BCOM 108- Business Laws

Objective: The objective of the course is to impart basic knowledge of the important business laws along with relevant case law.

Unit I

The Indian Contract Act 1872: Contract ó meaning of a contract, characteristics and kinds, essentials of a valid contract ó offer and acceptance, consideration, contractual capacity, free consent, legality of objects, void agreements, contingent contracts, modes of discharging a contract, breach of a contract and its remedies, quasi contracts, contract of indemnity and guarantee, contract of bailment and agency.

Unit II

Sale of Goods Act – 1930: Contract of sale, meaning, difference between sale and agreement to sell, Conditions and Warranties, transfer of ownership in goods including sale by non-owners, performance of contract of sale, meaning of an unpaid seller, rights of an unpaid seller against the goods and the buyer.

Unit III

Negotiable Instrument Act: Kinds and characteristics of Negotiable Instruments, Holders and Holder in ó due course, Privileges of Holders-in-due course; Negotiation and endorsement, crossing of cheques types of crossing, bouncing of cheques; Consumer Protection Act - 1986.

Unit IV

The Limited Liability Partnership (LLP) Act – 2008: Salient Features of the Act, Distinction between LLP and Partnership, LLP and Company, LLP Agreement, Nature of LLP, Partners and Designated Partners in an LLP, Incorporation document, incorporation by Registration, registered office of LLP and change therein- change of name, change of partners and their relations, extent and limitation of liability of LLP and Partners.

Business Law B.COM.(H)-II

Unit-I

Indian Contract Act. 1872 occupies an important place in the mercantile law of the country. Every citizen of the country ó Businessman, Professional, a Doctor, a Teacher or an artist is affected by this act.

Law gives us certain rights as citizen and imposes on certain obligation also. Sec 1 of the Indian Contract act ó act will be names as Indian Contract Act 1872. It will be applicable to the entire country. Except for the state of Jammu & Kashmir.

Definition of Contract- Sir Fredric Pollock "Every agreement and promise enforceable by law is a contractö. Sec 2(H) of Indian Contract Act ó õAn agreement enforceable by law is a contract.

a) **Agreement between the Parties. Sec(2C)** Every promise and every set of promises forming the considerations for each other is an agreement. Promise Sec. (2b) when the person to whom the proposal is made signifies his assent there to the proposal which is accepted. A proposal when accepted become a promise.
b) **Agreement Should be enforceable by law:-** A agreement generally be enforceable by law when it imposes some legal obligations on the parties to the contract. We can say agreement and obligation are two fundamental element of a contract. Obligations need to be legal not social at the same time.

Characterstics and Kinds:

The purpose of a contract is to establish the agreement that the parties have made and to fix their rights and duties in accordance with that agreement. The courts must enforce a valid contract as it is made, unless there are grounds that bar its enforcement.

Statutes prescribe and restrict the terms of a contract where the general public is affected. The terms of an insurance contract that protect a common carrier are controlled by statute in order to safeguard the public by guaranteeing that there will be financial resources available in the event of an accident.

The courts may not create a contract for the parties. When the parties have no express or implied agreement on the essential terms of a contract, there is no contract. Courts are only empowered to enforce contracts, not to write them, for the parties. A contract, in order to be enforceable, must be a valid. The function of the court is to enforce agreements only if they exist and not to create them through the imposition of such terms as the court considers reasonable.

It is the policy of the law to encourage the formation of contracts between competent parties for lawful objectives. As a general rule, contracts by competent persons, equitably made, are valid and enforceable. Parties to a contract are bound by the terms to which they have agreed, usually even if the contract appears to be improvident or a bad bargain, as long as it did not result from Fraud, duress, or Undue Influence.

The binding force of a contract is based on the fact that it evinces a meeting of minds of two parties in Good Faith. A contract, once formed, does not contemplate a right of a party to reject it. Contracts that were mutually entered into between parties with the capacity to contract are binding obligations and may not be set aside due to the caprice of one party or the other unless a statute provides to the contrary.

Types of Contract

Contracts under Seal Traditionally, a contract was an enforceable legal document only if it was stamped with a seal. The seal represented that the parties intended the agreement to entail legal consequences. No legal benefit or detriment to any party was required, as the seal was a symbol of the solemn acceptance of the legal effect and consequences of the agreement. In the past, all contracts were required to be under seal in order to be valid, but the seal has lost some or all of its effect by statute in many jurisdictions. Recognition by the courts of informal contracts, such as implied contracts, has also diminished the importance and employment of formal contracts under seal.

Express Contracts In an express contract, the parties state the terms, either orally or in writing, at the time of its formation. There is a definite written or oral offer that is accepted by the offeree (i.e., the person to whom the offer is made) in a manner that explicitly demonstrates consent to its terms.

Implied Contracts Although contracts that are *implied in fact* and contracts *implied in law* are both called implied contracts, a true implied contract consists of obligations arising from a mutual agreement and intent to promise, which have not been expressed in words. It is misleading to label as an implied contract one that is implied in law because a contract implied in law lacks the requisites of a true contract. The term quasi-contract is a more accurate designation of contracts implied in law. Implied contracts are as binding as express contracts. An implied contract depends on substance for its existence; therefore, for an implied contract to arise, there must be some act or conduct of a party, in order for them to be bound.

A contract implied in fact is not expressed by the parties but, rather, suggested from facts and circumstances that indicate a mutual intention to contract. Circumstances exist that, according to the ordinary course of dealing and common understanding, demonstrate such an intent that is sufficient to support a finding of an implied contract. Contracts implied in fact do not arise contrary to either the law or the express declaration of the parties. Contracts implied in law (quasi-contracts) are distinguishable in that they are not predicated on the assent of the parties, but, rather, exist regardless of assent.

The implication of a mutual agreement must be a reasonable deduction from all of the circumstances and relations that contemplate parties when they enter into the contract or which are necessary to effectuate their intention. No implied promise will exist where the relations between the parties prevent the inference of a contract.

A contract will not be implied where it would result in inequity or harm. Where doubt and divergence exist in the minds of the parties, the court may not infer a contractual relation-ship. If, after an agreement expires, the parties continue to perform according to its terms, an implication arises that they have mutually assented to a new contract that contains the same provisions as the old agreement.

A contract implied in fact, which is inferred from the circumstances, is a true contract, whereas a contract implied in law is actually an obligation imposed by law and treated as a contract only for the purposes of a remedy. With respect to contracts implied in fact, the contract defines the duty; in the case of quasi-contracts, the duty defines and imposes the agreement upon the parties.

Executed and Executory Contracts An executed contract is one in which nothing remains to be done by either party. The phrase is, to a certain extent, a misnomer because the completion of performances by the parties signifies that a contract no longer exists. An executory contract is one in which some future act or obligation remains to be performed according to its terms.

Bilateral and Unilateral Contracts The exchange of mutual, reciprocal promises between entities that entails the performance of an act, or forbearance from the performance of an act, with respect to each party, is a Bilateral Contract. A bilateral contract is sometimes called a two-sided contract because of the two promises that constitute it. The promise that one party makes constitutes sufficient consideration (see discussion below) for the promise made by the other.

A unilateral contract involves a promise that is made by only one party. The offeror (i.e., a person who makes a proposal) promises to do a certain thing if the offeree performs a requested act that he or she knows is the basis of a legally enforceable contract. The performance constitutes an acceptance of the offer, and the contract then becomes executed. Acceptance of the offer may be revoked, however, until the performance has been completed. This is a one-sided type of contract because only the offeror, who makes the promise, will be legally bound. The offeree may act as requested, or may refrain from acting, but may not be sued for failing to perform, or even for abandoning performance once it has begun, because he or she did not make any promises.

Unconscionable Contracts An Unconscionable contract is one that is unjust or unduly one-sided in favor of the party who has the superior bargaining power. The adjective *unconscionable* implies an affront to fairness and decency. An unconscionable contract is one that no mentally competent person would accept and that no fair and honest person would enter into. Courts find that unconscionable contracts usually result from the exploitation of consumers who are poorly educated, impoverished, and unable to shop around for the best price available in the competitive marketplace.

The majority of unconscionable contracts occur in consumer transactions. Contractual provisions that indicate gross one-sidedness in favor of the seller include limiting damages or the rights of the purchaser to seek court relief against the seller, or disclaiming a Warranty (i.e., a statement of fact

concerning the nature or caliber of goods sold the seller, given in order to induce the sale, and relied upon by the purchaser).

Unconscionability is ascertained by examining the circumstances of the parties when the contract was made. This doctrine is applied only where it would be an affront to the integrity of the judicial system to enforce such a contract.

Adhesion Contracts Adhesion contracts are those that are drafted by the party who has the greater bargaining advantage, providing the weaker party with only the opportunity to adhere to (i.e., to accept) the contract or to reject it. (These types of contract are often described by the saying "Take it or leave it.") They are frequently employed because most businesses could not transact business if it were necessary to negotiate all of the terms of every contract. Not all adhesion contracts are unconscionable, as the terms of such contracts do not necessarily exploit the party who assents to the contract. Courts, however, often refuse to enforce contracts of adhesion on the grounds that a true meeting of the minds never existed, or that there was no acceptance of the offer because the purchaser actually had no choice in the bargain.

Aleatory Contracts An aleatory contract is a mutual agreement the effects of which are triggered by the occurrence of an uncertain event. In this type of contract, one or both parties assume risk. A fire insurance policy is a form of aleatory contract, as an insured will not receive the proceeds of the policy unless a fire occurs, an event that is uncertain to occur.

Void and Voidable Contracts Contracts can be either void or Voidable. A void contract imposes no legal rights or obligations upon the parties and is not enforceable by a court. It is, in effect, no contract at all.

A voidable contract is a legally enforceable agreement, but it may be treated as never having been binding on a party who was suffering from some legal disability or who was a victim of fraud at the time of its execution. The contract is not void unless or until the party chooses to treat it as such by opposing its enforcement. A voidable contract may be ratified either expressly or impliedly by the party who has the right to avoid it. An express ratification occurs when that party who has become legally competent to act declares that he or she accepts the terms and obligations of the contract. An

implied ratification occurs when the party, by his or her conduct, manifests an intent to ratify a contract, such as by performing according to its terms. Ratification of a contract entails the same elements as formation of a new contract. There must be intent and complete knowledge of all material facts and circumstances. Oral Acknowledgment of a contract and a promise to perform constitute sufficient ratification. The party who was legally competent at the time that a voidable contract was signed may not, however, assert its voidable nature to escape the enforcement of its terms.

Essential of a valid contract

Agreement ó Proposal + Acceptance

Sec.2(e) Agreement

Sec.2(b) Promise

- All contracts are agreements
- Agreement ó Legal obligations

A Gives his car to B for repairs and b asks for Rs. 500 for the repairs work. There is legal obligation between the parties.

Agreement must be enforceable by the law to convert an agreement into a contract, some vital elements are required as follows:-

- Agreement
- Contractual Capacity of Parties to enter into an agreement.
- Free consent
- Valid object and consideration
- Agreement not being declared void by law.
- Agreement must be in written of law required

All agreements are not contract. Agreement can be religious, social or moral which puts no legal obligations on the parties.

Contractual Capacity of parties ó Parties must be legally competent to enter into it. Every person is competent to contract with following qualifications.

a) Age of Majority ó 18 years
b) Is of sound mind
c) Is not disqualified from contract by any law ó Enemies of the country ó Diplomatic personnel, bankrupt or sentenced to terms of imprison.

Free consent of Parties :- Consent of the parties is said to be free when the parties are of the same mind on the material terms of the contract - X has two houses one in Bombay and one in Delhi ó X wants to sell his Delhi House but wants to purchase Xøs Bombay house ó Parties has not the same mind or consent.

Consent must be free agreement forced by:

a) Coercion b) Undue influence c) Fraud would not be enforceable by law and known as voidable agreement d) Misrepresentation of fact unknowingly

Act of Corcion ó Act of forbidden by Indian panel code ó Murder, dacoity, kidnapping, physical beating, torture.

Ranganayak Amma Vs Alwar Sahi. A widow of 13 years was forced to adopt a boy by her husbandøs relatives before they allowed her to cremate the body of her dead husband.

Consent ó Sec 13 Two or more persons are said to be given the consent when they agree on something in the same sense.

Lawful Consideration and Legal Object:- Some consideration must be there ó Adequacy of considerations must be in real terms, considerations may be established in the a) Past b) Present or c) future. Consideration means some things in return. The object of the agreement must be lawful or it means object must not be a) illegal b) immoral or c) opposed to public policy.

Murdering someone for money is illegal object.

a) If any act opposed public policy forbidden by law it is fraudulent act 2007

b) Immoral Act ó Prostitution

c) Marriage brokerage taking money for giving service.

— Agreement not expressed declared Void

— Agreement in restrain of Marriage

— Agreement in restrain of Legal proceeding

Written and registering Agreement, Contact of insurance, Sale of property - inflecting new life in dead body ó convert iron into gold.

Exception to the rule :

Contract without consideration is valid:-

1. When the promise is made out of natural love & affection.
   a) Written condition registered
   b) Parties should be related
   c) Love and affection between the parties
   d) Registered
2. The Promise is mode to compensate for voluntary service.
3. Promise to pay time barred debt.
4. Contract of agency
5. Gratuitons bailment.
6. Promise for gift or donation

Blacuston õconsideration is the recommendation given by the party contracting to the otherö

Sec. 2(d) õWhen at the desire of the promisor or the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promisee.

Discharge of contract:- Concept of discharge of contract ó A contract gives birth to the rights and obligations of the parties and when the obligations are fulfilled by the parties the contract is discharged. Performance of obligations is the primary mode of the discharge of a contract. There are no of ways ó A contract is discharge or terminated.

1. **By performance :-** performance fulfillment of obligation by the parties within times and in a manager presented.
2. **Discharge by mutual consent or agreement:-** A contract is made by the consent or agreement of the parties, likewise it can be terminated by the agreement of the parties to the contract on the following ways:-
   a) **Novation :-** When both parties by Mutual Consent ó agree to make a new contract to replace the existing one ó novation is said to take place , novation can relates - change of parties to a contract, but also a change in the nature of the contract.
   b) Alteration:- Parties to a contract have the right to alter the terms of the original contract by Mutual Consent. Alternation can be regarding time, place, quantity or price. Under alternation parties will remain the same. Only term and conditions relating to contract will change.
   c) Ramission or waiver Sec 63- A promisee has the right or remit the performance of a promise by the promisor or to extend the time for performance or accept any other satisfaction say lesssor amount.
   d) Accord and Satisfaction:- When both the parties to a contract agree to make a ne contract the original contract is deemed to have been discharged with accord and satisfaction. Agree to pay 50 paise in a rupee.

3. **Discharge by impossibility of performance :-** Under Sec. 56 of an agreement relates to impossible act it is void but there are cases where the performance of a contract is possible when it is made but later becomes impossible because of the occurance of some event over which the promisor has no control. Under such cases the parties are not required to perform their promises. Since a situation is called supervening impossibility. The following are the example:-
   a) Destruction of subject Matter
   b) Change of Law
   c) Non occurrence of an event
   d) Personal Incapacity or death
   e) Outbreak of wars

4. Discharge by lapse of time.
5. Discharge by operation of law
   a) By merger ó When lessee becomes the legal owner ó lease deed end
   b) By authorized legal owner
   c) By Insolvency
6. Discharge by Breach:- Under Sec.39 ó if a party to a contract without valid reason refuses to perform his obligation the other party has the right to repudiate the contract. This is known as breach of contract
   - Actual Breach
   - Constructive Breach

Breach of contract of a party to a contract does not perform his obligations it is known as õbreach of contractö in case of breach of contract ó The party who does not perform his obligations is called the defaulting party whereas the other party is the aggrieved party. Remedies available to agreed party.

1. **Exonerations :-** When one party commits a breach of contract ó the aggrieved party can assume the contract to terminate and is exempted from further performance.
2. **Claim of damages** – Damages are a monetary compensation allowed to the aggrieved party by law for the loss suffered by him from the breach of a contract.
3. **Claim for Quantum Merit:**- It means ÷as much as earned and implies payment to a partyø had there been no breach of contract. Example a) Building Construction b) Book writing
4. **Claim for specific performance:-** If the damages are not adequate remedy. The court can direct for specific performance of the contract at the suit of the aggrieved party.
5. **Claim for injunction:-** It is a negative order by the court that restrain a party from doing some things. Example Singer & Dancer.

Proposal or offer and acceptance 2(a) When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal .

Element of a offer and legal rule regarding offer:-

1) Two parties
2) Choice to do or not to do legal rules
3) The offer must be made to create a legal obligation.
   Balfour Vs Balfour
4) The terms of the offer must be definite.
5) Offer must be a request and not an order.
6) The offer must be for a possible act.
7) The offer must be communicated
8) The offer may be general or specific
9) The offer may be expressed or Impelled.

Object of the Proposal

1. Intention to make an offer
2. Invitation to make an offer

Sec 2(b) Acceptance :-When the person to whom the offer is made signified his assent thereto the offer is said to be accepted.

Who can accept?

Specific offer C Caler V/S Canbolic smoke Ball. Co. general offer.

Rules for acceptance

1. Acceptance must be absolute and unconditional.
2. Acceptance must be made in the prescribed manner.
3. An offer, once rejected cannot be accepted until it is renewed.
4. Acceptance must be communicated to the offeror
5. Acceptance may be expressed or impiled.
6. Acceptance must be made before the lapse or withdrawal of an offer.
7. Acceptance can only be given by the person to whom the offer is made.
8. The offer cannot prescribe the method of refusal.

Contract of Indemnity & Guarantee

Contract of Indemnity and Guarantee Sec.124 ó A contract by which one party promises to save the other from loss caused to him by the conduct of the provision himself or by far conduct of any other person, is called a Contract of Indemnifier and person who is so protected - Indemnity Holder.

Example - In the case of Gajanan Moreshwar Vs Moreshwar Madam

Justice M.C. Chegla said õThe promisor is bound to indemnify the promise against a loss called by any event only in that case contract of insurance be covered under the act. In English Law a Contract of Indemnity is a promise to save another from harm or loss caused as a result of a transaction entered into at the instance of the promisor. Essential of contract of indemnity. All essential element of a General Contract ó offer + Acceptation = Agreement

Capacity of party to entre contract free consent, legal object

Contract of Indemnity may be Expressed or implied

Rights of Indemnity Holder Sec 125

1. Damage
2. Cost of Litigation
3. Sum paid under the conditions of compromise.

Rights of Indemnifier:-

1. Indemnifier gets the right to sue third parties on behalf of the indemnified.
2. The indemnifier is entitled to sue third party only to the extent of the damages he has paid to the indemnified.
3. If the indemnified suffer damages which are not covered by the contract of indemnity ó the indemnifier is not bound by law to pay such damages.

Commencement of Indemnifier's Liability:- If the indemnified has incurred a liability and that liability is absolute he is entitled to call upon the indemnifier to save him from that basically and pay it off.

Co. Juctice Backley ó Indemnity is not given by repayment after payment ó Indemnity requires that the party to be indemnified shall never be called upon to pay.

Contract of Guarantee:- Sec. 126 ó õA contract of guarantee is a contract to perform the promise or discharge the liability of the third person in case of his default.

a) Who gives the Guarantee ó surety
b) For whom Guarantee is given ó principal debtor
c) To whom Guarantee is given ó Creditor

Essential Elements:-

Must have all essential of a valid contract **Sec 126**

1) Three parties ó surety, debtor, creditor
2) Free consent
3) Oral or written
4) Debtor Surety obligation arise only when debtor make a default in the Performa of his obligation.

Consideration Sec 127 ó It is not essential that there is a consideration for the surety.

Types of Guarantees

1. **Retrospective Guarantee** ó relates to an existing or an old debt or party.
2. **Prospective Guarantee** ó Relates to future debt.
   a) Specific Guarantee ó relates to single transaction or debt
   b) Continuing Guarantee ó Relates to services of transaction ó called continuing Guarantee

Revocation of Guarantee: - Specific Guarantee comes to an end with a discharge of a debt or the performance of a promise.

A continuing Guarantee is terminated in the following

a) By Notice **Sec 130.**
b) By Surety ó death ó **Sec.131.**

Liability of Surety Debtor Suretyøs liability is secondary. Primary liability is of principal

a) The liability of the surety is co-extensive with that of principal debtor however the surety can limit his liability at the time of making the contract.
b) Liability of surety commences with the default of the principal debtor.

Discharge of surety from Liability

1. By notice of revocation 130 in case of continuing Guarantee for future transaction.
2. By surety death
3. Variation in the terms of the original contract
4. By release or discharge of the principal debtor
5. Agreement with the principal Debtor
6. By the creditorøs act or omission importing suretyøs remedy
7. Loss of security by the creditor
8. Guarantee obtained by misrepresentation.

Rights of surety

a) Rights against principal debtor. After payment surety has some rights against debtor.
b) Right against the creator. After the discharge of the liability the surety steps into the shoes of the debtor.
c) Rights against co-sureties.

Contracts of Bailment – Meaning, definition and characteristics

Word ÷Bailmentø is derived from the French word ÷Bailerø to deliver.

Sec 148 A Bailment is the delivery of goods by one person to another for some purpose upon a contract that they shall when the purpose is accomplished be returned or otherwise disposed off according to the direction of the person delivering them. The person delivering the goods is called the ÷Bailerø person to whom the goods are delivered is called the ÷Baileeø

Characteristics

1. Bailment is a contract ó all effective elements of a valid contract.
2. Bailment is of moveable goods.
3. Transfer of possession of goods.
4. Transfer of goods under bailment is temporary.
5. The goods must be delivered to the other person. Inder Kumar Vs the state of U.P.
6. The bailer has the right to get rerun of goods.

Delivery of goods must be in a contract of bailment.

1) Actual delivery
2) Constructive delivery
3) Token delivery ó handling over the key to a godown.

Deposit of currency in Bank a bailment

Types of contract of Bailment:

1. Bailment for reward or non gratuitous bailment
2. Gratuitous baliment
3. Bailment for use
4. Bailment for same custody
5. Bailment for carriage
6. Bailment for alternation
7. Bailment for repairs.
8. Bailment for pledge

Duties of Bailer or Rights of Bailee:

1. To disclose faults in goods bailed
2. To repay the necessary expenditure
3. To indemnify the bailee
4. Liability on premature breach of bailment.

Rights of Bailor or duties of Bailee:

1. Right of indemnity for losses due to negligence by bailer.
2. Termination of bailment on inconsistent use by the bailee.
3. Compensation for unauthorized use by the bailee.
4. Compensation when the bailee mixes the goods bailed with his own goods.
5. Right of return of loss in case of gratuitous bailment.
6. Right to get the goods back.
7. Right to increase
8. profit from goods bailed.

Finder of goods ó Bailee and owner goods ó bailer rights of finder of goods: ó

1. right of lieu on the goods.
2. Right to sue for reward.
3. Right to sale of goods.

Duties of finder of goods:

- Due care
- Finding the owner of goods
- Return for goods to the owner

Pledge **Sec. 172** ó The bailment of goods as security for payment of a debt or performance of a promise is called ÷Pledgeø

Who transfers the goods is known as ÷BailorøCalled the ÷Pawnorøor ÷Pledgerø

To whom the goods transferred is called ÷Bailerøor Known as ÷Pawneeøor ÷Pledgeeø

Essentials of a Valid Pledge

1. Pledge is only of movable goods.
2. Pledge involve judicial possession of goods ó only lawful owner of goods can pledge.
3. Pledge involves transfer of possession
4. Pledge can only of a saleable commodity.
5. Pledge involves return of goods.

Who may pledge?

1. Pledge by Mercantile agents.
2. Pledge where pawnor has limited interest in goods.
3. Pledge by a person in possession under a voidable contract.
4. Pledge by co-owner in possession of goods.
5. Pledge by a buyer in possession before sale is completed.

Void Agrements

A **void contract**, also known as a **void agreement**, is not actually a contract. A void contract cannot be enforced by law. Void contracts are different from voidable contracts, which are contracts that may be (but not necessarily will be) nullified.

An agreement to carry out an illegal act is an example of a void contract or void agreement. For example, a contract between drug dealers and buyers is a void contract simply because the terms of the contract are illegal. In such a case, neither party can go to court to enforce the contract. A void contract is void ab initio, i e from the beginning while a voidable contract can be voidable by one or all of the parties

A contract can also be void due to the impossibility of its performance. E g: If a contract is formed between two parties A & B but during the performance of the contract the object of the contract becomes impossible to achieve (due to action by someone or something other than the contracting parties), then the contract cannot be enforced in the court of law and is thus void. A void contract can be one in which any of the prerequisites of a valid contract is/are absent for example if there is no contractual capacity, the contract can be deemed as void. In fact,void means that a contract does not exist at all. The law can not enforce any legal obligation to either party especially the disappointed party because they are not entitled to any protective laws as far as contracts are concerned.

Features of Void agreements:

- An agreement made by incompetent parties (Incapacitated Person) is void.
- Any agreement with a bilateral mistake is void.

- Agreements which have unlawful consideration is void.
- Agreement with a unlawful object is void.
- Agreements made without consideration is void.
- Agreement in restraint of marriage of any major person is void (absolute restriction).
- Agreement in restraint of trade is void.(reasonable reason)
- Agreement in restraint of legal proceedings is void.
- An agreement the terms of which are uncertain is void.
- An agreement by way of wager (betting/gambling) is void.
- An agreement contingent upon the happening of an impossible event is void.
- Agreement to do impossible acts is void.

Contingent Contract

Contingent contracts usually occur when both negotiating parties fail to reach an agreement. The contract is characterized as õcontingentö because the terms are not final and are based on certain events or conditions occurring. (Malhotra, Bazerman 2008, p. 70). Contingent contracts can be likened unto if-then agreements that state which actions under certain conditions will result in specific outcomes

UNIT-2

DEFINITION OF 'GOODS' AND 'SALE'

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

Types of Goods

a) Specific Goods,

b) Future goods and

c) Generic Goods

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

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

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

Sale

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

Agreement to sell

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

Distinguish between a sale and an agreement to sell.

Sale	Agreement to sell
1. Property or ownership is of goods is transferred immediately to the future time or subject to	1. Ownership is to be transferred at conditions to be fulfilled.

certain buyer.	
2. If the buyer fails to pay for the goods the seller may sue for price.	2. The seller can sue only for the damages and not for the price.
3. If the goods are destroyed the loss falls upon the buyer.	3. If the goods are destroyed the loss falls upon the seller unless otherwise agreed.
4. The seller cannot resell the goods.	4. The seller can resell the goods.
5. A sale is an executed contract.	5. Agreement to sell is an executing contract.

Distinguish between Agreement to sell and Hire-Purchase Agreement:

Agreement to sell Hire purchase Agreement

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

a) Hire purchase agreement must be in writing.

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

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

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

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

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

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

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

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

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

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

CONDITIONS AND WARRANTIES

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

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

b) Condition is essential to the main purpose.

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

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

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

Difference between condition and warranty with an example:

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

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

The importance of the distinction between a condition and a warranty is that the breach of a õconditionö normally entitles the innocent party to terminate the Contract and claim damages; while the breach of a õwarrantyö normally entitles the innocent party to only claim damages.
An example of a õconditionö is a term that entitles the Buyer to vacant Possession of the property. If the Seller is unable to deliver vacant possession and is in breach of the condition, then the Buyer may have the right to affirm the Contract and sue for damages for default and/or sue for specific performance and/or terminate the Contract.

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

An example of a õwarrantyö is where the Seller warrants or agrees that at Settlement the property will be in the same state and condition it was in immediately before the date of the Contract.

There may be a change in a physical feature of the property between the date of the Contract and settlement that the Seller is not willing to rectify. In this instance the Buyer normally does not have a right to terminate or delay settlement unless the Contract provides otherwise.

Rather, the Buyer must settle and separately pursue a claim for damages/ Compensation from the Seller.

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

When is condition treated as a warranty?

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

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

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

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

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

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

Transfer of property is the process of transferring the property in goods to the buyer for a price.

It is the essence of a contract of sale.

Rules:

a. Sale of specific goods**:**

- i) Passing of property at the time of contract.
- ii) Goods to be weighed or measured for ascertaining price.

b. Sale of unascertained goods:

- i) Goods must be ascertained.
- ii) Goods must be appropriated.

c .Sale of approval:

- i) Acceptance.

ii) Failure to return.

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

TRANSFER OF TITLE/*NEMO DOT QUOD NON HABET*

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

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

As per **Sec. 27**, no one can sell the goods and convey a better title thereof unless he is the owner. Therefore when the goods are sold by a person who is not the owner thereof and who does not sell them under the authority or without the consent of the owner, the buyer acquires no better title than the seller had.

The exceptions are:

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

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

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

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

c) **Sale by one of joint owners**:- The third exception to the maxim, Nemo Dot Quod Non Habet lays down that if one of the several joint owners of goods has the sole possession of them by

permission of the co-owners, the property in the goods is transferred to any person to any person who buys them of such joint owners in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

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

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

e) **Seller in possession after sale**: A person having sold the goods, continues to be in possession of the goods or document of title to the goods, the delivery or transfer by that person of the goods or document of title under any sale or pledge to any person receiving the same in good faith and without notice of previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. E.g. A, a seller sells some goods to Z, a buyer. Z keeps the stock of goods with A for some time due to lack of warehouse facility. A sells the same goods to another buyer, X. The buyer, X gets a good title. Z has a legal remedy against A for the recovery of the price paid and damages if any. f) Buyer in possession: Under a contract of sale of goods, a buyer is allowed to take the possession of the goods even though he has to pay theprice for it. Eg. A purchases certain goods from B by issuing a cheque and takes the delivery of the goods from B. A, thereafter sells the goods to C. B has a right to claim for the price of the goods and damages from A. However, C gets a bona fide title on the goods.

RIGHTS OF AN UNPAID SELLER AGAINST GOODS

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

A. The whole price is not paid or tendered.

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

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

D. The buyer is declared insolvent.

His rights against goods are:

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

i) Right of lien.

ii) Right of stoppage in transit.

iii) Right of resale.

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

i) Right of withholding delivery.

ii) Right of stoppage in transit.

Rights of an unpaid seller against the buyer.

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

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

Sellers lien

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

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

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

c) Where the buyer becomes insolvent.

Stoppage in Transit

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

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

a) The buyer of goods must have become insolvent.

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

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

d) The sellerøs right of stoppage in transit can be exercised as long as the goods are in transit and not yet delivered to the buyer.

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

Right of Resale by a Seller

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

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

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

Unit-III

Negotiable Instrument Act 1881

Meaning:- Sec. 13 A negotiable instrument is a written document which creates a right in favour of any person and which is transferable by delivery.

A negotiable instrument means a promissory note bill of exchange or cheque payable either to order or to bearer.

Justice Willing :- A negotiable instrument is on the property and the title in which is acquired by anyone who takes it as bonafide and for value not withstanding any defect in the title of the person from whom to took it.

Essential characteristics of a Negotiable Instrument Act

1. Written document.
2. A Negotiable Instrument payable to bearer is transferable merely by delivery. A Negotiable Instrument payable to order is transferable by endorsement and deliver.
3. Holder of Negotiable Instrument can sue upon in his own name.
4. Consideration is presumed.
5. It works like money.

Kinds of Negotiable Instrument

Promissory Note: Sec A promissory note is an instrument in writing containing an unconditional undertaking signed by the mover to pay a certain sum of money to or to the order of a certain person.

Essential of Promissory Note

1. Unonditional Promise

ô In writing
— Signed by the debtor
— As payable to a specific person or to the order by the specified person or to the bearer
— Payable in the currency of the country
— Adequately stamped according to value.

On demand (or three months after date), I promise to pay to Sh. Suresh order the sum of rupees 1000/- with interest @10% per annum for value received.

Sign. Stamp

Parties ó Maker ó Debtor ó Payee ó Creditor

Bills of Exchange:- A bill of exchange is an instrument in writing containing an unconditional order signed by the maker directing a certain person to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument.

Characteristics

- Written
- Unconditional
- Order letter
- Signature of the drawer
- Payment to a specified person
- Stamped
- Value received
  1. Drawer
  2. Drawee
  3. Payee

Specimen of Bill of Exchange

R. 2000

New Delhi

(Stamp) 1st September, 2012

Two months after date py to me or my order the sum of Rs. 2000 for value received.

Mrs. Madhu K. Jain

Kamala Nagar

Kinds of Bills of Exchange

a) **Inland Bill** ó Which is drawn by a businessman for acceptance by another Businessman of the same country.
b) **Foreign Bill** ó When the drawer and the accepter live in different country.
c) **Accommodation Bill**:- Bill drawn without any actual consideration. Merely to help out friends and relatives.
d) **Inchoate Bill** ó When any person signs, stamps and delivers to another person a totally blank bill.

Cheque (Sec 6) A Cheque is a bill of exchange drawn on a specific banner and payable on demand.

Essential Characteristics of a Cheque

— Drawn upon a specified banker
— Payable on demand
— Signed by the drawer
— Unconditional order to pay a certain amount of money
— Must be date (It can be post dated)

Counterfoil	Cheque
No Counter í í í í .	No.
Dated í í í í í í í í	Canara Bank í í í í í í .
Canara Bank	Dateí í í í í í í í í í í í ..
Pay toí í í í í í í í .	Payí í í í í í í í í í í í í í í í or bearer
Rs. í í í í í í í í í .	í í í í í í í í í í í í í í í í Rs.
Cheque No.	í í
	A/c. Noí í í í í í í í í í í í í í í í í í í ..
	Sign.

Crossing a Cheque

To protect the interests of the owner from the risk, a system of crossing was introduced. A cross cheque is one on which two parallel lines with or without the words & Co. are drawn. These lines are usually drawn on the upper left hand corner of the cheque. A cross cheque shall only be collected by a bank and then it shall be credited to the A/c of the person presenting it. If the person receiving the payment is not the actual payee, than the bank will have to make the payment again the actual payee.

Types crossing

a) **General crossing** ó When the parallel lines are drawn on the face of the cheque and the wordø and co. are written in between.

í í í í í í í í í í   í í í í í í í í í í

b) **Special Crossing: -** When in between two parallel lines on the face of the cheques the name of any specific bank is mentioned than it is known as a special crossing. In case of special crossing the payment can be received only from the bank which is mentioned with specific crossing.

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c) **Restrictive Crossing:-** The effect of restrictive crossing is that the payment of cheque will be made by the bank to the collecting banker only for the A/c payee name.

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Difference between Cheque, Bills of Exchange and Promissory Note:

	Cheque	**B/E**	**P/N**
Parties	Drawer, Payee, Payer	Drawer, Payee, Payer	Mover, Payee
Order of Payment	Order of pay is always drawn in bank	Drawn in any person	Promise to pay
Acceptance	No	Accepted by the	Need accept to

		drawer	
Period	Payable on demand	Sight bill or a time bill	Sight or time bill
Circular	Within country	Foreign Country	Within country
Crossing	Can be	No.	No

Holder of a Negotiable instrument

Holder Sec. 8 any person who I legally entitled to the possession of a negotiable instrument and receive the payment on the due date is known as its holder. In order to be valid holder the person should be entitled to possess the instrument in his own name.

Holder for value:- If any person is the holder of a negotiable instrument the value of which has been paid at any time in the past, then he is known as a holder for value, who actually has paid the value is not a relevant question.

Holder in due course

Holder in due course means any person who for consideration becomes the possor of a P/N, B/E or Cheque if payable to the bearer or to the payee or endorsee thereof, before the amount mentioned on it become payable and without heaving sufficient cause to believe that any defect existed in the title of the person from whom he derived the title.

Characteristics of Holder in due course

1. He is the holder of the instrument.
2. Become the holder before due date.
3. For a consideration
4. No reason for believe that any defect from the person from whom he acquired

Special Privileges of a holder in due course

1. **Liability of prior parties**:- All the prior parties to a Negotiable Instrument continue to be liable to the holder of the negotiable instrument until the instrument is properly discharged.
2. **Fictitious Bill:-** If any Negotiable Instrument is drawn by any person in the name of a fictitious person and that person endorses the bill in favour of any other person, then he cannot hold against the holder in due course that the drawer of the bill was a fictitious Bill
3. Instrument free from all defects.
4. Every holder however is a holder in due course.

Payment in due course

Payment in due course means payment of the instrument after the expiry of the duration of the instrument in good faith and without any negligence, to the possessor thereof and without the existence of any circumstances that may lead one to believe that the person receiving the payment is not entitled to it.

Condition for Payment in due course

1. Payment must be in accordance with the apparent tenure of the instrument.
2. Payment must be made to the person in possession of the instrument.
3. Payment must be made in good faith.
4. Payment must be made under bonafide circumstances.

Dishonor of Bill

- Dishonor for Acceptance
- Dishonor for Payment.

Noting Cheques

Sec 26 of the Negotiable Instrument Act.

Every person capable of contracting according to the law to which he is subject may bind himself and be bound by moving, drawing, acceptance, endorsement delivery and negotiation of a P/N, B/E or Cheque.

Minors, idiots, lunatics and other such persons who are incompetent to enter into a contract as per the Act, cannot accept any Liability in the form of a N.I.

Minor ó A minor can acquire the rights contained in a negotiable instrument but cannot incur any liability then on.

Lunatics, idiots and drunk person ó position in similar of minors.

Corporation or Company ó Can draw, accept or endorse a negotiable instrument only when it is authorized to do so by its memorandum of association.

Bouncing of Cheques

Section 138 in The Negotiable Instruments Act, 1881

138. Dishonour of cheque for insufficiency, etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid. either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice. to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless-

(a) the cheque has been, presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course. of the cheque as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. Explanation.- For the purposes of this section," debt or other liability" means a legally enforceable debt or other liability.

Consumer Protection Act, 1986

INTRODUCTION

The Consumer Protection Act, 1986 was enacted to provide for better protection of the interest of the consumers and for the purpose to make provisions for the establishment of Consumer Councils and other authorities in the settlement of consumer disputes and for matters connected therewith. It seeks, *inter-alia*, to promote and to protect the rights of consumers such as protection against marketing of goods which are hazardous to life and property, the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices, the right to be assured, wherever possible, access to variety of goods at competitive prices, the right to be heard and to be assured that the interest of consumers will receive due consideration at appropriate forums, the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers and right to consumer education. The object is also to provide speedy and simple redressal to consumer disputes-quasi judicial machinery is sought to be set up at District, State and Central Levels. These quasi-judicial bodies are to observe principles of natural justice and have been empowered to give relief of specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of orders given by quasi-judicial bodies have also been provided.

PREAMBLE OF CONSUMER PROTECTION ACT

It is not necessary that every act passed by legislature must have the preamble. However, when preamble is added to an Act, it is a part of Act itself. The preamble of consumer protection Act, 1986 reads a follows:

õAn act to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumerøs disputes and for matters connected therewith.ö

From above, it would be seen that the consumer protection Act, 1986 seeks to provide for better protection of the interest of consumers and for that purpose to make provision for establishment of consumer councils and other authorities for the settlement of consumersø disputes.

SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION

The title of present Act is õthe consumer protection Act, 1986ö. It clearly reflects that purpose of the Act is to protect the interest of consumer.

Chapter I, II and IV of the Act came into force w.e.f. 15th April, 1987 and chapter III of the Act came into operation with effect from Ist July, 1987 in the whole India except the state of Jammu and Kashmir since separate legislation has been inacted for the state of Jammu and Kashmir know as the Jammu and Kashmir Consumer Protection Act, 1987.

Save as otherwise expressly provided by the Central Government by notification, the provisions of the Consumer Protection Act, 1986 as amended from time to time has made applicable to all the goods and services.

The Act seeks to protect the consumers in the following respects:-

(1) It seeks, inter-alia, to promote and protect the rights of consumers such as

The consumer protection

a) The right to be protected against marketing of goods and services which are hazardous to life and property;

b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumers against unfair trade practices;

c) The right to be assured, wherever possible, of access to a variety of goods and services at competitive prices;

d) The right to be heard and to be assured that consumersø interests will receive due consideration at appropriate forums;

e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and

f) The right to consumer education.

Chapter-II of the Consumer Protection Act, 1986 provides for establishment of central consumer protection council and state consumer protection council while Chapter III of the Act which is in fact is regarded as the soul of the Act, provides for establishment of three tier consumer disputes redressal agencies namely (i) the district form, (ii) the state commission, (iii) the national consumer disputes redressal commission.

(2) Section 6 of the Act spells out these objects and charges the Central Council with the responsibilities of fulfilling these objects. The section says that the objects of the Central Council shall be to promote and protect the rights of the consumers which have been listed in Section 6. They are as follows:

a) Protection Against Hazardous Goods :- The Act says in the first place that the consumer has a right to be protected against the marketing of goods which are hazardous to life and property.

b) Right to Consumer Information :- The consumer has been given the right to informed by the producer about the quality, quantity, potency, purity, standard and prices of goods he buys.

c) Right of Access to Variety of Goods and at Competitive Prices :- The central council as constituted under the Act has been charged with the responsibility of bringing about the organization of markets and market practices in such a way that all dealers are supplied with a variety of goods for the benefit of the consumer and that the goods with a variety are being offered at competitive prices.

d) Right to Due Attention at Appropriate Forums :- That Central Consumer Protection Council has been charged with the responsibility of assuring consumers that they would be heard as of right by the appropriate forums and the consumer will receive due attention and consideration from such Forums.

e) Right Against Unscrupulous Exploitation, Restrictive and Unfair Trade Practices :- The consumer has been given the right to seek redress against restrictive or unfair trade practices1 or unscrupulous exploitation.

f) Right to Consumer Education :- This has been made one of the missions of the Consumer Protection Act, 1986 and the Central Consumer Protection Council has been charged with the responsibility to provide to the people proper education in terms of their remedies under the Act. Once the people are rendered conscious of their power, they may, perhaps, feel energized to struggle against exploitation by manufacturers and traders. Controlling hands and tools of the govt. are easily corruptible. They also suffer from slow motion. They often fail in their mission. But consciousness of the people as a whole, for every person is a consumer one way or the other, when aroused by proper consumer education, is likely to be above petty temptations and therefore more effective in its mission.

(3) To provide speedy and simple redressal to consumer disputes, a quasi judicial machinery is sought to be set up at district, state and central level.

WHO CAN MAKE A COMPLAINT?

To initiate an action under the Consumer Protection Act, 1986, (hereinafter referred to as the Act) what is required is a complaint from the complainant. The term ÷complaintø has been defined in section 2(1)(d) of the Act. According to clause (b) of section 2(1) of the Consumer Protection Act, a complaint can be made by any of the following:

(i) a consumer or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force; or

(iii) the Central Government or any State Government, who or which makes a complaint; or

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) In case of death of a consumer, his legal heir or representative.

3.3.1 CONSUMER

According to Section 2(1)(d) of the Act consumer means any person who:

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

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose.

The aforementioned definition of the term ÷consumerø is really comprehensive so as to cover not only consumer of goods but also consumer of services.

The deviation is wide enough to include in ÷consumer not only the person who buys any goods for consideration but also any user of such goods with the approval of the buyer, likewise it covers any person who hires or avails of any services for consideration and also includes any beneficiary of such services, when availed with the approval of the hirer. In this way, any user of goods or any beneficiary of services, other than the actual buyer or hirer, is a consumer and thus he is competent to make a complaint before the Consumer Disputes Redress Forums. It includes anyone who consumes goods or services at the end of the claim of production.3

The definition of consumer may be discussed in following two parts:-

(i) Consumer of goods

(ii) Consumer of services

According to sub-clause (i) of section 2(1)(d) a consumer of goods means any person who ó

(a) buys any goods for consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and

(b) includes any user of such goods other than the person who buys the, when such use is made with the approval of the buyer but

(c) does not include a person who obtains such goods for resale or for any commercial purpose. Commercial purpose does not include use by a consumer of goods bought by and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

The above provision discloses that a person claiming himself to be a consumer should fulfill the following requirements :

(i) there should be a sale transaction between the seller and the buyer,

(ii) the sale must be of goods,

(iii) the buying of goods must be for consideration,

(iv) the consideration has been paid or promised or partly paid and partly promised, or under any system of deferred payment; and

(v) the user of the goods may also be a consumer when such use is made with the approbation of the buyer.

It may, however, be noted that a person who obtains the goods for resale or for any commercial purpose is not included within the meaning of the term consumer. This clearly reveals that the intention of the legislature is to restrict the benefits of the Consumer Protection Act to ordinary consumers buying goods or hiring services for consumption and not for resale or large scale commercial activity. Where the goods have been purchased or used by the consumer exclusively for the purpose of earning his livelihood, by means of self employment, such use of the goods will not be treated as ÷commercial purpose.

Unit-IV

Limited Liability Partnership Act, 2008

Meaning and Nature of Limited Liability Partnership:- Limited Liability Partnership(LLP) is a legal form which is governed by the Limited Liability Partnership Act, 2008. It means a partnership formed and registered under this Act. As per section 3 of LLP Act, a limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. It shall have a perpetual succession and any change in the partners shall not affect the existence, rights or liabilities of the limited liability partnership. Thus, LLP is a new business vehicle in body corporate form and, therefore, a separate legal entity which limits the liability of the partners to their agreed contribution.

Main Features of LLP

The Salient features of the limited liability partnership are as follows:

1. **Incorporated Association.** A ‘limited liability partnership’ is a body corporate formed and incorporated under the LLP Act. A LLP is formed by the registration of an incorporation document with the Registrar of companies of the state in which the registered office of the LLP is to be situated.
2. **Artificial Legal Person.** A limited liability partnership is an artificial legal person in the sense that on the other hand it is created by a process other than natural birth and does not possess the physical attributes of a natural person, and on the other hand, it is clothed with many of the rights of the rights of a natural person. It is invisible intangible and exists only in the eyes of law.

3. **Separate Legal Entity.** LLP is a separate legal entity separate from its partners, can own assets in its name, sue and be sued. No partner can either individually or jointly claim any ownership rights in the assets of the LLP during its existence or in its winding up. It can sue and be sued in its own name by its partners as well as outsiders. Creditors of the LLP are creditors of the LLP alone and they cannot directly proceed against the partners personally.
4. **Partners can Manage Business.** Unlike corporate shareholders, the partners have the right to manage the business directly.
5. **No. Mutual Agency.** One partner is not responsible or liable for another partnerøs misconduct or negligence.
6. **Minimum number of Partners.** Minimum of 2 Partners and no maximum.
7. **Business for Profit Only.** Should be carrying business for profit. Thus, LLP cannot be formed for non-economic or charitable purpose.
8. **Perpetual Succession**. A limited liability partnership like an incorporated company enjoys perpetual succession. Its life does not depend upon the death, insolvency or retirement of any or all partner(s). Law creates it and law alone can dissolve it. Partners may come and go but the LLP can go on for ever.
9. **Rights and Obligations as per Agreement.** The rights and duties of partners in LLP will be governed by the agreement between partners and the partners have the flexibility to devise the agreement as per their choice. The duties and obligations of Designated Partners shall be as provided in the act.
10. **Limited Liability**. Liability of the partners is limited to the extent of his contribution in the LLP. No exposure of personal assets of the partner, except in cases of fraud and negligence.
11. **Annual Accounts and Audits.** LLP shall maintain annual accounts. However, audit of the accounts is required only if the contribution exceeds Rs. 25 Lakhs or annual turnover exceeds Rs. 40 Lakhs.

Difference between LLP and Traditional Partnership Firm

Following points of difference between LLP & Traditional Partnership Firm may be noted as follows:

1. **Regulating Act.** A LLP is regulated by the Limited Liability Partnership Act, 2008, whereas a partnership firm is governed by the provisions of the Indian Partnership Act, 1932.
2. **Registration.** A partnership firm may or may not be registered but in the case of a limited liability partnership registration is mandatory.
3. **Number of Partners.** The maximum number of partners in the case of a partnership firm is fixed at 10 for banking business and at 20 for any other business, but there is no such maximum limit of partners in case of a limited liability partnership.
4. **Separate Legal Entity.** A limited liability partnership is a legal entity separate from its partners. The death of lunacy of its partners would not dissolve the LLP. A LLP may hold property in its own name and sue or to be sued in its own name. A partnership, on the other hand, does not have a distinct legal entity separate from its partners. Partners collectively are addressed as a firm. Its existence comes to an end upon the death or lunacy of its partners.
5. **Liability.** In the case of partnership firm each partner has unlimited liability and is personally liable for all the debts of the firm. In a LLP, on the other hand, a partner has limited liability to the extent of his agreed contribution in the LLP except in case of unauthorized acts, frauds and negligence of partner(s) when the delinquent partner will be personally liable.
6. **Mutual Agency.** Every partner of a partnership is an agent of other partners, whereas every partner of a LLP is not an agent of other Partners. As such in a partnership, each partner has an implied authority to bind his co-partners. As such in a partnership, each partner has an implied authority to bind his co-partners by acts done within the ordinary course of business, but in a LLP, a partner has no such authority, there being no mutual agency between the partners.
7. **Legal Compliances.** The responsibility for carrying out the legal obligations as laid down by the LLP Act shall be solely of the ÷designated partnersø and other partners would not be liable for any omissions in fulfilling the legal obligations. On the other hand, in the case of a partnership every partner would be responsible for carrying out the legal obligations.
8. **Audit.** Section 34(4) provides that the accounts of limited liability partnerships shall be audited in accordance with such rules as may be prescribed. In this regard Rule 24(8) of the LLP Rules, 2009 provides that õA LLP whose turnover does not exceed, in any financial year Rs. 40 lakhs, or capital contribution does not exceed Rs. 25 lakhs shall not be required to get its accounts audited.ö Only one criterion is prescribed in the case of a partnership firm, that is, it shall not be

required to get its accounts audited f its annual turnover does not exceed Rs. 40 lakhs. It is worth mentioning here that the aforesaid turnover limit has now been raised from Rs. 40 lakhs to Rs. 60 lakhs by the Finance At, 2010.

9. **Filling of Statement of Account etc.** Every limited liability partnership shall file within the prescribed time the ÷statement of Account and Solvencyø and an ÷Annual Returnø with the registrar of companies each year [(Sections 34(3) and 35]. A partnership firm is not required to file ÷Statement of Account and Solvencyø or ÷Annual Returnø with the Registrar of Firms.
10. **Winding up.** A partnership firm can be wound up at any time by any partner, if it is ÷partnership at willø, without legal formalities. In case of a LLP, no one member can require it to be wound up at will and winding up involves legal formalities.

Difference between LLP & Company

The main points of distinction between a limited liability partnership and limited liability company are as follows:-

1. **Regulating Act.** A LLP is regulated by the Limited Liability Partnership Act, 2008, wheras a company is governed by the companies Act, 1956.
2. **Minimum and Maximum number of Members.** In case of LLP, minimum partners required are 2 whereas in case of public company 7 members are required. There is no limit to maximum number of Partners in LLP and in case of private company it cannot exceed 50 .
3. **Internal Governance Structure.** A basic difference between a LLP and a joint stock company lies in that the internal governance structure of a company is regulated by statute (i.e. Companies Act, 1956) whereas for a LLP it would be by contractual agreement between partners.
4. **Management.** In case of a LLP, management rests with those partners (including designated partners) who are authorized by LLP agreement. But in the case of company the right to control and manage the business is vested in the Board of Directors elected by the shareholders. Thus, the management ownership divide inherent in a company is not there in a limited liability partnership.

5. **Transfer of Interest.** In case of a limited liability partnership, a partnerøs economic rights (i.e. right to a share of the profits and losses and to receive contribution at the time of winding up) shall be transferable (Section 42). However such transfer shall not by itself cause the disassociation of the partner and a dissolution and winding-up of the LLP further, such transfer would not make the transferee a ÷partnerø of the LLP entitled to participate in its management (Section 42) For becoming a partner of LLP, unless otherwise provided in the LLP agreement, consent of all the existing partners is required (schedule I appended to LLP Act.). But in the case of public company a shareholder can transfer his shares freely without restriction and the transferee succeeds to all the rights of membership.
6. **Audit**. The audit of the accounts of a company is a legal necessity but it is not so in the case of LLP if the capital contribution does not exceed Rs. 25 Lakhs or if the annual turnover does not exceed Rs. 40 lakhs {(Rule 24(8) of the LLP Rules, 2009].

DESIGNATED PARTNERS

Appointment of at least two õDesignated partnersö is mandatory for all LLPs. õDesignated Partnersö shall also be accountable for regulatory and legal compliances, besides their liability as ÷partners per-seø

Who can be a "Designated Partner"?

Every LLP shall be required to have at least two Designated Partners who shall be individuals and at least one of the Designated Partner shall be resident of India. In case of a LLP in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominee of such corporate shall act as designated partners.

Appointment

The designated partners can be named in the Incorporation Document and such persons shall be designated partners on incorporation. If the incorporation document states that such of the partners, from time to time, is to be designated partner, then every partner of the LLP shall be a designated partner. Any partner may become or cease to be designated partner in accordance with the LLP agreement. The designated partner is required to give his prior consent to act as such to the LLP. Every LLP shall file with the Registrar of Companies the particulars of ever designated partner who agrees to act as such in such form and manner as may be prescribed within 30 days of the appointment. However, if no partner of LLP has been intimated to the RoC as designated partner, or if at any time there is only one designated partner, then every partner of LLP would be deemed to be a designated partner.

Eligibility conditions for the Appointment of Designated Partners

Rule 9 of the Limited Liability Partnership Rules, 2009 provides that a person shall not be capable of being appointed as a designated partner of a limited liability partnership, if he:

a) Has at any time within the preceding five years been adjudged insolvent; or

b) Suspends, or has at any time within the preceding five years suspended payment to his creditors or has not at any time within the preceding five years made a composition with them; or

c) has been convicted by a court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or

d) has been convicted by a court for an offence involving section 30 of the Act. (Section 30 deals with punishment for carrying out acts by the LLP or its partners with intent to defraud its creditors or for a fraudulent purpose).

LIABILITIES OF DESIGNATED PARTNERS (SECTION 8)

Unless expressly provided otherwise in this Act, a designated partner shall be:

a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and

b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

CHANGES IN DESIGNATED PARTNERS (SECTION 9)

A limited liability partnership may appoint a designated partner within thirty days of a vacancy arising for any reason. Sub-section (4) of Section 7 provides for filing of particulars of designated partner so appointed with Registrar of Companies (ROC) within 30 days of his appointment.

If no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

INCORPORATION DOCUMENT

Two or more persons associated for carrying on a lawful business with a view to earn profit will be required to subscribe their names to an ÷incorporation documentø for getting Limited Liability Partnership incorporated. The ÷incorporation documentø shall be field in such manner and with such

fees, as may be prescribed, with the Registrar of Companies of the State in which the registered office of the limited liability partnership is to be situated. Note that a LLP cannot be formed for charitable or non-profit making activities.

A ÷statementø in the prescribed form shall be filed with the ÷incorporation documentø stating that all the requirements of the LLP Act, the rules made there under precedent to incorporation have been compiled with. The ÷statement must be signed by either an advocate or a Company Secretary or a chartered accountant or a Cost Accountant, who is engaged in the formation of the limited liability partnership and by anyone who subscribed his name to the incorporation document.

Contents of Incorporation Documents [(Section 11(2)]

The ÷incorporation documentø shall be in a form as prescribed in LLP Rules, 2009. It shall contain information regarding the following matters:

1. The name of the limited liability partnership.
2. The proposed business of the limited liability partnership.
3. The address of the registered office of the limited liability partnership.
4. The name and address of each of the persons who are to be partners of the limited liability partnership on incorporation.
5. The name and address of the persons who are to be designated partners of the limited liability partnership on incorporation.
6. Such other information concerning the proposed limited liability partnership, as may be prescribed.

PENALTY

Section 11(3) lays down the punishment for a person making the statement about compliance of the LLP Act referred to above either knowing it to be false or not believing in its being true with a fine of not less than ten thousand rupees but which may extend to five lakh rupees and also for imprisonment for a term which may extend to two years.

REGISTRATION

The registrar of companies (RoC) will scrutinize whether the ÷incorporation documetø and their papers (referred to above) presented to him satisfy the requirement of the Act and if they are not in order, he will register the Limited Liability Partnership within a period of 14 days from the date of presentation. On registration, the RoC shall issue a ÷Certificate of Incorporationø Signed by him and authenticated by his official seal stating therein that the LLP s incorporated by the name specified in the incorporation document. The Registrar shall enter the LLPøs name in the ÷Register of LLPsø statutorily maintained by him and shall assign a LLP Identification Number (LLPIN) to the LLP.

EFFECT OF REGISTRATION

On obtaining the ÷Certificate of Incorporationsø the LLP becomes a body corporate, having separate legal entity and perpetual succession. The effect of registration is that, from the date of registration/incorporation given in the Certificate, the limited liability partnership shall be capable forthwith of exercising the following powers.

(a) Suing and being sued;
(b) Acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
(c) Having a common sea, if it decides to have one; and
(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

REGISTERED OFFICE OF LIMITED LIABILITY PARTNERSHIP

Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.

Can LLP give any other address for the purpose of receiving communications from Registrar?

The limited liability partnership may, in addition to the registered office address, declare any other address as its address for service of documents in the manner as laid down in the LLP agreement.

Where LLP agreement does not provide for such manner, consent of all the partners will be required for declaring any other address as the address for service for document (Rule 16 of LLP Rules, 2009).

SERVICE OF DOCUMENTS

A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by other manner as may be prescribed. Rule 15 of LLP Rules, 2009 lays down (i) electronic transmission; and (ii) courier as the other two modes.

CHANGE OF REGISTERED OFFICE

A limited liability partnership may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

The limited liability partnership may change its registered office from one place to another. Rule 17 of the LLP Rules, 2009 has given the following procedure for change of registered office by a LLP.

1. The procedure a laid down in the LLP agreement should be followed. Where the LLP agreement does not provide for such procedure, consent of all partners shall be required. However, in case of change of registered office from one state to another state, consent of secured creditors, if any, shall also be required.
2. In case of change of registered office from one state to another state, the LLP shall publish a public notice, at least 21 days before filing any notice of change in From 15 with the Regsitrar in a daily newspaper published in English and local language.
3. Where the change in place of registered office is from one place to another place within the state from the jurisdiction of one Registrar to the jurisdiction of another Registrar, the LLP shall file the notice in Form 15 annexed to LLP rules, 2009 with the Registrar from where the LLP purposes to shift its registered office with a copy thereof for the information to the Registrar under whose jurisdiction the registered office is proposed to be shifted. Notice of change of place of registered office shall be filed with the Registrar in Form 15 within 30 days of complying with the requirements along with the requisite filing fee.

4. In case of change of place of registered office from one state to another state. The notice in form 15 should also be filed with the other Registrar under whose jurisdiction the registered office is proposed to be shifted for information. The change shall take effect only after such filing.
5. Form 15 should be signed by a designated partner and certified by CS/CA in practice in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

PARTNERS AND THEIR RELATIONS

Who can be a Partner in a LLP?

As per section 5 any individual or body corporate may be a partner in a limited liability partnership.

As per section 2(1)(d) 'body corporate' means a company formed and incorporated under the companies Act, 1956 and includes a LLP registered under this Act or a LLP incorporated outside India or a company incorporated outside India.

Thus, the following can be partners in a limited liability partnership:

(a) Any individual;
(b) An Indian company;
(c) Any other LLP;
(d) A foreign LLP; and
(e) A foreign company;

DISQUALIFICATIONS OF BECOMING A PARTNER (SECTION 5)

An individual shall not be capable of becoming a partner of a LLP, if he:

(a) Has been found to be a unsound mind by a court;
(b) is an undischarged insolvent;
(c) has applied to be adjudicated as an insolvent.

MINIMUM AND MAXIMUM NUMBER OF PARTNERS

Every limited liability partnership shall have at least two partners. There shall not be any upper limit on number of partners in a LLP.

Reduction of Number of partners below statutory minimum. Section 6 also provides that if at any time the number of partners of a LLP is reduced to one and such LLP carries on business with such sole partner for more than six months, then such sole partner, if he has knowledge of such a situation, shall be liable personally for the payment of the whole debts of the LLP contracted during that period.

Registered office of LLP

LLPs shall be **registered with** the Registrar of Companies (**ROC**) (appointed under the Companies Act, 1956) after following the provisions specified in the LLP Act. Every LLP shall have a **registered office**. An **Incorporation Document** subscribed by at least two partners shall have to be filed with the Registrar in a prescribed form. **Contents of LLP Agreement**, as may be prescribed, shall also be required to be filed with Registrar, online. Contents of LLP Agreement or any changes made therein, if any, may be filed in Form 3 and details of partners/designated partners may be filed in Form 4 in accordance with LLP Rules, 2009.

Change of name under LLP Act

Change of name of limited liability partnership. ! Change of name of limited liability partnership. - (1) Notwithstanding anything contained in sections 15 and 16, where the Central Government is satisfied that a limited liability partnership has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which - (a) is a name referred to in sub-section (2) of section 15; or (b) is identical with or too nearly resembles the name of any other limited liability partnership or body corporate or other name as to be likely to be mistaken for it, the Central Government may direct such limited liability partnership to change its name, and the limited liability partnership shall comply with the said direction within three months after the date of the direction or such longer period as the Central Government may allow. (2) Any limited liability partnership which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees and the

designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Nature of a LLP

The LLP act has incorporated definitions which has explained various expressions used in the Act for the purposes of certainty in the interpretation of the Act, *e.g.,* **'foreign limited liability partnership'** as limited liability partnership which is formed, registered or incorporated outside India and establishes a place of business in India; **'limited liability partnership'** as a partnership formed and registered under the said Act; **'limited liability partnership agreement'** as a written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to such partnership; and **'partner'** in relation to limited liability partnership, as any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement.

The LLP act seeks to provide that LLP is to be a body corporate having perpetual succession and a legal entity separate from its partners and any change in the partners of such partnership shall not affect its liabilities.

Partners

Any individual or a body corporate may become a partner in a LLP provided the said person is of sound mind, is not insolvent, and has not applied for adjudication for insolvency. A LLP shall consist of at least two partners and there is no restriction on the maximum number of partners. The Act provides that in a situation where the number of partners is reduced to one and such LLP carries on business with such sole partner for more than six months and then such partner, if having knowledge of such a situation, shall be liable personally for the obligations of the LLP. The LLP act has made provisions that a LLP shall have at least two designated partners who shall be individuals and at least one of them shall be resident in India.

An individual shall not become a designated partner in any LLP unless he has given his prior consent to act as such to the LLP in the prescribed form and manner. The particulars of every designated partner who agrees to act as such shall be filed with the Registrar. Any partner may become or cease to be designated partner in accordance with the LLP agreement. It also seeks to empower the Central Government to make rules for prescribing the conditions and requirements for an individual to be a designated partner. It also provides that every designated partner shall obtain a Designated Partner Identification Number (DPIN) from the Central Government.

The responsibilities and liabilities of the designated partner are as providedô

(*a*) responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the said Act; and

(*b*) liable to all penalties imposed on the LLP for any contravention of those provisions.

The LLP Act has provided for a 30 days period for filling up of a vacancy of a designated partner. If no designated partner is appointed, or if at any time there is only one designated partner, each partner of the LLP shall be deemed to be a designated partner.

If the LLP fails to appoint designated partners, then the LLP and its every partner shall be punishable with fine The Act provides that any agreement, made before the incorporation of the LLP, between the partners who subscribe their names to the incorporation document may impose obligation on LLP, if ratified by all the partners after its incorporation.

Incorporation and name of the LLP

Two or more persons are required to file an incorporation document for incorporating a LLP with the Registrar of Companies (ROC) in the State in which the registered office of the LLP is situated.

There shall be filed, along with the incorporation document, a statement in the prescribed form, that all the requirements of the act and the rules have been complied with. Once the incorporation documents

of the LLP are registered and a certificate of its incorporation is issued by the Registrar, the said certificate of registration shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Every LLP needs to have a registered office to which all communications will be made and received. The act has imposed an obligation on every LLP to suffix õlimited liability partnershipö or õLLPö with its name. The clause also seeks to provide that no LLP shall be registered with an undesirable name or a name which is identical or nearly resembles to that of any other partnership firm or an LLP or a body corporate or a registered trade mark or a trade mark, the application of which is pending.

The act has made provisions for the application for the reservation of proposed name of the LLP or change of its existing name to the Registrar who may reserve the name for a period of three months. Further, the Central Government is empowered to give directions to the LLP to rectify its name if the name registered is undesirable or so nearly resembles the name of any other LLP or body corporate or other name as to be likely to be mistaken for it.

Extent and Limitation of Liability

The act provides that every partner of the LLP is, for the purpose of business of the LLP, an agent of the LLP but not of other partners. The LLP shall not be bound by anything done by a partner in dealing with a person if that partner has no authority to act for the LLP in doing a particular act and the person with whom he is dealing also knows that the partner has no authority for such ac.t It, further, provides that an obligation of the LLP, whether arising out of contract or otherwise shall be solely the obligation of the LLP.

It also seeks to provide that liabilities of the LLP are to be met from the property of the LLP and that a LLP shall be liable for a wrongful act or omission by a partner in the course of the business of the LLP or with its authority. The partner is not personally liable, directly or indirectly for an obligation of the LLP solely by reason of his being a partner of the LLP. It, further, provides that the obligation of a LLP shall not affect the personal liability of a partner for his own wrongful act or omission but a partner shall not be personally liable for wrongful act or omission of any other partner.

After a partnerøs death, the business is continued in the same LLP, the continued use of that name or of the deceased partnerøs name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death. In case, the LLP or any of its partners carry out an act with intent to defraud the creditors of the LLP or any other person or if they carry out an act for any fraudulent purpose then there exists unlimited liability for the LLP and its partners. In case, any such act is carried out by a partner, the LLP is liable to the same extent as the partner, unless, it is established by the LLP that such act was without the knowledge or the authority of the LLP.

Contribution by the partners

The contribution may consist of money, tangible or intangible property, or any other benefits such as promissory notes, contracts for services performed or to be performed. The obligation of a partner to contribute money or property to a LLP shall be as per the LLP agreement.

Financial Disclosures

Proper books of account are to be maintained by the LLP relating to its affairs for each year and for filing of an Annual Statement of Accounts and Solvency with the Registrar in such form and manner as may be prescribed. The accounts of the LLPs shall be audited as provided by the rules which are made by the Government. Every LLP shall be required to file with the Registrar an annual return duly authenticated every year. Incorporation document, names of partners and changes, if any, made therein, Statement of Account and Solvency and Annual Return filed by each LLP with the Registrar shall be available for inspection in the office of the Registrar by the public.

Assignment and transfer of partnership rights

The rights of a partner to a share of the profits and losses of the LLP and to receive distributions in accordance with the LLP agreement are transferable either wholly or in part. The transfer of any rights by any partner would not by itself cause the disassociation of the partner or a dissolution and winding of a LLP. The transfer of rights would not entitle the transferee or assignee to participate in the

management or conduct of the activities of the LLP or access information concerning the transactions of the LLP.

Investigation of affairs of LLP

The act provides for the circumstances under which investigation of the affairs of a LLP may be ordered by the Central Government. The act also empowers the Central Government, if it feels it is necessary in public interest, to initiate proceedings against the LLP for recovery of property and damages.

Conversion of existing firms into a LLP A partnership firm may convert itself into an LLP as per Section 55 and second schedule of the act. A private company may convert itself into an LLP as per section 56 and third schedule of the act. A unlisted Public company may be converted into an LLP as per section 57 and the fourth schedule of the act. Upon such conversion, on and from the date of certificate of registration issued by the Registrar in this regard, the effects of the conversion shall be such as are specified in the act. On and from the date of registration specified in the certificate of registration, all tangible (movable or immovable) and intangible property vested in the firm or the company, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, and the whole of the undertaking of the firm or the company, shall be transferred to and shall vest in the LLP without further assurance, act or deed and the firm or the company, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

Provisions for incorporation of Foreign LLP

Foreign LLP can establish a place of business in India and its regulatory mechanism will be as per the rules prescribed by the Central Government.

Compromise, arrangement or reconstruction of LLP

The LLP act provides compromise or arrangement including mergers and amalgamations, winding up and dissolution of LLP. These should be agreed by majority of members and creditors of LLP

representing three-fourths in value and confirmed by the National Company Law Tribunal **("NCLT")**.

Winding up and dissolution of LLP

The winding up of LLP may be either voluntary or by the NCLT under certain circumstances. The NCLT can order for the winding up of the LLP on the grounds of inability of the LLP to pay its debts, or default in filing the statement of account or solvency or annual return with the Registrar of Companies **("ROC")** for five consecutive financial years or any other ground which is just and equitable in the opinion of the NCLT. The Central Government will make rules for provisions relating to winding up and dissolution of LLP

Conclusion

The LLP will act as an engine of growth for economic development of the country and would lead to the growth of professional services in the country. With the liberalisation and globalisation of Indian economy, the LLP, as an alternate mode of carrying business, will encourage joint ventures and would make Indian service sectors globally competitive. LLP structure will enable Small & Medium Enterprises and family partnerships to expand as they will be able to admit outsiders with capital or skill as partners. The hybrid structure of LLP will facilitate entrepreneurs, service providers and professionals to organize and operate in an innovative and efficient manner for effectively competing in the global market.

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