its full course, or the sum required to completely protect the creditor from any loss.' In such cases the contract will be an indemnity as the liability of the surety is potentially greater than that of the principal debtor. When the surety undertakes to become Liable - Under a contract of guarantee the assumption of secondary liability is an undertaking to become liable upon the default of the principal debtor. The guarantor's obligation is thereby dependent on the default of the principal debtor. Under a contract of indemnity, however, a primary liability falls upon the indemnifier and liability will arise according to the terms of the agreement. A distinction can clearly be drawn between:13 a promise to pay the creditor if the principal debtor makes default in payment, and a promise to keep a person who has entered, or is about to enter, into a contract of liability indemnified against that liability, independently of the question of whether a third person makes default or not.

The agreement will be a contract of indemnity if, for example: 1. the creditor is able to recover a loss on a transaction from the surety even though the principal debtor is not guilty of default 2. the agreement provides that the surety's liability arises only in the event that the creditor makes a loss on the totality of the principal transaction or a profit less than she should have made. In this situation the surety does not undertake to become liable upon the default of the principal debtor and hence there is no obligation to make good particular defaults. In addition the creditor has no recourse to the surety upon any particular default of the principal debtor. The validity of the surety's promise is independent of the principal debtor's promise; or 3. the agreement provides that the liability of the surety will arise at the request or upon notice from the creditor.15 An agreement may provide that in the event that the principal transaction becomes unsatisfactory the creditor may demand payment from the surety. Such liability is not dependent upon any default of the principal debtor and must therefore be an indemnity.

Rights of Subrogation - Upon payment by the surety of the principal debt he is legally entitled to the full rights of subrogation, thereby stepping into the creditor's shoes.16 This equitable principle was stated in Craythorne v Swinbume:1 7

a surety will be entitled to every remedy, which the creditor has against the principal debtor, to enforce every security and all means of payment; to stand in the place of the creditor, not only through the medium of contract, but even by means of securities, entered into without the knowledge of the surety; having a right to have those securities transferred to him; ... [t]his right of a surety ... stands, not upon contract, but upon a principle of natural justice.

This principle generally applies to both guarantees and indemnities. But if the agreement contains a clause entitling the surety only to such rights as the creditor under his discretion assigns to her upon her payment of the principal debt (as in Yeoman Credit v Latter) then the agreement must be an indemnity. A guarantor is by law entitled to full rights of subrogation. An agreement which purports to give completely different rights to the creditor and the surety (upon payment of the principal debt) can therefore only be an indemnity,avoid the consequences of variation of the principal transaction. Clauses cannot convert what is in essence a contract of guarantee into a contract of indemnity.2° The courts will look to the overriding intention of the agreement,21 and if the circumstances and the intention dominating the agreement are indicative of a guarantee then this must control the interpretation. In General Produce Co v United Bank" a clause was construed as making the surety liable as a principal debtor only in certain circumstances. The surety was liable as a guarantor at the outset of the document, but became liable as a principal debtor on the release of the original principal debtor's liability., This interpretation by the Court reconciled the apparent inconsistency in the document before them. There is no conflict between this case and cases where the court has found that such a clause does not convert what is in essence a contract of guarantee into a contract of indemnity: the court will attempt in each case to give effect to the intention of the parties.

Surrounding Circumstances

The courts may look to the surrounding circumstances to determine the intentions of the parties. This has most commonly occurred in cases where all parties knew that the principal transaction might not be enforceable.4 If the contract is a guarantee the unenforceability of the principal transaction will generally relieve the guarantor from liability. However, in such situations the courts are more likely to find that the contract is an indemnity 2 in order to avoid a situation where the:2 0

three parties [the creditor, principal, and surety].., enter into an arrangement under which money was to be advanced on [a contract] on which no-one was liable at all, there being noone liable as principal and therefore no-one liable as surety.

Why the Distinction is Important

It is submitted that the real importance of the distinction is the special rights of the parties to a contract of guarantee, in contrast with the conditional but standard two party relationship in a contract of indemnity. The distinctiveness of the guarantee contract is apparent in three main areas:

.Contracts Enforcement Act 1956 Section 2(1) of the Contracts Enforcement Act 1956 applies (inter alia) to "[e]very contract by any person to answer to another person to the debt, default, or liability of a third person." Section 2(2) further provides that: No contract to which this section applies shall be enforceable by action unless the contract or some memorandum or note thereof is in writing and is signed by the party to be charged therewith or by some other person lawfully authorised by him. In other words, in order for a creditor to be able to bring an action on a guarantee, that contract must be in writing and signed by the guarantor. This section only applies to guarantees and not to indemnities. The importance of compliance is emphasised by recent New Zealand cases. The requirement that all the material terms of a contract of guarantee be contained in the note of memorandum was a successful defence for a guarantor who alleged defects in the signature attestations and in the identification of the parties in Golden Coast Poultry Industries Ltd v Brown.' In this case the name of the principal debtor had been omitted and the guarantor was released from liability. A guarantor was also successful in Westpac Banking Corp v Morris28 where the alleged insertion of details into a contract after it had been signed supported a defence of invalidity under the Contracts Enforcement Act.

Creditors' Rights The distinction between a guarantee and an indemnity is important in that the rights of the creditor are governed by the nature of the agreement. A contract of guarantee involves a promise by the guarantor collateral to that of the principal debtor. If the principal debtor then fails to perform his obligation to the creditor, the creditor is entitled to sue the guarantor. The liabilities of the principal debtor and the guarantor are therefore co-extensive, as are the rights available to them pursuant to an action by the creditor. It therefore follows that if the principal obligation cannot be enforced against the principal debtor the guarantor must also be released from liability. The principle of co-extensiveness historically relates back to the Roman law concept of fide jussio. This was based on the reasoning that the guarantor's obligation is dependent upon that of the principal debtor and therefore cannot exist without a valid and subsisting obligation on her part.29 The relevant rule of law is "[where] the principal is not obliged, neither is the surety, as there can be no accessory without a principal obligation".o This rule was affirmed in Lakeman v Mountstephen: 1

There can be no suretyship unless there be a principal debtor, who of course may be constituted in the course of the transaction by matters ex post facto, and need not be at the time, but until there is a principal debtor there can be suretyship. Nor can a man guarantee anybody else's debt unless there is a debt of some other person to be guaranteed.

With a contract of indemnity on the other hand, primary liability falls upon the indemnifier. The indemnifier's obligation is wholly independent of that of the principal debtor, though default by the principal debtor is the most likely cause of recourse to the indemnifier by the creditor. An indemnifier will remain liable notwithstanding the unenforceability or invalidity of the principal contract. This is because the promise is to keep the creditor harmless against loss, not to answer for the debt of the principal.32 The indemnifier owes an independent debt, contingent on the creditor suffering some loss, and is thereby agreeing to answer for her own debt, not that of another.33 On this basis an indemnifier can be held liable for a shortfall on the anticipated profit notwithstanding that there was no further liability on the part of the principal, as in Goulston Discount Co Ltd v Clarke24 In that case, a man wished to purchase a £400 car with the assistance of the plaintiff finance company by way of a normal hire purchase agreement. The plaintiff bought the car from the defendant dealer from whom the finance company sought an indemnity. The material parts of the indemnity clause read:

In consideration of your entering into a hire purchase agreement with RH Webb I agree to indemnify you against any loss you may suffer by reason of the fact that the hirer under the said agreement for any cause whatsoever does not pay the amounts which he would if he completed his agreement by exercising the option to purchase. Loss shall mean the difference between the total amount the hirer would have had to pay to acquire title to the goods under the hire purchase agreement, plus your expenses, less payments received by you.

The hire purchase agreement was to run over two years and was calculated to cover the £300 (a £100 credit had been given for the trade-in), a finance cost of £57 and an option to purchase for £1. The total hire purchase price amounted to £458. Webb paid the first few instalments but then defaulted. The plaintiff then legally repossessed the car, sold it for £155 and sued the defendant dealer under the indemnity contract for the balance of the hire purchase price which it was unable to recover from Webb. At first instance it

It was held that the contract was a guarantee and that the plaintiff finance company was therefore only entitled to bring an action for the amount owing in arrears as opposed to the full amount of the hire purchase agreement. On appeal, Lord Denning MR had no difficulty in reversing this decision and finding that the contract was indeed an indemnity: a very sensible agreement which the defendant ought to honour. Had the contract been a guarantee, the defendant would have been liable only for the payments due at the time of termination.

Creditors' Obligations

What are the obligations of the creditor when taking action against the guarantor? To what extent, if any, must the creditor endeavour to recover from the principal debtor before an action can be brought against the guarantor? Is the creditor under any obligation to notify the guarantor of the principal debtor's default? A guarantor will be released from liability if there has been a breach of a condition precedent to the operation of the guarantee. Such conditions may be expressed or implied.

Every contract of guarantee or indemnity whereby any person (other than a minor) undertakes to accept liability in the event of the failure of a minor to carry out his obligations under a contract shall be enforceable against that person... to the extent that it would be if the minor has been at all material times a person of full age, and that liability shall not be affected by any other provision of this Act or any order made pursuant to any other provision of this Act [emphasis added].

Neither a guarantor nor an indemnifier has a defence that her contract is unenforceable owing to the fact that the principal obligation arises under an infant's contract and is therefore void. The second exception is that directors will remain liable on their contracts of guarantee notwithstanding that the contract of loan with the company is itself ultra vires and therefore unenforceable. This is consistent with equitable principles as the director of a company will be deemed to know that the principal obligation into which the company has entered is ultra vires. It would therefore be unfair to allow her to escape liability by claiming that the principal transaction was ultra vires and void and that she should therefore be relieved from liability under their guarantees. The exception was first asserted in an obiter statement by Lord Blackburn in Chambers v Manchester and Milford Ry Co46 and later relied on in Yorkshire Ry Wagon Co v Maclure. 7

Conclusions

Whether an undertaking regarding the debt or obligation of a third party is a guarantee or an indemnity will always depend on the facts of the individual

Q3 Explain rights and duties of Bailor, Bailee and Lien.

Answer - According to Contract Act, bailment means delivery of goods by one person to another for some purpose upon a contract that they these goods shall be returned or disposed of according to the directions of the person delivering them when the purpose will be accomplished.

Explanation

Under Contract Act, bailment is considered a contract. Such contract is consisted of following essentials.

i. Delivery of Goods

For a valid bailment, it is essential that goods should be delivered from one person to another person. It means that possession of goods should be changed.

ii. Delivery for Some Purpose

It is necessary for a valid bailment that goods should be delivered for some purpose.

iii. Return or disposing of Goods

For a valid bailment, it is also essential that goods should be returned or disposed off according to directions of bailor when purpose is accomplished.

3. Definition of Bailor

In bailment, the person, who delivers goods, is call bailor.

4. Duties and Liabilities of Bailor

Following are duties and liabilities of bailor;

i. Disclosing of defects of goods bailed

It is duty of bailor to disclose any defects, which are present in goods, which are being bailed.

ii. Repayment of expenses

It is liability of bailor to repay all those expenses, which bailee spends for purpose of bailment.

iii. Bailor’s Responsibility to Bailee

Bailor is liable to bailee for any loss, which the bailee bears in the following situations;

a. No right to make bailment

Bailor is responsible to bailee for any loss, which bailee bears because bailor was not entitled to make bailment.

b. No Right to get back bailed goods

Bailor is responsible to bailee for any loss, which bailee bears because bailor was not entitled to get back bailed goods.

c. No right to give Directions

Bailor is responsible to bailee for any loss, which bailee bears because bailor was not entitled to give directions.

5. Definition of Bailee

In bailment, the person to whom goods are delivered is called bailee.

6. Duties and Liabilities of Bailee

Following are duties and liabilities of bailee;

i. Care

In all cases of bailment, bailee is bound to take care of bailed goods in the same manner in which a man of ordinary prudence takes care of his own goods of the same quality and value.

ii. Unauthorized use of Bailed Goods

If bailee makes any use of goods bailed and such use in not according to conditions of bailment, he is liable to make compensation to bailor for any damage, which is caused to the goods during such use.

iii. Mixing of Bailed goods with Bailee’s goods

If bailee mixes bailed goods with his own goods without consent of bailor, his liability arises in the following two cases;

a. When goods can be Separated?

Out of mixed goods, if bailed goods can be separated or divided, bailee will be under obligation to bear all expense of separation or division, and any damage, which is caused from such mixture.

b. When goods cannot be Separated?

Out of mixed goods, if bailed goods cannot be separated or divided, bailee will be under obligation to compensate the bailor for such loss of bailed goods.

iv. Return of Bailed goods

It is duty of bailee to return bailed goods to bailor without any demand an according to directions of bailor on expiration of time or accomplishment of purpose.

v. Non-return of Bailed Goods

If bailee fails to return bailed goods at proper time, it is his liability to compensate bailor for any destruction or loss from this time.

vi. Increase or Profit from bailed goods

In absence of any contrary contract or according to directions of bailor, bailee is also under obligation to deliver to bailor any increase or profit, which may have accrued from bailed goods.

3. Right of Lien

The word lien means to "retain the possession of". According to section 47(1) 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 namely:

1. Where the goods have been sold without any stipulation as to credit
2. Where the goods have been sold on credit but the term of credit has expired
3. Where the buyer becomes insolvent

The right of lien is one of the unpaid sellers right against the goods the property in which is transferred to the buyer. It is the unpaid sellers right to retain the goods until the whole of the price is paid or tendered. Lien can be exercised only for non-payment of the price and not for any other charges due against the buyer. The right can only be exercised on the fulfillment of two conditions:

1. The unpaid seller must be in actual possession of goods
2. The unpaid seller can retain the goods only for the payment of the price of good

The right is not linked to the title of the goods but is concerned with the possession of the goods, hence the goods have to be in actual possession of the seller in order to exercise this right, which can even be done if he possesses the goods as a Bailee or an agent and should not necessarily be the owner. Thus the seller where he has transferred the documents to the buyer his lien is not defeated as long as he remains in the possession of the goods. But if the buyer has transferred the documents of title to a bona fide purchaser, the seller's lien is defeated, as the seller is not allowed to exercise this right when the goods were in the hands of the carrier. Where the goods are sold on credit this right is suspended during the term of credit. But on expiry of that term, if the goods are still in the possession of the seller his lien revives.

This exists only for the price of goods as expressly put in Section 46(1) (a) as held in the case of *Transport & General Credit Corp. v. Morgan*, the right wholly depends upon the statutory provisions and not upon any equitable considerations. The seller is thus not entitled to lien for any other charges i.e. charges for storage or the like. In the case of *Somes v. British Empire Shipping Co.*that where the price has been tendered the seller cannot claim to return the goods further for the expenses incurred by him on storage during the period that he was holding the goods in the exercise of his lien.

Now, since this right is based only on possession, as soon as the possession of goods is lost this right is also lost. The unpaid seller loses the lien thereon:

1. When he delivers the goods to a carrier or other Bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods:
2. When the buyer or his agent lawfully obtains possession of the goods ;
3. By waiver thereof.

The unpaid seller of goods having a lien thereon does not lose his lien by reason only that he has obtained a decree for the price of the goods. Section 47 also provides for the loss of lien by the unpaid seller in the following cases:

1. When he delivers the goods to the carrier or other Bailee for the purpose of transmission to the buyer without reserving right of disposal of the goods;
2. When the buyer or his agent lawfully obtains possession of the goods;
3. By wavier of the lien.

The basis of the right is the non-payment of the price and therefore if the buyer is willing to pay the price there is no question of exercise of this right, if the buyer pays the price this right which might have existed earlier is terminated. It is given under section 47(1) that the unpaid seller is entitled to exercise his right until payment or tender of the price in respect of certain goods, the payment of price thus terminates the sellers right to retain the goods.

The seller also loses when he delivers the goods to a carrier other than a Bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods. This continues so long as the unpaid seller delivers the goods is not made and the seller has the possession of the goods.

According to section 48 if the seller has delivered a part of the goods he can exercise on the remaining part of the goods unless and until the part delivery was made under such circumstances as to show it had been waived because sometimes delivery of part may operate as delivery of whole. Such a waiver may be presumed when the seller allows a period of credit to the buyer or delivers a part of the goods to the buyer or his agent.

4. Banker's Lien

A banker's lien, when it is not excluded by special contract, express or implied, extends to all bills, cheques, and money entrusted or paid to him, and all securities deposited with him, in his character as banker.Strictly, it is confined to securities and properties in the custody of the banker;and in respect of things which belongs to customer, and held by the bank as security;whether they are in the same or different branches. If thing is in possession of the bank, but owned by the customer, has no right over it. A deposit of valuables with a banker is subject to the banker's lien for the customer's general debts to him, unless can prove agreement to give up his general lien. Thus, if a certain sum is due to a bank in one account, it may retain as security or other movable that came into it hand in another account; including repayment of subsequent advances. A banker's lien would also apply to negotiable instruments remitted by customer for collection. Unless, otherwise directed, the proceeds of such collection may be used by the bank for reducing the customer's debit balance.

5. Extent

The extent of bailee's lien is in respect of services involving the exercise of labour or skill rendered by him in respect of the goods bailed. The services rendered for the purpose of lien must be limited to the labour or skill expended by the bailor over the goods bailed; the lien has nothing to do with any other kind of service. Such labour and skill must have been spent, and thirdly, the lien applies only to such goods over which the bailee has bestowed his labour and expenses, and not to other goods. Nor does any lien attach to goods bailed to a person for the purpose of his working with it, and not upon it. Mere making arrangement for storage of goods in a godown for payment would not attract his provisions since no improvement in the goods takes place, nor is any labour or skill exercised in respect of such goods.

6. Loss

A bailee's right is lost with the loss possession. It is lost if he surrenders possessions of the goods, even though he subsequently regains possession. Thus, in *EC Eduljee v. Café John Bros,E* sold a second hand refrigerator to *P*, and agreed to put it in order for further sum. *P* took delivery. Later, *E* agreed to make further repairs as an act of grace, and was given possession. *E* claimed a lien, as the original fixed for repairs had not been fully paid. It was held that the lien was lost by the original delivery to *P*.

The lien is also lost if the bailee has sold the goods.The bailee's assertion of right to retain the chattel otherwise than by way of lie may operate as a waiver of the lien; or by an act or agreement of the bailee amounting to waiver.

*Right to recover expenses Survives lienz: E*ven though the right is lost on loosing possession of goods, the bailee, nevertheless, retains the right to recover the expenses incurred by him for the preservation of the goods form deterioration no provided for in the contract of bailment.

7. Lien an implied pledge

Banker's lien is a general lien recognized by law. The general lien on the banker is regarded as something more than an ordinary lien; it is an implied pledge. This right coupled with rights u/s 43 of the *Negotiable Instruments Act, 1881* permits bills, notes and cheques, of the banker, being regarded as a holder for value to the extent of the sum in respect of which the lien exists can realize them when due; but in the case of the other negotiable instruments e.g. bearer bonds, coupons, and share warrants to bearer, coming into the banker's hands and thus becoming liable to the lien, the character of a pledge enables the banker to sell them on default, if a time is fixed for the payment of the advance ,or, where no time is fixed ,after request for repayment and reasonable notice of intention to sell and apply the proceeds in liquidation of the amount due to him .The right of sale extends to all properties and securities belonging to a customer in the hands of a banker ,except title deeds of immovable property which obviously cannot be sold.

The law gives inter alia, a general lien to the bankers – *Lloyds Bank v. Administrator General of Burma*, To claim a lien, the banker must be functioning qua banker under Section 6 of the Banking Regulation Act- *State Bank of Travencore v. Bhargavan ,1969 Kerala.*It is now well settled that the Banker lien confers upon a banker the right to retain the security, in respect of general balance account. The term general balance refers to all sums presently due and payable by the customer, whether on loan or overdraft or other credit facilities.*(Re European Bank (1872) 8 Chapter App 41)* In other words, the lien extends to all forms of securities deposited, which are not specifically entrusted or to be appropriated.

8. Case Laws and Illustrations

- *State Bank of India v/s Javed Akhtar Hussain*:

It was held by the Court that the action of the bank in keeping lien over the TDR and RD accounts was unilateral and high handed and even it is not befitting the authorities of the State Bank of India. The court relied on the ruling *Union Bank of India v/s K.V.Venugopalan* where it was held by the court that the fixed deposit money lodged with the bank is strictly a loan to the bank. The banker in connection with the FD is a debtor .The depositor would accordingly cease to be the owner of the money in fixed deposit .The said money becomes money of the bank, enabling the bank to do as it likes, that however, with the obligation to repay the debt on maturity .In the same ruling it was further held that the bank being a debtor in respect of the money in FD, had no right to pass into service the doctrine of banker's lien and the money in Fixed Deposit.

- *Valpy v. Gibson:*

Goods were sold and sent by the sellers at the request of the buyer to the shipping agents of the buyer, and were put on board a ship by those agents. Subsequently, they were re-landed and sent back to the sellers for the purpose of re-packing. While they were still in the possession of the sellers for that purpose, the buyer became insolvent. Thereupon the sellers refused to deliver them to the buyer's trustee in bankruptcy except upon payment of the price. Held, that the sellers had lost their lien by delivering the goods to the shipping agents, and their refusal to deliver the goods to the trustee was wrongful.

- *Gurr Cuthbert*:

Sale of stack of hay for 86 dollars, to be paid for as it is taken away, the whole to be removed by a certain date. Part, but only part, was paid for and removed by the buyer before that date, and two months after that date the seller cut up and used the remainder. In doing so, the seller waived his line, and the buyer successfully maintained an action against him.

- *Grice Richardson*:

The appellants, who traded in Australia, imported three parcels of tea which they sold to the respondents, who gave their acceptance or promissory notes for the price. The appellants were also warehousemen, having a bonded warehouse in which they had stored the tea on its importation. On selling the tea to the respondents, the appellants handed them delivery orders, which stated that the tea to which it referred was warehoused by the appellants. The delivery orders were subsequently endorsed by the respondents to w & Co. And entries were made at the warehouse that the tea had been transferred to the company. Subsequently, W & Co became insolvent and their acceptance and notes were dishonoured, by which time part of the tea had been delivered to W & Co and part remained in the warehouse, for which the appellants had not been paid. Held that the appellants as vendors retained their lien in respect of the tea which remained in the warehouse.

Q4 Under what circumstances an agency is terminated?

Answer - Contract entered into through an Agent and obligations arising from the acts done by an agent be enforced in the same manner and will have the same legal consequences as if the contract has been entered into and the acts done the principal in person as described in section 226 of the Act. Where a Agent does not work in good faith and is not loyal to his principal and tries to commit fraud or misrepresent in the business of Agency then principal is bound to take steps towards termination of the agency.

The following may the reasons which can be responsible for the termination of the Agency:-

1. By the principal revoking his authority: Under section 203 of Contract Act-1872 lays down that, the principal may save or otherwise revoke the authority given to his agent at any time before the authority has been exercised so to bind the principal.
2. By the Agent renouncing the business of the Agency:- Section 206 of Indian Contract Act, 1872 provides that, principal can revoke the agent's authority so also the agent can renounce the agency by giving a reasonable notice of renunciation otherwise he will be liable to make the loss good for any damage. Sec. 207 further mentions that like revocation the renunciation may also be express or implied in the conduct of agent.
3. By the business of the agency being completed:- In term of contract where the period of completion of the business is made the agency automatically stands terminated.
4. By either the principal being adjudicated an insolvent: Section 201 of the Act clearly indicates that, the agency which may be validy created stands revoked in the event of different situations including the death or insanity of the principal or the agent or by insolvency of the principal.
5. Principal should give reasonable notice of revocation:- Provisions says that a reasonable notice of the revocation when he have the justification to revoke the authority under sec.206.
6. By either the principal or Agent dying or becoming unsound mind: Section 201 also describes that, when principal dying or becoming of unsound mind agent is bound o take on behalf of the representatives of his late principal all reasonable steps for the protection of interests of agency.

7. By the happening of any event rendering the agency unlawful: - Whenever there is declaration of war the principal and agent may become alien enemies also comes in the way of termination of the agency.

8. If a limited period is given:- If the agency is for a fixed term, although with the possibility of fresh appointment after the expiry of the term it automatically terminates on expiry of the said term such agency cannot be said to be irrevocable as in the case of P. sukhdev v/s Commissioner of Endowments-1997. Under sec.205.

9. Manner and Circumstances of Revocation:- The principal may have where the agent has himself an interest in the property which forms the subject matter of the agency, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal under section 203 of the Act.

   The Principal cannot revoke the authority given to his agent after the agent has partly exercised his authority so far as regards such acts and obligations as arise from acts already done in the Agency as laid down in the section 204 of the Act.

   The reasonable notice of revocation is essential. Revocation may be express or implied in the Contract of the business under section 206 of the act.

   The revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively under section 207 of the act.

   ILLUSTRATION: - A empowers B to let A's house. Subsequently A lets it himself. This implied revocation of B's authority.

   CONCLUSION:- The effect of termination of Agency is on the maximum level to the Agent about his earnings and also put the principal in financial losses. Agent must remain faithful in the business of Agency. He should rendered the accounts, financial matters, appointment of sub-agents and other activities relating to Agency to the notice of his principal failing which it leads to termination of Agency.

Q5 Define the tern Sub-Agent. How far is principal bound by the acts of Sub – Agents. Distinguish between Sub-Agent and Substituted – Agent.

Answer - A rule which based on the principle that Agency is a contract based on trust and mutual confidence between the parties. A principal may have the mutual confidence in his

Agent but not in the subsequent sub Agent appointed by the Agent. There is a provision regarding ‘delegates non-protest delegare’ which means of this maximum is that an agent to whom another has delegated his own authority cannot delegate that authority to a third person.

PROVISIONS MADE IN THE ACT:- Under section 190 of the Contract Act which deals with delegation of an authority by the Agent describes as under:-

“An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally unless by the ordinary custom or trade a sub-agent may or from the nature of the agency a sub-agent must be employed.”

However the general principle is that the agent cannot delegate his authority to a third person but there are two exceptions to this general rule. These are:-

i) When the ordinary custom of trade permits employment of a sub-agent.

ii) When the nature of agency demands that employment of a su-agent is necessary by the Agent.

Although there are two exceptional conditions no agent is authorized to delegate his authority it the nature of his act is purely managerial and he is supposed to use his personal skill in discharge of his duty or where he is personally required to perform his duties.

SUB-AGENT:- Sub agent is a person employed by and acting under the control of the original Agent in the business of Agency under section 191 of the Act.

LEGAL POSITION OF SUB-AGENT PROPERLY APPOINTED:- Sub Agent may be either properly appointed or improperly appointed. If he is appointed by the Agent with the authority of his principal he is called sub-agent properly appointed. If he is appointed without the authority of principal he is improperly appointed.

When the sub-agent is appointed properly with the consent of the principal, the principal is bound by his acts and is responsible for his action as if he was an agent appointed by the principal.

The sub-agent is not responsible for his acts to principal. He is responsible only for such acts to the original Agent.

But if the sub-agent is guilty of fraud or willful wrong against the principal he becomes directly responsible to the principal under section 192 of the Act.

Difference between sub-Agent & substitute Agent

SUB-AGENT	SUBSTITUTED AGENT
Sub Agent is a person employed by and acting under the control of the original agent in the business of agency.	Substituted agent can be nominated by the original Agent to act for the principal for a certain part of the business of agency.
A sub-agent is not generally responsible to the principal but he is responsible to the agent.	A substituted agent by his mere appointment becomes immediately responsible to his principal.
There is no privity of contract between sub-agent and principal.	A privity of contract is created between the principal and the substituted Agent.

CONCLUSION:- There is lot of difference in between sub-agent and substituted agent one is appointed by the original agent is immediate responsible to the original whereas the substituted agent is directly responsible to the principal. He is appointed for some part of the business of agency.

Q6 Sharing of Profits in Business is not a conclusive evidence of the existence of Partnership. Comment.

Answer - The object of every partnership must be to carry on a business for the sake of profits and share the same. Therefore clubs, societies which do not aim at making profits are not said to be a partnership. The definition of term 'Profits' in the Partnership Act is that 'net- gains' i.e. he excess of the returns over outlay. At one time it was thought that a person who shared the profits must incur the liability also as he was deemed to be a Partner as it was held in a case of Grace v/s Smith, 1775. This principle was again confirmed in a case of

Waugh v/s Carver, 1793, it was held that the person sharing the profits does not always incur the liability of partners unless the real relation between them is that of partners.

ESSENTIALS:- Although sharing of profits is one of the essential elements of every partnership but every person who shares the profits need not always be a partner.

Example No.1: - I may pay a share of profits to the manager of my business instead paying him fixed salary so that he may takes more interest in the progress of the business, such person sharing the profits is simply my servant or agent but not my partner. Example No. 2:- A share of profits may be paid by a business man to a money-lender by way of payment towards the return of his loan and interest thereon, such a money-lender does not thereby become a partner.

a. The principle laid down in Cox v/s Hickman-1860: this principle forms the basis of the provisions of section 6 of the Partnership Act which gives a caution that the presence of only some of essentials of partnership does not necessarily result in partnership. For determining the existence of partnership there must be had to the real relation between the parties after taking all the relevant facts into consideration.

b. In determining whether a group of persons is or not a firm or whether a person is or is not a partner in a firm. To answer this query an explanation is given below:

(i) Sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons as partners.

(ii) Receipt by a person of a share of the profits of a business or of a payment contingent upon the earning of profits or varying with the profits earned by a business does not of itself make him a partner with the persons carrying on the business and in particulars the receipt of such a share by a servant or agent as remuneration a case of McLaren v/s Verschoyle-190l, or by a widow or child of a deceased partner.

(iii) Mollow March & Co. v/s Courts of Wards-1872: In this case a Hindu Raja advanced a large amount to a firm. Raja was given extensive powers of control over the business and he was to get commission on profits until the repayment of loan with 12% interest. It was held by the Raja could not be made liable for the debts contracted in the agreement was not to create Partnership but simply to provide security.

(iv) In a case of Walker v/s Hi4sch-1884: A person was working as clerk. The served a notice by the defendants terminating his services. Clerk contented that he was a partner and claimed dissolution of firm. I was held that though he shared the profits he was having the capacity of a servant only. He was not a partner and could not see dissolution of the firm.

CONCLUSION:- On nut-shell it could be concluded that just sharing the profits in the business is not conclusive existence of the partnership till it create some relationship between the persons who have entered into Partnership.

Q7 How the firm is registered? What is the effect of Registration and Non – Registration of firms?

Answer - In the Contract Act it is not necessary that the firm should be registered at the time of its formation. However a firm may be got registered at any-time after the creation of Partnership. Act does not lay down any-time limit within which the firm should be registered provided in section 63 of Partnership Act. The act does not impose any penalties for non registration of firms.There are some disabilities are provided in sec.69 of the Act for unregistered firms and their partners.

HOW THE FIRM IS REGISTERED:- The partnership agreement or any transaction between the partners and third parties is void on the basis of non-registration of partnership firm and the partners themselves. In addition to the above no prudent partner or firm should hesitate to get his or its name registered at the earliest possible opportunity. The procedure of registration is very simple as provided in section 58 and 59 of the Act.

A registration of firm may be affected by submitting to the Registrar of Firms a statement in the prescribed form and accompanied by the prescribed fee. The application must bear the following information:-

The firm's name. Place of business and the name of other places where the firm can carry on business. Date of joining of each partner with their permanent addresses. The duration of the firm.

When the Registrar is satisfied that the above mentioned requirements have been complied with and then he shall record an entry of statement in the register. This amounts to the registration of the firm.

Section 69 of the Act imposes certain claims in the Civil Courts. This section provides pressure which is to be brought to bear on partners to have the firm and themselves registered. The pressure consists in denying certain right of litigation to the firm or partners not registered under this act. A cause of action arose when the firm was unregistered but was registered at the time of filing the suit. It was held in the case of State of U.P., v/s Hamid Khan & Bros. and othrs-1986: it was held that section 69 to be inapplicable in this case.

EFFECTS OF NON-REGISTRATION& REGISTRATION

ON REGISTRATION OF FIRM	ON NON-REGISTERED FIRM
Any partner, nominee and authorized agent can bring a suit to enforce a right arising from a contract against any past or present partner and for the third parties too.	No partner, nominee and agent can bring a suit to enforce a right arising from a contract against any firm or any past or present partner of the firm or third parties.
Registered firm can claim of set-off or other proceedings to enforce a right arising from a contract u/s 69 of the Act.	The disabilities as provided in sec.69 of the act i.e.to claim of set-off or other proceedings to enforce a right arising from a contract.
Filing of the return every year is necessary.	It is not required to file the return by the un-registered firm.

Loonkaran v/s Ivan E. John, 1977, it was held that sec.69 is mandatory and unregistered partnership firms cannot bring a suit to enforce a right arising out of a contract falling within the ambit of sec.69 void.

In M/s Balaji Constructions co., Mumbai v/s Mrs. Lira Siraj Sheikh, 2006 It was observed that the firm was not registered on the date of filing of suit and person suing as partners were not shown in register of firm and suit by such firm hit by section 69(2) of Partnership Act and was liable to be dismissed.

CONCLUSION :- It is very well established that the partnership agreement or transaction between the partners and third parties is void on the ground of Non-Registration of the firm as well as of Partners. To enforce any right arising out of a contract the registration of both firm and partners are necessary for the benefit of the both.

Q8 Discuss the essentials of Partnership Firm.

Answer - Indian partnership Act was enacted in 1932 and it came into force on Ist day of October, 1932. A partnership arises from a contract and therefore such a contract is governed not only by the provisions of the Partnership Act but also by general law of contract.

DEFINITION OF PARTNERSHIP:- Kent's view "Partnership as a contract of two or more competent persons to place their money, efforts, labour and skill or some of them in lawful commerce or business and to share the profit and bear the loss in certain proportions. "Dixon defines partnership as, "Group of Persons". According of Pollock, "Partnership is a relation which subsists between persons who have agreed to share the profits of a business carried on by all or any of them on behalf of all of them."

Definition:- Section 4 of the Indian Partnership Act defines the 'Partnership' as under:- Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all."

NATURE OF PARTNERSHIP:- Partnership is a form of business organization, where two or more persons join together for jointly carrying on some business. It is an improvement over the 'Sole-trade' business, where one single individual with his own resources, skill and effort carries on his own business. Any two or more persons can join together for creating Partnership.

In certain respects a partnership is a more suitable form of business organization than a Company. For the creation of partnership just an agreement between various persons is required. Whereas in the case of company there are a lot of procedural formalities which have to be gone through to create a Company. In the case of company the control over regarding distribution of profits, holding of meetings, maintaining of accounts runs through a statutory control. Whereas in partnership firm the partners are the master of their affairs.

ESSENTIALS OF PARTNERSHIP: THE FOLLOWING ARE THE ESSENTIALS OF THE PARTNERSHIP:-

1. PERSONS WHO HAVE AGREED:- A question is arises at the preliminary stage is that, " who are the persons and who can agree for partnership:

(i) MINORS: - A minor is incompetent to contract case of Mohori Bibi v/s Damodardass Ghosh-1903: Minor may not become partner but he can be admitted to benefit of partnership and can share the profits. He cannot be liable for the losses.

(ii) CORPORATION: - A corporation is a legal person therefore corporation may enter into a partnership with the condition only if the constitution of the corporation must empowers it to form a partnership and not otherwise.

(iii) FIRM: - Firm is also recognized as a legal person in India and it cannot enter into a partnership. A firm which is proprietorship firm or a company registered under the Company's Act can very well enter into a partnership but here is mentioned that partnership firm is not a legal person therefore it is not competent to enter into a partnership. Duli chand v/s CIT, 1956.

(iv) ALIEN: - A national of other country may be a friendly alien or an enemy alien. A friendly Alien can enter into Partnership but latter Cannot except when he is under the protection of that country.

2. TO SHARE THE PROFITS OF A BUSINESS:- This line consists the two parts: 1. To share the profit and 2. Of a business. However the explanation of these two terms are as under :-

(i) Business:-This definition is not exhaustive. The existence of business is essential unless there is no intention to carry on business and to share the profits, there can be no partnership. Therefore the objects of the partnership and business must be lawful. Case of R.R.Sharma v/s Ruben, 1946.

(ii) Sharing of Profits:- A case of Cox v/s Hickman, 1860: though sharing of the profits of business is essential. The definition leave it opens as to how and when these profits are to be shared. In order to continue the partnership the actual existence of a business carried on by partners with an agreement to share profits of such business is essential.

(iii) Sharing of losses Grace V/s Smith-1775, Mutual Agency and Acting for all and to carry on the business are the essential terms of the partnership.

CONCLUSION:- In order to constitute partnership there must not only be sharing of profits but there must be also the relationship and the principle of agency. Section 4 of the act that there must be actual existence of a business carried on by the partners with an agreement to share the profits of such business is essential.

Q9 Explain the principle or doctrine of Holding Out.

Answer - Every partner is liable for all acts of the firm done while he is a partner. Therefore generally a person who is not a partner in the firm cannot be made liable for an act of the firm. In certain cases however a person who is not a partner in the firm may be deemed to be a partner or held out to be a partner for the purpose of his liability towards a third party.

The basis of liability of such a person is not that he was himself a partner or was sharing the profits o4 was taking part in the management of the business but the basis is the application of the law of estoppels because of which he is held out to be a partner or deemed to be a partner by “holding out”

DEFINITION OF HOLDING OUT Section 28 of the Partnership Act makes the following provision under this doctrine:-

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

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

ESSENTIAL INGREDIENTS: 1. Representation: - The representation may be in any of the three ways:-

i) By words written or spoken: - In case of Bevanv/s The National Bank Ltd., a person permitted his name to be used in the title of the firm. Therefore he was held liable under this principle.

ii) By conduct:- In the case of Parter v/s Lincell: a person by his conduct represented as a partner and was held liable. Martyn v/s Gray-1863: It was held that by knowingly permitting himself or suffering himself to be represented as a partner.

iii) Alleged Representation relied:- In the case of Munton v/s Rutherford: it was held that Mrs.Ruherford was not liable as a partner by estoppels or holding out.

iv)Credit to Firm on Representation:- In the case of Oriental bank of Commerce v/s S.R.Kishore& Co.-1992: It was held he was liable for the acts of the firm on the basis of the principle of “holding out”. Section 28 of the Act is based upon the principle of estoppels by conduct. Where a man holds himself out as a partner or allows others to do it, he is then properly stopped from denying the character he has assumed, and upon the faith of which creditors may be presumed to have acted. A man doing so may be rightly held liable as a partner by estoppels as held in a case of Mollwo March & Co. v/s Court of Wards-1872.

The representation on which a case of "Holding Out" is sought to be established may be express or implied it may consist of verbal or written statements or even may be by conduct. Form of representation is not material in such case.

EXCEPTIONS TO THE DOCRINE OF HOLDING OUT:-

1. Tort: The principle of holding a person liable for act of a firm on the ground of holding out cannot be extended to include liability arising out of tort.

2. Liability of Retired Partner: - The rule of holding-out provided in this section is also applicable to the retired partner who retires from the firm without giving proper public notice of his retirement. In such case person who even subsequent to the retirement give credit to the firm on the belief that he was a partner will be entitled to hold him liable as held in a case of Scrarf v/s Jardine-1882.

3. Insolvency of Partner: - Insolvency of the partner extinguished as the liability of a partner and he cannot be held liable even upon this doctrine.

4. Dormant Partner: His retirement does not require a public notice for bringing end to his liability. According to proviso to section 45(1) of the partnership Act a dormant partner is not liable for the acts done after the date on which he ceases to be a partner.

CONCLUSION: Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented to be a partner in firm is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, he must bear the consequences u/s28.

Q10 What are the provisions regarding dissolution of Partnership Firm?

Answer - Dissolution of partnership means coming to an end of the relation known as Partnership between various partners. It may also can be defined as the breaking up or extinction of the relationship which subsisted between all the partners of the firm as held in a case of Santdas v/s sheodyal-1971:

Here we are to note the significance of words in definition is, "between all partners "means every one of the members of the firm cease to carry on business of partnership. Thus where one or more members ceased to be partners in such firm while others remain the firm is not said to be dissolved.

DEFINITION: - The term dissolution of the Partnership firm has been defined in Section 39 of the Partnership Act which lies as, “the dissolution of partnership between all the partners of a firm is called the, ‘dissolution of the firm’.”

MODES OF DISSOLUTION: - There are five different modes of the dissolution of a firm:

Dissolution: = I without the interference of Court.

Ii. With the orders of the Court.

1. Without the interference of the Court: - there are four modes of dissolution of firm:-1.By Agreement under section 40 of the Act. 2, Compulsory dissolution u/s-41. 3. on the happening of certain contingencies u/s 42. 4. by Notice u/s 44 of Act.

1. Dissolution by Agreement: - As partners can create partnership by making a contract as between them, they are also similarly free to end this relationship and thereby dissolve the firm by their mutual consent.

Sometimes there may have been a contract between the partners indicating as to when and how a firm may be dissolved, such firm can be dissolved in accordance to such contract. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners as provided in section 40 of the Act. A case in this regard is of, EFD.Mehta v/s MFD Mehta-1971.

2.Compulsory dissolution:- Under Section 41 of the Act, if by the happening of any event which makes it unlawful for the business of the firm or for the partners to carry it on in partnership.

(a)If by the adjudication of all the partners or of all the partners but one as insolvent declared by the court.

3.On he happening of certain contingencies:- On the grounds of the gist of contract made between the partners of a firm may dissolved :- i) If the partnership firm constituted for a fixed term. By the expiry of the term firm can be dissolved. Ii) By the death of a partner may results dissolution unless rest of partners agrees to contrary. iii) It firm is constituted to carry out one or more adventures or undertaking by the completion thereof. On completion of the same firm may be dissolved.

4.Dissolution by Notice of Partnership:- If the partnership is azt will the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention dissolve the firm as provided in section 44 of this act, with the following conditions:-

a). The notice for dissolution of partnership must contain the clear intention of dissolving the firm which must be a final one. The date on which firm is dissolved must be indicated in the notice. A case of Mir Abdul Khaliq v/s Addul Gaffar Serifff-1985.

b). Notice must be given in writing.

c). Written notice must be given to all other partners of the firm.

5. Dissolution By Court:- A firm may be dissolved at the suit of a partner on any of grounds which provided in Section 44 of Act:-

i. That the partner has become of an unsound mind.

ii. That the partner has become in any way permanent incapable of performing his duties as a partner but in the case of Whitewell v/s Arthur- 1885: it was held partial incapacity cannot be a ground for dissolution of partnership firm.

iii. That a partner is guilty of such misconduct as would prejudicially affect the business of the firm, a case of Harrison v/s Tenent-1856.

iv. That the business cannot be carried on except at loss.

Q11 Explain the main provisions of sales of Goods Act.

Answer - **Scope of the Act**

The sale of Goods Act deals with 'Sale of Goods Act,1930,'contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price." 'Contract of sale' is a generic term which includes both a sale as well as an agreement to sell.

Essential elements of Contract of sale

1. Seller and buyer

There must be a seller as well as a buyer.’Buyer’ means a person who buys or agrees to buy goods[Section 2910].’Seller’ means a person who sells or agrees to sell goods [Section 29(13)].

2. Goods

There must be some goods.’Goods’ means every kind of movable property other than actionable claims and money includes stock and 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[Section 2(7)].

3. Transfer of property

Property means the general property in goods,and not merely a special property[Section 2(11)].General property in goods means ownership of the goods. Special property in goods means possession of goods.Thus,there must be either a transfer of ownership of goods or an agreement to transfer the ownership of goods.The ownership may transfer either immediately on completion of sale or sometime in future in agreement to sell.

4. Price

There must be a price.Price here means the money consideration for a slae of goods[Section 2(10)].When the consideration is only goods,it amounts to a ‘barter’ and not sale.When there is no consideration ,it amounts to gift and not sale.

5. Essential elements of a valid contract

In addition to the aforesaid specific essential elements,all the essential elements of a valid contract as specified under Section 10 of Indian Contract Act,1872 must also be present since a contract of sale is a special type of a contract.

Meaning and types of goods

Meaning of goods[Section 2(7)]

Goods means every kind of movable property other than actionable claims and money,and includes the following:

-
- Stock and share
- Growing crops,grass and thing attached to or forming part of the land which are agreed to be served before sale or under the Contract of sale.

Types of Goods[Section 6]

1.Existing Goods

Existing goods mean the goods which are either owned or possessed by the seller at the time of contract of sale.The existing goods may be specific or ascertained or unascertained as follows:

a) Specific Goods[Section 2(14)]:

These are the goods which are identified and agreed upon at the time when a contract of sale is made-For example,specified TV,VCR,Car,Ring.

b) Ascertained Goods:

Goods are said to be ascertained when out of a mass of unascertained goods,the quantity extracted for is identified and set aside for a given contract.Thus,when part of the goods lying in bulk are identified and earmarked for sale,such goods are termed as ascertained goods.

c) Unsanctioned Goods:

These are the goods which are not identified and agreed upon at the time when a contract of sale is made e.g. goods in stock or lying in lots.

2. Future Goods[Section 2(6)]

Future goods mean goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.There can be an agreement to sell only.There can be no sale in respect of future goods because one cannot sell what he does not possess.

3. Contingent Goods [Section 6(2)]

These are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

Price Of Goods

Meaning[Section 2(10)]

Price means the money consideration for a sale of goods.

Modes of determining Price [Section 9(1)]

There are three modes of determining the price as under:

- It may be fixed by the contract or
- It may be left to be fixed in an agreed manner
- It may be determined by the course of dealing between the parties.
- Thus,the price need not necessarily be fixed at the time of sale.

Consequences of not determining the Price in any of the Mode [Section 9(2)]

Where the price is not determined in accordance with Section 9(1),the buyer must pay seller a reasonable price.What is a reasonable price is a question of fact dependent on the circumstances of each particular case.It may be noted that a reasonable price need not be market price.

Consequence of not Fixing Price by third party[Section 10(1)]

The agreement to sell goods becomes void if the following two conditions are fulfilled.

- If such agreement provided that the price is to be fixed by the valuation of a third party,
- If such third party cannot or does not make such valuation.

Duty of buyer

A buyer who has received and appropriated the goods,must pay a reasonable price therefor.

Right of party not at fault to sue

Where such a third party is prevented from making the valuation by fault of the seller or buyer,the party not at fault may maintain a suit for damages against the party in fault.

Conditions and Warranties

It is usual for both seller and buyer to make representations to each other at the time of entering into a contract of sale. Some of these representations are mere opinions which do not form a part of contract of sale.Whereas some of them may become a part of contract of sale.Representations which become a part of contract of sale are termed as stipulatuins which may rank as condition and warranty e.g. a mere commendation of his goods by the seller doesn't become a stipulatuin and gives no right of action to the buyer against the seller as such representations are mere opinion on the part of the seller.But where the seller assumes to assert a fact of which the buyer is ignorant,it will amount to a stipulation forming an essential part of the contract of sale.

Meaning of Conditions [Section 12(2)]

A condition is a stipulation
Which is essential to the main purpose of the contract
The breach of which gives the aggrieved party a right to terminate the contract.

Meaning of Warranty[Section 12(3)]

A warranty is a stipulation
Which is collateral to the main purpose of the contract
The breach of which gives the aggrieved party a right to claim damages but not a right to reject goods and to terminate the contract.

Conditions to be treated as Warranty[Section 13]

In the following three cases a breach of a condition is treated as a breach of a warranty:
Where the buyer waives a conditions; once the buyer waives a conditions,he cannot insist on its fulfillment e.g. accepting defective goods or beyond the stipulated time amount to waiving a conditions.
Where the buyer elects to treat breach of the condition as a breach of warranty;e.g. where he claims damages instead of repudiating the contract.
Where the contract is not severable and the buyer has accepted the goods or part thereof,the breach of any condition by the seller can only be treated as breach of warranty.It can not be treated as a gorund for rejecting the goods unless otherwise specified in the contract.Thus,where the buyer after purchasing the goods finds that some condition is not fulfilled,he cannot reject the goods.He has to retain the goods entitling him to claim damages.

Express and Implied Conditions and Warranties

In a contract of sale of goods,conditions and warranties may be express or implied.

1.Express Conditions and Warranties.

These are expressly provided in the contract.For example,a buyer desires to buy a Sony TV Model No. 2020.Here,model no. is an express condition.In an advertisement for Khaitan fans,guatantee for 5 years is an express warranty.

2. Implied Conditions and Warranties

These are implied by law in every contract of sale of goods unless a contrary intention appears from the terms of the contract.The various implied conditions and warranties have been shown below:

Implied Conditions

1. Conditions as to title [Section 14 (a)]

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

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

2. Condition in case of sale by description [Section 15]

Where there is a contract of sale of goods by description,there is an implied condition that the goods shall correspond with description.The main idea is that the goods supplied must be same as were described by the seller.Sale of goods by description include many situations as under:
i. Where the buyer has never seen the goods and buys them only onm the basis of description given by the seller.
ii. Where the buyer has seen the goods but he buys them only on the basis of description given by the seller.
iii. Where the method pf packing has been described.

3. Condition in case of sale by sample [Section 17]

A contract of sale is a contract for sale by sample when there is a term in the contract, express or implied,to that effect.Such sale by sample is subject to the following three conditions:

The goods must correspond with the sample in quality.
The buyer must have a reasonable opportunity of comparing the bulk with the sample.
The goods must be free from any defect which renders them unmerchantable and which would not be apparent on reasonable examination of the sample.Such defects are called latent defects and are discovered when the goods are put to use.

4. Condition in case of sale by description and sample [Section 15]

If the sale is by sample as well as by description, the goods must correspond with the sample as well as the description.

5. Condition as to quality or fitness [Section 16(1)]

There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.In other words,the buyer must satisfy himself about the quality as well as the suitability of the goods.

Exception to this rule:

There is an implied condition that the goods shall be reasonably fit for a particular purpose described if the following three conditions are satisfied:

1.
    1. The particular for which goods are required must have been disclosed(expressly or impliedly) by the buyer to the seller.
    2. The buyer must have relied upon the seller's skill or judgement.
    3. The seller's business must be to sell such goods.

6. Condition as to merchantable quality[Section 16(2)]

Where the goods are bought by description from a seller who deals in goods of that description,there is an implied condition that the goods shall be of merchantable quality.The expression ‘ merchantable quality’ means that the quality and condition of the goods must be such that a man of ordinary prudence would accept them as the goods of that description.Goods must be free from any latent or hidden defects.

7. Condition as to wholesomeness

In case of eatables or provisions or foodstuffs,there is an implied condition as to wholesomeness.Condition as to wholesomeness means that the goods shall be fit for human consumption.

8. Coditions implied by custom [Section 16(3)]

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

Implied warranties

a)Warranty as to quiet possession [Section14(b)]

There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.The reach of this warranty gives buyer a right to claim damages from the seller.

b)Warranty of freedom from encumbrances [Section 14(c)]

There is an implied warranty that the goods are free from any charge or encumbrance in favour of any third person if the buyer is not aware of such charge or encumbrance.The breach of this warranty gives buyer a right to claim damages from the seller.

- Warranty as to quality or fitness for a particular purpose annexed by usage of trade[Section 16(3)]
- Warranty to disclose dangerous nature of goods

In case of goods of dangerous nature the seller fails to do so, the buyer may make him liable for breach of implied warranty.

Transfer of property in goods

Meaning of Passing of Property/Transfer of Property

Passing of property implies transfer of ownership and not the physical possession of goods.For example,where a principal sends goods to his agent,he merely transfers the physical possession and not the ownership of goods.Here,the principal is the owner of the goods but is not having possession of goods and the agent is having possession of goods but us not the owner.

Q12 Difference between Sale and Agreement to Sell.

Answer - Key Differences Between Sale and Agreement to Sell

The following are the major differences between sale and agreement to sell:

1. When the vendor sells goods to the customer for a price, and the transfer of goods from the vendor to the customer takes place at the same time, then it is known as Sale. When the seller agrees to sell the goods to the buyer at a future specified date or after the necessary conditions are fulfilled then it is known as Agreement to sell.
2. The nature of sale is absolute while an agreement to sell is conditional.
3. A contract of sale is an example of Executed Contract whereas the Agreement to Sell is an example of Executory Contract.
4. Risk and rewards are transferred with the transfer of goods to the buyer in Sale. On the other hand, risk and rewards are not transferred as the goods are still in possession of the seller.
5. If the goods are lost or damaged subsequently, then in the case of sale it is the liability of the buyer, but if we talk about an agreement to sell, it is the liability of the seller.
6. Tax is imposed at the time of sale, not at the time of agreement to sell.
7. In the case of a sale, the right to sell the goods is in the hands of the buyer. Conversely, in agreement to sell, the seller has the right to sell the goods.

Conclusion

Under Indian Sale of Goods Act 1930, section 4 (3) deals with the contract of sale and agreement to sell, where it has been clarified that the agreement to sell also come under sale. However, there is a distinction between these two terms which we discussed above.

Q13 Explain the concept of passing of property.

Answer - Passing of Property

As already noted in Unit 1, the passing of property i.e. the ownership in the goods from the seller to the buyer, is one of the essentials of a contract of sale. We have also seen that it is the essence of a contract of sale. In order to determine the liability of parties, it is important to see in whom does the property lie at a given instance. For example, if after the contract the goods are destroyed or damaged, the party who is the owner of the goods at the time will have to bear the loss.If the property in the goods has already passed, the buyer will have to bear the loss but if the seller still continues to be the owner, the loss will have to be borne by him. It is relevant to note here section 26. According to this section, risk prima facie passes with property. It reads that unless otherwise agreed, the goods remain at the seller‟s risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer‟s risk whether delivery has been made or not. Clearly, then, it is with the property that the risk prima facie passes. Therefore, passing of property becomes an important topic. The provisions of section 4 may also be noted here. As per that section, the seller may transfer the property in the goods either at the time of the contract or at some future time.

The first part of Chapter III of the Sale of Goods Act,1 containing sections 18 to 26 deals with "transfer of property as between seller and buyer".

Specific and Unascertained Goods

For the purpose of transfer of property, goods have been divided into specific and unascertained. We have already noted the distinction between these two types of goods in Unit 1. Specific goods mean goods identified and agreed upon at the time a contract of sale is made.2 On the other hand, if the goods are not identified and agreed upon at the time of making the contract, such goods are known as unascertained goods. Sections 19, 20, 21, 22 and 24 provide the rules regarding the transfer of property in specific goods while sections 18, 23 and 25 provide the rules regarding the transfer of property in unascertained goods.

Transfer of Property in specific goods

(i) Property passes when intended to pass- S. 19: It is provided that in a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Further, this section provides that for the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

1 1930. 2 S. 2 (14).

The question as to whether the title from the vendor to the vendee passed on execution of registration of documents for non-payment of consideration money entirely depends upon the intention of the parties. It is for the court concerned to take into consideration the various factors and circumstances existing at the time for the purpose of determining the intention of the parties.3In Saks v Tilley,4 there was a contract for the sale of diamonds. The condition for the supply of diamonds was acceptance of the bill of exchange by the buyer. Along with the parcel of diamonds, the Bill was sent and the invoice was marked “settled by acceptance”. It was held that the intention of the parties was that the ownership in the goods should not pass until the Bill is accepted. In united India Ins. Co. v O. Jameela Beevi,5 there was a sale of a motor vehicle (jeep). The price stipulated in the agreement was Rs. 10,000 out of which Rs. 2,000 had been paid by the buyer immediately, and the document containing the agreementof sale stipulated registration in the name of the buyer, after the balance of Rs. 8,000 was paid. It was also agreed that: (1) until the entire price is paid, the ownership in the vehicle shall not pass to the buyer, and (2) the seller was to execute the requisite papers after the payment of the balance of the price. Before the abovesaid conditions were fulfilled, there was an accident and the question arose as to who was the owner of the vehicle for the purpose of liability of the Insurance Company. It was held that since the requisite conditions necessary for the transfer of property had not yet been fulfilled, the seller was the owner of the vehicle at the time of the accident. In Underwood v BCB & Cement Syndicate,6 there was a contract to supply a condensing engine, F.O.R. London. At the time of the contract, it was installed at the seller‟s premises. It was dismantled. While it was being loaded in trucks for being taken to the rails, it was damaged. It was held that in this casethe intention of the parties was that the property should not pass until the engine was safely put on rail in London and therefore, loss for the damage to the engine had to be borne by the seller.In United Breweries Ltd. V State of Andhra Pradesh,7 a beer manufacturer sold beer in bottles and crates. According to the scheme, the customer had to pay the sale priceof beer plus refundable deposit for the crates and bottles. Then the customer, in his own turn, apart from charging the price of the beer was to take 40 paisa refundable deposit from the consumer. The consumer could return the bottles to the said manufacturer‟s customer and the customer would return the empty bottle to the manufacturer and get back the refund. It was held that there was sale of beer only and not of bottles and crates. There was no intention to sell bottles and crates and, therefore, they could not constitute the turnover assessable to sales tax.

Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

3 Ramchandra Singh v SDO, Hazipur AIR 1989 Pat50. 4 1915 32 TLR 148 CA. 5 AIR 1991 Ker. 380. 6 1922 1 KB 343. 7 AIR 1997 SC 1316.

(ii) Specific goods in a deliverable state- S. 20: This section deals with the case where the contract of sale is unconditional for specific goods in a deliverable state. In such a case, the property in the goods passes to the buyer when the contract is made. It is immaterial whether the time of payment of price or the time of delivery of the goods, or both, is postponed. Thus, if the contract between the parties satisfies the following conditions, the property passes at the time of making of the contract: The contract is an unconditional one; The goods are specific; The goods are in a deliverable state.

On the fulfilment of these conditions, the property would pass even though the delivery of the goods or the payment of the price, or both, is postponed.

A contract which is not subject to any condition precedent or subsequent is unconditional. Goods are said to be in a deliverable state when they are in such state that the buyer would under the contract be bound to take delivery of them. For example A purchases a table which, according to the contract, has to be polished by the seller before delivery, the table is not in a deliverable state. It will become in a deliverable state when the same has been polished. The property in such a case would not pass at the time of the making of the contract. If the contract is a conditional one, the property would not pass at the time of making of the contract. Sections 21 and 22 deal with conditional contracts whether the seller is to fulfil the condition of either putting the goods in a deliverable state under section 21 or to weigh, measure, test, etc. the goods in order to ascertain the price, according to section 22. The property in such a case would pass only when that condition is fulfilled and the buyer has notice thereof. In the case of Sandhusaran Singh v W.B. State Electricity Board,8 the plaintiff submitted a tender for the purchase of specified quantities of M.S. Rods of a particular description, lying in the specified railway yards. The tender was accepted. Under the terms, the buyer had to deposit the price and complete the removal of the entire goods in instalments within specified time. The plaintiff removed part of the goods after depositing proportionate price. Due to unavoidable circumstances like heavy breaches on the road owing to rain and landslide and consequent difficulty in transporting the remaining goods, the buyer sought extension of time. The seller did not grant the reasonable extension sought by the buyer. The seller wrote to the buyer cancelling the contract in respect of the remaining goods, and began to make a re-sale of those goods. The buyer brought an action for an injunction to restrain the seller from selling the remaining goods by treating the contract as cancelled. He pleaded that it was a sale of specific goods, in a deliverable state and the contract was unconditional, and, therefore, the property viz. ownership in the goods had passed to the buyer when the contract was made on the acceptance of his tender, and hence the seller had no right to cancel the contract and resell the goods. The buyer‟s plea was accepted and it was held that since the buyer had become the owner of the goods at the time of acceptance of his tender, under section 20, the purported re-sale of those goods by

8 AIR 1986 Cal. 240.

the seller was bad and the injunction sought for was issued. In Tarling v Baxtor,9 a contract for the sale of a certain stack of hay was entered into on January 6. The price was to be paid on February 4, but the stack was not to be removed until May 1. The stack was accidentally destroyed by fire on January 20. It was held that in this case the property in the goods had passed to the buyer even though the payment of the price and the delivery of the goods were postponed and, therefore, the buyer should bear the loss. In Kursell v Timber operators,10there was a sale of uncut timber defined to be "all trunks and branches of trees, but not seedlings and young trees of less than six inches in diameter at height of four feet from the ground," the timber to be cut not more than twelve inches from the ground. The buyers were given a time of 15 years within which they were to cut and remove the timber. The buyers had only worked for a few days when there was acquisition of the forest by Latvian Government whereby the contract was annulled and there was confiscation of all the property rights. The sellers sued buyers for the price but the buyers refused to pay the same on the ground that the property in the uncut timber had not passed to them. Held that the goods were not sufficiently identified and they were not specific because trees of only certain specifications were to be taken and moreover the goods were not in a deliverable state until they had been severed by the purchasers, therefore, the property in them did not pass at the time of making of the contract. The buyers as such were not liable to pay the price. In Acraman v Morrice,11 there was a contract for the purchase of trunks of certain oak trees. The buyer had to mark the portions he wanted and the seller was to cut off the rejected portions and then deliver the trunks to the buyer. The buyer selected the portions he wanted and before the rejected portions were separated by the seller, the seller became insolvent. The buyer himself got the rejected portions severed and carried away the trunks for which he had already paid. The assignees of the insolvent sued the buyer for conversion. It was held that since the rejected portions had yet to be severed by the seller according to the contract, the property in the goods had not passed to the buyer, the assignees of the seller were entitled to recover for the value of the goods taken away by the buyer .

Q14 What are the rights of Unpaid Seller?

Answer - According to Section 45(1) of Sale of Goods Act, 1930, the seller is considered as an unpaid seller when:

a- When the whole price has not been paid and the seller has an immediate right of action for the price.

b- When Bills of Exchange or other negotiable instrument has been received as conditional payment, and the pre-requisite condition has not been fulfilled by reason of the dishonour of the instrument or otherwise. For instance, X sold some goods to Y for $50 and received a cheque. On presentment, the cheque was dishonoured by the bank. X is an unpaid seller.

Seller also includes a person who is in a position of a seller i.e agent, consignor who had himself paid or is responsible for the price.

Rights against buyer

1- Suit for the price

When any goods are passed on to the buyer and the buyer has wrongfully neglected or refused to pay as per the terms and conditions of the contract, the seller may sue him as per the Section 55(1) because once the property has been passed the buyer is bound to pay the price.

But in the case due date of payment has been passed and goods had not been delivered yet, the seller can sue the buyer for the wrongful neglect or refusal on his part according to clause 2 of Section 55.

In case the price is due in foreign currency the damages must be calculated at the rate of exchange prevailing at the time when the price was due not on the judgement date.

2- Suit for damages

In case there is a wrongful refusal on the part of buyer for acceptance of goods and payment of money, the seller can sue him for damages of non-acceptance as per Section 56. For calculating the quantum of damages Section 73 and 74 of the Indian Contract Act applies.

In case the goods have a ready market, the seller has to resell the goods and buyer have to pay the losses if incurred. If the seller does not resell the goods the difference between contract and market price at the day of breach is taken as a measure for damages. If the difference between them is nil seller gets nominal value.

There is a duty of mitigation on the part of the seller, which means that injured has to make reasonable efforts to minimise the loss from that breach. For instance, if the seller can resale the goods, the difference in price in contract and resale price is given to the seller but if the seller deliberately refuses to resale the goods and its market value reduces then the buyer will not be liable for the exaggerated loss.

The nature of the duty of mitigation has been explained by the supreme court in case of *M. Lachia Shetty V Coffee Board*, where, a dealer who bid at an auction of coffee had been accepted, refused to carry out the contract, consequently, coffee was reauctioned at next best bidding price and dealer who refused the bid have to give the difference in the amount of loss to the board.

3- Suit for interest

As stated under Section 61, where there is a specific agreement between buyer and seller with regards to interest on the price of goods from the date on which payment becomes due, the seller may recover interest from a buyer. But if there were no such agreement the seller may charge interest from the day he notifies the buyer.

If there is no contract to the contrary, the court of law may award interest to the seller at such rate as it thinks fit on the amount of the price from the date on which amount is payable.

4- Repudiation of the contract before the due date

According to Section 60, the rule of anticipatory breach contract applies, wherein, if buyer repudiates the contract before the date of delivery the seller can consider the contract as rescinded and can sue for damages of the breach.

According to this Section, if one party repudiates before due date other has two courses of action. Either he may immediately accept the breach and bring the action of damages the contract is rescinded and damages will be assessed according to the prices then prevailing or he can wait for the date of delivery. In the second case, the contract is open at risk and will be a benefit to both parties. Ma be the party changes is mind and agree to perform and damages will be assessed according to prices on the day of delivery.

Rights against goods

a- Lien

Lien is a right which seller of goods can exercise when a buyer has not paid the price of goods, under this right seller can retain the possession of goods as an agent or bailee for the buyer. The seller can retain his possession as per Section 47 under the following circumstances:

1- In case the buyer is insolvent.

2- When the term of goods sold on credit is expired.

3- Goods sold without any stipulation as to credit.

When the goods are sold on credit the right to lien is suspended during the term of credit and lien exist only for the price of goods, not any additional charges.

According to Section 48 if the seller has delivered a part of unpaid goods he can exercise his right of lien on rest. In Grice V Richardson, the sellers had delivered a part of the three parcels of tea comprised in the sales, and they had not been paid for the part which remained with them. They were allowed to keep it till the payment of the price. Where, however, a part of goods delivered which show an agreement to waive the lien, the seller cannot the remainder.

Termination of lien takes place when the seller losses the possession of goods. As per Section 49, under following circumstances right of lien is terminated-

1- Waiver of lien-

The right of lien is an implied right attached by law in every contract of sale, the seller has the autonomy to waive this right, it may be expressed or implied from the conduct of the seller.

2- When buyer or agent lawfully obtains possession of goods.

Once the buyer got the possession of goods from the seller, all the rights of the seller in respect to goods are ceased even if the price is not paid. The seller can recover the price as a normal debt because the acceptance of possession gives absolute, unqualified and indefeasible right of goods to the buyer. When the goods are given again to the seller for repair he can not access the right of lien.

3- When the seller delivers goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.

When the seller has delivered goods to the carrier for transmission, his right of lien is ceased but the right to stoppage in transit is still accessible by him. In case seller regains possession of goods in transit by stoppage his right to lien is revived.

Like in Valpy V Gibson, the goods were delivered to the buyer's shipping agent, who had put them on board a ship. But the goods were returned to the seller for repacking, while they were still with the sellers the buyer became insolvent and seller being unpaid seller claimed to retain the goods in the exercise of their lien. It was held that they have lost their lien by delivery to the shipping agent. On the contrary, when the seller has reserved the rights of disposal his right of lien continues till the end of the transit. And the seller cannot lose his right to lien just because he has obtained a decree for the price of goods.

b- Stoppage

When the goods have been transferred to carrier or bailee for the purpose of transmission to the buyer, who has become insolvent, the seller has the right to stop the goods in transit in order to protect himself against the loss that may arise due to insolvency. As per Section 50, there are four essential requirements for stopping the goods in transit:

1. Unpaid seller.
2. Buyer insolvent.
3. Property should have passed to the buyer.
4. Property should be in course of transit.

The course of transit depends upon the capacity of middleman to hold the goods. Middleman should be an intervening person between the seller who has parted with the goods and the buyer who has not yet received the goods as held in the case of *Schotsmans v Lancashire & Yorkshire Rly co.*

Section 5 lays down the rules and regulations related to commencement and end of the transit, this Section is divided into seven sub-Sections which solve all the issues related to commencement and end of transit:

1- Delivery to the buyer- Goods are considered to be in transit from the time when they are delivered to the carrier or other bailee for the purpose of transmission to the buyer, till the goods are received by the buyer himself or his agent takes delivery of them.

For example, in the case of *Great Indian Peninsula v Hanmandas*, the seller consigned the goods with the GIP Ry Co for transportation to the buyer. On the arrival at the destination, the company had delivered the goods to the buyer who had loaded them on his cart, but the cart had not yet left the railway compound when a telegram was received by the company to stop the goods. The company did not do so and were sued by the seller in damages. It was held that the transit had ended as soon as the goods were handed over to the buyer.

But when the buyer denies accepting the delivery even when it has been landed at the place of destination, the transit does not end. This happened in the case of *James v Griffin* where on arrival of goods at the port of destination in the river Thames, the buyer sent his son to have goods landed, but told him that on account of his insolvency he did not intend to receive the goods and would like the seller to have them. When goods were so lying the seller's instruction to stop them was received. The buyer's trustee in bankruptcy claimed the goods. It was held that the goods were still in transit.

2- Interception by the buyer- When the buyer or the agent takes the delivery of the goods from the carrier, the transit ends even before their arrival at the appointed destination.

In case the carrier delivers the goods before the arrival of the buyer, although it is wrongful and the carrier may be held liable for the damages but the transit ends here.

In the case of *Lyons v. Honffnung*, the buyer takes his seat as a passenger in a ship which was carrying the goods. The court said that this does not amount to delivery to the buyer before their arrival at the appointed destination.

3- Acknowledgement to the buyer- The transit is considered to come to an end when the goods arrive at the appointed destination and the carrier acknowledges to the buyer or his agent that he is now holding the goods on his behalf. It is immaterial if the gods are still in the carrier or the buyer has indicated another destination. In order to put an end to the original contract of carriage, a very clear acknowledgement is required.

In the case of *Whitehead v. Anderson,* a quantity of timber was consigned on board. When the ship arrived at the destination, the buyer went bankrupt. The buyer's agent came to the board and told that he has come to take possession. The captain said that he will deliver only when the freight is paid. Before this could be done, the seller sent a notice to stop and asked to send the goods to be delivered to the agent of the seller. The court said that since the transit has not ended, the carrier was within his rights in returning the goods to the seller. The captain agreed to deliver the goods on a condition and if the condition is not fulfilled, the buyer does not acquire the constructive possession of goods.

4- Rejection by the buyer– When the buyer rejects the goods and the carrier or other bailee continues to possess them, the goods are held to be still in transit. This will also include the case when the seller himself refuses to take back goods.

5- Delivery to ship charted by the buyer- It is a question of fact whether the carrier is acting independently or as an agent of the buyer at the time when the goods are delivered to a ship charted by buyer. As soon as the goods are loaded on the ship, the transit ends if the carrier is acting as an agent of the buyer.

Thus, for instance, *Rosewear china clay co ltd, re*, the contract was for the sale of china clay at FOB Fowey. The buyer chartered a ship and instructed the seller to load to the goods at Fowey, which was accordingly done. The destination of the ship was not told to the seller nor any bill of lading signed. The seller gave notice stopping the goods.

6- Wrongful refusal to delivery- When the carrier wrongfully denies delivering the goods to the buyer or his agent the transit is at the end. It is obvious that goods should have arrived at their destination because otherwise, the carrier has the right to refuse to deliver them.

In the case of *Bird v. Brown,* the court discussed as to when it is wrongful to refuse the delivery of goods. In this case, the goods arrived at the destination but the buyer has become insolvent. A merchant was acting for the seller who gave stop notice to the seller without authority.

Subsequently, the trustee of the buyer demanded the goods as the buyer was insolvent. The carrier refused to deliver the goods and handed them to the merchant. The court said that after the formal demand for goods by the trustee, there could be no valid stoppage in transit.

7- Part delivery- in the case when the goods have been delivered partly, the seller has a right to stop the delivery of the rest of the goods unless the part delivery shows an agreement to the possession of the whole. For instance, A sells to B 20kg of wheat, 10kg has been transferred to B but rest 10kg is still in transit, in case B fails to pay A has a right to stop the goods in transit.

c- Resale

Exercising the right of lien or stoppage does not rescind the agreement but reselling of goods does and without this right, the other two rights of lien and stoppage would not be of much usage because he can only retain goods under these right till the buyer pays back the money.

The unpaid seller can exercise his right under following conditions and circumstances-

1- Seller before reselling the goods needs to send a notice to the buyer except in the case of perishable goods, giving him last chance to pay the price and take back the goods within a reasonable time. If the buyer does not pay the money back seller has the right to resell the goods. If the seller fails to give notice of his intention to resell, he cannot claim damages from the buyer and he has to give any profit.

2- If there is any loss in the resale of goods he can claim the loss from the buyer, on the contrary, if there is profit buyer cannot claim it.

3- Seller gives rightful ownership to buyer after the resale it does not matter notice of resale is given or not to defaulted buyer.

4- Sometimes the seller reserves exclusive right to resale the goods if the buyer makes a default in payment, in such cases the buyer cannot ask for profit on resale if no notice is served and seller has the exclusive right to resale.

For instance, R V Ward V Bignall, there was a contract of sale of two cars, vanguard and zodiac for 850$. The buyer deposited 25$ but afterwards did not pay the price despite a reasonable notice. The seller then tried to resell but could be sold only a vanguard for 359$. he then claimed damages for 475$ representing the balance of price and 22$ as advertising expenses. Court held that once the seller resells the goods the contract is rescinded and he cannot claim the money but he can ask for advertising expenses and a shortfall in the price of the vanguard.

Rights against seller

1- Damages for non-delivery

Section 57 states that, whenever any seller or refuses to deliver the goods to the buyer, the buyer may sue for non-delivery of goods. If the buyer has paid any amount he is entitled to recover it. Quantum of damages is decided through market forces, contract and market price on the day of the breach is considered as damages. If the buyer wants to claim that damages he must prove it in the court of law, otherwise, he cannot get a penny more than refund i.e the amount he has already paid. Buyer must try to keep the loss at a minimum by purchasing the goods from other sources instead of waiting for the market to fluctuate.

2- Suit for specific performance

Acc to Section 58 when goods are specific or ascertained and there is a breach of contract committed on the part of the seller then the buyer can appeal to the court of law for specific performance. The seller has to perform the contract and he does not have any option of retaining the goods by paying damages. The power of the court to order specific performance is subject to the provisions of chapter II of Specific Relief Act, 1963.

Thus on the sale of ship buyer was allowed to recover the ship specifically in the case of Behnke V Bede Shopping, there was a ship named the city which holds a unique value to the plaintiff but she was a cheap vessel being old but her engines were new and as to satisfy the German regulations and hence plaintiff could as a German shipowner have her at once put on the German register. A very experienced ship-valuer has said that he knew only one other comparable ship, but that may not be sold. Thus, on sale of a ship buyer was allowed to specifically recover the ship.

3- Suit for breach of warranty

As stated under Section 59, the buyer cannot reject the goods solely on the basis of breach of warranty on the part of the seller or when a buyer is forced to treat a breach of condition as a breach of warranty. But he may sue the seller for damages or set up against the seller the breach of the warranty in the extinction of the price.

The measure of damages is directly and naturally occurring loss in ordinary events from breach of warranty. Mason V Burningham, the buyer of a second-hand typewriter spends some money on getting it overhauled. Afterwards, the typewriter was seized from her as stolen property. this was a breach on the part of the seller of warranty of quiet possession. She was held entitled to recover damages including the cost of repair. She did a natural thing in having the typewriter repaired and the amount she had spent was a loss directly and naturally resulting from the breach.

4- Suit for anticipatory breach

According to Section 60, the rule of anticipatory breach contract applies, wherein, if any party repudiates the contract before the date of delivery the other party can consider the contract as rescinded and can sue for damages of the breach.

According to this Section, if one party repudiates before due date other has two courses of action. Either he may immediately accept the breach and bring the action of damages the contract is rescinded and damages will be assessed according to the prices then prevailing or he can wait for the date of delivery. In the second case, the contract is open at risk and will be a benefit to both parties. Maybe the party changes is mind and agree to perform and damages will be assessed according to prices on the day of delivery.

Conclusion

The seller becomes an unpaid seller when either he had not been paid in full or the buyer has failed to meet the maturity of bills of exchange or any other negotiable instrument accepted by seller as a condition precedent. Under this situation, the seller can resell the goods if he had exercised the right of lien or stoppage in transit, after giving notice to the buyer and the new buyer will have good title over the goods. In this case, the seller has the right to sue the buyer for failure to pay the required amount as well as a lien. On the contrary, if the seller fails to deliver goods to the buyer, he may sue the seller for non-performance and can claim damages or specific performance.

Q15 what are the remedies to the Breach of the Contract?

Answer - Many commercial agreements contain express provisions forremedies. For example, in a contract for the sale of goods, thebuyer may be entitled to require the seller to make good orreplace defective items. There may be a presumption (which may beexpressed in the contract) that all the terms which are to governtheir contractual relationship have been included by the partiesin express written form in the contract itself. In doing so theyintended to displace any rights and remedies provided by law(such as the buyer's right to terminate the contract forfundamental breach) which are not specified in the contract.

The purpose of a cumulative remedies clause is to ensure thatthe parties' rights specifically provided for in the agreementare in addition to their rights provided by the general law(*see inset box "Cumulative remedies clause"*). Anyparticular remedy that a party envisages it may need should bespecifically preserved in the contract.

Damages

Unlike the equitable remedies of specific performance andinjunction (*see "Specific performance" and "Injunctions"below)* damages for loss in a breach of contract claim areavailable as of right.

An innocent party may claim damages from the party in breachin respect of all breaches of contract. The damages may benominal or substantial. Nominal damages are awarded where theinnocent party has suffered no loss as a result of the other'sbreach and substantial damages are awarded as monetarycompensation for loss suffered as a result of the other party'sbreach.

For an innocent party to obtain substantial damages he mustshow that he has suffered loss as a result of the breach(remoteness) and the amount of his loss (measure). It is up tothe party in breach to argue that the innocent party has failedto mitigate his loss.

Remoteness of loss

The innocent party may only recover damages for loss sufferedas a result of the breach provided it is not too remote. The aimof damages is to put him in the position he would have been hadthe contract been properly performed.

The principles of remoteness are given in *Hadley vBaxendale ([1854] 9 Exch. 341*) and provide that thefollowing losses are recoverable:

- All loss which flows naturally from the breach.
- All loss which was in the contemplation of the parties at thetime the contract was made as a probable results of thebreach.

If the loss does not fall within the above categories, then itwill be too remote and will not be recoverable.

The rule in *Hadley v Baxendale* has been interpretedto mean that only loss which is within the reasonablecontemplation of the parties may be recovered (*The Heron II[1969] 1 AC 350*).

(Note that when dealing with specific types of contract theremay be legislation that covers remedies under that particulartype of contract. For example, in a sale of goods contract, aparty may be able to recover special damages (for example, fromunusual loss arising from special circumstances known thecontract breaker (*section 54, Sale of Goods Act 1979*)(SGA).)

Measure of damages

This is the method for calculating the damages to which theinnocent party is entitled. It covers loss of bargain orexpectation loss. The usual aim of the court is to put theinnocent party in the position he would have been in had thecontract been properly performed (*Robinson v Harman [1848] 18LJ Ex 202*). The two usual methods of assessing this aredifference in value or cost of cure. The court will generally usethe more appropriate.

Sometimes reliance loss may be sought where loss ofexpectation is difficult to prove. The aim of reliance loss is toput the innocent party into the position he would have been inhad the contract never been made, that is, an indemnity for hisout of pocket expenses incurred in reliance on the contract(*Anglia TV v Reed [1972] 1 QB 60*).

There are many other types of loss that have been claimed byinnocent parties. Damages for disappointment or mental distressare not generally awarded (*Addis v Gramophone Co. Ltd*

[1909]AC 488) unless the contract is, for example, a holidaycontract (*Jarvis v Swans Tours Ltd [1973] 1 QB 233*).

Mitigation

An innocent party cannot recover for loss that he could haveavoided by taking reasonable steps. This is sometimes expressedas the duty to mitigate. This does not apply to actions for theprice of goods delivered. Such an action is an action for anagreed sum and not an action for damages.

Although there is no duty to mitigate before actual breachoccurs the innocent party should not aggravate his loss. It isfor the defendant to prove that the plaintiff has failed tomitigate his loss (*Pilkington v Wood [1953] Ch 770*).

Advance payments

If a party in breach has made advanced payments under thecontract his ability to recover that money depends upon whetherthat payment constitutes a deposit (that is, a guarantee by himof due performance) or merely a payment of the whole or part ofthe price in advance.

If it is a deposit (this depends on the intentions of theparties) the general rule is that it cannot be recovered and itwill be set off against any damages awarded to the innocentparty. Care should always be taken with deposits so that they donot amount to penalties (*see "Penalty clauses"below*). However it may be possible to recover a deposit ifthe party has a lien over it (for example, *Chattey andAnother v Farndale Holding Inc., The Times, 17th October,1996*).

If the advance payment is not a deposit, the party in breachmay recover it, subject to any claim for damages by the innocentparty in respect of the breach.

An innocent party may only recover an advance payment if therehas been a total failure of consideration. This is aquasi-contractual remedy. If there is only a partial failure ofconsideration, this remedy is not available (*Rowland v Divall[1923] 2 KB 500).*

Penalty clauses and liquidated damages

It is common for the parties to expressly state in thecontract that if the contract is breached, a specified sum willbe payable or that goods will be forfeited. Clauses coveringthese areas are known as liquidated or agreed damages clauses.They frequently appear in commercial contracts, whetherindividually negotiated or on a party's standard business termsand, most commonly, in relation to late rather than defectiveperformance, particularly in the fields of construction andengineering and supply or sale of goods. Occasionally, theyappear in lease agreements imposed by a key or anchor tenant who,for example, needs to be trading from the demised premises by acertain deadline. Such clauses do not usually appear in contractsof employment.

The purposes of such clauses are to make recovery of damageseasier, avoiding the problems of proving actual loss; to avoidarguments as to the remoteness of certain types of consequentialor indirect losses; and to assure the other party of theirintention to be bound by the contract.

The normal rules applicable to the determination of whether aclause operates as liquidated damages or a penalty applyirrespective of the type of contract in question. A distinctionmust be drawn between clauses which purport to impose a penaltyon the defaulting party and clauses which levy liquidated damagesfrom that party. Penalty clauses are generally not enforceable,whereas liquidated damages clauses are.

Penalty or liquidated damages?

For a liquidated damages clause to be valid the specified summust be a genuine pre-estimate of the anticipated loss which theclaimant would be likely to suffer in the event of a breach ofthe obligation in question. If the loss is difficult to quantifya "best guess" procedure should be operated, keeping a record ofthe calculations underlying any elements of the determinedfigure. Provided the selected figure is not vastly in excess ofthe greatest loss which could be suffered, the clause is likelyto be enforceable. The essence of a penalty is that the moneyspecified is *in terrorem* of the defaulting party, inother words, it is intended to apply undue force to the otherparty to perform his side of the contract.

The use of the words "penalty" or "liquidated damages" are notconclusive. It is necessary to examine whether the amountspecified is in fact a penalty or liquidated damages. It is forthe party in breach to show that the sum is a penalty(*Robophone Facilities Ltd v Blank [1966] 3 All ER128*).

The leading case of *Dunlop Pneumatic Tyres*establishes the tests to distinguish penalties from liquidateddamages:

- A clause will be construed as a penalty clause if the sumspecified is "extravagant and unconscionable" in comparison withthe greatest loss that could possibly have been proved as aresult of the breach.

- It is likely to be a penalty if the breach of contractconsists of not paying a sum of money and the sum stipulated asdamages is greater than the sum which ought to have beenpaid.
- There is a presumption that if the same sum is stated toapply to different types of breach of contract, some of which areserious and others not, it is likely to be a penalty clause.
- It is not a bar to the operation of a liquidated damagesclause that a precise pre-estimation is impossible.

(*Dunlop Pneumatic Tyre Co Limited v New Garage & MotorCo Limited [1915] A.C 79*)

There is no public policy issue in relation to the upper limitof damages to which parties can contract to be liable. The UnfairContract Terms Act 1977 will in certain circumstances impose atest of reasonableness in relation to exclusion clauses (whichpurport to limit or exclude liability) but this is unlikely toapply to a genuine liquidated damages clause. If the clausespecifies a sum which is more than a genuine pre-estimate (andtherefore a penalty) the clause will be unenforceable. The courtswill not benefit the party claiming damages by imposing a lowersubstitute figure.

To claim on a genuine liquidated damages clause, the claimantmerely has to show breach of contract, whether or not there hasbeen any actual loss and regardless of the extent of anyloss.

It is not entirely clear whether a liquidated damages clauseis intended to be a mutually binding limitation on the amount ofdamages payable. It is likely that it is intended to be mutuallybinding in the field of building and engineering contracts. ACourt of Appeal case held that where "£nil" was inserted asthe amount of liquidated damages, then general damages for breachof contract were not recoverable in the alternative (*Temloc vErrill Properties, 1987 39 BLR.30*). A contract can, however,expressly provide for the party seeking to impose the clause tohave a choice whether to operate it or not. Certain charterpartycases suggest that the claimant may have a choice either to sueunder the liquidated damages clause or to ignore it and claimgeneral damages without limitation although these cases areprobably limited to that area of law.

If, however, the clause is invalidated because it is a penaltyclause or due to acts of the claimant (such as requiring theother party to perform additional work without a contractualmechanism to grant that party further time to perform thecontract) or breach of contract by the claimant, then the limitspecified in the unworkable clause will operate as a limitationon the amount of damages which can be claimed (although in thecase of a penalty the limit is unlikely to be reached because byits nature, it will be higher than the loss could ever be).

As regards enforcement, many contracts will specify that thedamages can be deducted from subsequent sums due. This isparticularly the case for building contracts where interimpayments to the contractor are usual. Many contracts will alsoprovide for the claimant to be able to recover liquidated damagesas if they were a debt due by the other party. If possible, whendrafting a penalty clause, you should try to ensure that you candeduct or recover damages in these ways as they are a moreeffective way of ensuring that you will be able to recover themoney due.

Otherwise the usual rules of enforcement would apply and aclaim form would be issued in the normal manner (without, ofcourse, having to prove actual loss).

Note that it will be a defence to a claim for liquidateddamages that the claimant has prevented the other party fromcompleting his obligations either by the claimant's own breach ofcontract or by other acts of prevention in circumstances wherethere is no provision in the contract to make an allowance orgive a time extension to the party from whom damages are claimedfor these circumstances.

It is important to observe all relevant proceduralrequirements in the contract such as notice periods andprovisions requiring the liquidated damages to be assessed anddeducted within certain time periods, otherwise the defendantwill not be required to pay the damages.

Specific performance

This is an equitable remedy granted at the court'sdiscretion.

Specific performance is a decree by the court to compel aparty to perform his contractual obligations. It is usually onlyordered where damages are not an adequate remedy (for examplewhere the subject matter of the contract is unique for example,Chinese vases in *Falcke v Gray* (*[1859] 4 Drew651*) but not if a replacement of the subject matter could beobtained even after a long delay (*Societe des IndustriesMetallurgiques SA v Bronx Engineering Co Ltd [1975] 1 Lloyds Rep465*).

It is a general rule that specific performance will not beordered if the contract requires performance or constantsupervision over a period of time and the obligations in thecontract are not clearly defined. For example, specificperformance of a covenant to keep a shop open during normalbusiness hours was refused by the House of Lords in *Co-opInsurance v Argyll Stores* (*[1997] 3 All ER 297*) onthe grounds that enforcement of a covenant to carry on a businesswould require constant supervision of the courts with the courtresorting to criminal punishment for contempt of court if theorder was not complied with. However, a recent case has reversedthis rule in relation to a tenant's repair covenants (*RainbowEstates Limited v Tokenhold Limited and another [1998] NewProperty Cases 33*). The judge in this case concluded thatthe old law of refusing specific performance if it would involveconstant supervision was no longer good or (at least) that therewere exceptions. It may be that only in the most exceptionalcircumstances (such as in this case) specific performance will beavailable to the landlords; however the arguments advancedindicate that it should be available in other situations.Specific performance was ordered requiring tenants to spend£300,000 on repairs to the flats. Factors militating infavour of this remedy were that the landlord had no right ofentry to repair in default of the tenant; that the lease had noforfeiture clause and that the building was listed so that repairas distinct from redevelopment was the most appropriateoutcome.

Specific performance is often ordered in relation to buildingcontracts because the contract deals with results rather than thecarrying on of an activity over a period of time and it usuallydefines the work to be completed with certainty (*Jeune vQueens Cross Properties Ltd [1973] 3 All ER 97*).

Specific performance is not available for contracts requiringpersonal services such as employment contracts because such anorder would restrict an individual's freedom (*Chappell vTimes Newspapers Ltd [1975] 1 WLR 482*).

The court has broad discretion to award specific performanceand in exercising this discretion it takes into account factorssuch as:

- Delay in asking for the order (*Lazard Brothers & CoLtd v Fairfield Properties co (Mayfair) Ltd [1977] 121 SJ793*).
- Whether the person seeking performance is prepared to performhis side of the contract (*Chappell v Times Newspapers Ltd[1975] 1 WLR 482*).
- Whether the person against whom the order is sought wouldsuffer hardship in performing (*Patel v Ali [1984] 1 All ER978*).
- The difference between the benefit the order would give toone party and the cost of performance to the other (*Tito vWaddell (No 2) [1977] Ch 106*).

- Whether any third party rights would be affected.
- Whether the contract lacks adequate consideration (the rule"equity will not assist a volunteer" applies so that specificperformance will not be ordered if the contract is for nominalconsideration even if it is under seal (*Jeffrys v Jeffrys[1841] 1 Cr & Ph 138*)).

Injunction

Like specific performance, an injunction is an equitableremedy and therefore only granted at the discretion of the court.It is awarded in circumstances where damages would not be anadequate remedy to compensate the claimant because the claimantneeds to restrain the defendant from starting or continuing abreach of a negative contractual undertaking (prohibitoryinjunction) or needs to compel performance of a positivecontractual obligation (mandatory injunction).

In exercising its discretion the court will consider the samefactors as above for specific performance and will use thebalance of convenience test (weighing the benefit to the injuredparty and the detriment to the other party). An injunction willnot be granted if its effect would be to compel a party to dosomething which he could not have been ordered to do by a decreeof specific performance (*Lumley v Wagner [1852] 1 DM & G604).*

In urgent cases a plaintiff may be able to obtain an interiminjunction to restrain an act. Special types of injunction may begranted to preserve property and assets pending trial (Marevainjunctions and Anton Piller orders).

Quasi contract: other remedies

Quasi-contract creates obligations at common law, distinctfrom obligations under a contract. It is an area of law in itsown right.

Quasi-contractual remedies are sometimes available either asan alternative to a remedy for breach of contract or where thereis no remedy for breach of contract. For example, a claim forquantum meruit (a reasonable remuneration for work done of goodssupplied under a contract which is later discovered to bevoid).

Limitation of actions

An innocent party will lose his right to bring a claim forbreach of contract if he delays for a certain length of time.

The Limitation Act 1980 provides statutory limitation periods.Theses do not apply to equitable remedies, however, in practice,equity usually applies the statutory rules.

The Limitation Act 1980 distinguishes between simple contractsand deeds. It provides the following limitation periods:

- For simple contracts, six years from when the cause of actionaccrued.
- For deeds, twelve years from when the cause of actionaccrued.

If there has been fraud or mistake, the limitation period doesnot begin to run until the innocent party has discovered this orshould have discovered this. There is a three year time limit inrespect of damages for personal injuries arising from breach ofcontract.

In acquisition agreements (which may be deeds) the seller maywant a shorter limitation period (commonly six years from thedate of the contract) This shorter period relates to the InlandRevenue's time limit for making tax assessments. Alternatively,the seller may want an even shorter period in relation to non-taxmatters (perhaps to link in with the audit of the targetcompany).

Q16 Explain different kinds of Negotiable Instruments.

Answer - Negotiable instruments are is a commercial document that satisfies certain conditions and transferable either by the application of law as by the custom of bleed concerned.

This instrument can be transferred freely from hand to hand and has a legal life that can be transferred by more delivery or endorsement.

Most Common Types of Negotiable Instruments are;

- Promissory notes.
- Bill of exchange.
- Check.

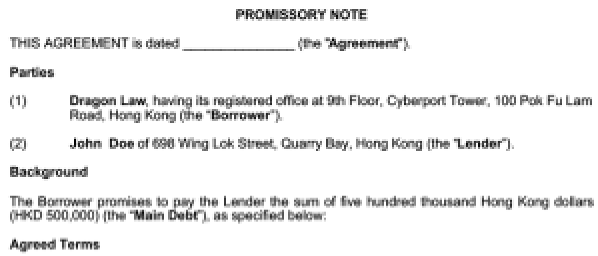
Most negotiable instruments fall under the following two categories; the Negotiable instrument by statute and Negotiable instruments by custom or usages.

Negotiable instrument acts state three instruments. check, bill of exchange and promissory notes are negotiable instruments.

They are therefore called negotiable instruments by statute.

Negotiable instruments by Statute are;

Promissory Notes as Negotiable Instrument



PROMISSORY NOTE

THIS AGREEMENT is dated ____________ (the "**Agreement**").

Parties

(1) **Dragon Law**, having its registered office at 9th Floor, Cyberport Tower, 100 Pok Fu Lam Road, Hong Kong (the "**Borrower**").

(2) **John Doe** of 698 Wing Lok Street, Quarry Bay, Hong Kong (the "**Lender**").

Background

The Borrower promises to pay the Lender the sum of five hundred thousand Hong Kong dollars (HKD 500,000) (the "**Main Debt**"), as specified below:

Agreed Terms

The promissory note is a signed document of written promise to pay a stated sum to a specified person or the bearer at a specified date or on demand.

The promissory note is an instrument in writing containing an unconditional rule signed by one party to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.

Thus a promissory note contains a promise by the debtor to the creditor to pay a certain sum of money after a certain date. The debtor is the maker of the instrument.

Bill of Exchange as Negotiable Instrument

Bill of Exchange

NO. MK-17991 BANGKOK, 3-7-1991

Exchange for US$ 20,880.00

At - after sight of this FIRST Bill of Exchange (Second of the same tenor and date being unpaid) Pay to the order of Bangkok Bank Limited the sum of

Value received.

To

The Bill of Exchange contains an order from the creditor to the debtor to pay a certain person after a certain period.

The person who draws it is called drawer (creditor) and the person on whom it is drawn is called drawee (debtor) or acceptor.

The person to whom the amount is payable is called payee.

Check as Negotiable Instrument

A Check (cheque in royal Britain) is a bill of exchange drawer a specified banker not expressed to be payable otherwise than on demand.

It is an instrument in writing, containing unconditional order, signed by the maker (depositor), directing a certain banker to pay a certain sum of money to the bearer of that instrument.

Some other instruments have acquired the character of negotiability by customs or usage of trade.

Negotiable instruments by custom or usages are mainly, the government promissory notes, delivery orders, and railway receipts have been held to be negotiable by usage or custom of the trade.

Q17 Distinguish between Holder and Holder in Due Course.

Answer - <u>DISTINGUISH BETWEEN HOLDER AND HOLDER IN DUE COURSE</u>

HOlDER	**HOLDER IN DUE COURSE**
(1) Meaning:	
In simple words the person who is the payee or in whose name it has been endorsed and who possesses it or a person who is its	In simple words, he is the person who has the right to sue in his. own name and has received the instrument for value and his

bearer, in order to be a holder, the person must be entitled in his own name to the possession of the instrument and should have the right to sue under the instrument. He must have a legal and valid title to the Instrument.	possession must be before the instrument becomes mature.
(2) Definition:	
According to the Sec. 8 of the act "the holder of a promissory note, bill or exchange means the payee are endorsee who is in possession of it or the bearer thereof but does not include a beneficial owner claiming through a benamider".	According to Sec.9 of the act, "any person who for considerators become the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorse thereof payable to order. Before the amount mentioned in become payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title".
(3) Valuable Consideration:	
Necessary	Not necessary
(4) Right to sue:	
A holder cannot sue all prior parties.	Due to legal title of the instrument the bolder in due course has a write to file a suit in case of refusal of payment.

(5) Holder in Good Faith:	
The instrument may or may not be obtained in good faith.	He must have become a holder of the instrument in good faith before the date of maturity. It is necessary that possession of instrument must be good. If there is any defect in tile title of transferor at due time of raking Instrument. he cannot be considered a holder in due course.
(6) Holder before Maturity:	
A person can become holder, before or after the maturity of the negotiable instrument.	He must have become u holder before the date of maturity of the instrument. But an accommodation will can be negotiated after maturity to the holder in due course.

PRIVILEGES OF A HOLDER IN DUE COURSE

A holder in due course enjoys as the following privileges under the act.

(1) Rights In Case of Incomplete Instrument:

Where one person signs and delivers to another a paper stamped as per law in blank or partially written authorizes the latter to file it. He undertakes lo be answerable when instrument is completed. The former cannot deny the authority which he has given for any amount not exceeding covered by the stamp. (Sec. 20)

(2) Prior Parties Liable:

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied. (Sec. 36). Prior parties to the instrument Include the maker or drawer, acceptor and all prior endorser. The holder in due course can sue any of the prior parties liable to pay in his own name.

Illustration:

- X draws a bill on Y. Afterward, X endorse the bill to Z which further endorse to M who is holder in due course. M can recover the amount from X, Y or Z.

(3) Right to Enforce Payment of Fictitious Name:

An acceptor of a hill cannot claim as against the holder in due course. that the other parties to the bill were fictitious. When the drawer is a fictitious person and is endorsed in the same hand as drawer's signature, the acceptor Is not relieved from liability to any bolder in due-course due to the reason that the drawn is fictitious:". (Sec. 42)

(4) No Effect of Conditional Delivery:

When an instrument is negotiated to a holder in due course, the other parties instruments cannot escape liability on the ground that the delivery of the instrument was conditional or for a special purpose only. (Sec. 46 & 47) .

(5) Instrument Cleansed of all Defects:

Even though as between the immediate parties to an instrument it was caused by fraud. etc. Once the instrument passes through the hands 0f a holder in due course, it is clean of all defects, and any person acquiring, it takes it free of all defects, unless he was himself a party to the fraud. (Sec. 53).

(6) Instrument Caused by Unlawful Consideration:

The defence on the part of a person liable on u negotiable instrument that it has been. lost or obtained from him by means of an offense or fraud or unlawful consideration, cannot be setup against a holder in due course. (sec. 58)

(7) Every Holder Is Holder in Due Course:

The law presumes that every holder of a negotiable instrument is a holder in due course provided that where the instrument has been obtained by unlawful means the burden of proving that the holder is the holder in due course lies. upon him. (Sec.118)

(8) Estoppel Against Denying Original Validity or Instrument:

No maker of the promissory note and no drawer of a bill of exchange or cheque and no acceptor of a bill of exchange for the honor of the drawer shall be a suit thereon by a holder in due course, be permuted to deny the validity of the instrument as originally made or drawn. (Sec.120)

(9) Estoppel Against Denying Capacity of Payee to Endorse:

No maker of the promissory note and no acceptor of a bill of exchange payable to order shall in a suit thereon by a holder in due course, be perceived to deny the payee's capacity, at the date of the note or bill to endorse the same.

Q18 What are the effects of Material Alterations?

Answer - Section 87 of the Negotiable Instrument act clearly states that

any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties.

Effects of Material Alteration

The main effect of a material alteration is that it makes the instrument void, i.e., it discharges the instrument itself as against any person who was a party to such instrument at the time of material alteration and did not give his approval to it.

All the prior parties to a negotiable instrument, which was altered subsequently without their consent thereto, shall not be liable even to holder-in-due-course, having no notice or knowledge of the material alteration.

It makes no discrimination whether the alteration was for the benefit or detrimental to any party to the instrument. Moreover, it is also immaterial whether the holder himself altered the instrument or any stranger altered it while the instrument was in the custody of the holder because a party, who is in custody of an instrument, is bound to preserve it in its original state.

It is, however, worth noting that a **materially altered instrument is not absolutely void**, i.e., not unenforceable against all the parties thereto.

It is void only against those who did not give their approval to the alteration, and can be enforced against those who consented to the alteration or effected the alteration. Such an instrument is also operative against those who become parties to the instrument subsequent to the alteration. There is, however, an exception to this rule.

An acceptor or endorser of a negotiable instrument is bound by his acceptance or endorsement notwithstanding any previous alterations of the instrument.

On the other hand, Section 89 of the Negotiable Instrument Act provides protection to a party who pays a materially altered bill of exchange or promissory note or cheque provided that the alteration does not appear on the face of the instrument in-question and pays so in good faith and without negligence on its part.

Such a party shall stand discharged if it makes payment to a person in the possession of the instrument under the circumstances, which do not afford a reasonable ground for believing that it is dis entitled to such payment. Besides, the payer under the above circumstances is also entitled to debit the party on whose account the payment was made with the amount paid.

Example of Material Alteration

For instance, A drew a cheque of Rs 500 in favour of B, who altered the figure 500 into 5,000 without taking the consent of the maker. The instrument appeared to be drawn for Rs 5,000 on the face of it. The drawee banker paid Rs 5,000 to B on the presentment of cheque for payment. The banker did so according to the apparent tenor of the instrument and in good faith. In this case, since the banker acted bona fide and without negligence, it is entitled to debit A with Rs 5,000.

Q19 What are different types of Crossing of Cheque?

Answer - Crossing of Cheques

Crossing a cheque refers to drawing **two parallel transverse lines** on the cheque with or without **additional words** like "& CO." or "Account Payee" or "Not Negotiable" **between the lines.**

By using a crossed cheque, one can make sure that the **amount** specified **cannot be en-cashed** but can only be **credited** to the **payee's bank account**.

Crossing of Cheque is recognized under **The Negotiable Instruments Act, 1881.**

The crossing of cheque had developed gradually as a means of **protection** against misusing of cheques.

Crossing of cheque **provides instruction** to the paying banker to **pay the amount through banker** only, and not directly to the payee or holder presenting it at the counter. This ensures that payment is made to the actual payee.

Types of Crossing of Cheques

Crossing of Cheques can be done in two ways:

1. General Crossing
2. Special Crossing

General Crossing

Section 123 of **The Negotiable Instruments Act, 1881** defines General Crossing as:

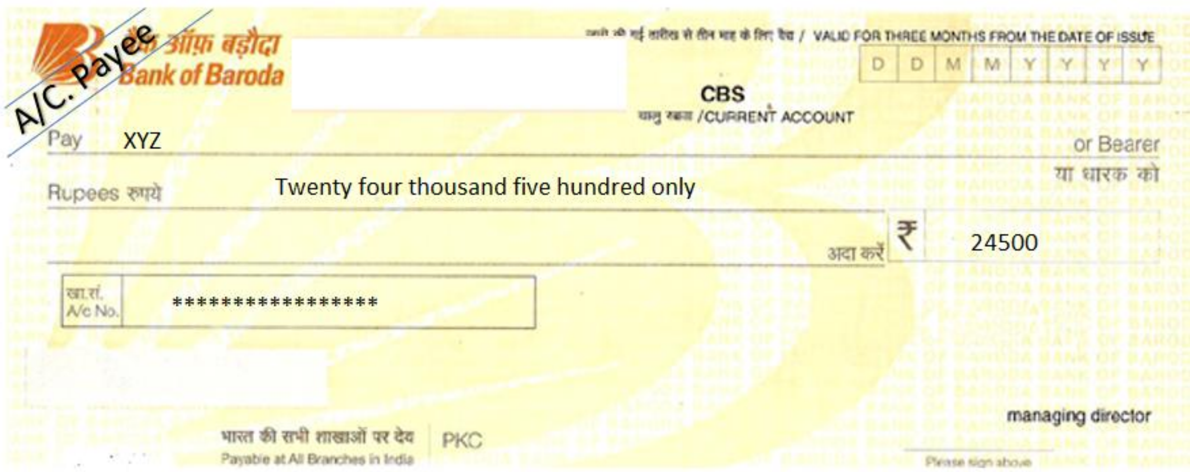
"Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally".

- Two parallel transverse lines are drawn on the face of the cheque, generally, on the top left corner of the cheque
- Holder or payee cannot get the payment at the counter but through the bank only
- Including the name of the banker is not essential, hence, the amount can be **encashed by any banker**

- The words, "& Company", "Not Negotiable", "A/C. Payee" may or may not be written
- It can be converted into Special Crossing

Specimen of General Crossing of Cheques

Types: General Crossing



Example: A Cheque Leaf

Special Crossing

Section 124 of **The Negotiable Instruments Act, 1881** defines Special Crossing as:

“Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable”, that in addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially and to be crossed to that banker.”

- Also known as Restricted Crossing
- Two transverse lines are not necessary to be drawn
- Name of the banker is added across the face of the cheque
- The Name of the Banker may or may not carry the abbreviated word, ‘& Co.’, ‘Account payee’ or ‘Not Negotiable’
- Payment can be made **only through the bank mentioned** in the Crossing. The Banker, mentioned in the Crossing, may appoint another banker as his agent to collect such cheques. thus, making it safer than ‘generally’ crossed cheques
- Specially Crossed Cheques can never be converted to General Crossing.

A specimen of Special Crossing of Cheques

Type: Special crossing

Double Crossing

Here the cheque bears two separate “**special**” crossing. For eg., a cheque is crossed specially in the name of ‘Canara Bank’, and further in the name of ‘Bank of Baroda’.

As per Section 127 of **The Negotiable Instruments Act, 1881**:

"Where a cheque is crossed specially to more than one banker except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof."

Thus, a cheque doubly crossed shall be payed by the banker when the second banker is acting only as the agent of the first collecting banker and this has been made clear on the Cheque, i.e., crossing must specify that the banker to whom it has been specially crossed again shall act as the agent of the first banker for the purpose of collection of the cheque.

It is done in case, the banker, to whom a cheque is specially crossed, does not have a branch at the place of the paying banker, or if he, otherwise, feels the necessity, he may cross the cheque specially to another banker

Q20 Explain dishonour of Negotiable Instruments.

Answer - **Dishonour of negotiable instrument** means loss of honour or respect for the instrument in question on the part of the maker, drawee, or acceptor, as the case may be, which eventually results in non-realization of payment due on the instrument.

Dishonour by non-acceptance:

Any type of negotiable instruments, i.e., **bill of exchange**, promissory note, or cheque may be dishonoured by non-payment by the drawee/acceptor thereof. But a bill may also be dishonoured by non-acceptance because bill of exchange is the only negotiable instrument which requires its presentment for acceptance and non-acceptance thereof, can amount to dishonour.

When is a bill said to be dishonoured by Non-Acceptance?

A bill is said to be dishonoured by non-acceptance in the following circumstances.

1. When the drawee or one of the several drawees, not being partners, commit default in acceptance upon being duly required to accept the bill. In this regard Section 63 expressly provides that the holder must, if so required by the drawee of a **bill of**

exchange presented to for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.

2. Where presentment is required and the bill remains unrepresented.
3. Where the drawee is incompetent to enter into a valid contract.
4. Where the bill is given a qualified acceptance.
5. If the drawee is a fictitious person.
6. If the drawee cannot be found even after reasonable search.
7. Where the drawee has either become insolvent or is dead and the holder does not present the bill to the assignee or legal representative of the insolvent or deceased drawee.

It is relevant to note that where a drawee-in-case-of-need is named in a bill of exchange or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Dishonour of negotiable instrument by Non-payment:

A promissory note, **bill of exchange**, or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill, or **drawee of the cheque** commit default in payment upon being duly required to pay the same. Also the holder of a bill or pro-note may treat it as dishonoured, without placing for payment when presentment for payment is excused expressly by the maker of the pro-note, or acceptor of the bill and the note or bill when overdue remains unpaid.

Dishonour by non-acceptance vs Dishonour by non-payment:

If a bill is dishonoured either by non-acceptance or by non-payment, the drawer and all the endorsers of the bill are liable to the holder, provided notice of such dishonour is given to them. The drawee, on the other hand, shall be liable to the holder only in the event of dishonour by non-payment.

Dishonour of Cheque for insufficient of funds in the account:

A cheque drawn by a person on an account maintained by him with a bank for payment of any amount of money to another person can be returned unpaid for lack of enough funds in the said account. This is called **dishonour of cheques** for insufficiency of funds (in the drawer’s account). In such cases, the drawer is also criminally liable for this offense and may be punished with imprisonment for a term, which may extend to one year, or with fine that may extend to twice the amount of the cheque, or with both.

Dishonour of cheque vs promissory note:

A cheque being drawn on specified bank and not expressed to be payable otherwise than on demand is never presented to the drawee bank for acceptance and same is the case of a promissory note. However, a pro-note made payable at a certain period after sight is required to be presented for sight, but it is never subject to presentment for acceptance.

How is a party to a negotiable instrument discharged?

A party to a negotiable instrument is discharged in the following ways

- By cancellation of the name of a party to the instruments
- by release of any party to the instruments
- by payments
- by allowing drawee more than 48 hours to accept
- by delay in presenting a cheque for payment
- by payment in due course of a cheque (payable to order)
- by taking qualified acceptance
- by non-presentment for acceptance of a bill of exchange
- by operation of law
- by material alteration

Code: 104

LAW OF TORTS

Ques 1. What do you understand by Tort? Mention various definition of jurists related to tort?

Ans. The word Tort is derived from a Latin word 'Tortus' which means 'twisted' or 'cooked act'. In English it means, 'wrong'. The Expression 'Tort' is of French Origin. The word Tort was derived from the Latin term Tortum. The term 'Tort' means a wrongful act committed by a person, causing injury or damage to another, thereby the injured institutes (files) an action in Civil Court for a remedy viz., unliquidated damages or injunction or restitution of property or other available relief. Unliquidated damages means the amount of damages to be fixed or determined by the Court.

Sir John Salmond: "Tort as a civil wrong for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of contract or the breach of trust or other merely equitable obligation."

Prof. P H Winfield: Tortious Liability arises from breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressable by an action for unliquidated damages.

Clark and Lindsell: "Tort is a wrong independent of contract for which the appropriate remedy is a common law action."

Fraser: A tort is an infringement of a legal right in rem of a private individual, giving a right of compensation of the suit of the injured party.

Section 2(m) of Limitation Act, 1963: "Tort means a civil wrong which is not exclusively a breach of contract or breach of trust."

Ques 2. Difference between Tort and Crime?

Ans.

S. no.	Tort	Crime
1	The person who commits a tort is known as 'tortfeasor'	The person who commits a crime is known as 'offender'
2	Proceedings take place in Civil Court	Proceedings take place in Criminal Court.
3	The remedy in tort is unliquidated damages	The remedy is to punish the offender
4	It is not codified as it depends on judgemade laws	Criminal law is codified as the punishments are defined

5	Private rights of the individuals are violated	Public rights and duties are violated which affects the whole community.

Ques 3. Difference between Trot, Contract and Quasi Contract?

Ans. A distinct difference between contract and tort laws lies in the issue of consent. In contract law, both parties must enter an agreement knowingly and without coercion.

Each party must consent to the contract and its outcomes. In tort law, the interaction between the parties is not based on consent.

Usually, torts occur by the intrusion of one party to another that results in some type of harm. Courts will award damages in a contract case to restore the injured party to where they were before the breach occurred.

In a tort case, a court will award damages to compensate the victim for their loss.

Another difference between the two branches of law, is that punitive damages are sometimes awarded in tort cases, whereas they are rarely awarded in breach of contract cases.

Can a Person File a Contract Claim and a Tort Claim in the Same Lawsuit?

In some cases, a tort claim and contract claim will be included within the same lawsuit. However, due to the differences between torts and contracts, these cases are not as common as those where both claims are filed separately.

If you have a case where there was a breach of duty in a contract, and a tort claim is tightly related to the subject matter of the contract, it may be possible to file the claims concurrently.

Difference between Tort and Quasi-Contract:

Quasi contract cover those situations where a person is held liable to another without any agreement, for money or benefit received by him to which the other person is better entitled. According to the Orthodox view the judicial basis for the obligation under a quasi contract is the existence of a hypothetical contract which is implied by law. But the Radical view is that the obligation in a quasi contract is sui generis and its basis is prevention of unjust enrichment. Quasi contract differs from tort in that:

• There is no duty owed to persons for the duty to repay money or benefit received unlike tort, where there is a duty imposed.

• In quasi contract the damages recoverable are liquidated damages, and not unliquidated damages as in tort.

Quasi contracts resembles tort and differs from contracts in one aspect. The obligation in quasi contract and in tort is imposed by law and not under any agreement. In yet another dimension quasi contract differs from both tort and contract. If, for example, A pays a sum of money by mistake to B. in Quasi contract, B is under no duty not to accept the money and there is only a secondary duty to return it. While in both tort and contract, there is a primary duty the breach of which gives rise to remedial duty to pay compensation

Ques 4. Define *Injuria Sine Damnum and Damnum Sine Injuria?*

Ans.

Injuria sine damno: 1) Injuria - injury to legal right

2) sine -without

3) damno - damages, monetary loss.

The meaning of this maxim is injury to legal right without any monetary loss. This is actionable, because there is violation of legal right, even though plaintiff suffer no loss in term of money and defendant is liable.

In simple words, Injuria sine damno means Injury without damage or it means infringement of an absolute private right without any actual loss or damage. whenever there is an invasion of legal right, the person in whom the right is vested is entitled to bring an action and may recover damages, although he has suffered no actual harm. In such case, the person need not prove the actual damage caused to him. Example Trespass to land or property.

Suppose 'A' enter a private compound without permission of the owner just for asking water, here the moment 'A' step in, A commit trespass and action can lie against 'A' even no actual damage is caused.

Here are some famous cases –

Ashby v/s White, 1703.

Fact- Plaintiff was legal voter ,his name was there in voter list.defendant was a returning officer, i.e. incharge of election. Deft. Refused the plaintiff to offer or to tender his lawful vote to his candidate. Plaintiff sued Deft.for compensation even though no loss is caused in term of money.

Issue - Whether defendant is liable.

Defence of Deft- The plaintiff suffered no loss in money. Moreover, the candidate to whom he was about to offer /tender his vote got elected. So deft.not liable

Held - Court held that Deft.is liable to pay compensation because he has violated legal right of plaintiff to vote. Even though plaintiff suffered no actual loss in term of money, or the candidate to whom plaintiff was interested got elected, defendant has committed a tort and therefore liable to pay compensation.

Dmanum Sine Injuria

Damnum means = Damage in the sense of money, Loss of comfort , service , health etc.

Sine means = Without

Injuria means = Infringement of a legal right / injury to legal right.

Damnun sine injuria means damages , monetary loss, to the plaintiff without violation of legal right, not actionable because no injury to legal right.

In Simple words, Damnum sine injuria means damage without infringement of any legal right. damage without injury is not actionable. Mere loss of money's worth does not of itself constitute legal damage. There are many acts which though harmful are not wrongful in the eyes of law, therefore do not give rise to a right of action in favour of the person who sustains the harm. No one is to be considered a wrong doer who merely avails himself of his legal rights, though his action may result in damage to another.

Gloucester Grammar school case, 1410 (setting up rival school)

Fact - Defendant was school teacher in plaintiff's school. Because of some dispute Deft left plaintiff's school and started his own school. As defendant was very famous amongst students or his teaching,boys from plaintiffs school left and joined to Deft.School . Plaintiff sued Deft.for monetary loss caused.

Held - Deft not liable. Compensation is no ground of action even though monetary loss in caused if no legal right is violated of anybody.

Ques 5. Define any two Justification In Tort?

Ans. Volenti non fit iniuria (or injuria) (Latin: "to a willing person, injury is not done") is a common law doctrine which states that if someone willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they are not able to bring a claim against the other party in tort or delict. Volenti applies only to the risk which a reasonable person would consider them as having assumed by their actions; thus a boxer consents to being hit, and to the injuries that might be expected from being hit, but does not consent to (for example) his opponent striking him with an iron bar, or punching him outside the usual terms of boxing. Volenti is also known as a "voluntary assumption of risk.

" Volenti is sometimes described as the plaintiff "consenting to run a risk." In this context, volenti can be distinguished from legal consentin that the latter can prevent some torts arising in the first place. For example, consent to a medical procedure prevents the procedure from being a trespass to the person, or consenting to a person visiting one's land prevents them from being a trespasser.

The defence has two main elements:

• The claimant was fully aware of all the risks involved, including both the nature and the extent of the risk; and

• The claimant expressly (by statement) or implicitly (by actions) consented to waive all claims for damages. Knowledge of the risk is not sufficient: sciens non est volens ("knowing is not volunteering"). Consent must be free and voluntary, i.e. not brought about by duress. If the relationship between the claimant and defendant is such that there is doubt as to whether the consent was truly voluntary, such as the relationship between workers and employers, the courts are unlikely to find volenti.

It is not easy for a defendant to show both elements and therefore comparative negligence usually constitutes a better defence in many cases. Note however that comparative negligence is a partial defence, i.e. it usually leads to a reduction of payable damages rather than a full exclusion of liability. Also, the person consenting to an act may not always be negligent: a bungee jumper may take the greatest possible care not to be injured, and if he is, the defence available to the organiser of the event will be volenti, not comparative negligence

NECESSITY

Necessity as a defense is defined under section 81 in Indian Penal Code as: "Act likely to cause harm, but done without criminal intent, and to prevent other harm.—Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property."

Factors affecting necessity

Affirmative defense

A defendant typically invokes the defense

Against intentional torts of trespass to chattels, , trespass to land or conversion.

With the necessity defense there will always be a prima facie violation of the law.

A tort is a civil wrong for which unliquidated damages have to be compensated by the defendant even if he did in case of necessity. The defense of necessity is only applicable when the defendant is able to justify his unlawful acts. It seems to be generally assumed that, if the defense of necessity succeeds, that is the end of the matter.

To present the defense at trial, defendants must need to meet the burden of provision of the four elements:

They were forced with a choice of evils and choose the lesser evil.

They acted to prevent imminent harm

They reasonably anticipated a direct casual relationship between their conduct and the harm to be averted.

And, they had no legal alternatives to violating the law.

Ques.6 What do you understand by Act done under Statutory Authority under tort?

Ans. When the commission of what would otherwise be a tort, is authorized by a statute the injured person is remediless. This is unless legislature has thought it proper to provide compensation to him. The statutory authority extends not merely to the act authorized by the statute but to all inevitable consequences of that act. But the powers conferred by the legislature should be exercised with judgment and caution so that no unnecessary damage is done, the person must do so in good faith and must not exceed the powers granted by the statute otherwise he will be liable.

For example, if there is a railway line near your house and the noises of the train passing disturbs then you have no remedy because the construction and the use of the railway is authorized under a statute. However, this does not give the authorities the license to do what they want unnecessarily; they must act in a reasonable manner. It is for this reason that we see that there are certain guidelines that need to be followed during construction of public transport facilities.

The philosophy behind this principle is that the lesser private rights must yield to the greater public good. Hence the state and people working for the state are given certain immunity and are allowed to do acts in pursuance of the public order even if they may lead to tortious liability. The extent to which this immunity is available to a public authority depends on whether the authority is absolute or conditional. Such a condition may be express or implied. In case of absolute statutory authority the immunity is available against both the act and its natural consequences. If absolute, then the authority is not liable provided it has acted reasonably and there is no alternative course of action.

In **Metropolitan Asylum District Board v. Hill**

a local authority being empowered by a statute to erect a small-pox hospital was restrained from erecting it at a place where it was likely to prove injurious to the residents of the locality. The authority to construct a hospital was construed as impliedly conditional only, i.e. to erect the hospital provided that the hospital authorities selected a site where no injurious results were likely to be caused to others.

Ques 7. Define Negligence under tort?

Ans. Negligence In order for a plaintiff to win a lawsuit for negligence, he or she must prove all of the "elements." For instance, one of the elements is "damages," meaning the plaintiff must have suffered damages (injuries, loss, etc.) in order for the defendant to be held liable. So, even if you can prove that the defendant was negligent, you may not be successful in your negligence lawsuit if that negligence caused you no harm.

When deciding on a verdict in a negligence case, juries are instructed to compare the facts, testimony, and evidence in determining whether the following elements were satisfied:

1. Duty

2. Breach of Duty

3. Cause in Fact

4. Proximate Cause

5. Damages

These five elements of a negligence case are explained in greater detail below.

1.Duty

The outcome of some negligence cases depends on whether the defendant owed a duty to the plaintiff. A duty arises when the law recognizes a relationship between the defendant and the plaintiff requiring the defendant to act in a certain manner toward the plaintiff. A judge, rather than a jury, ordinarily determines whether a defendant owed a duty of care to a plaintiff, and will usually find that a duty exists if a reasonable person would find that a duty exists under a particular set of circumstances.

For example, if a defendant was loading bags of grain onto a truck and struck a child with one of the bags, the first question that must be resolved is whether the defendant owed a duty to the child. If the loading dock was near a public place, such a public sidewalk, and the child was merely passing by, then the court may be more likely to find that the defendant owed a duty to the child. On the other hand, if the child were trespassing on private property and the defendant didn't know that the child was present at the time of the accident, then the court would be less likely to find that the defendant owed a duty.

2. Breach of Duty

It's not enough for a plaintiff to prove that the defendant owed him or her or a duty; the plaintiff must also prove that the defendant breached his or duty to the plaintiff. A defendant breaches such a duty by failing to exercise reasonable care in fulfilling the duty. Unlike the question of whether a duty exists, the issue of whether a defendant breached a duty of care is decided by a jury as a question of fact. Thus, in the example above, a jury would decide whether the defendant exercised reasonable care in handling the bags of grain near the child.

3. Cause in Fact

Under the traditional rules in negligence cases, a plaintiff must prove that the defendant's actions were the actual cause of the plaintiff's injury. This is often referred to as "but-for" causation, meaning that, but for the defendant's actions, the plaintiff's injury would not have occurred. The child in the example above could prove this element by showing that but for the defendant's negligent act of tossing the grain, the child would not have suffered harm.

4. Proximate Cause

Proximate cause relates to the scope of a defendant's responsibility in a negligence case. A defendant in a negligence case is only responsible for those harms that the defendant could have foreseen through his or her actions. If a defendant has caused damages that are outside of the scope of the risks that the defendant could have foreseen, then the plaintiff cannot prove that the defendant's actions were the proximate cause of the plaintiff's damages.

In the example described above, the child would prove proximate cause by showing that the defendant could have foreseen the harm that would have resulted from the bag striking the child. On the contrary, if the harm is something more remote to the defendant's act, then the plaintiff will be less likely to prove this element. Assume that when the child is struck with the bag of grain, the child's bicycle on which he was riding is damaged.

Three days later, the child and his father drive to a shop to have the bicycle fixed. On their way to the shop, the father and son are struck by another car. Although the harm to the child and the damage to the bicycle may be within the scope of the harm that the defendant risked by his actions, the defendant probably could not have foreseen that the father and son would be injured on their way to having the bicycle repaired three days later. Hence, the father and son wouldn't be able to satisfy the element of proximate causation

5. Damages

A plaintiff in a negligence case must prove a legally recognized harm, usually in the form of physical injury to a person or to property. It's not enough that the defendant failed to exercise reasonable care. The failure to exercise reasonable care must result in actual damages to a person to whom the defendant owed a duty of care.

Ques 8. Define Nervous Shock?

Ans. Nervous Shock

• Nervous shock refers to a psychiatric illness caused by shock. Nervous shock is different from normal grief, sorrow, or anxiety. Usually, primary victims involved in an accident recover damages for shock.

• Generally, there can be no recovery for a nervous shock unaccompanied by physical injury. However, when the nervous shock follows as a result of physical injury, the nervous shock is a part of the physical injury, and a plaintiff is entitled to recovery for nervous injury.

Definition To amount in law to "nervous shock", the psychiatric damage suffered by the claimant must extend beyond grief or emotional distress to a recognised mental illness, such as anxiety neurosis or reactive depression. Damages for bereavement suffered as a result of the wrongful death of a close one are available under the Fatal Accidents Act 1976, while courts can also award damages for "pain and suffering" as a result of physical injury.

Intentionally inflicted nervous shock

It is well established in English law that a person who has intentionally and without good reason caused another emotional distress will be liable for any psychiatric injury that follows.[2] An example of this is a bad practical joke played on someone which triggered serious depression in that person. The joker intended to cause the other person emotional distress and will be liable for the medical consequences.

Negligently inflicted nervous shock

Before a claimant can recover damages for the nervous shock which he suffered as a result of the defendant's negligence, he must prove all of the elements of the tort of negligence:

1. The existence of a duty of care, i.e. the duty on the part of the defendant not to inflict nervous shock upon the claimant;

2. A breach of that duty, i.e. the defendant's actions or omissions in those circumstances fell below what would be expected from a reasonable person in the circumstances.

3. A causal link between the breach and the psychiatric illness, i.e. the nervous shock was the direct consequence of the defendant's breach of duty;

4. The nervous shock was not too remote a consequence of the breach.

For fear of spurious actions and unlimited liability of the defendant to all those who may suffer nervous shock in one form or other, the English courts have developed a number of "control mechanisms" or limitations of liability for nervous shock. These control mechanisms usually aim at limiting the scope of the defendant's duty of care not to cause nervous shock, as well as at causation and remoteness.

Primary victims

A "primary victim" is a person who was physically injured or could foreseeably have been physically injured as a result of the defendants negligence. An example of this is a claimant who is involved in a car accident caused by the defendant's careless driving and gets mildly injured (or even remains unharmed) as a consequence, but the fright from the crash triggers a serious mental condition. Such a claimant can recover damages for his car, his minor injuries and the nervous shock he had suffered. Rescuers (such as firemen, policemen or volunteers) who put themselves in the way of danger and suffer psychiatric shock as a result used to be "primary victims", until the decision in White v Chief Constable of the South Yorkshire Police explained that rescuers had no special position in the law and had to prove reasonable fear as a consequence of exposure to danger.

Secondary victims

A "secondary victim" is a person who suffers nervous shock without himself being exposed to danger. An example of this is a spectator at a car race, who witnesses a terrible crash caused by negligence on the part of the car manufacturers and develops a nervous illness as a result of his experience. It is in these cases where the courts have been particularly reluctant to award damages for nervous shock. In several decisions, the courts have identified several strict requirements for the recognition of a duty of care not to cause nervous shock, as well as causation and remoteness:

• The claimant must perceive a "shocking event" with his own unaided senses, as an eye-witness to the event, or hearing the event in person, or viewing its "immediate aftermath". This requires close physical proximity to the event, and would usually exclude events witnessed by television or informed of by a third party.

• The shock must be a "sudden" and not a "gradual" assault on the claimant's nervous system. So a claimant who develops a depression from living with a relative debilitated by the accident will not be able to recover damages.

• If the nervous shock is caused by witnessing the death or injury of another person the claimant must show a "sufficiently proximate" relationship to that person, usually described as a "close tie of love and affection". Such ties are presumed to exist only between parents and children, as well as spouses and fiancés. In other relations, including siblings, ties of love and affection must be proved.

• It must be reasonably foreseeable that a person of "normal fortitude" in the claimant's position would suffer psychiatric damage. The closer the tie between the claimant and the victim, the more likely it is that he would succeed in this element. However, once it is shown that some psychiatric damage was foreseeable, it does not matter that the claimant was particularly susceptible to psychiatric illness - the defendant must "take his victim as he finds him" and pay for all the consequences of nervous shock (see "Eggshell skull" rule). A mere bystander can therefore hardly count on compensation for psychiatric shock, unless he had witnessed something so terrible that anybody could be expected to suffer psychiatric injury as a result. However, it seems that such a case is purely theoretic (see McFarlane v. EE

Caledonia Ltd, where the plaintiff witnessed an explosion of a rig where he and his colleagues worked, but received no compensation).

Ques 10. Explain Nuisance along with case laws?

Ans. NUISANCE

The word "nuisance" is derived from the French word "nuire", which means "to do hurt, or to else's improper use in his property results into an unlawful interference with his use or enjoyment of that property or of some right over, or in connection with it, we may say that tort of nuisance occurred annoy". One in possession of a property is entitled as per law to undisturbed enjoyment of it. If someone. In other words, Nuisance is an unlawful interference with a person's use or enjoyment of land, or of some right over, or in connection with it. Nuisance is an injury to the right of a person in possession of a property to undisturbed enjoyment of it and result from an improper use by another person in his property.

Stephen defined nuisance to be "anything done to the hurt or annoyance of the lands, tenements of another, and not amounting to a trespass."

According to Salmond, "the wrong of nuisance consists in causing or allowing without lawful justification the escape of any deleterious thing from his land or from elsewhere into land in possession of the plaintiff, e.g. water, smoke, fumes, gas, noise, heat, vibration, electricity, disease, germs, animals".

In order that nuisance is actionable tort, it is essential that there should exist:

· wrongful acts;

· damage or loss or inconvenience or annoyance caused to another. Inconvenience or discomfort to be considered must be more than mere delicacy or fastidious and more than producing sensitive personal discomfort or annoyance. Such annoyance or discomfort or inconvenience must be such which the law considers as substantial or material.

In **Ushaben v. Bhagyalaxmi Chitra Mandir, AIR 1978 Guj 13,** the plaintiffs'-appellants sued the defendants-respondents for a permanent injunction to restrain them from exhibiting the film "Jai Santoshi Maa". It was contended that exhibition of the film was a nuisance because the plaintiff's religious feelings were hurt as Goddesses Saraswati, Laxmi and Parvati were defined as jealous and were ridiculed. It was held that hurt to religious feelings was not an actionable wrong. Moreover the plaintiff's were free not to see the movie again.

In **Halsey v. Esso Petroleum Co. Ltd. (1961) 2 All ER 145:**,the defendant's depot dealt with fuel oil in its light from the chimneys projected from the boiler house, acid smuts containing sulphate were emitted and were visible falling outside the plaintiff's house. There was proof that the smuts had damaged clothes hung out to dry in the garden of the plaintiff's house and also paint work of the plaintiff's car which he kept on the highway outside the door of his house. The depot emanated a pungent and nauseating smell of oil which went beyond a background smell and was more than would affect a sensitive person but the plaintiff had not suffered any injury in health from the smell. During the night there was noise from the boilers which at its peak caused window and doors in the plaintiff's house to vibrate and prevented the plaintiff's sleeping. An action was brought by the plaintiff for nuisance by acid smuts, smell and noise. The defendants were held liable to the plaintiff in respect of emission of acid smuts, noise or smell.

Ques 11. What do you understand by false imprisonment and malicious prosecution?

Ans. An unjustified criminal charge can be devastating to an innocent person. Even when criminal proceedings absolve a guiltless person, the stigma attached with detention and accusations of criminal activity can lead to significant economic and non economic losses. Job opportunities are foreclosed. Anxiety, depression and humiliation often follow. This blog explores two of the tort remedies available to the falsely accused in the civil justice system.

The elements of malicious prosecution are:

(1) a criminal case was brought against the plaintiff

(2) the criminal case was brought as a result of oral or written statements made by the defendant;

(3) the criminal case ended in the favor of the plaintiff;

(4) the defendant's statements against the plaintiff were made without probable cause; and

(5) the defendant's statements were motivated by malice toward the plaintiff. The elements of malicious prosecution pose a significant burden to the Plaintiff. As the elements note, the criminal case must be resolved in the favor of the Plaintiff. This means that the case must be dismissed or the plaintiff must be acquitted. Even if the plaintiff is actually innocent, the claim will not succeed if the plaintiff is found guilty at trial. Additionally, the claim must be made without probable cause. Probable cause means that the reporter of the crime must have a good faith and reasonable belief that the Plaintiff was guilty of the offense. It is not enough that the plaintiff is. It must be apparent to a reasonable person that the plaintiff is not guilty of the offense. Finally innocent, it should be noted that prosecuting attorneys generally cannot be held liable for malicious prosecution. False imprisonment is a tort separate from malicious prosecution.

The elements of false imprisonment are:

(1) the defendant intended to restrict the plaintiff's freedom of movement;

2) the defendant, directly or indirectly, restricted the plaintiff's freedom of movement; and

(3) the plaintiff was aware that his or her movement was restricted. False imprisonment is viable tort in a number of circumstances. One such circumstance is when an individual levels

a false allegation against another leading to an arrest and detention. The defendant must directly or indirectly restrict of movement.

There are several notable affirmative defenses to false imprisonment. Most of the affirmative defenses revolve around the rights of police officers and business owners to arrest or detain individuals suspected of committing a crime. Generally, police officers and shopkeepers have the right to detain individuals that they reasonably believe have committed a crime. Note that a plaintiff can sue the police for false imprisonment. However, the police have a privilege to arrest individuals without a warrant. If the police officer believed and had probable cause to believe that the accused had committed a criminal offense, that officer cannot be held liable for false arrest.

Ques 12. Define Judicial and Quasi Judicial act?

Ans. Judicial

The rule is that “no action will lie against a judge for any acts done or words spoken in his judicial capacity in a court of justice”. And the exemption is not confined to judges of superior courts. It is founded on the necessity of judges being independent in the exercise of their office, a reason which applies equally to all judicial proceedings. But in order to establish the exemption as regards proceedings in an inferior court, the judge must show that at the time of the alleged wrong-doing some matter was before him in which he had jurisdiction (whereas in the case of a superior court it is for the plaintiff to prove want of jurisdiction); and the act complained of must be of a kind which he had power to do as judge in that matter.

Thus a revising barrister has power by statute “to order any person to be removed from his court who shall interrupt the business of the court, or refuse to obey his [105] lawful orders in respect of the same”: but it is an actionable trespass if under color of this power he causes a person to be removed from the court, not because that person is then and there making a disturbance, but because in the revising barrister’s opinion he improperly suppressed facts within his knowledge at the holding of a former court. The like law holds if a county court judge commits a party without jurisdiction, and being informed of the facts which show that he has no jurisdiction; though an inferior judge is not liable for an act which on the facts apparent to him at the time was within his jurisdiction, but by reason of facts not then shown was in truth outside it.

A judge is not liable in trespass for want of jurisdiction, unless he knew or ought to have known of the defect; and it lies on the plaintiff, in every such case, to prove that fact. And the conclusion formed by a judge, acting judicially and in good faith, on a matter of fact which it is within his jurisdiction to determine, cannot be disputed in an action against him for anything judicially done by him in the same cause upon the footing of that conclusion.

Allegations that the act complained of was done "maliciously and corruptly," that words were spoken "falsely and maliciously," or the like, will not serve to make an action of this kind maintainable against a judge either of a superior or of an inferior court.

There are two cases in which by statute an action does or did lie against a judge for misconduct in his office, namely, if he refuses to grant a writ of habeas corpus in vacation time, and if he refused to seal a bill of exceptions.

The rule of immunity for judicial acts is applied not only to judges of the ordinary civil tribunals, but to members of naval and military courts-martial or courts of inquiry constituted in accordance with military law and usage. It is also applied to a limited extent to arbitrators, and to any person who is in a position like an arbitrator's, as having been chosen by the agreement of parties to decide a matter that is or may be in difference between them. Such a person, if he acts honestly, is not liable for errors in judgment. He would be liable for a corrupt or partisan exercise of his office; but if he really does use a judicial discretion, the rightness or competence of his judgment cannot be brought into question for the purpose of making him personally liable.

QUASI-JUDICIAL ACTS

These quasi-judicial functions are in many cases created or confirmed by Parliament. Such are the powers of the universities over their officers and graduates, and of colleges in the universities over their fellows and scholars, and of the General Council of Medical Education over registered medical practitioners. Often the authority of the quasi-judicial body depends on an instrument of foundation, the provisions of which are binding on all persons who accept benefits under it. Such are the cases of endowed schools and religious congregations. And the same principle appears in the constitution of modern incorporated companies, and even of private partnerships. Further, a quasi-judicial authority may exist by the mere convention of a number of persons who have associated themselves for any lawful purpose, and have entrusted powers of management and discipline to select members. The committees of most clubs have by the rules of the club some such authority, or at any rate an initiative in presenting matters of discipline before the whole body. The Inns of Court exhibit a curious and unique example of great power and authority exercised by voluntary unincorporated societies in a legally anomalous manner. Their powers are for some purposes quasi-judicial, and yet they are not subject to any ordinary jurisdiction.

The general rule as to quasi-judicial powers of this class is that persons exercising them are protected from civil liability if they observe the rules of natural justice, and also the particular statutory or conventional rules, if any, which may prescribe their course of action. The rules of natural justice appear to mean, for this purpose, that a man is not to be removed from office or membership, or otherwise dealt with to his disadvantage, without having fair and sufficient notice of what is alleged against him, and an opportunity of making his defence; and that the decision, whatever it is, must be arrived at in good faith with a view to the common interest of the society or institution concerned. If these conditions be satisfied, a court of justice will not interfere, not even if it thinks the decision was in fact wrong. If not, the act complained of will be declared void, and the person affected by it maintained in his rights until the matter has been properly and regularly dealt with. These principles apply to the expulsion of a partner from a private firm where a power of expulsion is conferred by the partnership contract.

It may be, however, that by the authority of Parliament (or, it would seem, by the previous agreement of the party to be affected) a governing or administrative body, or the majority of an association, has power to remove a man from office or the like without anything in the nature of judicial proceedings, and without showing any cause at all. Whether a particular authority is judicial or absolute must be determined by the terms of the particular instrument creating it.

On the other hand, there may be question whether the duties of a particular office be quasi-judicial, or merely ministerial, or judicial for some purposes and ministerial for others. It seems that at common law the returning or presiding officer at a parliamentary or other election has a judicial discretion, and does not commit a wrong if by an honest error of judgment, he refuses to receive a vote: but now in most cases it will be found that such officers are under absolute statutory duties, which they must perform at their peril.

Ques 13. Define Vicarious Liability?

Ans. Vicarious liability means the liability of one person for the torts committed by another person. The general rule is that every person is liable for his own wrongful act. However, in certain cases a person may be made liable for wrongful acts committed by another person. For example: An employer may be held liable for the tort of his employees. Similarly, a master is liable for any tort, which the servant commits in the course of his employment. The reason for this rule of common law is that: -

As the master has the benefit of his servant's service he should also accept liabilities.

– The master should be held liable as he creates circumstances that give rise to liability.

- The servant was at mere control and discretion of the master.

- Since the master engages the servant, he ought to be held liable when gagging a wrong person.

- The master is financially better placed than the servant.

It must be proved that a person was acting as a servant and that the said tort was committed in the course of his employment before a master can be sued for a tort committed by his servant.

MASTER AND SERVANT

A servant means a person employed under a contract of service and acts on the orders of his master. The master therefore controls the manner in which his work is done. The concept of vicarious liability is based on the principle of equity that employee is normally people of meager resources and it is therefore only fair that the injured person is allowed to recover damages from the employers. Therefore a master is liable for the torts committed by his servant. To prove liability under master-servant relationship the servant must have acted in the course of his employment A master is liable whether the act in a question was approved by him or not. It is immaterial that the alleged act was not done for the benefit of the master. But the master is not liable for torts committed beyond the scope of employment. A servant is a person who works under the control of and is subject to the directions of another e.g. house-help, home servant, chauffeurs etc. Such persons are employed under a contract of service. The servant would also hold his master liable for torts committed in the course of duty for action done on ostensible authority. For vicarious liability to arise, it must be proved that:

1. There was a lawful relationship between the parties.

2. There must have been a contract of service between the parties.

3. The servant is under the control and discretion of the master. This control and discretion is determined by the master‟s freedom:

- To hire or fire the servant.

- To determine the tasks to be discharged.

- To provide implements.

- To determine how the tasks would be discharged.

- To determine the servants remuneration. - That the tort was committed by the servant in the course of his employment. This is irrespective of whether the servant was acting negligently, criminally, deliberately or wantonly for his own benefit.

An employer is however responsible for the torts committed by an independent contractor where the contract, if properly carried out, would involve commission of a tort and also in cases where the law entrusts a high duty of care upon the employer.

INDEPENDENT CONTRACTOR

An independent contract means a person who undertakes to produce a given result without being controlled on how he achieves that result. These are called contract for service. Because the employer has no direct control of him, he (the employer) is not liable for his wrongful acts. However, there are certain cases (exception) under which the employer may still be liable. These are: -

a). Where the employer retains his control over the contractor and personally interferes and makes himself a party to the act, which causes the damage.

b). Where the thing contracted is in itself a tort.

c). Where the thing contracted to be done is likely to do damage to other people's property or cause nuisance.

d). Where there is strict liability without proof of negligence e.g. the rule in Ryland vs. Fletcher.

Ques 14. Define Strict Liability?

Ans. Strict liability means liability without proof of any fault on the part of the wrongdoer. Once the plaintiff is proved to have suffered damage from the defendant's wrongful conduct, the defendant is liable whether there was fault on his part or not. Strict liability must be distinguished from absolute liability. Where there is absolute liability, the wrong is actionable without proof of fault on the part of the wrong-doer and in addition, there is no defense whatsoever to the action. Where there is strict liability, the wrong is actionable without proof of fault but some defenses may also be available .

Strict liability may be considered in the following case namely:

i. The rule in Ryland Vs. Fletcher (1866)
ii. Liability for fire and;
iii. Liability for animals.

1.The rule in RYLAND VS FLETCHER (1866) The rule is base on the judgment contained in the above case. It states that; "The person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and, is prima facie answerable for all the damage which is the natural consequence of its escape". The above rule is commonly called the rule in Ryland vs. Fletcher. It was formulated on the basis of the case of Ryland vs. Fletcher (1866). In this case Ryland had employed independent contractors to construct a reservoir on his land adjoining that of Fletcher. Due to the contractor's negligence, old mine shafts, leading from Ryland‟s land to Fletcher's were not blocked. When the reservoir was filled, the water escaped through the shafts and flooded the plaintiffs mine and caused great damage. The court held that Ryland was liable and it was immaterial that there was no fault on their part.

Limits of the rule.

For this rule to apply the following conditions must be applied:

i. Non-natural user: The defendant must have used his land in a way, which is not ordinarily natural.

ii. Bringing into, or keeping or accumulating things on land for personal use.

iii. That the things brought were capable of causing mischief if they escaped. These things need not be dangerous always.

iv. Need for escape: There must be actual escape of the thing from the defendants land and not a place outside it.

v. That the plaintiff suffered loss or damage for such escape.

Defenses in rule in Ryland vs. Fletcher.

i. Acts of God: Act of God is a good defense to an action brought under the rule.

ii. Plaintiffs' Fault: If the escape of the thing is due to the fault of the plaintiff, the defendant is not liable. This is because the plaintiff has himself brought about his own suffering.

iii. Plaintiff‟s consent or benefit: That the accumulation or bringing of the thing was by consent of the plaintiff.

iv. Statutory authority: That the thing was brought into the land by requirement of an Act of parliament.

v. Contributory negligence: if the plaintiff was also to blame for the escape.

vi. Wrongful act of third party: the defendant may take the defence of the wrongful acts of a third party though he may still be held liable in negligence if he failed to foresee and guard against the consequences to his works of that third party‟s act.

2. Liability for Fire: The liability for fire due to negligence is actionable in tort. It is also a case of strict liability. Therefore, if a fire starts without negligence but it spreads due -to negligence of a person, then that person will be liable for damages caused by the spread of the fire.

3. Liability for Animals: This may arise in cases of negligence. An occupier of land is liable for damage done by his cattle if they trespass onto the land of his neighbors thus causing damage. In the same way, person who keeps dangerous animals like leopards, dogs, lions, etc is liable strictly for any injury by such animals. He cannot claim that he was careful in keeping them. He remains liable even in the absence of negligence.

Ques 15. Define the term Defamation?

Ans. Defamation means the publication of a false statement regarding another person without lawful justification, which tends to lower his reputation in the estimation of right thinking members of society or which causes him to be shunned or avoided or has a tendency to injure him in his office, professions or trade. It has also been defined as the publication of a statement that tends to injure the reputation of another by exposing him to hatred, contempt or ridicule. In the case of Dixon Vs Holden (1869) the right of reputation is recognized as an inherent right of every person, which can be exercised against the entire world. A man‟s reputation is therefore considered his property.

Following are the essential elements of defamation: -

i. False statement: The defendant must have made a false statement. If the statement is true, it's not defamation.

ii. Defamatory statement: The statement must be defamatory. A statement is said to be defamatory when it expose the plaintiff to hatred, contempt, ridicule or shunning or injures him in his profession or trade among the people known to him.

iii. Statement refers the plaintiff: The defamatory statement must refer to the plaintiff. But the plaintiff need not have been specifically named. It is sufficient if right thinking members of the society understand the statement to refer to the plaintiff.

iv. Statement must be Published: Publication of the statement consists in making known of the defamatory matter to someone else (third parties) other than the plaintiff.

TYPES OF DEFAMATION

1. Slander:

Slander takes place where the defamatory statement are made in non-permanent form e.g. by word of mouth, gestures, etc. Slander is actionable only on proof of damage. However, in exceptional cases, a slanderous statement is actionable without proof of damage. This is so in cases: a) Where the statement inputs a criminal offence punished by imprisonment. b) Where the statement inputs a contagious disease on the plaintiff. c) Where the statement inputs unchastely on a woman. d) Where the statement imputes incompetence on the plaintiff in his trade, occupation or profession.

2. Libel:

Libel takes place where the defamatory permanent form e.g. in writing, printing, television broadcasting, effigy, etc. Where a defamatory matter is dictated to a secretary and she subsequently transcribes it, the act of dictation constitutes a slander while the transcript is a libel.

An action for libel has the following essential requirements:

i) it must be proved that the statement is false,

ii) in writing,

iii) is defamatory, and

iv) has been published.

Distinctions between slander and libel Libel can be a criminal offence as well as a civil wrong while slander amounts to a mere civil wrong only.

1. Libel is in a permanent form while slander is in a non-permanent form.

2. Under libel, the wrong is actionable per se whereas in slander the plaintiff must prove actual damage except when it conveys certain imputations.

3. Libel can be a criminal offence and may as well give rise to civil liability while slander is essentially a civil wrong. Defenses against defamation

i. Truth or justification:

Truth is a complete defense to an action on libel or slander. The defendant must be sure of proving the truth of the statement otherwise more serious and aggravated damage may be awarded against him.

ii. Fair comment:

Fair comment on a matter of Public interest is a defense against defamation. The word "fair" means honesty relevant and free from malice and improper motive.

iii. Absolute Privilege:

Certain matters are not actionable at all in defamation. They are absolutely privileged. A matter is said to be privileged when the person who makes the communication has a moral duty to make it to the person to whom he does make it, and the person who received it has an interest in hearing it. They include statements made by the judges or magistrates in the course of judicial proceedings, statements made in Parliament by Legislators and communication between spouses, etc.

iv. Qualified Privilege:

In this case a person is entitled to communicate a defamatory statement so long as no malice is proved on his part. They include statements made by a defendant while defending his reputation, communications made to a person in public position for public good, etc.

v. Apology or offer of Amends:

The defendant is at liberty to offer to make a suitable correction of the offending statement coupled with an apology. Such offers maybe relied upon as a defense.

vi. Consent:

In case whereby the plaintiff impliedly consents to the publication complained of, such consent is a defence in defamation.

Remedies for defamation Damages:

The plaintiff can recover damages for injury to his reputation as well as his feelings. Apology: An apology is another remedy available to the plaintiff. This is because it has the effect of correcting the impression previously made by the offending statement about the plaintiff.

Ques 16. Define Consumer, and his rights under consumer protection act 1986?

Ans. consumer 1.2 Section 2(d) of the Consumer Protection Act says that consumer means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;

Explanation.—For the purposes of the sub-clause (i),

"commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment. 1.2-1 Consumer of goods - The provision reveals that a person claiming himself as a consumer of goods should satisfy that— 1-2-1a THE GOODS ARE BOUGHT FOR CONSIDERATION - There must be a sale transaction between a seller and a buyer; the sale must be of goods; the buying of goods must be for consideration. The terms sale, goods, and consideration have not been defined in the Consumer Protection Act. The meaning of the terms 'sale', and 'goods' is to be construed according to the Sale of Goods Act, and the meaning of the term 'consideration' is to be construed according to the Indian Contract Act. 1-2-1b ANY PERSON WHO USE THE GOODS WITH THE APPROVAL OF THE BUYER IS A CONSUMER - When a person buys goods, they may be used by his family members, relatives and friends. Any person who is making actual use of the goods may come across the defects in goods. Thus the law construe users of the goods as consumers although they may not be buyers at the same time. The words "....with the approval of the buyer" in the definition denotes that the user of the goods should be a rightful user. Example : A purchased a scooter which was in B's possession from the date of purchase. B was using it and taking it to the seller for repairs and service from time to time. Later on B had a complaint regarding the scooter. He sued the seller. The seller pleaded that since B did not buy the scooter, he was not a consumer under the Act. The Delhi State Commission held that B, the complainant was using it with the approval of A, the buyer, and therefore he was consumer under the Act.

Rights and Duties of Consumer

Right to Safety: The right to be protected against goods which are hazardous to life and property. Right to Information:

The right to be informed about the quality, quantity, purity, price and standards of goods. Right to Choose:

The right to be assured access to a variety of products at competitive prices, without any pressure to impose a sale, i.e., freedom of choice.

Right to be Heard: The right to be heard and assured that consumer interests will receive due consideration at appropriate forums.

Right to Seek Redressal: The right to get relief against unfair trade practice or exploitation.

Right to Education: The right to be educated about rights of a consumer.

Duties of consumer

Illiteracy and Ignorance: Consumers in India are mostly illiterate and ignorant. They do not understand their rights. So its our duty to know about our rights and to use it in the right place.

Unorganized Consumers: In India consumers are widely dispersed and are not united. They are at the mercy of businessmen. On the other hand, producers and traders are organized and powerful.

Spurious Goods: There is increasing supply of duplicate products. It is very difficult for an ordinary consumer to distinguish between a genuine product and its imitation. It is necessary to protect consumers from such exploitation by ensuring compliance with prescribed norms of quality and safety. Always check the norms of the product.

False Advertising: Some businessmen give misleading information about quality, safety and utility of products. Consumers are misled by false advertisement. To stop this, we the consumer have to know about the product.

Malpractices of Businessmen: Only consumer can avoid and stop the mal practises of the businessmen by opposing them. So this is one of the duty of consume

Ques 17. State the composition of District Commission?

Ans. S. 28. (1) The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State:

- Provided that the State Government may, if it deems fit, establish more than one District Commission in a district

Each District Commission shall consist of—

- (a) a President; and
- (b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government

S. 29. The Central Government may, by notification make rules to provide for the qualifications, method of recruitment, procedure for appointment, term of office, resignation and removal of the President and members of the District Commission.

S. 30. The State Government may, by notification, make rules to provide for salaries and allowances and other terms and conditions of service of the President, and members of the District Commission

Jurisdiction of District Commission

S. 34. (1) Subject to the other provisions of this Act, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed **one crore rupees**: Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit.

Ques 18. State Composition of State Commission and National Commission?

Ans. State Commission

- S. 42. (1) The State Government shall, by notification, establish a State Consumer Disputes Redressal Commission, to be known as the State Commission, in the State.
- (2) The State Commission shall ordinarily function at the State capital and perform its functions at such other places as the State Government may in consultation with the State Commission notify in the Official Gazette:
- Provided that the State Government may, by notification, establish regional benches of the State Commission, at such places, as it deems fit.

Composition of State Commission

Each State Commission shall consist of—

- (a) a President; and

- (b) not less than four or not more than such number of members as may be prescribed in consultation with the Central Government.

Qualification

- S. 43. The Central Government may, by notification, make rules to provide for the qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission.
- S. 44. The State Government may, by notification, make rules to provide for salaries and allowances and other terms and conditions of service of the President and members of the State Commission.

Jurisdiction

- S. 47. (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—
- (a) to entertain—
- (i) **complaints** where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore:
- Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;
- (ii) complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;
- (iii) **appeals** against the orders of any District Commission within the State; and

National Commission

- S. 53. (1) The Central Government shall, by notification, establish a National Consumer Disputes Redressal Commission, to be known as the National Commission.
- (2) The National Commission shall ordinarily function at the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette:
- Provided that the Central Government may, by notification, establish regional Benches of the National Commission, at such places, as it deems fit.

Composition of National Commission

Sec 54. The National Commission shall consist of—

- (a) a President; and
- (b) not less than four and not more than such number of members as may be prescribed.

Qualification

- S. 55. (1) The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President and members of the National Commission:
- Provided that the President and members of the National Commission shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for re-appointment.

Jurisdiction

- 58. (1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction—
- (a) to entertain—
- (i) complaints where the value of the goods or services paid as consideration exceeds rupees ten crore.
- Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;
- (ii) complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;
- (iii) appeals against the orders of any State Commission;
- (iv) appeals against the orders of the Central Authority; and

Ques 19. What are the remedies available under consumer protection act 1986?

Ans. Under this Act, the remedies available to consumers are as follows:

(a) Removal of Defects:

If after proper testing the product proves to be defective, then the 'remove its defects' order can be passed by the authority concerned.

(b) Replacement of Goods:

Orders can be passed to replace the defective product by a new non-defective product of the same type.

(c) Refund of Price:

Orders can be passed to refund the price paid by the complainant for the product.

(d) Award of Compensation:

If because of the negligence of the seller a consumer suffers physical or any other loss, then compensation for that loss can be demanded for.

(e) Removal of Deficiency in Service:

If there is any deficiency in delivery of service, then orders can be passed to remove that deficiency. For instance, if an insurance company makes unnecessary delay in giving final touch to the claim, then under this Act orders can be passed to immediately finalise the claim.

(f) Discontinuance of Unfair/Restrictive Trade Practice:

If a complaint is filed against unfair/restrictive trade practice, then under the Act that practice can be banned with immediate effect. For instance, if a gas company makes it compulsory for a consumer to buy gas stove with the gas connection, then this type of restrictive trade practice can be checked with immediate effect.

(g) Stopping the Sale of Hazardous Goods:

Products which can prove hazardous for life, their sale can be stopped. If there is any deficiency in delivery of service, then orders can be passed to remove that deficiency. For instance, if an insurance company makes unnecessary delay in giving final touch to the claim, then under this Act orders can be passed to immediately finalise the claim.

(h) Discontinuance of Unfair/Restrictive Trade Practice:

If a complaint is filed against unfair/restrictive trade practice, then under the Act that practice can be banned with immediate effect. For instance, if a gas company makes it compulsory for a consumer to buy gas stove with the gas connection, then this type of restrictive trade practice can be checked with immediate effect.

(i) Stopping the Sale of Hazardous Goods:

Products which can prove hazardous for life, their sale can be stopped.

Ques 20. What are kinds of Nuisance?

Ans. Nuisance is of two kinds: ·

Public Nuisance Under Section 3 (48) of the General Clauses Act, 1897, the words mean a public nuisance defined by the Indian Penal Code.

Section 268 of the Indian Penal Code, defines it as "an act or illegal omission which causes any common injury, danger or annoyance, to the people in general who dwell, or occupy property, in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Simply speaking, public nuisance is an act affecting the public at large, or some considerable portion of it; and it must interfere with rights which members of the community might otherwise enjoy.

Thus acts which seriously interfere with the health, safety, comfort or convenience of the public generally or which tend to degrade public morals have always been considered public nuisance.Public nuisance can only be subject of one action, otherwise a party might be ruined by a million suits. Further, it would give rise to multiplicity of litigation resulting in burdening the judicial system. Generally speaking, Public Nuisance is not a tort and thus does not give rise to civil action.

In the following circumstances, an individual may have a private right of action in respect a public nuisance.

1. He must show a particular injury to himself beyond that which is suffered by the rest of public i.e. he must show that he has suffered some damage more than what the general body of the public had to suffer.

2. Such injury must be direct, not a mere consequential injury; as, where one is obstructed, but another is left open.

3. The injury must be shown to be of a substantial character, not fleeting or evanescent. In Solatu v. De Held (1851) 2 Sim NS 133, the plaintiff resided in a house next to a Roman Catholic Chapel of which the defendant was the priest and the chapel bell was rung at all hours of the day and night. It was held that the ringing was a public nuisance and the plaintiff was held entitled to an injunction.

In **Leanse v. Egerton, (1943) 1 KB 323**, The plaintiff, while walking on the highway was injured on a Tuesday by glass falling from a window in an unoccupied house belonging to the defendant, the window having been broken in an air raid during the previous Friday night. Owing to the fact that the offices of the defendant's agents were shut on the Saturday and the Sunday and to the difficulty of getting labour during the week end, no steps to remedy the risk to passers by had been taken until the Monday. The owner had no actual knowledge of the state of the premises.

It was held that the defendant must be presumed to have knowledge of the existence of the nuisance, that he had failed to take reasonable steps to bring it to an end although he had ample time to do so, and that, therefore, he had "continued" it and was liable to the plaintiff.

In Attorney General v. P.Y.A. Quarries, (1957)1 All ER 894:, In an action at the instance of the Attorney General, it was held that the nuisance form vibration causing personal discomfort was sufficiently widespread to amount to a public nuisance and that injunction was rightly granted against the quarry owners restraining them from carrying on their operations.

Without Proving Special Damage

In India under Section 91 of the Civil Procedure Code, allows civil action without the proof of special damage. It reads as follows:

"S. 91.(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted

-by the Advocate General, or with the leave of the court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions."

Thus, a suit in respect of a public nuisance may be instituted by any one of the followings:

By the Advocate-General acting ex officio; or

By him at the instance of two or more persons or

by two or more persons with the leave of the Court.

Private Nuisance

Private nuisance is the using or authorising the use of one's property, or of anything under one's control, so as to injuriously affect an owner or occupier of property by physically injuring his property or affecting its enjoyment by interfering materially with his health, comfort or convenience.

In contrast to public nuisance, private nuisance is an act affecting some particular individual or individuals as distinguished from the public at large. The remedy in an action for private nuisance is a civil action for damages or an injunction or both and not an indictment.

Elements of Private Nuisance Private nuisance is an unlawful interference and/or annoyance which cause damages to an occupier or owner of land in respect of his enjoyment of the land.

Thus, the elements of private nuisance are:

1. unreasonable or unlawful interference;

2. such interference is with the use or enjoyment of land, or some right over, or in connection with the land; and

3. damage. Nuisance may be with respect to property or personal physical discomfort

Nuisance may be with respect to property or personal physical discomfort

1. Injury to property In the case of damage to property any sensible injury will be sufficient to support an action.

In **St. Helen Smelting Co. v. Tipping, (1865) 77 HCL 642:,** the fumes from the defendant's manufacturing work damaged plaintiff's trees and shrubs. The Court held that such damages being an injury to property gave rise to a cause of action.

In **Ram Raj Singh v. Babulal, AIR 1982 All. 285**:, the plaintiff, a doctor, complained that sufficient quantity of dust created by the defendant's brick powdering mill, enters the consultation room and causes discomfort and inconvenience to the plaintiff and his patients.

The Court held that when it is established that sufficient quantity of dust from brick powdering mill set up near a doctor's consulting room entered that room and a visible thin red coating on clothes resulted and also that the dust is a public hazard bound to injure the health of persons, it is clear the doctor has proved damage particular to himself. That means he proved special damage.

2. Physical discomfort

In case of physical discomfort there are two essential conditions to be fulfilled:

a. In excess of the natural and ordinary course of enjoyment of the property – In order to be able to bring an action for nuisance to property the person injured must have either a proprietary or possessory interest in the premises affected by the nuisance.

b. Materially interfering with the ordinary comfort of human existence-The discomfort should be such as an ordinary or average person in the locality and environment would not put up with or tolerate.

Following factors are material in deciding whether the discomfort is substantial:

its degree or intensity;

its duration;

its locality;

the mode of user of the property.

In **Broadbent v. Imperial Gas Co. (1856) 7 De GM & G 436:**, an injunction was granted to prevent a gas company from manufacturing gas in such a close proximity to the premises of the plaintiff, a market gardener, and in such a manner as to injure his garden produce by the escape of noxious matter.

In **Shots Iron Co. v. Inglis, (1882) 7 App Cas 518**: An injunction was granted to prevent a company from carrying on calcining operations in any manner whereby noxious vapours would be discharged, on the pursuer's land, so as to do damage to his plantations or estate.

FINANCIAL MANAGEMENT (LLB – 114)

UNIT -1

Q-1. Explain the scope of financial management. What role should the financial manager play in modern enterprises.

Ans 1: The scope of financial management can be studied under the following heads: -

Traditional Approach 2. Modern Approach.

The Traditional Approach-
Till the middle of the 20th century, the nature of financial management is performed very well in terms of allocation of funds and the proper development of the business. It includes various features to define the old concept:

It was descriptive in nature and help the business to raise the finance.

The old concept looks like static in nature,

The old approach function followed the long-term growth but ignores the management strategy, working capital, capital budgeting techniques, and planning.

It helps to make the code of conduct to the modern techniques,

The Modern Approach-

The modern concept of **financial management** looks like a very broad concept and it also works for the development of an integral part of the management. It now plays a role of decision making for the purpose of improving the business operations with using proper methods or techniques.
This concept helps to associates the insider management with the outsider management. Instead of the preservation of liquidity and confined to the raising of funds, it is work with the help of financial planning, coordination, and control system for doing the proper business environment. So, that's the reason, modern management plays a crucial role rather than traditional management.

It includes various features like-

It helps to maintain the continuity of transactions,

Wider form,

It is the necessary part of the successful management,

It helps to measure the performance.

The functions of Financial Manager are discussed below:
Estimating the Amount of Capital Required
Determining Capital Structure
Choice of Sources of Funds
Procurement of Funds
Utilisation of Funds
Disposal of Profits or Surplus
Management of Cash
Financial Control

Q-2. Discuss the objectives and goals of financial management.

Ans 2: The objectives of financial management are given below:

Profit maximization

Main aim of any kind of economic activity is earning profit. A business concern is also functioning mainly for the purpose of earning profit. Profit is the measuring techniques to understand the business efficiency of the concern. The finance manager tries to earn maximum profits for the company in the short-term and the long-term.

Wealth maximization

Wealth maximization (shareholders' value maximization) is also a main objective of financial management. Wealth maximization means to earn maximum wealth for the shareholders. So, the finance manager tries to give a maximum dividend to the shareholders.

Proper estimation of total financial requirements

Proper estimation of total financial requirements is a very important objective of financial management. The finance manager must estimate the total financial requirements of the company. He must find out how much finance is required to start and run the company. He must find out the fixed capital and working capital requirements of the company.

Proper mobilization

Mobilization (collection) of finance is an important objective of financial management. After estimating the financial requirements, the finance manager must decide about the sources of finance. He can collect finance from many sources such as shares, debentures, bank loans, etc. There must be a proper balance between owned finance and borrowed finance. The company must borrow money at a low rate of interest.

Proper utilization of finance

Proper utilization of finance is an important objective of financial management. The finance manager must make optimum utilization of finance. He must use the finance profitable. He must not waste the finance of the company. He must not invest the company's finance in unprofitable projects. He must not block the company's finance in inventories. He must have a short credit period.

Maintaining proper cash flow

Maintaining proper cash flow is a short-term objective of financial management. The company must have a proper cash flow to pay the day-to-day expenses such as purchase of raw materials, payment of wages and salaries, rent, electricity bills, etc. If the company has a good cash flow, it can take advantage of many opportunities such as getting cash discounts on purchases, large-scale purchasing, giving credit to customers, etc. A healthy cash flow improves the chances of survival and success of the company.

Survival of company

Survival is the most important objective of financial management. The company must survive in this competitive business world. The finance manager must be very careful while making financial decisions. One wrong decision can make the company sick, and it will close down.

Q-3. Describe Profit Maximization as an objective of financial management.

Ans 3: Profit maximization: Profit maximization is considered as the goal of financial management. In this approach actions that increase the profits should be undertaken and the actions that decrease the profits are avoided. The term 'profit' is used in two senses. In one sense it is used as an owner oriented. In this concept it refers to the amount and share of national Income that is paid to the owners of business. The second way is an operational concept i.e. profitability. It is the traditional and narrow approach, which aims at, maximizes the profit of the concern. The Ultimate aim of the business concern is earning profit, hence, it considers all the possible ways to increase the profitability of the concern. Profit is the parameter of measuring the efficiency of the business concern. So it shows the entire position of the business concern. and hence Profit maximization objectives help to reduce the risk of the business. Its main aim is to earn profit. In this criteria Profit is the main parameter of business operation. It reduces the risk of business concern. In this criteria profit is the main source of finance and profitability meets the social needs.

Q-4. Describe Wealth Maximization as an objective of financial management.

Ans – 4: **Wealth Maximization**: Wealth maximization is one of the modern approaches, which involves latest innovations and improvements in the field of the business concern. The term wealth means shareholder wealth or the wealth of the persons those who are involved in the business concern. Wealth maximization is also known as value maximization or net present worth maximization. This objective is a universally accepted concept in the field of business. It removes technical disadvantages of the profit maximization. Wealth maximization is superior to the profit maximization because the main aim of the business concern under this concept is to improve the value or wealth of the shareholders. Wealth maximization considers the comparison of the value to cost associated with the business concern. Total value detected from the total cost incurred for the business operation. It provides extract value of the business concern. This concept considers both time and risk of business concern. This criteria provides efficient allocation of resources and it also ensures the economic interest of the society. The wealth maximization criterion is based on cash flows generated and not on accounting profit. The computation of cash inflows and cash outflows is precise. Wealth maximization can be activated only with the help of the profitable position of the business concern. So The goal of maximizing the value of the stock avoids the problems associated with the different goals we discussed above.in a simple language a good financial decisions increase the market value of the owners' equity and poor financial decisions decrease it. So the financial manager best serves the owners of the business by identifying goods and services that add value to the firm because they are desired and valued in the free marketplace. So it is a long term concept based on the cash flows rather than profits and hence there can be a situation where a business makes losses every year but there are cash profits because of heavy depreciation which indirectly suggests heavy investment in fixed assets and that is the real wealth and it takes into account the time value of money and so is universally accepted.

Q-5. What do you mean by Agency Problem? How this can be resolved?

Ans – 5: The agency problem is a conflict of interest inherent in any relationship where one party is expected to act in another's best interests. In corporate finance, the agency problem usually refers to a conflict of interest between a company's management and the company's stockholders. The manager, acting as the agent for the shareholders, or principals, is supposed to make decisions that will maximize shareholder wealth even though it is in the manager's best interest to maximize his own wealth.

Resolving agency problem:

Full Transparency

Agency problems are most prevalent when there's a disparity in knowledge between the agent and the principal. It's too easy and too tempting for the agent to exploit the knowledge gap for personal gain. When agent-principal relationships arise in your business, practising full transparency can help close the knowledge gap and prevent the agency problem from emerging. The agent should educate you, the principal, on everything that's going on, rather than leaving you in the dark while the agent makes decisions on your behalf.

Restrictions on the Agent's Capabilities

Giving the agent too much power to act on your behalf opens the door for future challenges and can lead the financial advisor to perhaps make poor choices. Most successful governments practice checks and balances because it tempers the power of any one individual or entity, keeping corruption to a minimum. You can practice the same principles in your business by limiting the power of the agent.

Commission and Bonus Structures

Perhaps the simplest method for eliminating the agency problem is to remove financial incentives that encourage conflicts of interest. Returning to the financial advisor example, the agency problem exists in that scenario because the advisor's compensation is tied to the specific financial products, he offers you.

Q-6. Mr. X has invested Rs.10000 now for 3 years at the interest rate of 12% pa. Find the amount he will get after 3 years.

Ans-6 : $FV = PV(1+r)^n$

P = 10000 r = 0.12 % n = 3 yrs

$FV = 10000\ (1+0.12)^3$

FV= 10000 (1.404)

FV = 14049.28

Q-7. Mr. X will get Rs.20000 if he invests for 2 years at the rate of 5%pa. What amount should he invest to get the desired amount?

Ans – 7: $PV = \frac{FV}{(1+r)^n}$

$PV = \frac{20000}{(1+0.05)^2}$

$PV = \frac{20000}{1.1022}$

PV = 18,145.

UNIT – 2

Q-1. What do you understand by capital budgeting? Explain any five objectives of capital budgeting?

Ans – 1: Capital Budgeting is the process of making investment decision in fixed assets or capital expenditure. Capital Budgeting is also known as investment, decision making, planning of capital acquisition, planning and analysis of capital expenditure etc.
The following are the objectives of capital budgeting.

To find out the profitable capital expenditure.

To know whether the replacement of any existing fixed assets gives more return than earlier.

To decide whether a specified project is to be selected or not.

To find out the quantum of finance required for the capital expenditure.

To assess the various sources of finance for capital expenditure.

Q-2. Elaborate the nature of investment decision.

Ans – 2 : The Nature of Investment decision :

Growth

The effects of investment decisions extend into the future and have to be endured for a longer period than the consequences of the current operating expenditure. A firm's decision to invest in long-term assets has a decisive influence decision to invest in long-term assets has a decisive influence on the rate and direction of its growth. A wrong decision can prove disastrous for the continued survival of the firm; unwanted or unprofitable expansion of assets will result in heavy operating costs to the firm. On the other hand, inadequate investment in assets would make it difficult for the firm to compete successfully and maintain its market share.

Risk

A long-term commitment of funds may also change the risk complexity of the firm, if the adoption of am investment increases average gain but causes frequent fluctuations in its earnings, the firm will become more risky. Thus, investment decisions shape the basic character of a firm.

Funding

Investment decisions generally involve large amount of funds, which make it imperative for the firm to plan its investment programmers very carefully and make an advance arrangement for procuring finances internally or extremely.

Irreversibility

Most investment decisions are irreversible. It is difficult to find a market for such capital items once they have been acquired. The firm will incur heavy losses if such assets are scrapped.

Complexity

Investment decisions are among the firm's most difficult decisions. They are an assessment of future events, which are difficult to predict. It is really a complex problem to correctly estimate the future cash flows of an investment economic, political, social and technological forces cause the uncertainty in cash flow estimation.

Q-3. Compare 'NPV' method with 'IRR' method.

Ans – 3 :

NPV	IRR
It is present value of cash inflow less present value of cash outflow.	It is the discount rate that makes NPV of all cash inflows of a project equal to zero.
It is expressed in the form of monetary return, which a company expects from the project.	It is expressed in the form of percentage return, a firm expects from the project.
It is an absolute measure.	It is a relative measure.
This method can be used to evaluate projects or investment plans where there are changes in cash flows.	This method cannot be used to evaluate projects with varying cash flows.

Q-4. A company is considering an investment proposal to install a new machinery. The project will cost Rs. 50,000 with lite of 5 years and no salvage value. The estimated cash flows before tax are:

1year- Rs. 10,000

2 year- Rs. 14,000

3 year- Rs. 11,000

4 year- Rs. 15,000

5 year- Rs. 25,000.

Compute: -i) A.R.R., ii) N.P. V at 10% discount rate, iii) P.I.at 10% discount rate

Ans – 4 : Average income = (10,000 + 14,000 + 11,000 + 15,000 + 25,000)/5

= 55000

Accounting rate of return = Average income/Average investment

= 55000 /25,000*

= 2.2%

*Average investment in project: (50,000)/2
= 25,000

NPV

CASH FLOWS	PV @ 10%	PV OF CASH

		INFLOWS
10000	0.990	9900
14000	0.980	13720
11000	0.971	10681
15000	0.962	14430
25000	0.952	23800
	TOTAL PV OF CASH INFLOWS	72531

NPV = PV OF CASH INFLOWS – PV OF CASH OUTFLOW

= 75231 – 50000

= 25231

PROFITABILITY INDEX = $\frac{\text{Present Value of Cash Flows}}{\text{Initial Investment}}$

PI = $\frac{72531^*}{50000}$

PI = 1.450

*as calculated above in NPV.

Q-5. Company XYZ is considering an investment of Rs.100,000. The useful life of the project is 10 years. The time period is three 3 years. The board of directors has identified two alternatives A and B. The expected annual cash flows are as follows:

Cost or Cash Flow	Project A	Project B
Initial cost	**(Rs.100,000)**	**(Rs.100,000)**
Cash flow year 1	**35,000**	**35,000**
Cash flow year 2	**28,000**	**35,000**
Cash flow year 3	**32,000**	**35,000**
Cash flow year 4	**40,000**	**35,000**

Calculate Payback Period and Justify the chosen project. Also give one limitation of Pay Back Period.

<u>Ans -5 :</u> The payback period for Alternative A is calculated as follows:

35,000 + 28,000 + 32,000 = 95,000. In 3 years the company expects to recover 95,000 of the initial 100,000 invested. After 3 years the company will need to recover 5,000 more of the original investment.

2In year 4, the company expects to recover the remaining 5,000, and the annual cash flow that year is 40,000. Assuming the cash flow is uniform throughout the year, we can divide 5,000 by 40,000 to get 0.125 (or 1.5 months).

The payback period for Alternative A is 3.125 years (i.e., 3 years plus 1.5 months).

The payback period for Alternative B is calculated as follows:

Divide the initial investment by the annuity: 100,000 ÷ 35,000 = 2.86 (or 10.32 months).

The payback period for Alternative B is 2.86 years (i.e., 2 years plus 10.32 months).

As mentioned earlier, Company XYZ's cut off period is 3 years. Since Alternative B recovers the investment within the cut off period (i.e., 2.86 is less than 3), Alternative B can be accepted.

This payback method of evaluating two investment alternatives has its limitation: the time value of money is not considered. To incorporate the time value of money concept, the discounted payback period method can be used.

UNIT – 3

Q-1. Define cost of capital. Explain the factors affecting cost of capital.

Ans- 1 : **Cost of capital** refers to the opportunity cost of making a specific investment. It is the rate of return that could have been earned by putting the same money into a different investment with equal risk. Thus, the cost of capital is the rate of return required to persuade the investor to make a given investment. The factors affecting are :

Current Economic Conditions :

If banks are growing, they can easily give loan at low rate of interest because they need to increase the sale for stability of their products. At that time, company's cost of debt will decrease which is the part of company's cost of capital.

Current Capital Structure :

When we have studied optimal capital structure, we have to study the cost of capital because for optimal capital structure, we need to calculate weighted average cost of capital.

Current Dividend Policy:

Every company has to make dividend policy. What amount of total earning, company is interested to pay as dividend. For this, we have to study Price-Earning Ratio (Dividend/EPS).

Financial and Investment Decisions :

When we get new share capital or debt, we have to tell to fund providers about the usage of their fund. If there is more risk in the investment, both shareholders and creditors will get high reward for this.

Unsystematic Risk:

Unsystematic risk is of two types: Business risk and financial risk. Business risk arises due to investment decisions of the company. Financing risk arises due to financing decisions, i.e. proportion of debt and equity in the capital structure.

Q-2. Explain Net Income Approach and Net Operating Income Approach.

Ans – 2 : Net Income theory was introduced by David Durand.

According to this approach, the capital structure decision is relevant to the valuation of the firm. This means that a change in the financial leverage will automatically lead to a corresponding change in the overall cost of capital as well as the total value of the firm.

According to NI approach, if the financial leverage increases, the weighted average cost of capital decreases and the value of the firm and the market price of the equity shares increases. Similarly, if the financial leverage decreases, the weighted average cost of capital increases and the value of the firm and the market price of the equity shares decreases.

Assumptions of NI approach:

There are no taxes

The cost of debt is less than the cost of equity.

The use of debt does not change the risk perception of the investors.

Net Operating Income theory was introduced by David Durand.

Under the net operating income (NOI) approach, the cost of equity is assumed to increase linearly with average. As a result, the weighted average cost of capital remains constant and the total of the firm also remains constant as average changed.

This approach is of the opposite view of Net Income approach. This approach suggests that the capital structure decision of a firm is irrelevant and that any change in the leverage or debt will not result in a change in the total value of the firm as well as the market price of its shares. This approach also says that the overall cost of capital is independent of the degree of leverage.

Assumptions of NOI approach:

There are no taxes

The cost of debt is less than the cost of equity.

The use of debt does not change the risk perception of the investors.

Q-3. Explain M.M. Approach of Capital Structure Theory.

Ans – 3. This approach was devised by Modigliani and Miller during the 1950s. The fundamentals of the Modigliani and Miller Approach resemble that of the Net Operating Income Approach.

Modigliani and Miller advocate capital structure irrelevancy theory, which suggests that the valuation of a firm is irrelevant to the capital structure of a company. Whether a firm is highly leveraged or has a lower debt component in the financing mix has no bearing on the value of a firm.

The Modigliani and Miller Approach further states that the market value of a firm is affected by its operating income, apart from the risk involved in the investment. The theory stated that the value of the firm is not dependent on the choice of capital structure or financing decisions of the firm.

Q-4. Write a short note on financial distress.

Ans - 4:

Financial Distress is a situation when a company is struggling to generate enough profits to meet its financial obligations. There could be various reasons for such a situation. However, some of the most common ones are illiquid assets, high fixed costs, unfavorable macro trends and so on.

Some of the signs of a company facing financial distress are – unable to pay creditors and third parties, facing challenges to pay monthly bills and salaries. When a company is in such a situation, it not only affects the higher management. The employees might also suffer from lower morale and higher stress due to the company not being able to meet its obligations.

Companies usually ensure that they do not ignore the signs of financial distress as it could take a severe turn in the long-run. Every management aims to reverse any sort of financial distress and keep the organization immune from a knee-jerk reaction.

Q-5. Define Leverage and also explain different types of leverages.

Ans – 5 :

Leverage occurs in varying degrees. The higher the degree of leverage, the higher is the risk involved in meeting fixed payment obligations i.e., operating fixed costs and cost of debt capital. But, at the same time, higher risk profile increases the possibility of higher rate of return to the shareholders.

Types of Leverage:

Leverage are the three types:

1. Operating leverage
2. Financial leverage and
3. Combined leverage

Operating leverage refers to the use of fixed operating costs such as depreciation, insurance of assets, repairs and maintenance, property taxes etc. in the operations of a firm. But it does not include interest on debt capital. Higher the proportion of fixed operating cost as compared to variable cost, higher is the operating leverage, and vice versa.

Financial leverage is primarily concerned with the financial activities which involve raising of funds from the sources for which a firm has to bear fixed charges such as interest expenses, loan fees etc. These sources include long-term debt (i.e., debentures, bonds etc.) and preference share capital.

Combined leverage may be favorable or unfavorable. It will be favorable if sales increase and unfavorable when sales decrease. This is because changes in sales will result in more than proportional returns in the form of EPS. As a general rule, a firm having a high degree of operating leverage should have low financial leverage by preferring equity financing, and vice versa by preferring debt financing.

Q-6. The following are the details :

Selling price per unit Rs. 20 Variable cost per unit Rs. 12 Actual sales 200 units and fixed costs is Rs. 1000. Calculated operating leverage.

Ans- 6 :

Sales (200*20)	4000
Less : VC (200*12)	(2400)
Contribution	1600
Less: FC	(1000)
Earning Before Tax	600
OPERATING LEVERAGE = CONTRIBUTION	1600
EBIT	600
OL	2.67

$$\text{OPERATING LEVERAGE} = \frac{\text{CONTRIBUTION}}{\text{EBIT}}$$

Q-7. Discuss various determinants of Dividend Policy.

Ans- 7: The main determinants of dividend policy of a firm can be classified into:

- Dividend payout ratio
- Stability of dividends
- Legal, contractual and internal constraints and restrictions
- Owner's considerations
- Capital market considerations and
- Inflation.

Q-8. Write a short note on Rights and Bonus Shares.

Ans – 8:

A rights issue is an offering of rights to the existing shareholders of a company that gives them an opportunity to buy additional shares directly from the company at a discounted price rather than buying them in the secondary market.

- The number of additional shares that can be bought depends on the existing holdings of the shareowners.
- Rights issue is an invitation to existing shareholders to purchase additional new shares in the company.
- In a right offering, each shareholder receives the right to purchase a pro-rata allocation of additional shares at a specific price and within a specific period (usually 16 to 30 days).
- Shareholders are not obligated to exercise this right.
- Cash-strapped companies can turn to rights issues to raise money when they really need it.

Bonus shares are the additional shares that a company gives to its existing shareholders on the basis of shares owned by them. Bonus shares are issued to the shareholders without any additional cost.

Bonus shares are additional shares given to the current shareholders without any additional cost, based upon the number of shares that a shareholder owns. These are company's accumulated earnings which are not given out in the form of dividends, but are converted into free shares.

UNIT – 4

Q-1. Elaborate the significance of working capital management.

Ans -1 :

Proper management of working capital is essential to a company's fundamental financial health and operational success as a business. A hallmark of good business management is the ability to utilize working capital management to maintain a solid balance between growth, profitability and liquidity.

Efficient working capital management helps maintain smooth operations and can also help to improve the company's earnings and profitability. Management of working capital includes inventory management and management of accounts receivables and accounts payables.

The main objectives of working capital management include maintaining the working capital operating cycle and ensuring its ordered operation, minimizing the cost of capital spent on the working capital, and maximizing the return on current asset investments.

Q-2. Write a short note on the following: Factoring & Types of Working Capital.

Ans – 2:

Factoring is a financial service for financing credit sales in which the receivables are sold bay a company to a specialized financial intermediary called "factor".

The factor provides several services to the company that draws up an agreement for managing its receivables. These services pertain to specially to protection of the company for credit risks. In addition, the factor also manages the finances of the company, maintains its accounts and collect its debts. For this service the factor charges a fee or a commission for taking the responsibility of realizing the receivables from the customers.

Factoring involves 3 parties in the agreement. These are:

1. the seller,
2. the buyer and
3. the factor.

Depending upon the Periodicity & concept working capital can be classified as below:

Gross Working Capital: The concept of gross working capital refers to the total value of current assets. In other words, gross working capital is the total amount available for financing of current assets. However, it does not reveal the true financial position of an enterprise. How? A borrowing will increase current assets and, thus, will increase gross working capital but, at the same time, it will increase current liabilities also.

Net Working Capital : The net working capital is an accounting concept which represents the excess of current assets over current liabilities. Current assets consist of items such as cash, bank balance, stock, debtors, bills receivables, etc. and current liabilities include items such as bills payables, creditors, etc. Excess of current assets over current liabilities, thus, indicates the liquid position of an enterprise.

Q-3. What is meant by inventory management? Describe the objective of inventory management.

Ans- 3:

Inventory management refers to the process of ordering, storing, and using a company's inventory. These include the management of raw materials, components, and finished products, as well as warehousing and processing such items.

Inventory management is a very important function that determines the health of the supply chain as well as the impacts the financial health of the balance sheet.

The main objective of inventory management: is to maintain inventory at appropriate level to avoid excessive or shortage of inventory because both the cases are undesirable for business. Thus, management is faced with the following conflicting objectives:
1. To keep inventory at sufficiently high level to perform production and sales activities smoothly.
2. To minimize investment in inventory at minimum level to maximize profitability.

Q-4. What are the motives of holding cash?

Ans - 4:

Transaction Motive: The transaction motive refers to the cash required by a firm to meet the day to day needs of its business operations. In an ordinary course of business, the firm requires cash to make the payments in the form of salaries, wages, interests, dividends, goods purchased, etc. Likewise, it also receives cash from its sales, debtors, investments. Often the firm's cash inflows and outflows do not match, and hence, the cash is held up to meet its routine commitments.

Precautionary Motive: The precautionary motive refers to the tendency of a firm to hold cash, to meet the contingencies or unforeseen circumstances arising in the course of business. Since the future is uncertain, a firm may have to face contingencies such as an increase in the price of raw materials, labor strike, lockouts, change in the demand, etc. Thus, in order to meet with these uncertainties, the cash is held by the firms to have an uninterrupted business operation.

Speculative Motive: The firms hold cash for the speculative purposes to avail the benefit of bargain purchases that may arise in the future. For example, if the firm feels the prices of raw material are likely to fall in the future, it will hold cash and wait till the prices actually fall. Thus, a firm holds cash to exploit the possible opportunities that are out of the normal course of business. These opportunities could be in the form of the low-interest rate charged on the borrowed funds, expected fall in the raw material prices or favorable change in the government policies.

Q-5. Define Accounts Receivables. Describe the Cost and Benefits of the investment in a firm's receivables.

Ans – 5:

Accounts Receivable (AR) is the proceeds or payment which the company will receive from its customers who have purchased its goods & services on credit. Usually the credit period is short ranging from few days to months or in some cases maybe a year.

The word receivable refers to the payment not being realised. This means that the company must have extended a credit line to its customers. Usually, the company sells its goods and services both in cash as well as on credit.

BENEFITS

In truth, every business financing option has its good and bad sides. Accounts receivable financing is no exception:

No Need for Collateral: It is a type of unsecured business financing option that does not require any collateral in the form of assets and guarantors.

Retain Ownership of Your Business: This type of financing does not require you to give out part of your business ownership to acquire finances.

COSTS

Higher Costs: While it is a quick way of accessing cash for your business, it may come at higher costs than the rates charged on other types of business loans. Remember that failure to pay back the amount within the predetermined period will only increase the total amount that you will be required to pay.

Lengthy Contracts: Some agreements can be short and viable, but others can be long and winding than you would like. It is crucial, however, to negotiate the length of the contract that perfectly works for you and your business.

Q-6. Describe the objectives of Cash Management.

Ans – 6:

Fulfil Working Capital Requirement: The organization needs to maintain ample liquid cash to meet its routine expenses which possible only through effective cash management.

Planning Capital Expenditure: It helps in planning the capital expenditure and determining the ratio of debt and equity to acquire finance for this purpose.

Handling Unorganized Costs: There are times when the company encounters unexpected circumstances like the breakdown of machinery. These are unforeseen expenses to cope up with; cash surplus is a lifesaver in such conditions.

Initiates Investment: The other aim of cash management is to invest the idle funds in the right opportunity and the correct proportion.

Better Utilization of Funds: It ensures the optimum utilization of the available funds by creating a proper balance between the cash in hand and investment.

Avoiding Insolvency: If the business does not plan for efficient cash management, the situation of insolvency may arise. It is either due to lack of liquid cash or not making a profit out of the money available.

Q-7. Elaborate the types of Inventory.

Ans – 7:

Raw materials are the basic materials that a manufacturing company buys from its suppliers and that is used by the former to convert them into the final products by applying a set of manufacturing processes.

For example, aluminum scrap is the raw material for a company that produces aluminum ingots. Flour is the raw material for a company that produces bread or pizza. Similarly, metal parts and ingots are the raw materials bought by a company that manufactures cars and crude oil is the raw material for an oil refinery.

Work in progress inventory can also be called semi-finished goods. They are the raw materials that have been taken out of the raw materials store and are now undergoing the process of their conversion into the final products.

These are the partly processed raw materials lying on the production floor. And they have also not reached the stage where they have been converted into the final product.

Finished goods are indeed the final products obtained after the application of the manufacturing processes on the raw materials and the semi-finished goods discussed above in the article.

They are saleable and their sale contributes fully to the revenue from the core operations of the company.

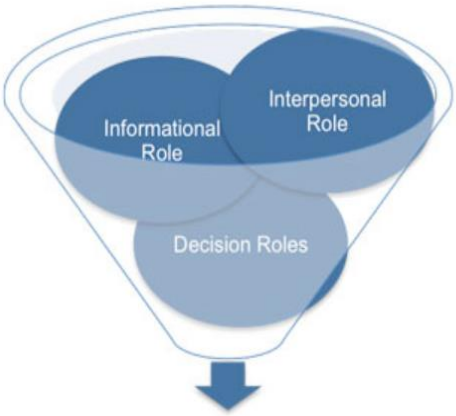
ORGANIZATION BEHAVIOUR- 116

Question 1: Explain Mintzberg's Management Roles and responsibilities that a manager may need to perform?

Answer:

The role of 'manager' sound simple enough, but anyone who has ever served as a manager knows that it is far more complex than it might sound at first. Being a leader in any organization is a complicated and challenging task that can take on a variety of forms depending on the needs of the organization and the people that are being led. Any given manager may be asked to complete a variety of tasks during a given day depending on what comes up and what problems need to be solved.

In order to better organize a long list of ten roles, they have been divided up into three categories - interpersonal, informational, and decisional. Below we will look at each of the ten roles, what they mean for the manager, and which of the three categories they fit into.



Mintzberg's Management Roles

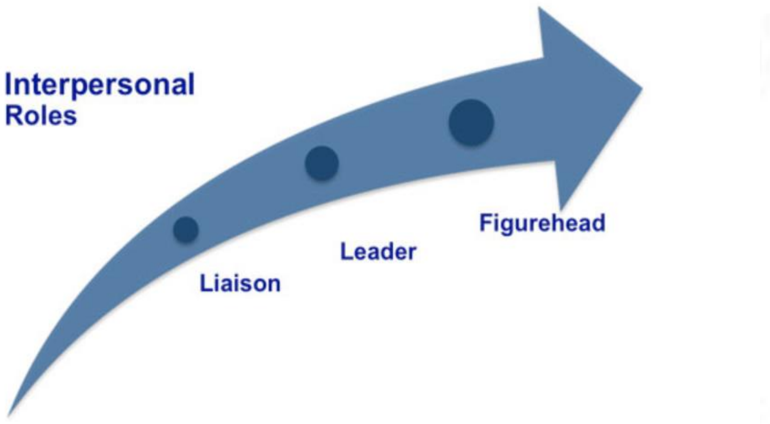
The 10 roles are then divided up into three categories, as follows:

i) Interpersonal Roles

ii) Informational Roles

iii) Decisional Roles

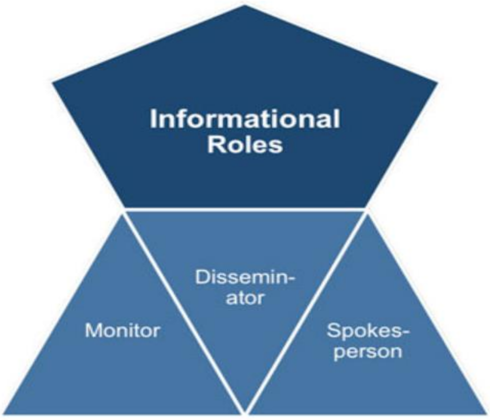
Interpersonal Roles



Figurehead
One of the important roles of a leader is simply to be a figurehead for the rest of the group. This is one of the interpersonal roles, because so much of it is about being someone that people can turn to when they need help, support, etc. A good leader will project confidence so that everyone involved feels a sense of security and reassurance that the job will be done right.

Leader
Another interpersonal role, this one should be obvious. A manager needs to lead the people that he or she is in charge of guiding toward a specific goal. This can include telling them what to do and when to do it, organizing the structure of the team members to highlight specific skills that each possesses, and even offering rewards for a job well done.

Liaison
The final role within the interpersonal category, acting as a liaison means that the manager must successfully interface with a variety of people - both within the organization and on the outside - to keep things running smoothly. This point is all about communication, and it is one of the main things that determines the ultimate success or failure of a manager. Being able to properly communicate with a range of people in such a way that the project remains on track is a crucial skill to develop.



Monitor
Acting as a monitor is the first managerial role within the informational category. Just as the word would indicate, being a monitor involves tracking changes in the field that your organization works in, as well as changes on your team that might be signs of trouble down the road. Things are never static in business, so the successful manager is one who will constantly monitor the situation around them and make quick changes as necessary.

Disseminator
It does no good as a manager to collect information from a variety of internal and external sources if you are only going to keep it for yourself. The point of gathering that information is so that your team can benefit from it directly, so the next informational role is dissemination - getting information out quickly and effectively to the rest of your team. Wasted time by the team members on a certain part of a project often has to do with them not possessing all of the relevant information, so make sure they have it as soon as possible.

Spokesperson
As the head of a team of any size or role within the organization, you will be the representative of that team when it comes to meetings, announcements, etc. Being a spokesperson is the final informational role on the list, and it is an important one because perception is often a big part of reality. Even if your team is doing great work, it might not be reflected as such to other decision makers in the organization if you aren't a good spokesperson.

Entrepreneur
In some ways, being a manager within a larger organization is like running your own small business. While you will have managers above you to answer to, you still need to think like an entrepreneur in terms of quickly solving problems, thinking of new ideas that could move your team forward, and more. This is the first role within the decisional category on the list.

Disturbance Handler
It is almost inevitable that there will be disturbances along the way during any kind of project or task that involves more than one person. The second item in the decisional section of the list is being a disturbance handler, because getting back on track after a problem arises is important to short-term and long-term productivity. Whether it is a conflict among team members or a bigger problem outside of the group, your ability to handle disturbances says a lot about your skills as a manager.

Resource Allocator
Every project is tackled using resources that are limited in some way or another. As a resource allocator, it is your job to best use what you have available in order to get the job done and meet your defined goals and objectives. Resources can include budget that has been made available for a project, raw materials, employees, and more. This is the third item within the decisional category, yet it is one of the most important things a manager must do.

Negotiator
Business is all about negotiation, and that is especially true for managers. The final role on the list, being a negotiator doesn't just mean going outside of the organization to negotiate the terms of a new deal. In fact, most of the important negotiation will take place right within your own team itself. Getting everyone to buy in to the overall goal and vision for a project likely will mean negotiating with individual team members to get them to adopt a role that suits their skills and personal development goals. A good manager will be able to negotiate their way through these challenges and keep the project on track for success.

Question 2: Define Organizational Behaviour? Why do we need to study Organizational behaviour? What are the Factors/ Elements that add complexity in human behaviour ?

Answer: Organisational behaviour is concerned with people's thoughts, feelings, emotions, and actions in a work setting. Understanding an individual behaviour is in itself a challenge, but understanding group behaviour in an organisational environment is a monumental managerial task.

As Nadler and Thushman put it: Understanding one individual's behaviour is challenging in and of itself; understanding a group that is made up of different individuals and comprehending the many relationships among those individuals is even more complex. Ultimately, the organisation's work gets done through people, individually or collectively, on their own or in collaboration with technology. Therefore, the management of organisational behaviour is central to the management task – a task that involves the capacity to "understand" the behaviour patterns of individuals, groups and organisations, to "predict" what behavioural responses will be elicited by various managerial actions and finally to use this understanding and these predictions to achieve "control"

"Organizational behaviour is directly concerned with the understanding, prediction, and control of human behaviour in organizations." — Fred Luthans.

Organizational behaviour is the study of both group and individual performance and activity within an organization.

Organisational behaviour can then defined as:
"The study of human behaviour in organisational settings, the interface between human behaviour and the organisational context, and the organisation itself."

The above definition has three facets – the individual behaviour, the organisation and the interface between the two. Each individual brings to an organisation a unique set of beliefs, values, attitudes and other personal characteristics and these characteristics of all individuals must interact with each other in order to create an organisational setting. The organisational behaviour is specifically concerned with work-related behaviour which takes place in organisations.

In addition to understanding the on-going behavioural processes involved in their own jobs, managers must understand the basic human element of their work. Organisational behaviour offers three major ways of understanding this context; people as organisations, people as resources and people as people.

Above all, organisations are people; and without people there would be no organisations. Thus, if managers are to understand the organisations in which they work, they must first understand the people who make up the organisations.
As resources, people are one of an organisation's most valuable assets. People create the organisation, guide and direct its course, and vitalise and revitalise it. People make its decisions, solve its problems, and answer its questions. As managers increasingly recognise the value of potential contributions by their employees, it will become more and more important for managers and employees to grasp the complexities of organisational behaviour.
Finally, there is people as people – an argument derived from the simple notion of

humanistic management. People spend a large part of their lives in organisational settings, mostly as employees. They have a right to expect something in return beyond wages and benefits. They have right to expect satisfaction and to learn new skills. An understanding of organisational behaviour can help the manager better appreciate this variety of individual needs and expectations.

Organisational behaviour is concerned with the characteristics and behaviours of employees in isolation; the characteristics and processes that are part of the organisation itself; and the characteristics and behaviours directly resulting from people with their individual needs and motivations working within the structure of the organisation. One cannot understand an individual's behaviour completely without learning something about that individual's organisation. Similarly, he cannot understand how the organisation operates without studying the people who make it up. Thus, the organisation influences and is influenced by individuals.

Need for Studying Organisational Behaviour

The rules of work are different from the rules of play. The uniqueness of rules and the environment of organisations forces managers to study organisational behaviour to learn about normal and abnormal ranges of behaviour.

More specifically, organisational behaviour serves three purposes:
• What causes behaviour?
• Why particular antecedents cause behaviour?
• Which antecedents of behaviour can be controlled directly and which are beyond control?

A more specific and formal course in organisational behaviour helps an individual to develop a more refined, workable set of assumptions more directly relevant to his work interactions. Organisational behaviour helps in predicting human behaviour in the organisational setting by drawing a clear distinction between individual behaviour and group behaviour. Organisational behaviour does not provide solution to all complex and multifarious behaviour puzzles of organisations. It is only the intelligent judgement of the manager in dealing with a specific issue can try to solve problem. Organisational behaviour only assists in making judgements that derived from tenable assumptions, judgement that takes into account the important variables underlying the situation; judgement that assigns due recognition to the complexity of individual or group behaviour; judgement that explicitly takes into account the managers own goals, motives, hang-ups, blind spots and frailties.

Factors /Elements of Organisational Behaviour

The key elements in the organisational behaviour are people, structure, technology and the environment in which the organisation operates.

People:
People make up the internal and social system of the organisation. They consists of individuals and groups. The groups may be big or small; formal or informal; official or unofficial. Groups are dynamic. They work in the organisation to achieve their objectives.

Structure:
Structure defines the formal relationships of the people in organisations. Different people in the organisation are performing different type of jobs and they need to be related in some structural way so that their work can be effectively co-ordinated.

Technology:
Technology such as machines and work processes provide the resources with which people work and affects the tasks that they perform. The technology used has a significant influence on working relationships. It allows people to do more and better work but it also restricts people in various ways.

Environment:
All organisations operate within an external environment. It is part of a larger system that contains many other elements such as government, the family and other organisations. All of these mutually influence each other in a complex system that creates a context for a group of people.

Question 3. "Organizational behaviour is a separate field of study not a Discipline". Explain Nature of Organizational Behaviour?

Ans: Organizational behaviour has emerged as a separate field of study.

The nature it has acquired is identified as follows:

1. **Separate Field of Study:**

Organisational behaviour can be treated as a distinct field of study. It has yet to become a science. Now efforts are being taken to synthesize principles, concepts and processes in this field of study.

2.Interdisciplinary Approach:

Organisational behaviour is basically an interdisciplinary approach. Organisational behaviour draws heavily from other disciplines like psychology, sociology and anthropology. Besides, it also takes relevant things from economics, political science, law and history. Organisational behaviour integrates the relevant contents of these disciplines to make them applicable for organisational analysis. For example, it addresses issues such as the following which may be relevant to the case:

• What facilitates accurate perception and attribution?

• What influences individual, group and organisational learning and the development of individual attitudes toward work?

• How do individual differences in personality, personal development, and career development affect individual's behaviours and attitudes?

• What motivates people to work, and how does the organisation's reward system influence worker behaviour and attitudes?

• How do managers build effective teams?

• What contributes to effective decision-making?

• What constitutes effective communication?

• What characterises effective communication?

• How can power be secured and used productively?

• What factors contribute to effective negotiations?

• How can conflict (between groups or between a manager and subordinates) be resolved or managed?

• How can jobs and organizations be effectively designed?

• How can managers help workers deal effectively with change?

3.An Applied Science:

The basic objective of organisational behaviour is to make application of various researches to solve the organisational problems, particularly related to human behaviour aspect.

4.Normative and Value Centred:

Organisational Behaviour is normative science. A normative science prescribes how the various findings of researches can be applied to get organisational results which are acceptable to the society. Thus, what is acceptable by the society or individuals engaged in an organisation is a matter of values of the society and people concerned.

5.Humanistic and Optimistic:

Organisational behaviour focuses the attention on people from humanistic point of view.

It is based on the belief that needs and motivation of people are of high concern. Further, there is optimism about the innate potential of man to be independent, creative, predictive and capable of contributing positively to the objectives of the organisation.

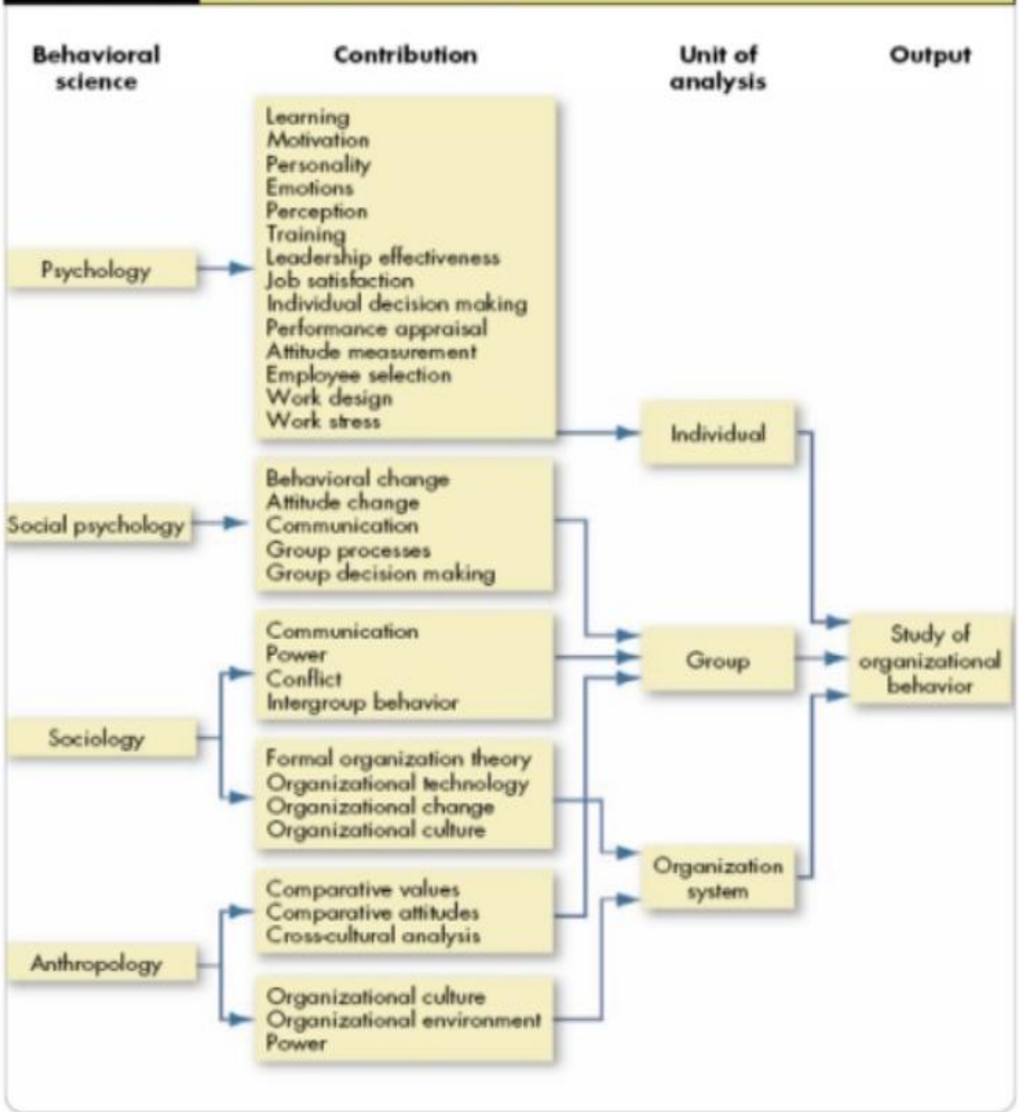
6. A Total System Approach:

The system approach is one that integrates all the variables, affecting organizational functioning. The systems approach has been developed by the behavioural scientists to analyse human behaviour in view of his/her socio-psychological framework. Man's socio-psychological framework makes man a complex one and the systems approach tries to study his/her complexity and find solution to it.

Question 4: What are the foundations of Organizational Behaviour and Contributing Disciplines to the OB Field?

Answer

Exhibit 1-3 Toward an OB Discipline



Organizational behaviour is an applied behavioural science that is built upon contributions from a number of behavioural disciplines. The main areas are psychology, sociology, social psychology, anthropology, and political science.

Psychology

Psychology is the science that attempts to measure, explain, and at times change the behavior of humans and other animals. Early industrial/organizational psychologists were concerned with problems of fatigue, boredom, and other factors relevant to working conditions that could disrupt/ impede efficient work performance. More recently, their contributions have been expanded to include learning, perception, personality, emotions, training, leadership effectiveness, needs and motivational forces, job satisfaction, decision making processes, performance appraisals, attitude measurement, employee selection techniques, work design, and job stress.

Sociology

Sociologists study the social system in which individuals fill their roles; that is, sociology studies people in relation to their fellow human beings. Their significant contribution to OB is through their study of group behavior in organizations, particularly formal and complex organizations.

Social Psychology

Social psychology blends the concepts of psychology and sociology. It focuses on the influence of people on one another. The major challenge deals with the issue of how to implement it and how to reduce barriers to its acceptance.

Anthropology

Anthropology is the study of societies to learn about human beings and their activities. Anthropologists work on cultures and environments; for example, they have aided in understanding differences in fundamental values, attitudes, and behavior among people in different countries and within different organizations.

Political Science

Political science studies the behavior of individuals and groups within a political environment. It focuses on areas, such as, conflict, intra-organizational politics and power.

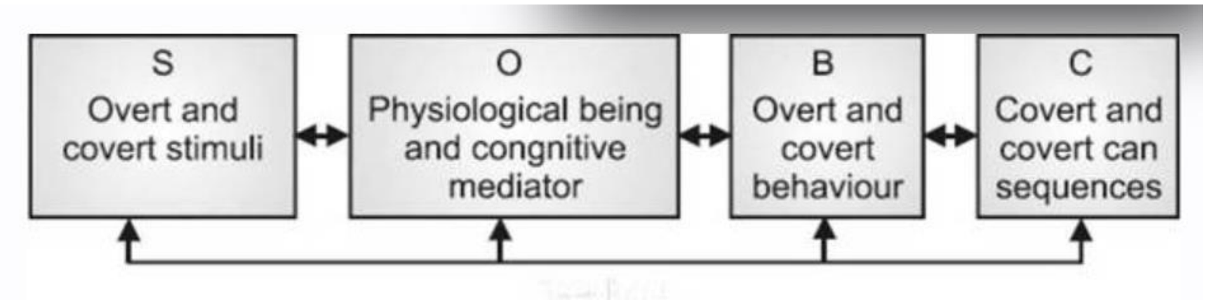
Question 5: Explain Various Models of Organizational Behavior and what are the managerial implications of it?

Answer:

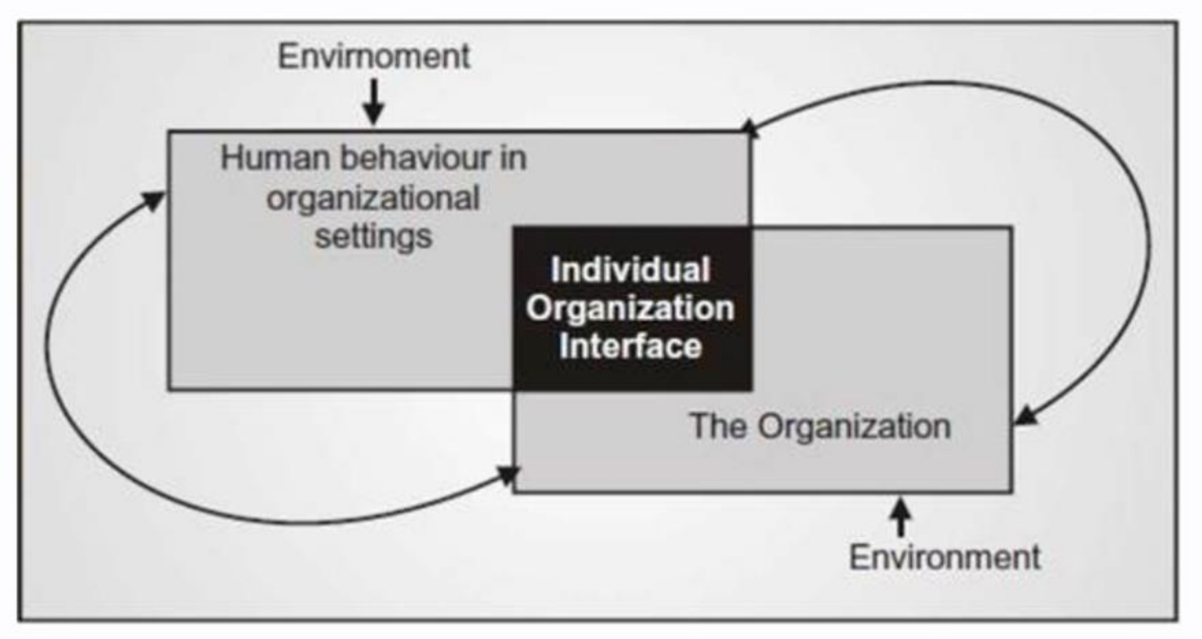
Models are the techniques which help us to understand complex things and ideas in a clear manner. Models are frameworks or possible explanations why do people behave as they do at work. There are so many models as many are organizations. Varying results across the organizations are substantially caused by differences in the models of organizational behaviour. All the models of organizational behaviour are broadly classified into four types

Autocratic, Custodial, Supportive and Collegial.

O.B. is the study of human behaviour in organizations, the interface between human behaviour and the organization and the organization itself. The following figures shows, this interrelationship clearly.



S-O-B-C Model of human behaviour.



Model of Organizational Behaviour.

The Autocratic Model

The basis of this model is power with a managerial orientation of authority. The employees in turn are oriented towards obedience and dependence on the boss. The employee need that is met is subsistence. The performance result is minimal.

In case of an autocratic model, the managerial orientation is doctorial. The managers exercise their commands over employees. The managers give orders and the employees have to obey the orders. Thus, the employees orientation towards the managers/bosses is obedience. Under autocratic conditions, employees give higher performance either because of their achievement drive or their personal liking to the boss or because of some other factor.

Evidences such as the industrial civilization of the United States and organizational crises do suggest that the autocratic model produced results. However, its principal weakness is its high human cost. The combination of emerging knowledge about the needs of the employees and ever changing societal values and norms suggested managers to adopt alternative and better ways to manage people at work. This gave genesis to the second type of models or organizational behaviour.

The Custodial Model

The basis of this model is economic resources with a managerial orientation of money. The employees in turn are oriented towards security and benefits and dependence on the organization. The employee need that is met is security. The performance result is passive cooperation.

While studying the employees, the managers realized and recognized that although the employees managed under autocratic style do not talk back to their boss they certainly think back about the system. Such employees filled with frustration and aggression vent them on their co-workers, families and neighbors. This made the managers think how to develop better employee satisfaction and security. It was realized that this can be done by dispelling employees' insecurities, frustration and aggression. This called for introduction of welfare programmers to satisfy security needs of employees. Provision for an on site day-care centre for quality child care is an example of welfare programme meant for employees. Welfare programmes lead to employee dependence on the organization. Stating more accurately, employees having dependence on organization may not afford to quit even there seem greener pastures around. The welfare programmes for employees started by the Indira Gandhi National Open University (IGNOU), New Delhi are worth citing in this context, IGNOU, in the beginning provided its employees facilities like house-lease facility, subsidized transport facility, day-time child care centre in the campus, etc. These made employees dependent on IGNOU which, in turn, became custodian of its employees.

The basis of this model is partnership with a managerial orientation of teamwork. The employees in turn are oriented towards responsible behavior and self-discipline.

Although the custodian approach brings security and satisfaction, it suffers from certain flaws also. Employees produce anywhere near their capacities. They are also not motivated to increase their capacities of which they are capable. Though the employees are satisfied, still they do not feel motivated or fulfilled in their work they do. This is in conformity with the research finding that the happy employees are not necessarily most productive employees. Consequently managers and researchers started to address yet another question. "Is there better approach/way to manage people?" The quest for a better way provided a foundation for evolvement to the supportive type of model of organizational behaviour.

The Supportive Model

The basis of this model is leadership with a managerial orientation of support. The employees in turn are oriented towards job performance and participation. The employee need that is met is status and recognition. The performance result is awakened drives.

The supportive model is founded on leadership, not on money or authority. In fact, it is the managerial leadership style that provides an atmosphere to help employees grow and accomplish their tasks successfully. The managers recognize that the workers are not by nature passive and disinterested to organizational needs, but they are made so by an inappropriate leadership style. The managers believe that given due and appropriate changes, the workers become ready to share responsibility, develop a drive to contribute their mite and improve themselves. Thus, under supportive approach, the management's orientation is to support the employee's job performance for meeting both organizational and individual goals.

However, the supportive model of organizational behaviour is found more useful and effective in developed nations and less effective in developing nations like ours because of employee's more awakening in the former and less one in the latter nations.

The Collegial Model

The collegial model is an extension of the supportive model. As the literal meaning of the work 'college' means a group of persons having the common purpose, the collegial model relates to a team work/concept. The basic foundation of the collegial model lies on management's building a feeling of partnership with employee. Under collegial approach, employees feel needed and useful. They consider managers as joint contributors to organizational success rather than as bosses.

Its greatest benefit is that the employee becomes self-discipline. Feeling responsible backed by self-discipline creates a feeling of team work just like what the members of a football team feel. The research studies report that compared to traditional management model, the more open, participative, collegial managerial approach produced improved results in situations where it is appropriate.

Although there are four separate models, almost no organization operates exclusively in one. There will usually be a predominate one, with one or more areas overlapping in the other models.

The first model, autocratic, had its roots in the industrial revolution. The managers of this type of organization operate out of McGregor's Theory X. The next three models begin to build on McGregor's Theory Y. They have each evolved over a period of time and there is no one "best" model. The collegial model should not be thought as the last or best model, but the beginning of a new model or paradigm.

Now, the sum and substances of these four models of organizational behaviour are summarized in Table

	Autocratic	Custodial	Supportive	Collegial
Basis of Model	Power	Economic sources	Leadership	Partnership
Managerial orientation	Authority	Money	Support	Teamwork
Employee orientation	Obedience	Security and benefits	Job performance	Responsible behaviour
Employee Psychological result	Dependence on boss	Dependence on organization	Participation	Self-discipline
Employee needs met	Subsistence	Security	Status and recognition	Self-actualization
Performance result	Minimum	Passive co-operation	Awakened drives	Moderate enthusiasm

Interpretation of Different Models: Various conclusions may be drawn from the study of different models as follows:

(i) As soon as the understanding of human behaviour develops or social conditions change, the model is bound to change. No one model is best for all times.

(ii) Models or organizational behaviour are related to hierarchy of human needs. As society advances on the need hierarchy, new models are developed to serve the higher order needs that is paramount at that time.

(iii) Present tendency towards more democratic models of organizational behaviour will continue to develop for long run.

(iv) Different models will remain in use though new model predominates as most appropriate for general use at any given time as task conditions differ from time to time and organization to organization.

Question 6: Explain some of the emerging trends in the fields of organisations and Organisational Behaviour. How these changes influence the organisation ?

Emerging trends in organisational behaviour

Organizations have witnessed a great development from the olden times particularly in respect of structure, operations and people. There is a considerable change in the cross-culture environment, influence of MNCs, growth in the technical know-how and quality management which has provided different environment in the modern organizations.Some of the important trends observed are mentioned below:

Globalisation

Emerging employment relationships

Workforce Diversity

Knowledge Management

Information technology and OB

Improving Ethical Behaviour

Improving Quality and Productivity
Improving People's Skills
Management Control to Empowerment

Globalization

Organisation in recent days has changed the style of working and tries to spread worldwide. Trapping new market place, new technology or reducing cost through specialization or cheap labour are few of the different reasons that motivates organizations to become global Moreover the way companies integrate their business practices with other countries has also changed. Instead of controlling the whole supply chain countries outsource some part of it to gain advantage of specialization. Thomas Friedman highlights this phenomenon in his book "The world is flat" There are several types of organizational changes that has occurred to help business adopt to globalisation, as the old principles no longer work in the age of globalisation Strategic changes, technological change, change in organizational cultural including organizational structural change and a redesign of work tasks are some of the important one. In line with these changes, there is strong expectation of employee to improve their knowledge and become an integral part of successful business formula in order to respond to the challenges brought by the global economy. In other words, it leads to formation of a learning organisation, which is characterized by creating, gaining and transferring the knowledge, and thus constantly modifying the organizational behaviour.

Globalization affects a manager in

• A manager has to manage a **diversified workforce** that is likely to have very different needs, aspirations and attitudes from the ones that they are used to manage in their home country.

• **Understanding culture of local people** in order to adapt appropriate management style for the success the operations. It is important for the manager to show tolerance to sensitivity to various individual in the workforce.

Emerging employment relationship

Changing trends in organisations in recent years have made it utmost important to consider some of the emerging employee relations issues which can affect employers in the coming decade. Understanding these issues will help management to better plan and respond to changes in the workplace. Employer employee relationship is also showing change in the modern era. Employers are no more autocrats and participative style of leadership is welcomed. Flexible working hours and increased authority motivates employees to perform to their best. Management now welcomes upward communication and participation of lower level employees in the decision-making process

Changing work force

The demographic of the workforce has changed in the recent years. This is due to a number of factors such as an aging population, labour shortages and immigration. Another significant factor that has changed the workforce is the changes in the attitudes of workers. Employers need to adapt their recruitment, training and management processes to adapt to changing workforce. An example of this is that where employers may have previously looked to younger people as a source of recruits, they may now have to broaden their view as there are currently a large number of older people either currently employed or seeking employment. These people may need extra training to bring their skills up to date. New parents now want to work closer to home or from home, employers may find that they need to make this a possible option in order to retain or find new staff. Allowing people to work from home will also make the employer and job more attractive to a wider range of people. Recent days is also witnessing a shortage of skilled labour in many sectors. Hence employers may have to take on less skilled workers initially and develop them, rather than simply hiring experienced people. Hiring employees from overseas also serves the purpose.

Knowledge Management

Knowledge management is a structured activity that improves an organization's capacity to acquire, share, and utilize knowledge for its survival and success. Knowledge management is around us from a very long period of time in one form or the other. The decisions we make and the action we take both are enabled by knowledge of some type. Hence to improve quality of these actions and decisions it is important to understand the process of knowledge management. Studies in knowledge management has proved an inseparable relationship between knowledge management and organizational culture (Davenport and Prusak,2000; Von Krogh, 2000; Nonaka and Takeuchi, 1995) Research has also proved organizational culture is a major barrier to leveraging intellectual assets. They focus on four ways in which culture influences organizational behaviours central to knowledge creation, sharing, and use. The first is the shared assumptions about what knowledge is and which knowledge is worth managing. Second is the relationship between individual and organizational knowledge. Third is the context for social interaction that determines how knowledge will be used in particular situations. Fourth is the processes by which knowledge is created, legitimated, and distributed in organizations.

There are three basic elements of knowledge management

1. Knowledge acquisition: -It is method of learning through experiences, sensation or perception.

2. Knowledge sharing: -Knowledge sharing is a process through which knowledge is shared among family, friends or any community.

3. Knowledge dissemination: It is conceptual and instrumental use of new knowledge. Increased awareness and ability to make informed choice among available alternatives are the outcomes of knowledge dissemination. Knowledge maps:-Knowledge maps guide employees to understand what knowledge is needed to increase their efficiency and productivity and where these knowledge are located.

Information Technology and OB

Technological change and advancement is one of the most salient factors impacting organizations and employees today. In particular, the prominence of information technology (IT) has grown many folds in recent years. This innovation in IT has opened new ways for conducting business that are different from the past. Technology has changed the nature of work as well as the roles of employees. Managerial decision making, stress handling, and attitude towards work have changed as an impact of technology. It is also seen from decades that there is a normal tendency of human being to resist to changes, making adoption of new technologies a little difficult. It has become important for the business and management to understand and take these issues into consideration while introducing or implementing any new technology. Frequent sessions on change management can help employees understand, use and adopt new technologies easily.

Improving People's Skills

The employees and executives are really in need of a boost up to be equipped with the required skills relevant to the technological changes, structural changes, environmental changes which are accelerated at a fast pace. In absence of the fastback possession, the targeted goals can't be achieved in time.

Main skills on focus are

• Managerial skills which include listening, motivating, planning, organizing, leading, problem solving, decision making.

• Technical skills.

To enhance these skills seminars, training and development session, career development programmes, induction and socialization and many more tools and techniques are adopted.

Designing an effective performance appraisal system with built-in training modules to help lower level cadres to upgrade their skill sets (conceptual, relational etc.) would be a remarkable.

Improving Quality and Productivity

Quality is a parameter which makes a product or service best or worst for the customers and users. It is a measure of expectation. A student expects the pen, she/he just bought, to write. The failure of the pen to write will express the failure of the product to meet the customer's expectation.

"Deming" defined quality as a predictable degree of uniformity and dependability at low cost and suited to the market.

"Juran" defined quality as fitness for use.

The key dimensions of quality are:

1. **Performance:** Primary/Perceptual characteristics of a product as signal, coverage, display quality etc. which are visible.

2. **Features:** Secondary characteristics, added features such as alarm clock added in mobile phones.

3. **Conformance:** To meet specifications according to industry standards.

4. **Reliability:** Probability of a product's failure within a specific period of time.

5. **Durability:** Measure of product's life having both economic and technical dimensions.

6. **Services:** Resolution of problems and complaints.

7. **Response:** Human-Human interface, such as courtesy of the dealer.

8. **Aesthetics:** Sensory characteristics such as exterior finish.

9. **Reputation:** Past performance and other intangibles such as being awarded rank first.

Managers confront the challenges of fulfilling the specific requirements of a customer. Implementing total quality management and re-engineering products to improve productivity and quality.

Empowering People

The main concern is to delegate power and responsibility to lower level workforce and assigning more freedom to make choices about their schedules, operations, procedures and method of solving their work related problems.

The implementation of empowerment concept brings around reshaping of relationship between the manager and the employees where the manager works as a coach, advisor, sponsor, facilitator and a guide.

The manager must learn how to give up control and employees must learn how to take responsibility for their work and make better decision. This in many cases brings change in leadership style.

Coping with Temporariness

The product life cycles are slimming up and thus the methods of operations are improving and fashions are changing very fast. This rapid changing era brings a **temporariness** feel among the organization's environment. The very long periods of stability is lost in the recent years due to competitiveness in providing better experience.

Actual jobs that workers perform are in a permanent state of flux so they need to upgrade their **knowledge** and **skill sets.**

Improving Ethical Behaviour

The complexity of business operations is forcing workforce to face ethical dilemmas, where they are required to define right and wrong conduct in order to complete their assigned activities. The ground rules governing the constituents of good ethical behaviour has not been clearly defined. Blurring out of differentiation between right things from wrong behaviour becomes a dent in an organization.

The managers must evolve code of ethics to guide employees through ethical dilemmas. Organizing workshops, seminars, training programs help improving behaviour of employees.

It is the duty *of* every individual to keep the climate within an organization healthy in terms of ethics and principals and maintain minimal degree of ambiguity

Question 7: Explain Organizational Culture and its characteristics? Discuss any four types of Organization Culture?

Ans : Organizational culture is defined as the underlying beliefs, assumptions, values and ways of interacting that contribute to the unique social and psychological environment of an organization.

Culture is the set of important understandings that of a community share in common. It consists of patterns and ways of thinking, feeling, and reactions that are acquired by language and symbols that create distinctiveness among human group.

Culture of the organisation plays an important role in the area of motivation and the level of economic rewards. It also influences the level of commitment to work on the part of the members. Organisational culture represents a common perception shared by the member of an organisation and has a tendency to describe the organisational culture in almost similar terms.

The term ‘Organisational Culture’ refers to the norms and values of an organisation, which together make the personality of the company.

The following characteristics help us to understand the nature of organizational culture better.

1. Individual Autonomy:

The degree of responsibility, freedom and opportunities of exercising initiative that individuals have in the organization.

2. Structure:

The degree which the organization creates clear objectives and performance expectations. It also includes the degree of direct supervision that is used to control employee behaviour.

3. Management Support:

The degree to which managers provide clear communication, assistance; warmth and support to their subordinates.

4. Identify:

The degree to which members identify with the organization as a whole rather than their particular work group or field of professional expertise.

5. Performance Reward System:

The degree to which reward system in the organization like increase in salary, promotions etc. is based on employee performance rather than on seniority, favouritism and so on.

6. Conflict Tolerance:

The degree of conflict present in relationships between colleagues and work groups as well as the degree to which employees are encouraged to air conflict and criticisms openly.

7. Rise Tolerance:

The degree to which employees are encouraged to be innovative, aggressive and risk taking.

8. Communication Patterns:

The degree to which organizational communications are restricted to the formal hierarchy of authority.

9. Outcome Orientation:

The degree to which management focuses on results or outcomes rather than on the techniques and processes used to achieve these outcomes.

10. People Orientation:

The degree to which management decisions take into consideration the impact of outcomes on people within the organization.

Clan Culture

A clan culture is a family-like type of corporate environment where everyone's views and ideas are valued. Clan cultures have a friendly, collaborative culture and are often compared to a large family. This type of culture emphasizes on the consensus of the employees while taking any business decision. Helping each other during working hour, eating lunch together, playing games in the evening, and celebrating each other's happy memories are the attributes of the clan culture

Advantages of Clan Culture-

- Productivity and company growth is consistent in this type of culture.
- There are clear communication and transparency. Every member is comfortable to voice their opinion and ideas.
- Employees are appreciated for their good work and also criticized constructively without hurting their sentiments.

Adhocracy Culture:

Adhocracy culture is a risk-taking culture. Here organizational leaders are innovative and creative in their approach. They are inspirational innovators who accept challenges, take risks and ready to break the organizational assumptions. Employees get their chances to spin their balls multiple times when they miss it.

Advantages of Adhocracy Culture-

- A shared commitment to innovation at every level of the organization.
- Competitive advantage in the marketplace.
- An inclusive environment that welcomes all ideas.

Market Culture:

Market culture is results-driven, market-orientated and extremely competitive. This culture thrives for results and works relentlessly to penetrate into the market and get maximum shares. This type of culture is most common in larger corporations, where leaders are relentless, strong and have very high expectations of their teams. Employees are given difficult goals and they are pushed to achieve those at any cost. Performance is closely monitored, for which it's not unusual for employees to be rewarded and punished. Getting the job done is the number one priority in this type of company culture.

Advantages of Market Culture-

- Goals are met, or if they aren't, new ways are explored to reach them.
- Employees are consistently pushed to go the extra mile and are driven and inspired by their leaders.

- They are always ready to react to any changes in the market to ensure they maintain the market share and stay ahead of the game.

Hierarchy Culture:

Hierarchy Culture is a formalized and structured work environment. Leaders are proud of their efficiency-based coordination and organization. Keeping the organization functioning smoothly is most crucial here. Formal rules and policies keep the organization together. The long-term goals are stability and results and are directly paired with an efficient and smooth execution of tasks.

Advantages of Hierarchy Culture-

- Employees who work for hierarchical companies feel more secure; get paid on time, and are safe to stay in their role in the long run.
- Benefits of promotion lead to exclusive advanced status and reward. This can prove a great motivator for employees.
- Employees gain status through consistent hard work and effort within a set role. By focusing on their work alone, they are more likely to achieve expert status in that one field.

Organizational cultures are rooted in the organization's beliefs but it does not imply that the rules cannot be bend. It is, in fact, a wise choice to develop a flexible culture that adapts to the change in the business processes in the world. Also, in the modern workplaces retaining the employees and also keeping them engaged is a huge task. Company culture is one of the main reasons why employees remain dissatisfied in their jobs. Therefore, it is very critical to build a culture that not only helps in the organization's bottom line but also keeps everyone happy and satisfied in their jobs.

Question .8 Discuss various role & importance of managerial communication at workplace?

Answer: To lead others, you must demonstrate effective communication skills. Otherwise, a manager will lack the credibility to implement his employer's objectives, and struggle to rally worker teams behind them. Managers who communicate well are also more likely to become good problem solvers, which is an essential skill to function well in an international workplace where diversity is increasingly the norm. Employees who show an aptitude for verbal and written communication are more likely to advance up the corporate ladder, as well. Effective communication between managers and employees is requisite for a well-functioning workplace.

Importance of managerial communication at workplace:

- **Managerial communication plays a pivotal role in knowledge sharing**. Managers must communicate with their subordinates to share whatever they know. A unique idea is of no use, if not shared. Managers need a medium which helps them interact with their immediate team members and vice a versa. Here comes the role of effective managerial communication. Managers need to communicate with their team members to make them clear as to what is expected out of them. Managerial communication helps managers to extract the best out of team members. Employees need to be told their key responsibility areas.

- **Managerial communication plays an important role in completing tasks way ahead of deadlines**. Individuals ought to work together in teams to complete tasks at a much quicker rate. It is really essential to discuss ideas, evaluate pros and cons of strategies to reach to something which would benefit not only the employees but the organization on the whole. Managers before implementing any new policy must sit with their team members and take their suggestions as well. You never know when someone comes up with a brilliant idea?
- **Effective communication leads to transparency among team members**. Employees who do not communicate are generally prone to stress and anxiety. Managerial communication enables the manager to delegate roles and responsibilities to their subordinates as per their interests and also allows the employees to ask whatever they have not understood. Managerial communication helps managers to know what their team members are up to and thus prevents overlapping of work.
- **Managerial communication also goes a long way in motivating employees**. A sense of loyalty towards work and organization develops if managers communicate with their team members on a regular basis. Remember problems if not attended at initial stages lead to critical situations later. Employees should have the liberty to discuss their grievances with their team leaders. Communication helps to sort out differences among employees in a healthy and positive way.
- **Managerial communication also plays an important role during crisis and critical solutions**. Managers ought to be in constant touch with their employees for them to deliver their level best. Managerial communication in simpler words gives a sense of security to the employees.
- **Human beings are not machines who can work at a stretch**. We need people around with whom we can discuss lot many things apart from routine work. If you do not communicate; you would never know what is happening around you. An individual working in isolation often treats his work as a burden. Communication keeps an individual abreast of the latest developments at the workplace.
- Managerial communication also plays an important role in stress management.

Question 9: Explain Attitude &What are the main components of attitudes? Are these components related or unrelated?

Answer: Attitude is defined as a more or less stable set of predispositions of opinion, interest or purpose involving expectancy of a certain kind of experience and readiness with an appropriate response.

Attitudes are also known as "**frames of reference** ". They provide the background against which facts and events are viewed.

Attitude Definition

Attitudes are evaluation statements either favourable or unfavourable or unfavourable concerning objects, people or events. They reflect how one feels about something.

Robbins

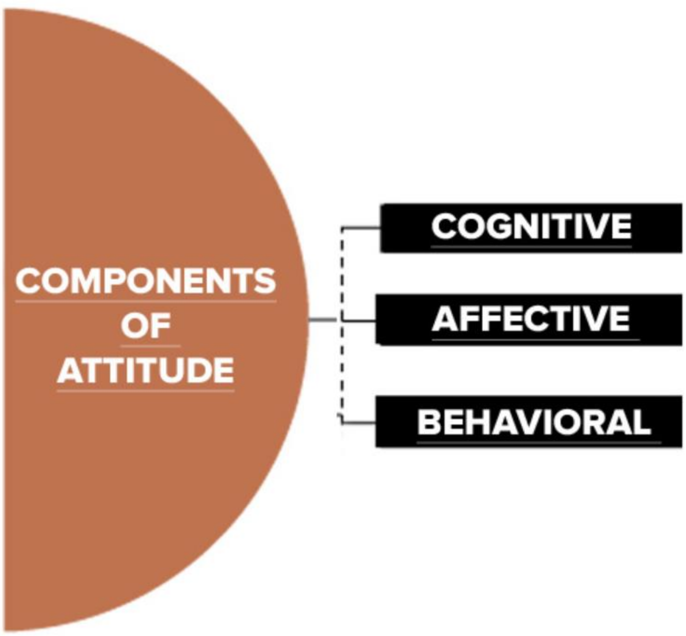
Attitude is a mental and neutral state of readiness organized through experience, exerting a directive or dynamic influence upon individual's response to all objects and situations with which it is related.

G.W. Allport

Attitude as an enduring organization of motivational, emotional, perceptual and cognitive processes with respect to some aspect of the individual's world.

Krech and Crutchfield

Components of Attitude



Cognitive component

Cognitive component of attitude is associated with the *value statement*. It consists of values, belief, ideas and other information that a person may have faith in.

Example: Quality of sincere hard is a faith or value statement that a manager may have.

Affective component

Affective component of attitude is associated with *individual feelings about another person*, which may be positive, neutral or negative.

Example: I don't like Sam because he is not honest, or I like Sam because he is sincere. It is an expression of feelings about a person, object or a situation.

Behavioral component

Behavioral component of attitude is associated with the *impact of various condition or situations that lead to person behaviour* based on cognitive and affective components.

Example: I don't like Sam because he is not honest is an affective component, I, therefore, would like to disassociate myself with him, is a behavioural component and therefore I would avoid Sam.

Cognitive and affective components are bases for such behaviour. Former two components cannot be seen, only the behaviour component can be seen. Former is important because it is a base for the formation of attitude.

They are all interrelated as one leads to the formation of the other ultimately leading to a positive or negative attitude. The cognitive component states fact or solidifies a particular claim, the Affective component adds one's personal feeling towards the Cognitive statement and finally, depending on the emotional view of the cognitive component, the behavioral component details a corresponding course of action or reaction. The occurrence/situation leads to an emotion which in turn leads to a path of action and this creates the foundation to a positive or negative attitude.

Viewing attitudes as made up of three components - cognition, affect and behaviour– is helpful toward understanding their complexity and the potential relationship between attitude and behaviour. The object of an attitude is represented as a prototype in a person's memory. Then an individual uses an attitude as a schema for evaluating an object. The person may assess the object as good or bad, positive or negative, favoured or not; then the person determines the strategy to take toward it. The accessibility of an attitude, or ease with which it is activated, affects its implementation. Personal experience with the object and the repeated expression of the attitude increases it accessibility. In this way, attitude-related information helps process complex information.

Question 10: Discuss different types of Attitude? What is attitude function and how it is important for Managers?

Answer: There are broadly three types of attitude in term of Organizational Behaviour

Job satisfaction

A collection of positive and/or negative feelings that an individual hold toward his or her job.

A person will hold a positive attitude if had a high level of satisfaction, while dissatisfied people will generally display a negative attitude towards life.

When we talk about attitude, we generally speak about job satisfaction because they are inter-related in organizational behaviour.

Job involvement

Job involvement refers to the degree to which a person identifies himself (psychologically) with his job, actively participates and considers his perceived performance level important to self-worth. (Robbins)

Higher job satisfaction leads to low absenteeism & employee turnover and indicates that the individual cares for his job.

Organizational commitment

Organizational commitment refers to a degree to which an employee identifies himself with the organizational goals and wishes to maintain membership in the organization.

Resigning from the job or absenting versus job satisfaction is a predictor of organizational commitment. Organizational commitment depends upon the degree of autonomy & freedom job and job enrichment factor.

Functions of Attitude

Attitudes have four important functions in organizational behavior viewpoint.

Adjustment Function

Attitudes often help individuals to adjust to their work environment.

Example: Well-treated employees tend to develop a positive attitude towards their management or job.

Ego-Defensive Function

Attitudes help people to retain their self- image and dignity.

Example: Older faculty might feel somewhat threatened by a young and new faculty member who is full of fresh ideas and enthusiasm

Value-Expressive Function

Attitudes provide individuals with a basis for expressing their values.

Example, a manager who values honest and sincere work will be more vocal against an employee who is having a very casual approach towards work.

Knowledge Function

Attitudes provide frames of reference or standard that allow individuals to understand and perceive the world around him.

Example, If a student has a strong negative attitude towards the college, whatever the college does, the student will be perceived as something 'bad' and as actually against them.

Importance of Attitude in an organization and its implications on mangers

An expert knows that a positive attitude is necessary for successful completion of a project or an assigned task. Having a positive attitude with positive thinking in the organization will reflect on what employee do and make them a more productive employee.

Employees with a positive attitude will create a healthy atmosphere in the organization, develop positive relations with sub-ordinates, their supervisors, managers and top management. A positive attitude has significant benefits for an individual in many aspects.

Following are the aspects related to the **importance of attitude**

Career success

Performance is a parameter to measure employees' success in the workplace. Performance leads to success either through promotion or increased compensation. A positive attitude of an employee will help him to think of ways to accomplish their task in a well-defined manner

Productivity

An employee with a positive attitude tends to take more interest and responsibility and will provide better work, which in turn will improve productivity.

Leadership

Managing a diverse workforce is a crucial task for achieving the objective of an organization. Positive attitude demonstrated by leaders or employee will result in proper communication between the subordinate which will lead to efficient work.

Teamwork

A positive attitude of employees helps to appreciate each other‘s competencies and work as a team for achieving common objectives.

Decision making

An employee with a positive attitude and mindset will help employees to make better decisions, in an objective manner. It will enable employees to choose wisely and logically and avoid them to take an unambiguous decision.

Motivation

Motivation is an important factor for efficient work. An employee with a positive attitude will always be mentally prepared to face any obstacle in a job. The moment they are successful in overcoming obstacles, they are motivated to move forward.

Interpersonal relations

Customers prefer to make relation with someone who is positive in nature. A positive attitude helps in establishing valuable customer loyalty.

Stress management

Positive attitude and thinking will reduce the stress of an employee and with reduced stress employee can take a better decision and increase their productivity which results, employees, to enjoy better health and take fewer sick leaves.

Question 11. What do you understand by Learning? Explain the theories of learning with example.

Answer: Learning can be defined as the permanent change in behaviour due to direct and indirect experience. It means change in behaviour, attitude due to education and training, practice and experience. It is completed by acquisition of knowledge and skills, which are relatively permanent.

Nature of Learning

Nature of learning means the characteristic features of learning. Learning involves change; it may or may not guarantee improvement. It should be permanent in nature, that is learning is for lifelong.

The change in behaviour is the result of experience, practice and training. Learning is reflected through behaviour.

Factors Affecting Learning

Learning is based upon some key factors that decide what changes will be caused by this experience. The key elements or the major factors that affect learning are motivation, practice, environment, and mental group.

Coming back to these factors let us have a look on these factors −

- **Motivation** − The encouragement, the support one gets to complete a task, to achieve a goal is known as motivation. It is a very important aspect of learning as it acts gives us a positive energy to complete a task. **Example** − The coach motivated the players to win the match.
- **Practice** − We all know that" Practice makes us perfect". In order to be a perfectionist or at least complete the task, it is very important to practice what we have learnt. **Example** − We can be a programmer only when we execute the codes we have written.
- **Environment** − We learn from our surroundings; we learn from the people around us. They are of two types of environment – internal and external. **Example** − A child when at home learns from the family which is an internal environment, but when sent to school it is an external environment.
- **Mental group** − It describes our thinking by the group of people we chose to hang out with. In simple words, we make a group of those people with whom we connect. It can be for a social cause where people with the same mentality work in the same direction. **Example** − A group of readers, travellers, etc.

These are the main factors that influence what a person learns, these are the root level for our behaviour and everything we do is connected to what we learn.

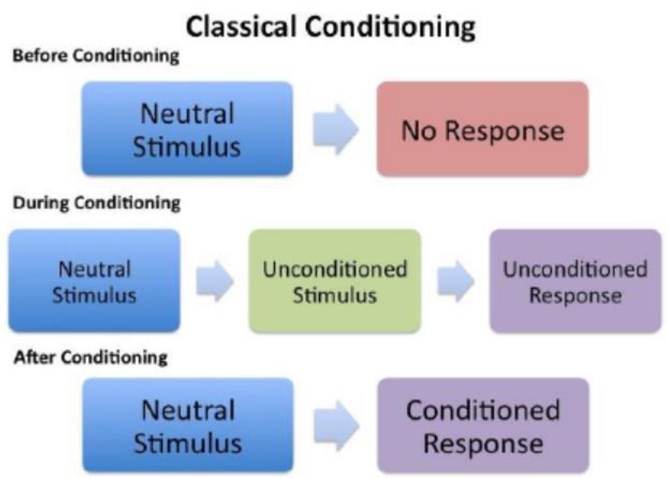
Learning can be understood clearly with the help of some theories that will explain our behaviour.

- Classical Conditioning Theory
- Operant Conditioning Theory
- Social Learning Theory
- Cognitive Learning Theory

Classical Conditioning Theory

The classical conditioning occurs when a conditioned stimulus is coupled with an unconditioned stimulus. Usually, the conditioned stimulus (CS) is an impartial stimulus like the sound of a tuning fork, the unconditioned stimulus (US) is biologically effective like the taste of food and the unconditioned response (UR) to the unconditioned stimulus is an unlearned reflex response like salivation or sweating.

After this coupling process is repeated (for example, some learning may already occur after a single coupling), an individual shows a conditioned response (CR) to the conditioned stimulus, when the conditioned stimulus is presented alone. The conditioned response is mostly similar to the unconditioned response, but unlike the unconditioned response, it must be acquired through experience and is nearly impermanent.



Operant Conditioning Theory

Operant conditioning theory is also known as instrumental conditioning. This theory is a learning process in which behavior is sensitive to, or controlled by its outcomes.

Let's take an example of a child. A child may learn to open a box to get the candy inside, or learn to avoid touching a hot stove. In comparison, the classical conditioning develops a relationship between a stimulus and a behavior. The example can be further elaborated as the child may learn to salivate at the sight of candy, or to tremble at the sight of an angry parent.

In the 20th century, the study of animal learning was commanded by the analysis of these two sorts of learning, and they are still at the core of behavior analysis.

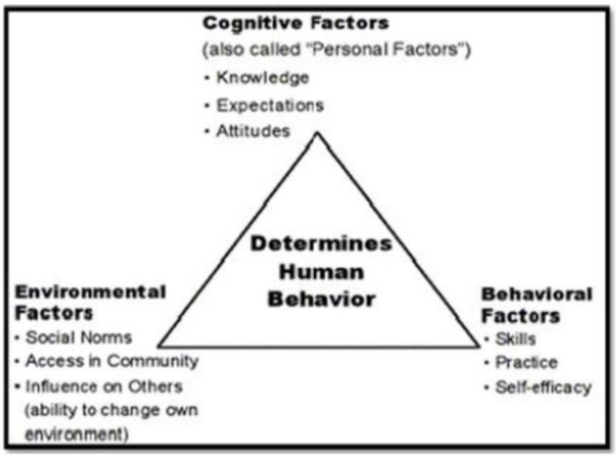
Operant Conditioning

	Reinforcement Increase Behavior	Punishment Decrease Behavior
Positive Stimulus (something added)	Positive Reinforcement Add something to increase behavior	Positive Punishment Add something to decrease behavior
Negative Stimulus (something removed)	Negative Reinforcement Remove something to increase behavior	Negative Punishment Remove something to decrease behavior

Social Learning Theory

The key assumptions of social learning theory are as follows −

- Learning is not exactly behavioral, instead it is a cognitive process that takes place in a social context.
- Learning can occur by observing a behavior and by observing the outcomes of the behavior (known as vicarious reinforcement).
- Learning includes observation, extraction of information from those observations, and making decisions regarding the performance of the behavior (known as observational learning or modeling). Thus, learning can occur beyond an observable change in behavior.
- Reinforcement plays an important role in learning but is not completely responsible for learning.
- The learner is not a passive receiver of information. Understanding, environment, and behavior all mutually influence each other.



Cognitive Learning Theory

Cognition defines a person's ideas, thoughts, knowledge, interpretation, understanding about himself and environment.

This theory considers learning as the outcome of deliberate thinking on a problem or situation based upon known facts and responding in an objective and more oriented manner. It perceives that a person learns the meaning of various objects and events and also learns the response depending upon the meaning assigned to the stimuli.

This theory debates that the learner forms a cognitive structure in memory which stores organized information about the various events that occurs.

Learning & Organizational Behavior

An individual's behavior in an organization is directly or indirectly affected by learning.

Example − Employee skill, manager's attitude are all learned.

Behavior can be improved by following the listed tips −

- Reducing absenteeism by rewarding employees for their fair attendance.
- Improving employee discipline by dealing with employee's undesirable behavior, drinking at workplace, stealing, coming late, etc. by taking appropriate actions like oral reprimands, written warnings and suspension.
- Developing training programs more often so as to grab the trainees' attention, provide required motivational properties etc.

Question.12 Most People believe that biological factors are important in determining the personality of a person" Comment on this statement by taking various biological factors relevant for personality and their impact?

Answer: The study of the biological contributions to personality may be studied under three heads:

a. **Heredity*:*** Heredity refers to those factors that were determined at conception.

   Physical stature, facial attractiveness, sex, temperament, muscle composition and reflexes, energy level, and biological rhythms are characteristics that are considered to be inherent from one's parents. The heredity approach argues that the ultimate explanation of an individual's personality is the molecular structure of the genes, located in the chromosomes.

Research on animals has showed that both physical and psychological characteristics can be transmitted through heredity. But research on human beings is in adequate to support this view point. However, psychologists and geneticists have accepted the fact that heredity plays an important role in one's personality.

b. **Brain*:*** The second biological approach is to concentrate on the role that the brain plays in personality. Though researchers make some promising inroads, the psychologists are unable to prove empirically the contribution of human brain in influencing personality. The most recent and exciting possibilities come from the work done with electrical stimulation of the brain (ESB) and split-brain psychology.

   Preliminary results from the electrical stimulation of the brain (ESB) research give indication that better understanding of human personality and behaviour might come from the study of the brain. Work with ESB on human subjects is just beginning.

   There seem to be definite pleasurable and painful areas in the human brain. This being true, it may be possible physically to manipulate personality through ESB.

c. **Biofeedback*:*** Until recently, physiologists and psychologists felt that certain biological functions such as brainwave patterns, gastric secretions, and fluctuations in blood pressure and skin temperature were beyond conscious control. Now some scientists believe that these involuntary functions can be consciously controlled through biofeedback. In BFT the individual learns the internal rhythm of a particular body process through electronic signals feedback from equipment that is wired to the body area. From this biofeedback the person can learn to control the body processing question. More research is needed on biofeedback before any definitive conclusions can be drawn. But its potential impact could be extremely interesting for the future.

d. **Physical features*:*** A vital ingredient of the personality, an individual's external appearance, is biologically determined. The fact that a person is tall or short, fat or skinny, black or white will influence the person's effect on others and this in turn, will affect the self-concept. Practically all would agree that physical characteristics have at least some influence on the personality. According to Paul H Mussen "a child's physical characteristics may be related to his approach to the social environment, to the expectancies of others, and to their reactions to him. These, inturn, may have impacts on personality development".

Role of Heredity

The personality pattern is inwardly determined by and closely associated with the maturation of physical and mental characteristics which constitute the individual's heredity endowment. Although social and other environmental In the course of interaction of hereditary and environmental factors, the individual selects from his environment what fits his needs and rejects what does not. Thus personality pattern develops through interactions with the environment which an individual himself has initiated. One reason for stressing the role of heredity in the development of personality is to recognize the fact that personality pattern is subject to limitations. A person who inherits a low level of intelligence, for example, cannot, even under the most favourable environmental conditions, develop a personality pattern that will lead to adequate personal and social adjustment, than a person with high level of adjustment. Thus heredity sets limits to a person's development. Furthermore, recognition of the limitations imposed by heredity underlines the fact that people are not totally free to choose and develop the kind of personality pattern they want. Using intelligence again as an illustration it may be said that a person with a low-grade intelligence cannot develop the personality pattern of a leader even though he wants to do so and even though he has a strong motivation to try to develop the personality traits essential for leadership.

Question 13. Explain the various theories of personality with their implications in the field of Management.

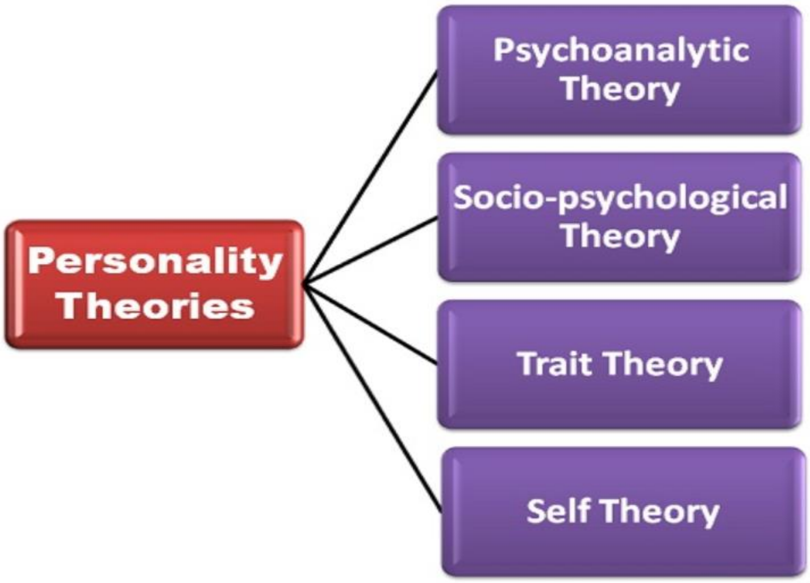
Answer: Definition: The **Personality** refers to the distinct traits, thoughts, feelings, actions and characteristics of an individual that differentiates him from other individuals. Simply, the personality is the typical behaviour of a person in which he responds to the given situations.

The term personality is derived from a Latin word **"persona"** which means to speak through, it is also a mask used by actors in Greece and Rome to play different roles or disguise themselves.

Theories of Personality

Since there is no exact definition of the term personality, different theorists from psychology field as well as from other fields dealing with human behaviour have carried on researches to find out the answers to certain questions Viz. What is Personality? What does it constitute? How is behaviour governed by Personality?

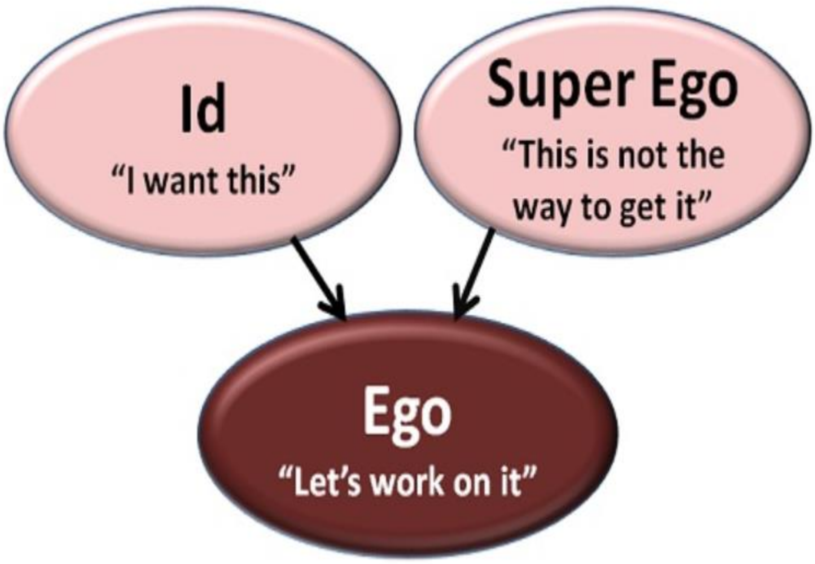
The theories of personality have been grouped as:



Psychoanalytic Theory

Definition: The **Psychoanalytic Theory** is the personality theory, which is based on the notion that an individual gets motivated more by unseen forces that are controlled by the conscious and the rational thought.

Sigmund Freud is closely related to the psychoanalytic theory. According to him, the human behaviour is formed through an interaction between three components of the mind, i.e. Id, Ego and Super Ego.



1. **Id:** Id is the primitive part of the mind that seeks immediate gratification of biological or instinctual needs. The biological needs are the basic physical needs and while the instinctual needs are the natural or unlearned needs, such as hunger, thirst, sex, etc. Id is the unconscious part of the mind; that act instantaneously without giving much thought to what is right and what is wrong.

   Example: If your Id passed through a boy playing with a ball, the immediate urge to get that ball will drive you to snatch it by any means, this is irrational and may lead to the conflict between the boys. Thus, Id is the source of psychic energy, a force that is behind all the mental forces.

2. **Super-Ego:** The Super-Ego is related to the social or the moral values that an individual inculcates as he matures. It acts as an ethical constraint on behavior and helps an individual to develop his conscience. As the individual grows in the society, he learns the cultural values and the norms of the society which help him to differentiate between right and wrong.

   Example: If the super-ego passed that boy playing with a ball, it would not snatch it, as it would know that snatching is bad and may lead to a quarrel. Thus, super ego act as a constraint on your behavior and guides you to follow the right path. But if the Id is stronger than super-ego, you will definitely snatch the ball by any means.

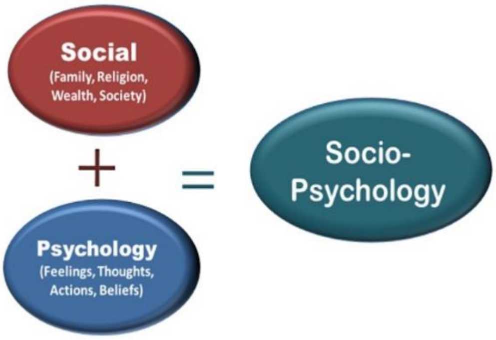
3. **Ego:** Ego is the logical and the conscious part of the mind which is associated with the reality principle. This means it balances the demands of Id and super-ego in the context of real life situations. Ego is conscious and hence keep a check on Id through a proper reasoning of an external environment.

   Example: If you pass through the same boy playing with the ball, your ego will mediate the conflict between the Id and super-ego and will decide to buy a new ball for yourself. This may hurt you Id, but the ego would take this decision to reach to a compromise situation between the Id and super-ego by satisfying the desire of getting a ball without committing any unpleasant social behavior.

Hence, these are the fundamental structures of the mind, and there is always a conflict between these three. The efforts to attain the balance between these defines the way we behave in the external environment.

Socio-Psychological Theory

Definition: **The** Socio-Psychological Theory **asserts that individual and society are interlinked. This means, an individual strives to meet the needs of the society and the society helps him to attain his goals. Through this interaction, the personality of an individual is determined.**



The Socio-Psychological theory is the contribution of Adler, Horney, Forman and Sullivan. This theory is also called as Neo-Freudian Theory because it differs from the Freud's psychoanalytic theory in the following respects:

1. According to this theory, the social variables and not the biological instincts, are the important determinants in shaping the individual's personality.
2. Here, the motivation is conscious, i.e. an individual knows what are his needs and wants and what kind of behaviour is required to meet these needs.

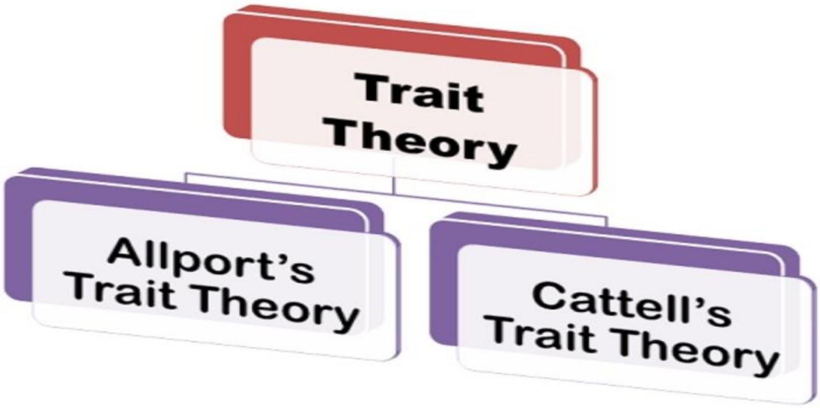
Thus, the theorists believe that socio-psychological factors, i.e. the combination of both the social (family, society, wealth, religion) and the psychological factors (feelings, thoughts, beliefs) play an important role in shaping the personality of an individual.

It is the society from where the individual inculcates the cultural values and the social norms, which helps him in shaping his personality and influences his behavior according to the external situations.

Trait Theory

Definition: The **Trait Theory** asserts that an individual is composed of a set of **definite predisposition attributes** called as traits. These traits are distinguishable and often long lasting quality or a characteristic of a person that makes him different from the others.

The two most common trait theories are:



Allport's Trait Theory: This theory is given by Gordon Allport. According to him, the personality of an individual can be studied through a distinction between the common traits and the personal dispositions.

The common traits are used to compare the people on the grounds of six values, such as religious, social, economic, political, aesthetic and theoretical. Besides the common traits, there are personal dispositions which are unique and are classified as follows:

- **Cardinal Traits:** The cardinal traits are powerful, and few people possess personality dominated by a single trait. **Such as Mother Teressa's altruism.**
- **Central Traits:** These traits are the general characteristics possessed by many individuals in the varying degrees. Such as loyalty, friendliness, agreeableness, kindness, etc.
- **Secondary Trait:** The secondary traits show why at times, a person behaves differently than his usual behavior. Such as a jolly person may get miserable when people try to tease him**.**

Cattell's Trait Theory: This trait theory is given by Raymond Cattell. According to him, the sample of a large number of variables should be studied to have a proper understanding of the individual personality.

He collected the life data (everyday life behaviors of individuals), experimental data (standardizing experiments by measuring actions), questionnaire data (responses gathered from the introspection of an individual's behavior) and done the factor analysis to identify the traits that are related to one another.

By using the factor analysis method, he identified 16 key personality factors:

1. **Abstractedness** – Imaginative Vs Practical
2. **Warmth** – Outgoing Vs Reserved
3. **Vigilance** – Suspicious Vs Trusting
4. **Tension** – Impatient Vs Relaxed
5. **Apprehension** – Worried Vs Confident

6. **Emotional Stability** – Calm Vs anxious
7. **Liveliness** – Spontaneous Vs Restrained
8. **Dominance** – Forceful Vs Submissive
9. **Social Boldness** – Uninhibited Vs Shy
10. **Perfectionism** – Controlled Vs Undisciplined
11. **Privateness** – Discreet Vs Open
12. **Sensitivity** – Tender Vs Tough
13. **Self Reliance** – Self sufficient Vs Dependent
14. **Rule-Consciousness** – Conforming Vs Non-Conforming
15. **Reasoning** – Abstract Vs Concrete
16. **Openness to Change** – Flexible Vs Stubborn

The trait theory is based on the assumption that the traits are common to many individuals and they vary in absolute amounts. Also, the traits remain consistent over a period of time, and thus can be measured through the behavioral indicators.

Self Theory

Definition: The **Self Theory** emphasizes on the set of perceptions an individual has for himself and the perceptions of the relationships he has with others and the other aspects of life. Carl Rogers has contributed significantly towards the self theory.

The self theory comprises of four factors that are explained below:

1. **Self-Image:** Self-image means what an individual thinks about himself. Everybody has certain beliefs about themselves, such as who or what they are, these beliefs form the self image and identity of a person.

   According to Erikson, identity is formed through a lifelong development usually unconscious to the individual and his society, i.e. an individual forms perception about himself unconsciously, according to the social circumstances.

2. **Ideal-Self:** The ideal-self means, the way an individual would like to be. It is very much different from the self-image, as it shows the ideal position perceived by an individual, whereas the self-image is the reality that an individual perceives.Thus, there could be a gap between these two.

   The ideal-self-acts as a stimulus to motivate an individual to undertake those activities that are in compliance with the characteristics of his ideal self.

3. **Looking-Glass-Self:** The looking-glass self means, an individual's perception of how others are perceiving his qualities or feeling about him. Simply, it is the perception of other's perception, i.e. perceiving what others perceive about yourself and not see what actually you are.
4. **Real-Self:** The real-self is what others show you with respect to your self-image. An individual's self-image is confirmed when others responses to him and shares their beliefs or perception, about what they actually feel about him.

   This is taken as feedback from the environment that helps an individual to adjusts his self-image accordingly and be in line with the cues he had received.

Thus, according to Carl Rogers, the self-theory is composed of several perceptions of **"I" or "me"** and the perception of relationships of **"I" and "me"** to others.

Thus, we can say, that personality is the organization of different psychological systems in an individual, who tries to adjust to the external environment.

Question 14: Explain Maslow hierarchy need of Theory and What can the management do to satisfy the various levels of workers as shown in Maslow's Model?

Answer:

The Hierarchy of Needs

The Maslow motivation theory is one of the best known and most influential theories on workplace motivation.

Psychologist Abraham Maslow first developed his famous theory of individual development and motivation in the 1940's. He suggested that human beings have a hierarchy of needs. That is, that all humans act in a way which will address basic needs, before moving on to satisfy other, so-called higher level needs.

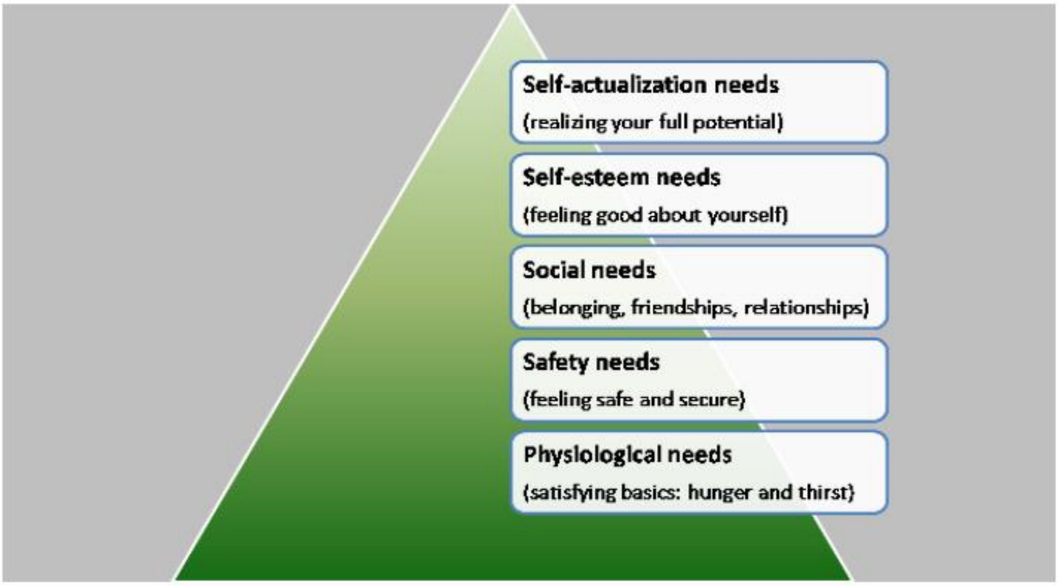
Maslow represented this theory as a hierarchical triangle. This shows how basic needs must be met before one can "climb" the hierarchy, to address more complex needs.

For example, first one must meet the basic, physiological need for food, water and warmth. After that the focus would be on the need to be safe, then the need to belong to social groups, and so on up the hierarchy.

The important thing to recognize is Maslow's contention that one's sense of well-being. i.e. the 'feelgood factor' increases as the higher-level needs are met.

he Maslow motivation theory is typically represented by 5 steps:

- **Physiological needs** – such as hunger, thirst and sleep
- **Safety needs** – such as security, protection from danger and freedom from pain.
- **Social needs** – sometimes also referred to as love needs such as friendship, giving and receiving love, engaging in social activities and group membership.
- **Esteem needs** – these include both self-respect and the esteem of others. For example, the desire for self-confidence and achievement, and recognition and appreciation.
- **Self-actualization** – This is about the desire to develop and realize your full potential. To become everything you can be.



Maslow's Hierarchy of Needs

Maslow believed that human beings have a strong desire to reach their full potential. In his own words:

"a man's desire for self-fulfilment, namely the tendency for him to become actually in what he is potentially: to become everything that one is capable of being…."

Employee Motivation Techniques Using the Maslow Pyramid

Now the way to apply this theory it is to try to have the members of our team working at the highest level. Knowing our team members as individuals and working to understand their specific needs will help you identify what actions are needed on our part to keep them motivated.

When building our team, try to make sure that lower level needs are met. When encounter a motivational issue, try to find out if there are lower level needs that are not being met, and take steps to meet them if possible.

Here are some **employee motivation techniques** to try that use *Maslow's Hierarchy of Needs* as a framework...

Physiological Needs

- Provide input for employee salaries and bonuses.

Safety Needs

- Ensure the correct tools for the job are available.
- Create an environment where individuals are comfortable challenging requests that are dangerous.

Social Needs

- Schedule weekly project team meetings.
- Get the team together to celebrate project milestones.

Esteem Needs

- Recognize team members for excellent contributions to the project.
- Ensure each team member understands how important they are to the project.

Self-Actualization Needs

- Take into account each team members professional goals when assigning tasks.
- Empower team members so that they can develop and grow.

A person's behavior can focus on more than one need. For example, one of team members may be actively seeking promotion because it will lead to a higher salary (physiological need). But the promotion can also satisfy esteem and self-actualization needs. Even though the needs are described as hierarchical, application of the theory isn't as rigid.

The Maslow Theory of Motivation is a great tool for Project Managers to understand and use. It can help you keep your team motivated as well as correct motivational issues.

Question15: What is perception Error? Explain the different type of perpetual occurs in an organization explain with the example of Interview process ?

Ans: Anything that inhibits or prevents us from making accurate perceptions is called a perceptual barrier or a perceptual error. Perceptual errors often result from the preconceived ideas perceivers hold about people and situations. Five of the most common perceptual barriers are selective perceptions, stereotypes, halo effect, projections, and expectations.

Selective Perception

In the organizational context, selective perception means paying attention to information that supports your ideas and ignoring the rest. For instance, if you dislike some teachers, you would tend to focus on their negative personality characteristics and ignore any positive qualities that would be inconsistent with your opinion of them. Another type of selective perception is perceptual defence. This is the tendency for people to protect themselves from ideas, objects, or situations that are threatening. For instance, you may ignore a person who has ideas that threaten your deeply held convictions.

Stereotypes

A stereotype is an oversimplified mental picture that is associated with a particular group (e.g., women are emotional, Scots are thrifty, and fat people are jolly). Stereotypes persist because people who hold them tend to practice selective perception. For example, a foreperson who believes that young people are lazy may notice that some of the younger workers are taking extra breaks, but fail to perceive that older workers are doing the same. Positive stereotypes can be as misleading as negative ones. For instance, regardless of the reality, some of us tend to stereotype attractive people as warm, kind, sensitive, and honest.

Halo Effect

The halo effect1 occurs in organizations when managers provide overly favourable evaluations of employees based on their observations of isolated successes. A typical halo error made by managers is to assume that a person with a good attendance record is responsible in all areas of performance. Another is being influenced by the previous year's performance evaluations.

Projection

Projection is the tendency to attribute one's own beliefs, feelings, tendencies, motives, or needs to other people. For instance, a manager who enjoys taking on new responsibilities may project this tendency onto employees by assigning them extra job duties without first consulting them. Managers can avoid the negative consequences of projection by cultivating empathy and developing their listening skills.

Expectations

An expectation is the tendency to find in a situation or a person what one expects to find. Our expectations have a big impact on how we perceive the world around us. For instance, when we ask people how they are doing, we expect them to answer, "Fine, thank you." If their response is accompanied by negative body language, we may choose to ignore the nonverbal information because it is not consistent with our expectations.

Typical Perceptual Errors in the Interview Process

Selecting the best person for the job is a crucial aspect of organizational success. Perception plays a significant role in this process. Some common perceptual errors made in job interviews are described below.

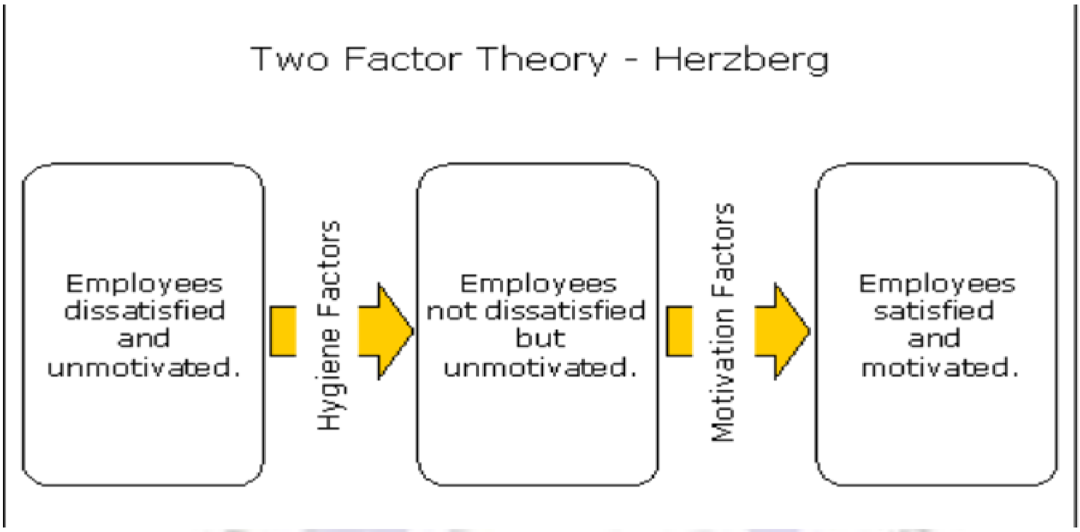
- Similarity error. The similarity error occurs when an interviewer makes a more favorable evaluation of someone who is similar to the interviewer. For instance, an athletic interviewer with an outgoing personality might have an undeservedly positive impression of someone who is outgoing and athletic.
- Contrast error. The contrast error occurs when an interviewer compares the candidate to other candidates instead of evaluating the individual according to a set standard. For instance, a mediocre candidate may receive an outstanding evaluation if interviewed after several poor candidates. Similarly, a strong candidate may receive a mediocre evaluation if seen after several outstanding candidates.
- Overreacting to negative information. Interviewers often perceive negative information as more important than positive information. A candidate who presents negative information at the beginning of an interview is more likely to receive a negative evaluation than a candidate who presents this information at the end of the interview. This is partially due to the impact of first impressions, which is discussed below.
- First impression error. Sometimes people make hasty judgments or evaluations of other people based on their first impressions. The first three minutes of a job interview can determine whether the person will get the position. Research suggests that positive first impressions are more likely to change than negative first impressions.

Sometimes our expectations turn into a self-fulfilling prophecy. Consider the example of a manager who believes that an employee is bored with his work and may quit. The manager gives this employee minimal feedback and encouragement, and assigns the interesting work tasks to other employees. These actions provoke the employee, who previously had no intention of doing so, into resigning.

Question 16: Explain Herzberg's Motivation-Hygiene Theory (Two Factor Theory)and Herzberg believed that businesses should motivate employees by adopting a democratic approach to management and by improving the nature and content of the actual job.

Ans: **Herzberg's two factor theory of motivation**

This is an environmental motivation theory which emphasises factors in the environment that contribute to the behaviour. His two factors are job satisfaction and job dissatisfaction. His conclusions are based on research conducted among 200 accountants and engineers.



Hygiene factors: The hygiene factors do not motivate people. They simply maintain status quo. They produce no growth but they prevent loss. The absence of these factors leads to job satisfaction.

The elimination of dissatisfaction does not mean satisfaction and they simply maintain a "Zero level of motivation". These factors are primarily extrinsic and environment oriented and relate to job context, rather than job content. Some of the hygiene factors are:

(i) Interpersonal relations with peers and supervisors and subordinates.

(ii) Company policies and administration rules.

(iii) Working conditions and job security.

(iv) Supervisor's technical competence.

(v) Salary and certain types of employee benefits.

All these factors are designed to avoid damage to efficiency or morale and these do not stimulate positive growth.

The word "hygiene" is taken from the medical field, where it means-taking steps to maintain your health and not necessarily improve it. Similarly a hygiene factor in this theory of motivation prevents decay but does-not encourage growth.

Hawthrone experiments suggest that improvements in working conditions or increments in financial benefits do not contribute to motivate performance. A new plant or new facilities at a plant seldom motivates workers if the workers do not enjoy their work and is no substitute for employee feelings or recognition and achievement.

Motivational factors:

These factors are related to the nature of work itself (job content), and are intrinsic to the job itself. These factors have a positive influence on morale, satisfaction, efficiency and higher productivity. Some of these factors are:

a) The jobs itself:

To be motivated, the people must like and enjoy their jobs. They are highly committed to goal achievement and do not mind working after hours to do what is to be done. Their moral is high as evidenced by lack of absenteeism and tardiness.

(b) Recognition:

Recognition of an employee's contribution is highly morale boosting. It gives the workers a feeling of work and self esteem. It is human nature to be happy when appreciated. This is the fourth level need in Maslow's model of hierarchical needs and boosts the ego and esteems the factors.

(c) Achievement:

A goal achievement gives a great feeling of accomplishment. The goal must be challenging requiring initiative and creativity. The opportunities must exist for a meaningful achievement otherwise workers become sensitized to their environment- and begin to find faults with it.

(d) Responsibility:

It is an obligation to carry out the assigned duties satisfactorily. The higher the level of these duties, the more responsible you feel and more motivated you are. It is good feeling to know that you are considered a person of integrity and intelligence to be given a higher responsibility. It is a motivational factor that helps growth.

(e) Growth and Advancement:

These factors are an inter-related and are positively related to motivation. Job promotions, higher responsibility, participation in central decision making, executive benefits are all signs of growth and advancement an add to dedication and commitment of employees.

Herzberg's two factor model is tied in with Maslow's basic model in that the hygiene faclms satisfy the first three levels of Maslow models of physiological needs, security and safety needs and social needs, and the motivational factors satisfy the last two higher level needs of esteem and self-actualization needs in the Maslow model.

This theory has contributed to one management programme that has lent itself to the enhancement of motivators. This programme is that of "job enrichment" which means restructuring of jobs to include satisfier factors into the job content. Some of the principles of job enrichment are advanced by Herzberg himself.

i) Give the employee the freedom of operation and responsibility. An opportunity to schedule one's own work enhances a sense of achievement and motivation. Expand his authority while retaining some controls and accountability for actions and results.

ii) To increase responsibility, give the person a whole unit to operate. This unit may be one group, section or division and grant additional authority to achieve the group goal. This will help the growth an advancement factors.

iii) Introduce new and more difficult tasks at each step giving the workers an opportunity to learn and specialize.

iv) The employee must be given frequent feedback on his performance and on his handling of his own duties and responsibilities. This feedback will reinforce the learning process and reduce or eliminate any existing deviations and will appraise the employee about his progress.

Herzberg believed that businesses should motivate employees by adopting a democratic approach to management and by improving the nature and content of the actual job through certain methods. Some of the methods managers could use to achieve this are:

- **Job enlargement** – workers being given a greater variety of tasks to perform (not necessarily more challenging) which should make the work more interesting.
- **Job enrichment** - involves workers being given a wider range of more complex and challenging tasks surrounding a complete unit of work. This should give a greater sense of achievement.
- **Empowerment** means delegating more power to employees to make their own decisions over areas of their working life.

Question 17 Change is highly important to the success of an organization but many people have the tendency covertly to resist it" Explain this statement and point out the reasons for resistance to change.

Answer: One of the most important tasks of managers is to facilitate changes smoothly. Change is always inevitable but so is resistance to change. It is basic human nature of people to try and keep their methods and customs constant. This is where change management comes into play. An organization always must strive to adapt to change if it wants to be successful.

One of the most important facets of change management is resistance to change. It is simply human nature to counteract any changes and maintain the status quo.

But since change is inevitable, instead of resisting changes the organization must try to implement them with minimum hassle.

Resistance to change may be either overt or implicit. For example, employees may react to a change in policies with outright rejection and protests.

They may even refrain from showing disapproval expressly, but they may do so implicitly by not accepting changes. Managers must understand these problems and help the employees adopt these changes smoothly.

The resistance towards change at an individual level can be due to various reasons:

- **Habits:** We individuals are influenced by our habits in our ways of working and accept or reject a change depending upon the effect which a change may have on the existing habits of the individuals. For example, change in the office location might be subjected to resistance from the individuals as this might compel them to change their existing life routine and create a lot of difficulties in adjustment or coping with the schedule. The individuals might have to drive a longer way for reaching their office, or start early from home for reaching their office in time, etc.
- **Lack of Acceptability or Tolerance for the Change:** Some individuals endorse change and welcome a change initiative happily while few individuals fear the impact of change. Over a period of time change fatigue also builds up.
- **Fear of a Negative Impact Economically or on the Income:** During the process of organizational restructuring or introduction of organization-wide change as a strategic move on the part of the management, several inhibitions, and fear rule the thought process of the individuals. Fear of possible loss of a job as a result of change or a change in their income structure or may be a change in their work hours could be one amongst the possible reasons.
- **Fear of the Unseen and Unknown Future:** Individuals develop inertia towards the change due to the fear of unknown or uncertainties in the future. This can be tackled through effective communication with the participants of change and making people aware of the positives of change and the course of action which individuals are expected to follow to cope with the changing requirements successfully.
- **Fear of Losing Something Really Valuable:** Any form of threat to personal security or financial security or threat to the health of the individuals may lead to fear of losing something precious as a result of the implementation of change.
- **Selective Processing of Information:** It can be considered as a filtering process in which the individuals perceive or make judgments by gathering selective information which is greatly influenced by their personal background, attitude, personal biases or prejudices, etc. If an individual maintains a negative attitude towards any kind of change, then they are having a usual tendency of looking at the negativities associated with the change and involve all the positive aspects of it.
- A Rigid Belief that change cannot bring about any facilitating change in the organization and it only involves the pain and threats to the individuals.

Now, we will look into the **organizational factors which result in resistance to change.**

- **Resistance Due to the Structural Rigidities or Limitations:** Structural resistance is a characteristic feature of bureaucracies, which focus more on stability, control, set methodologies or routine.
- Ignoring all the interconnected factors which require change or lack of clarity in understanding the ground realities.

- **Inertia from the Groups:** Groups may resist change because just like individuals, groups equally follow set behavioural patterns, norms or culture and as a result of change the groups might have to change their existing ways of conduct or behaviour.
- Possible threats to Power, Resources or Expertise can also result in resistance towards an organization level change. Any kind of devolution of power or transfer of resources from some agency or group to some other agency or a group will definitely lead to a feeling of fear or inertia towards a change initiative.

In the end, it can be concluded that any kind of change will surely involve heavy resistance at the individual as well as organizational level. But through effective communication during all stages and consulting, desirable outcomes can be ensured by breaking all the possible barriers or resistances towards a change. What is more important is identifying the main source of resistance and accordingly developing action plans for dealing with it.

Successful change in an organization will require strong commitment and involvement on the part of the top management, focused and an integrated approach, strong and a stable leadership, effective and open communication from the internal change agent for making people sensitive and more aware of the realities and the ultimate need for change.

For minimizing the resistance towards the change employee participation and involvement in the overall process plays a crucial role in building acceptability and seeking the cooperation of the employees towards the change. Hence proper planning, coordinated approach and complete involvement of all the stakeholders, play a decisive role in implementing strategic decisions and determining the success of change.

Overcoming Resistance

While change will almost always face resistance, it is certainly possible to overcome it. Managers must strive to help their employees adjust to changes and facilitate new variations in functioning.

Firstly, managers must be able to convince workers that the changes they are proposing are necessary. They should show how the workers and the organization itself will benefit from these changes.

Secondly, the management can keep the following considerations in mind to implement changes smoothly:

- Changes should not happen in one go because it is easier to implement them in stages.
- Changes should never cause security problems for the workers.
- Managers must consider the opinions of all employees on whom the proposed change will have an effect.
- If managers portray leadership by first adapting to the changes themselves, employees are less likely to resist.
- Sufficient prior training of employees can help them accept changes with confidence.

Question 18: Why do people Join Group? Explain the Five stage Model of Group Development?

Answer : People join groups and teams for a variety of reasons. They join functional groups simply by virtue of joining organizations. People you accept employment to earn money or to practice their profession. People in existing functional groups are told, are asked, task forces and teams. people join informal or interest groups for a variety of reasons, most of them quit complex. Indeed, the need to be a team players has grown so strong today that many organizations will actively resist hiring some one who does not want to work with others.

Interpersonal Attraction One reason why people choose to form informal or interest groups is that they are attracted to one another. Many different factor contribute to interpersonal attraction. Attraction is increased when people have similar attitude, personalities, or economic standings.

Group Activities Individuals may also be motivated to join a group because the activities of the group appeal to them. Jogging, Playing war games and flying model airplanes are all activities that some people enjoy. Many of them are more enjoyable to participate in as a member of a group and most require more than one person. Of course, if the groups level of interpersonal attraction is very low, a person may choose to forget the activity rather than join the groups.

Group Goals The goal of a group may also motivate people to join. The Sierra Club, which is dedicated to environmental conservation is a example of this kind of interest group. Member may or may not be personally attracted to the other fundraisers, and they probably do not enjoy the activity of knocking on doors asking for money but they join the group because the subscribe to its goal. Workers join unions like the United Auto Workers because they supports its goal.

Security - By joining a group we can reduce our insecurity – we feel stronger, have fewer self-doubts, and are more resistant to threats.

Status - inclusion in a group viewed by outsiders as important; provides recognition and status

Self-esteem - An individual can increase his self-esteem through group membership. one may gain esteem by becoming a member of a high-status group

Affiliation - fulfills social needs, enjoys regular interaction; can be primary source for fulfilling need for affiliation

Power- what cannot be achieved individually often becomes possible; power in numbers

Instrumental Benefits A final reason why people join groups is that membership is sometimes seen as instrumental in providing other benefits to the individuals. For example, it is fairly common for college students entering their senior year to join several professional clubs or associations, because listing such membership on a resume is thought to enhance the chance of geeting job, similarly, a manager might join a certain racquet club not because she is attracted to its members and not because of the opportunity to play tennis.

Five stages of Group development

Some of work group can effectively work through their responsibilities, but it is not every group. Then Tuckman (2011) explained that there are five stages of group development: forming, storming, norming, performing, and adjourning. These five model stages can improve a new team become effective more quickly.

Forming: At this stage, the formation of a new group begins, wherein the members come together and get to know each other through the interactions. Here the individuals are excited and anxious to know about the scope of the task and the ways to approach it.

Storming: Once the forming stage is over, the individuals will start interacting with each other in the context of the task to be achieved. Questions around leadership, authority, rules, policies, norms, responsibilities, structure, evaluation criteria and reward systems tend to arise during the storming stage. Now group members have an understanding of the work and a general feel of belongingness towards the group as well as the group members.

Norming: Once the role of every member is cleared along with the authority and responsibility of each, the team members start settling in a group. Here, everybody works cohesively towards the target and appreciate each other's experience and skills. Group interaction are lot more easier, more cooperative, and productive, with weighed give and take, open communication, bonding, and mutual respect.

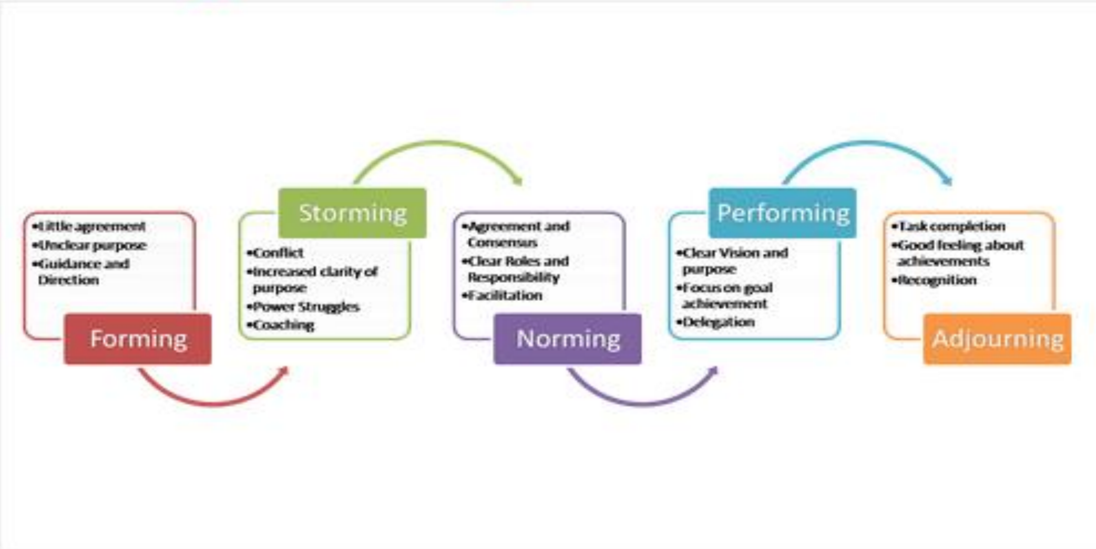
Performing: Once a group is clear about its needs, it can move forward to the third stage of group development, the norming stage. This is the time where the group becomes really united.

At this stage, the morale is high as group members actively acknowledge the talents, skills and experience that each member brings to the group. A sense of belongingness is established and the group remains focused on the group's purpose and goal.

Members are flexible, interdependent, and trust each other. Leadership is distributive and members are willing to adapt according to the needs of the group.

.

Adjourning: This is the last stage of group development, where the group is terminated, and the group members are separated from each other. Every group is created for a purpose, and once the purpose is fulfilled the group is adjourned.



Question 19: what do you mean by social loafing give examples? What are the reasons which can be held responsible for social loafing in an organization? Explain and its types and effect on group performance?

Answer: The Social Loafing is the tendency of an individual to put less effort into the job when he is a part of the group, as compared to when he is working alone. It states that the employees working in a group, underperform a given task in comparison to their potential, ultimately hindering the group performance. This is because they develop a casual attitude towards the assigned responsibilities by putting in their least contribution and thus, relying upon the efforts of other team members.

Social loafing Examples

There are many possible examples of social loafing. Below are two social loafing examples:

Some students have the task of working collectively on a paper for a course. They will receive one grade for the paper. Some students in the class do not make much of an effort working on the group paper even though they made an effort on other assignments in which they worked alone.

Employees of a company are part of a committee to write a new employee manual. During a committee meeting, some of the employees did not make much of an effort and had few suggestions. These employees had made a much greater effort on other tasks in which they worked alone.

Social Loafing Does Not Always Occur

It is important to keep in mind that social loafing does not always occur. For example, Karau and Williams (1997) found that social loafing did not occur for a cohesive group. Moreover, the findings of their second study suggest that people may actually make a greater effort when working with co-workers who are low in ability (a social compensation effect).

Causes of Social Loafing

This issue is deeply rooted in the organizational factors and group formations. Discussed below are some of the causes of this social psychology phenomenon:

Complex Goals: The individuals usually give up when they feel that the goals set by the management are robust and impossible to achieve.

Easily Achievable Goals: If the goals set are simple enough and does not pose any challenge for the employees, they tend to feel demotivated. Thus, showing minimal interest in achieving them.

Goal Value: If the team members feel that the goals or objectives laid for them have no significance and won't add any value to the organizational objectives; they will try to slack off from the given task.

Lack of Motivation: The demotivated workforce is another primary reason for social loafing where the employees are not charged up to fulfil the given responsibility.

Large Group Size: At times, the group or team consist of more number of individuals than required.

Therefore, surplus members tend to become unproductive and waste their time in social loafing.

Sense of Inferiority: The team members who are less skilled or average performers are sometimes put in the group of super achievers.

This will develop an inferiority complex, resulting in average employees depending upon the efficient team members for task accomplishment.

Lowered Sense of Efficacy: When the individuals feel that their efforts are undervalued or ignored, they find it better to escape from their responsibilities through social loafing.

Meagre Sense of Responsibility: If the employees are not made individually accountable for the given task, they would be reluctant of their duties and responsibilities.

Moreover, they will prefer to rely upon those who hold accountability to accomplish the assigned responsibility.

Types of Social Loafing :

Free-Rider Effect

Sometimes, one or more team members possess a casual attitude towards the group goals, feeling that their contribution to the task is not that compulsory. Since the other members will now solely accomplish the given project, it is termed as the free-rider effect. Such social loafers are considered as free-riders.

Sucker Effect

Due to the free-rider effect, the other members of the group or team feel overloaded with work. This is because they now have to do the task of such free-riders too, without getting any additional recognition. Thus, the other team members get demotivated and feel sucked at their job.

Effect on Group Performance

Reasonable consequences of social loafing also include dissatisfaction with group members who fail to contribute equally and the creation of in groups and out groups. Additionally, groups will lack the talents that could be offered by those who choose to not contribute. All of these factors result in less productivity.

• Leads **to Poor Team Spirit**: If few members become lazy and reluctant, making the least contribution in the group, the whole team feels demotivated and demoralized.
• Portrays **Negativity**: The escaping attitude of social loafers spread negativity in the whole group. It thus brings down team performance and productivity.
• Hinders **Development**: The growth of the organization gradually falls if social loafing continues for a long time.
• Causes **Wastage of Resources**: The human resource involves cost, and because of social loafing, the employees become futile for the organization.
• Demotivates **Hard Working Team Members**: Due to free-riders effect and sucker effect, the performing team members get demoralized. Hence they too try to slack off from the assigned task considering it as a burden.

• Affects **Decision Making**: Without proper input from all the group members, the group's decision-making efficiency diminishes.

Question 20: What are the Group Decision Making Technique. Explain Brainstorming & Nominal Group Technique (NGT) in detail.

Answer : Group decision-making commonly known as collaborative decision-making is a situation faced when individuals collectively make a choice from the alternatives before them.

Essential elements of the group decision making process

Having an effective group decision making process can be a major source of productivity improvement for your organization. Some surveys show that nearly 50% of participants consider unfocused projects and meetings as the primary source of lost time and workday productivity. Many of these meetings support group decision making activities. Any improvement in the group decision making process increases value generated from a decision while simultaneously improving organizational productivity.

When starting to make a decision, an initial choice should be made regarding the level of collaborative decision making that is needed. This helps determine what is required from the leader and participants to meet decision success criteria, while guiding participation level to achieve commitment to the decision implementation. Additional factors that will influence this choice include the value of the decision, complexity, available time, number of solution alternatives, and level of understanding required for needs/desires.

When dealing with larger groups, an effective group decision making process will address how group interactions will be managed and facilitated. This should be addressed in initial planning to ensure that the benefits of group contribution and coordination can be gained at all appropriate steps in the decision making process. Good facilitation can avoid inadequate exchange of relevant information and process losses that are characterized by the meeting surveys mentioned in the opening paragraph.

Group facilitation or coordination should aim to:

- Motivate people to perform joint work
- Provide goal clarity
- Structure group discussions and provide explicit coordination where mechanisms are clearly and intentionally described to eliminate any misunderstanding in intention
- Supply information to establish common understanding (such as definition of key terms) and promote appropriate sharing
- Provide mechanisms for information storage, retrieval, sharing, summarization and repetition
- Establish the communication channels needed to satisfy task complexity needs
- Offer methods for reconciliation of conflicting information and the meaning of shared information
- Address social needs for interaction rules (such as equal treatment) and facilitating non-conflicting personal goals
- Promote objectivity, equal participation, and consensus while meeting objectives
- Intervene in crises, maintain order, and resolve emotional conflicts
- Optimize integration of knowledge, opinions and preferences into the collective group decision.
- Make the decision and meet decision making process performance objectives to achieve required decision quality

Types of group decision-making techniques are;

- Brainstorming.
- Nominal Group Technique.
- Electronic Meeting.
- Multi-Voting.
- Delphi Method.
- Dialectic Decision Methods.

Brainstorming vs Nominal Group Technique

Brainstorming and nominal group technique are both idea-generating approaches used in project management – for developing size estimates, identifying risks, gathering requirements, etc.

Brainstorming

Brainstorming is a group creativity technique that can be used for multiple aspects of project management. Brainstorming involves facilitating a group of individuals in generating as many ideas on a topic as possible. To be most effective, participants are challenged to think creatively and consider all ideas and options and are ensured of a "safe space" to share their ideas.

Nominal Group Technique

Nominal group technique takes brainstorming a step further by adding a voting process to rank the ideas that are generated. However, versus using simple voting, each participant must provide their input and there is discussion regarding the relative ranking of that result. This allows participants to be more engaged in the discussion and in the solutions.

Example

As standard practice, I will conduct a brainstorming session early on in my projects to have team members identify the risks of the project – both threats and opportunities. This allows the group to interact together (preferably in-person, but can also be done virtually with some limitations) and the team begins to form their identity and embrace the challenge of the project as united group.

I will then leverage a nominal group technique approach when it comes to evaluating and ranking the risks. Everyone will write down their votes, all votes are then shared, and then we discuss the results in order to validate our final risk ranking.

Summary

Both brainstorming and nominal group technique are group creativity techniques that can be extremely beneficial in the planning and analysis of project management. These techniques allow team members or groups of stakeholders to work as a team on identifying problems and solutions.

Strengths of Group Decision Making

- Groups generate more complete information and knowledge.
- By aggregating the resources of several individuals, groups bring more input into the decision process.
- In addition to more input, groups can bring heterogeneity to the decision process. They offer increased diversity of views.
- A group will almost always outperform even the best individual. So, groups generate higher quality decisions.

- Finally, groups lead to increase acceptance of solutions. Many decisions fail after the final choice is made because people don't accept the solution. Group members who participated in making a decision are likely to enthusiastically support the decision and encourage others to accept it.

Weaknesses of Group Decision Making

1. Group decisions are time-consuming. They typically take more time to reach a solution than making the decision alone.
2. Group decisions have conformity pressures in groups. The desire by group members to be accepted and considered an asset to the group can result in squashing any overt disagreement.
3. Group decision can be dominated by one or a few members. If this dominated coalition is composed of low and medium ability members, the group's overall effectiveness will suffer.
4. Finally, group decisions suffer from ambiguous responsibility. In an individual decision, it's clear who is accountable for the final outcome. In a group decision, the responsibility of any single member is watered down.

Marketing Management Questions

Course- BBA-LLB **Subject Code**: 118 **Semester**: 2nd

Q1) Explain the importance of understanding the marketplace and customers by identifying the five core marketing concepts.

Despite the fact that modern business is changing rapidly and it's radically different from 10, 20, or 50 years ago, some core marketing concepts have remained the same.

Marketing is defined by the American Marketing Association as:

"the activity, set of institutions, and processes for creating, communicating, delivering, and exchanging offerings that have value for customers, clients, partners, and society at large."

Marketing concepts relate to the philosophy a business use to identify and fulfill the needs of its customers, benefiting both the customer and the company. Same philosophy cannot result in a gain to every business, hence different businesses use different marketing concepts (also called marketing management philosophies).

The ‘marketing concept’ proposes that in order to satisfy the organizational objectives, an organization should anticipate the needs and wants of consumers and satisfy these more effectively than competitors. This concept originated from Adam Smith’s book **The Wealth of Nations**, but would not become widely used until nearly 200 years later.

Marketing and marketing concepts are directly related.

Given the importance of customer needs and wants in marketing, we have to understand them correctly.

They have been defined long time ago as this:

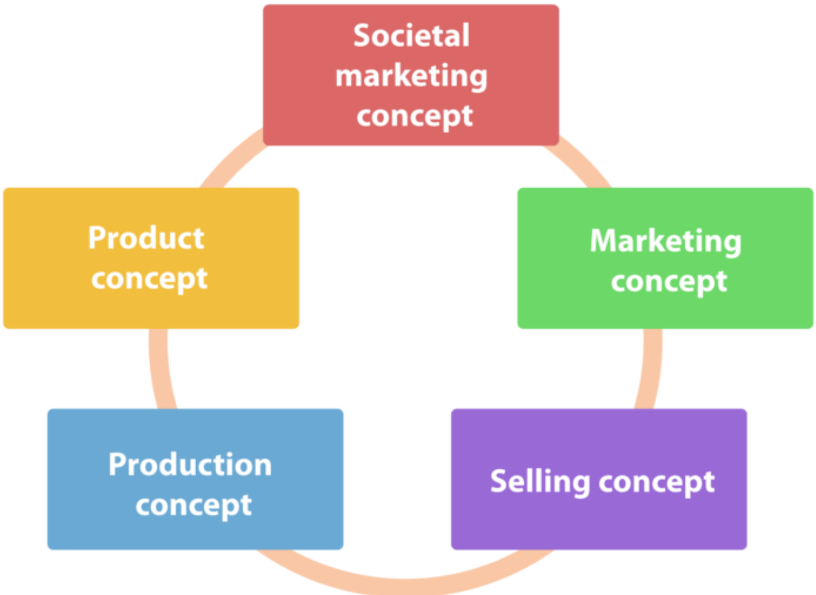
- **Needs:** Something necessary for people to live a healthy, stable and safe life. When needs remain unfulfilled, there is a clear adverse outcome: a dysfunction or death. Needs can be objective and physical, such as the need for food, water and shelter; or subjective and psychological, such as the need to belong to a family or social group and the need for self-esteem.
- **Wants:** Something that is desired, wished for or aspired to. Wants are not essential for basic survival and are often shaped by culture.
- **Demands:** When needs and wants are backed by the ability to pay, they have the potential to become economic demands.

There are numerous marketing concepts which are used by marketers as a reference in the marketing field. Some of these marketing concepts exist to date, while some others are outdated and have been taken over by other marketing concepts.

The five marketing concepts

The five marketing concepts are:

1. **Production concept**
2. **Product**
3. **Selling concept**
4. **Marketing concept**
5. **Societal marketing concept**



Let's take a closer look at each one.

THE PRODUCTION CONCEPT

When the production concept was defined, a production oriented business dominated the market. This was from the beginning of capitalism to the mid 1950's.

During the era of the production concept, businesses were concerned primarily with **production, manufacturing, and efficiency issues**. Companies that use the production concept have the belief that customers primarily want products that are affordable and accessible.

The production concept is based on the approach that a company can increase supply as it decreases its costs. Moreover, the production concept highlights that a business can lower costs **via mass production.**

A company oriented towards production **believes in economies of scale** (decreased production cost per unit), wherein mass production can decrease cost and maximize profits. As a whole, the production concept is oriented towards operations.

THE PRODUCT CONCEPT

This concept works on an assumption that **customers prefer products of greater *quality* and *price* and *availability*** doesn't influence their purchase decision. And so company develops a product of greater quality which usually turns out to be expensive.

One of the best modern examples would be IT companies, who are always improving and updating their products, to differentiate themselves from the competition. Since the main focus of the marketers is the product quality, they often lose or fail to appeal to customers whose demands are driven by other factors like price, availability, usability, etc.

THE SELLING CONCEPT

Production and product concept both focus on production but selling concept focuses on making an actual sale of the product. Selling concept focuses on making every possible sale of the product, regardless of the quality of the product or the need of the customer.

The selling concept highlights that customers would buy a company's products **only if the company were to sell these products aggressively**. **This philosophy doesn't include building relations with the customers**. This means that repeated sales are rare, and customer satisfaction is not great.

THE MARKETING CONCEPT

A company that believes in the marketing concept **places the consumer at the center of the organization**. All activities are geared towards the consumer. A business aims to understand the needs and wants of a customer. It executes the marketing strategy according to market research beginning from product conception to sales.

By focusing on the **needs and wants** of a target market, a company can deliver more value than its competitors. The marketing concept emphasizes the **“pull strategy”**. This means that a brand is so strong that customers would always prefer your brand to others’.

THE SOCIETAL MARKETING CONCEPT

This is a relatively new marketing concept. While the societal marketing concept highlights the needs and wants of a target market and the delivery of better value than its competitors, it also **emphasizes the importance of the well-being of customers and society as a whole** (consumer welfare or societal welfare).

The societal marketing concept calls upon marketers to build social and ethical considerations into their marketing practices. They must balance and juggle the often conflicting criteria of company profits, consumer want satisfaction, and public interest.

CONCLUSION

The five marketing concepts are a good example of how marketing has changed throughout the years. It has shifted its focus from products to users.

Q2) Explain in brief the four elements of marketing mix. Does it do an adequate job in preparing an integrated marketing program?

The term "marketing mix" is a foundation model for businesses, historically centered around product, price, place, and promotion (also known as the "4 Ps"). The marketing mix has been defined as the "*set of marketing tools that the firm uses to pursue its marketing objectives in the **target market*** ". Thus the marketing mix refers to four broad levels of marketing decision, namely: product, price, place, and promotion.

The correct arrangement of marketing mix by enterprise marketing managers plays an important role in the success of a companies’ marketing:

1. develop strengths and avoid weaknesses

2. strengthen the competitiveness and adaptability of enterprises
3. make the internal departments of the enterprise work closely together

As we noted before, the marketing mix is predominately associated with the 4P's of marketing, the 7P's of service marketing, and the 4 Cs theories developed in the 1990s.
A marketing expert named E. Jerome McCarthy created the Marketing 4Ps in the 1960s.

This classification has been used throughout the world. Business schools teach this concept in basic marketing classes.

The marketing 4Ps are also the foundation of the idea of marketing mix.

PRODUCT

A product is an item that is built or produced to satisfy the needs of a certain group of people.

The product can be intangible or tangible as it can be in the form of services or goods.

You must ensure to have the right type of product that is in demand for your market.

So during the product development phase, the marketer must do an extensive research on the life cycle of the product that they are creating.

A product has a certain life cycle that includes the growth phase, the maturity phase, and the sales decline phase.
It is important for marketers to reinvent their products to stimulate more demand once it reaches the sales decline phase.

Marketers must also create the right product mix. It may be wise to expand your current product mix by diversifying and increasing the depth of your product line.

All in all, marketers must ask themselves the question "what can I do to offer a better product to this group of people than my competitors".

In developing the right product, you have to answer the following questions:

- What does the client want from the service or product?
- How will the customer use it?
- Where will the client use it?
- What features must the product have to meet the client's needs?
- Are there any necessary features that you missed out?
- Are you creating features that are not needed by the client?
- What's the name of the product?
- Does it have a catchy name?
- What are the sizes or colors available?
- How is the product different from the products of your competitors?
- What does the product look like?

PRICE

The price of the product is basically the amount that a customer pays for to enjoy it. Price is a very important component of the **marketing mix definition**.

It is also a very important component of a marketing plan as it determines your firm's profit and survival.

Adjusting the price of the product has a big impact on the entire marketing strategy as well as greatly affecting the sales and demand of the product. This is inherently a touchy area though. If a company is new to the market and has not made a name for themselves yet, it is unlikely that your target market will be willing to pay a high price.

Although they may be willing in the future to hand over large sums of money, it is inevitably harder to get them to do so during the birth of a business.

Pricing always help shape the perception of your product in consumers eyes.

Always remember that a low price usually means an inferior good in the consumers eyes as they compare your good to a competitor.

Consequently, prices too high will make the costs outweigh the benefits in customers eyes, and they will therefore value their money over your product. Be sure to examine competitors pricing and price accordingly.

When setting the product price, marketers should consider the perceived value that the product offers. There are three major pricing strategies, and these are:

- Market penetration pricing
- Market skimming pricing
- Neutral pricing

Here are some of the important questions that you should ask yourself when you are setting the product price:

- How much did it cost you to produce the product?
- What is the customers' perceived product value?
- Do you think that the slight price decrease could significantly increase your market share?
- Can the current price of the product keep up with the price of the product's competitors?

PLACE

Placement or distribution is a very important part of the product mix definition. You have to position and distribute the product in a place that is accessible to potential buyers.

This comes with a deep understanding of your target market.

Understand them inside out and you will discover the most efficient positioning and distribution channels that directly speak with your market.

There are many distribution strategies, including:

- Intensive distribution
- Exclusive distribution

- Selective distribution
- Franchising

Here are some of the questions that you should answer in developing your distribution strategy:

- Where do your clients look for your service or product?
- What kind of stores do potential clients go to? Do they shop in a mall, in a regular brick and mortar store, in the supermarket, or online?
- How do you access the different distribution channels?
- How is your distribution strategy different from your competitors?
- Do you need a strong sales force?
- Do you need to attend trade fairs?
- Do you need to sell in an online store?

<u>PROMOTION</u>

Promotion is a very important component of marketing as it can boost brand recognition and sales. Promotion is comprised of various elements like:

- Sales Organization
- Public Relations
- Advertising
- Sales Promotion

Advertising typically covers communication methods that are paid for like television advertisements, radio commercials, print media, and internet advertisements.

In contemporary times, there seems to be a shift in focus offline to the online world. Public relations, on the other hand, are communications that are typically not paid for.

This includes press releases, exhibitions, sponsorship deals, seminars, conferences, and events.

Word of mouth is also a type of product promotion.

Word of mouth is an informal communication about the benefits of the product by satisfied customers and ordinary individuals. The sales staff plays a very important role in public relations and word of mouth.

It is important to not take this literally. Word of mouth can also circulate on the internet. Harnessed effectively and it has the potential to be one of the most valuable assets you have in boosting your profits online.

An extremely good example of this is online social media and managing a firm's online social media presence.

In creating an effective product promotion strategy, you need to answer the following questions:

- How can you send marketing messages to your potential buyers?
- When is the best time to promote your product?
- Will you reach your potential audience and buyers through television ads?
- Is it best to use the social media in promoting the product?
- What is the promotion strategy of your competitors?

The use of a marketing mix is an excellent way to help ensure that 'putting the right product in the right place' will happen. The **marketing mix** is a **crucial tool to help understand what the product or service can offer and how to plan for a successful product offering**. The marketing mix is most commonly executed through the 4P'S of Marketing: **Price**, **Product**, **Promotion**, and **Place**.

These have been extensively added to and expanded through additional P's and even a 4C concept. But the 4Ps serve as a great place to start planning for the product or even to evaluate an existing product offering.

<u>PRODUCT</u>

The product is either a tangible good or an intangible service that is seem to meet a specific customer need or demand. All products follow a logical **product life cycle** and it is vital for marketers to understand and plan for the various stages and their unique challenges. It is key to understand those problems that the product is attempting to solve. The benefits offered by the product and all its features need to be understood and the unique selling proposition of the product need to be studied. In addition, the potential buyers of the product need to be identified and understood.

PRICE

Price covers the actual amount the end user is expected to pay for a product. How a product is priced will directly affect how it sells. This is linked to what the perceived value of the product is to the customer rather than an objective costing of the product on offer. If a product is priced higher or lower than its perceived value, then it will not sell. This is why it is imperative to understand how a customer sees what you are selling. If there is a positive customer value, than a product may be successfully priced higher than its objective monetary value. Conversely, if a product has little value in the eyes of the consumer, then it may need to be underpriced to sell. Price may also be affected by distribution plans, value chain costs and markups and how competitors price a rival product.

PROMOTION

The marketing communication strategies and techniques all fall under the promotion heading. These may include advertising, sales promotions, special offers and public relations. Whatever the channel used, it is necessary for it to be suitable for the product, the price and the end user it is being marketed to. It is important to differentiate between marketing and promotion. Promotion is just the communication aspect of the entire marketing function.

PLACE

Place or placement has to do with how the product will be provided to the customer. Distribution is a key element of placement. The placement strategy will help assess what channel is the most suited to a product. How a product is accessed by the end user also needs to compliment the rest of the product strategy.

Q3) Describe the environmental forces that affect the company's ability to serve its customers.

Marketing Environment is the combination of external and internal factors and forces which affect the company's ability to establish a relationship and serve its customers.

The marketing environment of a business consists of an internal and an external environment. The internal environment is company-specific and includes owners, workers, machines, materials etc. The external environment is further divided into two components: micro & macro. The micro or the task environment is also specific to the business but external. It consists of factors engaged in producing, distributing, and promoting the offering. The macro or the broad environment includes larger societal forces which affect society as a whole. The broad environment is made up of six components: demographic, economic, physical, technological, political-legal, and social-cultural environment.

"A company's marketing environment consists of the actors and forces outside of marketing that affect marketing management ability to build and maintain successful relationships with target customers". – Philip Kotler

The marketing environment is made up of the internal and external environment of the business. While the internal environment can be controlled, the business has very less or no control over the external environment.

Internal Environment

The internal environment of the business includes all the forces and factors inside the organisation which affect its marketing operations. These components can be grouped under the Five Ms of the business, which are:

- Men
- Money
- Machinery
- Materials
- Markets

The internal environment is under the control of the marketer and can be changed with the changing external environment. Nevertheless, the internal marketing environment is as important for the business as the external marketing environment. This environment includes the sales department, marketing department, the manufacturing unit, the human resource department, etc

External Environment

The external environment constitutes factors and forces which are external to the business and on which the marketer has little or no control. The external environment is of two types:

Micro Environment

The micro-component of the external environment is also known as the task environment. It comprises of external forces and factors that are directly related to the business. These include suppliers, market intermediaries, customers, partners, competitors and the public

- **Suppliers** include all the parties which provide resources needed by the organisation.
- **Market intermediaries** include parties involved in distributing the product or service of the organisation.
- **Partners** are all the separate entities like advertising agencies, market research organisations, banking and insurance companies, transportation companies, brokers, etc. which conduct business with the organisation.
- **Customers** comprise of the target group of the organisation.
- **Competitors** are the players in the same market who targets similar customers as that of the organisation.
- **Public** is made up of any other group that has an actual or potential interest or affects the company’s ability to serve its customers.

Macro Environment

The macro component of the marketing environment is also known as the broad environment. It constitutes the external factors and forces which affect the industry as a whole but don’t have a direct effect on the business. The macro-environment can be divided into 6 parts.

Demographic Environment

The demographic environment is made up of the people who constitute the market. It is characterised as the factual investigation and segregation of the population according to their size, density, location, age, gender, race, and occupation.

Economic Environment

The economic environment constitutes factors which influence customers' purchasing power and spending patterns. These factors include the GDP, GNP, interest rates, inflation, income distribution, government funding and subsidies, and other major economic variables.

Physical Environment

The physical environment includes the natural environment in which the business operates. This includes the climatic conditions, environmental change, accessibility to water and raw materials, natural disasters, pollution etc.

Technological Environment

The technological environment constitutes innovation, research and development in technology, technological alternatives, innovation inducements also technological barriers to smooth operation. Technology is one of the biggest sources of threats and opportunities for the organisation and it is very dynamic.

Political-Legal Environment

The political & Legal environment includes laws and government's policies prevailing in the country. It also includes other pressure groups and agencies which influence or limit the working of the industry and/or the business in the society.

Social-Cultural Environment

The social-cultural aspect of the macro-environment is made up of the lifestyle, values, culture, prejudice and beliefs of the people. This differs in different regions.

Importance of Marketing Environment

Every business, no matter how big or small, operates within the marketing environment. Its present and future existence, profits, image, and positioning depend on its internal and external environment. The business environment is one of the most dynamic aspects of the business. In order to operate and stay in the market for long, one has to understand and analyse the marketing environment and its components properly.

Essential for planning

An understanding of the external and internal environment is essential for planning for the future. A marketer needs to be fully aware of the current scenario, dynamism, and future predictions of the marketing environment if he wants his plans to succeed.

Understanding Customers

Thorough knowledge of the marketing environment helps marketers acknowledge and predict what the customer actually wants. In-depth analysis of the marketing environment reduces (and even removes) the noise between the marketer and customers and helps the marketer to understand consumer behaviour better.

Tapping Trends

Breaking into new markets and capitalizing on new trends requires a lot of insight about the marketing environment. The marketer needs to research about every aspect of the environment to create a full proof plan.

Threats and Opportunities

Sound knowledge of the market environment often gives a first mover advantage to the marketer as he makes sure that his business is safe from future threats and taps the future opportunities.

Understanding the Competitors

Every niche has different players fighting for the same spot. A better understanding of the marketing environment allows the marketer to understand more about the competitions and about what advantages do the competitors have over his business and vice versa.

Q4) Describe in detail the process of market segmentation, targeting and positioning for any product.

Introduction: Market consists of buyers and buyers differ in on or more respects.
They may differ in the wants, resources, geographical, location, buying attitudes

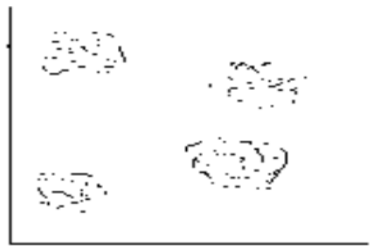
and buying practices. Any of these variable can be used to segment a market. Each buyer is potentially a separate market because of unique needs and wants. Ideally a seller management design a separate product and or marketing program for each buyer. Most sellers will not find it worth wile to “customize”. Their product to satisfy each specific buyer. Instead the saver identifiers broad classes of buyers who differ in their product requirement and or marketing responses.

As a market is segmented using more characteristics such as age, income, etc., the seller achieves finer precision but at the price of multiplying the no. of segments and thinking gout the population of the segments.

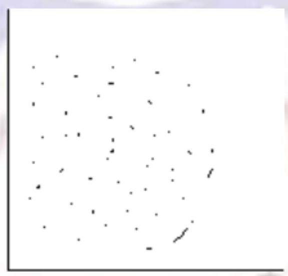
Types of market segmentation:

1. **Homogeneous preferences**: A market where all consumers have roughly the same preference. We would predict the existing brands would be similar and located in the center of the preferences as shown in the below.

2. **Clustered preference**: The market might reveal district preference cluster, called natural market segments. The first firm in this market has three options. It might position is self in the center hoping to appeal to all the groups (undifferentiated marketing). It might position itself in the largest market segment (consummated marketing). It might marketing several brands, each positioned in a different segment (differentiated marketing) clearly if it is developed only one brand, competition would enter and introduce brands in other segments.



3. Diffused preferences: As the other extreme consumer preferences can the scattered throughout the space showing that consumer differ in what they want from the product. If one brand exists the market, it is likely to be positioned in the center minimizes sum of total consumer dissatisfaction. A new competitor could take step to the first brand and fight for market share of the competition could locater in a center to win over a customer group that not satisfied with the center brand. If several brands are in the market, they are likely to be positioned throughout the space show real differences to march consumer preference difference.



Bases for segmenting consumer market:

- Geographic segmentation
- Demographic segmentation
- Psychographics segmentation
- Behavioral segmentation

1. **Geographic segmentation**: - Geographical segmentation for dividing

the market into different geographical units such as nations, states, regions, countries, citizen of neighbor hoods. The company can decide to operate in one or a few demographic areas of operate in all but pay attention to variations in geographic needs and preferences.

Ex: General foods Maxwell house ground coffee is sold nationally but is flavored regionally.

Its coffee is flavored stronger in the west than the east

2. **Demographic segmentation**: -Demographic segmentation consists of dividing the market into groups on the basis of demographic variables such as age, sex, family size, family life cycle, income, occupation, education, religion, race and nationality. Demographic variables are the most popular bases for distinguishing customer groups.

3. **Psychographics segmentation**: -In psychographics segmentation, buyers are divided into different groups on the basis of their social class life style and or personality characteristics. People with in the same demographic groups can exhibit very different Psychological profiles.

4. **Behavioral segmentation**: - In behavioral segmentations buyers are divide into groups on the basis of their knowledge attitude use and response to a products many marketers believe that behavioral are best starting point for constructing market segments. A). Occasions: - B). Benefits: - C). User status: - D). Usage rate: - E). Loyalty status: - F). Buyer readiness stage: -

Target Market,

Introduction:

TARGETING: Once the firm has identified its market-segment opportunities, it has to decide how many and which ones to target.

Using the Marketing Mix to Reach Target Segments

Once target segments are identified, the marketing manager selects a targeting strategy that will be the best fit for reaching them. Targeted marketing enables the marketing and sales teams to customize their message to the targeted group(s) of consumers in a focused manner. The targeting strategy is where the marketing mix comes together to create the right offer and marketing approach for each target segment. A summary of common targeting strategies is provided in the table below.

Strategy	Target Market
Mass marketing	Everybody everywhere
Differentiated marketing	Large groups within the total market
Niche marketing	High penetration within smaller, specialized segments
Micromarketing	Individual customers or localized microsegments

Mass Marketing

Mass marketing, also called *undifferentiated marketing*, involves marketing to the entire market the same way. Mass marketing effectively ignores segmentation and instead generates a single offer and marketing mix for everyone. The market is treated as a homogeneous aggregate. Mass marketing aims to reach the largest audience possible, and exposure to the product is maximized. In theory, this would directly correlate with a larger number of sales or buy-in to the product.

Mass marketing tries to spread a marketing message to anyone and everyone willing to listen. Communication tends to be less personal, as evidenced by common mass-marketing tactics: national television, radio and print advertising campaigns; nationally focused coupons; nationally focused point-of-purchase displays. The success of mass-marketing depends on whether it is possible to reach enough people, through mass-communication techniques and one universal product offer, to keep them interested in the product and make the strategy worthwhile. While mass-marketing tactics tend to be costly because they operate on a large scale, this approach yields efficiencies and cost savings for companies because it requires the marketing team to execute only one product offer and marketing mix.

For certain types of widely consumed items (e.g., gasoline, soft drinks, white bread), the undifferentiated market approach makes the most sense. For example, toothpaste (such as the brand Crest) isn't made specially for one consumer segment, and it is sold in huge quantities. The manufacturer's goal is to get more people to select and buy their particular brand over another when they come to the point of purchase. Walk through any supermarket, and you will observe hundreds of grocery products, especially generic items, that are perceived as nearly identical by the consumer and are treated as such by the producer. Many mass-marketed items are considered staple or "commodity" items. People buy new ones when the old ones wear out or are used up, and mass-marketed brand loyalty might be the primary driver when they decide which replacement product to purchase.

Differentiated Marketing

A differentiated marketing strategy is one in which the company decides to provide separate offerings to each different market segment that it targets. It is also called multisegment marketing. Each segment is targeted in a particular way, as the company provides unique benefits to different segments. The goal is to help the company increase sales and market share across each segment it targets. Proctor and Gamble, for example, segments some of its markets by gender, and it has separate product offerings and marketing plans for each: Secret-brand deodorant for women, and Rogaine (a treatment for hair loss) for men.[1]

When it is successful, differentiated marketing can create a very strong, entrenched market presence that is difficult for competitors to displace because of consumers' strong affinity for products and offers that meet the unique needs of their segment. A differentiated strategy can be a smart approach for new companies that enter a market and lure customers away from established players to capture share in a large overall market. Often, established companies become vulnerable to new competitors because they don't give sufficient attention to the perfect marketing mix for any given market segment.

However, differentiated marketing is also very expensive. It carries higher costs for the company because it requires the development of unique products to fit each target segment. Likewise, each unique product and market segment requires its own marketing plans and execution: unique messages, campaigns, and promotional tactics and investments. Costs can add up quickly, especially if you are targeting a lot of unique market segments.

For a large company such as Kraft, the cost of this kind of marketing is well worth it, since its products are sold all over the world. An example of its differentiated marketing strategy are the many surprising variations of the famous Oreo cookie developed for the Chinese market. Consumers there can enjoy Oreos with cream flavors such as green-tea ice cream, raspberry-blueberry, mango-orange, and grape-peach. All of these Oreo formulations have been heavily market tested and are based on the unique preferences of Chinese consumers.

NICHE MARKETING

Niche marketing (also called concentrated marketing) is a strategy that targets only one or a few very defined and specific segments of the consumer population. The goal is to achieve high penetration among the narrowly defined target segments. For example, the manufacturer of Rolex watches has chosen to concentrate on only the luxury segment of the watch market.

An organization that adopts a niche strategy gains an advantage by focusing all efforts on only one or a small handful of segments. All of their market analysis, product development, marketing strategy, and tactics concentrate on serving that select part of the market. When they do it well, this approach can provide a differential advantage over other organizations that don't concentrate all their efforts on the "niche" segment(s). Niche targeting is particularly effective for small companies with limited resources, as it does not require the use of mass production, mass distribution, or mass advertising. When a company is highly successful in desirable "niche" market segments, it can be very profitable.

The primary disadvantage of niche marketing is that it makes companies vulnerable to demand in the narrow market segments they serve. As long as demand is robust, the organization's financial position will be strong. But if something changes and demand drops off, the company has nothing to cushion it from financial hardship. Since the company has focused all efforts on one market (essentially putting all their eggs in one basket), the firm is always somewhat at risk. Such companies are especially vulnerable to small shifts in population or consumer tastes, which can greatly affect their position (for better or for worse). Large competitors with deeper pockets may choose to enter a market and use their size and resources to put smaller, niche players out of business. To insulate themselves from this type of risk, many companies pursing a niche strategy may target multiple segments.

Luxury-goods providers are a great illustration of the challenges of the niche marketing strategy. When economic recessions occur, luxury-goods providers like Rolex, Chanel, and Armani routinely struggle financially because their narrow segment of "luxury" consumers has less disposable income. When fickle consumer tastes shift from Ralph Lauren to Dolce & Gabanna to Prada (and back again), the company's profitability can hang in the balance.

MICROMARKETING

Micromarketing is a targeting strategy that focuses even more narrowly than niche marketing. It caters to the needs of individuals ("individual marketing") or very small segments in a targeted geography ("local marketing"). Micromarketing can be very powerful by giving consumers exactly what they want, when they want it. However, to achieve large-scale success with this approach, companies must figure out how to meet highly individualized needs efficiently and profitably.

INDIVIDUAL MARKETING

Individual marketing is sometimes referred to as "mass customization" or "one-to-one marketing." With this approach, companies offer consumers a product created to their individual specifications. For example, Build-A-Bear Workshop invites children to create their own custom stuffed animals. A child can select the type of animal, from teddy bear to unicorn, along with color, size, clothing, and other accessories. Creators of handmade goods on Etsy.com take orders from buyers who may request variations on the individually crafted jewelry, clothing, toys, and other items displayed on the Web site. In the following video, Etsty CEO, Chad Dickerson, explains what makes the company's approach unique.

POSITIONING

Introduction: Positioning is the act of designing the company's offering and image to occupy a distinctive place in the target market's mind.

1. **Under positioning**: Some companies discover that buyers have only a

vague idea of the brand. The brand is seen as just another entry in a crowded marketplace. When Pepsi introduced its clear Crystal Pepsi in 1993, customers were distinctly unimpressed. They didn't see "clarity" as an important benefit in a soft drink.

2. **Over positioning**: Buyers may have too narrow an image of the brand. Thus a consumer might think that diamond rings at Tiffany start at $5,000 when in fact Tiffany now offers affordable diamond ring starting at$1,000.
3. **Confused positioning**: buyers might have a confused image of the brand resulting from the company's making too many claims or changing the brand's positioning too frequently. This was the case with Stephen job's sleek and powerful next desktop computer, which was positioning first for students, then for engineers, and then for businesspeople, all unsuccessfully.
4. **Doubtful positioning**: Buyers may find it hard to believe the brand claims in view of the product's features, price, or manufacturer. When GM's Cadillac division introduced the Cimarron, it positioning the car as a luxury competitor with BMW, Mercedes, and Audit. Although the car featured leather seats, a luggage rack, lots of chrome, and a Cadillac logo stamped on the chassis, customers saw the car as merely a dolled-up version of Chevy's Cavalier and Oldsmobile's firenza. Although the car was positioned as "more for more", the customers saw it as "less for more".

The theme park company can now recognize the different positioning strategies that are available.

- **Attribute positioning**: A company positions itself on an attribute, such as size or number of years in existence. Disneyland can advertise itself as the largest theme park in the world.
- **Benefit positioning**: The product is positioned as the leader in a certain benefit. Kott's Berry Farm may try to position itself as a theme park that delivers a fantasy experience, such as

living in the old west.

- **Use or application positioning:** Positioning the product as best for some use or application. Japanese Deer Park can position itself for the tourist who has only an hour to catch some quick entertainment.
- **User positioning**: Positioning the product as best for some user group. Magic Mountain can advertise itself as best for "thrill seekers".
- **Competitor positioning:** The product claims to be better in some way then a named competitor. For example, Lion Country safari can advertise having a great variety of animals than Japanese deer park.
- **Product category positioning**: The product is positioned as the leader in a certain product category. Mainland of the pacific can position itself not as a "recreational theme park" but as an "educational institution.
- **Quality or price positioning**: The product is positioned as offering the best value. Busch Gardens can position itself as offering the "best value" for the money.

Q5) Name the major factors that influence consumer buyer behaviour and the stages in consumer buying behaviour process.

Introduction: The modern marketing management tries to solve the basic problems of consumers in the area of consumption. To survive in the market, a firm has to be constantly innovating and understand the latest consumer needs and tastes. It will be extremely useful in exploiting marketing opportunities and in meeting the challenges that the Indian market offers. It is important for the marketers to understand the buyer behaviour due to the following reasons.

The study of consumer behaviour for any product is of vital importance to marketers in shaping the fortunes of their organisations.

- It is significant for regulating consumption of goods and thereby maintaining economic stability.
- It is useful in developing ways for the more efficient utilisation of resources of marketing. It also helps in solving marketing management problems in more effective manner.
- Today consumers give more importance on environment friendly products. They are concerned about health, hygiene and fitness. They prefer natural products. Hence detailed study on upcoming groups of consumers is essential for any firm.
- The growth of consumer protection movement has created an urgent need to understand how consumers make their consumption and buying decision.
- Consumers' tastes and preferences are ever changing. Study of consumer behaviour gives information regarding colour, design, size etc. which consumers want. In short, consumer behaviour helps in formulating of production policy.
- For effective market segmentation and target marketing, it is essential to have an understanding of consumers and their behaviour.

Consumer behavior Models: Many models have been developed describing the buying process. These models called as consumer behavior models treat a consumer as a decision maker who comes to a market place to buy the products brand for his satisfaction of needs. The buying process has been discussed below through the consumer behaviors models. The important models of buyer behaviors are as follows:

1. Economic model

2. Sociological model
3. Howard-sheath model

Economic model: - This model says as “purchasing decision are the result of largely rational and conscious economic calculations. The individual buyer seeks to spend his income on goods that will deliver the must utility (satisfaction) to his tastes and the relative price.

Social model.: - The S.M. has been explained by sociologists studying the behaviors of a group of individuals and the manner in which it influences the behaviors of an individual. The models says that the individual is always influenced by a group as he lives in a society where in many group exist like family, reference group etc.

Harvard sheath model - The H-S model assumes problem-solving approach in buying and assumes input output approach in buying behavior, this model is a comprehensive model and largely approved.

- *Another way of classification of buyer behavior:*

- **Complex buying behavior**: This type of consumers have involvement in purchasing a brand with high difference among goods with brands.
- **Dissonance reducing buying behavior**: This type of consumers have low difference in branding preference with high involvement of purchasing
- **Variety seeking buying behavior**: This type of customers are switching brands often. But they have low involvement of purchasing.
- **Habitual buying behavior**: This type of customers are regularly buy goods in habitual manner. So they have less involvement in purchasing and changing brands.

	High involvement	*low involvement*
High difference	Complex buyer Behavior	Variety seeking buyer Behavior
Low difference	Dissonance reducing Buying Behavior	Habitual buying Behavior

Consumer Decision Making Process

1. **Problem or Need Recognition:** Consumer decision making process begins with an unsatisfied need or problem. Everyday we face multiple problems which individuals resolve by consuming products or services. Consumer problem can be routine or unplanned. For example – run out of milk or cooking oil, car indicating low level of fuel, are some of the routine problems that individuals face. Such problems are quickly recognised, defined, and resolved. Recognition of unplanned problem may take much longer time as it may evolve slowly over time. For example - need of a new refrigerator as existing one is not working properly.

2. **Information Search:** Information search is done to know about product or service, price, place and so on. In the process of decision making, the consumer engages in both internal and external information search. Internal information search involves the buyer identifying alternatives from his memory. Internal information search is sufficient for low involvement products or services. For high involvement product or service, buyers are more likely to do external information search. The amount of efforts a buyer put in information search depends on various factors like market, competition, difference in brands, product

characteristics, product importance, and so on.

3. **Alternatives Evaluation:** At this step the buyer identifies and evaluates different alternatives to choose from. It is not possible to examine all the available alternatives. So, buyer develops evaluative criteria to narrow down the choices. Evaluative criteria are certain characteristics that are important to buyer such as price of the product, size, colour, features, durability, etc. Some of these characteristics are more important than others. To narrow down the choices the buyer considers only the most important characteristics.

4. **Purchase Decision:** The earlier mentioned evaluation step helps the consumer in arriving at a purchase intention. In the decision evaluation stage, the consumer forms preferences among the brands in the choice set. The consumer may also form a purchase intention and lean towards buying the most preferred brand. However factors can intervene between the purchase intention and the purchase decision. A buyer who decides to execute a purchase intention will be making up to five purchase decisions brand decision, vendor decision, quantity decision, timing decision and payment- method decision.

5. **Post-purchase Use and Evaluation:** Once the buyer makes a decision to purchase a product or service there can be several types of additional behaviour associated with that decision such as decisions on product uses and decision on services related to the product purchased. The level of satisfaction experienced by the buyer after his purchase will depend on the relationship between his expectations about the product and performance of the product. If the buyer is satisfied then he will exhibit a higher probability of repeat purchase of the product or service. The satisfied buyer will

also tend to say good words about the product or service. Whereas a highly dissatisfied buyer will not buy the product or service again and spread negative words about service and company.

From the point in time when an individual first hears of an innovation to the point in time when adoption occurs has been recognised as consisting of five logical stages namely, awareness interest evaluation trial and adoption:

1. Awareness stage:

Here the individual is exposed to the innovation but lacks complete information about it. That is, the individual is aware of the innovation but is not yet motivated to seek further information. He knows of product existence.

2. Interest stage:

The individual becomes interested in the new idea and seeks additional information about it. The innovation is favoured in a general way but is not yet judged in terms of its utility to a specific situation. He seeks further information.

3. Evaluation stage:

The individual applies his mental faculty to the innovation to compare present and anticipated situation and then decides to whether or not to try it. It is to do with careful weighing as to whether or not to try it.

4. Trial stage:

The individual uses the innovation on a small-scale in order to determine its utility in his own situation. That is, he tries it once or twice to confirm its utility.

5. Adoption stage:

The individual decides to continue the full use of the innovation. That is he purchases and repurchases.

It is worth emphasizing here that any innovation may be rejected at any stage of adoption process. Even rejection can take place after adoption which is called as discontinuance. Further, a consumer may move through several of these stages simultaneously as it happens in case of impulse buying.

Adaptor Categories:

Companies are finally interested in the level and rate of diffusion because, the ultimate level of diffusion is a limit on the total sales of the company, while the rate of diffusion affects how quickly the company covers its costs and begins to make a profit.

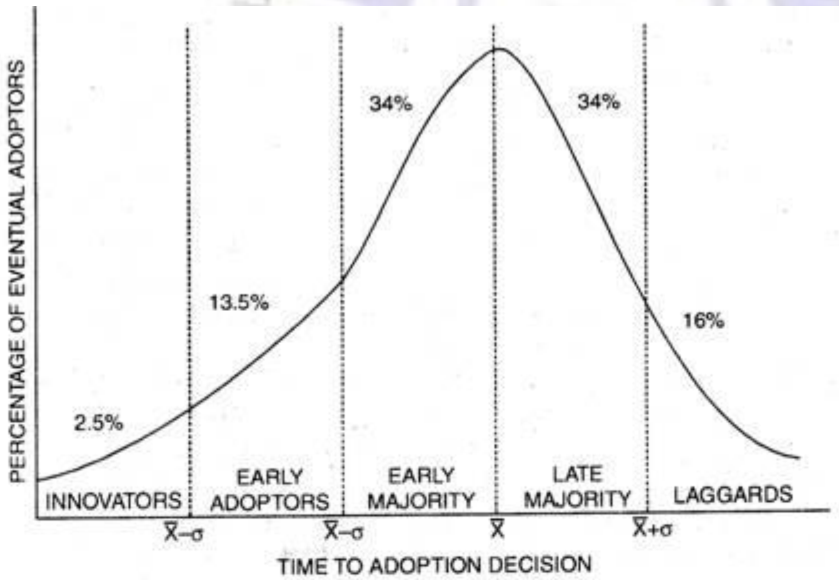


Fig. 1.07. Consumer adoptor categories.

These are: innovators, early adoptors, early majority late majority and laggards:

1. Innovators:

These represent the first 2.5 per cent of the total adoptors. They are young risk runners, rich, better educated, more cosmopolitan, but less integrated with local groups. They are the forerunners and important to the victory of new product so introduced.

2. Early adoptors:

These represent the next 13.5 per cent of the total adoptors. These adopt in the per groups act as taste-makers or opinion leaders in their local groups. These are wealthier and better educated and have greater technical knowledge of the innovation.

As they are integrated with the community, they exert influence. Others turn to them for their advice the moment they come in contact with these persons.

3. Early majority:

This group accounts for the next 34 per cent of the total adoptors. These are average people in terms of income, education, age and occupations. These tend to be more cautious before adopting normally waiting until its benefits and other features have been clearly demonstrated well before adoption.

4. Late majority:

This group represents the next 34 per cent of the total adoptors. These are more conservative, less educated and older with limited purchasing power. The reason for their adoption is that majority of the people have adopted or the product is within their purchasing power now.

5. Laggards:

This last chunk accounts for remaining 16 per cent of the total adoptors. This group considers adopting as the last resort as there is no alternative. The features of this group are not available because, very less is known about this group.

Q6) Explain in detail the core concepts of the product mix and the determinants affecting the product mix.

A product is something that is manufactured for sale in the market. Customer needs are met by the usage of products. Product is one of the main components of marketing—all marketing activities revolve around the product. Products can be tangible or intangible. Tangible products are known as goods while intangible products are called services.

The term product can be understood in narrow as well as broad sense. In a narrow sense, it is a set of tangible physical and chemical attributes assembled in an identifiable and readily recognizable form.

In a broader sense, it recognizes each separate brand as a separate product. A product can be defined as- "A good, idea, method, information, object, or service that is the end result of a process and serves as a need or want satisfier. It is usually a bundle of tangible and intangible attributes (benefits, features, functions, uses) that a seller offers to a buyer for purchase."

Ordinarily speaking, product or goods is a word which means any commodity which can be recognised by its certain shape, quality or quantity e.g., car, book, watch, clothes etc. Actually this meaning of the product is narrow in sense. The word 'Product' is taken in wider perspective in marketing. Here, every brand is considered a separate product i.e., Lux and Lifebuoy—both are soaps, but are treated as separate products. In narrow sense, these will be considered as merely soaps.

Every business firm undertakes the function of product selling, though it may or may not be visible. A laundry firm provides the clothes-washing service. This function is similar to product selling which a retailer performs. Firms while selling their products, sell services too which are related to their products. A consumer buys a product because he gets psychological and physical satisfaction from that product.

According to Philip Kotler "A product is anything tangible or intangible that can be offered to a market for attention, acquisition use or consumption that might satisfy a need or want".

Structure of Product Mix:

1. Width:

Width of the product mix means the number of different product lines found within the company. Thus, breadth is measured by the number of product lines carried. For example, Bajaj group has a number of subsidiaries under it producing bulbs, fluorescent lights, mixers and grinders, toasters, motorcycles, pressure cookers and a host of other products.

2. Depth:

Depth of the product mix refers to the average number of items offered by the company within each product line. It is measured by assortment of sizes, colours, models, prices and quality offered within each product line. For instance, Hindustan Unilever offers a number of variants like Lux Fresh Splash, Strawberry and cream, Peach and cream, Sandal and cream, etc. within the product line Lux soaps.

3. Consistency:

The consistency of product mix points out how closely related the various product lines are in terms of consumer behaviour, production requirements, distribution channels or in some other way. For example, the products produced by the General Electric Company have an overall consistency in that most products involve electricity in one way or the other.

According to Kotler, all three dimensions of product mix have a market rationale. By increasing the width of the product mix the company hopes to capitalise on its good reputation and skills in present markets.

By increasing the depth of its product mix, the company hopes to entice the patronage of buyers of widely differing tastes and needs. By increasing the consistency of its product mix, the company hopes to acquire an unparalleled reputation in a particular area of endeavour.

Products may be classified on the basis of users of the products, the type of consumers who use the product that is:

1. Consumer products, and
2. Industrial products.

1. Consumer Products:

Consumer products are those products that are bought by the final customer for consumption.

Consumer products are of four types:

i. Convenience products,

ii. Shopping products,

iii. Speciality products, and

iv. Unsought products.

i. Convenience Products:

Convenience Products are usually low priced, easily available products that customer buys frequently, without any planning or search effort and with minimum comparison and buying effort. Such products are made available to the customers through widespread distribution channels-through every retail outlets. This category includes fast moving consumer goods

(FMCG) like soap, toothpaste, detergents, food items like rice, wheat flour, salt, sugar, milk and so on.

ii. Shopping Products:

Shopping products are high priced (compared to the convenience product), less frequently purchased consumer products and services. While buying such products or services, consumer spends much time and effort in gathering information about the product and purchases the product after a careful consideration of price, quality, features, style and suitability.

Such products are distributed through few selected distribution outlet. Examples include television, air conditioners, cars, furniture, hotel and airline services, tourism services.

iii. Speciality Products:

Speciality Products are high priced branded product and services with unique features and the customers are convinced that this product is superior to all other competing brands with regard to its features, quality and hence are willing to pay a high price for the product. These goods are not purchased frequently may be once or twice in lifetime and are distributed through one or few exclusive distribution outlets. The buyers do not compare speciality products.

iv. Unsought Products:

Unsought product is consumer products that the consumer either does not know about or knows about but does not normally think of buying. In such a situation the marketer undertakes aggressive advertising, personal selling and other marketing effort. The product remains unsought until the consumer becomes aware of them through advertising. The price of such product varies. Examples of unsought product are cemetery plots, blood donation to Red Cross, umbilical cord stem cell banking services.

2. Industrial Products:

Industrial Products are purchased by business firms for further processing or for use in conducting a business .The distinction between consumer product and industrial is based on the purpose for which the product is bought. Like a kitchen chimney purchased by a consumer is a consumer product but a kitchen chimney purchased by a hotel is an industrial product.

Business products include:

i. Material and parts,

ii. Capital items,

iii. Supplies, and

iv. Services.

i. Material and parts – Material and parts include raw material like agricultural products, crude petroleum, iron ore, manufactured materials include iron, yarn, cement, wires and component parts include small motors, tires, and castings.

ii. Capital items – Capital items help in production or operation and include installations like factories, offices, fixed equipments like generators, computer systems, elevators and accessory equipments like tools office equipments.

iii. Supplies – Supplies include lubricants, coal, paper, pencils and repair maintenance like paint, nails brooms.

iv. Services – Services include maintenance and repair services like computer repair services, legal services, consultancy services, and advertising services.

Q7) Elaborate in detail the dynamic product life cycle in relation to the current market scenario.

Stages of Product Cycle

Product life cycle can be defined as the life cycle of the product. It means the various stages a product sees in its complete life span.

Product life cycle comprises of the following four stages –

- Introduction or innovation
- Growth
- Maturity
- Decline

Let us start by describing the first stage we have in the product life cycle, that is, the introduction stage.

Introduction Stage

The product is introduced in the market in this stage; it is the initial stage of the product.

- Sales of the product are low in this stage because there may not be a need of the product in the market.
- The product may undergo brand trouble.
- In this stage, there is very little or no profit.
- The demand for the product is created and developed in this stage.

After this initial stage, the next stage of the product is the growth stage.

Growth Stage

In this stage, the demands and market share increases as well as competition emerges in the market.

- Generally, the price remains constant in this stage.
- Marketing and promotional expenses increase.
- There is rapid increase in sales.
- The manufacturing cost decreases so there is increase in profit margin.
- It penetrates other market segment.

In the growth stage, there is a boom in the demand of the product and the profit increases substantially.

Maturity Stage

The price of the product is comparatively low, but the advertisement and promotion cost increases in this stage.

- This stage remains for a comparatively longer duration.
- In this stage, there is high competition.
- Profit is decreased.
- Sales growth can be divided into the following three categories in the maturity stage –

- Growth
- Stability
- Decay

In growth, there is an increase in the demand of the product. In stability, the demand of the product remains constant. In decay, there is a slight decrease in the demand.

Decline Stage

There is a decrease in sales in this stage. Demand of product also decreases.

- There is decrease in the price of the product.
- Margins are lowered.
- There is introduction of new product in market.
- New strategies are implemented.

This is the final stage of the product. There is a decrease in demand and sales of the product.

Importance of Product Life Cycle

Product life cycle is an important tool for market forecasting, planning and control. Product life cycle is important in various ways. The situation of the product can be analyzed properly and changes can be made in order to increase profit. Some other important features are −

- Helpful in formulating a proper product policy, production and pricing.
- Helpful in modifying the marketing policy.
- Helpful to the marketer regarding competition.
- Cautions the management about the decline stage of the product.

Extending the Product Life Cycle

For successful products, a business will want to do all it can to extend the growth and maturity phases of the life cycle, and to delay the decline phase.

What can businesses do to extend the product life cycle?

To do so, it may decide to implement **extension strategies** - which are intended to extend the life of the product before it goes into decline.

Examples of extension strategies are:

1. **Advertising** – try to gain a new audience or remind the current audience
2. **Price reduction** – more attractive to customers
3. **Adding value** – add new features to the current product, e.g. improving the specifications on a smartphone
4. **Explore new markets** – selling the product into new geographical areas or creating a version targeted at different segments
5. **New packaging** – brightening up old packaging or subtle changes

Q8) Name and describe the major steps involved in new product development process.

In order to stay successful in the face of maturing products, companies have to obtain new ones by a carefully executed new product development process. But they face a problem: although they must develop new products, the odds weigh heavily against success. Of thousands of products entering the process, only a handful reach the market. Therefore, it is of crucial importance to understand consumers, markets, and competitors in order to develop products that deliver superior value to customers. In other words, there is no way around a systematic, customer-driven new product development process for finding and growing new products. We will go into the **eight major steps in the new product development process**.

1. Idea generation – The New Product Development Process

The new product development process starts with idea generation. Idea generation refers to the systematic search for new-product ideas. Typically, a company generates hundreds of ideas, maybe even thousands, to find a handful of good ones in the end. Two sources of new ideas can be identified:

- Internal idea sources: the company finds new ideas internally. That means R&D, but also contributions from employees.
- External idea sources: the company finds new ideas externally. This refers to all kinds of external sources, e.g. distributors and suppliers, but also competitors. The most important

external source are customers, because the new product development process should focus on creating customer value.

2. Idea screening – The New Product Development Process

The next step in the new product development process is idea screening. Idea screening means nothing else than filtering the ideas to pick out good ones. In other words, all ideas generated are screened to spot good ones and drop poor ones as soon as possible. While the purpose of idea generation was to create a large number of ideas, the purpose of the succeeding stages is to reduce that number. The reason is that product development costs rise greatly in later stages. Therefore, the company would like to go ahead only with those product ideas that will turn into profitable products. Dropping the poor ideas as soon as possible is, consequently, of crucial importance.

3. Concept development and Testing – The New Product Development Process

To go on in the new product development process, attractive ideas must be developed into a product concept. A product concept is a detailed version of the new-product idea stated in meaningful consumer terms. You should distinguish

- A product idea à an idea for a possible product
- A product concept à a detailed version of the idea stated in meaningful consumer terms
- A product image à the way consumers perceive an actual or potential product.

Let's investigate the two parts of this stage in more detail.

Concept development

Imagine a car manufacturer that has developed an all-electric car. The idea has passed the idea screening and must now be developed into a concept. The marketer's task is to develop this new product into alternative product concepts. Then, the company can find out how attractive each concept is to customers and choose the best one. Possible product concepts for this electric car could be:

- Concept 1: an affordably priced mid-size car designed as a second family car to be used around town for visiting friends and doing shopping.
- Concept 2: a mid-priced sporty compact car appealing to young singles and couples.

- Concept 3: a high-end midsize utility vehicle appealing to those who like the space SUVs provide but also want an economical car.

As you can see, these concepts need to be quite precise in order to be meaningful. In the next sub-stage, each concept is tested.

Concept testing

New product concepts, such as those given above, need to be tested with groups of target consumers. The concepts can be presented to consumers either symbolically or physically. The question is always: does the particular concept have strong consumer appeal? For some concept tests, a word or picture description might be sufficient. However, to increase the reliability of the test, a more concrete and physical presentation of the product concept may be needed. After exposing the concept to the group of target consumers, they will be asked to answer questions in order to find out the consumer appeal and customer value of each concept.

4. Marketing strategy development – The New Product Development Process

The next step in the new product development process is the marketing strategy development. When a promising concept has been developed and tested, it is time to design an initial marketing strategy for the new product based on the product concept for introducing this new product to the market.

The marketing strategy statement consists of three parts and should be formulated carefully:

- A description of the target market, the planned value proposition, and the sales, market share and profit goals for the first few years
- An outline of the product's planned price, distribution and marketing budget for the first year
- The planned long-term sales, profit goals and the marketing mix strategy.

5. Business analysis – The New Product Development Process

Once decided upon a product concept and marketing strategy, management can evaluate the business attractiveness of the proposed new product. The fifth step in the new product development process involves a review of the sales, costs and profit projections for the new product to find out whether these factors satisfy the company's objectives. If they do, the product can be moved on to the product development stage.

In order to estimate sales, the company could look at the sales history of similar products and conduct market surveys. Then, it should be able to estimate minimum and maximum sales to assess the range of risk. When the sales forecast is prepared, the firm can estimate the expected costs and profits for a product, including marketing, R&D, operations etc. All the sales and costs figures together can eventually be used to analyse the new product's financial attractiveness.

6. Product development – The New Product Development Process

The new product development process goes on with the actual product development. Up to this point, for many new product concepts, there may exist only a word description, a drawing or perhaps a rough prototype. But if the product concept passes the business test, it must be developed into a physical product to ensure that the product idea can be turned into a workable market offering. The problem is, though, that at this stage, R&D and engineering costs cause a huge jump in investment.

The R&D department will develop and test one or more physical versions of the product concept. Developing a successful prototype, however, can take days, weeks, months or even years, depending on the product and prototype methods.

Also, products often undergo tests to make sure they perform safely and effectively. This can be done by the firm itself or outsourced.

In many cases, marketers involve actual customers in product testing. Consumers can evaluate prototypes and work with pre-release products. Their experiences may be very useful in the product development stage.

7. Test marketing – The New Product Development Process

The last stage before commercialisation in the new product development process is test marketing. In this stage of the new product development process, the product and its proposed marketing programme are tested in realistic market settings. Therefore, test marketing gives the marketer experience with marketing the product before going to the great expense of full introduction. In fact, it allows the company to test the product and its entire marketing programme, including targeting and positioning strategy, advertising, distributions, packaging etc. before the full investment is made.

The amount of test marketing necessary varies with each new product. Especially when introducing a new product requiring a large investment, when the risks are high, or when the firm is not sure of the product or its marketing programme, a lot of test marketing may be carried out.

8. Commercialisation

Test marketing has given management the information needed to make the final decision: launch or do not launch the new product. The final stage in the new product development process is commercialisation. Commercialisation means nothing else than introducing a new product into the market. At this point, the highest costs are incurred: the company may need to build or rent a manufacturing facility. Large amounts may be spent on advertising, sales promotion and other marketing efforts in the first year.

Some factors should be considered before the product is commercialized:

- Introduction timing. For instance, if the economy is down, it might be wise to wait until the following year to launch the product. However, if competitors are ready to introduce their own products, the company should push to introduce the new product sooner.
- Introduction place. Where to launch the new product? Should it be launched in a single location, a region, the national market, or the international market? Normally, companies don't have the confidence, capital and capacity to launch new products into full national or international distribution from the start. Instead, they usually develop a planned market rollout over time.

In all of these steps of the new product development process, the most important focus is on creating superior customer value. Only then, the product can become a success in the market. Only very few products actually get the chance to become a success. The risks and costs are simply too high to allow every product to pass every stage of the new product development process.

Q9) Which factors influence the prices a company charges in different countries and its process in detail?

Pricing can be defined as a process of determining the value that is received by an organization in exchange of its products or services.

It acts as a crucial element of generating revenue for an organization.

Therefore, the pricing decisions of an organization have a direct impact on its success.

The price of a product is influenced by a number of factors, such as manufacturing cost, competition, market conditions, and quality of the product. An organization, while setting the prices of its products, needs to ensure that prices must cover costs incurred for producing products and profit margins. If the price of a product does not cover costs, then financial resources of the organization would exhaust, which would ultimately result in the failure of business.

An organization uses a number of methods and strategies to determine the prices of its products. In economic terms, an efficient pricing strategy is the one that aims at gaining consumer surplus to the producer. The pricing strategy of an organization should be realistic, flexible, and profitable.

Moreover, it should be focused on achieving the financial goals of an organization. Some of the most common pricing strategies used by an organization include differential pricing, promotional pricing, product line pricing, and psychological pricing.

Concept of Product Pricing

Setting prices as per the level where marginal revenue is equal to marginal cost is called marginality rule. However, there is evidence produced by some researchers that most of the organizations do not follow marginality rules rather they follow different pricing methods and strategies based on different market conditions. Pricing decisions play an important role in an organization since they help in generating revenue.

Pricing contributes to the success or failure of the organization's marketing strategy. Price is also called a demand regulator. Setting the prices involves a deep understanding of factors that affect the marketing environment. Every organization sets the prices of its products for fulfilling various objectives.

i. Profit-oriented Objectives:

Include the following objectives:

a. Maximizing Profit:

Implies that prices are set in such a way that they help in achieving maximum profit. According to Stanton, Etzel and Walker, “The pricing objective of making as much money as possible is probably followed more than any other goal.” Profit maximization is more beneficial in the long run as compared to short run. For instance, an organization selling a new product tries to build a customer base by selling the product at low prices in the short run. This helps the organization to gain profit in the long run by winning loyal customers.

b. Achieving a Target Return:

Refers to earn an adequate rate of return on the investment done by an organization in manufacturing a product. The main focus of marketers is on maintaining a specific return on sales or investment. This is done by adding extra cost to the product for earning a desired profit.

ii. Sales-oriented Objectives:

Include the following objectives:

a. Increasing the sales volume:

Implies sales expansion by giving discounts to customers. In the short run, an organization might be ready to bear losses by reducing the prices to increase the sales volume. For instance the hotel industry faces low demand during off–season; therefore, it prefers to decrease its prices and offers discounts to increase sales.

b. Increasing or maintaining market share:

Plays a crucial role in the success of an organization. The organization tries to gain market share by lowering down the prices as compared to its competitors.

iii. Status quo-oriented Objectives:

Includes the following objectives:

a. Stabilizing the Prices:

Prevents price wars between competitors. The prices are stabilized in those industries where product is standardized in nature. The stabilization of the prices helps in maintaining the demand and reducing competitive threats.

The marketers follow various steps to set prices as shown in Figure-3:

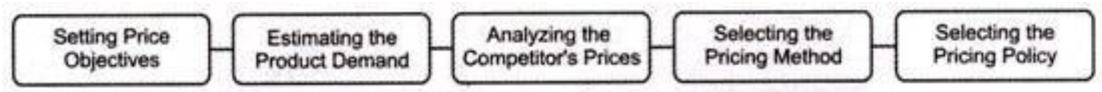


Figure-3: Process of Setting Prices

Now, let us discuss the steps of setting prices (Figure-3) in detail:

1. Setting price objectives:

Refers to set the goals of the pricing policy. An organization can have multiple pricing objectives.

Some of the price objectives are discussed as follows:

a. Survival:

Involves the formulation of a short-term price objective to face the fierce competition. The price of a product is reduced to increase sales volume. However, this strategy does not work in the long term as an organization would not be able to cover its costs, thus, profit margin may decrease in future.

b. Quality of a Product:

Affects the price of products. An organization incurs high cost in research and development to improve the quality of a product. Therefore, it covers the research and development cost in the price of the product. Sometimes, the organization raises prices to make customers aware about the improved quality of its products.

2. Estimating the product demand:

Helps in knowing the factors that affect the demand of a product. Some of the important factors can be the prices of products, environmental factors, and income and expectations of customers. There are three things that are studied by the marketers for estimating the demand.

These are discussed as follows:

a. Price Sensitivity:

Affects the demand of a product. If the price of the product rises then the demand falls and vice versa. In this case, the demand may shift to the substitute of the product. A marketer tries to study the price sensitivity of the product for making decisions about the price of the product.

b. Demand Curve:

Implies a statistical tool that shows a relationship between the demand and price of a product. It helps in knowing the demand and price fluctuations of the product.

c. Price Elasticity of Demand:

Refers to a percentage change in the demanded quantity of the product with respect to the percentage change in the price of the product. If the demand of a product changes with the change in price then the demand is said to be elastic. On the other hand, if the demand of a product does not change with the change in price then the demand is said to be inelastic.

3. Analyzing the competitor's prices:

Influences the decisions of setting the prices of products. The pricing strategies of competitors affect the demand of the product and lead to a loss of market share. Thus, it is clear that the marketers should be careful about the future competition.

Following are the three ways by which an organization reacts to price changes:

a. Maintaining the status quo and not reacting to any price change

b. Setting the prices equal to the organization's prices

c. Setting the prices less than the organization's prices

The process of analyzing the prices of competitors is difficult. Therefore, the organizations depend on the publicly available data or public statements to know the price strategies of competitors.

4. Selecting the pricing method:

Involves the selection of a technique for setting the price. There are various types of pricing methods used by organizations.

5. Selecting the pricing policy:

Involves a strategy or practice used by an organization to achieve its pricing objectives.

Q10) Explain how companies find a set of prices that maximises the profits from the total product mix.

In terms of the marketing mix some would say that pricing is the least attractive element. Marketing companies should really focus on generating as high a margin as possible. The argument is that the marketer should change product, place or promotion in some way before resorting to pricing reductions. However price is a versatile element of the mix as we will see.

Penetration Pricing.

The price charged for products and services is set artificially low in order to gain market share. Once this is achieved, the price is increased. This approach was used by France Telecom and Sky TV. These companies need to land grab large numbers of consumers to make it worth their while, so they offer free telephones or satellite dishes at discounted rates in order to get people to sign up for their services. Once there is a large number of subscribers prices gradually creep up. Taking Sky TV for example, or any cable or satellite company, when there is a premium movie or sporting event prices are at their highest – so they move from a penetration approach to more of a skimming/premium pricing approach.

Economy Pricing.

This is a no frills low price. The costs of marketing and promoting a product are kept to a minimum. Supermarkets often have economy brands for soups, spaghetti, etc. Budget airlines are famous for keeping their overheads as low as possible and then giving the consumer a relatively lower price to fill an aircraft. The first few seats are sold at a very cheap price (almost a promotional price) and the middle majority are economy seats, with the highest price being paid for the last few seats on a flight (which would be a premium pricing strategy). During times of recession economy pricing sees more sales. However it is not the same as a value pricing approach which we come to shortly.

Price Skimming.

Price skimming sees a company charge a higher price because it has a substantial competitive advantage. However, the advantage tends not to be sustainable. The high price attracts new competitors into the market, and the price inevitably falls due to increased supply.

Manufacturers of digital watches used a skimming approach in the 1970s. Once other manufacturers were tempted into the market and the watches were produced at a lower unit cost, other marketing strategies and pricing approaches are implemented. New products were developed and the market for watches gained a reputation for innovation.

The diagram depicts four key pricing strategies namely premium pricing, penetration pricing, economy pricing, and price skimming which are the four main pricing policies/strategies. They form the bases for the exercise. However there are other important approaches to pricing, and we cover them throughout the entirety of this lesson.

Psychological Pricing.

This approach is used when the marketer wants the consumer to respond on an emotional, rather than rational basis. For example Price Point Perspective (PPP) 0.99 Cents not 1 US Dollar. It's strange how consumers use price as an indicator of all sorts of factors, especially when they are in unfamiliar markets. Consumers might practice a decision avoidance approach when buying products in an unfamiliar setting, an example being when buying ice cream. What would you like, an ice cream at $0.75, $1.25 or $2.00? The choice is yours. Maybe you're entering an entirely new market. Let's say that you're buying a lawnmower for the first time and know nothing about garden equipment. Would you automatically by the cheapest? Would you buy the most expensive? Or, would you go for a lawnmower somewhere in the middle? Price therefore may be an indication of quality or benefits in unfamiliar markets.

Product Line Pricing.

Where there is a range of products or services the pricing reflects the benefits of parts of the range. For example car washes; a basic wash could be $2, a wash and wax $4 and the whole package for $6. Product line pricing seldom reflects the cost of making the product since it delivers a range of prices that a consumer perceives as being fair incrementally – over the range.

If you buy chocolate bars or potato chips (crisps) you expect to pay X for a single packet, although if you buy a family pack which is 5 times bigger, you expect to pay less than 5X the price. The cost of making and distributing large family packs of chocolate/chips could be far more expensive. It might benefit the manufacturer to sell them singly in terms of profit margin, although they price over the whole line. Profit is made on the range rather than single items.

Optional Product Pricing.

Companies will attempt to increase the amount customers spend once they start to buy. Optional 'extras' increase the overall price of the product or service. For example airlines will charge for optional extras such as guaranteeing a window seat or reserving a row of seats next to each other. Again budget airlines are prime users of this approach when they charge you extra for additional luggage or extra legroom.

Captive Product Pricing

Where products have complements, companies will charge a premium price since the consumer has no choice. For example a razor manufacturer will charge a low price for the first plastic razor and recoup its margin (and more) from the sale of the blades that fit the razor. Another example is where printer manufacturers will sell you an inkjet printer at a low price. In this instance the inkjet company knows that once you run out of the consumable ink you need to buy more, and this tends to be relatively expensive. Again the cartridges are not interchangeable and you have no choice.

Product Bundle Pricing.

Here sellers combine several products in the same package. This also serves to move old stock. Blu-ray and videogames are often sold using the bundle approach once they reach the end of their product life cycle. You might also see product bundle pricing with the sale of items at auction, where an attractive item may be included in a lot with a box of less interesting things so that you must bid for the entire lot. It's a good way of moving slow selling products, and in a way is another form of promotional pricing.

Promotional Pricing.

Pricing to promote a product is a very common application. There are many examples of promotional pricing including approaches such as BOGOF (Buy One Get One Free), money off vouchers and discounts. Promotional pricing is often the subject of controversy. Many countries have laws which govern the amount of time that a product should be sold at its original higher price before it can be discounted. Sales are extravaganzas of promotional pricing!

Geographical Pricing.

Geographical pricing sees variations in price in different parts of the world. For example rarity value, or where shipping costs increase price. In some countries there is more tax on certain types of product which makes them more or less expensive, or legislation which limits how many products might be imported again raising price. Some countries tax inelastic goods such as alcohol or petrol in order to increase revenue, and it is noticeable when you do travel overseas that sometimes goods are much cheaper, or expensive of course.

Value Pricing.

This approach is used where external factors such as recession or increased competition force companies to provide value products and services to retain sales e.g. value meals at McDonalds and other fast-food restaurants. Value price means that you get great value for money i.e. the price that you pay makes you feel that you are getting a lot of product. In many ways it is similar to economy pricing. One must not make the mistake to think that there is added value in terms of the product or service. Reducing price does not generally increase value.

See also eMarketing Price and international Marketing price.

Our financial objectives in terms of price will be secured on how much money we intend to make from a product, how much we can sell, and what market share will get in relation to competitors. Objectives such as these and how a business generates profit in comparison to the cost of production, need to be taken into account when selecting the right pricing strategy for your mix. The marketer needs to be aware of its competitive position. The marketing mix should take into account what customers expect in terms of price.

There are many ways to price a product. Let's have a look at some of them and try to understand the best policy/strategy in various situations.

Premium Pricing.

Use a high price where there is a unique brand. This approach is used where a substantial competitive advantage exists and the marketer is safe in the knowledge that they can charge a relatively higher price. Such high prices are charged for luxuries such as Cunard Cruises, Savoy Hotel rooms, and first class air travel.

Q11) Discuss the changing communications landscapes and the need for integrated marketing communications.

Marketing communication involves sharing of meaning, information and concepts by the source and the receiver about the products and services and also about the firm selling through the devices of promotion via, advertising, publicity, salesmanship and sales promotion.

In marketing the source is the marketer who desires to promote the product. Marketer delivers a message to a receiver, who is the target market segment. Message is received and integrated by consumers and if their predisposition becomes favorable, they decide to purchase. Feedback is the reverse flow of communication to the marketer.

Marketing communication may be distorted particularly when a message passes through a number of channels. Noise is a major injurious. Noise can arise due to faulty transmission, faulty reception. Competitive communication constitutes the most serious noise.

Meaning of Marketing Communication:

Marketing communications refer to the strategy used by a company or individual to reach their target market through various types of communication. Marketing communication includes advertising, direct marketing, branding, packaging, sales presentations, trade show appearances etc.

Concept of Marketing Communication Mix:

Marketing Communication Mix is the "Promotion" of the Marketing Ps and covers every method and medium of communicating with your target audience. In many ways, the marketing communication mix is the heart of your marketing strategy around which everything else in sales and marketing is predicated.

If business consists of creating value and creating customers. Marketing Communication covers exactly how you are going to create customer by taking your value message to the market.

2. Marketing Communication Objectives:

Marketing communication objectives are long-term goals where marketing campaigns are intended to drive up the value of your brand over time. In contrast to sales promotions, which are short-term inducements to buy, communication goals succeed when you persuade customers through consistent reinforcement that your brand has benefits they want or need.

(i) To Increase Awareness:

Increased brand awareness is not only one of the most common marketing communication objectives; it is also typically the first for a new company. When you initially enter the market, you have to let people know your company and products or services exist.

This might include broadcast commercials or print ads that depict the image of your company and constant repetition of your brand name, slogans and jingles. The whole objective is to become known and memorable.

Established companies often use a closely related goal of building or maintaining top- of-mind awareness, which means customers think of you first when considering your product category.

(ii) To Change Attitudes:

Changing company or brand perceptions is another common communication objective. Sometimes, misconceptions develop in the market about your company, products or services.

Advertising is a way to address them directly. In other cases, negative publicity results because your company is involved in a business scandal or unsettling activities.

BP invested millions of rupees in advertising to explain the company's clean up efforts to the public following its infamous Gulf of Mexico oil in mid-2010. Local businesses normally don't have that kind of budget but local radio or print ads can do the trick.

(iii) To Influence Purchase Intent:

A key communication objective is to motivate customers to buy. This is normally done through persuasive advertising, which involves emphasis of your superior benefits to the user, usually relative to competitors. It is critical to strike a chord with the underlying need or want that triggers a customer to act.

Sports drink commercials showing athletes competing, getting hot and sweaty and then taking a drink afterward are a common approach to drive purchase intent. The ads normally include benefits of the drink related to taste or nutrients.

(iv) To stimulate Trial Purchase:

Two separate but closely related communication objectives are to stimulate trial use and drive repeat purchases. Free trials or product samples are common techniques to persuade customers to try your product for the first time. The goal is to take away the risk and get the customer to experience your brand.

Once you get them on the first purchase, you have to figure out how to convert that into a follow-up purchase. Discounts on the next purchase or frequency programs are ways to turn one-time users into repeat buyers and, ultimately, loyal customers.

(v) To Drive Brand Switching:

Another objective closely tied to stimulating trial use is driving brand switching. This is a specific objective of getting customers who buy competing products to switch to your brand. Tide detergent is normally pitted against "other leading brands" in comparative ads intended to motivate brand switching.

The advantage with this goal is that customers already buy within your product category. This means need is established. You just need to persuade them that your product or service is superior and induce them to try it out.

---

3. Process of Communication in Marketing:

Marketing communication involves sharing of meaning, information and concepts by the source and the receiver about the products and services and also about the firm selling through the devices of promotion via, advertising, publicity, salesmanship and sales promotion.

In marketing the source is the marketer who desires to promote the product. Marketer delivers a message to a receiver, who is the target market segment. Message is received and integrated by consumers and if their predisposition becomes favorable, they decide to purchase. Feedback is the reverse flow of communication to the marketer.

Marketing communication may be distorted particularly when a message passes through a number of channels. Noise can arise due to faulty transmission, faulty reception. Competitive communication constitutes the most serious noise.

Communication is a process of exchanging verbal and non-verbal messages. It is a continuous process. Pre-requisite of communication is a message. This message must be conveyed through some medium to the recipient.

It is essential that this message must be understood by the recipient in same terms as intended by the sender. He must respond within a time frame. Thus, communication is a two way process and is incomplete without a feedback from the recipient to the sender.

The main components of communication process are as follows:

(i) Context:

Communication is affected by the context in which it takes place. This context may be physical, social, chronological or cultural. Every communication proceeds with context. The sender chooses the message to communicate within a context.

(ii) Sender/Encoder:

Sender/Encoder are a person who sends the message. A sender makes use of symbols to convey the message and produce the required response. Sender may be an individual or a group or an organization. The views, background, approach, skills, competencies and knowledge of the sender have a great impact on the message.

The verbal and non-verbal symbols chosen are essential in ascertaining interpretation of the message by the recipient in the same terms as intended by the sender.

(iii) Message:

Message is a key idea that the sender wants to communicate. It is a sign that elicits the response of recipient. Communication process begins with deciding about the message to be conveyed. It must be ensured that the main objective of the message is clear.

(iv) Medium:

Medium is a means used to exchange/transmit the message. The sender must choose an appropriate medium for transmitting the message else the message might not be conveyed to the desired recipients.

The choice of appropriate medium of communication is essential for making the message effective and correctly interpreted by the recipient.

(v) Recipient/Decoder:

Recipient/Decoder are a person for whom the message is intended/aimed/targeted. The degree to which the decoder understands the message is dependent upon various factors such as knowledge of recipient, their responsiveness to the message, and the reliance of encoder on decoder.

(vi) Feedback:

Feedback is the main component of communication process as it permits the sender to analyze the efficacy of the message. It helps the sender in confirming the correct interpretation of message by the decoder. Feedback may be verbal or non-verbal. It may take written form also in form of memos, reports, etc.

---

4. Golden Rules of Marketing Communications:

Despite the many benefits of Integrated Marketing Communications (or IMC); there are also many barriers. Here's how you can ensure you become integrated and stay integrated – 10 Golden Rules of Integration.

(1) Get Senior Management Support for the initiative by ensuring they understand the benefits of IMC.

(2) Integrate at Different Levels of management – Put 'integration' on the agenda for various types of management meetings whether annual reviews or creative sessions. Horizontally ensure that all managers, not just marketing managers understand the importance of a consistent message whether on delivery trucks or product quality.

Also ensure that Advertising, PR, Sales Promotions staff are integrating their messages. To do this you must have carefully planned internal communications, that is, good internal marketing.

(3) Ensure the Design Manual or even a Brand Book is used to maintain common visual standards for the use of logos, typefaces, colors and so on.

(4) Focus on a clear marketing communications strategy – Have crystal clear communications objectives; clear positioning statements. Link core values into every communication. Ensure all communications add value to (instead of dilute) the brand or organization. Exploit areas of sustainable competitive advantage.

(5) Start with a Zero Budget – Start from scratch. Build a new communications plan. Specify what you need to do in order to achieve your objectives. In reality, the budget you get is often less than you ideally need, so you may have to priorities communications activities accordingly.

(6) Think Customers First – Wrap communications around the customer's buying process. Identify the stages they go through before, during and after a purchase. Select communication tools which are right for each stage. Develop a sequence of communications activities which help the customer to move easily through each stage.

(7) Build Relationships and Brand Values – All communications should help to develop stronger and stronger relationships with customers. Ask how each communication tool helps to do this. Remember: customer retention is as important as customer acquisition.

(8) Develop a Good Marketing Information System which defines who needs what information when. A customer database for example, can help the telesales, direct marketing and sales force. IMC can help to define, collect and share vital information.

(9) Share Artwork and Other Media – Consider how, say, advertising imagery can be used in mail shots, exhibition stands, Christmas cards, news releases and web sites.

(10) Be prepared to change it all – Learn from experience. Constantly search for the optimum communications mix. Test Improve each year. 'Kaizen'.

---

5. Integrated Marketing Communication in India and Other Countries:

Integrated Marketing Communication (IMC) is one of the most important communications trends adopted by companies in the last decade. With an increase in global competition, technological advances, and more informed customers, it is important for businesses to make a powerful impact on target audiences and markets. IMC is one such step toward an integrated approach to achieving efficiency by synergy.

With the change in communication practices and technologies around the world, integration in marketing techniques is inevitable for the companies to survive in this multi-national and multicultural world emerging globally.

India, as one of the more economically advanced among developing countries, offers excellent opportunity for the study of concepts such as IMC and its need in countries outside the US and outside the paradigm of what is called 'Western'.

India's huge population and growing middle class presents promising potential for many US and European multinational companies focusing on the Indian markets. With more companies viewing India as an emerging market, competition in markets is growing and integration would become inevitable for communications in the developing world.

Components of Integrated Marketing Communication:

1. The Foundation:

Corporate image and brand management; buyer behavior; promotions opportunity analysis.

2. Advertising Tools:

Advertising management, advertising design: theoretical frameworks and types of appeals; advertising design: message strategies and executioner frameworks; advertising media selection. Advertising also reinforces brand and firm image.

3. Promotional Tools:

Trade promotions; consumer promotions; personal selling, database marketing, and customer relations management; public relations and sponsorship programs.

4. Integration Tools:

Internet Marketing; IMC for small business and entrepreneurial ventures; evaluating and integrated marketing program.

Importance of Marketing Communication:

Importance of marketing communication can be summarized as follows:

(i) Marketing communication involves sharing of meaning, information and concepts by the source and the receiver about the products and services and also about the firm selling through the devices of promotion via, advertising, publicity, salesmanship and sales promotion.

(ii) Marketing Communication creates competitive advantage, boost sales and profits, while saving money, time and stress.

(iii) It wraps communications around customers and helps them move through the various stages of the buying process. The organization simultaneously consolidates its image, develops a dialogue and nurtures its relationship with customers.

(iv) Marketing communication cements a bond of loyalty with customers which can protect them from the inevitable onslaught of competition. The ability to keep a customer for life is a powerful competitive advantage.

(v) It increases profits through increased effectiveness. At its most basic level, a unified message has more impact than a disjointed myriad of messages. In a busy world, a consistent, consolidated and crystal clear message has a better chance of cutting through the 'noise' of over five hundred commercial messages which bombard customers each and every day.

(vi) Marketing communication can boost sales by stretching messages across several communications tools to create more avenues for customers to become aware, aroused and ultimately, to make a purchase.

(vii) It carefully linked messages and help buyers by giving timely reminders, updated information and special offers which, when presented in a planned sequence, help them move comfortably through the stages of their buying process and this reduces their misery of choice in a complex and busy world.

(viii) It makes messages more consistent and therefore more credible. This reduces risk in the mind of the buyer which, in turn, shortens the search process and helps to dictate the outcome of brand comparisons.

Q12) Describe the major decisions involved in developing an advertising program.

Advertising is the action of calling public attention to an idea, good, or service through paid announcements by an identified sponsor.

According to Kotler –

Advertising is any paid form of non-personal presentation & promotion of ideas, goods, or services by an identified sponsor.

According to the Advertising Association of the UK –

Advertising is any communication, usually paid-for, specifically intended to inform and/or influence one or more people.

A simpler (and modern) definition of advertising can be – A paid communication message intended to inform people about something or to influence them to buy or try something.

Characteristics Of Advertising

- **Paid Form:** Advertising requires the advertiser (also called sponsor) to pay to create an advertising message, to buy advertising media slot, and to monitor advertising efforts.
- **Tool For Promotion:** Advertising is an element of the promotion mix of an organization.

- **One Way Communication:** Advertising is a one-way communication where brands communicate to the customers through different mediums.
- **Personal Or Non-Personal:** Advertising can be non-personal as in the case of TV, radio, or newspaper advertisements, or highly personal as in the case of social media and other cookie-based advertisements.

Types Of Advertising

Advertising activities can be categorized into above the line, below the line and through the line advertising according to their level of penetration.

- **Above the line advertising** include activities that are largely non-targeted and have a wide reach. Examples of above the line advertising are TV, radio, & newspaper advertisements.
- **Below the line advertising** include conversion focused activities which are directed towards a specific target group. Examples of below the line advertising are billboards, sponsorships, in-store advertising, etc.
- **Through the line advertising** include activities which involve the use of both ATL & BTL strategies simultaneously. These are directed towards brand building and conversions and make use of targeted advertisement strategies. Examples of through the line advertising are cookie based advertising, digital marketing strategies, etc.

Advertising activities can also be categorized into 5 types based on the advertising medium used. These types of advertisements are:

- **Print Advertising:** Newspaper, magazines, & brochure advertisements, etc.
- **Broadcast Advertising:** Television and radio advertisements.
- **Outdoor Advertising:** Hoardings, banners, flags, wraps, etc.
- **Digital Advertising:** Advertisements displayed over the internet and digital devices.
- **Product/Brand Integration:** Product placements in entertainment media like TV show, YouTube video, etc.

Objectives Of Advertising

There are 3 main objectives of advertising. These are:

To Inform

Advertisements are used to increase brand awareness and brand exposure in the target market. Informing potential customers about the brand and its products is the first step towards attaining business goals.

To Persuade

Persuading customers to perform a particular task is a prominent objective of advertising. The tasks may involve buying or trying the products and services offered, to form a brand image, develop a favourable attitude towards the brand etc.

To Remind

Another objective of advertising is to reinforce the brand message and to reassure the existing and potential customers about the brand vision. Advertising helps the brand to maintain top of mind awareness and to avoid competitors stealing the customers. This also helps in the word of mouth marketing.

Other objectives of advertising are subsets of these three objectives. These subsets are:

- Brand Building
- Increasing Sales
- Creating Demand
- Engagement
- Expanding Customer Base
- Changing Customers' attitudes, etc.

Importance Of Advertising

To The Customers

- **Convenience:** Targeted informative advertisements make the customer's decision making process easier as they get to know what suits their requirements and budget.
- **Awareness:** Advertising educates the customers about different products available in the market and their features. This knowledge helps customers compare different products and choose the best product for them.
- **Better Quality:** Only brands advertise themselves and their products. There are no advertisements for unbranded products. This ensures better quality to the customers as no brand wants to waste money on false advertising.

To The Business

- **Awareness:** Advertising increases the brand and product awareness among the people belonging to the target market.
- **Brand Image:** Clever advertising helps the business to form the desired brand image and brand personality in the minds of the customers.
- **Product Differentiation:** Advertising helps the business to differentiate its product from those of competitors' and communicate its features and advantages to the target audience.
- **Increases Goodwill:** Advertising reiterates brand vision and increases the goodwill of the brand among its customers.
- **Value For Money:** Advertising delivers the message to a wide audience and tends to be value for money when compared to other elements of the promotion mix.

Advantages Of Advertising

- **Reduces Per-Unit Cost:** The wide appeal of advertisements increases the demand for the product which benefits the organization as it capitalizes on the economies of scale.
- **Helps In Brand Building:** Advertisements work effectively in brand building. Brands who advertise are preferred over those which doesn't.
- **Helps In Launching New Product:** Launching a new product is easy when it is backed by an advertisement.
- **Boosts Up Existing Customers' Confidence In The Brand:** Advertisements boosts up existing customers' confidence in the brand as they get a feeling of pride when they see an advertisement of the product or the brand they use.
- **Helps In Reducing Customer Turnover:** Strategic advertisements for new offers and better service helps reduce customer turnover.
- **Attracts New Customers:** Attractive advertisements help the brand in gaining new customers and expanding the business.
- **Educates The Customers:** Advertisements inform the customers about different products existing in the market and also educates them in what they should look for in an apt product.

Disadvantages Of Advertising

- **Increases The Costs:** Advertising is an expense to the business and is added to the cost of the product. This cost is eventually borne by the end consumer.
- **Confuses The Buyer:** Too many advertisements with similar claims often confuses the buyer in what to buy and should he buy the product or not.
- **Is Sometimes Misleading:** Some advertisements use smart strategies to mislead the customers.
- **Only For Big Businesses:** Advertising is a costly affair and only big businesses can afford it. This makes small businesses out of competition with big businesses who get to enjoy a monopoly in the market.
- **Encourages The Sale Of Inferior Products:** Effective advertisements even lead to the sale of inferior products which aren't good for the consumers.
  - Organisation allocate millions and even billions of dollars for advertising. It is important that the marketers effectively use the advertising resources to make the marketing effort successful. The steps involved vary from company to company but there are five major steps that organisations can take in developing an advertising program.

  - **1) Mission/Objective**
    2) Budget
    3) Message
    4) Mediaplan
    5) Evaluation
  - **1) Advertising mission/ objective**
  - The advertising objective refers to the specific goals an organisation wants to achieve in a specified time with specified audience.

  - The marketing strategy which specifies the target market, marketing positioning and marketing mix elements, gives direction to the advertising objectives. The planning which is done for the steps in making decisions for promotion activities form the basis of each promotion tool. (**Kindly see chapter – Promotion Mix – Marketing Communications;Discuss the steps involved in Promotion Decisions?**)

- Advertising is done to inform the audiences about the company and its products. Some managers' stress on the communication aspect of advertising of developing awareness of product benefits, influencing buyers to try the product, and generating positive attitudes and emotions towards the products. They believe that the organisation should not be solely dependent on advertising to meet its sales objectives.

- **Professor Kotler has classified advertising objectives as below-**
- **Informative advertising –** In informative advertising the aim is to build primary demand. It creates awareness about new products or new features of existing products. For example, In some markets, Motorola advertised its year old Moto X style model by highlighting that the device was available with the latest android software. Samsung advertising its Galaxy S7 smartphone as water resistant with exceptional camera.
- **Persuasive advertising** – Here the motive is to create preference for the company's product. It is also known as Comparative advertising. Company's highlight the attributes of their products which are better than the competitors. For example, Duracell's advertisement on long lasting batteries as compared to others.
- **Reminder advertising** – This advertising is done to persuade repeat purchasing. It is mostly done when the product or service is in the maturity stage and there is presence of competitor products. Colgate asking customers to regularly use its toothpaste to avoid tooth decay.
  Reinforcements advertising – It is to convince the existing users of company's products that they have made a right choice. The aim is to ensure that the existing users don't switch to competitor products.
- **2) Determining the advertising budget**
- Advertising budget is a financial document that outlines the total amount allocated for advertising along with the information on how the amount will be spent. The management has to decide on the right amount to be allocated so that less amount should not result in ineffective advertising and excess amount should not raise the expenditure which will eat into the profits of the company. Some company's rely on Percent of Sales. This method sets aside a predetermined percent of sales for advertising. It can be the last sales that the organisation made or the forecast sales. For

example, if an organisation has allotted 7% to its forecast sales. If sales are expected to reach $100,000, then the advertising budget is set at $7000.00. Below factors can be considered when deciding on the advertising budget-

- **a) Stage of product in product life cycle** – New products require intense advertising to create awareness in the target market. Whereas, products in maturity stage have less advertising expenses as the motive of advertising is just to remind and reinforce the company's products.
- **b) Market share and consumer base** – Brands with high market share usually require less advertising budget as a percentage to sales. Similarly, a brand which wants to increase its market share, will need to invest heavily in advertising which will need high advertising budget.
- **c) Competition and clutter** – Among lot of competitors and advertising clutter in the target market, a brand trying to be a leader will need to invest heavily in advertising to make a mark on its potential buyers. Even if the competition is less, the brand will need extensive advertising to stand out from the clutter of advertisements from different organisations.
- **d) Advertising frequency** – Marketers need to be aware of the frequency of the advertisements in the target market when allocating the advertising budget.
- **e) Product substitutability** – Highlighting product features to differentiate it from substitute products in the market will need advertising regularly.
- **3) Advertising message**
- Just creating an expensive advertisement will not serve the purpose unless it is creative. The most creative part in advertising is working on the advertising campaign. It takes into consideration what to say to the target audience and how to say it so that the buyers will listen, understand and remember the message when making buying decisions.

- **There are 4 steps in developing a creative advertising strategy-** Message generation – There are many theories proposed by advertisers for creating an effective message. Some link the brand to a single benefit. For example, Duracell highlights the long lasting batteries in its advertising message. Visa credit card is positioned as the most widely used and accepted credit card. John Maloney proposed the deductive framework for creating an advertising message. According to him buyers expect four types of rewards form a product – rational, sensory, social and ego. The buyers visualise these rewards to three types of experiences – results-of-use experiences, product-in-use-experiences, and incidental-to-use-experiences. The message to be generated should be a combination arrived at by crossing any of the 4 rewards/ benefits with three types of experiences.

- For example, a Lotion that provides skin fairness – Result-of-use-experience and ego.

- Message evaluation and selection – The advertiser should consider the following 3 factors while evaluating and selecting a message-

- (i) The message should highlight something interesting, and invoke the desirability in the consumers.

- (ii) The message should highlight the exclusiveness of the product that is not available with other products of same kind from different brands in the market.

- (iii) The message should be believable.

- A study of the market should be carried out to understand which appeal works best for the organisation.
  Message execution –Creative advertising can be presented in 3 forms of execution-
- (i) Style – slice of life, musical, lifestyle (how product fits in certain lifestyle), personality symbol, fantasy, technical expertise, mood or image (beauty, serenity, love, etc.), scientific evidence (some scientific study or analysis done), testimonial evidence (product endorsing by people or well-known celebrities).

- (ii) Tone – Tones can be positive, humorous, informative, self-deprecating, and in rare cases negative. Sometimes two or more tones are combined.

- (iii) Words – Attention getting and memorable words also help in creating a creative advertisement. McDonald’s, “I’m loving it”, 7-Up’s, “the Un-cola”.

- There are many aspects of advertising that the marketers should study and incorporate. The format elements like ad size, colour and illustration contributes to the ads cost as well as its impact. How nicely the slogans can make the advertisement more effective and catchy to get the audience's attention.

- **4) Deciding on the Media**
- The next step after finalising the message is to select the most effective (high impact) and efficient (less costly, within the budget) media for communicating the message to the masses.

- It is a challenge to decide on the media vehicle as each one of them have advantages as well as disadvantages. The marketers must consider various alternatives available in the target market to construct a media mix. Media Mix is referred to a combination of advertising tools or vehicles (TV, Radio, outdoor, newspapers, etc.) that will carry the message to the audiences. The marketers consider the reach, frequency and impact of the media tools. The marketer has to be aware of the reach, impact and frequency of major media types. As each one of these varies in terms of cost, advantages and limitations, a careful analysis becomes important for the marketer. The factors considered are –

- **i) Target audience media habits** – Internet advertising on websites and mobiles if best vehicle to reach the teenagers as they regularly visit internet sites and applications.
- **(ii) Product characteristics** – Does the product need demonstration? Electronic products can best be advertised on televisions as they have visual and motion elements for proper demonstration. Fashion apparels need colourful presentation hence best advertised on magazines, online and television.
- **(iii) Message characteristics** – for example, a soon to be launched product can be advertised on television as well as magazines. But a discount sale will need immediate communication in the target market. It will be more effective if advertisements are made through outdoor advertising, newspapers, radio, etc.
- **(iv) Cost** – creating an advertisement to be telecast on television is costlier than an advertisement created for newspapers, radio, etc.

- The marketer should consider the limitations and advantages of various media types to create effective media mix and media schedule.

- Similarly, the Geographical Allocation of the media is considered to target specified regions and territories. It has to decide on local, national, or international coverage and accordingly select advertising vehicle to carry the message in these regions.

- **5) Media Evaluation**
- An organisation should have effective planning and control on the advertising program to measure its effectiveness. Most commonly used methods for measuring the effectiveness are-
  1) Communication-effect research – There are three methods under this.
- (i) In Consumer feedback method, the consumers are asked some questions on the ad and their feedback is analysed for its effectiveness. Questions like,
  • What do you think is the main message in this ad?
  • How likely it is that this ad will influence you to make the intended decision? etc.
- (ii) Portfolio tests take a customer through various ads. And at the end the customers are asked to recall the ads and their content. The effectiveness of the ad is calculated basis the recall of the contents of the ads.

- (iii) Laboratory tests use equipment to check the consumer's physiological reactions like heartbeat, pupil dilation, heartbeat, etc. when exposed to the ad. Many theorist have argued about the effectiveness of these methods.
- **2) Sales effect research** – Organisations measure the effect of advertising expenditure on the sales. These measures are difficult to measure as the change in sales could have been because of many reasons like price changes, changes in competition, changes in economic conditions, etc. Majorly two approaches are followed to measure the sales effectiveness.
- (i) Historical Sales – Advertising relationships- Here the historical relationship is analyzed between the changes in sales and the advertising expenditure in that period. Usually quarterly, half-yearly and yearly data is considered for this analysis. This analysis becomes complex when advertisers consider the effect on sales due to current advertising as well as the carry over effect of advertising done in the previous period.

(ii) Experimental studies – To understand the relation between advertisement and its influence on the sales, experimental studies can be used. One such method is test market approach. The effect on sales is measured in few cities where consumers are exposed to advertisements and also in cities where no advertisement is run. Due to decline in sales for Teflon-coated cookware, Du Pont conducted such study in 13 different cities and concluded that the organisation has to advertise at the highest levels to achieve increase in sales.

Q13) Discuss the role of personal selling in the promotion mix. In what situations is it most ideal?

The selling process is a set of activities undertaken to successfully obtain an order and begin building long-term customer relations. The activities apply to all forms of selling and can be adapted to most selling situations (including non-product selling such as – selling an idea).

There are several stages involved in the process and a salesman has to understand all the stages in the process to make the process more effective:-

1.Prospecting and Evaluating

2. Approaching the Consumer

3. Preparing for the Sale

4. Making the Presentation

5. Overcoming the Objections

6. Closing the Sale

7. Following Up.

1. Prospecting and Evaluating:

Prospecting consists in developing a list of potential customers. The first step in the sales process is to discover the names of prospects from several sources such as the company's sales records, consumer's information requests from advertisements, other customers newspaper announcements, public records, telephone and trade directories, who's who, yearbooks, and trade association list.

After developing the prospect list, a salesman evaluates each prospect to determine whether the prospect is able, willing, and authorized to buy the product. On the basis of this evaluation, names of some prospects may be deleted, while others are deemed to be acceptable and may be ranked in relation to their desirability or potential.

2. Approaching the Consumer:

This is most critical step because the prospect's first impression of the salesman may be a lasting impression that has long- run consequences. One type of approach is based on referrals; the salesman approaches the prospects and explains that an acquaintance as associate or a relative has suggested the call. The 'cold courses' is an approach in which the salesman calls or potential customers without their prior consent.

'Repeat contact' is another common approach, when making the contact; the salesman mentions a prior meeting. What type of approach would be suitable depends upon the salesman's preferences, the product being sold, the firm's resources, and the characteristics of the prospect.

3. Preparing for the Sale:

This step consists in finding and analysing information regarding prospects specific product needs, current brands being used; feelings about other available brands and personal characteristics. This information is used in selecting an approach and in creating a sales presentation. The more information about a prospect that a salesman has, the better able he is to develop an approach and presentation that precisely communicates with the prospect.

4. Making the Presentation:

During the sales presentation, the salesman must attract and hold attention of the prospect in order to stimulate interest and convince and arouse desire for the product.

To attract such attention, the salesman should talk to the prospect briefly about the product either by asking a question that interests him or by display of some material, such as a sample, or by allowing the prospect touch, hold, or actually use the product. Demonstration may also be given about the product so that the prospect gets more involved.

5. Overcoming the Objections:

There are certain objections which can be anticipated and their answers formulated before the sales interview takes place. There are other objections which cannot be anticipated because they are usually related to the procedures of a particular business.

For these objections, the following methods may be used:

i. Direct denial method (also called the "head-on or contradiction" method), under which the salesman should never contradict the buyers' observation. In such method, the salesman should keep in mind these guidelines; (a) He should not be offensive, rather he should smile; (b) The retail sales clerk should not attempt this method because he is seldom in a position to keep the customers; (c) The type of customer must be kept in mind so that his feelings may not be hurt; (d) It should not be used if the objection has any 'ego' involvement in it.

ii. The Boomerang method (also called the translation method), is so called because the object raised by the prospect often comes back at him as a valid reason for buying the product. This method is useful in meeting excuses that are not strongly backed by facts. It is effective only when the salesman is skilled in applying this technique.

iii. Indirect-identical method (also known as “yes but method or ‘sidestepping the question method), is most widely used method. It is a method of compromise because both salesman and prospects “bend” a little. They admit to each other that they both are right, but there is the other side of the problem to consider also.

iv. Compensation method, which merely acknowledges the validity of an objection, but points out some advantage that is supposed to compensate for the objection, such as lower price, or special care of the product.

v. The Pass-up method, is one where the salesman smiles and tries to pass over the objection especially when the objection is of trivial nature that it does not deserve a careful or thoughtful answer.

vi. The question method, under which the salesman asks questions regarding objections, so that further analysis be made. The “reason objections” are answered with the word why because why reopens the discussion and the possibility of making a sale.

The salesman, while using any of these methods of handing objections, must be sure that he is applying the right method in such particular situation.

6. Closing the Sale:

This step is the climax of the selling process in which the salesman asks the prospect to buy the product or products. “He who wins the last battle wins the war” is truly applicable to a salesman foreclosing in the test, of every salesman. Inadequate preparation, poor impression, failure in meeting objections or wrong approach on the part of the salesman may come in his way.

Buyer’s fears and the salesman’s attitude are two important obstacles of closing the sale. The sale must be closed only when the salesman knows that the customer is prepared for it. The close of the sale depends upon the conditions, personality for the parties and the nature of the goods.

Some of the effective ways of closing the sale are – (i) to take it for granted, (ii) offer some inducements, (iii) telling business stories how others have benefitted by the purchase of the products, (iv) fear of loss, (v) stressing minor but interesting details, and (vi) marketing a straight request for an order.

The salesman may employ a "trial close" by asking questions that assume the prospect will buy the product, e.g. he might ask the potential customer questions about financial terms, desired colours, or sizes, delivery arrangements, or the quantity to be purchased. The prospects reactions to such questions usually indicate how close the prospect indirectly respond that they will buy the product without having to state those sometimes difficult words "I'll like it". A salesman should try to close at several points during the presentation, because the prospect may be ready to buy.

7. Following Up:

After a sale is closed, it should be properly followed. The salesman should ensure that the delivery instructions given by the customer are properly followed. The salesman must visit the customer often to learn what problems or questions have arisen regarding the product. "After sales service" should be punctual, quick and satisfactory.

Q14) Explain how sales promotion campaigns are implemented and what are its objectives?

Even though customer satisfaction has become the top priority for businesses, there are times when they need to stimulate demand and increase sales of their products for short-run. This is where sales promotion comes into play.

Sales promotion is a part of the promotional mix where the business uses many short-term customer-oriented strategies to stimulate the demand for its product by making it look more attractive and/or worthy.

Here's a simpler definition of sales promotion –

Sales Promotion Definition

Sales promotion is a marketing strategy where the product is promoted using short-term attractive initiatives to stimulate its demand and increase its sales.

This strategy is usually brought to use in the following cases –

- to introduce new products,
- sell out existing inventories,
- attract more customers, and
- to lift sales temporarily.

American Marketing Association defines sales promotion as –

Media and nonmedia marketing pressure applied for a predetermined, limited period of time in order to stimulate trial, increase consumer demand, or improve product availability.

Importance Of Sales Promotion

Sales promotion is a handy technique to fulfil the short term sales goals by persuading potential customers to buy the product. It is an important promotional strategy to –

- **Spread information about the brand** to new customers or new market
- **Stabilize sales volume** and fulfil short-term sales goals
- **Stimulate demand** for a short term by making the product look like a great deal.

Objectives Of Sales Promotion

The answer to the question *what is sales promotion?* also gives a hint to sales promotion objectives, the main objective being lifting the sales temporarily.
Other objectives include but are not limited to –

To Create Market For New Products

It is sometimes hard to establish demand for a new product in a market of similar products. In such cases, the company opt for increasing some sales by using sales promotion strategies like penetration pricing, offers, discounts, and scarcity principle.

To Remain Competitive

Companies use temporary sales promotion techniques to compete with competitor's short term marketing strategies.

To Gain Dealers Trust

Sales promotion techniques increase the sales of the products. This increases dealers' income and results in them preferring the brand more.

To Take Products To New Markets

New markets are often hard to enter. Sales promotion increases traction and makes more customers try the new product.

Increase Brand Awareness

It includes attractive incentives which help increase brand awareness, which eventually leads to more sales.

Woo Existing Customers

Sales promotion is also used to tackle the poaching strategies of competitors and keep existing customers with the brand.

Sales Promotion Strategies

Sales promotion strategies can be divided into three broad types. These are –

- **Pull Strategy –** The pull strategy attempts to get the customers to 'pull' the products from the company. It involves making use of marketing communication and initiatives like seasonal discounts, financial schemes, etc.
- **Push Strategy –** The push strategy attempts to push the product away from the company to the customers. It involves convincing the intermediary channels to push the product from the distribution channels to the final consumers using promotional and personal selling efforts. This strategy involves making use of tactics developed especially for resellers, merchants, dealers, distributors, and agents.
- **Hybrid Strategy –** A hybrid sales promotion strategy makes use of both the pull and push strategy to sell the product with the least resistance possible. It involves attracting the customers using special coupons and also providing incentives to the merchants to sell the brand's products.

Types Of Sales Promotions

Sales promotion can be broadly divided into two types according to whom the promotion is targeted to. These are –

Consumer Sales Promotion

When the sales promotion strategies are targeted to the end consumers, it is referred to as consumer sales promotion. An example would be offering 20% off on certain products to the customers. The main motive of consumer-oriented promotion is to increase sales directly by attracting new customers and wooing existing ones.

Sales Promotion Techniques Targeted To Consumers

Sales promotion tools used for consumer-oriented promotion are –

- **Free Samples:** Distributing free samples increases brand awareness and triggers the psychology of ownership where the person chooses the promoted product if he liked the sample.
- **Free Gifts –** Offering free gifts attract customers as they get more while paying for less.
- **Discounts/Discount Coupons –** Discount coupons are a great method of increasing sales for the short term. People go for discount coupons as they let them buy the products they couldn't afford otherwise.
- **Exchange Schemes –** Exchange schemes attract many customers as they get some value even for their old product.
- **Finance Schemes –** Finance schemes like no-cost EMI, low-interest EMI, etc. makes it easier for customers to purchase expensive products.
- **Shipping Schemes –** Sometimes huge shipping costs discourage the customers from buying products. Such short term shipping schemes remove friction.
- **Bundle Discounts –** These deals are a great way to reduce unsold inventory. It includes selling bundled products at a price lesser than when those number of products are bought separately.
- **Bulk Purchase Deals –** This is a great sales promotion tactic to reduce unsold inventory. It includes providing discount to customers who buy in bulk.

Trade Sales Promotion

When the promotion activities are strategized keeping in mind the dealers, distributors, or agents, it is called trade sales promotion. In this type of sales promotion, offers are provided within the trade channels with an aim to woo retailers, wholesalers, agents, or distributors. This is done to get more shelf space as compared to competitors, motivate the dealers to sell more of the brand's products and to increase the sales indirectly.

Sales Promotion Techniques Targeted To Traders

- **Point Of Purchase Displays –** This includes providing free point of purchase (POP) display units to the retailers to increase their sales.

- **Trade Shows –** Trade shows are a great sales promotion strategy where the business promotes its product to thousands of traders in the trade show. Trade shows also witness huge discounts as compared to when bought usually.
- **Push Money –** Also known as spiffs, this technique includes extra payments to traders to motivate them to meet specified goals. For example, giving them a $50 bonus per unit for selling product A and $30 for selling product B for a specified time period.
- **Deal Loaders –** These are the gifts provided to the traders (wholesalers and retailers) for ordering a certain quantity of product.
- **Trade Deals –** These are special concessions provided to the merchants to encourage them to promote a specific product and increase its sales for a limited time period.
- **Buying Allowances –** Special discounts provided to the sellers when they order a specified number of products.

Sales Promotion Examples

A product can be promoted for a limited time using innumerable tactics. Here are a few examples of sales promotion tactics that exist –

Black Friday Sale

Black Friday Sale is a seasonal sale which occurs only once a year. It involves huge discounts and special offers which are limited to a day. As a result, it increases the sales manifold.

Buy One Get One

Buy One Get One (BOGO) is a popular type of sales promotion where two products are offered at a price of one. This works great to promote a new product or clear the inventory at the end of the season.

Referral Bonuses

Referral Marketing is a great sales promotion strategy where the company pushes its own customers to bring in new customers. This is done by providing them with special discounts, offers, cashback, or actual monetary benefits.

Q15) Discuss the nature and importance of marketing logistics and integrated supply chain management.

Distribution (or **place**) is one of the four elements of the marketing mix. Distribution is the process of making a product or service available for the consumer or business user who needs it. This can be done directly by the producer or service provider, or using indirect channels with distributors or intermediaries. The other three elements of the marketing mix are product, pricing, and promotion.

Decisions about distribution need to be taken in line with a company's overall strategic vision and mission. Developing a coherent distribution plan is a central component of strategic planning. At the strategic level, there are three broad approaches to distribution, namely mass, selective or exclusive distribution. The number and type of intermediaries selected largely depends on the strategic approach. The overall distribution channel should add value to the consumer.

Prior to designing a distribution system, the planner needs to determine what the distribution channel is to achieve in broad terms. The overall approach to distributing products or services depends on a number of factors including the type of product, especially perishability; the market served; the geographic scope of operations and the firm's overall mission and vision. The process of setting out a broad statement of the aims and objectives of a distribution channel is a strategic level decision.

Strategically, there are three approaches to distribution:[3]

- *Mass distribution* (also known as *intensive distribution*): When products are destined for a mass market, the marketer will seek out intermediaries that appeal to a broad market base. For example, snack foods and drinks are sold via a wide variety of outlets including supermarkets, convenience stores, vending machines, cafeterias and others. The choice of distribution outlet is skewed towards those than can deliver mass markets in a cost efficient manner.
- *Selective distribution:* A manufacturer may choose to restrict the number of outlets handling a product. For example, a manufacturer of premium electrical goods may choose to deal with department stores and independent outlets that can provide added value service level required to support the product. Dr Scholl orthopedic sandals, for example, only sell their product through pharmacies because this type of intermediary

supports the desired *therapeutic* positioning of the product. Some of the prestige brands of cosmetics and skincare, such as Estee Lauder, Jurlique and Clinique, insist that sales staff are trained to use the product range. The manufacturer will only allow trained clinicians to sell their products.

- *Exclusive distribution:* In an exclusive distribution approach, a manufacturer chooses to deal with one intermediary or one type of intermediary. The advantage of an exclusive approach is that the manufacturer retains greater control over the distribution process. In exclusive arrangements, the distributor is expected to work closely with the manufacturer and add value to the product through service level, after sales care or client support services. Another definition of exclusive arrangement is an agreement between a supplier and a retailer granting the retailer exclusive rights within a specific geographic area to carry the supplier's product.[4]

Supply chain management is a process used by companies to ensure that their supply chain is efficient and cost-effective. A supply chain is the collection of steps that a company takes to transform raw materials into a final product. The five basic components of supply chain management are discussed below −

Plan

The initial stage of the supply chain process is the planning stage. We need to develop a plan or strategy in order to address how the products and services will satisfy the demands and necessities of the customers. In this stage, the planning should mainly focus on designing a strategy that yields maximum profit.

For managing all the resources required for designing products and providing services, a strategy has to be designed by the companies. Supply chain management mainly focuses on planning and developing a set of metrics.

Develop(Source)

After planning, the next step involves developing or sourcing. In this stage, we mainly concentrate on building a strong relationship with suppliers of the raw materials required for production. This involves not only identifying dependable suppliers but also determining different planning methods for shipping, delivery, and payment of the product.

Companies need to select suppliers to deliver the items and services they require to develop their product. So in this stage, the supply chain managers need to construct a set of pricing, delivery and payment processes with suppliers and also create the metrics for controlling and improving the relationships.

Finally, the supply chain managers can combine all these processes for handling their goods and services inventory. This handling comprises receiving and examining shipments, transferring them to the manufacturing facilities and authorizing supplier payments.

Make

The third step in the supply chain management process is the manufacturing or making of products that were demanded by the customer. In this stage, the products are designed, produced, tested, packaged, and synchronized for delivery.

Here, the task of the supply chain manager is to schedule all the activities required for manufacturing, testing, packaging and preparation for delivery. This stage is considered as the most metric-intensive unit of the supply chain, where firms can gauge the quality levels, production output and worker productivity.

Deliver

The fourth stage is the delivery stage. Here the products are delivered to the customer at the destined location by the supplier. This stage is basically the logistics phase, where customer orders are accepted and delivery of the goods is planned. The delivery stage is often referred as logistics, where firms collaborate for the receipt of orders from customers, establish a network of warehouses, pick carriers to deliver products to customers and set up an invoicing system to receive payments.

Return

The last and final stage of supply chain management is referred as the return. In the stage, defective or damaged goods are returned to the supplier by the customer. Here, the companies need to deal with customer queries and respond to their complaints etc.

This stage often tends to be a problematic section of the supply chain for many companies. The planners of supply chain need to discover a responsive and flexible network for accepting damaged, defective and extra products back from their customers and facilitating the return process for customers who have issues with delivered products.

Components of physical distribution:-

- **Order processing** :- Processing deals receiving, recording, filling & assembling of product for dispatch. The possible time required from the data of receipt of an order up to the data of dispatch of goods most be reasonable & as start as possible. Order cycle time must not exceed & days.
- **Inventory management**:- Inventories are reservoirs of goods held in anticipation promptly, inventories are kept to meet market demands promptly, inventory means, money is held temporarily in the form of raw materials component parts supplies in process goods and finished goods, 20% to 30% of the total assets of a firm are locked up-inventory.
- **Location of warehouses**:-Storage means holding the stock of goods for a relatively longer period as the goods are not immediately in demand warehouses also provide the following services breaking bulk, dispatch of smaller consignments to retailers, holding the stocks for retailers, regulating the goods
- **Determining material handling system**:- once the layout for the factories design the next task is to develop efficient material handling system to move the material from are stage of production to another stage. Little handling involves moving, packaging, storing, all the materials used by the firm with the development of technology a variety of material handling requirements have been developed to economic the cost reduce the effort of workers improve the safety for men & materials.
- **Selecting of a method of transport system**: - marketers need to take an interest in their company's transportation decisions.

The choice of transportation carries affects the pricing of products, delivering performance and condition of the goods when they arrive all of which will affect customer satisfaction. In shipping goods to its ware houses, dealers and customers. The company can choose among 5 transportation models: trail, truck, water, pipeline and air.

Q16) How is rural marketing changing and affecting the global Indian scenario?

A rural marketing strategy refers to the planning of adequate supply of consumer goods and agricultural input to the villages at an affordable price to fulfil the needs of the consumers residing in these rural areas. Rural markets have a high potential and can generate huge sales volume for the companies which manufacture cost-efficient products and have active supply chain management.

Some of the important features or characteristics of rural marketing are being listed below:

Large and scattered market:

The rural market is very large in size and mostly scattered. As these markets are of diverse nature, the people living in those rural areas are from diverse cultural, linguistic and religious background. No two markets are alike and it is dispersed across India. Here in India, the rural market consists of over 63 crore consumers from 6, 20,000 villages spread throughout the country. Therefore a large population gives an opportunity for marketing a variety of goods and services. However income and purchasing power play a major role in determining the demand in rural areas.

Occupation Pattern:

Agriculture and related activities continue to be the main occupation for majority of the rural population. Land is the major source of income for about 77% of the population. Others are engaged in business (10%), non-agriculture labour (9%), and salary earners (2%) and not gainfully employed (2%). It is evident that rural prosperity depends upon growth and development of agriculture.

Low standard of living:

The consumer in the village area do have a low standard of living because of low literacy levels, low per capita income, social backwardness, low savings, economic backwardness, lack of exposure to the media, etc. In general a rural consumer spends less on non-food items.

Traditional outlook:

The rural consumer values old customs and tradition. They do not prefer changes. In other words, the adaptability to change is lethargic and hence the problem of marketing of goods is much prevalent.

Diverse socio-economic backwardness:

Rural consumers have diverse socio-economic backwardness. This is different in different parts of the country. There exists tremendous variation in culture, life style, tastes, preferences, culture, etc of the rural consumers.

Infrastructure facilities:

The infrastructure facilities like roads, warehouses, communication systems, and financial systems are inadequate in rural areas. Most of rural markets are not connected by roads. Most of the roads are kuchha and become unusable during rainy season. Many farmers use bullock cart for transporting their produce from village to the market. This means of transport is time consuming. And same is the problem with transporting the goods from urban markets to rural areas. Hence physical distribution is hampered.

OPPORTUNITIES IN RURAL MARKETS

Whilst on one hand, there are many challenges in rural marketing, but certainly there also exists infinite opportunities. The rural market is fascinating and challenging at the same time. The marketers have to find out new ways of dealing with the rural customers. As already mentioned, the urban markets are fully saturated, so the easiest and the simplest option available with the marketer is to look towards the rural prospects. These rural people are eagerly waiting to be served. Here are some of the points which the marketers could utilize for marketing their products in rural areas.

1) Huge untapped Potential – As more than 70% of the total India‘s population dwells in rural areas, the huge population itself speaks of its potential. The rural market offers a great chance for different branded goods as well as services for large number of customers.

Penetration levels for many products are low in rural areas. The market has been growing at 3-4% per annum adding more than one million new consumers every year.

2) Impact of globalization - Globalization had a great impact on target groups like farmers, youth and women. Farmers, today 'keep in touch' with the latest information and maximize both ends. On youth its impact is on knowledge and information and while on women it still depends on the socio-economic aspect. The marketers who understand the rural consumer and fine tune their strategy are sure to reap benefits.

3) Effectiveness of communication - An important tool to reach out to the rural audience is through effective communication. The rural audience has matured enough to understand the communication developed for the urban markets, especially with reference to FMCG products. Television has been a major effective communication system for rural mass and, as a result, companies should identify themselves with their advertisements.

4) Rising rural prosperity and purchasing power - The agricultural development programs of the government have helped to increase income in the agricultural sector. These in turn have created greater purchasing power in rural markets. Moreover, today rural incomes generate not 88 only from agricultural section but also from other sections. There is a sizeable salaried class in rural areas. Rural demand in FMCG products, consumer durables, automobile and retail is growing at a faster pace than anticipated due to rise in its consumption patterns.

5) Change in rural consumer behavior – With the economic development of rural areas, disposable income of rural people has gone up. Moreover, with the presence of internet and direct-to-home television connectivity in rural areas, these people have started gaining knowledge about the different brands that are available in urban markets. They are slowly realizing the importance of established brands and have started purchasing these brands. Rural people are now purchasing branded soaps, toothpowder, paste, tobacco products, radio, TV, bicycles, motorcycles, cooking utensils, wrist watch, razor blades, detergents and so on. The rural consumers have become choosy and they have started weighing better options in purchasing products, particularly branded ones. It is a boon to the companies that rural people amidst deficiency spend so lavishly on weddings, ceremonies, rituals and festivals. Mainly through more exposure to urban products and services due to media, literacy, migration, etc., demand for urban type products, aspiration for better quality of life as product become affordable.

6) Improvement in infrastructure and rural connectivity - The governments too have realized the importance of huge untapped potential and they are now on the path of making huge investments in rural infrastructure. In India, the eleventh five year plan government has specific focus on the inclusive growth of the country. Several schemes have been launched in last couple 60% 40% 2010 Non Farm Farm 70% 30% 2020(E) Non Farm Farm 89 of years related to rural housing, roads, communication, drinking water, rural electrification, etc. These have considerably improved the living conditions of rural population and have led to increase in their demand and consumption for the automobile and consumer durable goods such as mobile, television, etc. moreover, improvement of rural infrastructure and greater connectivity with far flung rural areas can stop migration of rural youths. Not only this, agriculture related activities will also get a fillip.

7) I.T. penetration in rural India - Today's rural children and youth grow up in an environment where they have 'information access' to education opportunities, exam results, career counseling, job opportunities, government schemes and services, health and legal services, worldwide news and information, land records, mandi prices, weather forecasts, bank loans, livelihood options. If television had change the language of brand communication in rural India, affordable internet connectivity through various types of communication hubs had a great impact on the minds of the rural youth. As the electronic ethos and IT culture moves into rural India, the possibilities of change are becoming visible. Alternate use of rural labour especially the rural youths in service sector and also in production related activities will help stop rural migration.

8) Favorable government policies – As a part of the process of planned economic development, the government has been making concerted efforts towards rural development. The massive investment in the rural India has generated new employment, new income and new purchasing power. In the recent years, as a part of new farming policies, high support prices are offered for agricultural products. Various measures like tax exemption in rural areas, subsidy, concessions, incentives, assistances, literacy drive in rural areas has bought in rapid development of rural markets. Government‘s initiative for vocationalization of education especially in rural areas comes as a major boost in rural areas. XIIth Plan has already initiated by the central government but for Make in India to be successful, skilled labour force is needed. The labour in rural areas (which remains idle for most of the time), can be effectively utilized with small scale industrial units or with agro-based units, which are present near the rural areas.

9) Credit facilities through banks - With co-operative banks taking the lead in the rural areas, every village has access to short, medium, long-term loans from these banks. The credit facilities 90 extended by public sector banks through rural financing schemes like Kisaan Credit Cards help the farmers to buy seeds, fertilizers and consumer durable goods on installments. The introduction of the micro finance proved to be of great help to the people living in hinterlands.

10) Intense Competition in urban markets - Intensified competition in urban markets is leading to increase in costs and thereby reducing market share. The rural markets are therefore becoming increasingly attractive in comparison to urban markets. The automobile and FMCG market brings this out clearly. Hero Honda motorcycles, Parle, Britannia, Brooke Bond, Maruti Cars, HLL products or Wipro products find ready acceptance in rural markets as compared to urban markets where there is a proliferation of brands.

Q17) Are ethics important in marketing, if yes why?

Ethics are explained as the moral principles and values that oversee the actions and decisions of a person or group. They serve as guidelines to act rightly and justly when faced with ethical problem. Ethics in marketing denotes to the practice of marketing in business in an ethical and moral way. It means intentionally applying standards of justice and represents the company to others. While the objective of any business is to be money-making, if a company has to use counterfeit advertisement, or misleading or objectionable marketing tactics to attain it, it's really not running a successful marketing campaign. There can be short term gain in doing something unethical. Researchers stressed on the fact that acts in an ethical manner will get in long-term rewards for their actions. Doing business in ethical way can build loyal customers, get more referrals, and will be building a positive image about their business. Marketing has the potential to influence beliefs and behaviours. It is important to maintain high ethical standards to protect the interests of customers and the public, and the reputation of clients. Marketing ethics has been developed with reference to business ethics that reflect interest of various stakeholders.

Issues in ethics of Marketing

Marketing has gripped with ethical mistreatment because marketing manager face some of the most difficult ethical problems in business. Ethical problems occur only when an individual interacts with other people. Ethics can be viewed in terms of the needs of' the individual and the needs of applicable others. The value system of each individual consists of perceived sets of obligations toward others. Baumhart (1961) recognized the major ethical problems that must be removed from business process such as

1. Gifts, gratuities, bribes

2. Price discrimination and unfair pricing

3. Dishonest advertising

4. Miscellaneous unfair competitive practices

5. Cheating customers, unfair credit practices and overselling

6. Price collusion by competitors

7. dishonesty in making or keeping a contract, and

8. unfairness to employees and prejudice in hiring.

Ethical conflict occurs when people perceive that their duties toward one group are inconsistent with their duties and responsibilities toward some other group (including one's self). They then must attempt to resolve these opposing obligations. Basically, Ethical conflicts in marketing can mainly arise in two contexts; firstly the difference between the needs of company, industry, and society. Secondly, the conflict arises when the interest of individual and organization vary (England, 1998). Bartels succinctly states "the nature of ethical conflict: In a pluralistic society not one but many expectations must be met. Therefore, resolution of what is right to do produces a balance of obligations and satisfactions. Ideally, full satisfaction of the expectations of all parties would constitute the most ethical behaviour. This is impossible for expectations are often contradictory and sometimes exceed social sanction. Therefore, skill and judgment must be used to guide one in determining the point at which his own integrity can be best maintained." Marketing ethics denotes morals and standards relating to marketing practices, including those related to 'four P's of marketing' and 'marketing research'. The first few editorials on ethical issues in marketing published in the 1960s

Ethics Compliance Programs

i. Development of code of ethics in which guidelines are developed by companies to help employees in order to make ethical decisions.

ii. Consumerism where social movements that protect consumers from harmful business practices.

iii. Green marketing in which there is marketing of products and packages that are less toxic and recyclable.

iv. Corrective advertising in which advertising that clarifies previous deceptive claims.

To summarize, the ethics of marketing and its bond with the clients forms a basis to the victory of the organization. Ethics are the honest values and principles that govern the actions and verdicts of an entity or cluster. It is normal that customers anticipate to be treated in a fair manner and with regard. Reliability of service, trustworthiness, responsiveness, understanding and reception of value addition to products are some of the expectations of the customers. They do not want unrealistic promises, or deceptive offerings. There are some ethical dilemmas for marketers to meet expectations of customers. Ethical issues arise due to the dissimilarity between the individual and company's values and norms. When the products are not disclosed properly then they are dishonourably marketing their product. To control these unethical behaviours are by control them properly and then by making sure that everyone follow it. If someone does not follow rules then the proper actions must be taken against them for breaching the codes of conduct. In sum, marketing ethics indicates that there should be an apparent understanding of what is right and what is wrong in business.

Q18) Discuss how companies go about conducting online marketing to deliver superior customer value to customers.

In today's world of business, marketing online is becoming one of the most effective ways to attract more users. E-marketing facilitates the investigation and form the market, consumer opinion and occasional users to make it permanent. Marketing online is identified as traditional advertising and direct marketing interaction:

Online marketing goals should be linked and be formed from the general company's marketing objectives. They must have formed links with marketing strategy decisions, target market and so on. Essentially, online marketing goals are very similar to the general marketing goals, but before the formation of them, it is necessary to identify and fix the real needs of the organization / target marketing on the Internet.

The organization, through internet marketing, has consistently performed the following steps for achieving the objectives

- *Improving the image of the organization* - the organization has a virtual space to present their work using the latest technologies and the application of innovative e-marketing tools.
- *Audience massification* - the organization must be able to attract the widest possible group of users because the Internet technology makes it possible to have access to the rapidly expanding global audience that is not limited by any boundaries and limits
- *Ability to select audience* - organization, planning and implementing e-marketing efforts should focus on the target group of Internet users, as new technology makes it possible to achieve easily the desired users or their group. According to the types of the Internet users of organization it is easy to identify the target audience.
- *Interactive communication with the consumer* - has an active form that is interactive, relationship with their consumers. In this case, the company must provide not only detailed information about its activities, products, and any effort to learn about the client, to know his opinion, comments and so on. It can also be applied to fans, fan communities creation and so on.
- *Effective business* - organization, using technology, by the instruments of advanced virtual payments should allow consumers conveniently to purchase goods, take orders and apply innovative methods of payment for goods.
- The dynamism of marketing - has constantly updated information and data contained in the web space, website and so on. Enterprise users must keep themselves informed about the activities, products and services.

Goals of online marketing:

INCREASE REVENUE

The primary goal of any marketing strategy is ultimately to increase revenue, and Internet marketing is no exception. Thankfully, the Internet provides plenty of opportunities for every business to improve their bottom line.

By combining search engine optimization, or SEO, with pay per click ads, or PPC, your company can improve the chances that potential customers find you online. And with strategies like content marketing and social media marketing, you can position yourself as an expert in your field who also cares about your clients.

BUILDING A BRAND

Internet marketing objectives often include building a brand. This means not only establishing your logo and company name in the minds of consumers, but also what your company stands for.

Well-known brands are typically trusted more by customers, especially when paired with positive associations. The Internet is a great tool for building that trust, because it has a wide reach and allows you to directly connect with individuals.

MANAGE ONLINE REPUTATION

In an age when anyone with a computer or smartphone can post their opinions about companies, products, and services for the whole world to see, it's important for businesses to maintain a solid online reputation. This means monitoring your company's name, maintaining social profiles, and responding to bad reviews accordingly.

One bad review doesn't mean that your company's reputation is shot, but one bad reaction to a bad review might. The way you publicly respond to customer complaints will show them (and all other current and potential customers) how much you care about their opinions. But as intimidating as that may sound, all it takes is a bit of respect and concern for your customer base.

Q19) Elucidate the importance of branding, packaging and labelling for a product and in response to changing marketing's environment.

According to **American Marketing Association - Brand** is "A name, term, design, symbol, or any other feature that identifies one seller's good or service as distinct from those of other sellers. The legal term for brand is trademark. A brand may identify one item, a family of items, or all items of that seller. If used for the firm as a whole, the preferred term is trade name."

According to **Philip Kotler** - "**Brand** is a name, term, sign, symbol, design, or a combination of them, intended to identify the goods or services of one seller or group of sellers and to differentiate them from those of competitors"

Meaning of Branding

Branding is a process of creating a unique name and image for a product in the mind of consumer, mainly through advertising campaigns. A brand is a name, term, symbol, design or combination of these elements, used to identify a product, a family of products, or all products of an organisation.

Elements of Branding

Brand includes various elements like - brand names, trade names, brand marks, trade marks, and trade characters. The combination of these elements form a firm's corporate symbol or name.

Brand Name - It is also called Product Brand. It can be a word, a group of words, letters, or numbers to represent a product or service. For example - Pepsi, iPhone 5, and etc.

Trade Name - It is also called Corporate Brand. It identifies and promotes a company or a division of a particular corporation. For example - Dell, Nike, Google, and etc.

Brand Mark - It is a unique symbol, colouring, lettering, or other design element. It is visually recognisable, not necessary to be pronounced. For example - Apple's apple, or Coca-cola's cursive typeface.

Trade Mark - It is a word, name, symbol, or combination of these elements. Trade mark is legally protected by government. For example - NBC colourful peacock, or McDonald's golden arches. No other organisation can use these symbols.

Trade Characters - Animal, people, animated characters, objects, and the like that are used to advertise a product or service, that come to be associated with that product or service. For example - Keebler Elves for Keebler cookies

Branding Strategies

There are various branding strategies on which marketing organisations rely to meet sales and marketing objectives. Some of these strategies are as following :-

- **Brand Extension** - According to this strategy, an existing brand name is used to promote a new or an improved product in an organisation's product line. Marketing organisations uses this strategy to minimise the cost of launching a new product and the risk of failure of new product. There is risk of brand diluting if a product line is over extended.
- **Brand Licensing** - According to this strategy, some organisations allow other organisations to use their brand name, trade name, or trade character. Such authorisation is a legal licensing agreement for which the licensing organisation receives royalty in return for the authorisation. Organisations follow this strategy to increase revenue sources, enhance organisation image, and sell more of their core products.
- **Mixed Branding** - This strategy is used by some manufacturers and retailers to sell products. A manufacturer of a national brand can make a product for sale under another company's brand. Like this a business can maintain brand loyalty through its national brand and increase its product mix through private brands. It can increase its profits by selling private brands without affecting the reputation and sales of its national brand.
- **Co-Branding** - According to this strategy one or more brands are

combined in the manufacture of a product or in the delivery of a service to capitalise on other companies' products and services to reach new customers and increase sales for both companies' brands.

Packaging:

Introduction: Product packaging plays an important role in the marketing mix .Packaging plays an important role as a medium in the marketing mix, in promotion campaigns, as a pricing criterion, in defining the character of new products, as a setter of trends and as an instrument to create brand identity and shelf impact in all product groups.

The top ten requests about packaging:

Even though the consumer is not dissatisfied with the packaging available on the market, he would still like to be tempted by functional and attractive packaging ideas, by multisensory appeal and creative design - preferably with packaging ideas made from board. He acknowledges additional benefits and appeal and is even willing to pay an extra charge for them. Good starting points for improvements, changes, innovations which optimise the features of packaging that determine buying decisions and thus generate new market potential can be summarised in consumers' top ten requests about product packaging:

1. **Eye-catching appearance** A distinctive, unmistakable and eye-catching appearance is a signal at the POS to which all consumers and particularly the younger ones respond positively. Whatever stands out clearly in the monotonous competitive environment, whatever is surprising scores points with the consumer. Special effort makes a special impression - and is allowed to cost more too.

Design, shape and colour The purpose of well-considered design, creative printing and finishing is to entice the consumer to devote attention to the pack and its contents at the POS. Aesthetics and attractiveness are major distinctive features - and are in fact essential in some product segments: beautiful packaging design is of central importance in the cosmetics and confectionery product groups. Consumers like to buy agreeably designed and decorative products!

2. **Functionality** Functional aspects are the basis for all successful packaging and for thus greater product success too. Product and aroma protection, hygiene and tightness, environmental responsibility and practical handling (in both use and storage) are just as important here as ideas that improve comfort: closure mechanisms, portioning, see-through windows, for example.
3. **Innovation** Novelty has exceptionally strong appeal. An innovative pack can even make "new products" out of familiar ones. Unusual solutions, functional new developments and originality not only set design trends but also boost sales!
4. **Material** What is printed on board is read particularly willingly, while what is packaged in board sells particularly well. Sustainability, easy disposal and, above all, great design variety and potential are particular features of the material. Popular with consumers, particularly high appeal and many other advantages too.
5. **Efficient communication** The packaging is the credible medium at the point of sale and is consulted willingly and intensively (see "Material"). This makes it an efficient means of communication and, in addition, one that gets closer to the consumer than all others. If several of his senses are appealed to as well, he can be persuaded particularly successfully.
6. **Multisensory** appeal Anyone who approaches consumers via several of his senses attracts greater attention, intensifies perception and stimulates interest in buying. Packaging that can be felt, smelled and heard as well as looked at wins the

customer's favour. So much so that he is willing to pay a higher price for this multisensory appeal.

7. **Appropriateness** for the product Packaging is considered to be an important indicator of quality. The quality of the product therefore has to be communicated by good packaging and not just by promises of quality made in the text on the packaging. A credible "overall work of art" is created as a result, in which the contents and the packaging are coherent and the consumer is convinced by their consistency.
8. **Value** Packaging is an excellent way to communicate sophistication, class and value. This makes it an ideal strategic option for expressing premium positioning - as well as being the instrument of choice when a product needs to be upgraded or a brand needs to be revitalised. Products in classy packaging are particularly popular presents too.

   Additional benefits Successful packaging not only combines what is pleasant with what is functionally useful but also provides additional benefits. For example, as a gift or for presentation, with entertaining components or simply by making it possible to continue using the packaging for something else after the product has been consumed.

Functions of packing:

1. **Product Identification:**Packaging serves as an identification of the product. A product is packed in special sized, coloured and shaped container for keeping its difference from the products of competitors. Forex
2. **Product Protection:** The main function of packaging is to provide protection to the product from dirt, insects, dampness and breakage. For example, the products like biscuit, jam, chips, etc., need to be protected from environmental contact. That is why they are tightly packed.

3. **Convenience:**Packaging provides convenience in the carriage of the product from one place to another, in stocking and in consuming. For example, the new pet bottles of COKE makes the carriage and stocking easier. Similarly, the pack of FROOTI provides convenience in its consumption.
4. **Product Promotion:**Packaging simplifies the work of sales promotion. Packing material in the house reminds the consumers constantly about the product. In this way, the packaging performs the role of a passive salesman. Consequently, it increases the sales.

Q20) Identify and discuss the major forms of direct marketing.

Direct marketing is a marketing strategy where returning and potential customers are contacted directly by the brand, instead of having an indirect medium between them.

It is called 'direct marketing' because it generally eliminates the need for a middleman such as a retailer. The results of a direct marketing campaign are immediately measurable because your business can track how many customers have positively responded to you.

Direct marketing largely relies on the individual distribution of a sales pitch to their consumers and potential customers, personally. Door-to-door salesmen, promotional telephone calls, SMS, emails, kiosks, hand-out brochures and coupons are among the more popular methods used in direct marketing.

Types of Direct Marketing

There is a range of types of direct marketing techniques that you can implement in order to reach your target audience. Here are some types of direct marketing listed:

1. **Face-to-Face Marketing-** This is one of the oldest forms of direct marketing. Authorised sales representatives are employed to meet prospects directly. The goal of each representative is to reach out to these prospects, convert them into profitable consumers and thus promote the business of your organization.
2. **Door-to-Door Marketing-** Door-to-Door sales (D2D) are another form of face-to-face marketing. It simply means that your sales representative is participating in door-to-door

prospective, which indicates a system of direct contact with your targeted audience. Rather than relying on any other kind of marketing, a D2D salesman goes from one place to another, engaging prospects in a conversation about the products and services you offer implementing various compliance techniques with the intention of doing business with them.

3. **Kiosk Marketing-** Public places that get a lot of crowds are always full of opportunities to gain people's attention towards your business. Representatives stationed at kiosks in these places such as shopping malls can directly talk to potential customers by catching their eyes with your products and services.
4. **Leaflet Handouts-** This type of direct marketing involves handing out leaflets to the targeted audience that contain printed information about the products and services you offer, giving your potential customers the option to contact you, should they decide to make a purchase. Leaflets are sometimes also handed out at kiosks, to encourage a more positive engagement from your prospects. These leaflets may also sometimes contain offers and coupon codes that are redeemable for only a limited amount of time, thereby enticing your prospects further into making a purchase from you.
5. **Telemarketing-** The process of contacting your prospects individually and trying to get them interested in purchasing what your business has to offer has rapidly grown in the past few years. Representatives at call-centres contact a list of people who would be interested in your product and inform them the perks and advantages of making the purchase. This technique is often used by AT&T and Vodafone to inform both existing and potential consumers about the services they offer.
6. **Email Marketing:** With the widespread usage of the internet, businesses have inclined towards sending emails to contact their prospects directly. This technique is called cold emailing and if used with a proper strategy has a really good conversion rate.
7. **Targeted Advertisements:** Internet has opened the gates to yet another form of direct marketing – Targeted Advertisements. Almost every activity a user perform over the internet is recorded in the form of a cookie or other data. This data along with the user's demographics is used by advertisers to target personalised ads to him directly. An example of targeted advertisements is remarketing where user witnesses the advertisements of the products he abandoned while visiting an ecommerce website.

Advantages Of Direct Marketing

A good direct marketing campaign focuses on promoting and selling to your prospective customers by:

- Helping you build a better relationship with both returning and new customers by contacting them directly.
- Testing the appeal of your products and services and getting direct feedback from your target audience, which can also be used to improve the products and services you offer.
- Helping you understand which marketing technique could be a better way to reach out to your target audience directly in order to do business with them.
- Providing your customers with any compelling content that they could share with other potential customers.
- Providing a positive boost in sales by gaining loyal customers for your business.

Direct Marketing Strategies

A well-planned direct marketing campaign can help you reach your ideal customers. Strategizing your direct marketing techniques can help you amass wider and more loyal support from your prospects.

- **360-Degree Approach-** Just like any other marketing strategy, including a 360 degree approach to your direct marketing strategy and using all the available marketing mediums to convey the marketing message makes the communication more effective.
- **Segmenting The Target Market-** Using lists of targeted prospects so that promotional messages can be sent only to those who would most likely be interested in the services you offer is an effective direct marketing strategy. This can be done by collecting information via surveys, or sometimes also monitoring your regular customers' behaviours.
- **Personalized Messages –** Although the number of sales pitches delivered can be massive, inserting the recipient's name or location at a prominent place in the message adds a nice personal touch which can attract your potential customers.
- **Increasing Customer Loyalty-** Since direct marketing allows you to directly contact your customers, it also allows you to build a good relationship with your existing and potential customers. Combine direct marketing techniques with customer loyalty strategies to build better customer relationships.

- **<u>Testing Products and Sales Performance-</u>** Direct marketing allows you to directly test products and customers' feedbacks to them. Each time you run a direct marketing campaign for your business, it is important to monitor the reviews and ratings from your customers in order to improve any future direct marketing campaigns.
- **<u>Harnessing The Power Of The Internet-</u>** Direct marketing isn't limited to the offline world anymore. Your target market is already on the internet. Using emails, retargeting, Facebook ads and Google ads to reach to the target audience directly gets more results.
- **<u>Call To Action Marketing-</u>** The call to action(CTA) is one of the most common features across all forms of direct marketing today. The audience you target can easily know more about the services you offer by calling you on a toll-free number or clicking the link in an email promotion you sent them.

Direct marketing is based on the opportunity to communicate with your prospects and customers directly, which also allows you to build a close relationship with them. And while the goal of direct marketing is to increase awareness and educate the markets about the products and services you offer, the major focus is on persuading your prospects to make a purchase directly, without the involvement of a third party.