SPECTRUM ALL-IN-ONE® Series

Including Exams' QPs with Solutions

Latest : Nov.-22

Previous : Oct./Nov.-21 | Aug.-21 | Nov.-20

Jan/Feb-20 | Jan-19 | July/Aug-18

May/June-18 | Jan-18 | July/Aug-17 | Feb-17

LATEST 2023-EDITION

BUSINESS LAW & ETHICS

As Per the Latest (2022-23) Syllabus (CBCS)

SIA® Publishers & Distributors Pvt. Ltd.

MBA (OU) I-YR II-SEM

SIA Publishers & Distributors Pvt. Ltd. | SPECTRUM ALL-IN-ONE® Series

LATEST
2023
EDITION

BUSINESS LAW AND ETHICS

MBA I-Year II-Sem.
As Per the Latest (2022-23) Syllabus (CBCS)
(Osmania University)

MBA : I-Year II-Sem.

Exam QPs : **Latest QP :** Nov.-22

Previous QPs : Oct./Nov.-21 | Aug.-21 Nov.-20 | Jan./Feb.-20 | Jan.-19 | July/Aug.-18 | May/June-18 | Jan.-18 | July/Aug.-17 | Feb.-17

Prepared by : SIA Team of Experts

Total Pages : 176

Salient Features:

- Complete Syllabus covered as per CBCS Guidelines (Osmania University) 2022-23 Regulation
- Subject is Explained in Simple and Easy to Understand Language
- List of Important Definitions are covered
- Model Question Papers with Solutions (As Per the New External Exam Pattern) are covered
- Latest to Previous Exams Question Papers with Solutions are Included
- Internal Assessment (MID) Exam Pattern is Included
- Every Unit Comprises of Essay and Short Questions
- Exhaustive coverage of Topics from Examination Point of View
- Unit-wise Frequently Asked Questions and Important Questions are covered
- Gives Complete Knowledge of the Syllabus Topics

Books Available for MBA I-Year II-Sem (O.U)

- Human Resource Management
- Financial Management
- Business Research Methods
- Operations Research
- Entrepreneurship Development
- Business Law and Ethics

Copyright © Reserved with the Publisher

Despite every effort taken to present the book without errors, some errors might have crept in. We do not take any legal responsibility for such errors and omissions. However, if they are brought to our notice, they will be corrected in the next edition.

Printed at:
SIA Publishers & Distributors Pvt. Ltd.,
Shed No. C-8/2, IDA Uppal, Hyderabad-39.

For Books Enquiry
Call Our Customer Care No.
040 - 44 999 999
Remember as **Double Four Six Nines**
Contact between : (9am to 6pm)
(Monday - Saturday)

SIA Publishers & Distributors Pvt. Ltd.
Office Address:
#5-1-911/5, Biyabani Square Building, Putli Bowli,
Lane Opp. to Osmania Medical College, Koti,
Hyderabad - 500 095, Telangana, India

UNIVERSAL BOOK SHOWROOM
(A Unit of SIA Group)
Satisfying customers since 1979

OUTLETS :

MAIN BRANCH PUTLI BOWLI
94 Bus Stop, Putli Bowli, Lane
Opp. to Osmania Medical College Gate (HYD)
040 - 66447999

KOTI
Beside Gokul Chat,
Opp. Women's College Road (HYD)
040 - 6641 5999

S.R.NAGAR
Beside HDFC Bank,
Gajalaxmi Estates (HYD)
040 - 6614 5999

A.S. RAO NAGAR
Opp: Malabar Gold & Diamonds Store
Main Road (Sec-bad)
040 - 35103999

KOMPALLY
Beside Sri Chaitanya
Inter/Degree College
+91 9949963281

VIDYA NAGAR
2-2-5 Usha Kiran arcade
Osmania University Road, (HYD)
+91 91001 23113

SHAIKPET
Opp. D-Mart, Beside G. Narayanamma
Engineering College, Gachibowli Road (HYD)
+91 99638 98569

MADINAGUDA
Chandanagar
Lingampally
+91 89193 45411

MAHABUBNAGAR
1-4-132/2/A, Government Hospital Road,
Beside Cosmic Bake Zone, New Town, Mahabubnagar, TS.
+91 98857 82211

PREFACE

ABOUT THE SUBJECT

The subject **'Business Law and Ethics'** is combination of two wider concepts-'Business Law' and 'Business Ethics'. Business Law is also known as 'Mercantile Law'. Business Law is a branch of law which lays down a set of rules for governing few transactions and relationships among businessmen and their customers, dealers, suppliers and the government. Business ethics is the application of general ethical rules to business behaviour.

The important topics covered in this subject are,

- Law of Contracts.
- Law Relating to Special Contracts.
- Companies Act 2013.
- Consumer Protection Law in India.
- Law of Industrial and Intellectual Property.
- Cyber Law.
- Competition Law.
- Land and Real Estate Laws.
- Law of Insurance.
- Law of Export-Import Regulation.
- International and Comparative Commercial Arbitration.
- Ethical and Value Based Considerations in Business.
- Corporate Social Responsibility.

ABOUT THE BOOK

The book entitled **'Business Law and Ethics'** is designed for MBA I-Year II-Semester students. The content provided in this book is strictly as per the latest (2022-23) syllabus prescribed by Osmania University.

Every concept is explained in a simple manner with sufficient number of examples so as to facilitate better understanding and easy learning in a shorter span of time. Keeping in view the examination pattern of MBA students, this book provides the following features:

- Frequently Asked Questions and Important Questions are included to help students prepare for Internal and External Assessment.
- 11 Latest to Previous University Question Papers are included in the units.
- List of Important Definitions are given.
- Model Papers are provided in order to help students in understand the paper pattern of end examination.

An attempt has been made through this book to provide theoretical knowledge of "Business Law and Ethics". The book is especially prepared for postgraduate students.

The table below gives complete idea about the subject,

Unit No.	Unit Name	Description
1.	Law of Contracts	This unit includes topics: Definition of Contract and Agreement, Classification of Contracts, Essential Elements of a Valid Contract, Offer, Acceptance, Consideration, Capacity to Contract, Free Consent, Legality of Object, Performance of Contract and Remedies for Breach of Contract.
2.	Law Relating To Special Contracts	This unit includes topics: Salient Features of Contract of Agency, Bailment and Pledge, Indemnity and Guarantee, Sale of Goods Act, Distinction Between Sale and Agreement to Sell, Conditions and Warranties, Negotiable Instruments Act, Definitions, Essential Elements and Distinctions Between Promissory Note, Bill of Exchange and Cheques – Types of Crossing.
3.	Companies Act, 2013	This unit includes topics: Definition of Company, Characteristics of Company, Classification of Companies, Formation of Company, Memorandum and Articles of Association, Prospectus, Share Holders and Their Meetings, Board Meetings, Law Relating to Meetings and Proceedings, Management of a Company, Qualifications, Appointment, Powers and Legal Position of Directors/Board of Directors, M.D and Chairman and Their Powers.
4.	Consumer Protection and Other Essential Laws	This unit includes topics: Introduction to Consumer Protection Law in India, Consumer Councils, Redressal Machinery, Rights of Consumers, Consumer Awareness, Law of Industrial and Intellectual Property, Cyber Law, Competition Law, Land and Real Estate Laws and Law of Insurance.
5.	International Business Law and Business Ethics	This unit includes topics: Law of Export – Import Regulation, International and Comparative Commercial Arbitration, Ethical and Value Based Considerations in Business, Need and Justification of Ethics, Efficiency and Integrity in Business Operations and Corporate Social Responsibility.

It is sincerely hoped that this book will satisfy the expectations of students and at the same time helps them to score maximum marks in exams.

Suggestions for improvement of the book from our esteemed readers will be highly appreciated and incorporated in our forthcoming editions.

BUSINESS LAW AND ETHICS

MBA I-YEAR II-Sem (Osmania University)

CONTENTS

Syllabus as per 2022-23 curriculum

LIST OF IMPORTANT DEFINITIONS L.1

INTERNAL ASSESSMENT (MID EXAM) PATTERN M.1

UNIT-I LAW OF CONTRACTS ..... 1 - 32

1.1 DEFINITION OF CONTRACT AND AGREEMENT – CLASSIFICATION OF CONTRACTS 2

1.2 ESSENTIAL ELEMENTS OF A VALID CONTRACT 6

1.3 OFFER AND ACCEPTANCE 7

1.4 CONSIDERATION 10

1.5 CAPACITY TO CONTRACT 12

1.6 FREE CONSENT 16

1.7 LEGALITY OF OBJECT 17

1.8 PERFORMANCE OF CONTRACT 19

1.9 REMEDIES FOR BREACH OF CONTRACT 22

SHORT QUESTIONS AND ANSWERS 25

FREQUENTLY ASKED QUESTIONS AND IMPORTANT QUESTIONS 28

INTERNAL ASSESSMENT 31

UNIT-II LAW RELATING TO SPECIAL CONTRACTS ..... 33 - 66

2.1 AGENCY – SALIENT FEATURES OF CONTRACT OF AGENCY 34

2.2 BAILMENT AND PLEDGE 35

2.3 INDEMNITY AND GUARANTEE 39

2.4 SALE OF GOODS ACT – DISTINCTION BETWEEN SALE AND AGREEMENT TO SELL 43

2.5 CONDITIONS AND WARRANTIES 47

2.6 NEGOTIABLE INSTRUMENTS ACT – DEFINITION AND CHARACTERISTICS 51

2.6.1 Promissory Note – Definition and Essential Elements 53

2.6.2 Bill of Exchange – Definition and Essential Elements 53

2.6.3 Cheques – Definition, Essential Elements and Types of Crossing 54
2.6.4 Distinctions Between Promissory Note, Bill of Exchange and Cheques 56
SHORT QUESTIONS AND ANSWERS 59
FREQUENTLY ASKED QUESTIONS AND IMPORTANT QUESTIONS 62
INTERNAL ASSESSMENT 65

UNIT-III COMPANIES ACT, 2013 67 - 96

3.1 COMPANY – DEFINITION AND CHARACTERISTICS OF A COMPANY 68
3.2 CLASSIFICATION OF COMPANIES 70
3.3 FORMATION OF COMPANY – MEMORANDUM AND ARTICLES OF ASSOCIATION 73
3.4 PROSPECTUS 77
3.5 SHAREHOLDERS AND THEIR MEETINGS 79
3.6 BOARD MEETINGS – LAW RELATING TO MEETINGS AND PROCEEDINGS 81
3.7 MANAGEMENT OF A COMPANY – QUALIFICATION, APPOINTMENT, POWERS AND LEGAL POSITION OF DIRECTORS/BOARD OF DIRECTORS 83
3.8 M.D AND CHAIRMAN 86
SHORT QUESTIONS AND ANSWERS 88
FREQUENTLY ASKED QUESTIONS AND IMPORTANT QUESTIONS 92
INTERNAL ASSESSMENT 95

UNIT-IV CONSUMER PROTECTION AND OTHER ESSENTIAL LAWS 97 - 134

4.1 INTRODUCTION TO CONSUMER PROTECTION LAW IN INDIA 98
4.2 CONSUMER COUNCILS 99
4.3 REDRESSAL MACHINERY 101
4.4 RIGHTS OF CONSUMERS AND CONSUMER AWARENESS 103
4.5 LAW OF INDUSTRIAL AND INTELLECTUAL PROPERTY 105
4.6 CYBER LAW 115
4.7 COMPETITION LAW 117
4.8 LAND AND REAL ESTATE LAWS 118
4.9 LAW OF INSURANCE 122
SHORT QUESTIONS AND ANSWERS 126
FREQUENTLY ASKED QUESTIONS AND IMPORTANT QUESTIONS 130
INTERNAL ASSESSMENT 133

UNIT-V INTERNATIONAL BUSINESS LAW AND BUSINESS ETHICS 135 - 148

5.1 LAW OF EXPORT – IMPORT REGULATION 136
5.2 INTERNATIONAL AND COMPARATIVE COMMERCIAL ARBITRATION 137
5.3 ETHICS AND VALUE BASED CONSIDERATIONS IN BUSINESS 139
5.4 NEED AND JUSTIFICATION OF ETHICS 140
5.5 EFFICIENCY AND INTEGRITY IN BUSINESS OPERATIONS 141
5.6 CORPORATE SOCIAL RESPONSIBILITY 142
SHORT QUESTIONS AND ANSWERS 145
FREQUENTLY ASKED QUESTIONS AND IMPORTANT QUESTIONS 147
INTERNAL ASSESSMENT 148

MODEL QUESTION PAPERS WITH SOLUTIONS

EXAM QUESTION PAPERS WITH SOLUTIONS (PREVIOUS TO LATEST)

NOTE TO STUDENTS

The latest syllabus of "Business Law And Ethics" for MBA Osmania University I-Year II-Sem (2022-23 Regulation) is partially similar to old syllabus of "Business Law And Ethics" for MBA I-Year I-Sem Osmania University (2016-17 Regulation) with addition and deletion of some topics. Some QPs are included at the end of the book with references in the units. The topics which were there in 2016-17 Syllabus and now deleted in 2022-23 Syllabus are considered as Out of Syllabus topics. The QP questions which are related to Out of Syllabus topics are marked as Out of Syllabus questions in QPs

Business Law And Ethics

MBA (I-Year II-Sem) Osmania University

Syllabus

UNIT-I

Law of Contracts : Definition of Contract and Agreement – Classification of Contracts, Essential Elements of a Valid Contract – Offer – Acceptance – Consideration – Capacity to Contract – Free Consent – Legality of Object – Performance of Contract – Remedies for Breach of Contract.

UNIT-II

Law Relating To Special Contracts : Salient Features of Contract of Agency, Bailment and Pledge, Indemnity and Guarantee, Sale of Goods Act – Distinction Between Sale and Agreement to Sell – Conditions and Warranties. Negotiable Instruments Act – Definitions, Essential Elements and Distinctions Between Promissory Note, Bill of Exchange and Cheques – Types of Crossing.

UNIT-III

Companies Act, 2013 : Definition of Company – Characteristics – Classification of Companies – Formation of Company – Memorandum and Articles of Association – Prospectus – Share Holders and Their Meetings – Board Meetings – Law Relating to Meetings and Proceedings – Management of a Company – Qualifications, Appointment, Powers and Legal Position of Directors – Board – M.D. and Chairman – Their Powers.

UNIT-IV

Consumer Protection and Other Essential Laws : Introduction to Consumer Protection Law in India – Consumer Councils – Redressal Machinery – Rights of Consumers – Consumer Awareness. Law of Industrial and Intellectual Property, Cyber Law, Competition Law, Land and Real Estate Laws, Law of Insurance.

UNIT-V

International Business Law and Business Ethics : Law of Export – Import Regulation, International and Comparative Commercial Arbitration.

Ethical and Value Based Considerations in Business, Need and Justification of Ethics, Efficiency and Integrity in Business Operations – Corporate Social Responsibility.

LIST OF IMPORTANT DEFINITIONS

UNIT - I

1. As per Sec. 2(h) of the Indian Contract Act, "An agreement enforceable by law is a contract".
2. According to the Sec. 2(e) "Every promise and every set of promises, forming the consideration for each other is an agreement".
3. According to the Section 2(a), the person is said to make a proposal when he "signifies to another his willingness to do or to abstain from doing anything with a view of obtaining the assent of other for its realization".
4. Sec. 2(b) of the Indian Contract Act, 1872 defines acceptance as "A proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal on its acceptance becomes a promise".
5. According to Pollock, "consideration is the price for which the promise of other is bought and the promise thus given for value is enforceable".

UNIT - II

1. A contract, under which one party promises to save another party from loss or damages, by the conduct of himself or by others, is known as "contract of indemnity".
2. According to section 13 "A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer".
3. Section 5 of the Negotiable Instrument Act, 1881 states that "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 instrument".
4. Section 6 of the Negotiable Instrument Act, 1881 defines "a cheque is a bill of exchange which is, drawn upon a specified banker and payable on demand".

UNIT - III

1. "Company" is defined as a company registered under Companies Act, 2013 or any previous company laws.
2. According to section 2(56) of the companies Act, 2013 "Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act".
3. Quorum implies to the minimum number of members required to conduct and validate a meeting.
4. According to Section 2(54) of companies Act, 2013 "Managing director is a director who by virtue of an agreement with the company or of a resolution passed by the company in a general meeting or by its board of directors is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called".

UNIT - IV

1. The consumer protection Act, 2019 defines consumer as any individual who purchases any goods/services for a consideration which has been paid or promised or partly paid or partly promised or any mechanism of deferred payment.
2. The term cyber law refers to the set of rules and regulations related to the use of internet.
3. According to Riegal and Miller, "Insurance is a contract, the insurer agreeing to make good any financial loss, the insured may suffer within the scope of the contract and the insured agreeing to pay a consideration" (premium).
4. Premium is the amount of money or consideration which is paid by the insured to the insurance company for providing any insurance coverage.

UNIT - V

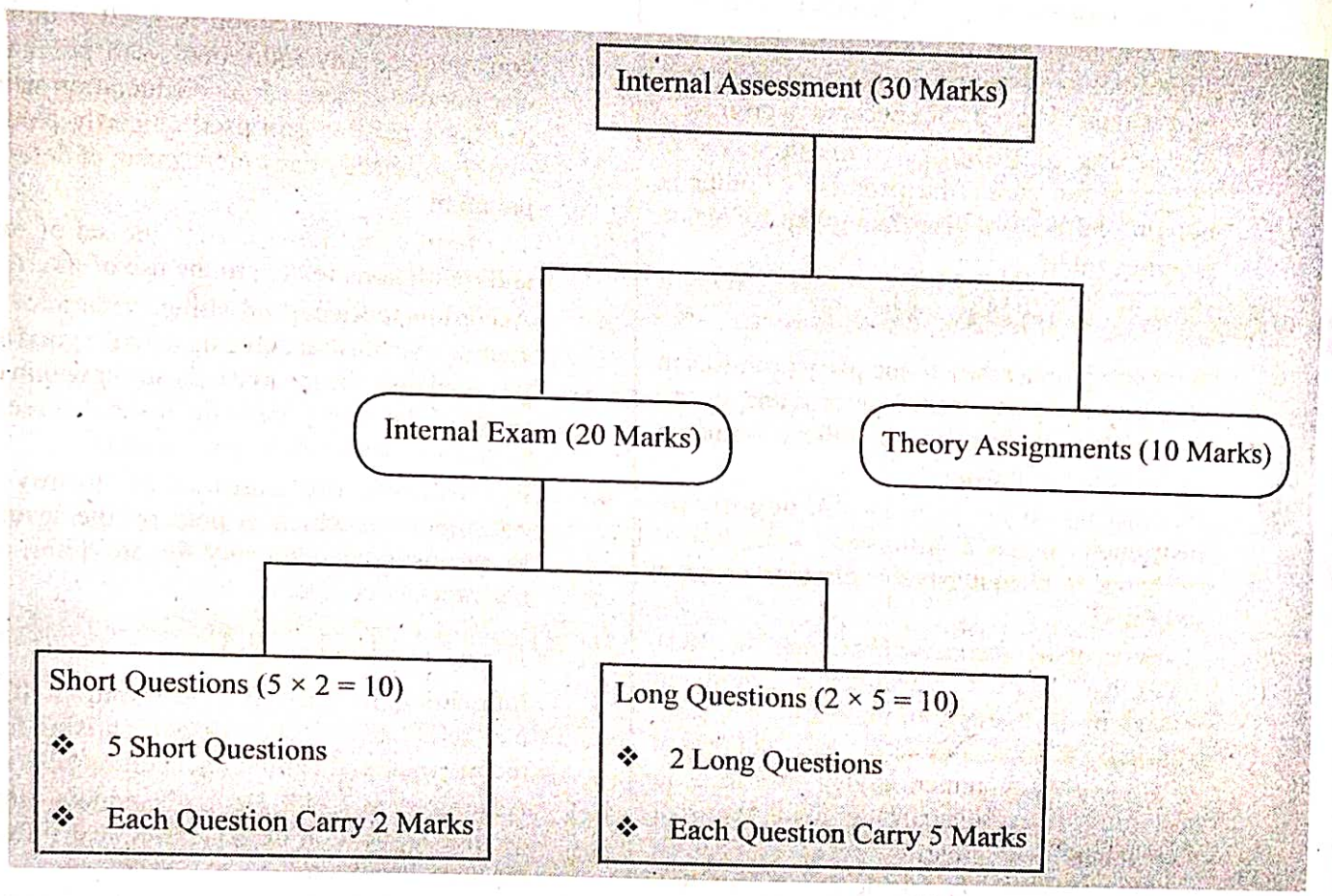
1. International Commercial Arbitration (ICA) is a technique of settling disputes arising from the international commercial contracts.
2. According to Keith Davis, "business ethics are the application of general ethical rules to business behaviour".
3. Integrity is defined as doing the right thing even if no one is around. It is the ability of person to perform things with honesty, reliability and fairness.
4. According to World Business Council for Sustainable Development, "CSR is a continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large".
5. Morals refers to the act of respecting people, care for oneself and others. Morals involves good conduct.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

INTERNAL ASSESSMENT (MID EXAM) PATTERN

The pattern of Internal Assessment as per CBCS & AICTE guidelines (2022-23) for all the semesters is as follows,

- Internal Assessment is conducted for 30 marks.
- Internal Assessment is divided into two parts – Internal Exam and Theory Assignments.
- Internal Exam is conducted for 20 Marks that consist of 5 Short Questions, each carrying 2 marks and 2 Long Questions each carrying 5 Marks.
- Theory Assignments Carry 10 Marks.



UNIT 1 Law of Contracts

SYLLABUS

Definition of Contract and Agreement – Classification of Contracts, Essential Elements of a Valid Contract – Offer – Acceptance – Consideration – Capacity to Contract – Free Consent – Legality of Object – Performance of Contract – Remedies for Breach of Contract.

LEARNING OBJECTIVES

After studying this unit, one would be able to understand,

- Definition of Contract and Agreement.
- Classification of Contracts.
- Essential Elements of a Valid Contract.
- Definition of Offer and Legal Rules of Valid Offer.
- Definition of Acceptance and Essentials of Valid Acceptance.
- Concept and Essentials of Valid Consideration.
- Capacity to Contract, Free Consent and Legality of Object.
- Performance of Contract.
- Remedies for Breach of Contract.

INTRODUCTION

A contract is an agreement between two or more parties which will be administered by law. The essential elements of a valid contract includes offer and Acceptance, lawful consideration, free consent, Capacity of parties to contract etc.

An offer is a proposal made by one party to the other party in order to establish a legal agreement between them. A proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal on its acceptance becomes a promise.

Consideration forms a vital part of a contract. It is considered as an important element of a contract. Consideration is a technical term used in terms of "quid pro quo" which generally means "something in return".

Capacity refers to the competence of a person to sign or enter a valid contract. The people who are willing to sign the contract should possess the capacity to sign (or enter) the contract.

Performance of the contract is one of the different methods of fulfilling the contract. The contract is said to be performed when the two parties to a contract either perform or aims to perform their respective promises. Every contract have some rights and obligations. A right does not have any worth if there is no remedy to enforce that right in a law court at the time of its infringement or breach of contract. Remedy is given by law through which right can be enforced.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

1.1 DEFINITION OF CONTRACT AND AGREEMENT – CLASSIFICATION OF CONTRACTS

Q1. Explain the definition of contract and agreement. Explain classification of contract.

August-21, Q6

OR

Define 'Contract'. Write about classification of contracts.

(Refer Only Topics: Definition of Contract, Classification of Contracts)

Answer : *Feb.-17, Q6(a)*

Definition of Contract

A contract is an agreement between two or more parties which will be administered by law. As per Sec. 2(h) of the Indian Contract Act, "An agreement enforceable by law is a contract". Hence contract is an agreement, whose objective is to establish a legal obligation i.e., a duty enforceable by law.

Definition of Agreement

According to the sec 2(e) "Every promise and every set of promises, forming the consideration for each other, is an agreement". This statement makes it clear that 'Promise' is an agreement.

Classification of Contracts

Contracts are classified on the basis of the following,

I. Validity

II. Formation

III. Performance.

I. Classification Based on Validity

A contract is formed on the basis of an agreement. An agreement would become a valid contract when all the essential elements of a contract are present. If in case one or more essential elements of the contract are missing then it would be either voidable, void, illegal or unenforceable contract but not a valid contract.

1. Voidable Contract

Sec. 2(i) of the Indian Contract Act defines,

"An agreement that is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others is a voidable contract".

This form of contract is formed in case when one of the essential elements i.e., 'free consent' is not present. If the consent of the party to a contract is not free that is, when it is formed due to coercion, undue influence, misrepresentation or fraud, the contract is said to be voidable at his option [Section 19 and 19A]. The party whose consent is not free can rescind (avoid (or) repudiate) the contract if he is intended to do so. A voidable contract is valid until it is avoided by the party entitled to do so.

Example

'*Y*' promises to sell his bike to '*Z*' for the sum of ₹ 10,000. Here, the consent is acquired through force or coercion, therefore the contract is said to be voidable contract at the option of '*Y*'. He may avoid the contract or elect to be bound by it.

2. Void Agreement and Void Contract

(a) Void Agreement

"An agreement not enforceable by law is said to be void".

Void agreement does not create any legal rights or obligations. It is "devoid of legal effects" altogether or it is "void-ab initio" which means from the very beginning. Example, an agreement with a minor or agreement without consideration.

(b) Void Contract

Section 2(j) of the Contract Act, 1872 defines,

A contract becomes void when it ceases to be enforceable by law.

Example

Contract to import goods from Pakistan becomes void when a war breaks out between the importing country and the exporting country i.e., India and Pakistan.

3. Illegal Agreement

Illegal agreement is an agreement where one goes beyond the legally accepted rules of fundamental public policy or which is criminal in nature or which is immoral. Illegal agreement has much greater significance compared to void contract. All illegal agreements are void but all void agreements or contracts are not necessarily illegal.

4. Unenforceable Contract

A contract which is unenforceable in the court of law due to some technical defect like absence of writing, where remedy has been barred by lapse of time is called as an unenforceable contract. The concerned parties may carry out the contract but in case of breach or repudiation of such a contract, the aggrieved party would not be empowered to the legal remedies.

II. Classification Based on Formation

Contract may be made or formed either by writing or by words of mouth (or) it is inferred from the conduct of the parties (or) the conditions/situations of the case. This constitutes the various modes to form a contract.

Classification of contracts based on formation are as follows,

1. Expressed Contract

If in case the terms of a contract are in the expressed form either by words spoken or written during the formation of the contract is called as expressed contract. Where the offer or acceptance of any promise is made in words then, promise is said be expressed [Sec. 9 of the Contract Act] and an expressed promise would lead to an expressed contract.

2. Implied Contract

Contract which is implied from the acts or conduct of the parties or course of dealings between them is termed as an "implied contract". This is the result of the specific acts of the concerned parties but not the expressed promise or the promises made by the parties. It may also result out of continuing course of conduct of the parties. Section-9 of the Contract Act states, the proposal or acceptance of any promise is made other than words, then the promise is said to be implied.

Example

There is an implied contract when '*Y*' enters into a public bus, or takes a cup of tea in a restaurant, acquires a ticket from an automatic weighing machine or lift the luggage of Z to carry out from the railway station.

3. Quasi Contract

Quasi contract is not at all a contract, it is entered intentionally by the parties. On the other hand, the Quasi contract is created by law. It is similar to a contract where legal obligation is applied on a party who should perform it. It lays on the ground of equity that "a person may not be allowed to enrich himself unjustly at the expense of another".

Example

'*A*', a businessman forgot to take his goods from *B*'s house by mistake. *B* treats the goods as his own. In this case '*B*' is bound to pay for the goods.

4. E-commerce Contract

A contract which is entered into by the two parties via internet is called as an "E-commerce contract". Various individuals or companies develop networks on Internet that are attached/related with many other networks. Thus, there is an expansion of commercial transactions for any person.

III. Classification Based on Performance

The extent upto which contracts can be performed are categorized into four heads. Namely,

1. Executed Contract

The term 'executed' means the task which is completed. A contract where both the parties have performed their respective obligations is an 'executed contract'.

Example

'*P*' agrees to purchase a book for *Q* which of cost ₹ 500 (Oxford dictionary). When *P* purchases the dictionary and *Q* pays the price of that book then it means that both the parties have performed their obligations. Therefore, the contract is said to be executed.

In few cases, even after the completion of the contract, its influence may continue. Example, when a person buys a bun from a retail store which contains a stone and it breaks one of his teeth then, he has a right to recover the damages from the seller.

2. Executory Contract

"Executory" means something that remains to be carried into effect. A contract where both the parties are yet to perform their obligations is an executory contract.

Example

The contract is executory when '*P*' does not purchase the book and '*Q*' does not pay any price. In the same manner, when *P* agrees to engage *Q* as his servant from the next month onwards, it is an executory contract.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

3. Unilateral or One-sided Contract

A unilateral or one-sided contract means only one party should fulfill his obligation during the formation of the contract and the other party fulfills the obligation at the time of contract or prior to the existence of the contract. These contracts are also termed as contracts with executed consideration.

Example

'*P*' near railway station permits the railway coolie to carry his luggage and place it in the carriage. Contract is formed immediately when the luggage is placed in the carriage. But coolie has already performed his obligation and '*P*' should fulfil his obligation i.e., paying the reasonable charges to the coolie.

4. Bilateral Contract

A bilateral contract means a contract where the obligations of both the parties remain outstanding at the time of formation of the contract. Thus, it is similar to executory contracts. Thus, it is also termed as contract with executory consideration.

Q2. Illustrate the distinction between void, voidable and illegal contracts.

Answer : *Dec.-08, Q2(a)*

The differences between void, voidable and illegal contracts are listed in the table below,

S.No.	Basis	Void Contract	Voidable Contract	Illegal Contract
1.	Enforceability	A void contract is not enforceable by law.	These contracts are enforceable by law at the option of one party but not at the option of other or other.	No court will entertain or enforce illegal contract.
2.	Validity	A void contract is a valid contract until the contradictory situations occurs.	Voidable contracts are valid contracts.	Illegal contracts are not valid contracts. They are actually void contracts with broader scopes.
3.	Nature of Contract	A contract may be valid while entering into contract. If it changes either due to circumstance it becomes void.	All voidable contracts are induced by coercion, fraud or misrepresentation and undue influence.	Illegal contracts are unlawful and are either valid or void contracts depending on circumstance.
4.	Void	A contract becomes void by supervening impossibility or illegality.	A voidable contract becomes void when the party whose consent is not free.	Illegal contracts are opposed to public policy and are void.
5.	Section	Sec 2(j) of the act deals with void contracts.	Sec 2(i) of the act deals with void able contracts.	No sections of the law deals will illegal contracts.
6.	Legal Action	These contracts are not enforceable by law and hence cannot be sued.	If the aggrieved party suffers loss, it can sue the other party.	The parties entered under illegal contracts cannot sue other party.
7.	Legality	Void contracts are illegal.	Voidable contracts are legal and hence the parties involved in it get relief.	Illegal contracts are criminal in nature.
8.	Example	A contract to import goods from another country is a valid contract but if war breaks out between the two countries, the contract becomes a void contract.	L agrees to sell his car to M for ₹ 5,000 only. His consent is obtained by use of force. The contract is voidable, which means that if L chooses, he may standby the contract or avoid the contract.	A rents B's house to store some smuggled goods. B is aware of A's purpose. The agreement between A and B is collateral to the agreement of buying smuggled goods. However this agreement is also illegal, since the main agreement is illegal.

Q3. "All contracts are agreements but not all agreements are contracts". Explain.

(Model Paper-I, Q6(a) | July/August-18, Q6(a))

OR

"All contracts are agreements but all agreements are not contracts" Justify.

Answer : *(May-13, Q2(b) | Jan./Feb.-11, Q2(a))*

A contract is an agreement between two or more parties which will be enforceable by law. As per Sec. 2(h) of the Indian Contract Act.

"An agreement enforceable by law is a contract".

Hence, contract is an agreement whose objective is to establish a legal obligation i.e., a duty enforceable by law.

From the above definition it is quite clear that the contract includes two elements namely,

1. An agreement and
2. Legal obligation (i.e., a duty enforceable by law).

1. Agreement

According to the Sec. 2(e) "Every promise and every set of promises, forming the consideration for each other is an agreement". This statement makes it clear that 'Promise' is an agreement.

Sec. 2(b) defines promise as "When the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. A proposal, when accepted becomes a promise".

In simple words, an agreement is made only when one party makes a proposal or an offer to the other party, and the other party accepts the proposal i.e., Agreement is the sum of 'Offer' and 'Acceptance'.

Agreement = Offer + Acceptance

The above definition of agreement includes the following features,

(a) Number of Persons (Individuals) Involved

As one person cannot make an agreement with himself there is a need of two or more than two persons to make an agreement.

(b) Consensus-ad-idem

An agreement can be made only when both the parties accept the subject matter of the agreement in the same sense/way and at the same time. This concept is called as consensus-ad-idem and if it is not present in an agreement then the contract cannot be formed/made.

The presence of consensus-ad-idem in any agreement can be tested by applying the offer and acceptance.

Examples

(i) If the consumer asks ₹ 10 lakhs and if the vendor thinks that the consumer is asking ₹ 5 lakhs, then there is no consensus-ad-idem and hence there is no contract.

(ii) If the vendor asks the consumer, "Do you want 100 gm of sugar" and if the consumer says "Yes", to it, then there will be consensus-ad-idem and the agreement exists.

2. Legal Obligation

An agreement can become a contract only when it results into a legal obligation i.e., a duty enforceable by law. The term "obligation" refers to as a legal tie-up, which binds a particular person or persons in order to perform or not to perform a particular act or acts.

If the agreement does not hold the capability to establish a duty enforceable by law, then it cannot form a contract. Therefore, the term agreement is a wider term than a contract, i.e., "All contracts are agreements but all agreements are not contracts".

The agreements which are social, moral or religious in nature, cannot become a contract as they cannot be enforced by the law.

Example

A friend '*P*' promises his friend '*Q*' that he will give a gift on his/her birthday, but due to lack of money *Q* was not given gift by '*P*'. *Q* cannot raise any claim for the gift from '*P*' as it was not a legal agreement.

In short, agreements that are enforceable by law are contracts. But those agreements which give rise to social obligations do not become contracts. It is necessary that agreements must give rise to legal obligations. Therefore **"all contracts are agreements but all agreements need not be contracts".**

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

1.2 ESSENTIAL ELEMENTS OF A VALID CONTRACT

Q4. Define contract and valid contract. What are the essential elements of a valid contract. *Model Paper-II, Q6(a)*

OR

What is a definition of contract? Explain the essential elements of a valid contract. *Nov.-20, Q6*

(Refer Only Topics: Definition of Contract, Essential Elements of a Valid Contract)

OR

Define contract. Explain various elements of a valid contract. *May/June-18, Q6(a)*

(Refer Only Topics: Definition of Contract, Essential Elements of a Valid Contract)

OR

What is meant by a valid contract? What are the essentials of a valid contract? *July/August-17, Q6(a)*

(Refer Only Topics: Definition of Valid Contract, Essential Elements of a Valid Contract)

OR

Explain the essentials of valid contract. *Jan.-14, Q2(b)*

(Refer Only Topic: Essential elements of a Valid Contract)

OR

Write about offer, acceptance, consideration and free consent.

(Refer Only Topics: Offer and Acceptance, Lawful Consideration, Free Consent)

Answer : *Oct./Nov.-21, Q7*

Definition of Contract

A contract is an agreement between two or more parties which will be administered by law, as per Sec. 2(h) of the Indian Contract Act.

"An agreement enforceable by law is a contract".

Definition of Valid Contract

An agreement which binds the two parties and which is enforceable by law is known as valid contract. All the parties in a valid contract are bound to perform the contract.

Essential Elements of a Valid Contract

An agreement in order to become a contract, must have the following essential elements,

1. Offer and Acceptance

The contract in order to become an agreement must be made between two parties i.e., one should make an offer and the other should give its acceptance. The offer and acceptance must be lawful in nature which means that they should fulfill the requirements of the contract act in relation thereto.

2. Purpose to Establish Legal Relationship

The parties of an agreement should have an intention to establish a legal relationship between them. If such intention does not exist then a contract cannot be formed.

Agreements of social or domestic type cannot be considered as contracts as they will not fulfill the legal obligations.

Example

A father promises his son to buy a bicycle if he gets 1st class marks, but the father does not do so and fails to fulfill the agreement due to some reasons. In this case, the son cannot sue against his father as there was no legal obligation.

3. Lawful Consideration

An agreement can be enforceable by law, only when it has "Consideration" in it. "Consideration" is defined as the price paid by one party to the other or it is a price paid by one party to the other for the promise made. An agreement is legally enforced only when both the parties provide something and receives something in return.

The consideration may be an act (doing something) or forbearance (not doing something) or a promise to do or not to do something. It may be in the past, present or future.

It is not necessary that consideration must be in the form of cash or kind, but it is mandatory that it must be real and lawful.

4. Capacity of Parties Competency

The parties to an agreement should be capable enough to enter into a valid contract or else it would not be enforced by the court of law. A person is considered to be competent to a contract if he/she has,

(a) The age of a major

(b) The sound mind

(c) Persons not disqualified by any law.

The various reasons for not being considered to be capable enough to enter into the contract are,

(i) Minor

(ii) Lunacy

(iii) Idiocy

(iv) Drunken persons.

If any of the party is found with any of the above feature then the agreement is not enforceable by law except in certain special cases.

5. Free Consent

In order to make a valid contract, there should be free and genuine consent from the parties involved in an agreement.

The parties consent is considered to be free if in case they agree upon the same thing in the same sense. The parties are considered to possess the same mind when they accept the subject matter of the contract in a similar sense and at the same time (Sec. 13).

Free consent will be absent, if the agreement is induced by,

(a) Coercion

(b) Undue influence

(c) Fraud

(d) Misrepresentation

(e) Mistake (Sec. 14).

If the agreement is violated because of any of the above first four factors then the contract is voidable and it cannot be executed by the party responsible for coercion, undue influence etc., and the other party can either accept or reject the contract as per the rules of the act.

If the agreement is induced by the mistake of both the parties then it can be void (Sec. 20).

6. Lawful Object

A contract is said to be valid, only if the object of the agreement is lawful i.e., the object should not be illegal, fraudulent, immoral or opposed to public policy or should not cause any damage to a person or property. If the object is unlawful then agreement would be void.

7. Writing and Registration

As per the Indian Contract Act, a contract can be either oral or in written form. But in few special circumstances it emphasizes on the point that an agreement in order to be valid, should be in writing and should be registered.

(a) As per Arbitration and Conciliation Act, 1996, an arbitration agreement should be in writing.

(b) According to the Transfer of Property act, 1882, an agreement for a sale of immovable property should be in writing and registered before enforcing it legally.

8. Certainty

According to the Sec. 29, of the contract act "Agreements, the meaning of which is not certain or capable of being made certain are void". The agreement should be clear and certain in order to form a valid contract, if in case agreements are vague or uncertain then it would be difficult to form the contract and hence it cannot be executed.

Example

'*P*' accepts to sell "a 100 kgs of rice" to '*Q*', there is no information as to what type of rice is considered to be sold. Therefore, the agreement is void because of its uncertainty.

9. Possibility of Performance

Sec 56 states that, "An agreement to do an act impossible in itself is void". The contract can be valid, only if it is capable of being performed and if the act is impossible in itself, physically or legally then the agreement cannot be enforced by law.

Example

'*P*' makes an agreement with '*Q*' as to find out the treasures by magic. This agreement cannot be enforced.

10. Not Expressly Declared Void

The agreement should not be declared directly void by the law enforced in a country (Sec. 24 to 30).

For instance, an agreement in restraint of marriage, an agreement in restraint of trade and an agreement by way of wages have been expressively declared as void under Sections 26, 27 and 30 respectively.

1.3 OFFER AND ACCEPTANCE

Q5. Define Offer. What are the legal rules or essentials of a valid Offer.

Answer :

Definition of Offer

An offer is a proposal made by one party to the other party in order to establish a legal agreement between them. According to the Section 2(a), the person is said to make a proposal when he "signifies to another his willingness to do or to abstain from doing anything with a view of obtaining the assent of other for its realization".

Example

A offers to sell his car to B for ₹ 2,50,000. A is the offeror or proposer and B is the offeree or promisee.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Legal Rules or Essentials of a Valid Offer

The legal rules or essentials of a valid offer are as follows,

1. Offer should be as per law and should have the capability of being accepted and establishing a legal relationship

According to law, an offer which does not lead to the establishment of a legal relationship is not a valid offer. The offers of a social and domestic nature do not constitute legal relationship.

Legal relationships are generally established in business transactions. In these transactions, if one party is responsible for the breach of contract, then the other party can sue against the party responsible for breaching.

2. An offer should be definite, unambiguous and certain and is not loose and vague

If the terms of an offer are not clear, specific and certain, then it cannot constitute a valid offer and hence cannot create a contractual relationship.

An agreement which is to be agreed in future cannot constitute a contract as the terms of agreement are not yet decided because of which it is uncertain to take place.

'*P*' purchased a cow from '*Q*' and is promised to buy one more if the first cow gives good quantity of milk. But, later '*P*' denied to buy one more cow. Here, '*Q*' cannot enforce the agreement as it was loose, not clear and vague.

3. An offer may be differentiated from

(a) Expressing of Intention and an Announcement

When a person expresses that he has an intention to do something then the second person cannot take an action against the first person. This expression indicates that an offer will be made or invited in future but not at the present condition.

Example

A college conducts a scholarship test and announces that the first five merit students will be given scholarship. Here, the student who got sixth place in merit list cannot sue against the college, for not giving him scholarship. In this case, the expression of intention to write an exam, does not establish a binding contract on those who have appeared in it, hence the sixth student cannot receive the scholarship.

(b) An Invitation to make an Offer or do Business

An offer should be differentiated from an "invitation to receive an offer". In this case, the person inviting will not make any offer and instead of it invites the other person or party to make an offer. These domestic invitations, though constitute an offer, they are not considered as offers as per the law, as they do not involve any legal obligation.

When a shopkeeper demonstrates some of the goods on display then it means, he is informing and inviting the public to make an offer to buy the goods. Similarly quotations, catalogues of prices, advertisements in newspapers and circulars do not make an offer.

4. An Offer should be Communicated

In order to make a complete valid offer, it should be discussed or communicated with the offeree (i.e., the person to whom the offer is made).

The offer cannot be accepted if it is not communicated by an offeror to an offeree. Anything which is done in ignorance of an offer cannot be accepted, as there is no consensus of will.

5. Offer should be made with a Perspective to Receive the Acceptance

The offer should be made with an intention of gaining the other party's acceptance and not just for revealing the intention of making an offer.

6. Offer should not Include the Term Non-compliance

A person cannot declare that the offer is assumed to be accepted, if the acceptance is not communicated by within a specific time.

Example

If '*P*' writes to '*Q*', that he ('*P*') shall sell his house for ₹ 10,00,000 and if '*Q*' does not reply then he shall consider that the offer is accepted. But a contract cannot be made if '*Q*' does not reply and he is not obliged to reply.

On the other hand, if '*Q*' accepts '*P*'s proposal, then an offer is made.

7. An Offer should Follow the Terms and Conditions

Before making an offer, the offeror reveals the terms and conditions associated with the offer. The offeree should accept all the terms and conditions if he wants to make an offer. Hence, a contract cannot exist, if all the terms and conditions of an offer are fulfilled and accepted.

8. Two Identical Cross Offers Cannot Make a Contract

If two parties make similar offers to each other then the offers are referred to as cross-offers. These offers does not form an acceptance of one's offer by the other as there is no mutual agreement.

Q6. Explain the concept of Offer and Acceptance with suitable examples.

(Model Paper-II, Q6(a) | August-21, Q7)

OR

Define Acceptance. What are the essentials of valid acceptance.

(Refer Only Topics: Definition of Acceptance, Essentials of a Valid Acceptance).

Answer :

Concept of Offer

An offer is a proposal made by one party to the other party in order to establish a legal agreement between them.

Example

A offers to sell his car to B for ₹ 2,50,000. A is the offeror or proposer and B is the offeree or promisee.

Concept of Acceptance.

Sec. 2(b) of the Indian Contract Act, 1872 defines acceptance as "A proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal on its acceptance becomes a promise".

Example

A offer to sell his house for ₹ 5,00,000 for which *B* accepts *A*'s offer. It means that '*B*' accepted the offer made by '*A*'.

An offer made can be accepted by only those persons to whom it is made.

Essentials of Valid Acceptance

The acceptance is said to be valid if it fulfills the following conditions,

1. Absolute and Unqualified

Sec. 7(1) of the Indian Contract Act, 1872 defines as, "In order to convert a proposal into a promise, the acceptance must be absolute and unqualified". Thus, it means an offer should be accepted as it is without any kind of deviations or reservations or conditions. A qualified and conditional acceptance gives rise to counter offer thereby terminating the original offer to proceed further.

Examples

'*X*' made an offer to *Z* for selling his car for ₹ 1,00,000. 'Z' accepted the offer made by *X* but for ₹ 90,000. Later on in case if '*Z*' accepts the original offer of '*X*' then '*X*' will not be bound to sell his car for ₹ 1,00,000 because original offer of '*X*' is being terminated on account of '*Z*'s counter offer to the original offer. [Nihal Chand Vs Amar Nath]

2. Manner

Sec. 7(2) of the Indian Contract Act, 1872 specifies that the acceptance should be in the following manner,

(a) If the proposal does not clearly indicate the manner in which the offer is to be accepted, then the offer should be accepted in some usual and reasonable manner.

(b) If the proposal specifies the manner in which the offer is to be accepted. The offer must be accepted as per the specific manner defined by the Indian Contract Act.

Example

'*A*' of Mumbai sends a fax to '*B*' of Bangalore asking him to buy his business and also writes "send the acceptance through fax". Then '*B*' accepts the offer but sends the acceptance through telegram. Thus, *A* can reject the offer of *B* as it was not according to the prescribed manner but '*A*' should inform '*B*' about this rejection within a reasonable time, if in case '*A*' does not do so, then it is considered as acceptance of offer made by '*B*' and would become a valid contract between *A* and *B*.

3. Communication

The acceptance to the offer is said to complete if the offer has been communicated between the offeree and the offerer. If the offer is not communicated, then it would not be a valid offer.

Example

A offered the manager of the railway company to supply coal to a railway company. The manager accepted the offer and keeps it in the table drawer and forgets to send the acceptance. It was held that the contract is void as the acceptance was not being communicated. [Brogden Vs Metropolitan Railway Co.].

4. By Whom

Acceptances should be communicated by the authorized person only i.e., the offeree, otherwise there would be no legal relationship.

Example

'*P*' applied for the post of headmaster in some school. The managing committee even though selected '*P*' but did not communicate the same to *P*. A member of the managing committee informed '*P*' about his selection and this was not known by the other managing committee members. On the other hand, the managing committee cancelled the resolution and appointed somebody else for the post '*P*' filed a suit in court against the school for breach of contract. It was held that *P*'s case was not been proceeded further as his appointment to the school was not legally informed by an authorized person. [Powell Vs Lee].

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

5. To Whom

Acceptance should be communicated to whom the offer is made i.e., to the offeree. If the offer is not communicated to an authorized person, then there will be no legal contract.

Example

F has been offered to buy his nephew's horse of $ 30 by a letter saying, "If I hear no more about him, I shall consider the horse mine. The nephew did not reply at all to *F* instead he told '*B*', his Auctioneer not to sell his horse to anyone except '*F*'. '*B*' sold the horse forgetting the instructions. *F* cannot file a case as there was no proper communication between *F* and his nephew. [Felthouse Vs Bindley].

6. Time Limit

The acceptance to the offer should be given in a prescribed or reasonable time. It depends on the facts and conditions of the case.

Example

X offered to sell the shares of a company in the month of June but the acceptance to the offer communicated in November. It was held that offerer was not bound by the acceptance as the acceptance was not given in the specified time [Ramsgate Victoria Hotel Co. Vs Montefire].

7. Before the Lapse of an Offer

The acceptance to the offer should be given before the offer gets lapsed or is taken back. If the acceptance of the offer is given after the lapse of an offer then there would be no valid contract.

Example

X offered *Y* to shift his house from Mumbai to Pune within six months. But *Y* shifted to Pune after a year he received offer. It was held that there is no valid contract between '*X*' and '*Y*' due to lapse of offer and therefore the acceptance was considered as invalid.

1.4 CONSIDERATION

Q7. What is Consideration? What are the legal rules for valid consideration?

Jan./Feb.-15, Q2(b)

OR

Explain the essentials of valid consideration.

(Refer Only Topic: Legal Rules or Essentials of Valid Consideration)

Answer : *May/June-15, Q2(a)*

Definition of Consideration

According to Pollock, "consideration is the price for which the promise of other is bought and the promise thus given for value is enforceable".

Example

'*C*' agrees to sell a bike to '*D*' for ₹ 15,000. In this case, cost is the consideration for *D* and price is the consideration for '*C*'.

Legal Rules or Essentials of Valid Consideration

The legal rules of consideration are as follows,

1. It must Move at the Desire of the Promisor

An act comprising consideration must be made at the desire or appeal of the promisor. If in case, it is made at the instance of a third party, then it will not be regarded as an effective consideration.

Example

'*C*' saves goods of '*D*' from fire without being asked for help. In this case '*C*' cannot demand payment for the service provided by him.

2. It may Move from the Promisee or any other Persons

According to the Indian law, consideration may move from the promisee or any other person or i.e., even a stranger. It means that, when there is a consideration for a promise then there is no need to know as to whom it has been furnished. But, the stranger to consideration would be liable to sue only when he/she is a party to the contract.

Example

In case of Chinnaya v/s Ramayya (1882), an old lady '*A*' through a gift deed has gifted certain property to her daughter '*B*' along with the direction that she should pay her aunt '*C*' a certain amount annually. On the same day '*B*' entered into an agreement with '*C*' to pay her the agreed sum of money. But, later on '*B*' disagreed to pay the amount with the appeal that no consideration has taken place between *B* and *C*. In this case '*C*' was allowed to maintain suit as consideration had moved from '*A*'s sister, '*C*' to the daughter '*B*'.

3. It may be Past, Present or Future

A consideration may be past, present or future according to Sec. 2(d).

(a) Past Consideration

If a consideration by a party for a current promise was given in the past (or) before the date of the promise then it is termed as past consideration.

(b) Present or Executed Considerations

A present or executed consideration takes place when consideration is provided along with promise i.e., during the time of the promise.

Example

In a cash sale consideration is present or executed.

(c) Future or Executory Consideration

A future or executory consideration takes place when consideration from one party to another party is to pass simultaneously for the formation of the contract.

4. It Need Not be Adequate

As consideration is "something in return" but in reality it may not be equal to the value of "something given". According to this law, contract should be supported by consideration. Even though consideration need not be adequate to the promise, but it must be of certain value in front of law.

Example

'*C*' purchased an old cupboard of ₹ 1000 from '*D*'. It would be quite difficult but not impossible task for the court to determine whether the price paid by '*C*' was adequate (or) not (or) whether the cupboard was worth the price being paid.

5. It Must be Real and Not Illusory

A consideration must be real, competent and also of certain value in the eyes of the law even though it may be inadequate. The real consideration is not present in the following cases,

(a) Physical Impossibility

For example, '*C*' promises '*D*' to put life into *D*'s dead wife and for which '*D*' must pay him ₹ 1000. '*C*s' promise is physically impossible to perform.

(b) Legal Impossibility

For example, '*C*' hires '*D*' for specific work and promises to pay a 'reasonable' amount as there is no recognized technique of determining the reasonable remuneration. The promise made by '*C*' is unenforceable as consideration is sound to be uncertain.

(c) Illusory Consideration

For example, the two crew members of a ship deserted it half way by a voyage. The captain therefore promised to equally divide the salary of the deserters among the rest of the crew if they brought the vessel home. In this case, they could not claim the amount as the consideration was illusory and they were already in an agreement to bring the vessel home.

Q8. Discuss types of consideration. What will happen if consideration is missing in an agreement? *Jan.-19, Q6(a)*

OR

"A contract without consideration is void" Explain.

(Refer Only Topics: Importance of Consideration in an Agreement)

Answer : *June/July-09, Q2(a)*

Types of Consideration

The different forms of consideration are as follows,

1. Executed Consideration

A consideration which includes past (or) present performance is termed as executed consideration. Generally, executed consideration is something actually done, forborne (or) suffered with the making of the contract. When a consideration is already done based on response to a promise, it is observed as executed consideration. In this form of consideration, one party has already performed his promise and the other party has to perform his promise.

2. Executory Consideration

A promise to do (or) forbear (or) suffer in the future is termed as executory consideration. It is a promise in future. A promise that has to be performed by both the parties in future is executory consideration. In this form of consideration, liability is found to be outstanding on both the parties. A consideration is executory when it is to be done or completed in future.

3. Past Consideration

A past consideration is considered as valid. It is fully completed, forborne (or) suffered before dealing with agreement. A past consideration takes place when promisee has done (or) abstained from doing something. This form of consideration is backed by a future promise and the act is done without involving any promise.

4. Unlawful Consideration

The unlawful form of consideration is prohibited by law. A consideration is unlawful when it indicates any injury to the person (or) property of another and is fraudulent in nature. An unlawful consideration is observed/perceived by law as immoral (or) opposed to public policy.

5. Unreal or Illusory Consideration

A consideration for a promise is regarded as unreal (or) illusory when it is written simply in words. A consideration without any legal value is not a consideration. An unreal (or) illusory consideration takes place when it is physically (or) legally impossible to perform a promise.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Importance of Consideration in an Agreement

Consideration is found to be an essential element of contract and is regarded as the backbone. A contract without consideration is void contract. It enables in creating the legal rights between two parties. A law enforces only those promises which are made for consideration due to the fact that gratuitous (or) voluntary promises are mostly made roughly and without any due interest. The law looks adversely on an exchange of promises which would lead into one of the parties getting "something for nothing". It provides no source nor attempt any solution to force the performance of an agreement made without adequate consideration. A promise (or) undertaking which does not include consideration is null and void.

Example

If '*C*' promises to pay '*D*' ₹ 200 for nothing, *D* neither doing nor promising to do anything in return to compensate *C* for his money. Therefore, *C*'s promise has no force in law.

An offer made involving a promise not to end it and keep it open does not stop the offeror from revoking the offer, if it is not supported by consideration. Anson views consideration as offer and acceptance that inter relates the parties and comprise an outward view of a contract, but many systems of law need few additional evidence about the intention of the parties and in default of such evidence refuse to identify an obligation. In India, additional evidence about the intention of parties is provided by consideration while in England, additional evidence is provided by form and consideration. It is essential for consideration to have legal value and it must not be unreal consideration, if it is unreal then it is said to be no consideration at all.

1.5 CAPACITY TO CONTRACT

Q9. What is Capacity to contract? Who are the incompetent persons to contract? What are the effects of agreement made by incompetent persons to contract.

Model Paper-II, Q6(b)

OR

What do you understand by 'Capacity to contract'? What is the effect of agreement made by persons not qualified to contract.

(Refer Only Topics: Capacity to Contract, Effects of Agreement Made by Incompetent Persons to Contract)

Answer : *Jan./Feb.-20, Q6(a)*

Capacity to Contract

Capacity to contract refers to the competence of a person to sign or enter a valid contract. The people who are willing to sign the contract should possess the capacity to sign (or enter) the contract.

As per the Section 10, an agreement is said to be a contract when the parties signing the agreement are competent persons to contract. Section 11 outlines the following people as competent to the contract,

1. The people who have attained the age of individual as per the law to which they are subject.
2. The people who are mentally fit or the people of sound mind and
3. The people who are not disqualified to enter into contract by law to which they are subject.

Incompetent Persons to Contract

According to section 11, the following people are considered as incompetent persons to contract,

1. Minor
2. Person with unsound mind.
3. Person disqualified by law to contract.

Effects of Agreement made by Incompetent Persons to Contract

The persons not qualified to contract are minors, persons with unsound mind and person declared as disqualified by law. The effect of agreement made by persons not qualified to contract can be studied under three headings as follows,

1. Effects of Agreement Made by Minor

The effects of agreement made by minor are,

(a) Minor is considered as incompetent to contract. If any agreement is entered/signed by a minor then such agreement is considered as void ab initio and inoperative.

(b) In case of minor's agreement, parties to the agreement does not have any legal rights and obligations.

(c) In case of minor's agreement, minor will have an alternative to sure the opposite party but the opposite party cannot sue the minor on any ground.

2. Effects of Agreement made by Persons with Unsound Mind

The effects of agreement made by persons with unsound mind are,

(a) The agreements signed by persons of unsound mind are inoperative and absolutely void.

(b) In case if agreement is signed for necessities and necessities are supplied to person with unsound mind or his/her dependents then the property of unsound mind person will be liable for payment for such necessities.

3. Effects of Agreement Made by Person Declared as Disqualified by Law

Alien enemy, foreign sovereigns, insolvent, convicts, corporations etc., are the persons declared as disqualified by law. The effects of agreement made by such persons are,

(a) The agreement made with alien enemy is a void agreement.

(b) Foreign sovereigns can sign the agreements but they cannot be sued in our courts unless they submit themselves to the jurisdiction of our courts.

(c) Convict cannot enter into any agreement during his period of sentence, if he/she do so then such agreement is a void agreement.

(d) The corporation/company can enter into only those agreements which does not contradict object clause of its memorandum of association. If the agreements of company goes beyond object clause then such agreements are regarded as void.

(e) Insolvents cannot enter into agreements with respect to their property. If they do so then such agreements are considered as void.

Q10. Define Minor. Discuss the law relating to agreement with Minor.

OR

Discuss the validity of contracts by minors.

(Refer Only Topic: Law Relating to Agreement with Minor)

Answer :

Definition of Minor

Section 3 of the Indian Majority Act, 1875 defines the minor as a person who has not attained the age of eighteen years. A minor reaches the age of majority after twenty one years of age in the below mentioned two situations,

1. When the court of wards take care of the minor's property or
2. When the guardian of a minor or minor's property is appointed as per the Guardians and Wards Act, 1890.

Law Relating to Agreement with Minor

The position of a minor in the agreements signed by him/her can be explained with the help of following rules or laws of validity,

1. A Minor can be a Promisee or Beneficiary

The minor's incompetency to contract refers to the incompetency of a minor to abide by the rules of the contract. No one can stop a minor from taking up the role of beneficiary such as endorsee, payee or a promisee in a contract. According to law, a minor is a competent person to receive the benefits. In case of minor contracts, the minor will have an alternative to sue the other person but the other person cannot sue the minor on any ground.

Example

P a minor sold goods to *Q* (a customer) on a contract basis. Here, *P* can sue *Q* for getting the payment for the sold goods.

2. The Benefits Obtained by the Minor from Void Agreement cannot be Demanded for Compensation

According to Section 65, compensation has to be paid for entering into a void agreement. This rule is not applicable to the minors.

Example

'*A*', a minor took a loan by mortgaging his estate. As this is a minor agreement, a minor is neither responsible to payback the loan nor his/her estate can be used to payback the loan amount.

3. An Agreement entered with or by a Minor is Considered as Void Agreement and Inoperative ab Initio

The privacy council explained this point very clearly in Mohiri Bibi Vs Dharmodas Ghose case. In Mohiri Bibi Vs Dharmodas Ghose case, a minor for obtaining a loan amount of ₹ 20,000, mortgaged his property in the name of moneylender. From the ₹ 20,000 loan amount, the money lender gave ₹ 8000 to minor. Consequently, the minor sued for cancelling the mortgage by specifying that he was a minor when he/she mortgaged his/her property. Therefore, mortgage was considered as void and was cancelled. The money lender's request to minor for repaying ₹ 8000 which he paid as advance was also rejected.

4. The Agreement Signed by the Minor cannot be Changed by him after becoming Major

The consideration given by the person when he was a minor must not be taken as a consideration in the contract which he had signed after becoming a major. Therefore, the consideration given at the time of minority is not considered as consideration. If required, a new contract can be signed by the minor after becoming a major (but on the condition that the new contract should take new consideration into account).

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Example

'*A*', a minor took a loan of ₹ 10,000 from '*B*' and signs a promissory note in favour of *B*. After becoming major, '*A*' signs another promissory note for settling the first promissory note. The second promissory note is considered as void as no consideration is received for the second promissory note.

5. Minor is Incompetent to Enter into Partnership Contract

A minor is incompetent to enter into partnership contract but he can be allowed to obtain the benefits of an already existing partnership on the consent of all the other partners.

6. The Agreements Entered by the Minor might not Lead to Specific Performance as Minor Agreements are Void-Ab Initio

The agreement signed by the parent/guardian of the minor for the sake of minor can be specifically enforced by the minor or against the minor if the agreement is within the authority of the parent/guardian and for the welfare of minor.

7. Minor is Responsible to Pay for the Necessaries Supplied to him

A minor is responsible to pay for the necessaries supplied to him/her or necessary services provided to him/her or to the person to whom he has to support as per the law.

8. Minor's Parents/Guardian are not Considered as Liable for the Contract Signed by the Minor

In case, if the contract is signed by the minor for the supply of necessaries, then the minor's parents/guardian cannot be made liable/responsible. But, if minor is playing the role of an agent for parents guardian then the parents/guardian can be held responsible for the contract signed by the minor.

9. A Minor cannot be Declared as Insolvent

A minor cannot be declared as insolvent as he is incompetent to the debts of the contract.

10. A Minor is Held Liable for Illegal Act

A minor is liable for illegal act but if the illegal act or tort occurs out of a contract then he is held liable for that illegal act or tort as making minor liable for such illegal act is indirectly enforcing a void contract.

11. A Minor can be an Agent

An agent acts as a mediator between the principal and the third party. The agent disappears after bringing principal and third party together.

12. A Minor can Plead his Minority every Time

If a minor has signed the contract by showing him as major, then the other person cannot sue the minor for fraud as suing a minor for fraud is like enforcing a void contract.

For example, '*A*', a minor misrepresented his age and showed himself as a major to get a loan of ₹ 500 from '*B*' (other party). The minor after receiving the loan refused to payback the loan amount to *B*. *B* went to court to sue *A* for loan amount. Therefore, the contract was declared as void contract by the court as *A* is a minor and *A* is not held liable to repay back the loan amount.

Q11. When a person is said to be of unsound mind? Enlist different persons of unsound mind who cannot enter into contract.

Answer :

Unsound Mind

A person who is of unsound mind is incapable of entering into the contract. Soundness of mind is one of the important conditions of capacity to contract. Section 12 defines the soundness of mind as follows,

1. A person is said to be of sound mind for the purpose of making a contract if, at the time when he is capable of understanding it and of forming a rational judgment which effects its interests.
2. A person who is usually of unsound mind but occasionally of sound mind, may make a contract when he is of sound mind.
3. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Example

The patients who are mentally ill may enter into the contract in the occasions of sound mind.

Persons of Unsound Mind

The persons of unsound mind who cannot enter into the contract are as follows,

1. Idiots
2. Lunatics and
3. Intoxicated or drunken persons.

1. Idiots

An idiot refers to a person who does not have the power to think mentally. He does not have the capability to understand even simple matters. Idiocy is permanent unsoundness. Like minor contract, the contract of idiot is also considered as void.

2. Lunatics

A lunatic person suffers from unsoundness of mind periodically. The reasons behind lunacy may be mental stress or other personal experiences. The lunatic persons can enter into the contract when they are of sound mind.

3. Intoxicated or Drunken Persons

Intoxicated or drunken persons are not capable of entering into the contract temporarily. In other words, a person is not capable to contract when he is drunk or intoxicated as he does not have the capability to take a rational decision. The capacity to contract of drunken or intoxicated person is same as that of lunatic person.

The contract of persons of unsound mind are void contracts but the persons of unsound mind are held liable for the necessaries supplied to them or to the people whom they are legally bound to support. The liability of the persons of unsound mind is not the personal liability, only the property of the person of unsound mind is held liable.

Q12. Explain the people who are disqualified by law to contract.

Answer :

Under the provision of law, few persons have been disqualified from entering into a contract besides the minors and persons of unsound mind. They are,

1. Alien Enemy

A person who is the citizen of a foreign country is known as an alien. An alien can be an alien friend or an alien enemy. An alien whose country maintains good relations with the Republic of India is known as an alien friend. Usually, he possesses full contractual capacity, if war exists between an alien country and Republic of India, then it is termed as an alien enemy. The contractual capacity of alien enemy is as follows,

(a) During the war, the position of contracts in an alien enemy is not allowed to enter into any contract nor can be sued in any Indian court except by licence from the central government.

(b) Position of contracts which are entered before the war, contracts are dissolved which are against the public policy or those which benefits the enemy. Contracts which are not against public policy are suspended during the period of war and revived after the war.

2. Foreign Sovereigns and Ambassadors

Foreign sovereigns and ambassadors may enter into the contracts and impose those contracts in our courts without the approval of central government but they cannot be sued in our courts unless they submit themselves to the jurisdiction of our courts.

Note

(a) A former king can be sued in our courts.

(b) If foreign sovereign etc., enters into contract via an agent living in India, then this agent would be liable on the contract.

3. Convicts

During the period of sentence, a person is referred as a convict. The contractual capacity of convict is as follows,

(a) Convict cannot enter into any contract during his period of sentence.

(b) Convict can enter into a contract and sue on a contract only after the completion of the period of sentence or when he is released on bail.

4. Company under the Companies Act or Statutory Corporation under the Special Act of Parliament

The contractual capacity of the company and the statutory corporation is as follows,

(a) The contractual capacity of the company is ascertained by the 'object clause' of its memorandum of association.

(b) The contractual capacity of statutory corporation is ascertained by the statute creating it.

If anything is done beyond its power is termed as ultra vires (i.e., beyond power) and is therefore regarded as void.

5. Insolvents

If debts of a person are more than his assets, then he is regarded as insolvent and his property is handed over to the official receiver or official assignee who is appointed by the court. These type of persons,

(a) Cannot enter into contracts with respect to their property

(b) Cannot sue

(c) Cannot be sued.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

1.6 FREE CONSENT

Q13. What is free consent? Explain the characteristics of free consent.

Answer : *Jan.-18, Q6(b)*

Meaning of Free Consent

The term consent is referred as an act of assenting or acceptance to an offer. In Sec. 13, it is explained that "Two or more persons are said to be in consent when they agree upon the same thing in the same sense". Therefore, consent involves identity of minds with regards to the subject matter of the contract. In English law, it is referred as 'consensus-ad-idem'.

One of the essential elements of a valid contract is free consent, as in Sec. 10 it is mentioned that all agreements are contracts if they are made by free consent of parties.

Characteristics of Free Consent

Following are the characteristics of free consent,

1. Free consent of the parties is a requisite for valid contract.
2. For a free consent, there must be mutual agreement between the parties. In a contract, mutual agreement between the parties is said to be missing when their consent is obtained by coercion, undue influence, fraud, misrepresentation and mistake.

(a) Coercion

As per section 15, a contract is regarded to have taken place by coercion, if it is acquired by committing any act or threatening to perform any act that is restricted by the Indian penal code, illegal holding of any property and threatening to detain any property.

(b) Undue Influence

As per section 16, a contract is said to be induced by undue-influence, where the relations subsisting between the parties are such that one of them is in a position to dominate the will of the other.

(c) Fraud

As per section 17, fraud include acts either committed by a party to a contract or by agent with the aim to deceive another party or agent or to persuade them to enter into the contract.

(d) Misrepresentation

As per section 18, A wrong representation which is either innocently or intentionally made is termed as misrepresentation.

(e) Mistake

As per section 20, 21 and 22, when a person decides to do nothing and does something else due to error, it is known as mistake.

3. Consent of person in a contract is said to be free, if it is not induced by coercion, undue Influence, Fraud, misrepresentation and Mistake.
4. During an agreement, the consent of a person is said to be free, if it is not caused by any kind of fear or induced ignorance.
5. Consent is said to be free if the non-existance of these causes where the first two are considered as sources of fear and the last three are sources of induced ignorance.

Q14. What is free consent? Explain the factors affecting free consent.

Answer : *May-13, Q2(a)*

Meaning of Free Consent

The term consent is referred as an act of assenting or acceptance to an offer. In Sec. 13, it is explained that "Two or more persons are said to be in consent when they agree upon the same thing in the same sense". Therefore, consent involves identity of minds with regards to the subject matter of the contract. In English law, it is referred as 'consensus-ad-idem'.

Factors Affecting Free Consent

The free consent is mainly affected by the following factors,

1. Coercion and Undue Influence

(a) Coercion

When a person is forced by using pressure or threat to enter into a contract it is known as coercion. According to Sec. 15, a contract is regarded to have taken place by coercion if it is acquired by performing the following,

(i) Committing any act which is restricted by the Indian Penal Code

(ii) Frightening to perform any act that is restricted by the Indian Penal Code

(iii) Illegal holding of any property

(iv) Frightening to detain any property.

Example

Ramesh beats Suresh and forces him to sell his house for ₹ 5,00,000. Here Suresh's consent is acquired by coercion because beating someone is an act of offence under the Indian Penal Code.

(b) Undue Influence [Section 16(1)]

When the will of a person is dominated by the other person in order to gain unfair advantage, it is termed as undue influence. According to Sec. 16(1), undue influence is defined as "A contract is said to be induced by undue influence,

(i) Where the relations subsisting between the parties are such that one of them is in a position to dominate the will of the other.

(ii) The dominant party uses that position to obtain an unfair advantage over the other".

2. Misrepresentation

A wrong representation which is either innocently or intentionally made is termed as misrepresentation. A representation is a statement of fact which one party makes in the process of negotiations with an intention of persuading the other party to enter into a contract. It can be expressed either by words or by writing or can be understood from the acts and conduct of both the parties.

According to Section 18 misrepresentation occurs when,

(a) A person optimistically believes that a fact is true even though the available information may not allow it to be so, but still that person believes it to be true.

(b) When there is a branch of duty by a person which carries a benefit to the person involved in it by misleading another to his prejudice.

(c) When a party causes misrepresentation innocently, the other party in the agreement to make a mistake as to the matter of thing which is already the subject of the agreement.

Example

While selling a mare (female horse) '*X*' says to '*Y*' that the mare is completely healthy. '*X*' believes that the mare is genuinely healthy even though he does not have a proof to believe it. But '*Y*' later on finds the mare to be unhealthy. This representation made by '*X*' is a complete misrepresentation.

3. Fraud

An act of false representation made intentionally by one party with a view to deceive the other party is termed as fraud. Sec. 17 include acts either committed by a party to a contract or with their connivance or by agent with the aim to deceive another party or agent or to persuade them to enter into the contract. The acts represented by Sec. 17 are as follows,

(a) The suggestion that the fact is true and even the person giving the suggestion does not believe it to be true.

Example

If '*A*' sells a locally manufactured product to '*B*' by claiming it to be an imported one and sells them at a higher price, than it is considered as fraud.

(b) Active concealment of a fact by a person being aware about the fact.

Example

An '*A*' furniture dealer after knowing about the cracks in a furniture attempts to cover them by using some packing material and polishing in such a manner that the buyer even after thorough examination could find out the defects, and this contributes to fraud through active concealment.

4. Mistake

When a person decides to do nothing and does something else due to error, it is know as mistake. Mistake is an incorrect or false belief about something. Mistake is an erroneous belief about something.

Types of Mistakes

Mistake is of two types,

(a) Mistake of law and

(b) Mistake of fact

(a) Mistake of Law

It is further classified into,

(i) Mistake of law of the country or

(ii) Mistake of law of a Foreign country.

(b) Mistake of Fact

It can be classified as,

(i) Bilateral mistake or

(ii) Unilateral mistake.

1.7 LEGALITY OF OBJECT

Q15. Under what circumstances is the object or consideration of contract deemed unlawful? Illustrate with an example.

Answer : *July-10, Q2(b)*

Section 23 of the Indian Contract Act, 1872 states that the consideration or the object of an agreement is unlawful under the following circumstances,

1. If it is forbidden by law
2. If it defeats the provisions of any law
3. If it is fraudulent
4. If it involves or implies injury to a person or property of another,
5. If the court considers it as immoral or opposed to public policy.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

1. If it is Forbidden by Law

When the object (or) the consideration of an agreement is the performance of an act which is forbidden by law (or) prohibited by law then the agreement becomes void and an act is forbidden by law if it is punishable either by criminal law of the country (or) by any special registration.

Examples

(a) 'Y' promises 'X' to drop a prosecution which he has instituted against X for robbery and X promises to restore the value of the things taken. The agreement becomes void because the X Vs Y object concerned here is unlawful. (Example: William Vs Bayley).

(b) A loan has been granted by Z to the guardian of Y, who is minor that can help him to do minor's marriage i.e., Y's marriage. It was held that Z cannot recover the amount of loan as the agreement is void due to unlawful object since minor's marriage is illegal. [C. Srinivas Vs K. Raja Rama Mohana Rao]

2. If It Deceits the Provisions of any Law

If in case the object (or) consideration of an agreement deceits the provisions of any law, then such an agreement is void.

Example

A borrow a sum of ₹ 10,000 from B and agreed not to raise any objection as to the limitation and B may recover the amount after the expiry of limitation period. The agreement is void since it deceits the provisions of the law of limitation act. [Rama Murthi Vs Goppayya]

3. If it is Fraudulent

If in case the object of an agreement is to defraud others, the agreement is said to be void.

Example

X, an agent for a landed proprietor agrees to receive money from Y, to get leased land without any knowledge of his principal. The agreement between X and Y becomes void because it implies a fraud by concealment of facts by X, to his principal.

4. If it Involves or Implies Injury to a Person (or) Property of Another

When the object of an agreement aims at injuring a person (or) property of another, then the agreement becomes void.

Example

A promises to pay sum of ₹ 20,000 to B if he agrees to publish a libel i.e., defamatory article against someone. It was held that B cannot recover the amount as this agreement is void since it involves injury to someone. [Clay Vs Yates]

5. If the Court considers it as Immoral (or) Opposed to Public Policy

The agreement becomes void when the object (or) consideration is opposed (or) immoral to the public policy.

Example

A has given a sum of ₹ 20,000 to B, a married woman to take divorce from her husband and A agrees to marry her as soon as she obtains divorce. It was held that A cannot recover the amount as the agreement made is void agreement because the object of this agreement was immoral.

Q16. What is unlawful and illegal agreement? Explain the effects of illegal agreement.

Answer :

Unlawful Agreement

An unlawful agreement is similar to a void agreement or is same like the void agreement which is not enforceable by law. It is nothing but void-ab-initio and is destitute of legal effects altogether where it influences only the immediate parties and has no further consequences.

Illegal Agreement

While an illegal agreement means an agreement which is not only void between immediate parties but also influences in the future when the collateral transactions to it becomes void with illegality.

Example

A lend sum of ₹ 10,000 to Z to help him to buy few illegal goods from X, an alien enemy. When Z enters into an agreement with X, the agreement will be illegal agreement and the agreement between Z and A will also become illegal, being collateral to the main transaction which is illegal. Thus, A cannot recover the amount from Z on the other hand, A could recover the amount if in case he was unaware of the purpose of loan.

Effects of Illegal Agreement

The effects of illegality can be summed up as follows,

1. The collateral transactions to an illegal agreement becomes fraudulent with illegality and they are treated as illegal inspite of they being lawful by themselves.

2. No action can be taken against the following,

(a) Towards recovery of money paid (or) transferred property under an illegal agreement and

(b) For the breach of an illegal agreement.

3. In case of equal guilt in an illegal agreement the status of defendant is better when compared with the plaintiff. The plaintiff (innocent party) can sue to recover money paid (or) property transferred in the following situations,

(a) If he is not in pari delicto [equally guilty] with the dependent. For example, where he was about to enter into an agreement by fraud, undue influence (or) coercion.

(b) Where he should not depend upon the illegal transaction. [Sajan Singh Vs Sardora Ali (1960) A.C. 167]

(c) Where a substantial part of illegal transaction is not yet performed and he is truly and genuinely repentant. [Bigos Vs Boustead, (1951) All E.R. 92]

1.8 PERFORMANCE OF CONTRACT

Q17. What is Performance of Contract? Discuss types of performance and types of tender.

OR

Explain how a contract is performed.

(Refer Only Topic: Types/Ways of Performance of Contract)

Answer : *Oct./Nov.-21, Q6*

Performance of Contract

Performance of the contract is one of the different methods of fulfilling the contract. The contract is said to be performed when the two parties to a contract either perform or aims to perform their respective promises.

As per the Section 37 of the Indian Contract Act, the obligation of the parties about the performance is, "the parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of this act or of any other law".

Types/Ways of Performance of Contract

A contract can be performed in two ways, actual performance or attempted performance. The following are the two different types of performance,

1. Actual Performance

If an offeror/promisor has made an offer of performance to the offeree/promisee and if the offeree accepts the offer, then it is referred to as actual performance.

Example

If a textile manufacturer promises to a retail textile seller that he (manufacturer) would provide ten varieties of qualitative garments by the end of month and if he delivers the promised varieties and the retailer accepts it, then it is an actual performance.

2. Tender (Attempted Performance) [Section 38]

If an offeror makes an offer of performance to the offeree/promisee but if the offeree does not accept the promise, then it is called as an attempted performance or tender (Section 38).

Example

In the above example, if the promisee does not accept the delivered goods, (i.e., garments) then it becomes an attempted performance as the promisor or offeror has completed his duty as per the contract.

In this case, i.e., in attempted performance, the promisor is neither responsible for non-performance of the contract nor he will loose his rights under the contract.

Types of Tender

There are two types of tenders as follows,

(a) Tender of Goods or Services

When an offeror/promisor makes an offer to deliver goods and services to the offeree/promisee but if the promisee/offeree does not accept the offer of delivery, then such tender is referred to as tender of goods or services.

Effects

(i) There is no need of offering the goods and services again.

(ii) As promisee is responsible for the non-performance of the contract, the promisor can sue him.

(iii) The promisor can be relieved from his responsibilities.

(b) Tender of Money

If an offeror makes an offer to pay some money to the offeree, but if the offeree does not accept it, then it is referred to as tender of money.

Effects

(i) The offeror cannot get rid of his responsibility to pay money.

(ii) The offeror is not responsible to pay the interest from the date of a valid tender.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Q18. Explain the term Tender. What are the essentials of a valid tender?

Answer :

Tender

If an offeror makes an offer of performance to the offeree/promisee but if the offeree does not accept the promise, then it is called as an attempted performance or tender (Section 38).

Essentials of a Valid Tender

The following are the essentials of a valid tender,

1. Unconditional

Any tender should be unconditional i.e., they should not be confused by any type of conditions.

A tender is considered to be unconditional if it made as per the terms of the contract.

Example

If a farmer '*F*' offers to provide one ton of rice to a manufacturer of rice '*M*', on a condition that if he (manufacturer) sells one of his machine to him. As this is a conditional tender and is therefore found to be invalid.

2. At Appropriate Time

The tender should be made at an appropriate time, i.e., as per the time specified in agreement. If the time is not specified in the agreement then it should be made during the business hours.

Tender of goods or money becomes invalid, if it is made before the due data.

3. At Appropriate Place

The tender should be made at an appropriate place, i.e., as per the agreement or at promisee's business place which is specified in the articles of association.

If there is no such business place, it can be done at promisee's house.

4. Reasonable Chance to Promisee

Tender should facilitate the promisee with a reasonable chance to determine as to whether the goods offered are as the promisor was supposed to deliver.

5. For Complete Obligation

The tender should not be for a part of obligation but it should be for the complete obligation. Anyhow, the tender does not become invalid, if there is only a small deviation from the terms of contract.

But if the tender goes beyond act or goes very less from the terms of contract, then it becomes invalid.

Example

If the contract between '*P*' and '*Q*' is to deliver 100 kgs of black gram by '*P*' to '*Q*'. If the delivery is made for only 98 kgs or 102 kgs then it is a valid tender, but if the delivery is of 80 kgs or 130 kgs, then it is an invalid tender.

6. To an Appropriate Person

The tender should be made to an offeree or his duly authorized agent but it becomes invalid if it is made to an unauthorized person or a stranger.

If the tender is made to any one of the several joint promisees, then it has the same effect as a tender to all of them.

7. Of Exact Amount and in Legal Tender

The tender of money should be of exact amount and it should be a legal tender.

Q19. (a) Enlist the persons who can perform the contracts.

(b) List out the circumstances under which contracts need not be performed.

Answer :

(a) Persons Who Can Perform the Contracts

A contract can be performed by the following persons,

1. Promisor himself
2. Promisor's agent
3. Legal representatives
4. Third party [section 41]
5. Joint promisors [section 42].

1. Promisor Himself

If in case a contract includes person's skills, preferences etc., then the promisor himself needs to perform the contract.

As per Section 40, "if it appears from the nature of the case, that it was the intention of the parties to any contract that any promise included in it needs to be performed by the promisor himself, such promise should be fulfilled by the promisor".

Example

If '*P*' promises '*Q*' that he will develop a software for his company, then '*P*' must fulfil his promise personally.

2. The Promisor's Agent

If the contract is not of personal nature, and if the parties to the contract are not definite that the contract must be fulfilled by the promisor himself, then such contracts can be performed by the promisor himself or his agent.

Example

'*P*' promises '*Q*' the delivery of the goods, this promise can be fulfilled by '*P*' either by personally delivering the goods or by asking his agent to deliver the goods. If suppose '*P*' dies before delivering the goods, then his agent needs to fulfill the promise or even the other appropriate person can be appointed to fulfill the promise.

3. Legal Representatives

If in case the promisor dies, after entering into a contract, then his legal representative can carry out the contract unless any contradictory intention rises up or if the contract is personal in nature, then legal representative cannot perform the contract. As per the rule of law, "a personal cause of action comes to an end with the death of the concerned person".

Examples

If husband promises his wife to take her out for a movie on some particular day, but suppose if he dies before that particular day, then his legal representative cannot fulfill the contract. If '*P*' promises to deliver goods to '*Q*' on a certain specific day, but if '*P*' dies just before one day then his legal representative can deliver goods to '*Q*'.

4. Third Person/Third Party [Section 41]

Section 41 states that, "if a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor", i.e., a contract can be carried out by the third party, if promisee accepts the agreement.

5. The Joint Promisors [Section 42]

If suppose many promisors are present, and if no contradictory intentions rises up, then the promise can be performed by the following persons,

(i) If all the promisor are alive, then they can perform the promise mutually.

(ii) If any of the joint promisors expires, then the representatives of expired promisors along with the promisors survival can perform the promise.

(iii) If all the joint promisor expires, then all their representatives can perform the promise jointly.

Example

P, *Q*, *R* together entered into a contract of constructing a house within a specific time with '*S*'. But '*R*' expires in the middle of contract, then his representative along with the '*P*' and '*Q*' are supposed to carry out the promise within the prescribed specified time.

(b) Circumstances Under Which Contracts Needs to be Performed

The following are the circumstances, where in the parties of a contract need not perform the contract,

1. As per section 56 of the Indian Contract Act, if the performance of a contract becomes impossible then the parties need not perform the contract.
2. The promisor need not perform the contract, if the promisee ignores or refuses to provide the required information or facilities. For example, '*P*' promises '*Q*' that he will repair *Q*'s building. When '*P*' requests '*Q*' to show *Q*'s building, '*Q*' ignored or refused to show his building. Under this situation, '*P*' need not perform his duty. '*P*' is excused for non-performance of the contract.
3. As per section 62 of the Indian Contract Act, if the parties agree to substitute the old contract with a new contract either through 'Novation' or 'Rescind' or wants to change the terms and conditions of the old contract then under such a situation the parties are excused for the non-performance of original contract.
4. As per section 64 of the Indian Contract Act, if the party at whose option a contract is voidable, repudiates the contract then the other party contract need not perform the contract.
5. When the promisee excuses the promisor from performing the whole or part of the contract, then in such a case the promisor need not perform the contract.
6. When promisee extends the time limit set for the performance of contract, then the promisor need not perform the contract.
7. If the promisee accepts that performance which is not specified in the contract then under such a situation the promisor need not perform the contract.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

1.9 REMEDIES FOR BREACH OF CONTRACT

Q20. Define performance of contract and breach of contract. What are the remedies for breach of contract. *Model Paper-I, Q6(b)*

OR

What is breach of contract? What are the remedies for breach of contract? *Feb.-17, Q6(b)*

(Refer Only Topics: Definition of Breach of Contract, Remedies for Breach of Contract)

OR

What do you mean by performance of contract? Explain the remedies available for breach of contract. *Jan.-18, Q6(a)*

(Refer Only Topics: Definition of Performance of Contract, Remedies for Breach of Contract)

OR

Explain the remedies available for breach of contract. *July/August-18, Q6(b)*

(Refer Only Topic: Remedies for Breach of Contract)

OR

What are the remedies for breach of contracts. *(July/August-17, Q6(b) | July/August-16, Q2(a))*

(Refer Only Topic: Remedies for Breach of Contract)

OR

Enumerate the remedies for breach of contracts.

(Refer Only Topic: Remedies for Breach of Contract)

Answer :

Definition of Performance of Contract *Jan./Feb.-11, Q2(b)*

Performance of the contract is one of the different methods of fulfilling the contract. The contract is said to be performed when the two parties to a contract either perform or aims to perform their respective promises.

Definition of Breach of Contract

When an obligation involved in a contract is broken then it is termed as breach of contract. If a party to contract does not fulfill his contractual obligation and make the performance of contract impossible then he is liable for damages incurred by injured party.

Remedies for Breach of Contract

The following are the remedies available for the injured party at the time of breach of contract,

1. Rescission of the Contract

If one party breaks the contract then the other party can sue for considering the contract as cancelled and rejecting to perform further. In this situation, he becomes aware of all his obligations under the contract.

Example

X promises to sell his car to *Z*, and *Z* agrees to make payment on delivery of car. But if *X* does not deliver the car then *Z* is discharged from liability to pay the price.

Rescission is granted by the court when,

(a) Plaintiff considers the contract as voidable, or

(b) Contract is unlawful as the causes are not clear and the defendant is blamed more than plaintiff.

Section 27 of the specific relief Act, 1963 outlines the situations in which the court may not cancel the contract,

(a) When the contract is either expressly or impliedly approved by the plaintiff, or

(b) When the parties cannot occupy their original positions due to the changing conditions, or

(c) When the third parties have acquired rights in good faith and for value while maintaining the contract, or

(d) When the parties agree to cancel only a part of contract but that part cannot be separated from the rest of the contract.

2. Suit for Damages

Damages are referred to monetary compensation allowed to injured party as a remedy for breach of contract. The purpose of providing damage is to put the injured party in the same position as he/she was before the occurrence of loss.

3. Suit Upon Quantum Meruit

The meaning of the term 'Quantum Meruit' is 'as much as earned'. An obligation to sue on a quantum meruit occurs when a contract is performed by one party to some extent and becomes discharged by the breach of contract of other party. Thus, the party is not sued for original contract that has been discharged but for implied promise made by the other party to pay in the event of breach.

4. Suit for Specific Performance of the Contract

Damages are not always an appropriate remedy for the breach of contracts. In such situations the court may address the party in the breach to perform his promise based on the terms and conditions of the contract. It is a direction for specific performance of the contract by the court in convenience of the party which is not in the breach.

The following are the situations, wherein the specific performance of a contract can be enforced in the responsibility of the court,

(a) When non-performance of act cannot be compensated in money as it is an inadequate relief.

(b) When actual damage for non-performance of act cannot be determined.

(c) When it is not possible to get the compensation in terms of money for the non-performance of act.

The following are the cases wherein specific performance will not be provided,

(a) When damages are regarded as an appropriate remedy.

(b) When contract is not specific or unfair to either party.

(c) When contract is revocable by its nature.

(d) When trustees make the contract in breach of their trust.

(e) When contract involves a personal matter (E.g.: A contract to marry).

(f) When the contract is made by accompany on the basis of the powers mentioned in the memorandum of association, and

(g) The performance of those contracts which cannot be supervised by the court. (E.g.: A contract for painting a house).

5. Suit for Injunction

Injunction refers to the order given by the court to restrict the party in breach from performing what he promised not to perform. Usually, providing an injunction by the court is discretionary, but court normally refuses to grant an injunction to restrict the breach of a contract,

(a) Wherein promisor make commitment not to do something.

(b) Which is negative in substance eventhough it is not in form.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Q21. What do you mean by the term 'Damages'? State the various rules for awarding damages under breach of contract.

OR

State briefly the principles on which damages are awarded on the breach of a contract.

(Refer Only Topic: Rules/Principles for Awarding Various Types of Damages Under Breach of Contract)

Answer : *Jan./Feb.-20,Q6(b)*

Damages

Damages are referred to monetary compensation allowed to injured party as a remedy for breach of contract. The purpose of providing damage is to put the injured party in the same position as he/she was before the occurrence of loss.

Rules/Principles for Awarding Various Types of Damages under Breach of Contract

The following are the various rules of contract. For awarding various types of damages under breach of contract,

1. Ordinary Damages or Damages Arising Naturally

If a contract is broken due to the breach of one party then injured party is liable to recover damages from other party. Such damages arises naturally, directly in usual course of business due to breach. These damages are known as ordinary damages.

Example

'*P*' has a contract to sell 50 quintal of rice to '*Q*' at ₹ 500 per quintal and payment is to be done at the time of delivery. But on delivery date the price of rice increased by ₹ 550 per quintal and '*P*' refused to sell the rice. '*Q*' is entitled to claim for damage from '*P*' for breach of contract.

2. Special Damages or Damages in Contemplation of the Parties

Special damages can be recovered due to the breach of contract. Where the purpose of contract was already brought into the notice of the party. But, if party fails to serve the purpose according to the contract then injured party is eligible to claim for damages. Special damages can be claimed only in special circumstances.

Example

'*B*' a trader deliver some goods to railway company and asked them to deliver at a place where festival was to be held. On the consignment note it was clearly instructed that it should be delivered before Saturday. But, railway authorities failed to deliver the goods on specified day. '*B*' is liable to recover his damages or loss of profit from railway company.

3. Vindictive or Exemplary Damages

Vindictive or exemplary damages has no place in contract of law as they are punitive in nature (involving punishment). But in few cases these damages are compensated,

(a) In case of breach of promise to marry and

(b) In case of wrongly dishonouring of cheque by banker. [Even after having sufficient funds to honour].

4. Nominal Damages

Nominal damages refer to nominal loss. Where injured party does not suffer any loss due to breach of contract. This loss is very small. It is just to acknowledge that plaintiff has proved his point and won.

5. Damages for Loss of Reputation

Such damages are generally not recoverable, but in some exceptional cases it is awarded.

Example

If a banker wrongly refuses to honour the cheque of trademan then that trademan is eligible to claim the damages for the loss of reputation in the market. Even it has a rule i.e., the smaller the value of dishonour cheque the higher will be the compensation award.

6. Damages for Inconvenience and Comfort

Under this, damages are claimed for the physical inconvenience and discomfort suffered by the injured party.

Example

'*A*' with his wife and children took bus tickets for a particular place but bus has dropped them 5 km before their destination. Due to mid-night, '*A*' and his family were unable to get other transportation facility so they have walked to reach their destination and suffered physical inconvenience. So '*A*' is liable to recover damage.

7. Mitigation of Damages

It is the duty of injured party to take all necessary steps to mitigate the loss consequent to the breach. His claim of loss is eligible to extend of breach only but not to his negligence of mitigating the loss.

8. Cost of Decree

The injured party is entitled to recover damages along with the cost of decree.

9. Damages Agreed upon in Advance

Under this, injured party is entitled to recover damages only to an extend agreed in contract to be paid at the time of failure of performance or breach of contract. Under Sec. 74 a reasonable amount is agreed between both the parties in advance for a breach of contract.

Example

In a contract between '*P*' and '*Q*' '*P*' promises to pay ₹ 500 on Monday, if he fails to pay then ₹ 1000 will be paid to '*Q*' as a compensation.

SHORT QUESTIONS AND ANSWERS

Q1. Define a contract and identify the essential requirement of a contract.

(Model Paper-II, Q1 | July/August-18, Q1)

OR

Essentials of valid contract.

(Refer Only Topic: Essential Requirements of a Contract)

Answer :

July/August-16, Q1(a)

Definition of Contract

A contract is an agreement between two or more parties which will be administered by law. As per Sec. 2(h) of the Indian Contract Act, "An agreement enforceable by law is a contract". Hence contract is an agreement, whose objective is to establish a legal obligation i.e., a duty enforceable by law.

Essential Requirements of a Contract

The essential requirements of a contract are,

1. Offer and acceptance
2. Purpose to establish legal relationship
3. Lawful consideration
4. Capacity of parties competency
5. Free consent
6. Lawful object
7. Writing and registration
8. Certainty
9. Possibility of performance
10. Not expressly declared void.

Q2. Free Consent

Answer :

(Nov.-20, Q1 | May/June-18,Q1 | April/May-14,1(b))

The term consent is referred as an act of assenting or acceptance to an offer. In Sec. 13, it is explained that "Two or more persons are said to be in consent when they agree upon the same thing in the same sense". Therefore, consent involves identity of minds with regards to the subject matter of the contract. In English law, it is referred as 'consensus-ad-idem'.

Q3. Coercion

Answer :

Jan.-19, Q1

When a person is forced by using pressure or threat to enter into a contract it is known as coercion. According to Sec. 15, a contract is regarded to have taken place by coercion if it is acquired by performing the following,

1. Committing any act which is restricted by the Indian Penal Code
2. Frightening to perform any act that is restricted by the Indian Penal Code
3. Illegal holding of any property
4. Frightening to detain any property.

Example

Ramesh beats Suresh and forces him to sell his house for ₹ 5,00,000. Here Suresh's consent is acquired by coercion because beating someone is an act of offence under the Indian Penal Code.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Q4. Consideration

Answer : *(Jan.-18, Q1 | July/August-16,Q1(b) | May-15,1(b))*

Consideration forms a vital part of a contract. It is considered as an important element of a contract. Consideration is a technical term used in the terms of "quid pro quo" which generally means "something in return". Usually, when one party to an agreement assures (or) promises to do something, he must get "something in return". This "something in return" is called as consideration.

Justice Patterson defines consideration as, "consideration means something which is of some value in the eye of law, it may be some benefit to the plaintiff (or) some detriment to the defendant".

According to Pollock, "consideration is the price for which the promise of other is bought and the promise thus given for value is enforceable".

Example

'*C*' agrees to sell a bike to '*D*' for ₹ 15,000. In this case, cost is the consideration for *D* and price is the consideration for '*C*'.

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

Q5. Capacity to Contract.

Answer : *(Feb.-17,Q1 | Jan.-14,1(b))*

Capacity to contract refers to the competence of a person to sign or enter a valid contract. The people who are willing to sign the contract should possess the capacity to sign (or enter) the contract.

As per the Section 10, an agreement is said to be a contract when the parties signing the agreement are competent persons to contract. Section 11 outlines the following people as competent to the contract,

1. The people who have attained the age of individual as per the law to which they are subject.
2. The people who are mentally fit or the people of sound mind and
3. The people who are not disqualified to enter into contract by law to which they are subject.

Q6. Void Contract.

Answer :

Void Contract *Aug.-21,Q1*

Section 2(j) of the Contract Act, 1872 defines,

A contract becomes void when it ceases to be enforceable by law.

A contract when actually entered into by both the parties may be valid or binding on the parties.

Example

Contract to import goods from Pakistan becomes void when a war breaks out between the importing country and the exporting country i.e., India and Pakistan.

Q7. Distinguish between Agreement and Contract. *(Model Paper-I, Q1 | Feb./Mar.-12,Q1(a))*

OR

Contract Vs Agreement.

Answer : *Feb.-13,Q1(a)*

The differences between agreement and contract are as follows,

S.No.	Basis	Agreement	Contract
1.	Definition	According to section 2(e), agreement is a promise or set of promises forming consideration for each other.	According to section 2(h), contract is an agreement that is enforceable by law.
2.	Equation	Agreement = Offer + Acceptance	Contract = Agreement + Enforceability by law.
3.	Nature	All agreements are not contracts.	All contracts are agreements.
4.	Legal relationship	In an agreement, the parties are not intended to create legal relationship.	In contracts, the parties should create a legal relationship between them.
5.	Legal agreement	Agreement can be a social or legal agreement.	The contract must be a legal agreement.

Q8. Explain legality of object.

Answer : *Oct./Nov.-21,Q1*

A contract is said to be valid, only if the object of the agreement is lawful i.e., the object should not be illegal, fraudulent, immoral or opposed to public policy or should not cause any damage to a person or property. If the object is unlawful then agreement would be void.

Section 23 of the Indian Contract Act, 1872 states that the consideration or the object of an agreement is unlawful under the following circumstances,

1. If it is forbidden by law
2. If it defeats the provisions of any law
3. If it is fraudulent
4. If it involves or implies injury to a person or property of another.
5. If the court considers it as immoral or opposed to public policy.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

FREQUENTLY ASKED QUESTIONS AND IMPORTANT QUESTIONS

ESSAY QUESTIONS

Q1. Explain the definition of contract and agreement. Explain classification of contract.

(August-21, Q6 | Feb.-17, Q6(a)) REPEATED 2 TIMES

Ans:

For answer refer Unit-I, Page No. 2, Q.No. 1.

Q2. Illustrate the distinction between void, voidable and illegal contracts.

(Important Question | Dec-08, Q2(a))

Ans:

For answer refer Unit-I, Page No. 4, Q.No. 2.

Q3. "All contracts are agreements but not all agreements are contracts". Explain.

(July/August-18, Q6(a) | May/13, Q2(b) | Jan./Feb.-11, Q2(a)) REPEATED 3 TIMES

Ans:

For answer refer Unit-I, Page No. 5, Q.No. 3.

Q4. Define contract and valid contract. What are the essential elements of a valid contract.

(Nov.-20, Q6 | May/June-18, Q6(a) | July/August-17, Q6(a) | Jan-14, Q2(b) | Oct./Nov.-21, Q7) REPEATED 5 TIMES

Ans:

For answer refer Unit-I, Page No. 6, Q.No. 4.

Q5. Explain the concept of Offer and Acceptance with suitable examples.

(Important Question | August-21, Q7))

Ans:

For answer refer Unit-I, Page No. 9, Q.No. 6.

Q6. What is consideration? What are the legal rules for valid consideration?

(Jan./Feb.-15, Q2(b) | May/June-15, Q2(a)) REPEATED 2 TIMES

Ans:

For answer refer Unit-I, Page No. 10, Q.No. 7.

Q7. Discuss types of consideration. What will happen if consideration is missing in an agreement?

(Jan.-19, Q6(a) | June/July-09, Q2(a)) REPEATED 2 TIMES

Ans:

For answer refer Unit-I, Page No. 11, Q.No. 8.

Q8. Explain the people who are disqualified by law to contract.

Important Question

Ans:

For answer refer Unit-I, Page No. 15, Q.No. 12.

Q9. What is free consent? Explain the characteristics of free consent.

(Important Question | Jan.-18, Q6(b))

Ans:

For answer refer Unit-I, Page No. 16, Q.No. 13.

Q10. What is free consent? Explain the factors affecting free consent.

(Important Question | May-13, Q2(a))

Ans:

For answer refer Unit-I, Page No. 16, Q.No. 14.

Q11. Under what circumstances is the object or consideration of contract deemed unlawful? Illustrate with an example.

(Important Question | July-10, Q2(b))

Ans:

For answer refer Unit-I, Page No. 17, Q.No. 15.

Q12. What is unlawful and illegal agreement? Explain the effects of illegal agreement.

Important Question

Ans:

For answer refer Unit-I, Page No. 18, Q.No. 16.

Q13. What is Performance of Contract? Discuss types of performance and types of tender.

(Important Question | Oct./Nov.-21, Q6)

Ans:

For answer refer Unit-I, Page No. 19, Q.No. 17.

Q14. Explain the term Tender. What are the essentials of a valid tender?

Important Question

Ans:

For answer refer Unit-I, Page No. 20, Q.No. 18.

Q15. (a) Enlist the persons who can perform the contracts.

(b) List out the circumstances under which contracts need not be performed.

Important Question

Ans:

For answer refer Unit-I, Page No. 20, Q.No. 19.

Q16. Define performance of contract and breach of contract. What are the remedies for breach of contract.

(Feb.-17, Q6(b) | Jan.-18, Q6(a) | July/August-18, Q6(b) | July/August-17, Q6(b) | July/August-16, Q2(a) | Jan./Feb.-11, Q2(b)) REPEATED 6 TIMES

Ans:

For answer refer Unit-I, Page No. 22, Q.No. 20.

SHORT QUESTIONS

Q1. Define a contract and identify the essential requirement of a contract.

(July/August-18, Q1 | July/August-16, Q1(a)) REPEATED 2 TIMES

Ans:

For answer refer Unit-I, Page No. 25, Q.No. 1.

Q2. Free Consent

(Nov.-20, Q1 | May/June-18,Q1 | April/May-14,1(b)) REPEATED 3 TIMES

Ans:

For answer refer Unit-I, Page No. 25, Q.No. 2.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Q3. Coercion.

(Important Question | Jan.-19, Q1)

Ans:

For answer refer Unit-I, Page No. 25, Q.No. 3.

Q4. Consideration

(Jan.-18, Q1 | July/August-16,Q1(b) | May-15,1(b)) REPEATED 3 TIMES

Ans:

For answer refer Unit-I, Page No. 26, Q.No. 4.

Q5. Capacity to Contract

(Feb.-17,Q1 | Jan.-14,1(b)) REPEATED 2 TIMES

Ans:

For answer refer Unit-I, Page No. 26, Q.No. 5.

Q6. Distinguish between Agreement and Contract.

(Feb./March-12,Q1(a) | Feb.-13,Q1(a)) REPEATED 2 TIMES

Ans:

For answer refer Unit-I, Page No. 26, Q.No. 7.

INTERNAL ASSESSMENT

I. Short Questions and Answers (2 Marks Questions)

Q1. Define Contract.

Answer :

A contract is an agreement between two or more parties which will be administered by law.

Q2. What is a void agreement?

Answer :

An agreement which not enforceable by law is said to be void.

Q3. What do you mean by consideration?

Answer :

Consideration is a technical term used in the terms of "quid pro quo" which generally means "something in return".

Q4. Define breach of contract.

Answer :

When an obligation involved in a contract is broken then it is termed as breach of contract.

Q5. Define Acceptance.

Answer :

Sec. 2(b) of the Indian Contract Act, 1872 defines acceptance as "A proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal on its acceptance becomes a promise".

II. Long Questions and Answers (5 Marks Questions)

Q1. Define a contract and identify the essential requirement of a contract.

Answer :

For answer refer Unit-I, Page No. 25, Q.No. 1.

Q2. Free Consent.

Answer :

For answer refer Unit-I, Page No. 25, Q.No. 2.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

UNIT 2

Law Relating To Special Contracts

SYLLABUS

Salient Features of Contract of Agency, Bailment and Pledge, Indemnity and Guarantee, Sale of Goods Act – Distinction Between Sale and Agreement to Sell – Conditions and Warranties. Negotiable Instruments Act – Definitions, Essential Elements and Distinctions Between Promissory Note, Bill of Exchange and Cheques – Types of Crossing.

LEARNING OBJECTIVES

After studying this unit, one would be able to understand,

- Concept of Contract of Agency and Salient Features of Contract of Agency.
- Concept of Bailment and Pledge.
- Concept and Differences Between Indemnity and Guarantee.
- Sale of Goods Act.
- Distinction Between Sale and Agreement to Sell.
- Conditions and Warranties.
- Negotiable Instruments and its Characteristics.
- Definition and Essential Elements of Promissory Note, Bill of Exchange and Cheque.
- Types of Crossing of cheques.

INTRODUCTION

The special contracts are contract of agency, bailment and pledge, indemnity and guarantee, sale of goods Act and Negotiable Instruments Act and so on. Contracts are formed by consensus. Law provides for rights and liabilities when parties have not set their own terms regarding a contract.

The term Bailment is derived from a french word 'bailer' which means to deliver. Delivery of goods by one person to another as a security for the repayment of a loan or performance of a contract is known as pledging of goods.

A Contract, under which one party promises to save another party from loss or damages, by the conduct of himself or by others, is known as "contract of indemnity". A contract under which a person guarantee's the performance of promise or discharge of liability to another person, due to default by a third party is known as "Contract of Guarantee".

Sale of Goods Act, 1930 contains information concerning laws related to sale of goods. A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

2.1 AGENCY – SALIENT FEATURES OF CONTRACT OF AGENCY

Q1. What is contract of Agency? What are the essentials/features of valid contract of Agency? *Model Paper-I, Q7(a)*

OR

Explain the salient features of contract of agency. *Nov.-20, Q8*

(Refer Only Topic: Essentials/Salient Features of Contract of Agency)

OR

Outline the important features of contract of Agency.

(Refer Only Topic: Essentials/Salient Features of Contract of Agency)

Answer : *Feb.-17, Q7(a)*

Contract of Agency

A person having a capacity to enter into a contract can enter either by himself or through another person. According to Section 182, a person who is engaged to do any act for another person or to represent another person in existing dealings with third party is termed as agent. The principal is a person for whom the agent acts or represents in dealing. The agent facilitates in establishing a contract between another person and third person, the fundamental purpose of an agent is to build a contractual relation between the principal and the third person. an agent acts as a connecting link between the principal and third parties. Any person can become an agent between the principal and third party whether he/she possess the contractual capacity or not even a minor or lunatic can also act as an agent). According to the law, any person who is a major and is of sound mind can employ an agent. A person having unsound mind/lunatic or a minor cannot employ an agent even but a guardian of a minor can appoint an agent to minor.

Essentials/Salient Features of Valid Contract of Agency

The Essentials/Salient Features of Valid Contract of Agency are,

1. **Agreement between the Principal and the Agent**

According to Section 185, a consideration is not essential for creating an agency. The consent of principal to be represented by the agent is an adequate detriment to the principal for dealing with the contract of agency.

Agency completely relies on agreement and not contract. Any person can become an agent between the principal and third persons a minor or a lunatic can also become an agent but the principal will be responsible for the acts of an agent.

2. **Intention of the Agent to Act on Behalf of the Principal**

The willingness of a person to act on behalf of another person is very important in the relationship of agency. The agency emerges after the willingness of a person to act on behalf of another person even though the contract between the parties does not represent such relationship.

3. **Consideration is not Required**

In case of contract of agency, consideration is not required [section 185]. Agency relationship can be created without consideration.

4. **Capacity of a Person to Act as Principal**

According to section 183, the principal must be competent (i.e., he/she must be major and of sound mind) to enter into a valid contract of agency. Incompetent person like minor, lunatic or person of unsound mind cannot appoint an agent. If a competent agent is representing an incompetent principal then under this situation, agent is personally held liable to the third party for the acts of the principal.

5. **Capacity of a Person to Act as an Agent**

As per section 184, any person can act as an agent. Contractual capacity of an agent is not considered in contract of agency. Incompetent persons to contract like minor, Lunatic or a person of unsound mind may act as an agent. An incompetent agent is no way liable to the principal. Infact, the principal who had appointed incompetent person as agent will be at risk.

2.2 BAILMENT AND PLEDGE

Q2. Define Bailment. Discuss the features and types of bailment.

Answer :

Definition of Bailment

Sec. 148 of the Contracts Act defines Bailment as "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 directions of the person delivering them. The person who delivers the goods is called the bailor and the person to whom they are delivered is called the bailee".

Example

A handed over certain ornaments to B to be used in a religious possession. The ornaments has been taken on loan and the transaction was one of the nature of bailment.

Bailment means a delivery of goods on condition to redeliver the goods when the condition is satisfied.

Essential Features of Bailment

The essential features of bailment are,

1. Delivery Possession

The first important feature of bailment is the delivery of goods from one person to another. Delivery involves change of possession from one person to another and not change of ownership. At the same time, mere custody without possession does not create bailment.

2. Delivery of Goods must be for Some Purpose

The delivery of the goods must be for some purpose. If the goods are delivered by mistake, there is no bailment. Goods must be delivered with the agreement that after the purpose for which they are delivered is accomplished, the goods will be returned.

3. Contract

Bailment is based upon a contract between the parties. The relationship of bailor and bailee is the creation of a contract.

4. Return of Goods

Bailment of goods is always for some purpose and is subjected to the condition that when this purpose is achieved, the goods will be returned to the bailor or disposed off according to his direction.

Types of Bailment

Bailment may be classified into different types as follows,

1. Voluntary Bailment and Involuntary Bailment

Voluntary bailment comes out of an express contract between the parties, whereas involuntary bailment arises by the operation of law.

Involuntary bailment arises in case of finder of goods. Gratuitous and non-gratuitous bailment : When the bailee keeps the goods for the bailor without expecting any reward it is gratuitous bailment and when some consideration passes between the parties it is non-gratuitous bailment or bailment for reward.

Example : A motor car let out for hire, articles given to a person for being repaired for remuneration etc., are examples of voluntary and involuntary bailment.

2. On the Basis of Benefit

Bailment may also be classified in accordance with the benefit derived by the parties, such as

(a) Bailment for the exclusive benefit of the bailor

(b) Bailment for the exclusive benefit of the bailee

(c) Bailment for mutual benefit.

Q3. Define Bailment. Discuss the rights and responsibilities of bailee. *Jan.-19, Q7(a)*

OR

Explain the rights and duties of bailee.

(Refer Only Topics: Rights of Bailee, Responsibilities/Duties of Bailee)

Answer : *July/August-18, Q7(a)*

Definition of Bailment

Sec. 148 of the Contracts Act defines Bailment as "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 directions of the person delivering them. The person who delivers the goods is called the bailor and the person to whom they are delivered is called the bailee".

Rights of Bailee

A bailee has the following rights under a contract of bailment,

1. Enforcement of the Rights

The bailee can enforce the duties of the bailor by approaching the court of law.

2. Bailment by Several Joint Owners

If several joint owners of goods bail them, the bailee may deliver them back to or according to the directions of one joint owner without the consent of all, in the absence of any agreement to the contrary.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

3. Right of Compensation

If the bailor has no right to bail or receive the goods or to give direction regarding them and as a result the bailee has incurred some loss, the bailor is responsible for the same.

4. Right to Remuneration

The bailee is entitled to the lawful charges for providing his services.

5. Right to Claim Damages

The bailee has a right to know the faults in the goods bailed to him of which the bailor is aware, which materially interfere with the use of them or expose the bailee to extraordinary. The bailee in this case is entitled to receive damages.

6. Right to Apply to Court to Stop Delivery

If a person other than the bailor claims the goods bailed the bailee may apply to the court to stop delivery of goods to the bailor and to decide the title of the goods.

Responsibilities/Duties of Bailee

The various responsibilities/duties of bailee are,

1. Duty to take Reasonable Care of the Goods

A bailee is under a duty to take as much care of the goods entrusted to him as a man of ordinary prudence would take of his own goods in similar bulk, quantity and value.

2. Duty not to make Unauthorized use of Goods

A bailee is under a duty not to use the goods in a manner which is not so authorised by the bailor. An unauthorised use of goods is a breach of the bailment contract and makes the bailee liable for damages.

3. Duty not to Mix Bailors Goods with his own Goods

A bailee is under a duty not to mix the goods bailed with his own goods, without the consent of the bailor.

(a) If the bailee with the consent of the bailor mixes his own goods with that of the bailor, the bailor and bailee shall have an interest in proportion to their respective share in the mixture thus produced.

(b) If the goods are mixed without the consent of the bailor, then if the goods can be separated or divided, the property in the goods will remain with the parties respectively i.e., the bailor and bailee are the owners of their goods. The bailee is bound to bear the expenses of separation or division and also any damage arising from such unauthorised mixing.

(c) When the goods mixed cannot be separated, the bailor is entitled to be compensated by the bailee for the loss of goods.

4. Duty not to Setup any Adverse Title against the Bailor

A bailee is not authorised to set up any adverse title against the bailor. The bailee is stopped from challenging the rights of the bailor.

5. Duty to Return any Accretion to the Goods of Bailee

A bailee is under the duty to return to the bailor any increase or profits accruing from the goods bailed. The bailor is entitled to the profits accruing from the goods bailed unless there is a contract to the contrary.

6. Duty to Return the Goods

The bailee has the duty to return or deliver the goods bailed. He must deliver back the goods as soon as the time for which they were bailed has expired or the purpose for which they are bailed has been accomplished.

Q4. Explain the rights and duties of bailor.

Answer :

Rights of the Bailor

Some of the rights of bailor are,

1. Enforcement of Rights

The bailor can enforce by suit all the liabilities of the bailee, as his rights.

2. Avoid the Contract

He can avoid the bailment if the bailee does any act which is inconsistent with the terms of bailment.

3. Return of Goods Lent Gratuitously

He can demand the return of goods lent gratuitously whenever he pleases, even though he lent them for a specified time or purpose.

4. Compensation from a Wrongdoer

If any third person deprives the bailee of the use or possession of the goods bailed, or harms them, he can sue them for such injury.

Duties of the Bailor

Some of the duties of bailor are,

1. To Disclose known Faults

The bailor should disclose about the nature of the goods and all the known faults about the goods bailed to the bailor, otherwise he will be responsible for any damage caused to the bailee.

2. To Bear Extraordinary Expenses of Bailment

He is responsible for any extraordinary expenses occurred on goods during bailment.

3. To Indemnify Bailee for Loss in Case of Premature Termination of Gratuitous Bailment

If any loss is occurred to the bailee because of premature termination of the bailment, the bailor shall have to indemnify the bailee.

4. To Receive Back the Goods

It is the duty of the bailor to receive the goods back. If he refuses to take them back, then the bailee is entitled to reoeive compensation from the bailor for the necessary expenses of custody.

5. To Indemnify the Bailee

If the title of the goods is defective and the bailee suffers because of it, then the bailor has to compensate for the loss occurred so.

Q5. Define Pledge. What are the rights and duties of pawnee/pledgee and pawnor?

Answer :

Definition of Pledge

Delivery of goods by one person to another as a security for the repayment of a loan or performance of a contract is known as pledging of goods. According to Indian Contract Act, "the bailment of goods as a security for payment of a debt or performance of a promise is called pledge". The bailor in this case is called the 'pawnor' or 'pledger' and the bailee is called 'pawnee' or 'pledgee'.

Rights of Pawnee/Pledgee

The rights of pawnee/pledgee are as follows,

1. Rights of Retainer

The pawnee is entitled to retain the goods with himself as a contingency of pledge until the payment of dues is to him.

According to Section 173, the pawnee can retain the goods under the following conditions,

(a) For the interest due to on the debt

(b) He is liable to attain all the expenses incurred by him for either the protection or the preservation of pledged goods.

2. Right of Retainer for Subsequent Advances

The rights of a retainer can be extended to the subsequent advances over a specific period, if the pawnee lends money to the same pawnor after the pledge data.

3. Right to Extraordinary Expenses

For the preservation of the pledged goods, the pawnee is entitiled to obtain the amount as extraordinary expenses incurred by him from the pawnor. He doesn't have any right to retain the goods instead he can only sue for their recovery.

4. Right against True Owner in Case of Deceived Pawnor

According to Section 178-A, when the pawnor has obtained the possession of the goods pledged by him under a voidable contract, but the contract has not been rescinded at the time of pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without the notice of the pawnor's defect of title.

5. Pawnees Right where Pawnor makes Default

According to Section 176, the pawnee can enjoy the following rights in case of default of the pawnor,

(a) In case of deficiency or damage, the pawnee can recover the deficient amount while selling the goods. At the same time, if he has realised the surplus amount on the sale of goods then he is liable to pay such amount to the pawnor.

(b) He is having a right to sue the pawnor in case of his default and can retain the pledged goods as a collateral security.

(c) He can sell the goods pledged after giving a reasonable notice concerning the sale of goods to the pawnor. He can either sue the pawnor or can sell the goods after he has been informed through notice for the same.

Duties of Pawnee/Pledgee

The duties of pawnee/pledgee are as follows,

1. To handle the pledged goods appropriately.
2. To avoid unauthorized usage of pledged goods.
3. To ensure that any act does not violate the provisions of contract Act and terms of contract of pledge.
4. To ensure pledged goods does not get mixed with other goods.
5. To ensure the delivery of any accretion (collection) of the pledged goods. Example: bonus shares.
6. To make sure that full amount of dues is received on return of the pledged goods.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Rights of Pawnor

The pawnor possess the following rights,

1. **Rights to Get Back Goods**

   By repaying the loan and interest, the pawnor can get back the possession of the goods pledged.

2. **Reservation and Maintenance of the Goods**

   He is obliged to protect and preserve the goods in their true sense in the same manner as performed by the bailee.

3. **Rights of an Ordinary Debtor**

   Even the pawnor enjoys the rights of an ordinary debtor which are provided to him by the stipulation of several laws, meant for the protection of this interest.

4. **Right to Redeem Debt**

   Pledge may be made for a specific time period i.e., the performance of the promise or the payment of the debt has to be made within the stipulated time period. Within such time period, if pawnor pays the actual amount of the debt along with the extraordinary default charges prior to the sale of goods, then he is entitled to redeem the goods by himself.

Duties of Pawnor

The following are the duties of the pawnor,

1. To fulfill his part of obligation on the date provided and to act in accordance with the terms of contract.
2. To repay for the extra costs incurred by him to the pawnee.

Q6. Explain and distinguish between bailment and pledge. *May-15, Q3(b)*

OR

Distinguish between bailment and pledge.

(Refer Only Topic: Differences Between Bailment and Pledge)

Answer : *Jan.-16, Q3(b)*

Bailment

The term bailment is derived from a french word 'bailer' which means to deliver. It denotes a contract resulting from delivery. It involves change of possession and not transfer of ownership.

Sec. 148 of the Contracts Act defines Bailment as "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 directions of the person delivering them. The person who delivers the goods is called the bailor and the person to whom they are delivered is called the bailee".

Pledge

Delivery of goods by one person to another as a security for the repayment of a loan or performance of a contract is known as pledging of goods. According to Indian Contract Act, "the bailment of goods as a security for payment of a debt or performance of a promise is called pledge". The bailor in this case is called the 'pawnor' or 'pledger' and the bailee is called 'pawnee' or 'pledgee'. A pledge is a type of bailment in nature. Therefore, it should possess all the features of a contract of bailment.

Differences Between Bailment and Pledge

S.No.	Basis	Bailment	Pledge
1.	Meaning	Bailment refers to delivery of goods by one person to another for some specific person.	Pledge refers to bailment of goods to perform a specific promise.
2.	Parties	"Bailor" and "Bailee" are involved in bailment.	"Pledger" and "Pawnor" are involved in pledge.
3.	Right	In case of default by bailor, bailee has right to retain goods or claim for expenses or charges.	In case of default by pledger, pawnor has right to sell the goods after giving a notice.
4.	Use of Goods	Bailee can use the goods of bailor under certain circumstances. Example: '*A*' delivered a piece of cloth to '*B*' for tailoring purpose.	Pawnor has no right to use the goods of pledger. Example: '*X*' borrowed 1000 from '*Y*' and gave his mobile to *Y*. Bailment of mobile is a pledge.

2.3 INDEMNITY AND GUARANTEE

Q7. Define contract of Indemnity and contract of Guarantee. Distinguish between them.

Model Paper-II, Q7(a)

OR

What is Indemnity and Guarantee of Contracts? Explain with suitable examples.

August-21, Q8

(Refer Only Topics: Contract of Indemnity, Contract of Guarantee)

OR

Distinguish between indemnity and guarantee. *May/June-18, Q7(a)*

(Refer Only Topic: Differences between Indemnity and Guarantee)

OR

Explain the differences between indemnity and guarantee.

(Refer Only Topic: Differences between Indemnity and Guarantee)

Answer : *(Jan.-14, Q3(b) | May-13, Q3(a))*

Contract of Indemnity

A contract, under which one party promises to save another party from loss or damages, by the conduct of himself or by others, is known as "contract of indemnity". The party who is promising to save from loses is termed as indemnifier and the person who is saved from loses is termed as "Indemnified".

Example

'*P*' contract with '*Q*' to save '*Q*' from any legal proceedings that may take place against '*Q*'. This is called contract of indemnity. '*P*' will receive certain amount from '*Q*' under such contract. Here, '*P*' is called indemnifier and '*Q*' is called indemnified.

Contract of Guarantee

A contract under which a person guarantee's the performance of promise or discharge of liability to another person, due to default by a third party is known as "contract of guarantee". The party who gives the guarantee is called as "security". The party to whom the guarantee is given is called as "Creditor" and the person on behalf of whom the guarantee is being given is called as "principal Debtor". A guarantee, either it is oral or written, implied or expressed, is valid.

Example

"*X*" says to "*Y*" to give his house for rent to "*Z*" and promises that if '*Z*' fails to pay rent, he will pay rent on behalf of "*Z*". This is called as "Contract of guarantee". Here, *X* is security, *Y* is creditor and *Z* is principal debtor.

Differences between Indemnity and Guarantee

Some of the differences between indemnity and guarantee are as follows,

S.No.	Point of difference	Indemnity	Guarantee
1.	Number of contracts	There will be only one contract between the indemnifier and indemnified.	There will be three contracts between the parties. They are contract between, • Principal debtor and creditor. • Principal debtor and surety. • Creditor and surety.
2.	Number of parties	There will be only two parties to the contract.	There will be three parties to the contract.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

3.	Party to be liable	In this contract, indemnifier alone is liable to perform the promise.	In this contract, principal debtor as well as surety is liable to perform the promise.
4.	Legal Proceedings	Indemnifier cannot sue a third party in case of any loses or damages.	Surety can sue principal debtor, in order to regain the amount which he has paid to creditor.
5.	Act on Request	In this contract no party will request the indemnifier to give indemnity.	In this contract, principal debtor request surety to give guarantee to creditor.

Q8. What are the rights of surety against creditor, principal debtor and co-sureties?

Answer :

A surety has rights against the creditor, principal debtor and co-sureties.

1. Rights of Surety Against Creditor

The following are the rights of surety against creditor,

(a) Before Payment of Guaranteed Debt

When the due date to repay the debt comes to an end, then the creditor can ask for repayment or he can sue against the principal debtor. But, the surety needs to compensate any losses or expenses incurred.

(b) Right of Set-off

If the creditor sue against the surety for the payment of liability of principal debtor, then he can depend on any set off or counter-claim which the principal debtor has against the creditor.

(c) On Payment of Guarantee Debt

According to the Section 141, if the entire debt is paid by the principal debtor, then the surety can subrogate the rights of creditor and acquires the right to demand from the creditor all the securities paid by the principal debtor, at before or after the creation of guarantee. The surety acquires the rights whether he knows or not the existence of such securities.

Example

'*P*' lends ₹4000 to '*Q*' on the surety of '*R*', '*P*' also had a further security of ₹4000 in the form of Q's television. But later '*P*' gives up the security of television and '*Q*' becomes insolvent. Now '*P*' sues '*R*' for his surety. But '*R*' is discharged from liability to the amount of the value of television, as he was unaware of the additional security.

(d) Right to Equities

After paying the guaranteed debt, the surety is authorized for all the equities which might have been enforced by the creditor on the principal debtor as well as against the persons claiming through him.

(e) Right of Subrogation

According to Section 140, when the guaranteed debt becomes due, because of the failure of the principal debtor then the surety pays off the debt and he gets all the rights which the creditor has against the principals debtor.

2. Rights of Surety Against Principal Debtor

The following are the rights of surety against principal debtor,

(a) Right to be Relieved of Liability

If the debt is determined and if the principal debtor does not repays the debt then the surety can force the principal debtor to relieve him from the liability of paying the debt. If the liability of the principal debtor results as the fixed sum, then the surety appeals him to discharge him from that liability.

(b) Right to Indemnity

According to the Section 145, whenever a contract is made the principal debtor makes an implied promise that he would indemnify the surety and the surety is authorized to recover all the payment made on the behalf of the principal debtor. If the surety pays an extra amount like interest, damage costs etc., then he can recollect those costs also from the principal debtor.

Example

'*P*' lends to '*Q*', when '*R*' is the surety '*P*' demands '*R*' for the payment but if he rejects to pay, then '*P*' sues against him. '*R*' defends the suit and is forced to pay the debt along with the costs. Later '*R*' can recollect the amount from '*Q*' for cost and principal debt.

3. Right of Surety Against Co-sureties

If two or more persons acts as surety to a guaranteed debt, then they are referred as co-sureties. The co-sureties are equally liable towards the benefit and burden of the guaranteed debt.

(a) Co-sureties are Liable to Contribute Equally

According to Section 146, if there are two or more co-sureties for the same debt or duty and if the principal debtor fails to make the payment then all the co-sureties are equally liable to contribute to the extent of failure in the absence of any contract to the contrary.

Example

'*P*' lends ₹2000 to '*Q*' when R_1, R_2, R_3 are the co-sureties. There is a contract between R_1, R_2, R_3 where R_1 is responsible for one-quarter, R_2 for one-half and R_3 for one-quarter. '*Q*' fails to repay the amount. So, according to the contract, R_1 is liable to pay ₹ 500, R_2 is liable to pay ₹ 1000 and R_3 is liable to pay ₹ 500.

(b) Liability of Co-sureties Bound in Different Sums

According to Section 147, the co-sureties are ready to guarantee different sums. Then they are liable to contribute equally subject to maximum amount guaranteed by each one. If the creditor gives any security of the principal debtor to a co-surety then the other co-sureties also have a right to share in the continuation of the security (i.e., the rights of co-sureties towards the benefits and burden are equal).

Example

'*P*' borrows ₹9000 from *Q*, when R_1, R_2, R_3, are sureties. If '*P*' fails to pay the amount to '*Q*' then R_1, R_2, R_3, are equally liable and each should pay ₹3000 to '*Q*'.

(c) Release of a Co-sureties

According to Section 138, if there are co-sureties and the creditor discharges one surety then the others cannot be discharged. The discharged surety cannot relieve himself from the responsibility to the other sureties.

Q9. Write a brief note on discharge of surety.

Answer :

A surety will be discharged when his/her liability as surety comes to an end. The different modes/methods which can be adopted for discharging surety are as follows,

- By revocation
  - By Notice (Section 130)
  - By Death of surety (Section 131)
  - By Novation (Section 62)
- By conduct of the creditor
  - Variance in terms of contract (Section 133)
  - Release or discharge of the principal debtor (Section 134)
  - Compounding by creditor with principal debtor (Section 135)
  - Creditor act or omission impairing surety s eventual remedy (Section 139)
  - Loss of security (Section 141)
- By invalidation of contract
  - Guarantee gained by misrepresentation (Section 142)
  - Guarantee gained by concealment (Section 143)
  - Guarantee on contract that creditor shall not act until co-surity joins (Section (144)
  - Failure of consideration

Figure: Modes/Methods of Discharge of Surety

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

1. Discharge of Surety by Revocation of Contract of Guarantee

The different modes/methods of discharge of surety by revocation of contract of guarantee.

(a) Revocation of Surety by Giving a Notice (Section 130)

According to Section 130, in a continuing guarantee, the surety can cancel his future transaction by giving a notice to the creditor. But, the surety cannot cancel his liability for already entered transactions.

(b) Revocation by Death of Surety (Section 131)

According to Section 131, if there is no contract to the contrary, then the death of surety acts as a revocation of a continuing guarantee with respect to future transactions. The deceased surety's estate will be liable for the transactions which took place before the death of surety but not after the death (even if the creditor has no notice of the surety's death).

(c) Revocation by Novation (Section 62)

Novation refers to the replacement of an old contract of guarantee with a new contract of guarantee either between the same parties or between one of the old parties and a new party. The consideration for the new contract is the mutual discharge of old contract. In this case, the original contract of guarantee comes to an end and the surety under original contract is discharged.

2. Discharge of Surety by the Conduct of the Creditor

The different modes/methods of discharge of surety by the conduct of the creditor are,

(a) Variance in Terms of Contract

According to Section 133, a surety will be liable for all his undertakings in a contract. But, if any variance is made without the consent of surety in terms of the contract between the principal debtor and the creditor then the surety is discharged (surety) with respect to the transactions that are subsequent to the variance.

Example

'*P*' makes an agreement with '*Q*' that *P* would lend '*Q*' ₹ 10,000 on 9th of August. '*R*' acts as surety for '*Q*'. But without the knowledge of '*R*', '*P*' lends ₹ 10,000 to '*Q*' on July 8th. Here '*R*' is discharged from his liability as the terms of agreement are varied.

(b) Release or Discharge of Principal Debtor

According to the Section 134, the surety is discharged by any contract between the creditor and the principal debtor, through which the principal debtor is released. The surety is also discharged by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Example

'*P*' offers a job to '*Q*' at one place on the surety of '*R*'. But this job is aborted and '*P*' appoints '*Q*' as a fresher at some other place, where '*R*' acts as a surety. Hence, '*R*' is discharged from his liability.

(c) Compounding Creditor with Principal Debtor

According to the section 135, a contract existing between the creditor and the principal debtor, through which the creditor makes a composition with, or promises to give time to or not to sue, the principal debtor, discharges the surety, till the surety approves of such contract.

Example

'*P*' purchased a plot from '*Q*' under installment scheme. '*R*' is the surety for the performance of '*P*'. But on the request of '*P*', '*Q*' increases the time duration to pay the installment. Hence, as '*P*' is given extra time, '*R*' is discharged from further liability under guarantee.

(d) Creditors Act or Omission Impairing Surety's Eventual Remedy

According to the Section 139, if the creditor does any act which is compatible with the rights of the surety or fails to do some act which his duty to the surety requires him to do and the eventual remedy of the surety himself against the principal debtor is thereby impaired then the surety is discharged.

Example

'*P*' enters into a contract for constructing a house for '*Q*' for a given sum of money which is paid in installment when, the work reaches certain stage. '*R*' stands as surety for '*Q*'. But *Q*, without informing '*R*' pays three installments in advance. '*R*' is discharged because of the advance payment of instalment.

(e) Loss of Security

According to the Section 141, if the creditor losses or without the consent of the surety, ports with any security given to him at the time of the contract of guarantee then the surety is discharged from liability to the extent of the value of security.

Example

'*P*' lends ₹ 4000 to '*Q*' on the surety of '*R*', '*P*' also had an additional security of ₹ 4000 in the form of a television. But later '*P*' gives up the security of television and '*Q*' becomes insolvent. Now 'P' sues '*R*' for his surety. But, '*R*' is discharged from liability to the amount of the value of television as additional security was included in the contract without the surety's consent.

3. Discharge of Surety by Invalidation of Contract

The different modes/methods of discharge of surety by invalidation of contract are,

(a) Guarantee Gained by Misrepresentation

According to the Section 142, a guarantee that has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, relating to a material part of the transaction, is invalid.

(b) Guarantee Gained by Concealment

According to the Section 143, a guarantee which the creditor has obtained by remaining silent to the material circumstances is invalid.

Example

'*P*' enters into a contract to supply paddy to '*Q*', the owner of Rice mill, when '*R*' stands as the surety to '*Q*'. '*P*' and '*Q*' made a secret agreement wherein '*Q*' agreed to pay ₹ 100 higher than the market price, without the consent of '*R*'. Hence, '*R*' is not liable as a surety as the agreement is concealed from '*R*'.

(c) Guarantee on Contract That Creditor Shall not Act on it Until a Co-surety Joins

According to the section 144, when an individual gives a guarantee upon a contract that a creditor shall not act upon it till an another person has joined in it as co-surety. Then the guarantee is not valid if that other person does not join.

Example

P_1, P_2, P_3 and P_4 are the co-sureties. P_3 signed a guarantee given to the bank. It was also signed by P_1 and P_2, but P_4 did not signed and he expired later. The bank did not agree with P_1, P_2, P_3 to discharges P_4's signature. Hence, P_3 was not liable.

(d) Failure of Consideration

The surety can be discharged, if the contract of guarantee involves failure of consideration between the creditor and the principal debtor.

2.4 SALE OF GOODS ACT – DISTINCTION BETWEEN SALE AND AGREEMENT TO SELL

Q10. Write about Sale of Goods Act 1930. What are the different types of contract of sale? Explain the essential elements of a contract of sale.

Answer :

Sale of Goods Act, 1930

The sale of goods is a very common type of commercial contract. Sale of Goods Act, 1930 contains information concerning laws related to sale of goods. Before the introduction of Sale of Goods Act, 1930, the rules concerning the sale of goods were included in chapter VII of the Indian Contract Act, 1872.

Contract of Sale

A contract of sale refers to a contract through which "the seller transfers or agrees to transfer the property in goods to the buyer for a price. The contract of sale may be of two types,

1. Conditional contract of sale
2. Absolute contract of sale.

1. Conditional Contract of Sale

Conditional contract of sale is a contract of sale which is on a condition.

2. Absolute Contract of Sale

Unlike, conditional contract of sale, absolute contract of sale is made without conditions.

Contract of sale is a general term and covers,

(a) Sale

(b) Agreement to sell.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

In case of 'sale', property in goods is passed onto the buyer from seller. Whereas in case of "Agreement to sell", there is only an agreement between the parties which the seller would transfer the property in goods to the buyer in the future or after the fulfillment of some conditions. An agreement to sell takes the form of sale with the span of time or fulfillment of conditions which were imposed on the transfer of property in goods to the buyer.

Essential Elements of a Contract of Sale

The following are the essential elements of contract of sale,

1. Two parties
2. Goods
3. Price
4. Transfer of general property.

1. Two Parties

The contract of sale should have two different parties i.e., (Buyer and seller). Both these parties must be capable of performing the contract. Buyer refers to a person who buys the goods or agrees to buy goods from the seller. Whereas, seller refers to a person who sells the good or agree to sell goods to buyer.

Example

There were three joint owners in a company. After 3 years of successful working the company was shutdown due to some reason. The left over assets of the company were divided among the joint owners equally. This is not a sale as people to whom assets are shared are owners and they cannot play the role of both buyer and seller.

2. Goods

The contract of sale should include goods so that the property in goods can be transferred from the seller to the buyer. The goods in the contract of sale should be movable goods. Transfer of immovable property is not covered in the sale of goods act.

Example

'*A*', a house owner gave his house on rent to *B*. House is an immovable property and transfer of house from *A* to *B* is not a sale.

3. Price

In a contract of sale price refers to the money consideration for the sale of goods (sec 2(10)) if goods are exchanged for goods then it is as barter system and not sale.

Example

P sold 100 pens to *Q* costing ₹ 10 per pen. As an exchange to 50 pens, *Q* agrees to give *P* 100 erasers costing ₹ 5 per eraser. *Q* agrees to pay the balance amount (i.e. ₹ 500) in cash. Therefore, this is a contract of sale.

4. Transfer of General Property

Transfer of general property is one of the essential elements of contract of sale. Contract of sale should be for the transfer of general property in goods and not in the special property in goods. The actual owner of the goods will have general property in goods. If actual owner pledges goods with other person then that other person will have special property in goods.

5. Essential Elements of a Valid Contract

For answer refer, Unit-I, Page No. 6, Q.No. 4, Topic: Essential Elements of a Valid Contract.

Q11. Outline the provisions of the Sale of Goods Act in brief.

Answer : *July/August-17, Q7(a)*

Some of the provisions of sale of goods act are as follows,

1. The various provisions of the Sale of Goods Act 1930 and any type of revocations by the act, do not effect the following (section 66).
   (a) Any title, liability, right, interest or obligation received prior to the introduction of this act.
   (b) Any remedy or legal proceeding related to title, right, liability, obligation or interest.
   (c) Anything accomplished or suffered prior to the introduction of the act.
   (d) Any enactment concerning the sale of goods that is not expressly cancelled by the act.
   (e) Any legislation consistent with this.
   (f) The laws of insolvency concerning the contract of the sale of goods.
2. According to Section 66(3), the provisions of sale of goods act are not applicable to contract of sale transactions which is planned to take place by way of pledge, charge, mortgage or other security.
3. The provisions that are not cancelled in the Indian contract Act 1872 are applicable to the contracts for the sale of goods.

4. The terms defined in the Indian contract Act 1872, and the terms used but not defined in the sale of goods Act 1930 have the same meaning.
5. Section 2 of the sale of goods act 1930 consists of exhaustive definitions which are subject to the explanation.
6. The provisions concerned with delivery of goods are as follows,
   (a) As per the section 33, the delivery must lead to effective way of transferring the goods to the buyer or his legally authorized representative agent.
   (b) As per Section 32, the delivery and payment of goods should be in accordance with the terms and conditions of the contract.
   (c) According to Section 34, if only a part of goods are delivered with an intention of delivering the whole would have similar effect of delivering the whole amount of goods in order to transfer the ownership of goods. But if only a part of goods are delivered with an intention of separating it from the whole lot then it does not constitute as the delivery of whole of the goods.
   (d) As per Section 35, the seller of goods is not subjected to deliver the goods until and unless the buyer asks the delivery, the demand for delivery and the tender of delivery should be made at the reasonable hour.
   (e) According to Section 36(1), the place at which goods are to be delivered should be mentioned in the contract and they (goods) are to be delivered during the working hours of business.
   (f) As per Section 36(2), if there is a contract with respect to the time of delivery, then the goods are to delivered within the agreed time, and if there is no contract with respect to the time of delivery, then the goods are to be delivered within the reasonable time.
   (g) According to Section 36(3), if suppose at the time of sale, the third person handles the goods, then the seller cannot make a delivery to the buyer until and unless the third person accepts to possess the goods on behalf of the buyer.
   (h) Unless otherwise accepted all expenses of and incidental to delivering the goods into the state of delivery are borne by the seller. But the expenses of and incidental to receiving of delivery are borne by the buyer (section 36(5)).
   (i) According to Section 37, the delivery of goods must be according to the terms and conditions of the contract. If there is any defect in delivery, then the buyer has the right to reject the goods.
   (j) As per the (section 38(1)) the seller of goods cannot deliver the goods in installment, unless and until it is agreed upon at the time of contract. Even if he does, the buyer is into bound to accept the goods.
   (k) As per Section 39, in order to carry out the contract of sale consistently, the seller is entitled and supposed to deliver the goods to a carrier with an intention of transferring the goods to the buyer or delivery of goods to Wharfinger for safe custody.

Q12. What is Sale of Goods Act? Distinct between Sale and agreement to sell.

(Model Paper-I, Q7(b) | August-21, Q9)

OR

Distinguish between Sale and Agreement to Sell. *(Jan.-18, Q7(b) | April/May-14, Q3(b))*

(Refer Only Topic: Distinction Between Sale and Agreement to Sell)

OR

Explain the distinctions between sale and agreement to sell.

(Refer Only Topic: Distinction Between Sale and Agreement to Sell)

Answer : *Oct./Nov.-21, Q9*

Sale of Goods Act

The sale of goods is a very common type of commercial contract. Sale of Goods Act, 1930 contains information concerning laws related to sale of goods. Before the introduction of Sale of Goods Act, 1930, the rules concerning the sale of goods were included in chapter VII of the Indian Contract Act, 1872.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Distinction Between Sale and Agreement to Sell

The difference between sale and agreement to sell are as follows,

S.No.	Basis for Difference	Sale	Agreement to Sell
1.	Nature	The contract of sale is executed in nature.	Agreement to sell is an executory contract in nature.
2.	Transfer of property	The property in the goods transfer to the buyer immediately and the seller is no more considered as the owner of the goods sold.	The property in the goods gets transferred to the buyer in the future course of time or after the fulfillment of certain condition.
3.	Types of Goods	Sale mainly takes place for existing and specific goods only.	Agreement to sell is mainly for future and contingent goods and sometimes even for undetermined existing goods.
4.	Risk of Loss	When the goods are damaged in the process of sale the loss must be incurred by the buyer even if the goods are in the possession of the seller.	In the "agreement to sell" the loss for the damages is incurred by the seller even if the goods are under the possession of the buyer.
5.	Consequences of breach	Seller can sue the buyer for failure to pay the price of the goods or for the breach of contract by the buyer, even though the goods are in possession of seller.	In an agreement to sell, seller can sue buyer if there is a breach of contract by the buyer or for the damages to the goods, incurred but not for the price of the goods eventhough the goods are in the possession of the buyer.
6.	Seller's Right to re-sale	Seller has no right to re-sale the goods and with this act of seller the immediate buyer cannot claim the title of the goods.	In the agreement to sell, the original buyer can merely sue seller for the damages and the buyer who takes the goods for possession gets only the goods title.
7.	General and Particular Property	A sale is considered as a contract with additional conveyance and results in 'jus in rem' which means right against the whole world. A seller can enjoy the possession of goods and can use them as their wish.	An agreement to sell is just a contract which creates 'jus in personam' which means right against a particular individual. Seller can sue only for the damages during the breach of contract.
8.	Insolvency of Buyer	If the buyer becomes insolvent in a sale, the official assignee/officer of receiver can only claim for the rateable dividend of the goods price and even claim for the delivery of goods from the seller.	On the insolvency of buyer, the seller can refuse the delivery goods until the full payment for the goods is being made.
9.	Insolvency of the Seller	When seller becomes insolvent, the buyer who is also the owner can claim the receiver to deliver the goods from the official receiver or assigner.	In the agreement to sell the buyer is not liable to claim the seller for the goods as the property has not been fully transferred to the buyer. Seller can only claim for the rateable dividends.

Q13. Distinguish between a sale and a hire-purchase agreement.

Answer :

Jan.-Feb.-20, Q7(a)

The differences between sale and hire-purchase agreement are as follows,

S.No	Basis of Differences	Sale	Hire-Purchase Agreement
1.	Regulating authority	Sale of Goods Act, 1930 regulates all contracts of sales.	Hire purchase Act, 1972 regulates hire-purchase agreements.
2.	Nature	It is a sales contract.	It is an hiring agreement.

3.	Transfer of goods	Under this, goods are not necessarily transferred to buyer immediately after sale.	Under this, goods are transferred to buyer immediately after signing the agreement.
4.	Ownership	In sales, the ownership of goods moves from seller to the buyer either immediately or after the fulfillment of a specific condition.	In hire-purchase agreement, the buyer after paying the instalment becomes the owner of the goods.
5.	Termination	In contract of sale, buyer cannot terminate sales contract.	In hire purchase agreement, hirer can terminate the agreement but prior to transfer of ownership.
6.	Repossession of goods	Under this, goods cannot be taken back by the seller once sold.	Under this, goods can be taken back by the hire-vendor if the hirer fails to pay the amount.
7.	Transfer of good title	Under this, buyer can transfer good title to third party. As ownership of goods is already transferred to buyer by seller.	Under this, the hirer cannot transfer good title to third party as in hire purchase, ownership remains with hire vendor.
8.	Contract or agreement in writing	It is not mandatory for a contract of sale to be in written form.	It is mandatory for hire-purchase agreement to be in written form.
9.	Implied conditions and warranties	Under this, a contract includes benefits of implied conditions and warranties.	Under this, an agreement does not include benefits of implied conditions and warranties.
10.	Sales tax	Under this, sales tax is applicable for sale of taxable goods.	Under this, sales tax is not applicable for hire of taxable goods.
11.	Treatment of payment by buyer or hirer	Under this, buyer's payment will be considered payment towards the price of goods.	In case of hire purchase agreement, the payment made by hirer is considered as hire charges for using the goods till the completion of hire purchase agreement.
12.	States or position	In case of contract of sale, the position of buyer is like that of an owner of goods.	In case of hire purchase agreement, the position of hirer is not like that of an owner. The hirer is regulated and controlled by hire vendor.

2.5 CONDITIONS AND WARRANTIES

Q14. Define Condition and Warranty and explain with an example. What are the situations where conditions are treated as warranties?

Answer :

Definition of Condition

According to [Section 12(1)] stipulation in a contract of sale of goods may be a condition or warranty.

According to [Section 12(2)] a condition is a stipulation,

1. Which is necessary to the crucial/aim of the contract and
2. If the contract is discontinued then the aggrieved party has the right to end the contract.

Example

A asked a bus dealer to provide him a bus which is appropriate for the touring purpose. *A* recommended 'Deluxe Bus'. *A* bought the 'Deluxe Bus' but did not find it convenient for the touring purpose. It was held that the condition of being the 'Deluxe Bus' convenient was not being fulfilled. *A* has the right to end the contract and can claim the money spent on purchasing the 'Deluxe Bus'.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Definition of Warranty

According to [Section 12(3)] the warranty is a stipulation and consists of the following,

1. A warranty is collateral to the main objective of the contract.
2. The breach of warranty gives the right to aggrieved party only to claim damages, but does not have a right to refuse goods or end the contract.

Example

'*A*' asked a chemist to recommend medicine which can cure 'head ache' a chemist suggested one medicine and told that it can cure fever also. But '*A*' did not find that medicine curing the fever. In this chemist's suggestion is warranty and *A* cannot reject the medicine but can claim damages.

When Condition can be Treated as Warranty

The following are the cases when condition can be treated as warranty (Section 13). They are,

1. **Voluntary Waiver of Condition**

If contract of sale is subjected to a condition that is to be fulfilled by the seller then the buyer can either waive the condition, or can consider the contract as breach of condition and is same as breach of warranty [Section 13(1)].

Once the buyer waives the condition, the contract condition can never be fulfilled at the later stage.

2. **Acceptance of Goods by Buyer**

When the buyer accepts the goods in the contract then under such a case the breach of any condition which the seller needs to fulfill is regarded as breach of warranty. Conditions applicable in the contract of sale is not expressed or implied for the acceptance of goods (Section 13(2)).

Q15. Differentiate between condition and warranty. Explain in detail express and implied conditions and warranties.

OR

Distinguish between condition and warranty and discuss the implied conditions and warranties under contract of sale of goods.

(Refer Only Topics: Differences Between Condition and Warranty, Implied conditions, Implied Warranties)

Answer :

July/August-18, Q7(b)

Differences between Condition and Warranty

The following are the differences between condition and warranty,

S.No.	Basis	Condition	Warranty
1.	Condition	A condition is a stipulation which plays an important role in the main contract.	A warranty is a stipulation which is collateral to the main objective of the contract.
2.	Breach of Condition	The aggrieved party has the right to end the contract.	The aggrieved party has the right to claim against damages but cannot make the contract end.
3.	Treatment	Under contract the breach of condition is same as breach of warranty.	A breach of warranty is not a breach of condition.

Express Conditions and Warranties

These are provided expressly in the contract. For example, A buyer may wish to buy fridge of the whirlpool (brand) it is an express conditions and on that brand if the company provides 2 years guarantee then it becomes an express warranty.

Implied Conditions

Implied conditions are implied by law for the contract of sale related to goods. The following are the implied conditions which are defined under sections of the law.

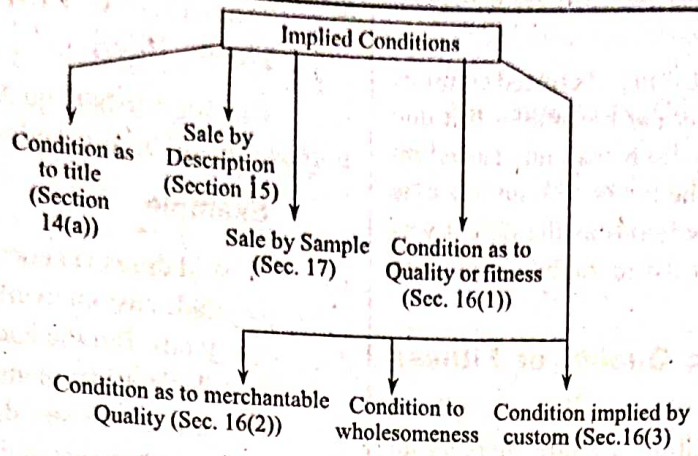


Figure: Implied Conditions

1. Condition as to Title (Section 14(a))

The implied condition related to seller is that (a) the seller has right to sell the goods under sale and (b) Under agreement to sell, the seller can sell the goods only at specified time such as at time of property to pass.

Example

A purchased a car from '*B*'. But after few months the true owner of car i.e., '*C*' demanded *A* to return his car. *A* has to return the car inspite of its usage for few month. But *A* can recover the full price of the car given to '*C*' (true owner) from '*B*'.

2. Sale by Description (Section 15)

Under contract of sale of goods, the goods should be according to the description of seller only. The following are the situations under this,

(a) The buyer has not seen the goods but buys on the mere description provided by the seller.

Example

W purchased a reaping machine from *X* who said that the machine was only one year old and used only few times to cut only 60 areas but *W* found the machine very old. Thus, *W* can reject the machine as it is not as per the description of the seller.

(b) The buyer has seen the goods but purchases as per the description provided by the seller.

Example

The buyer has seen certain goods and purchased on the basis of description given by seller as "dating from 17th century" but found actually it is of 18th century. The buyer can reject the goods as they are not as per the description of the seller.

(c) Where the method of packing has been described and is considered as a part of the description.

Example

L purchased 30 tins of Australian fruit from *M* and ordered the packing to be done in 30 tins in each case but *M* supplied cases that could include only 24 tins. *L* can therefore reject the goods as they were not packed as per the described method of packing.

3. Sale by Sample (Section 17)

A contract of sale can be a sale either by sample expressed or implied and this sale consists of the three conditions. (a) The goods should be as per the sample with respect to quality, (b) The buyer has the right to compare the bulk goods with the sample which is being provided and (c) The goods should be defect-free. If the defects in the good are not been identified after examining the sample then it is called 'latent defect'. The seller is not responsible for such defects in goods which is visible to the buyer/customer.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Example

'*P*' bought certain quantity of crested coatings from '*Q*' which is similar to sample. But due to latent defect the cloth was not sufficient to make the coat. The buyer '*P*' can exercise right in rejecting the goods as the defect was not visible and after usage the buyer came to know.

4. Condition as to Quality or Fitness (Sec. 16(1))

Usually, in the contract of sale there is no implied condition with respect to condition of the quality or fitness of the goods. The buyer should scrutinize the suitability of quality or fitness as per (sec-16(1)). This is called 'Caveat emptor'.

Example

A purchased a hot water bottle from *B*, a chemist and enquired about its stand for boiling water. *B* said that the bottle can be used to hard hot water only. Accordingly '*A*' fills water which results in burst of the bottle and causes injury to his wife. It was held that the chemist is liable to refund and pay for damages as the purpose of buyer was not being fulfilled.

5. Condition as to Merchantable Quality (Sec. 16(2))

According to [Sec. 16(2)] goods should be of merchantable quality when the goods are being purchased through getting the description from the seller.

Example

'*G*' purchased plastic catapult from '*F*'. While using plastic catapult it broke off due to the ineffective material being used in its production. It caused injury to *G* by making him one eye blind. It was held that the dealer is liable as goods were not of Merchantable quality.

6. Condition as to Wholesomeness

Condition as to wholesomeness is made with reference to eatables or provisions or foodstuffs. Apart from being Merchantable in nature these goods must be eatable and acceptable by the human beings.

Example

F purchased milk from *D*'s dairy. *F*'s wife after consuming it got infected and died as milk had typhoid germs in it. '*D*' is liable to pay as the milk was not suitable for *F*'s wife consumption.

7. Condition Implied by Custom [Sec. 16(3)]

Condition to both quality or fitness for specific purpose should be annexed with the usage of trade.

Example

'J' sold drugs via auction to '*B*', for auction it is a trade custom to inform any sea damages in the goods. But the auction took place without any declaration of major defects. '*B*' found that goods are sea damaged. Thus, '*B*' can reject such goods and can claim for damages incurred because goods were auctioned without any declaration.

Implied Warranties

The following are implied warranties,

1. Implied Warranty of Freedom from Encumbrances [Section 14(c)]

A warranty for freedom from encumbrances implies that the goods are free from any charge or right in the side of the third party. If any charge or encumbrances interfere in the buyer's possession of goods then the buyer has the right to claim damages for the breach of warranty.

2. Implied Warranty as to Harmful Goods

If the goods sold by the seller are harmful in nature then the buyer of such goods needs to be informed about it. If the seller conceals the harmful quality/nature of the goods and if suppose the buyer suffers an injury due to such harmful quality then the seller is held liable to bear the damages.

3. Implied Warranty as to Quiet Possession [Section 14(b)]

Generally, in a contract of sale, there will be an implied warranty that the buyer has and usually enjoys quiet possession of goods on a condition that no contradictory intention is present in the contract. In case, if the buyer is restricted from enjoying the quiet possession of goods due to seller's defective title then seller is held liable for such damages.

4. Implied Warranty as to Quality or Fitness by Usage of Trade [Section 16(4)]

In a contract of sale, there would be an implied warranty with respect to quality or fitness for a specific purpose through usage of trade.

2.6 NEGOTIABLE INSTRUMENTS ACT-DEFINITION AND CHARACTERISTICS

Q16. Define Negotiable Instrument. What are the different types of negotiable instruments? Explain the characteristics of various types of negotiable instruments. *Model Paper-II, Q7(b)*

OR

What is meant by Negotiable Instrument? What are its characteristics? *Feb.-17, Q7(b)*

(Refer Only Topics: Definition of Negotiable Instrument, Characteristics/Features of Various Types of Negotiable Instruments)

OR

Define Negotiable Instrument. Explain its characteristics. *May-15, Q3(a)*

(Refer Only Topics: Definition of Negotiable Instrument, Characteristics/Features of Various Types of Negotiable Instruments)

OR

Outline the features of Negotiable Instruments Act. *Jan.-16, Q3(a)*

(Refer Only Topic: Characteristics/Features of Negotiable Instruments)

OR

Elucidate the features of Negotiable Instrument Act. *May-13, Q3(b)*

(Refer Only Topic: Characteristics/Features of Negotiable Instruments)

OR

Define Negotiable Instrument. Explain the characteristics of various types of negotiable instruments.

(Refer Only Topics: Definition of Negotiable Instrument, Characteristics/Features of Various Types of Negotiable Instruments)

Answer : *Jan.-18, Q7(a)*

Definition of Negotiable Instrument

According to section 13 "A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer".

Types of Negotiable Instruments

Negotiable instruments can be classified based on,

1. Negotiable by statute.
2. Negotiable by custom or usage.

1. Negotiable by Statute

Section 13 of the negotiable instruments Act defines three types of negotiable instruments. They are,

(a) Bill of exchange.
(b) promissory notes.
(c) Cheque.

These instruments are said to be negotiable by statute.

2. Negotiable by Custom or Usage

Some instruments have gained the feature of negotiability in terms of their usage or custom of trade. Section 131 of the transfer of property Act, also defines the negotiable instruments by law or custom. Pay orders, banker's drafts, government promissory notes, delivery orders, railway receipts for goods are said to be negotiable by custom or usage.

Characteristics/Features of Various Types of Negotiable Instruments

Some of the characteristics features of negotiable instruments (both instruments negotiable by statute and instruments negotiable by custom or usage) are as follows,

1. Defects Free Title of Holder in Due Course

A holder in due course is a person receiving an instrument bonafide for value and would get defect free title of the transferor. In other words, irrespective of the title of the transfer holder in due course would get good title or defect free title. The defences filed against the previous holder will not affect the title of the holder in due course.

Example

A sold goods to *B* and *B* promised *A* via a promissory note that he will pay *A*, a sum of ₹ 500 for the goods he received from *A*. After that *B* rejected to pay ₹ 500 to *A* because the goods were not as per the order. *A* sued *B* for the promised amount and court declared *B*'s defence against *A* as good. If *A* negotiate promissory note to *C* (*C* is a holder in due course) then *B*'s defense against *A* will be of no use.

2. Assumptions

Until and unless specified, there are some assumptions which are applicable to all kinds of negotiable instruments. The following assumptions are included in the section 118 and 119,

(a) Order of Endorsements

Endorsements in the negotiable instrument are assumed to made in the same order as they appear thereafter.

(b) Consideration

Consideration is assumed to be very important in each and every negotiable instrument. Negotiable instrument is assumed to be drawn, created, accepted, negotiated, endorsed for some consideration in return. A holder would be able to get the judgement from court very easily if he holds/possess the negotiable instruments.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

(c) Proof of Protest

According to Section 119, in case of dishonour of instrument, the court assumes the fact of dishonour on the basis of proof of protest providing that fact of dishonour is not proved wrong by any one.

(d) Date

A negotiation instrument must have a date and should be drawn on the same as specified on it.

(e) Holder Assumed as Holder in Due Course

A holder of a negotiable instrument is assumed as a holder in due course according to Sec.118.

(f) Time of Transfer

Each and every negotiable instrument is assumed to transferred before the time of maturity.

(g) Stamp

If instrument gets misplaced somewhere then the instrument is assumed that, it has been stamped properly.

(h) Time of Acceptance

In case of acceptance of bill of exchange, it is assumed that the acceptance has taken place within the specified time period and before the maturity date.

3. Easily Transferable

Another characteristic feature of a negotiable instrument is its easy transferability. In case of instrument payable to bearer, transfer of property between the parties takes place through delivery. On the otherhand, in case of instrument payable to order, transfer of property between the parties takes place through endorsement and delivery.

4. Recovery

A holder in due course holds the right to sue on negotiable instrument to recover the amount.

Q17. Explain the characteristics of a negotiable instrument and the main provisions of the Negotiable Instruments Act.

Answer : *Oct./Nov.-21, Q8*

Characteristics of Negotiable Instruments

For answer refer Unit-II, Page No. 51, Q.No. 16, Topic: Characteristics/Features of Various Types of Negotiable Instruments.

Provisions of Negotiable Instruments Act

The provisions of Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 with respect to section 138, 141 – 143 are as follows,

1. As per Sec 138, the duration of accused in jail has extended from 1 year to 2 years.
2. As per Sec 138, payee can send notice to drawer within 30 days (which was 15 days earlier) from date of receipt of information relating to unpaid/bounced cheque.
3. As per Sec 141, a person is not liable for prosecution under Sec 138 who is nominated as a director of the company because he is employee of central government or state government or financial corporation owned or managed by central or state government.
4. As per Sec 142, court may consider complaint after one month period but there should be a valid reason for not filing complaint within one month.
5. As per Sec 143, court can try cases informally even through anything contained in Cr. P.C and provisions of section 262 to 265 of Cr. P.C might be applicable to such trials.
6. As per Sec 143, every trail should be conducted as soon as possible and attempt should be made to conclude the trail within six months from complaining date.
7. As per Sec 144, inspite of anything in Cr. P.C for the purpose of such trial of bounced cheques, magistrate may direct to send copy of summons issued for accused where he resides or carry out business for gain either through speed post or courier services.
8. As per Sec 144, if accused or the witness refuse to take delivery of summons and sign the acknowledgement of receiving summon then court may declare that the summons has been duly served.
9. As per Sec 145, irrespective of matter in Cr. P.C the complainant may give evidence on affidavit and subject to all exceptions relating to evidence in any enquiry,trial or other proceeding under Cr. P.C.
10. As per Sec 145, the court may summon and examine any person giving evidence on affidavit, on the application of the prosecution or the accused.
11. As per Sec 146, the court assume the fact of dishonour of cheque untill that fact is disproved. The court consider a cheque as dishonoured on producing a bank slip or memo with official mark indicating cheque dishonoured.
12. As per Sec 147, without any consideration of Cr. P.C every offence of bounced cheque is compoundable.
13. As per Sec 5, 81, 39 and 131, provisions of Information Technology Act, 2000 are applied to Negotiable Instruments Act with respect to electronic image of a truncated cheque and a cheque in the electronic form.

2.6.1 Promissory Note – Definition and Essential Elements

Q18. What is a Promissory Note? What are the essential elements/characteristics of a promissory note?

Answer :

Definition of Promissory Note

Section 4 of the Negotiable Instruments Act 1881 states that "A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument".

Essential Elements/Characteristics of Promissory Note

The essential elements/characteristics of promissory note are as follows,

1. Writing

The promissory note should be in writing. The writing involves prints and typewriting and may even be in pencil or ink. A verbal communication or engagement to pay is not sufficient in a promissory note.

2. Promise to Pay

It should include an express promise to pay, only acknowledgment of indebtedness or implied undertaking with the help of using the word 'debt' or the pronote is not enough.

3. Definite and Unconditional

In the promissory note, the promise to pay should be definite and unconditional in nature. It would be considered as invalid if it is uncertain or conditional.

4. Signed by the Maker

It is necessary for the instrument to be duly signed by the maker, when the instrument is not signed it is regarded as incomplete and would have no effect. Infact, the instrument written by the maker mentioning his name in the body of the instrument also requires his signature. Signature is the writing of a person's name with the purpose of making the instrument valid and to make the contract effective.

5. Certain Parties

The instrument must clearly highlight and explain about as to who is the maker and who is the payee. Eventhough instrument includes unconditional promise to pay, but it is considered as invalid when the maker and the payee does not identify it.

6. Certain Sum of Money

The payable amount should be certain and must not include any contingent additions or substractions. The sum payable is considered as certain sum of money in the following cases,

(a) If it is payable along with interest, when the instrument does not includes any rate of interest then it is not considered a valid promissory note.

(b) When the payment is made at directed/mentioned rate of exchange.

(c) The unpaid balance may become due, when the payment is made on installments along with a provision that default is being made in payment.

7. Promise to Pay Money Only

The payment which is to be made under the instrument should be in money only and this money must be according to the legal tender money of India. When the instrument consists of a promise to pay something more than money then it is not a valid promissory note.

8. Bank Note or Currency Note is Not a Promissory Note

The bank note or currency note is not a promissory note because a bank note or currency note is money itself.

9. Formalities Like Member, Date, Place, Consideration, etc.

A promissory note must essentially be stamped under the Indian Stamp Act, 1899. The member, date, place, consideration are not that much important under law when compared to the stamp.

10. It May be Payable On Demand or After a Definite Period of Time

In promissory note statement such as 'on demand' refers to payable immediately or forthwith.

11. It Cannot be Made Payable to Bearer on Demand

The Reserve Bank of India Act, 1934 forbids issue of such promissory notes except by the Reserve Bank of India itself or the Central Government.

2.6.2 Bill of Exchange – Definition and Essential Elements

Q19. Define Bill of Exchange. Discuss in detail essential elements/characteristics of Bill of Exchange.

Answer :

Definition of Bill of Exchange

Section 5 of the Negotiable Instrument Act, 1881 states that "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 instrument".

The bill of exchange is made payable on demand or after a definite period of time to the bearer.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Essential Elements/Characteristics of Bill of Exchange

The elements/characteristics of bill of exchange are as follows,

1. It is essential that a bill of exchange is in writing or else it would be considered as an invalid bill of exchange.
2. It must necessarily include 'order to pay'.
3. The order should be unconditional in nature.
4. The bill of exchange includes and needs three parties namely the drawer, the drawee and the payee.
5. All the parties performing bills of exchange should be certain.
6. If the bill of exchange is not signed by the drawer then it would be invalid. The sign of drawer is an essential requirements.
7. The sum payable of bill of exchange should be certain.
8. It must necessarily include an order to pay money.
9. A bill must essentially have a stamp according to an Act. But other formalities such as member, date, place and consideration are not compulsory under law.

Q20. Present the salient features of Negotiable Instruments Act, specifying the characteristics of promissory note and Bill of exchange.

Answer : *Jan./Feb.-20, Q7(b)*

Salient Features of Negotiable Instrument Act

For answer refer, Unit-II, Page No. 51, Q.No. 16, Topic: Characteristics/Features of Various Types of Negotiable Instruments.

Characteristics of Promissory Note

For answer refer, Unit-II, Page No. 53, Q.No. 18, Topic: Essential Elements/Characteristics of Promissory Note.

Characteristics of Bill of Exchange

For answer refer, Unit-II, Page No. 53, Q.No. 19, Topic: Essential Elements/Characteristics of Bill of Exchange.

2.6.3 Cheques-Definition, Essential Elements and Types of Crossing

Q21. Define cheque. What are the essentials elements/characteristics of a cheque? Who are the parties to a cheque.

Answer :

Cheque

Sec. 6 of the Negotiable Instrument Act, 1881 defines "a cheque is a bill of exchange which is,

1. Drawn upon a specified banker and
2. Payable on demand.

Essential Elements/Characteristics of a Cheque

The essential elements/characteristics of cheque are as follows,

1. In Writing

The cheque should be in writing.

2. Express Order to Pay

The cheque should be an express order for making payment and it should not be a request to pay.

3. Definite and Unconditional Order

The cheque should be definite and unconditional order.

4. Signed by the Drawer

The cheque should be signed by the drawer.

5. Order to Pay Certain Sum

The cheque should contain an order which says to pay a certain sum to the bearer.

6. Order to Pay Money Only

The cheque should order the bearer to pay in terms of money only.

7. Three Parties

The three parties involved in the cheque are,

(a) Drawer

(b) Drawee and

(c) Payee.

8. Drawn Upon a Specified Banker

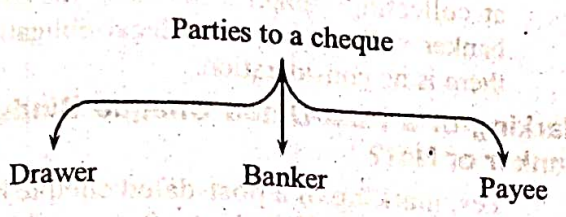
According to Sec. 6 the cheque should be draw on a specified banker.

9. Payable on Demand

The cheque should always be payable on demand.

Parties to a Cheque

The diagrammatic representations of parties to a cheque,



There are three parties in the cheque which are as follows,

(a) Drawer

A person who draws the cheque is known as 'drawer'.

(b) Banker

The cheque drawn by a banker is called the 'drawee'.

(c) Payee

The person on whom cheque is drawn is termed as 'payee'. The payee can be either 'drawer' or 'third party'.

Q22. What are the various Negotiable Instruments? Explain various types of crossing cheque.

Answer : *May/June-18, Q7(b)*

Types of Negotiable instruments

For answer refer, Unit-II, Page No. 51, Q.No. 16, Topic; Types of Negotiable Instruments.

Types of Crossing Cheque

The following are the types of crossings. They are,

1. General crossing
2. Special crossing.
3. Restrictive crossing
4. Not negotiable crossing (Sec. 130).

1. General Crossing

A cheque is called crossed if it bears the following,

(a) The words 'and company' or any acronym if any is written between two parallel transverse lines and includes the words "not negotiable" (or)

(b) Two parallel transverse lines which may or may not include the words 'not negotiable' (Sec.123). When cheque is crossed then the drawee banker is liable to pay when it is presented by banker (Sec.126, Para-1).

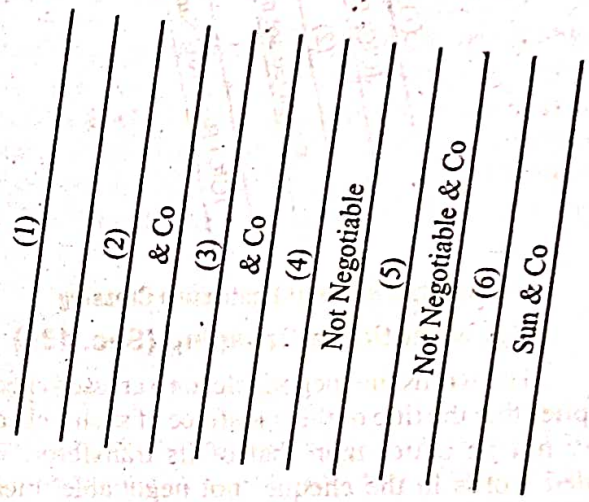


Figure: Specimen of General Crossing

2. Special Crossing

According to (Sec.124) a cheque is said to have special crossing, when a cheque bears across its face along with the name of a banker the words 'not negotiable'. In case of special crossing transverse lines are not required. The payment of this cheque can be received only through a banker if his name exist on the face of the cheque or between the transverse lines. According to (Sec.126, Para-2), the special crossing cheque drawn on banker shall pay to only that banker on whose name it is drawn or to his agent for collection.

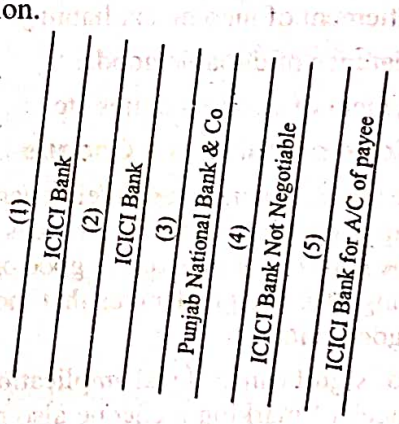


Figure: Specimens of Special Crossing

3. Restrictive Crossing

This type of crossing which has been followed by commercial and banking institutions. The words which are added to this type of crossing are "A/C Payee" to the general of special crossing. The words 'A/C payee' gives instructions to the collecting banker that amount received on cheque is to be credited to the account of the payee. If the collecting banker wrongly credits the amount to different person then he is liable to pay to the owner of the cheque.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

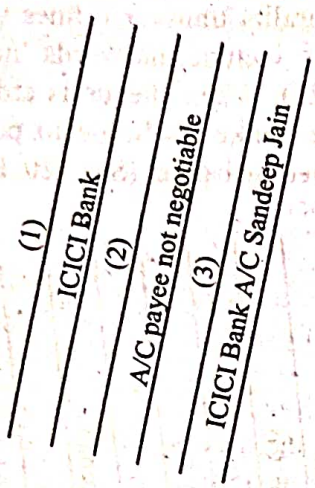


Figure: Specimens of Restrictive Crossing

4. Not Negotiable Crossing (Sec. 130)

The words 'not negotiable' on a crossed cheque implies that the title of the transferee of such a cheque may not be better than that of its transferor. The added words in the cheque 'not negotiable' means the further transferability of cheque is possible but cannot exercise the essential features of negotiability. The holder who posses the cheque marked as 'not negotiable' is completely responsible for that cheque.

Q23. Explain the significance and legal implications of marking a cheque and state whether the marking of a post-dated cheque binds the banker who certifies it.

Answer : *Jan.-19, Q7(b)*

Significance of Marking a Cheque

Marking of cheque (or certification of a cheque) is done for the following purposes,

1. Settlement of income tax liability.
2. Clearance of dutiable goods.
3. Payment of customs duties etc.

Implications of Marking a Cheque

The main legal implication/effect/consequence of marking a cheque is that it provides additional currency by marking of a cheque as good on its's face. The marking of a cheque denotes that the cheque is drawn in good faith.

Like significance, legal implications/effects/consequences of marking a cheque also relies upon the three cases i.e.,

1. Marking at drawer's instance/request.
2. Marking at holder's instance/request.
3. Marking at collecting banker's instance/request.

The legal implications of marking a cheque in each case is briefly explained below,

(a) In case of marking a cheque by payee banker at drawer's instance, there is no legal consequence. The banker is not responsible to payee and drawer as well.

(b) In case of marking a cheque by payee banker at holder's instance, drawer's right to countermand payment remains unaffected. Apart from this, banker cannot debit drawer's account in situation of insolvency, death or insanity of the customer.

(c) In case of marking a cheque by a payee banker at collecting banker's instance, the drawee banker will not have any legal obligation if there is no consideration.

Marking of a Post-Dated Cheque Binds the Banker or Not?

Yes, marking of a post-dated cheque binds the banker who certifies it. In fact, marking of post-dated cheques is not allowed. Such type of marking is considered as invalid. If a banker certifies a post-dated cheque as good for payment then that banker is held liable to make payment.

2.6.4 Distinctions Between Promissory Note, Bill of Exchange and Cheques

Q24. What is Promissory Note? What are the essential elements and distinctions between promissory note, bill of exchange and cheque?

OR

What are the essential elements and distinctions between promissory note, bill of exchange and cheque? *Nov.-20, Q9*

OR

What is Promissory Note? Distinguish between promissory note and bill of exchange.

Answer : *July/August-17, Q7(b)*

Definition of Promissory Note

Section 4 of the Negotiable Instruments Act 1881 states that "A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument".

Essential Elements of Promissory Note

For answer refer, Unit-II, Page No. 53, Q.No. 18, Topic: Essential Elements/Characteristics of Promissory Note.

Essential Elements of Bill of Exchange

For answer refer, Unit-II, Page No. 53, Q.No. 19, Topic: Essential Elements/Characteristics of Bill of Exchange.

Essential Elements of Cheque

For answer refer, Unit-II, Page No. 54, Q.No. 21, Topic: Essential Elements/Characteristics of a Cheque.

Promissory Note VS Bill of Exchange VS Cheque

Some of the differences among Promissory note, bill of exchange and cheque are,

S.No.	Basis	Promissory Note	Bill of Exchange	Cheque
1.	Definition	Sec.4 of the Negotiable Instrument Act, 1881 defines "a promissory note is an instrument in writing containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument".	Sec.5 of the Negotiable Instrument Act, 1881, defines "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 only to or to the order of a certain person or the bearer of the instrument".	Sec.6 of the Negotiable Instrument Act, 1881 defines "a cheque is a bill of exchange which is drawn upon a specified banker and payable on demand".
2.	Parties Involved	The parties involved in promissory note are two. They are maker and payee.	The parties involved in Bill of Exchange are three. They are Drawer, Drawee and Payee.	The parties involved in cheque are three. They are, Drawer, Banker and Payee.
3.	Stamp	It does not need any stamp.	It needs stamp in certain cases.	It does not need any stamp.
4.	Crossing	A promissory note cannot be crossed.	A Bill of Exchange cannot be crossed.	A cheque can be crossed.
5.	Notice of Dishonour	In case of promissory note, notice of dishonour need not be given to maker.	A bill requires a notice of dishonour.	A cheque does not require any notice of dishonour.
6.	Countermanding	A promise cannot be countermanded.	A bill payment cannot be countermanded.	A cheque can be countermanded by the drawer.
7.	Payable to bearer on demand	A promissory note may be payable on demand or after a definite period of time.	As per the section 31 of the Reserve Bank of India Act, 1934, a bill cannot be payable to bearer on demand.	A cheque is payable to bearer on demand.

Q25. Discuss the amendments made in Negotiable Instruments Act, 1881.

Answer :

The amendments that took place in Negotiable Instruments Act, 1881 are as follows,

1. Section 6 is Substituted with New Section

In new Sec 6, cheque refers to a bill of exchange drawn on a specified banker and not expressed to be payable otherwise on demand and it includes electronic image of truncated cheque and a cheque in electronic form.

The expressions "a cheque in the electronic form" refers to cheque and "truncated cheque" refers to cheque which is truncated during the course of a clearing cycle by clearing house or bank which is managed by RBI.

2. Amendment of Section 64

Section 64 of Negotiable Instruments Act, 1881 is re-numbered as sub-section (1) and following sub-section (2) is also inserted.

Sub-Sec (2)

Without considering matter of section 6, whenever an electronic image of a truncated cheque is presented for payment, drawee bank can demand further information relating to truncated cheque from the bank incase of any suspicion.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

3. Amendment of Section 81

Section 81 of Negotiable Instruments Act, 1881 is re-numbered as sub-section (1) and following sub-section (2) and (3) are also inserted.

Sub-Sec (2)

When a cheque is an electronic image of a truncated cheque then banker is entitled to retain truncated cheque even after receiving payment.

Sub-Sec (3)

A certificate issued on the foot of the printout of the electronic image of a truncated cheque by the banker is considered as prima facie proof of payment.

4. Amendment of Section 89

Section 89 of Negotiable Instruments Act, 1881 is re-numbered as sub-section (1) and following sub-sections (2) and (3) are added.

Sub-Sec (2)

If there is any difference in apparent tenor of electronic image and truncated cheque then it is responsibility of bank or clearing house to make alteration and ensure exactness of apparent tenor of electronic image of truncated cheque at the time of truncating and transmitting the image.

Sub-Sec (3)

After receiving a transmitted electronic image of a truncated cheque, bank or clearing house must verify it with party who transmitted the image to make sure that image transmitted and received by bank is exactly the same.

5. Amendment of Section 131

In section 131 of Negotiable Instruments Act, 1881 Explanation is re-numbered as Explanation I and following Explanation II is also added.

Explanation II

It is the responsibility of banker to verify the electronic image of truncated cheque whether it is genuine or not and any fraud, forgery appearing on face of instrument which can be verified with due diligence and ordinary care.

6. Amendment of Section 138

In section 138 of Negotiable Instruments Act, 1881,

(a) "A term which may be extended to one year" is replaced with "a term which may be extended to two years".

(b) In this proviso in clause (b) "within fifteen days" is replaced with "within thirty days".

7. Amendment of Section 141

In section 141 of the Negotiable Instruments Act, 1881 in sub-section (1) after the proviso, the following proviso is added.

Provided that any person who is nominated as a director of company, if he is employee of central or state government or financial corporation managed by central or state government is not liable for prosecution under this chapter.

8. Amendment of Section 142

In section 142 of Negotiable Instruments Act, 1881 after clause (b) following proviso is added, provided that a complaint may be taken to court after prescribed period only if complainant provide sufficient reasons for not making a complaint within such period.

9. Insertion of New Sections After Section 142

After section 142 of Negotiable Instruments Act, 1881 the following sections were added,

Section 143 : Power of Court to Try Cases Summarily

Without considering code of criminal procedure, 1973 all offences will be tried by judicial magistrate or by metropolitan magistrate.

In case of any conviction in summary trial, magistrate can pass a sentence of imprisonment and fine. Magistrate can recall any witness if he find that it is undesirable to try the case summarily.

Section 144 : Mode of Service of Summons

Without considering the code of criminal procedure 1973, a magistrate can issue summons to accused or witness and to place of residence or business. If accused or witness does not take delivery or refuse to sign acknowledgement of receiving summons then court declare that summons are accepted.

Section 145 : Evidence on Affidavit

Without considering the code of criminal procedure 1973, complainant can give evidence on affidavit. If the application of prosecution or the accused appears to be appropriate to court then the court may summon and examine any person giving evidence on affidavit.

Section 146 : Bank's Slip Prima Facia Evidence of Certain Facts

Court shall accept a cheque as dishonoured, if a bank's slip or memo with official mark of cheque dishonoured is produced. Court presume the fact of dishonour of cheque untill the fact is disproved.

Section 147 : Offences to be Compound

Irrespective of code of criminal procedure 1973, every offence punishable under this Act is compoundable.

SHORT QUESTIONS AND ANSWERS

Q1. Negotiable Instrument. *(Model Paper-I, Q2 | May-15, Q1(d) | April/May-14, Q1(e) | May-13, Q1(b) | July/August-16, Q1(c) | Feb.-13, Q1(i))*

Answer :

According to Thomas, "A negotiable instrument is a legally recognized written document whereby rights are created in favour of one and obligations are created on the other party".

1. Transferable by delivery or by Endorsement and delivery.
2. In the due course, the holder of an instrument can sue it in his own name.
3. The property in it passes to a bonafide transferee for value free from equities and free from any defect in the title of the person from whom he obtained it".

According to section 13 "A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer".

Q2. Types of Crossing *(Model Paper-II, Q2 | July/Aug.-16, Q1(d) | Feb.-March-12, Q1(d) | Jan.-Feb-11, Q1(d) | July/Aug.-17, Q2)*

OR

Types of Cheque Crossing. *August-21, Q2*

Answer :

Following are various types of crossings,

1. **General Crossing**

A cheque is said to be crossed generally when it bears across its face, addition of two parallel transverse lines simply, either with or without the words 'not negotiable'.

2. **Special Crossing**

When a cheque bears in addition in the name of the banker, it is called special crossing. When a cheque is specially crossed, the banker on whom it is drawn shall pay it only to the banker on whom it is crossed or to his agent.

3. **Restrictive Crossing**

In this type of crossing the words A/c payee are added to the general or special crossing. The words A/c payee on the cheque are a direction to the collecting banker that the amount collected on the cheque is to be credited to the account of the payee.

Q3. Bill of Exchange. *Nov.-20, Q2*

OR

Bills of Exchange. *Jan.-18, Q2*

Answer :

According to Sec. 5, "an instrument which is in writing and which includes an unconditional order signed by the maker directing a particular individual to pay a specific amount only to or to order a particular individual or to the bearer of instrument is termed as bill of exchange. It mainly includes three parties, the drawer, the drawee and the payee".

Q4. Rights of unpaid seller. *Jan./Feb.-20, Q2*

Answer :

The following are the rights of an unpaid seller,

I. **Rights Against the Goods**

Rights of an unpaid seller against the goods is further sub classified into two categories as follows,

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

1. Rights of an Unpaid Seller where Property in Goods is Transferred to the Buyer

These are the three rights of an unpaid seller against goods where property in goods is transferred to the buyer. They are,

(a) Right of Lien (Sec. 46(1) (a) and 47 to 49)

A right of lien is a right to keep hold the possession of goods unless and until the price is paid for the goods.

(b) Right of Re-Sale [Sec. 46 (1)(c) and 54]

An unpaid seller can re-sale the goods under the following conditions,

(i) When the goods are perishable in nature.

(ii) When unpaid seller sends notice to buyer saying that he wants to re-sale the goods and the buyer fails in making payment within a reasonable time period.

(iii) When seller expressly states that he will have a right to re-sale the goods, if buyer fails in making payment for the goods [Sec. 54(4)]

(c) Right of Stoppage in Transit [Sec. 46(1) and 50 to 52]

The right of stoppage in transit is the right of an unpaid seller to stop the goods which are in transit from reaching the buyer. Apart from this, unpaid seller has right to continue possession of goods till the goods are in transit to and retain possession of goods till the buyer makes payment for goods.

2. Rights of an Unpaid Seller where Property in Goods is not Transferred to the Buyer

Besides the other measures, an unpaid seller can have the right of withholding delivery which is same as right of lien and right of stoppage in transit where property in goods is not transferred to the buyer.

II. Rights Against the Buyer Personally

Rights of an unpaid seller against the buyer are known as rights in personam. These rights are sub classified as follows,

1. Right to Claim for Damages for Non-Acceptance [Sec. 56]
2. Right to Sue Buyer for Interest [Sec. 61(2)(a)]
3. Right to Sue Buyer for Price [Sec. 955]
4. Refusal/Repudiation of the Contract Before its Due Date [Sec. 60]

Q5. Caveat Emptor. *Jan.-19, Q2*

Answer :

Doctrine of caveat emptor is a Latin word which means "let the buyer be aware".

According to Sec (16), the 1st para is dealt with 'Caveat Emptor' as 'subject to the provisions of this Act and any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.

It means it is not the duty of the seller to highlight the faults in the goods instead the buyer should be aware of the goods in terms of quality, fitness and should carefully examine the goods before purchasing.

Q6. Distinguish between promissory note and Bill of Exchange. *July/August-18, Q2*

OR

Distinctions between promissory note and bills of exchange.

Answer : *Oct./Nov.-21, Q2*

S.No.	Basis	Promissory Note	Bill of Exchange
1.	Definition	Sec.4 of the Negotiable Instrument Act, 1881 defines "a promissory note is an instrument in writing containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument".	Sec.5 of the Negotiable Instrument Act, 1881, defines "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 only to or to the order of a certain person or the bearer of the instrument".
2.	Parties Involved	The parties involved in promissory note are two. They are maker and payee.	The parties involved in Bill of Exchange are three. They are Drawer, Drawee and Payee.
3.	Stamp	It does not need any stamp.	It needs stamp in certain cases.
4.	Crossing	A promissory note cannot be crossed.	A Bill of Exchange cannot be crossed.

Q7. Bailment.

Answer : *May/June-18, Q2*

The term bailment is derived from a french word 'bailer' which means to deliver. It denotes a contract resulting from delivery. It involves change of possession and not transfer of ownership.

Sec. 148 of the Contracts Act defines Bailment as "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 directions of the person delivering them. The person who delivers the goods is called the bailor and the person to whom they are delivered is called the bailee".

Q8. Promissory Note.

Feb.-17, Q2

Answer :

An instrument or bill including an unconditional undertaking, signed by the maker to pay a specific amount only to or to order of a specific individual or to the bearer of the bill is known as "promissory note". In promissory note 'maker' is an individual who makes the promissory note and promises to pay it, while payee is an individual to whom the payment is to be made.

Section 4 of the Negotiable Instruments Act 1881 states that "A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument".

Warning: Misuse/Misreading of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

FREQUENTLY ASKED QUESTIONS AND IMPORTANT QUESTIONS

ESSAY QUESTIONS

Q1. What is contract of Agency? What are the essentials/features of valid contract of Agency?

(Feb.-17, Q7(a) | Nov.-20, Q8) REPEATED 2 TIMES

Ans:

For answer refer Unit-II, Page No. 34, Q.No. 1.

Q2. Define Bailment. Discuss the rights and responsibilities of bailee.

(July/August-18, Q7(a) | Jan.-19, Q7(a)) REPEATED 2 TIMES

Ans:

For answer refer Unit-II, Page No. 35, Q.No. 3.

Q3. Explain and distinguish between bailment and pledge.

(May-15, Q3(b) | Jan.-16, Q3(b)) REPEATED 2 TIMES

Answer :

For answer refer Unit-II, Page No. 38, Q.No. 6.

Q4. Define contract of Indemnity and contract of Guarantee. Distinguish between them.

(Jan.-14, Q3(b) | May-13, Q3(a) | May/June-18, Q7(a) | August-21, Q8) REPEATED 4 TIMES

Answer :

For answer refer Unit-II, Page No. 39, Q.No. 7.

Q5. What is Sale of Goods Act? Distinct between Sale and agreement to sell.

(Jan.-18, Q7(b) | April/May-14, Q3(b) | Oct./Nov.-21, Q9 | August-21, Q9) REPEATED 4 TIMES

Answer :

For answer refer Unit-II, Page No. 45, Q.No. 12.

Q6. Differentiate between condition and warranty. Explain in detail express and implied conditions and warranties.

(Important Question | July/August-18, Q7(b))

Answer :

For answer refer Unit-II, Page No. 48, Q.No. 15.

Q7. Define Negotiable Instrument? What are the different types of negotiable instruments? Explain the characteristics of various types of negotiable instruments.

(May-13, Q3(b) | Jan.-16, Q3(a) | May-15, Q3(a) | Feb.-17, Q7(b) | Jan.-18, Q7(a)) REPEATED 5 TIMES

Answer :

For answer refer Unit-II, Page No. 51, Q.No. 16.

Q8. Present the salient features of Negotiable Instruments Act, specifying the characteristics of promissory note and Bill of exchange.

(Important Question | Jan./Feb.-20, Q7(b))

Answer :

For answer refer Unit-II, Page No. 54, Q.No. 20.

Q9. What are the various Negotiable Instruments? Explain various types of crossing cheque.

(Important Question | May/June-18, Q7(b))

Answer :

For answer refer Unit-II, Page No. 55, Q.No. 22.

Q10. What are the rights of surety against creditor, principal debtor and co-sureties?

Important Question

Answer :

For answer refer Unit-II, Page No. 40, Q.No. 8.

Q11. Write a brief note on discharge of surety.

Important Question

Answer :

For answer refer Unit-II, Page No. 41, Q.No. 9.

Q12. Write about Sale of Goods Act 1930. What are the different types of contract of sale? Explain the essential elements of a contract of sale.

Important Question

Answer :

For answer refer Unit-II, Page No. 43, Q.No. 10.

Q13. Outline the provisions of the Sale of Goods Act in brief.

(Important Question | July/August-17, Q7(a))

Answer :

For answer refer Unit-II, Page No. 44, Q.No. 11.

Q14. Explain the characteristics of a negotiable instrument and the main provisions of the Negotiable Instruments Act.

(Important Question | Oct./Nov.-21, Q8)

Answer :

For answer refer Unit-II, Page No. 52, Q.No. 17.

Q15. What is a Promissory Note? What are the essential elements/characteristics of a promissory note?

Important Question

Answer :

For answer refer Unit-II, Page No. 53, Q.No. 18.

Q16. Define Bill of Exchange. Discuss in detail essential elements/characteristics of Bill of Exchange.

Important Question

Answer :

For answer refer Unit-II, Page No. 53, Q.No. 19.

SHORT QUESTIONS

Q1. Negotiable Instrument.

(May-15, Q1(d) | April/May-14, Q1(e) | May-13, Q1(b) | July/August-16, Q1(c) | Feb.-13, Q1(i)) REPEATED 5 TIMES

Ans:

For answer refer Unit-II, Page No. 59, Q.No. 1.

Q2. Types of Crossing.

(July/Aug.-16, Q1(d) | Feb./March-12, Q1(d) | Jan.-Feb.-11, Q1(d) | July/Aug.-17, Q2 | August-21, Q2) REPEATED 5 TIMES

Ans:

For answer refer Unit-II, Page No. 59, Q.No. 2.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Q3. Bill of Exchange.

(Nov.-20, Q2 | Jan.-18, Q2) REPEATED 2 TIMES

Ans:

For answer refer Unit-II, Page No. 59, Q.No. 3.

Q4. Caveat Emptor.

(Important Question | Jan.-19, Q2)

Ans:

For answer refer Unit-II, Page No. 60, Q.No. 5.

Q5. Distinguish between promissory note and Bill of Exchange.

(Oct./Nov.-21, Q2 | July/August-18, Q2) REPEATED 2 TIMES

Ans:

For answer refer Unit-II, Page No. 61, Q.No. 6.

Q6. Bailment.

(Important Question | May/June-18, Q2)

Ans:

For answer refer Unit-II, Page No. 61, Q.No. 7.

INTERNAL ASSESSMENT

I. Short Questions and Answers (2 Marks Questions)

Q1. Who is an agent?

Answer :

According to section 182, "a person who is engaged to do any act for another person or to represent another person in existing dealings with third party is termed as agent".

Q2. What is Contract of Sale?

Answer :

A contract of sale refers to a contract through which "the seller transfers or agrees to transfer the property in goods to the buyer for a price".

Q3. Define Negotiable Instrument.

Answer :

According to section 13 "A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer".

Q4. Define Condition.

Answer :

According to [Section 12(2)], "a condition is a stipulation, which is necessary to the crucial/aim of the contract and if the contract is discontinued then the aggrieved party has the right to end the contract".

Q5. What do you mean by a cheque?

Answer :

Section 6 of the Negotiable Instrument Act, 1881 defines "a cheque is a bill of exchange which is, drawn upon a specified banker and payable on demand".

II. Long Questions and Answers (5 Marks Questions)

Q1. Negotiable Instrument.

Answer :

For answer refer Unit-II, Page No. 59, Q.No. 1.

Q2. Types of Crossing.

Answer :

For answer refer Unit-II, Page No. 59, Q.No. 2.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

UNIT 3 Companies Act, 2013

SYLLABUS

Definition of Company – Characteristics – Classification of Companies – Formation of Company – Memorandum and Articles of Association – Prospectus – Share Holders and Their Meetings – Board Meetings – Law Relating to Meetings and Proceedings – Management of a Company – Qualifications, Appointment, Powers and Legal Position of Directors – Board – M.D. and Chairman – Their Powers.

LEARNING OBJECTIVES

After studying this unit, one would be able to understand,

- Definition and Characteristics of a Company.
- Classification of Companies.
- Formation of Company.
- Memorandum and Articles of Association.
- Concept of Prospectus.
- Shareholders and their Meeting.
- Law Relating to Meetings and proceeding of Board of Directors.
- Concept of Quorum.
- Qualification, Appointment, Powers and Legal Position of Directors/Board of Directors.
- Managing Director and his/her Power.
- Chairman and his/her Legal Position and Powers.

INTRODUCTION

A company is an association of individuals which is constituted for the achievement of a common purpose. As per the companies Act, 2013 companies are classified into private company, public company, registered company, statutory company, unlimited liability company, limited liability company, holding and subsidiary company, government company and foreign company. Formation of a company involves promotion, Incorporation, capital subscription and commencement of business. The two important documents to be filed to the registrar at the time of formation of company are, Memorandum of Association and Articles of Association.

As per the companies Act 2013, "A prospectus is defined as any document described or issued as a prospectus and includes any notice, circular, advertisement or other document, inviting deposits from public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of a body corporate".

Shareholders are the owners or members of the company. They hold equity shares in the company. The different types of shareholders meetings are Statutory Meeting, Annual General Meeting, Extraordinary General Meeting and Class Meeting.

Directors, Chairman and Managing Director come under management of a company. They play an important role in company management.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

3.1 COMPANY – DEFINITION AND CHARACTERISTICS OF A COMPANY

Q1. Define company. State the characteristics of a company.

Answer :

Definition of Company

"Company" is defined as a company registered under Companies Act, 2013 or any previous company laws.

Features of Companies Act, 2013

The main features of Companies Act, 2013 are as follows,

1. The main feature of Companies (Amendment) Act, 2013 is that it improves the services of management of administration.
2. It supports the use of new technologies like E-Governance.
3. It focuses more on the concept of investor's protection.
4. It introduced provision for the constitution of national company law tribunal.
5. It provides reservation to women for board of directors seats.
6. It is applicable to all the companies incorporated in this act as well as for previous Acts.
7. It focusses on adopting better practices of corporate governance.
8. It emphasize on enhancement of the disclosure norms and corporate practices of the government.
9. It tries to limit the term of the company auditors.
10. It add new definitions to the concepts relating to annual return, small companies, key managerial personnel, financial statements and so on.
11. It states that the company which is incorporated as one person company would be considered as private limited company.

Q2. Differentiate between companies Act, 1956 and companies Act, 2013.

Answer :

Model Paper-I, Q8(a)

Following are the differences between Companies Act, 1956 and 2013,

S.No.	Basis	Companies Act, 1956	Companies Act, 2013
1.	Structure of financial statements	The structure of financial statements is mentioned in the Schedule VI of Companies Act, 1956.	In Companies Act, 2013, the revised structure of financial statements is mentioned in Schedule III.
2.	Financial year	The financial year ending date of the company should be decided by the company itself.	All the companies must close their financial year on 31st March every year.
3.	Sections and schedules	The Companies Act, 1956 consists of 658 sections and 15 schedules.	The Companies Act, 2013 consist of 29 chapters, 470 sections and 7 schedules.
4.	Shareholders	As per 1956 Act, the maximum number of shareholders in a Pvt. Ltd. company were allowed to be 50 excluding the past and present employees.	As per 2013 Act, the maximum number of shareholders in a Pvt. Ltd. company are 200 excluding the past and present employees.
5.	One person company	The one person company policy did not exist.	The one person company policy exists.
6.	Minimum subscription	As per the Sec. 69 of 1956 Act, the minimum subscription of a company was based on shares only.	As per Sec. 39 of 2013 Act, company should subscribe and pay the minimum subscription mentioned in the prospectus.

7.	Securities premium reserve	In Companies Act, 1956, employment of Securities Premium Reserve was stated under Sec. 77(A) and 78.	In Companies Act, 2013, employment of Securities Premium Reserve was stated in Sec. 52 (2).
8.	Distribution of shares	Sec. 79 of 1956 Act, allowed shares to be distributed at a discount.	Sec. 53 of 2013 Act does not allow the distribution of shares at a discount. But, Sec. 54 allows the issue of Employee Stock Ownership Plan (ESOP) at a discount to the employees.
9.	Interest on calls in arrears	Interest rate chargeable on calls in arrears is 10%.	Interest rate chargeable on calls in arrears is 5%.
10.	Interest on calls in advance	Interest rate is 12% on calls in advance.	Interest rate is 6% on calls in advance.

Q3. Explain the latest amendments made in the Companies Act, 1956.

Answer :

The Companies Act, 1956 was amended by Companies Act, 2013 and now the latest amendments are made in these acts through Companies Act, 2015.

1. Share Capital

Companies (Amendment) Act 2015 has eliminated the requirement of minimum paid-up share capital for incorporating any private or public companies in India. Earlier it was INR 1,00,000 and INR 5,00,000 minimum paid-up share capital required for incorporation of companies.

2. Relaxation of Party Transaction

Under section 188 of Companies Act (CA) 2013, a special resolution was required for any party transaction from the board of directors and share holders of the company. However, CA 2015 has converted such special resolution to ordinary resolution, in case of any party transaction.

Similarly in section 188 of CA 2013, special resolution was required for any party transaction between holding company and its wholly owned subsidiary. The CA 2015 has relaxed this special resolution and recommended that the accounts of wholly owned subsidiary will be consolidated with the holding company accounts and such accounts should be presented to the shareholder before the general meeting for approval.

3. Inspection of Resolution

The section 117 of CA 2013 provided public access to the resolutions for terms of appointment of director, resolution of winding-up, resolution of borrowing etc. These resolutions need to be filed by the company with the Registrar Of Companies (ROC). However, CA 2015 has limited the public access to the above resolutions. Only authorised person would have the access to such resolutions.

4. Common Seal

According to CA 2013, certain documents like – Bills of exchange, share certificate and so on should be kept with a common seal. However, the common seal has become optional for the companies after the amendments of CA 2015.

5. Violation of Acceptance of Deposits

CA 2013 provides stringent provisions related to acceptance/renewal/repayment of deposit. There is no penalty described for non-compliance with the relevant provisions. To overcome these issues relating to provisions, Sec-76 has been introduced. The punishments which are described by CA 2015 are as follows,

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

(a) The default company has to pay a fine of INR 10,000,000 to INR 100,000,000 with the amount of deposit and interest.

(b) Officers of the company will be sentenced for 7 year imprisonment or they are also required to pay a fine of INR 2,500,000 to INR 20,000,000.

6. Reporting by Auditors in Respect of Fraud

According to CA 2013, an auditor is required to report the central government regarding any fraud made by the companies in their accounts. However, CA 2015 has provided some threshold or criteria based on which the auditor is responsible to make complaints against any fraud. The fraud which doesn't meet the requirement of threshold of CA 2015 is disclosed in the annual report of the company, instead of reporting directly to central government. However this provision is not yet notified.

7. Dividend

According to the section 123, companies are required to declare the dividend with a purpose of fulfilling the prescribed condition in a financial year. The CA 2015 has introduced a new provision, according to which a company can only declare the dividend when it covers all the losses and depreciation amount of past years from its profits.

8. Special Courts

Under CA 2013, section 435 and 436 empowered the central government to set special courts for dealing with the offences comes under this Act. However, CA 2015 amended this provision by stating that special courts can only deal with those offences which come under CA 2013. They can sentence a person for an imprisonment of 2 or more years, and all other offences which do not come under CA 2013, will be handled by the metropolitan magistrate or by a first class judicial magistrate.

3.2 CLASSIFICATION OF COMPANIES

Q4. Define company. Explain in detail classification of companies. *Model Paper-II, Q8(a)*

OR

Define 'Company'. What are the different types of companies? *July/August-2017, Q8(a)*

OR

Define Company. Explain different types of companies? *Jan./Feb.-2015, Q4(b)*

OR

Critically examine the various forms of companies.

(Refer Only Topic: Classification/Types/Forms of Companies)

Answer : *May-2013, Q4(b)*

Definition of Company

"Company" is defined as a company registered under Companies Act, 2013 or any previous company laws.

Classification/Types/Forms of Companies

As per companies Act, 2013, the companies which are registered under the Act are classified into the following types,

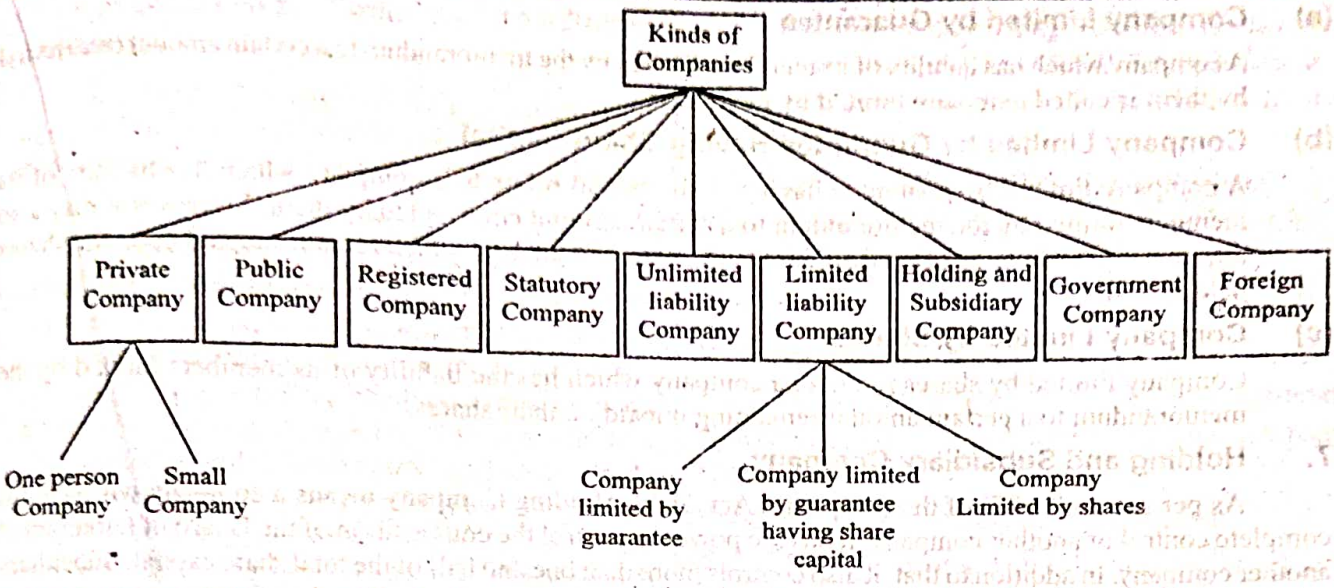


Figure: Kinds of Companies

1. Private Company

Section 2 (68) of the companies Act, 2013 states that a private company is a company having atleast 1,00,000 of paid up capital or more. It does not grant the right to transfer shares or invite subscription to shares or debentures from public. It does not accept or invite deposits from people other than its directors, members and their relatives. Moreover, its membership is restricted to 200 members only.

Private companies are further classified into two types. They are,

(a) One Person Company (OPC)

As per a provision of Section 2 (62) of the Companies Act 2013, "One Person Company (OPC) means a company which has only one person as member".

(b) Small Company

As per section 2 (85) of the Companies Act 2013 small company refers to a company other than public company, which has a maximum paid up capital of ₹50 lakhs. It may have higher paid up capital as prescribed by the Act, but it should not be more than ₹ 5 crores. It also refers to a company which has a maximum turnover of ₹ 2 crore from previous profit and loss account. It may have a maximum turnover of ₹ 20 crore as prescribed by the Act.

2 Public Company

As per section 2(7) of the Companies Act 2013, Public company is company other than private company which has a minimum paid up capital of five lakh rupees or more as prescribed by the Act.

3. Registered Company

Registered company means a company which is registered under the Companies Act, 2013 or any other previous companies Acts. The Registrar Of Companies (ROC) grants a certificate of incorporation to all registered companies. Such companies can be incorporated as either unlimited liability company or limited liability company. Moreover, it can also be incorporated as private or public company.

4. Statutory Company

Statutory company refers to a company incorporated and governed through a special Act passed by the state legislature or the parliament to perform special public undertakings. Some of the important statutory companies are the Reserve Bank of India (RBI), Food Corporation of India and Life Insurance corporation (LIC) of India.

5. Unlimited Liability Company

As per section 3(2) of the Companies Act 2013, an Unlimited company is a company which has unlimited liability of the members. Its liability is extendible till the complete amount of liabilities and debts of the company.

6. Limited Liability Company

Limited liability company is a company which has limited liability. It is further divided into three types. They are,

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

(a) Company Limited by Guarantee

A company which has liability of its members limited by the memorandum to a certain amount contributed by them is called company limited by guarantee.

(b) Company Limited by Guarantee Having Share Capital

A company limited by guarantee having share capital refers to a company which has liability of its members limited by the memorandum to a certain amount contributed by them. Moreover it may also require to contribute additional amount to the extent of amount which remains unpaid upon the shares held by him.

(c) Company Limited by Shares

Company limited by shares refers to a company which has the liability of its members limited by the memorandum to a certain amount remaining unpaid on their shares.

7. Holding and Subsidiary Company

As per section 2 (87) of the companies Act, 2013, Holding Company means a company which holds complete control of another company. It has the power to control the composition of the Board of Directors of another company. In addition to that, it also controls more than one and half of the total share capital. Subsidiary company means a company which is controlled by a Holding company. Its Board of Directors composition and one and half of its total share capital is controlled by the Holding company.

8. Government Company

As per section 2 (45) of the companies Act, 2013, Government Company refers to a company whose 51% or more paid up capital is held by the Government. It may be held by the central government, state government or both. A subsidiary company controlled by a Government is also called a government company.

9. Foreign Company

Under section 2(4) of the companies Act, 2013, foreign company refers to a company or body corporate located outside India. It conducts its business activities in India on its own or through an agent either electronically or through any other modes.

Q5. How does a private company differ from a public company? Describe briefly the procedure for effecting the conversion of a private company into a Public company.

Answer :

Jan./Feb.-20, Q8(a)

Private Company Vs Public Company

The differences between the private company and public company are as follows,

S.No.	Basis for Distinction	Private Company	Public Company
1.	Members	The minimum number of members involved in a private company is 2 and the maximum is 200.	The minimum number of members involved in a public company are 7 and there is no limit for the maximum members.
2.	Transfer of shares	The shares are strictly transferred and governed by its articles.	The shares are freely transferable.
3.	Name	It is obligatory for a company to specify the word "Private Limited" at the end of its name.	There is no such condition here.
4.	Privileges	The privileges enjoyed by the private companies are many.	A public company does not enjoy any privileges.
5.	Number of directors	The minimum number of directors in a private company are two.	The minimum number of directors in a public company are three.
6.	Restrictions on appointment of directors	There are no restrictions with respect to the appointment of directors in a private company.	In a public company, the directors should file with the registrar their consent for acting as a director.
7.	Paid-up capital	It must have a minimum paid up capital of ₹ 1,00,000.	It must have a minimum paid up capital of ₹ 5,00,000.

Conversion of Private Company into a Public Company

A private company willing to convert itself into a public company should follow a procedure prescribed under Sec. 14 and Sec. 18 of Companies Act, 2013.

Under Section 14 of the Act, The Article of Association is altered to convert a private company into a public company. For this purpose, a Special resolution of shareholders should be passed in the General Meeting. A private company doesn't remain private after altering its articles in such a way that it no more includes limitations and restrictions (which should be generally included in the articles of a private company under the Act). Now when the private company becomes public company, it is suggested to redesign the articles to prevent any kind of administrative problems in the future.

To affect the conversion of a private company into a public company, the application is given in form No. INC - 27 along with the fee. A copy of order of the Competent Authority (showing the approval of alteration) is filed with the registrar in form No. INC - 27 accompanied with a printed copy of the altered articles and fee, within 15 days of receiving the order from the Central Government.

After obtaining the documents related to the conversion, ROC (Registrar Of Companies) confirms that the company has followed the required provisions for the registration purpose. (Section 18 ; Companies Act, 2013). The satisfied ROC will provide a new certificate of Incorporation after the registration of all documents submitted for conversion purpose.

As per section 18(3), the conversion of company has no affect on liability, debts, contracts or obligations incurred by the company prior to conversion.

3.3 FORMATION OF COMPANY – MEMORANDUM AND ARTICLES OF ASSOCIATION

Q6. Define 'Company'. Examine the process involved in the formation of company.

(Model Paper-I, Q8(b) | Feb.-17, Q8(a))

OR

Explain the process of formation of a company. *July/August-18, Q8(a)*

(Refer Only Topic: Process of Formation of a Company)

OR

How is a company formed under the Companies Act, 1956? Enumerate the various documents to be filed with the registrar.

(Refer Only Topics: Process of Formation of a Company, Documents to be Filed to the Registrar of Companies)

Answer : *Jan.-19, Q8(a)*

Definition of Company

"Company" is defined as a company registered under Companies Act, 2013 or any previous company laws.

Process of Formation of a Company

The Companies Act 1956 was amended and the Companies Act 2013 is formed. The procedure to form a company as per the Companies Act 2013 involves four steps,

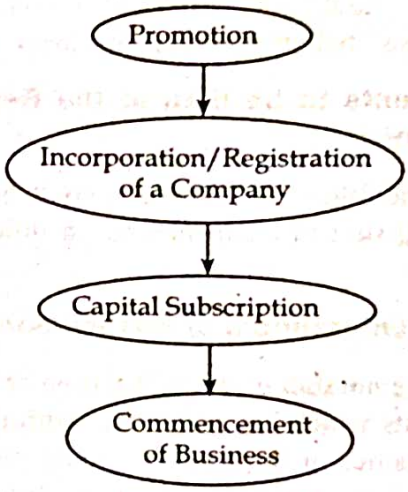


Figure: Steps in Formation of a Company

Step-1: Promotion

Promotion is the first step in the formation of a company. Promoting a business involves developing the business idea, collecting relevant information, planning the procedure for the formation of the business etc. All these tasks are performed by promoter.

Step-2: Incorporation/Registration of a Company

In the second step, the incorporation or registration of company is done according to the rules prescribed in the Indian companies Act, 2013. The company gets into existence only after obtaining the certificate of incorporation. To get the company registered, it is important to submit an application to Registrar of Companies (ROC) together with the recommended documents (such as director's written consent, Memorandum of Association (MOA), Articles of Association (AOA), Statutory declaration) and also the fees. If satisfied, the ROC will issue the certificate of Incorporation.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Step-3: Capital Subscription

A public company can start its business only when it is able to subscribe the minimum subscription mentioned in the company's prospectus. Before incorporating a business, a company should issue prospectus to the public for subscription to the capital. Minimum 90% of the prospectus should be subscribed by public within 120 days from the date of issue. This is known as capital subscription. After the subscription of the prospectus, the company can issue shares and debentures.

Step-4: Commencement of Business

It refers to a document issued by the company Act to a company before initiating its business operations. This document is called "Certificate of Commencement of Business". A public limited company should get "certificate of commencement of business" before starting its business operations.

Documents to be filed to the Registrar of Companies

The following documents are to be submitted to the registrar of companies for incorporation of a company,

1. Memorandum of Association (MOA)

Memorandum of Association is one of the documents which has to be filed with the registrar of companies at the time of incorporation of the company". It is considered as a basic document of the company. In case of public limited company, (MOA) is to be signed by atleast seven members and in case of private limited company, it is two members.

2. Articles of Association (AOA)

Articles of Association is the set of rules and regulations framed by the company for the management of the internal affairs of the company. It contains the Bye-laws that governs the conduct of the company. It plays a very important role in the internal affairs of the company and also helps in achieving the objectives of Memorandum of Association.

3. Prospectus

As per the Companies Act, 2013. "A prospectus is defined as any document described or issued as a prospectus and includes any notice, circular, advertisement or other document, inviting deposits from public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of a body corporate".

Q7. What is Memorandum of Association? Explain its contents. *July/August-18, Q8(b)*

OR

Explain the ingredients of Memorandum of Association. *Nov.-20, Q10*

(Refer Only Topic: Contents/Ingredients/Clauses of Memorandum of Association)

OR

Explain the clauses of Memorandum of Association.

(Refer Only Topic: Contents/Ingredients/Clauses of Memorandum of Association)

Answer : *Jan.-18, Q8(b)*

Memorandum of Association

According to section 2(56) of the companies Act, 2013 "Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act". Memorandum of association is one of the documents which has to be filed with the registrar of companies at the time of incorporation of the company. The memorandum is an extremely important document in relation to the affairs of the company.

Contents/Ingredients/Clauses of Memorandum of Association

According to section 4(1) of the companies Act, 2013, Memorandum of every company must contain the following contents or ingredients or clauses,

1. Name Clause

A company being a legal person, must have a name to establish its identity. A company shall not be registered by a name which in the opinion of the Central government is undesirable and which resembles the name of an existing company. A company cannot adopt a name which violates the Provisions of the Emblems and Names (prevention of improper use) Act 1950. This Act prohibits the use of the name and emblem of the United Nations and the World Health Organization, the official seal and emblems of the Central government and the state government, the Indian national flag, pictorial representation of Mahatma Gandhi and the Prime Minister of India.

Every public company must write the word 'limited' after its name and every private limited company must write the words 'private limited' after its name. Every company is required to publish its name, outside its registered office and every place where it carries out business.

2. Registered Office Clause

Every company shall have a registered office from the day it commences the business or from the 30th day of its incorporation, whichever is earlier. All communications and notices are to be addressed to that registered office.

3. Objects Clause

The clause is the most important in the memorandum of association of a company because it not only shows the objects for which the company is formed but also determines the extent of the objects. The objects clause is classified into,

(a) Main objects which are pursued by the company on its incorporation and objects incidental to the attainment of the main objects.

(b) Other objects which are not included in the above clause.

4. Liability Clause

This clause has to state the nature of liability that the members incur. Such liability may be limited by shares or limited by guarantee. In case of liability limited by shares, the shareholders may be called upon to pay only the unpaid amount on the shares. In case of liability limited by guarantee, the shareholders may be called upon to pay the amount guaranteed.

5. Capital Clause

The memorandum of company limited by shares must state the authorized or nominal share capital, the different kinds of shares and the nominal value of each share. The company's Memorandum involving a share capital must represent the amount of the share capital with which the company is going to be registered and also the division made into shares of fixed amount. A company's capital with which it is to be registered is termed as 'registered', authorized or nominal capital. A company should issue the shares as per the Memorandum and is not liable to issue more shares than they are actually authorized.

6. Association or Subscription Clause

This clause provides that those who have agreed to subscribe to the memorandum must signify by their willingness to associate and form a company.

The Memorandum of Association must be signed by at least 7 subscribers in the case of public company and by at least 2 subscribers in the case of a private company.

Q8. Define Public Limited Company. Explain in detail Memorandum and Articles of Association.

OR

Explain in detail Memorandum and Articles of Association. *Nov.-20, Q11*

(Refer Only Topics: Memorandum of Association, Articles of Association)

OR

Define Public Limited Company. Explain the contents of Articles of Association. *May/June-18, Q8(a)*

(Refer Only Topics: Definition of Public Limited Company, Contents/Ingredients of Articles of Association)

OR

What is Articles of Association? Briefly write about the contents of Articles of Association.

(Refer Only Topics: Articles of Association, Contents/Ingredients of Articles of Association)

Answer : *Feb.-17, Q8(b)*

Definition of Public Limited Company

As per section 2(7) of the companies Act, 2013, public company is company other than private company which has a minimum paid up capital of five lakh rupees or more as prescribed by the Act.

Memorandum of Association

For answer refer Unit-III, Page No. 74, Q.No. 7.

Articles of Association

According to Section 2(5) of the Companies Act 2013, "Articles mean Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this act, including so far as they apply to the company, the regulations contained as the case may be in Table-A to schedule-I of this Act".

Articles of Association is an important document but next to Memorandum of Association. Articles of Association contains rules and regulations of a company framed for the internal management of its affairs. Articles of Association is attested by the subscribers of the memorandum and registered along with the memorandum.

Contents/Ingredients of Articles of Association

The contents or ingredients of Article of Association as per Companies Act, 2013 are as follows,

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

1. The minimum subscription amount.
2. Procedure for forfeiture of shares, reissue of shares and surrender of shares.
3. Provisions for change in share capital.
4. Company's borrowing powers.
5. Process for share allotment.
6. Call money and process to make call.
7. The amount and division of share capital.
8. Procedure for share capital reduction.
9. Right to borrow and the loan arrangement procedure.
10. Rules laid down for manager, Treasurer, auditor and secretary.
11. Rules with regards to usage of common seal.
12. Rules about generation of reserve funds.
13. Rules in relation to books of Accounts.
14. Rules about company's windup.
15. Rules about share and debentures commission.
16. Rules about profit capitalization.
17. Members voting rights and procedure for poll and voting.
18. Transforming the shares into stock.
19. Transfer of shares and Lien on shares.
20. Kinds of meetings and time to call such meetings.
21. Share certificates.
22. Rules in connection with issue of preference shares.
23. Rules to authenticate prepatory contracts.
24. Right to announce/communicate interim dividend.
25. Right to restrict the director's rights.
26. Right to give out the company's profits.
27. Right to designate internal auditor.
28. Right to provide share warrants.

Q9. Discuss the relationship and differences between Memorandum and Articles of Association.

OR

Discuss the relationship between the Articles of Association and Memorandum of Association of a company.

(Refer Only Topic: Relationship Between Memorandum and Articles of Association)

Answer : *June/July-09, Q4(a)*

Relationship Between Memorandum and Articles of Association

The relationship between Memorandum of Association and Articles of Association is discussed as follows,

1. Articles of Association define the powers, rights, and duties of company's management as between themselves and the company as a whole.
2. Articles of Association specify the means and form in which the company's internet regulations can be made occasionally.
3. Article of Association act as subordinate to the MOA and is in accordance with company's memorandum.
4. The AOA cannot extend the company's objectives as stated in the memorandum of the company.

Differences between Memorandum and Articles of Association

The differences between the Memorandum and Articles of Association are as follows,

S.No.	Basis for Distinction	Memorandum of Association	Articles of Association
1.	Definition	According to section 2(56) of the companies Act, 2013 "Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act".	According to Section 2(5) of the Companies Act 2013, "Articles mean Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this act, including so far as they apply to the company, the regulations contained as the case may be in Table-A to schedule-I of this Act".
2.	Charter	It is considered as a charter of the company and defines the nature of its business, nationality and capital. It also outlines the company's relationship with the outside world.	They are considered as a subsidiary to the memorandum and provides regulations for the internal management.
3.	Scope	The scope related to the activities of the company and the aspects beyond which the company cannot move are outlined in the memorandum.	They outlines the rules for fulfilling the objectives of the company as specified in the memorandum.
4.	Importance	It is considered as a supreme document of a company.	They are considered as secondary to the memorandum.
5.	Alteration	It involves strict restrictions on alteration. Few conditions of incorporation which are included in the memorandum of association cannot be changed. (Except with the approval of shareholders and the company law tribunal).	Shareholders can change AOA. It is not necessary to get confirmation from company law board to alter the AOA.
6.	Provision	It cannot include any contents which are against the companies Act, 2013.	It cannot include any contents which are against both memorandum of association and the companies Act, 2013.
7.	Relationship	It maintains the relationship between the company and the outside world.	It maintains the relationship between both the company and among its members.

3.4 PROSPECTUS

Q10. Define Prospectus as per Companies Act, 2013. Explain its features and legal requirements.

Answer :

Definition of Prospectus

As per the companies Act 2013, "A prospectus is defined as any document described or issued as a prospectus and includes any notice, circular, advertisement or other document, inviting deposits from public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of a body corporate". In other words, Prospectus can be defined as any document which is inviting offers from public for subscription of shares or debentures of a company. Prospectus can be in the form of a document, notice, circular, advertisement or any other thing in writing.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Features of Prospectus

The features or essential information that a prospectus must contain is as follows,

1. It must be an invitation offering to the public.
2. It must be issued on behalf of the company or in relation to intended company.
3. It must involve an invitation of subscribe or purchase.
4. It must involve an invitation of shares or debentures.
5. It must be in writing. An oral invitation to subscribe for shares or debentures of a company or deposits is not a prospectus.

Legal Requirements for Prospectus

Companies Act, 2013 stated some legal requirements in relation to prospectus which are as follows,

1. Dating of Prospectus (Sec 26)

According to section 26 of Companies Act; 2013, the prospectus issued by a company must be properly dated i.e., the date of publication of prospectus.

2. Registration of Prospectus (Sec 27)

According to section 27 of Companies Act, 2013, the registration of prospectus involve the following points,

(a) Nature

By nature a prospectus cannot be issued by the company unless it is delivered to the registrar for registration.

(b) Time Limit

Before the publication of prospectus, registration of prospectus should be completed.

(c) Signature

The signature of all directors or proposed directors or agents whose names are mentioned in the prospectus is must.

(d) Date of Issue

The first thing which appears in prospectus given in a newspaper advertisement would be the issue date of prospectus.

(e) Contents

Following contents should be should be ensured at the time of registration,

(i) Copy of prospectus has been delivered to ROC for registration.

(ii) Specified documents are attached with that copy.

(iii) Endorsement indicating the consent of experts has been obtained.

(f) Enclosures

Following enclosures are required for registration,

(i) Consent of the expert to issue a prospectus.

(ii) Copy of contracts used to appoint or fix remuneration of managing director or manager.

(iii) Written statement of auditor stating the changes made in financial statements including reasons.

(iv) Consent of every person including company's auditor, legal adviser, attorney, solicitor, banker and broker.

(g) Final Registration

After meeting all the requirements, prospectus must be issued within 90 days of its registration.

(h) Penalty

If any company issue the prospectus without registration, then the company as well as every person involved in such activity will be liable to pay a penalty of ₹ 50,000.

Q11. Discuss the contents of prospectus. Write briefly about Statement in lieu of Prospectus.

Answer :

Contents of Prospectus

The important contents of the prospectus are,

1. General Information of the Company

General information of the company include name, address of registered office, names of regional stock exchange and other stock exchanges.

2. Capital Structure of the Company

Capital structure of the company includes authorized issue, subscribed and paid-up capital and size of present issue giving separate reservations for preferential allotment to promoters and others.

3. Terms of the Present Issue

Terms of the present issue comprises of terms of payments, rights of the instruments holders, availability of forms, prospectus and mode of payment.

4. Particulars of the Issue

The particulars of the issue include objects, project cost and means of financing.

5. Company, Management and Project

It involves information relating to history, main objects and present business of the company, subsidiary of the company and promoters.

6. **Particulars in Regard to the Company**
Particulars in regard to the company and other listed companies under the same management.

7. **Outstanding Litigation Pertaining to Matters**
Outstanding litigation pertaining to matters likely to affect operation and finance of the company including tax liabilities of any nature etc.

8. **Management Perception of Risk Factors**
Management perception of risk factors, such as sensitivity to foreign exchange rate fluctuations, difficulty in availability of raw material or in marketing of products, cost/time over run etc.

9. **Report Prepared by the Auditors**
A report about the profit and loss of the firm must be prepared by the auditors.

10. **Other Contents**

(a) Disclosure of information regarding the sources of promoter's contribution.
(b) Content of the auditors, directors, bankers to the issue and the opinion of expert if needed.
(c) Information and details regarding underwriting of the issue.
(d) Declaration regarding the issue of allotment letters and refund within the time prescribed.
(e) Date of the opening and closing of issue.
(f) Information related to directors in terms of their appointment and relay.

Statement in Lieu of Prospectus

Statement in Lieu of Prospectus (SILOP) is a document filed by the company with the Registrar of Companies (ROC) atleast three days before the first allotment of shares or debenture under following conditions,

(a) When company issues the prospectus.
(b) When company issued the prospectus but not proceeded to allot any of its shares offered to the public for subscription.

According to section 69(1), if the company which is required to submit Statement in Lieu of Prospectus (SILOP) does not comply with the requirement, then it cannot allot the shares. In simple words, SILOP can be referred to the situation where a company does not invite public to subscribe for its shares, but arranges to get money from private sources, it need not issue a prospectus to the public. In such a case, the promoters are required to prepare a draft prospectus which is known as Statement in Lieu of Prospectus (SILOP). As per the companies law, 2013, the filing of Statement in Lieu of Prospectus (SILOP) has been dispensed. It means that the new Act does not allow the submission of statement in Lieu of prospectus.

3.5 SHAREHOLDERS AND THEIR MEETINGS

Q12. Who are shareholders? What are the different types of shareholders meetings? OR

Explain the different types of shareholders meetings. *(Jan.-18, Q8(a) | Oct./Nov.-21, Q11)*

(Refer Only Topic: Types of Shareholders Meetings)

OR

What are the different kinds of meetings of the shareholders of a company? Discuss briefly about them.

(Refer Only Topic: Types of Shareholders Meetings)

Answer : *June/July-09, Q4(b)*

Shareholders

Shareholders are the owners or members of the company. They hold equity shares in the company. The companies Act, 2013 provides various rights and protection to shareholders. The Act provides that anyone can become a member of the company be it an individual, body corporate or an Association.

Types of Shareholder Meetings

The various kinds of shareholder meetings are as follows,

1. **Statutory Meeting**

(Note: Statutory meeting and statutory report Under Section 165 of companies Act, 1956 have been removed in companies Act, 2013)

A company limited by shares and all the companies which are limited by guarantee and has a share capital, must essentially within a period of 1 month and not more than 6 months from the date of starting of the business conducts a general meeting of the company which is usually known as statutory meeting. In a public limited company such meeting is the first general meeting of the shareholders.

2. **Annual General Meeting**

Annual General Meeting (AGM) is a general meeting which is compulsory for every company to conduct every year. It is an important democratic technique in the form of meeting to protect the rights of shareholders of a company. This meeting facilitates shareholders every year with an opportunity to review and control the functioning of the company.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

3. Extraordinary General Meeting

An Extraordinary General Meeting (EGM) is conducted when some decisions cannot be postponed till the annual general meeting. At times, EGM is conducted on request of members of the company. All general meetings except annual general meeting are referred as EGM. It is held in the period between two annual general meetings. EGM mainly deals with modifications in clauses of memorandum or articles of the company and restructuring of board of directors.

4. Class Meeting

Class meetings refers to those meetings which are conducted separately for different classes of shareholders. In order to have effective changes in the rights, separate meeting must be conducted for specific class of holders and proposed variation must be approved at the meeting. The rights attached to shares of specific class varies due to special resolution passed at separate meeting of that shareholders but it is subjected to following conditions,

(a) Provisions relating to such variation must be involved in memorandum or articles of the company.

(b) In case, such provisions are not there in memorandum or articles then such variations must be prohibited as per the terms of issue of those specific class of shares.

Q13. What are the statutory provisions regarding the holding of an annual general meeting? What business is transacted at such a meeting.

Answer : *Jan./Feb.-20, Q8(b)*

Statutory Provisions Regarding Holding an Annual General Meeting

The various provisions of the companies Act, 2013 regarding the holding of Annual General Meeting are as follows,

1. Every company apart from one person company shall conduct an Annual General Meeting besides any other meetings and shall mention the same in the notices.
2. The power to hold such meeting remains in the hands of Board of Directors. Without the permission of the board, secretary cannot issue a notice for AGM.
3. The first AGM of the company must be conducted within 9 months of closing date of first financial year. Later on, every year AGM must be conducted within 6 months of closing of financial year. The duration between two successive AGMs must not be more than 15 months.
4. AGM must be conducted within working hours on any day except national holiday declared by central government. It should be held at registered office of company or in city, town or village where registered office is situated.
5. AGM notice must include all the general contents that are included in notice of general meeting with items of ordinary business that should be dealt at meeting. If board plans to deal with matters of special business at an AGM then such matters must be included in notice and statement of material facts must be attached to it.
6. Board of every company is held with responsibility to conduct AGM for its members. In case, board fails to conduct AGM in any year then members can approach respective authority then it may direct board to conduct AGM of the company.
7. In case of any default in AGM against the provisions of the Act their tribunal can call for a general meeting of the company on application of any member. Tribunal give consequential directions which are convenient for calling, holding and conducting the meeting. A general meeting conducted as per the directions of the tribunal is considered to be an AGM of the company.
8. In case of any default in AGM against Sec. 96 or against directions of the tribunal then it is considered as punishable offense for company and each officer of company who is in default. They must pay fine amount which may increase to ₹ 1 lakh.

Business Transacted at Annual General Meeting

The businesses transacted at Annual General Meeting are, ordinary business and special business.

1. Ordinary Business

The ordinary business activities include,

(a) All the items of the accounts, balance sheets and the report of the board of directors and auditors.

(b) The dividend declaration.

(c) The appointment of new directors in place of retiring directors,

(d) The appointment and fixing of remuneration of auditors.

2. Special Business

A special business is a business other than ordinary business, transacted during annual general meeting or any other business meeting.

3.6 BOARD MEETINGS – LAW RELATING TO MEETINGS AND PROCEEDINGS

Q14. What are the law relating to meetings and proceedings of Board of Directors?

(Model Paper-II, Q8(b) | August-21, Q10)

OR

Discuss the law relating to meetings and proceeding of a company.

July/August-16, Q4(a)

OR

Describe the law relating to meetings and proceedings. *Jan.-16, Q4(b)*

OR

Explain the laws relating to meetings and proceedings.

Answer : *Jan.-14, Q4(b)*

The legal provisions regarding Board meetings and proceedings cover the following aspects,

1. Summoning and Holding Board Meetings

(a) Authority to Summon Board Meetings

The Act doesn't specify who should summon board meetings. However, following persons can summon Board meetings as per SS–1.

(i) Any director of company.

(ii) The company secretary (on the request of a director) or any other person authorized by the Board.

(b) First Board Meeting

As per Section 173(1) of the companies Act 2013, the first Board meeting shall be held within 30 days of its commencement date.

(c) Number and Frequency of Meetings

Every year, atleast 4 meetings of the Board of directors shall be held and the gap between 2 consecutive meetings shall not be more than 120 days (Section 173(1)).

(d) Exemption, Exceptions, Modification for Specified Companies

The central government has the authority to notify that the above provisions will not apply to any class or description of companies or will apply to such modifications, condification or exceptions as mentioned in the notification [section 173(1)].

(e) Board Meeting of OPC, Small and Dormant Company

The one person company, small company and dormant company is considered to meet the above provisions if a minimum of one Board meeting has been conducted in each half of a calendar year. There should not be a gap of less than 90 days in 2 meetings.

(f) Meeting of Committees

Depending on the need, the committees will meet frequently subject to the specifications provided by the board regarding minimum number and frequency.

(g) Meeting of Independent Directors

If the independent directors are to be appointed under the Act, they shall meet atleast 1 time in a year.

2. Notice and Agenda of Board Meeting

(a) Notice to Every Director

According to Section 173(3), every director shall be given a notice of board meeting. Irrespective of whether the meetings will be held on pre-determined dates or at pre-determined intervals, a meeting notice will be provided. The information contained in the notice may include day, full address, date, serial number and the venue of the meeting.

(b) Agenda of Board Meeting

A formal agenda is not required by the Act, for board meeting. However, according to SS–1, the directors will be given agenda and notes on agenda.

3. Time, Place and Serial Number of Meeting

There is no specific provision given by the Act in relation to time and place of the Board meeting. However, As per SS–1, Board meeting can be held at any place, at any time and on any day except a national holiday. The meeting will have a serial number [SS–1/1.2.1. and 1.2.2].

4. Quorum for Board Meeting

For answer refer Unit-III, Page No. 82, Q.No. 15, Topic: Provisions Relating to Quorum for Board Meetings.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

5. Participation of Directors in Board Meeting

The directors may participate in Board meeting either in person or through video conferencing. The Act provides that some matters cannot be discussed in a meeting through video conferencing. As per Section 161 of the Act, a director cannot appoint a proxy to attend the meeting on his behalf. However, board can appoint an alternate director in place of director in his absence.

6. Voting and Decisions at Board Meetings

A simple majority shall decide the questions arising at any Board meeting (useless otherwise provided int he Act and AOA). For each resolution at the meeting, one vote can be given by each director. The chairman will go for second or casting vote in case of an equity of shares.

7. Minutes of Board Meetings

As per the Section 118 of the companies Act 2013, the minutes of the board meeting shall be recorded as per the provisions of the Act. Some special provisions are given below,

(a) Minutes shall be recorded in books maintained specifically for recording purpose.

(b) Minutes may be recorded in physical or electronic form.

(c) Minutes shall be written clearly in a simple/ plain language.

(d) Minutes shall have a fair and proper summary of the meeting proceedings.

(e) Minutes of board meetings and the committees shall be recorded in separate minute books.

The contents of minutes may include the following,

(a) The power of chairman to exclude the matters which are inappropriate in his opinion.

(b) The circulation of minutes among all the board members within 15 days from the date of conclusion of the board meeting.

(c) Entry of minutes in the minute book within 30 days from the date of conclusion of the board meeting.

(d) Signing and dating of minutes by the chairman of the Board meeting.

Q15. Explain in detail about Quorum of Board meeting.

OR

What do you understand by Quorum? Must a quorum be present throughout a meeting? Where is the procedure if a quorum is never formed?

(Refer Only Topics. Quorum, Importance of Quorum, Procedure if Quorum is not Formed)

Answer : *Jan.-19, Q8(b)*

Quorum

Quorum implies to the minimum number of members required to conduct and validate a meeting.

Provisions Relating to Quorum for Board Meetings

Some of the provisions relating to Quorum for Board meeting,

1. Required Quorum

For a board meeting, the quorum shall be 1/3rd of the total strength or 2 directors.

2. Vacancy of the Board

The directors whose strength is vacant shall not be included in the total strength of directors.

3. Time for Presence of Quorum

The presence of quorum will be throughout the meeting, during business transactions and also at the commencement of the meeting.

4. Quorum in Case of Interested Directors

At times, there is an increase in the number of interested directors and it goes upto 2/3rd of the total strength of the Board of directors. In this case, the uninterested directors whose strength is not less than 2 will be Quorum at the meeting.

5. Non-Applicability of Quorum Provisions

The provisions relating to quorum shall not be applicable to OPC wherein there is only 1 director on its board of directors.

6. Quorum Requirement Cannot be Missed Out

The quorum requirement cannot be missed out even in a case where one out of 2 directors is abroad. The act doesn't consider a meeting to be valid if it is attended by only 1 director.

Importance of Quorum

Presence of quorum is important to validly transact businesses at a meeting. If it is not present then such meetings are considered as invalid meetings.

Procedure if Quorum is not Formed

If quorum is not formed within half an hour from the time given for conducting a meeting then any one of the following procedure can be adopted.

The meeting is considered to be dissolved.

or

Meeting may be adjourned to the same day, same time and place in the next week or to any other day, time and place as the board may specify.

or

If quorum is not present even at the adjourned meeting within half an hour from the time decided for meeting then the members present will be considered as quorum. If only one person is present at the adjourned meeting then such meeting is considered as invalid meeting.

3.7 MANAGEMENT OF A COMPANY – QUALIFICATION, APPOINTMENT, POWERS AND LEGAL POSITION OF DIRECTORS/BOARD OF DIRECTORS

Q16. Who are Directors? Explain the Qualification, Appointment and powers of Directors.

OR

Explain the Qualification, Appointment and powers of Board of Directors.

May/June-18, Q8(b)

(Refer Only Topics: Qualification of Directors/Board of Directors, Appointment of Directors/Board of Directors, Powers of Directors/Board of Directors)

OR

Briefly write about the powers of Board of Directors of a company.

(Refer Only Topic: Powers of Board of Directors)

Answer :

June/August-17, Q8(b)

Directors

There is no specific definition provided for the term 'Director' under the companies Act, 2013. However, the Section 2(34) of the Act describes the term "Director" as a director appointed to the Board of a company.

In general terms, a Director may be defined as any individual who is responsible for managing the company's affairs. The directors are collectively known as Board of Directors. Board Directors collectively take decisions in relation to the management of the company in the board meetings.

As per the Section 2(10) of the Act 2013, "Board of Directors means the collective body of the directors of the company".

Qualification of Directors/Board of Directors

It is not necessary for one to have professional or academic qualifications to become a director of a public company or a private company. Infact, The companies Act 2013 also doesn't provide any specifications regarding qualification of directors. However, the below qualifications may be required as per different provisions relating to the Directors,

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

(a) A director should be a solvent person.

(b) A director must not be convicted of any offence by the court.

(c) A director should be an individual.

(d) A director should have a sound mind.

(e) A director should possess share qualification (in case AOA provides such).

Appointment of Directors/Board of Directors

The provisions of companies Act, 2013 for the appointment of directors is as follows,

1. Appointment of Director by Small Shareholders [Section 151]

One director may be appointed in the listed company by small shareholders as per the prescribed terms and conditions.

2. Appointment of Director by the Company [Section 152]

If the AOA doesn't provide any provisions regarding the appointment of the first director, the subscribers to the memorandum will be considered as the company's first directors, who may hold the office until the directors are duly appointed as per the provisions of the section. According to section 154, unless the Director Identification Number (DIN) is allotted, no one can be appointed as a company's Director.

3. Appointment of Additional Director, Alternative Director and Nominee Director [Section 161]

The board of directors may be given powers to appoint any person as an Additional director except the one who is disqualified to be appointed as a director in a General meeting. The additional director may be appointed any time and will hold office until the next general meeting.

Subject to the companies articles, the board of directors may appoint a person as alternate director if that person doesn't hold any alternate dictatorship for any other director in the company or holds no dictatorship in the same company to work as an alternate director in the absence of a director for a period of atleast 3 months.

The articles of the company may give powers to the board to appoint any person as a director nominated by the state government or central government or by any law on account of shareholdings in a government company.

4. Appointment of the Directors to be Voted Individually [Section 162]

At a company's General meeting, the proposal for appointment of 2 or more individuals as directors of company will not make progress except that a proposal is already made at the meeting to move such a proposal, without any vote being made against it.

Any proposal made to approve the appointment of a person as director will be considered as proposal for his appointment.

Options to Adopt Principle of Proportional Representation for Appointment of Directors [Section 163]

The Articles of Association of a company may require that atleast 2/3 of the total number of directors should be appointed as company's directors as per the principle of proportional representation, be it through a single transferable vote or through a system of cumulative voting. The directors may be appointed in this manner once in three years.

Powers of Directors/Board of Directors

The powers of Directors/Board of Directors as per section 179 of the companies Act, 2013 are as follows,

1. The board of directors can use all powers and can exercise things and acts as the company is authorized to exercise and do, except in certain conditions.

2. Any previous act of the board will not be invalidated if the company makes a regulation in the General meeting.

3. The board of directors can use the following powers on behalf of the company through resolutions passed at board meetings,

   (a) Board of Directors can borrow money.

   (b) Board of Directors can provide loans or give security in relation to loans.

   (c) Board of Directors can diversify the company's business.

   (d) Board of Directors can approve merger, amalgamation or reconstruction.

   (e) Board of Directors can approve report of the board and the financial statement.

   (f) Board of Directors can acquire a stake in another company and can take over a company.

(g) Board of Directors can put money into company's funds.

(h) Board of Directors can validate buy-back of securities as per section 68.

(i) Board of Directors can supply securities (including debentures), be it in India or outside the country.

(j) Board of Directors can call on shareholders in case if they didn't pay money on their shares.

Q17. Describe the Appointment, powers and legal position of Directors. *Oct./Nov.-21, Q10*

OR

State the legal position of Board of Directors.

Answer :

Appointment of Director/Board of Director

For answer refer Unit-III, Page No. 83, Q.No. 16, Appointment of Directors/Board of Directors.

Powers of Directors/Board of Directors

For answer refer Unit-III, Page No. 83, Q.No.16, Topic: Powers of Directors/Board of Directors.

Legal Position of Directors/Board of Directors

The legal position of a director as different individuals is as follows,

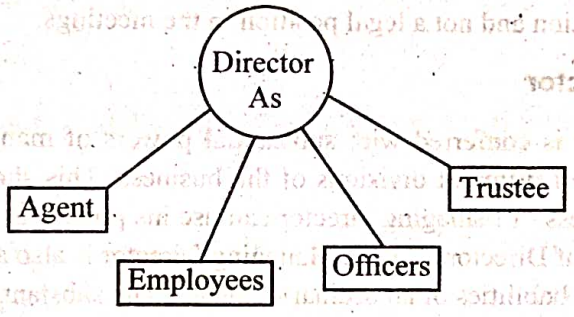


Figure: Position of Directors in a Company

1. Directors as Agent

Directors are elected by the shareholders and a company which is considered as an artificial person acts with the help of the directors. The directors in the eyes of law are regarded as agents of the company for which they perform.

2. Directors as Employees

Eventhough directors acts as agents, they are also viewed as employees or servants of the company as they avail privileges and benefits which are usually given under the Companies Act to the employees. There is nothing which restricts the director from being a servant under a special contract of a service with the company.

3. Directors as Officers

Sometimes, directors are considered as officers of the company as they are chargeable for the penalties in case if the provisions of the Companies Act are not being properly followed by them.

4. Directors as Trustee

Directors are considered as trustees with respect to the following,

(a) Directors are Trustees of the Company's Money and Property

Usually, directors are regarded as trustees of the company's money and property and are liable for all the money and property of the company on which they possess control over. In case if the director does not properly pay or transfer the money then he/she have to refund it to the other company. But in practise directors are not trustees as they do not own the property of the company. Only because of their obligations to company and few powers they are being regarded as trustees of the company.

(b) Directors are Trustees of the Power Entrusted to Them

Directors are considered as trustees of the powers given to them as they are found to practise the power honestly and in the interest of the company and shareholders and not in their own interest.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

3.8 M.D AND CHAIRMAN

Q18. Who is a Managing Director (MD) and Chairman? Discuss the powers of managing director and chairman.

Answer :

Managing Director

According to Section 2(54) of companies Act, 2013 "Managing director is a director who by virtue of an agreement with the company or of a resolution passed by the company in a general meeting or by its board of directors is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called".

Chairman

The meaning of the word "chairman" is not defined by the companies Act, 2013. The term chairman may be understood as the chairman of the Board Meeting or its committees. The board may elect a chairman at a specific meeting. It is not obligatory on the board to continue with the same chairman for consecutive meetings. In law, all directors have similar responsibilities, but this is not the case with chairman. Therefore, chairman is a momentary position and not a legal position in the meetings.

Powers of Managing Director

The Managing director is conferred with substantial powers of management. He can exercise the powers in a specific division or different divisions of the business. This shows that there can be multiple managing directors in a business. A managing director can use his powers as per the directions, control and superintendence of the Board of Directors. As the Managing Director is also a director, his needs to carryout the responsibilities, duties and liabilities of an ordinary director. The substantial powers of management will not include the power to do the administrative acts of routine nature (when approved by the board) like,

(a) The power to fix the company's common seal to any document or

(b) The power to draw and endorse a cheque owing to the company in a bank.

(c) The power to draw and endorse any negotiable instrument.

(d) The power to sign any certificate of share.

(e) The power to manage registration of transfer of any share.

Powers of Chairman

The various powers and duties of the chairman as per the companies Act, 2013 and the articles of company are as follows,

1. As the Section 107 of the Act, the chairman has a power to announce the voting results by show of hands.

2. The Section 109 of the Act empowers the chairman to order a poll and shall be ordered to be taken by him upon the demand of members.

3. As per Section 109 of the Act, the chairman can appoint scrutinizers for the purpose of scrutinizing the votes in the poll and report the same to him.

4. As per Section 109, the chairman can use the power to remove the scrutinizers from the office whenever he feels necessary. The chairman can exercise this power even before the poll results are announced and can fill the vacant position with someone else.

5. The Section 109 of the Act empowers the chairman to control the way in which the poll is carried out.

6. Section 118 of the Act empowers the chairman to discard some matters from the minutes of the meeting if he thinks that,

   (a) The matter is unimportant or is unfavourable to the company's interests.

   (b) The matter can cause deformation to any person.

7. The chairman of the meeting has the powers to control the meetings, set the priority of speakers and set their time for speaking, check if there is any confusion in the meeting and withdraw anyone using any approaches.

8. The chairman can make sure that minutes of the meetings are prepared in a correct and appropriate manner and are signed within the specified time limit.

Q19. What are powers and legal position of Directors, Board of Directors and Chairman under companies Act?

Answer : *August-21, Q11*

Powers of Directors

For answer refer Unit-III, Page No. 83, Q.No. 16, Topic: Powers of Directors/Board of Directors.

Legal Position of Directors

For answer refer Unit-III, Page No. 85, Q.No. 17, Topic: Legal Position of Directors/Board of Directors.

Powers of Board of Directors

For answer refer Unit-III, Page No. 83, Q.No. 16, Topic: Powers of Board of Directors/Board of Directors.

Legal Position of Board of Directors

For answer refer Unit-III, Page No. 85, Q.No. 17, Topic: Legal Position of Directors/Board of Directors.

Powers of Chairman

For answer refer Unit-III, Page No. 87, Q.No. 19, Topic: Powers of Chairman.

Legal Position of Chairman

A chairman doesn't hold any legal position in the company. His position is temporary in the meetings. The chairman has a general responsibility to supervise the Board functioning. Some of the roles and responsibilities of the chairman are as follows,

The chairman leads the board's meetings (or) shareholder's meetings. He is accountable for the leadership of the Board and makes sure that everything works effectively. He sets the goals and ensures effective communication with shareholders. He carries out different functions as per the provisions of MOA and AOA of the companies Act, 2013.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

SHORT QUESTIONS AND ANSWERS

Q1. Define Company. State the characteristics of a company. *Model Paper-I, Q3*

OR

Characteristics of a Company.

(Refer Only Topic: Characteristics of a Company)

Answer : *(May-15, Q1(f) | May-13, Q1(d) | Feb./March-12, Q1(e))*

Definition of Company

As per the Companies Act, 2013, 'A company refers to an organization incorporated under the Companies Act, 2013 or under any previous company law'.

Characteristics of a Company

The characteristics of a company are as follows,

1. Perpetual Succession

Even though the members of the company change or die, the company exists. A company is developed by a process of law and can be ended only by a process of law. It is considered as a juristic person which has perpetual succession.

2. Common Seal

A company does not possess any physical existence. So it perform its functions through its agents and all the contracts of a company which are entered by the agents should be under the common seal of the company. This common seal serves as an official signature of the company.

3. Transferability of Shares

Generally, the company's capital is divided into small parts termed as shares which are subjected to specific conditions. The shares are freely transferable and the shareholders do not have to be or permanently devoted to a company. At the time of establishment of joint stock companies the shares can be easily transferable.

4. Separate Property

A company can own, enjoy and dispose the property on its own name as it is a legal person who is different from its members. Even though the shareholders contribute their capital and assets, they are not regarded as private and joint owners of its property.

5. Capacity to Sue

Through its corporate name, a company can sue and can be sued. A company can sue one of its own members for liability scandal when it incurs any loss, as a company is a separate person from its own members.

Q2. Prospectus.

Answer : *(Nov.-20, Q3 | Jan.-18, Q3 | Feb.-17, Q3)*

As per the companies Act 2013, "A prospectus is defined as any document described or issued as a prospectus and includes any notice, circular, advertisement or other document, inviting deposits from public or inviting offers from the public for the subscription or purchase of any shares in or debentures of a body corporate".

In other words, prospectus can be defined as any document which is inviting offers from public for subscription of shares or debentures of a company. It is simple invitation issued to the public for depositing money with the company or to take shares or debentures of the company. Prospectus can be in the form of a document, notice, circular, advertisement or any other thing in writing.

Q3. Alteration of Memorandum.

Answer : *Jan./Feb.-20, Q3*

The procedure for the alteration/change of the compulsory clauses or conditions of the memorandum is as follows,

1. Change of Name

Changes in company's name can be done by passing a special resolution or ordinary resolution.

(a) By Special Resolution

A company may change its name. For this purpose it must first pass a special resolution and then obtain approval of the central government in writing.

(b) By Ordinary Resolution

If a company is registered by a name which in the opinion of the central government is identical to an existing company. It may change its name by passing an ordinary resolution and with the previous approval of the central government.

2. Change of Registered Office

The change of registered office may involve any of the following,

(a) Change of Registered Office within the City

To change the registered office within the city, a resolution must be passed by the board of directors and the registrar must be informed of the change within 30 days.

(b) Change of Registered Office within the State

When the registered office is to be changed outside the local limits of any city in the same state, a special resolution must be passed. A notice of such change must be given to the registrar within 30 days.

(c) Change of Registered Office from One State to Another

To change registered office from one state to another state, a special resolution must be passed by the company and a copy must be filed with the registrar within 30 days.

3. Change of Objects Clause

A special resolution must be passed for change of objects clause. A copy of the resolution shall be filed with the register with in 30 days of its passing.

Q4. Articles of Association.

Answer : *(Model Paper-II, Q3 | Jan.-19, Q3 | July/August-17, Q3)*

According to Section 2 (5) of the companies Act, 2013 "Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this act, including so far as they apply to the company, the regulations contained as the case may be in Table-A to schedule-1 of the Act".

Articles of Association is the set of rules and regulations framed by the company for the management of the internal affairs of the company. It contains the Bye-laws that governs the conduct of the company. It plays a very important role in the internal affairs of the company and also helps in achieving the objectives of Memorandum of Association.

Q5. Write a note on Statutory Meeting.

Answer : *July/August-18, Q3*

(Note: Statutory meeting and statutory report Under Section 165 of companies Act, 1956 have been removed in companies Act, 2013)

A company limited by shares and all the companies which are limited by guarantee and has a share capital, must essentially within a period of 1 month and not more than 6 months from the date of starting of the business conducts a general meeting of the company which is usually known as statutory meeting. In a public limited company such meeting is the first general meeting of the shareholders members.

Q6. Memorandum of Association.

Answer : *May/June-18, Q3*

According to section 2(56) of the companies Act, 2013 "Memorandum means" the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act". Memorandum of association is one of the documents which has to be filed with the registrar of companies at the time of incorporation of the company. The memorandum is an extremely important document in relation to the affairs of the company.

In simple words, it is a document which sets out the constitution of the company and is the foundation on which the structure of the company is based. It contains the fundamental conditions upon which alone the company is incorporated.

Memorandum of association is a "public document" which is open to all the investors for studying and investing. It also provides detailed information to the shareholder like how their money will be utilized by the company and the extent of their liability limited by shares or limited by guarantee.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Q7. Minutes of Meeting.

Answer : *August-21, Q3*

The concept of 'Minutes of Meetings' is discussed Under Section 118 of companies Act, 2013. Minutes refers to the official record of the company meetings. The minutes of meeting are the summary of complete meeting conducted with shareholders and directors in which discussions are made, decision are taken and resolution arrived. Thus, minutes of meeting considered as the complete summary report of the conducted company meetings.

As per the Section 118 of the companies Act 2013, the minutes of the Board meeting shall be recorded as per the provisions of the Act. Some special provisions are given below,

(a) Minutes shall be recorded in books maintained specifically for recording purpose.

(b) Minutes may be recorded in physical or electronic form.

(c) Minutes shall be written clearly in a simple/plain language.

(d) Minutes shall have a fair and proper summary of the meeting proceedings.

(e) Minutes of board meetings and the committees shall be recorded in separate minute books.

Q8. Classification of Companies.

Answer : *Oct./Nov.-21, Q3*

As per companies Act, 2013, the companies which are registered under the Act are classified into the following types,

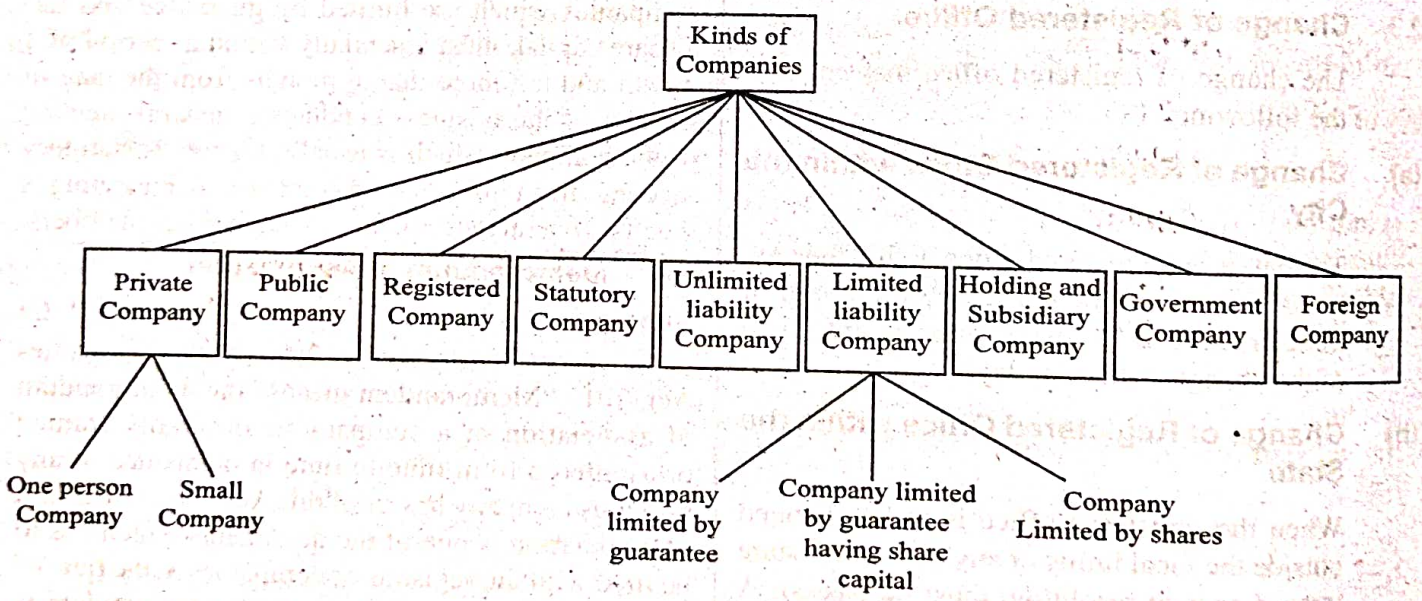


Figure: Kinds of Companies

1. Private Company

Section 2 (68) of the companies Act, 2013 states that private company is a company having atleast 1,00,000 of paid up capital or more..Private companies are further classified into two types. They are, One Person Company (OPC) and small company.

As per section 2 (85) of the companies Act, 2013 small company refers to a company other than public company which has a maximum paid up capital of ₹ 50 lakhs.

2 Public Company

As per section 2(7) of the companies Act, 2013, public company is company other than private company which has a minimum paid up capital of five lakh rupees or more as prescribed by the Act.

3. Registered Company

Registered company means a company which is registered under the companies Act, 2013 or any other previous companies Acts.

4. Statutory Company

Statutory company refers to a company incorporated and governed through a special Act passed by the state legislature or the parliament to perform special public undertakings.

5. Unlimited Liability Company

As per section 3(2) of the companies Act, 2013, an unlimited company is a company which has unlimited liability of the members.

6. Limited Liability Company

Limited liability company is a company which has limited liability. It is further divided into three types. They are company limited by guarantee, company limited by guarantee having share capital and company limited by shares.

7. Holding and Subsidiary Company

As per section 2 (87) of the companies Act, 2013, Holding Company means a company which holds complete control of another company. Subsidiary company means a company which is controlled by a Holding company.

8. Government Company

As per section 2 (45) of the companies Act, 2013, Government Company refers to a company whose 51% or more paid up capital is held by the Government.

9. Foreign Company

Under section 2(4) of the companies Act, 2013, foreign company refers to a company or body corporate located outside India.

Warning: Any copying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

FREQUENTLY ASKED QUESTIONS AND IMPORTANT QUESTIONS

ESSAY QUESTIONS

Q1. Define company. Explain in detail classification of companies.

Ans: *(July/August-2017, Q8(a) | Jan./Feb.-2015, Q4(b) | May-2013, Q4(b))* REPEATED 3 TIMES

For answer refer Unit-III, Page No. 70, Q.No. 4.

Q2. How does a private company differ from a public company? Describe briefly the procedure for effecting the conversion of a private company into a Public company.

Ans: *(Important Question | Jan./Feb.-20, Q8(a))*

For answer refer Unit-III, Page No. 72, Q.No. 5.

Q3. Define 'Company'. Examine the process involved in the formation of company.

Ans: *(Feb.-17, Q8(a) | July/August-18, Q8(a) | Jan.-19, Q8(a))* REPEATED 3 TIMES

For answer refer Unit-III, Page No. 73, Q.No. 6.

Q4. What is Memorandum of Association? Explain its contents.

Ans: *(July/August-18, Q8(b) | Nov.-20, Q10 | Jan.-18, Q8(b))* REPEATED 3 TIMES

For answer refer Unit-III, Page No. 74, Q.No. 7.

Q5. Define Public Limited Company. Explain in detail Memorandum and Articles of Association.

Ans: *(Nov.-20, Q11 | May/June-18, Q8(a) | Feb.-17, Q8(b))* REPEATED 3 TIMES

For answer refer Unit-III, Page No. 75, Q.No. 8.

Q6. Discuss the relationship and differences between Memorandum and Articles of Association.

Ans: *(Important Question | June/July-09, Q4(a))*

For answer refer Unit-III, Page No. 76, Q.No. 9.

Q7. Who are shareholders? What are the different types of shareholders meetings?

Ans: *(Jan.-18, Q8(a) | Oct./Nov.-21, Q11 | June/July-09, Q4(b))* REPEATED 3 TIMES

For answer refer Unit-III, Page No. 79, Q.No. 12.

Q8. What are the statutory provisions regarding the holding of an annual general meeting? What business is transacted at such a meeting.

Ans: *(Important Question | Jan./Feb.-20, Q8(b))*

For answer refer Unit-III, Page No. 80, Q.No. 13.

Q9. What are the law relating to meetings and proceedings of Board of Directors?

Ans: *(August-21, Q10 | July/August-16, Q4(a) | Jan.-16, Q4(b) | Jan.-14, Q4(b))* REPEATED 4 TIMES

For answer refer Unit-III, Page No. 81, Q.No. 14.

Q10. Explain in detail about Quorum of Board meeting.

Ans: *(Important Question | Jan.-19, Q8(b))*

For answer refer Unit-III, Page No. 82, Q.No. 15.

Q11. Who are Directors? Explain the Qualification, Appointment and powers of Directors.

Ans: *(May/June-18, Q8(b) | June/August-17, Q8(b))* REPEATED 2 TIMES

For answer refer Unit-III, Page No. 83, Q.No. 16.

Q12. Describe the Appointment, powers and legal position of Directors.

Ans: *(Important Question | Oct./Nov.-21, Q10)*

For answer refer Unit-III, Page No. 85, Q.No. 17.

Q13. Who is a Managing Director (MD) and Chairman? Discuss the powers of managing director and chairman.

Ans: *Important Question*

For answer refer Unit-III, Page No. 86, Q.No. 18.

Q14. What are powers and legal position of Directors, Board of Directors and Chairman under companies Act.

Ans: *(Important Question | August-21, Q11)*

For answer refer Unit-III, Page No. 87, Q.No. 19.

SHORT QUESTIONS

Q1. Define Company. State the characteristics of a company.

Ans: *(May-15, Q1(f) | May-13, Q1(d) | Feb./March-12, Q1(e))* REPEATED 3 TIMES

For answer refer Unit-III, Page No. 88, Q.No. 1.

Q2. Prospectus.

Ans: *(Nov.-20, Q3 | Jan.-18, Q3 | Feb.-17, Q3)* REPEATED 3 TIMES

For answer refer Unit-III, Page No. 88, Q.No. 2.

Q3. Alteration of Memorandum.

Ans: *(Important Question | Jan./Feb.-20, Q3)*

For answer refer Unit-III, Page No. 89, Q.No. 3.

Q4. Articles of Association.

Ans: *(Jan.-19, Q3 | July/August-17, Q3)* REPEATED 2 TIMES

For answer refer Unit-III, Page No. 89, Q.No. 4.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Q5. Write a note on statutory meeting. *(Important Question | July/August-18, Q3)*

Ans:

For answer refer Unit-III, Page No. 89, Q.No. 5.

Q6. Memorandum of Association. *(Important Question | May/June-18, Q3)*

Ans:

For answer refer Unit-III, Page No. 89, Q.No. 6.

Q7. Minutes of Meeting. *(Important Question | August-21, Q3)*

Ans:

For answer refer Unit-III, Page No. 90, Q.No. 7.

INTERNAL ASSESSMENT

I. Short Questions and Answers (2 Marks Questions)

Q1. Define Company.

Answer :

"Company" is defined as a company registered under Companies Act, 2013 or any previous company laws.

Q2. Define Memorandum of Association.

Answer :

Memorandum of association is one of the documents which has to be filed with the registrar of companies at the time of incorporation of the company. The memorandum is an extremely important document in relation to the affairs of the company.

Q3. Define Articles of Association.

Answer :

According to Section 2(5) of the Companies Act 2013, "Articles mean Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this act, including so far as they apply to the company, the regulations contained as the case may be in Table-A to schedule-I of this Act".

Q4. What is Prospectus?

Answer :

As per the companies Act 2013, "A prospectus is defined as any document described or issued as a prospectus and includes any notice, circular, advertisement or other document, inviting deposits from public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of a body corporate".

Q5. Who are Shareholders?

Answer :

Shareholders are the owners or members of the company. They hold equity shares in the company. The companies Act 2013 provides various rights and protection to shareholders.

II. Long Questions and Answers (5 Marks Questions)

Q1. Define Company. State the characteristics of a company.

Answer :

For answer refer Unit-III, Page No. 88, Q.No. 1.

Q2. Prospectus.

Answer :

For answer refer Unit-III, Page No. 88, Q.No. 2.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

UNIT 4 Consumer Protection and Other Essential Laws

SYLLABUS

Introduction to Consumer Protection Law in India – Consumer Councils – Redressal Machinery – Rights of Consumers – Consumer Awareness. Law of Industrial and Intellectual Property, Cyber Law, Competition Law, Land and Real Estate Laws, Law of Insurance.

LEARNING OBJECTIVES

After studying this unit, one would be able to understand,

- Consumer Protection Act, 2019.
- Consumer Protection Councils (State, Central and District Councils) and Their Functions.
- Redressal Machinery with Regard to Consumer Protection in India.
- Rights to Consumers.
- Consumer Awareness.
- Law of Industries.
- Law of Intellectual Property.
- Competition Law in India.
- Cyber Law.
- Land and Real Estate Laws.
- Law of Insurance.

INTRODUCTION

The consumer protection Act aims at providing fast and easy redressal of consumer disputes and for doing this, quasi – judical redressal agencies are established at central, state and district level. Consumer have different types of rights like right to be protected, right to be informed, right to choose, right to be heard, right to seek redressal and right to consumer awareness. All these rights are protected under consumer protection Act.

Law of industries includes, factories Act, Bonus Act, ESI Act, etc. Intellectual property refers to the tangible property created by writers, investors and artists by transforming their ideas. The Indian government has formulated various acts for the protection of Intellectual Property Rights (IPRs). They are, Copyright Act, Trademark Act, Patent Act, Geographical indications of goods Act and Design Act. Competition law is formed to prohibit anti–competition agreements, prohibit abuse or misuse of dominant position and for regulation of combinations.

Cyber law includes the set of rules and regulations related to the use of internet. Land laws include land acquisition, law and rent control law. Real estate law includes Indian Easement Act 1882, Transfer of Property Act 1882, Real Estate (Regulation and Development) Act etc. Real estate Act 2016 controls development, marketing and sale of real estate projects in order to secure consumer's interest in real estate sector.

The contract of insurance can be defined as a contract in which the insurer or professional risk bearer agrees to protect the insured against financial loss or a specific risk in exchange for a certain amount of money (premium.)

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

4.1 INTRODUCTION TO CONSUMER PROTECTION LAW IN INDIA

Q1. Define Consumer Protection. Explain in detail consumer protection Act, 2019.

Model Paper-I, Q9(a)

OR

Write a note on consumer protection Act in India.

Jan.-16, Q5(a)

(Refer Only Topics: Consumer Protection Act, 2019, Objectives of the Act)

OR

Discuss the consumer protection law in India.

(Refer Only Topics: Consumer Protection Act, 2019, Objectives of the Act)

Answer :

July/August-16, Q5(a)

Definition of Consumer Protection

Consumer protection is a type of protection which is provided to the consumers against the effect of malpractices of the marketers and firms and the social evils such as corruption, ill treatment, exploitation, unhygienic working conditions and deceitful market practices (including black marketing, overcharging, misguidance by advertising, mislabelling, misuse of trademarks, patents etc).

Consumer protection specifies the protection provided to the consumers against the adverse market conditions such as price hikes, black marketing etc.

Consumer Protection Act, 2019

The old Consumer Protection Act 1986 is replaced by the new Consumer Act 2019. The new Act, 2019 was passed on 9th August 2019 by the Government of India. It came into effect on 20 July 2020. COPRA 2019 is a law that focusses on protecting the consumer interests. This can surely and speedily resolve a large number of complaints that remained pending in the consumer courts throughout the country.

Objectives of the Act

Some of the objectives of Consumer Protection Act, 2019 are as follows,

1. To protect the consumer rights by setting up the authorities for effectively setting and managing the disputes of consumers.
2. To provide complete protection to consumers.
3. To simplify the process of consumer disputes adjudication.

Q2. Critically evaluate the legal provisions for consumer protection in India.

Answer :

Jan.-14, Q5(b)

The important provisions/features of Consumer Protection Act, 2019 are as follows,

1. Incorporation of E-Commerce

E-commerce transactions were not included specifically in the earlier Act, 1986. The new Act has incorporated e-commerce transactions.

2. Set up of Central Consumer Protection Authority (CCPA)

The new Act has lead to the establishment of a regulatory authority called as the Central Consumer Protection Authority (CCPA) with extensive powers of enforcement. There is an investigation wing in the CCPA, the head of which will be a Director-General whose main responsibility is to investigate into consumer law violations.

The director will also check for unfair trade practices and false or misleading advertisements. The below punishments will be given, if anyone doesn't comply with the direction of the central authority.

(a) Imprisonment for a period upto 6 months (or)

(b) Fine upto 20 lakh rupees or both.

3. Strict Norms & Penalty for False or Misleading Advertisement

The Act 2019 has also defined the term "Misleading Advertisement" as any advertisement which,

(a) Gives false information about the product/service.

(b) Purposely hides the important information.

(c) Gives a false guarantee to the consumer regarding products.

The entities who will be liable to such Ads include manufacturers, celebrity endorses, advertising agencies and publishers. The penalty for misleading Ads will be imposed by CCPA.

4. Product Liability and Penal Consequences

The concept of product liability has been introduced by the Act, 2019 and its scope covers product seller, product manufacturer and the service provide of the product. In case of any claim for compensation, the product liability action will be taken based on,

(a) Defect in design.

(b) Deviations from manufacturing specifications.

(c) Not complying with the express warranty.

(d) Imperfect and faulty service.

(e) Not providing sufficient information for correct use.

When compared to product sellers and service providers, the product manufacturer is more exposed to risk under the new act. However, some exceptions may protect the sellers from liability claims.

5. Improvement of Pecuniary Jurisdiction

The new Act has revised pecuniary limits for entreating consumer complaints, where the value of goods or services paid will be as follows,

(a) National Commission – Above 10 crore

(b) State Commission – 1 crore to 10 crore

(c) District Commission – Upto 1 crore.

6. Unfair Trade Practices

A definition of unfair trade practices is also introduced by the new Act, which includes sharing the consumers personal information in a confidential manner. If the information is disclosed, it should be in accordance with the provision of the any other law.

7. Provision for Alternate Dispute Resolution

To make the dispute resolution process more quicker and simpler, the Act has come up with a "Mediation" mechanism which is an alternative to Dispute Resolution System. Dispute resolution will become more speedier and quicker this way. Further, the pressure on consumer courts will also reduce.

8. E-Filing of Complaints

The Consumer Protection Act 2019 allows the consumers to file their complaints online. This initiative aims at reducing inconvenience and providing relieve to consumers.

4.2 CONSUMER COUNCILS

Q3. Write a note on Consumer Protection Councils. State the functions of consumer councils in India.

OR

Explain the functions of consumer councils in India. *Feb.-17, Q9(a)*

(Refer Only Topic: Functions of Consumer Councils (Central, State and District Councils))

OR

What are the functions of the state and central consumer protection councils?

(Refer Only Topic: Functions of Consumer Councils (Central, State and District Councils))

Answer : *Jan./Feb.-20, Q9(a)*

Consumer Protection Councils

In India, consumer movement has resulted in the establishment of various organizations locally. These organizations are called as consumer forums (or Consumer Protection Councils). The consumer protection councils are established at central, state and district level. The consumer protection council established at central level is known as 'central consumer protection council', the consumer protection council at state level is known as state consumer protection council' and consequently the consumer protection council at district level is known as 'district consumer protection council'.

Functions of Consumer Councils (Central, State and District Councils)

The various functions of consumer councils in India (Central, State and District Councils) are as follows,

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

1. Consumer councils work for the protection of rights of consumers.
2. Consumer councils give guidance to consumers on how to approach consumer court to file a suit.
3. Consumer councils represent the consumers in the consumer court.
4. Consumer councils bring awareness in consumers regarding consumer rights.
5. Consumer councils motivate business units and professional associations to set code of conduct which govern the activities undertaken by their members.
6. Consumer councils gather, receive and distribute information regarding goods and services and immovable property.
7. Consumer councils receive and analyze the complaints given by the consumers.
8. Consumer councils may perform some other additional functions with the prior permission from the chief executive in council.

Q4. Discuss in detail consumer protection councils.

Answer :

The consumer councils in India established at central, state and district level are discussed as follows,

1. Central Consumer Protection Council.
2. State Consumer Protection Council.
3. District Consumer Protection Council.

1. Central Consumer Protection Council

The Consumer Protection Act provides that the central government may establish a council called the central consumer protection council.

(a) Members of the Central Council

The central council shall consist of the following members,

(i) The minister incharge of the department of consumer affairs who shall be its chairman.

(ii) Number of other official or non-official members representing such interests.

As per the consumer protection rules, the central council shall consist of 150 members and the term of the council shall be 3 years.

(b) Meetings of the Central Council

Regarding the meetings of central council, the act provides that the central council shall meet as and when necessary, but at least one meeting shall be held every year. The central council shall meet at such place and time as the chairman thinks fit.

(c) Objectives of the Central Council

The prime objectives of the central council are the promotion and protection of the rights of the consumers.

2. State Consumer Protection Council

According to the consumer protection act 2019, state consumer protection council should be established by the state government to protect the rights of consumers at state level.

(a) Members of the State Council

The Act states that the chairman of this council should be the minister of state government and the incharge of the consumer affair of the state and other members of the state council should be selected or prescribed by the state government itself.

(b) Meetings of the State Council

The state council must conduct at least 2 meetings every year.

(c) Objectives of the State Council

The state council aims at protecting and promoting the rights of consumers at state level.

3. District Consumer Protection Council

The state government by notification will set up a council for every district which is called as the 'district consumer protection council' and shortly known as 'district council'.

(a) Members of the District Council

The members of the district council are,

(i) The district collector who takes up the position of chairman in the district council.

(ii) Some number of other official and non-official members specified by the state government.

(b) Meetings of the District Council

Meetings are conducted as and when required but conducting at least 2 meetings in an year is mandatory. The time and place of the meeting is decided by the chairman of district council.

(c) Objectives of the District Council

The district council aims at protecting and promoting within the district all the rights of consumers as mentioned in the Act.

4.3 REDRESSAL MACHINERY

Q5. What is Consumer Councils and Redressal Machinery in India? Explain.

(Model Paper-II, Q9(a) | August-21, Q13)

OR

Explain the Redressal Machinery available with regard to consumer protection in India.

(Refer Only Topic: Redressal Machinery for Consumer Protection in India)

Answer : *May/June-18, Q9(a)*

Consumer Councils

In India, consumer movement has resulted in the establishment of various organizations locally. These organizations are called as consumer forums (or Consumer Protection Councils).

Redressal Machinery for Consumer Protection in India

The redressal agencies under the consumer protection Act, 2019 are,

1. District Commission (or) District Consumer Disputes Redressal Forum (DCDRF).
2. State Commission (or) State Consumer Disputes Redressal Commission (SCDRC).
3. National Commission (or) National Consumer Disputes Redressal Commission (NCDRC).

1. District Commission (or) District Consumer Disputes Redressal Forum (DCDRF)

The district consumer disputes redressal forum is also called as the 'district forum'. The state government by notification set up this forum in every district of the state.

The district forum is composed of the following members,

(a) An individual who possesses the qualification to become a district judge, can take up the position of president in district forum.

(b) Two other members. Among these two members, one member should be female. These two members should possess the below mentioned qualifications. They should possess knowledge and should have good experience in tackling problems concerning law, economics commerce, industry, accountancy, administration or public affairs.

The district forum is conferred with the authority to deal with consumer complaints where the value of goods/service and the damages claimed is not more than ₹ 20 lakhs (According to amendment in the Act 2002).

Consumers may file a complaint in a District Forum if,

(a) Opposite party or each member of the opposite party (if there are more than 1) stays or conducts business within the concerned district while filing the complaint (or)

(b) Any one of the party (in case of more than 1) staying or conducting the business in the district while filing the complaint (if the permission is granted by the district forum).

2. State Commission (or) State Consumer Disputes Redressal Commission (SCDRC)

Every state commission is composed of the following members,

(a) An individual who is or has been a high court judge, appointed by the state government.

(b) The state commission also contains minimum two members specified by the act. They should possess appropriate knowledge and have experience in tackling problems concerned with law, accountancy, economics, industry, commerce, public affairs or administration. One among them should be a women.

As per the Amendment in Act 2002, the state commission have jurisdiction/authority,

(a) To entertain complaints where the value of goods or services and claim for compensation is more than ₹ 20,00,000 but does not cross 1 crore.

(b) To ask for records and pass suitable orders,

(i) If there are any pending consumer disputes with the district forum within the state.

(ii) If the state commission perceives that the district forum has unlawfully excercized its legal powers (or) has used the legal power not given by the law (or) has been unsuccessful in using the authority or power.

(iii) The state commission can also consider requests/appeals made against the orders of district forum within the state.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

3. National Commission (or) National Consumer Disputes Redressal Commission (NCDRC)

National Consumer Disputes Redressal Commission (NCDRC), India was established in the year 1988 under the Consumer Protection Act, 1986. It is a quasi-judicial commission of the country and is considered as the top agency for redressal of consumer disputes.

The National Consumer Disputes Redressal Commission (the National Commission) comprises of,

1. An individual who is or has been supreme court judge. He will take up the role of president of the national commission by the central government.
2. Four other members who should possess knowledge and have experience in tackling problems concering law, accountancy, economic, commerce, public affairs, industry or administration. One among this members should be a female.

The National Consumer Commission has the authority,

(a) To consider complaints where the value of goods/services and claim for compensation is ₹ 1 crore or more.

(b) To ask for records from the state commission.

(c) To hear appeals made against the order of any state consumer commission.

Q6. What is the jurisdiction of a consumer dispute redressal forum? In what manner is a complaint filed before it? What procedure is followed by it after receiving a complaint?

Answer : *Jan.-19, Q9(a)*

Jurisdiction of a Consumer Dispute Redressal Forum

The consumer disputes redressal forum (or district forum) may have jurisdiction to handle complaints where, the cost of goods or services and the value of the compensation claimed is not more than ₹ 20 lakhs. This jurisdiction is subject to other legal obligations of this Act.

Manner/Way of Filing a Complaint

Now, the question arises how a complaint is filed with a district forum. A complaint concerning goods or services sold or delivered or agreed to be sold or delivered might be filed with the district forum by,

(a) Consumer to whom those goods or services are sold or delivered or agreed to be sold or delivered.

(b) Any recognized consumer association, irrespective of whether the consumer to whom goods or services are sold or delivered or agreed to sold or delivered.

The state government or central government might file the complaint with district forum either in its individual interest or as a representative of consumers interests. Each and every complaint involves some amount of fees. The amount of fees and fee payment procedure should be as per the specifications given by the state government.

After receiving a complaint, the district forum might accept or reject a complaint. A decision regarding whether to accept or reject the complaint is taken within 21 days from the date on which complaint was received by the district forum. If the complaint is accepted, then the district forum might proceed with the complaint in the manner prescribed in this act. Once the complaint is accepted by the district forum, it will not be transferred to any other court or authority established by or under any other act being in force for the time being.

Procedure to be Followed After Receiving a Complaint

After receiving the complaint concerned with goods, the district forum sends a copy of the complaint to the opposite person specified in the complaint. The district forum asks the opposite party for his opinion on the complaint within 30 days.

If the opposite party refuses to accept the statement made against him in the complaint or unable to take up any action in support of his case within the time specified by the district forum. The district forum follows the below given procedure to settle the consumer disputes,

1. Sending a Sample of Goods to Laboratory for Tests

The district forum takes the sample of goods from the complainant, seals them and sends them to the laboratory for the purpose of analysis or test which can required. Such analysis or test is carried out in order to know whether goods have any defects mentioned in the complaint.

2. Deposit of Fees

Before sending sample of goods to laboratory for test or analysis, the district forum asks the complainant to deposit some amount of fees as prescribed by the district forum.

3. Payment of Fees to Laboratory and Forwarding a Copy of Report to Opposite Party

The fees deposited to the forum is paid to laboratory for conducting test or analysis. After receiving the report from the laboratory about the test or analysis results, a copy of this report along with the remarks identified by the forum are sent to opposite party.

4. Disapproval by Any Party

If any party raises objection against the results of the laboratory test or analysis, or raises objection against the methods used by laboratory for conducting test or analysis, the district forum asks the objecting party to submit his objections to the forum in the written form.

5. Equal Opportunity to Parties of Being Heard and Issue of Order

The district forum gives equal opportunity to both complainant and opposite party of being heard with respect to the correctness of the report given by the laboratory and also with respect to the objection raised concerning such report. Later on, forum will issue an order.

If after completing the procedure, the district forum comes to know that goods complained possesses the defects mentioned in the complaint, then under this situation forum will issue an order to the opposite party asking him to take up one or more below given steps,

(a) Replace the defective goods with new goods of similar type.

(b) Give compensation to the consumer for the loss or damage incurred by consumer because of the negligence of the opposite party.

(c) To stop the unfair or restrictive trade practices.

(d) To drop the harmful goods from the sales list.

(e) To provide for appropriate costs to parties.

4.4 RIGHTS OF CONSUMERS AND CONSUMER AWARENESS

Q7. Define 'Consumer'. What are the rights of consumers as per Consumer Protection Act.

Answer : *July/August-17, Q9(a)*

Definition of Consumer

The consumer protection Act, 2019 defines consumer as any individual who purchases any goods/services for a consideration which has been paid or promised or partly paid or partly promised or any mechanism of deferred payment. It also includes the individuals who use such goods with the approval of the buyer. But those who acquire such goods for resale purpose or commercial purpose, will not be considered as consumers. As per the Act 2019, the expression "buys any goods" and "hires or obtains any services" includes transactions carried out online or offline via electronic means or direct selling or teleshopping or multi-level marketing.

Rights of Consumers

As per the consumer protection Act 2019, the rights of consumers are as follows,

1. Right to be protected.
2. Right to be informed.
3. Right to be choose.
4. Right to be heard.
5. Right to seek redressal.
6. Right to consumer awareness.

1. Right to be Protected

This right provides protection against the products or services which are harmful to health and life of a consumer. If there are any manufacturing defects in the products like pressure cookers, gas cylinders etc, then this will cause huge effects on life and property of a consumer. Thus, buying the right products with proper working conditions is the right of a consumer. In case of any defect in the product, the consumer may return it to the supplier.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

2. Right to be Informed

This right makes it compulsory for the firms to disclose the facts required for making informed choice. The act clarifies that every consumer has a right to know or be informed regarding product's quality, purity, quantity potency and standards to make sure that consumers can be saved from unfair trade practices. It is important for the manufacturer to make a mention of contents of product, date of production, price etc., on the product.

3. Right to Choose

A consumer has the right to choose the product he/she likes. He/she has a right to choose from a variety of products at competitive prices.

4. Right to be Heard

It the consumer has incurred a loss or damages due to some product or if he/she was exploited by marketers, then in such a case he/she has a right to be heard and be assured that their case will be considered by the proper forums at district, state or national level.

5. Right to Seek Redressal

The consumer has a right to seek redressal incase he/she is exploited by marketers or he/she is a victim of unfair trade practices. Under this right, the consumer can ask for compensation for damages incurred and problem they have gone through due to such unfair trade practices.

6. Right to Consumer Awareness

The consumer has a right to become well-aware of their rights, the provision of law (in case of exploitation or damages), available remedies. Awareness will help the consumer to safeguard himself from fraudulent information, advertising labelling and other such misleading practices.

Q8. What are the rights of consumers? What is Consumer Awareness? What is the need for Consumer Awareness? Explain the level of consumer awareness in India.

OR

What are the rights of consumers? Critically analyze the level of consumer awareness in India.

(Refer Only Topics: Rights of Consumers, Level of Consumer Awareness in India)

Answer : *July/August-18, Q9(a)*

Rights of Consumers

For answer refer Unit-IV, Page No. 103, Q.No. 7, Topic: Rights of Consumers.

Consumer Awareness – Meaning

Consumer Awareness refers to the consumer having a knowledge (while buying goods) about their rights and responsibilities, protection laws available and machineries for redressal. It is very important for all consumers to have awareness so that they can wisely choose the products and protect themselves from frauds. In India, "Jago Grahak Jago" is the best example of consumer awareness.

Need for Consumer Awareness

Consumer awareness is an urgent need in the current situation. Technology is rapidly advancing, marketers are coming up with sophisticated gadgets and unique marketing strategies are being used in the era of globalization. All these are associated with unique problems and challenges. Consumers need to be aware of such rapid changes to protect themselves from harm.

The consumers need to pay attention to the things they buy and the quality of products and services they avail both online and offline. Thus, there is a necessity to educate and motivate consumers.

Level of Consumer Awareness in India

In India, there is a growing consumer awareness as people are getting more and more educated about products and are becoming alert of frauds. Many social groups played a major role in making the consumers become aware of their rights against unfair trade practices. Several social systems across the world have also helped in increasing the consumer awareness regarding the available redressal systems against exploitation, poor quality of products and services. In India, department of consumers affairs initiated a campaign called "Jago Grahak Jago" in the year 2005. The campaign worked out successfully and brought a drastic improvement in consumer awareness. Because of this campaign, consumers were protected against malpractices of marketing and their complaints were redressed successfully.

Despite all this, some consumers become a victim of unfair trade practices and are misled by illusionary advertisements due to lack of proper education. This issue needs to be addressed by educating the consumers about their rights and responsibilities by holding awareness workshops and training camps. The consumers should also come up and voice against the rise in prices of various commodities. Everyone should know about Consumer Protection Act, 2019 and RTI Act (Right To Information), so that illegal practices can be eradicated from the market and those who are involved in corrupt practices can be punished.

4.5 LAW OF INDUSTRIAL AND INTELLECTUAL PROPERTY

Q9. List and explain the laws regulating industries.

Answer : *Model Paper-I, Q9(b)*

The various laws that regulate industries are given as follows,

- The Factories Act, 1948
- The Employees Compensation Act, 1923
- The Employees State Insurance Act, 1948
- The Employees Provident Funds and Miscellaneous Provisions Act, 1952
- The Payment of Gratuity Act, 1972
- The Maternity Benefit Act, 1961
- The Minimum Wages Act, 1948
- The Payment of Wages Act, 1936
- The Trade Unions Act, 1926
- The Industrial Disputes Act, 1947
- The Payment of Bonus Act, 1965
- The Collection of Statistics Act, 2008
- The Apprentices Act, 1961
- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

Figure: Laws/Acts Regulating Industries

1. The Factories Act, 1948

The Factories Act was enacted on September 23, 1948 with an aim to regulate the working conditions in factories and for providing relief and some minimum benefits to the workers. The Factories Act is a Central Act enacted by the Government of India for the welfare of the workers. It is applicable all over the country.

The Act aims at ensuring safety of the workers against accidents on machines and other equipments and taking care that the children are not employed for any work which involves dangerous machinery.

2. The Employees Compensation Act, 1923

The Workmen Compensation Act, 1923 is considered as the oldest and the most significant part of the social security legislation. After amendments, the act is renamed as Employees Compensation Act. The main aim of the Act is to provide social security to employees. The Act states that specific classes of employers should provide compensation to their employees in case of any injury by accident. According to this Act, "the cost of product should bear the blood of the employees". The Act encourages the employees to claim for compensation even if the accident happens due to their negligence.

3. The Employees State Insurance Act, 1948

The Employees State Insurance Act was enforced from 19th April 1948. It was introduced basically to offer benefits to the employees. The Act instructs the state to make better provisions for ensuring the right to work, educate and provide public assistance in case of unemployment, old age, sickness and disablement. It makes provisions for ensuring fair and healthy conditions of work and maternity relief using appropriate legislations or in any other manner to all workers. It aims to introduce health insurance scheme for the industrial workers and provide periodical payments to the employees in case of permanent injury or sickness or maternity.

4. The Employees Provident Fund and Miscellaneous Provisions Act, 1952

The employees provident funds and Miscellaneous provisions Act, 1952 was enforced for giving social security to the industrial workers. It acts as a social measure which encourages the employees to save a part from their present earning for future. The Act offers retirement or old-age benefits like provident fund, superannuation pension, invalidation pension, family pension and deposit linked insurance.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

5. The Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 is an important act of social security legislation whose main objective is to offer gratuity to the employees who are engaged in factories, mines, oil fields, plantations, ports, railways, shops and other establishments. The gratuity is usually paid at the time of superannuation, retirement, resignation, death or total disablement (due to accident or disease).

6. The Maternity Benefit Act, 1961

The Maternity Benefit Act of 1961 was passed to offer uniform maternity benefit to women workers in those industries which were not covered by the ESI (Employees State Insurance) Act, 1948. As per Maternity Benefit Act 1961, pregnant (women) workers should be given 3 months (i.e., 12 weeks) leave with average daily wages. Along with this, ₹ 250 should be given as medical bonus, if pre-natal confinement and post-natal care is not available free of cost.

7. The Minimum Wages Act, 1948

The minimum wages Act, was enacted in the year 1948. The Act aims to protect the labour from exploitation. Generally, the employers take advantage of workers and pay them less wages. The act has made it compulsory for the employers to pay minimum wages to workers. The pay should not be less than the minimum wage limit and workers must not accept wages which are below minimum wage limit.

8. The Payment of Wages Act, 1936

The payment of wages Act 1936, monitors the payment of wages to specific groups of individuals who are employed in the industry. This act was enacted for assuring that the employees (who are included by the act) are paid by the employer within the specified time period and there must not be any deductions except those entitled by law on 1st January 1996.

9. The Trade Unions Act, 1926

The Trade Unions Act, 1926 was enacted on June 1, 1927. The main aim behind passing this act was to oversee the conditions that govern the registration, rights, obligations and liabilities of a registered Trade Union. The objective of the act is to make provisions for registering the Trade Unions (which are formed by the workers in order to protect their legitimate rights while fighting with the employers). After registration, the trade unions will be able to enjoy some privileges and will be under the protection of law.

10. The Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 is one of the laws governing Industrial Relations in India. The Act came into force on 1st April, 1947 and has been amended several times since then. The objectives of the Act, in accordance with the judgement given by supreme court are as follows,

(a) To promote measures for securing and preserving amity and good relations between the employers and the employees.

(b) To provide a suitable machinery for investigation and settlement of industrial disputes.

(c) To provide relief to workmen in matters of layoffs, retrenchment, wrongful dismissals and victimization.

11. The Payment of Bonus Act, 1965

The payment of Bonus Act, 1965 provides that the employer should pay bonuses to employees based on the profits, production or productivity. The main aim of the act is enable the employees to earn slightly more than the minimum wages on the basis of performance.

12. The Collection of Statistics Act, 2008

The Collection of Statistics Act, 1953 was last amended in the year 2008. The Act was enacted to collect specific type of data/statistics in relation to trade, industries and commerce. It covers the whole of India, except Jammu and Kashmir.

13. The Apprentices Act, 1961

The apprentices Act, 1961 came into force with an objective to provide regulations and controlling measures for training of apprentices and also for other related matters. The Act states that the employers should train a specific number of apprentices for selected trades. Apprentice means a person/individual who learns from an employer (usually expert) on the basis of an agreed contract to work for a fixed time period at low wages.

14. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to enable the industrial establishment to compulsory notify the emerging vacancies to the employment exchanges before the vacancies are filled up. The Act aims to,

(a) Have an authority that checks the employment potential of different establishments and to understand the labour market in a better way.

(b) Encourage the government to design a training policy for the technical education.

(c) Facilitate the unemployed persons in finding a suitable employment.

Q10. Explain briefly the provisions relating to,

(a) Payment of Bonus Act, 1965.

(b) Minimum Wages Act, 1948.

Answer :

(a) Provisions Relating to Payment of Bonus Act, 1965

Some of the provisions of Payment of Bonus Act, 1965 are as follows,

1. Employee

An individual employed in any industry on a salary or wage of not more than INR ₹ 10,000 per month for performing any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hiring or rewarding on the basis of the express or implied terms of employment is called as an employee.

2. Salary or Wage

The salary or wage means the remunerations which are made in terms of money. The terms of employment are either expressed or implied and are payable for an employment or for the work done in such employment. It involves dearness allowance which is paid to an employee due to increase in the cost of living, but does not involve,

(i) Other allowances for the temporary employees.

(ii) The allowances for any house accommodation or light, water, medical attendance or other amenity.

(iii) Travelling concession, bonus and a payable commission to the employee.

(iv) Any paid or payable contribution by the employer to any pension fund or provident fund.

3. Proportionate Reduction in Bonus in Some Cases

If an employee has not worked on all the working days in an accounting year, then such employee will be paid a minimum bonus of INR 100 or as the case may be of INR 60 and if the bonus is more than 8.33 percent of his salary or wage for the number of days he has actually worked in that accounting year, then it shall be decreased proportionately.

4. Calculation of Number of Working Days

To meet the purposes of section 13, an employee is considered to have worked in an organization in any accounting year and also on the days on which,

(i) The employee has been laid off/dismissed under an agreement or as allowed by standing orders under the industrial employment act, 1946.

(ii) The employee was on leave with salary or wage.

(iii) The employee was absent because of temporary disablement occurred due to the accident.

(iv) The employee was on maternity leave with salary or wage in the accounting year.

5. Adjustment of Customary or Interim Bonus Against Bonus Payable Under the Act

An employer can deduct the amount of bonus paid from the amount of bonus payable by him to the employee under this act, but only in the following two cases,

(i) If an employer has paid any puja bonus or other customary bonus to an employee, or

(ii) If an employer has paid a part of the bonus payable under this act.

6. Deduction of Certain Amounts from Bonus Payable under the Act

In any accounting year, if an employee is exposed as guilty for any kind of financial misconduct which led to the financial loss to the employer, then under this act, the employer is allowed to deduct the loss incurred from the amount of bonus payable by him to the employee and the employee shall be entitled to get the balance (if any).

7. Separate Establishment

A department or undertaking or branch is considered as a separate establishment when the profit and loss accounts are created and maintained for such department or branch.

8. Disqualification and Deduction of Bonus

The bonus can be deducted by an employer for that year if the employee is dismissed for fraud or riotous or violent behaviour in the premises of the establishment or theft, misconduct or damage of any property or misconduct resulting in the financial loss to the employee.

(b) Provisions Relating to Minimum Wages Act, 1948

The important provisions of the Minimum Wages Act are as follows,

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

1. Fixing of Minimum Wages

The minimum rates of wages is fixed by the appropriate government and revisions are done once in five years. The minimum wage is fixed at time rate, piece rate, guaranteed time rate and overtime rate.

2. Minimum Rate of Wages

The minimum rate of wages include the following,

(i) A basic rate of wages and a cost of living allowance.

(ii) The primary rate of wages with or without the cost of living allowance and the cash value of the concessions with regard to the supplies of necessary commodities at concession rates.

(iii) An inclusive rate to be considered for the base rate, the cost of living allowance and the cash value of the concessions.

3. Working Hours

The government should give a weekly day off rest, pay remuneration for the days of rest and payment for work on a day of rest at rate not less than the overtime rate.

4. Overtime

If an employee works on any day more than the number of working hours constituting a normal working day, then the employer must pay him at the overtime rate fixed as per the act.

5. Employer's Obligation

It is the legal obligation on the employers to pay the rates after the fixation or revision of minimum rates of wages as per the procedure specified under the act. They cannot claim for the incompetency of the industry to pay.

6. Exemptions

The appropriate government specifies that the provisions of this act is not applicable to the wages payable to the disabled employees. For certain reasons, the government may recommend that the provisions of this act is not applicable to all or any class of employees. No provision of this act applies to the wages payable by an employer to a member of his/her family who is living with him/her and is dependent on him/her.

7. Content of Minimum Wages

The fair wages committee observed that the minimum wages should not only be given for fulfilling the basic requirements of life but also for sustaining the efficiency of the workers by giving few measures of education, medical aid and amenities.

8. Different Categories

This act allows fixation of various minimum rates of wages for various work classes in the similar scheduled employment.

Q11. What are the main provisions of the Payment of Wages Act, 1936? Explain.

Answer :

The important provisions of the Payment of Wages Act, 1936 are as follows,

1. Coverage

Payment of wages Act is applicable to the individuals who are employed directly or through sub-contractors in any factory and in railway. The state government has the authority to extend the provisions of the Act for the individuals employed in any industrial establishment. The wage limit for the applicability of the Act is ₹ 6500 per month.

2. Definition of Factory and Industrial Establishment

The factory is defined as a premises, where a number of 10 or more individuals work (if power is used) and number of 20' or more individual work (if power is not used) in a manufacturing process. The industrial establishment means tramway service, dock, wharf, jetty, mechanically propelled inland vessel, mine, quarry, oilfield, plantation, production workshop, adaptation, manufacture of articles for use, transport, sale, construction industry including buildings, roads, bridges, canals, operation related with navigation, irrigation water supply and the generation, transmission and distribution of electricity or any other form of power.

3. Responsibility for Payment of Wages

The payment of wages is the responsibility of the employers, managers of factories and/or the individuals who supervise and regulate the industries.

4. Fixation of Wage Periods

The individuals who are liable for payment of wages will fix the wage period and accordingly the wages are paid. Such wage period must not be more than one month.

5. Time of Wage Payment

The factories which employ less than 1,000 individuals shall pay the wages before the expiry of the seventh day from the last wage period. But in all the other cases, the wages shall be paid on the tenth day from the last wage period.

6. Deductions

The wages of an employed person can be deducted for many different reasons like fines, absence from duty, deductions for damage or loss, house accommodation, amenities and services, recovery of advances or loans, income tax, court order, cooperative societies, LIC promotion, fidelity guarantee bonds, Prime Minister's national relief fund, trade union subscription and so on.

7. Fines

The guidelines used for charging fines are as follows,

(a) Before charging fines, a chance must be given to the employees.

(b) The total sum of fine which may be generally charged in one wage period must not be more than an amount equal to 3% of the wages payable to an employee.

(c) Any person who is under the age of 15 years shall not be charged any fine.

(d) The fine imposed will not be recovered after the expiry of 60 days from the day on which such fine is imposed.

8. Claims

In this Act, the individuals whose payment of wages is delayed or deductions are made from the wages can apply for direction. Such applications should be made within 12 months from the deduction date or from the date on which the payment was due. The authority has the right to approve any delayed application. After hearing the considerations of both the persons, the authority may direct the payment. For delayed wages, compensation may be ten times the amount deducted or ₹ 25.

9. Penalties

The penalties are generally given for the contravention of different provisions of the act and varies from a fine of ₹ 500 to ₹ 1,000. A fine may extend to ₹ 500 if the specified registers or records are not maintained, the necessary information is not provided or false information is presented. Punishment may be a minimum fine of ₹ 200 and can extend upto ₹ 1,000 for stopping an inspector, not presenting any document to the inspector or avoiding anybody from appearing before or being assessed by an inspector.

Q12. Explain the provisions relating to,

(a) Industrial Disputes Act, 1947.

(b) Trade Unions Act, 1926.

Answer :

(a) Provisions Relating to Industrial Disputes Act, 1947

The Industrial Disputes Act is based on the following principles,

1. A permanent machinery (Conciliation) has been set up for the speedy and amicable settlement of industrial disputes.
2. Compulsory arbitration in public utility services, including the enforcement of arbitration awards, has been recognised.
3. Strikes and lockouts during pendency of conciliation and arbitration proceedings and the arbitration awards, enforced by the government order are prohibited.
4. Specific time limits has been set for various stages of conciliation and arbitration for eliminating delays.
5. An obligation has been imposed on employers to recognise and deal with representative trade union.
6. Work committees set up to provide machinery for mutual consultation between employers and employees.
7. Industrial disputes may be referred to an industrial tribunal where both the parties to any industrial dispute, apply for such reference where the appropriate government considers it expedient to do so.

(b) Trade Unions Act, 1926

Following are some of the provisions/salient features of Trade Unions Act, 1926,

1. Registration

A Trade Union must get itself registered with the registrar of Trade Unions. Section 4 of this Act provides the rules for registration with respect to the number of members that are to be included in the union. The registrar may cancel the application if half of the members decided to withdraw from the union before registration.

2. Cancellation of Registration

According to Section 10 of this Act, registrar may cancel the registration of a Trade Union in the following conditions,

(a) If the application is not filled by the Trade Union.

(b) If the registrar has come to know that the certificate is fraudulent one.

(c) If the applicant and the union make an active participation in any illegal strike.

(d) If the primary objectives of the union is no longer statutory in nature.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

3. Re-registration of a Trade Union

Section 11 and 12 of this Act, provides the procedure for re-registration of a Trade Union. The registrant whose registration has been cancelled by the registrar can apply for the re-registration after 6 months from the date of cancellation.

4. Incorporation

According to section 13, after registration, the Trade Union shall be incorporated as a corporate body with its name. The registered Trade Union shall have a perpetual succession, a common seal and power to contract and also a right to sue and be sued.

5. Duties and Liabilities of Registered Trade Union

As per Section 15 of this Act, Trade Union should,

(a) Notify the address change of its registered head office

(b) Maintain general funds

(c) Funds for political purposes.

6. Distinction between Registration and Recognition of Trade Unions

In section 28 of the Trade Union Act, the procedure, conditions and rights for recognition of a Trade Union are included. Registration of a Trade Union can be done with registrar whereas recognition is to be carried out by the management as a collective bargaining agent or with the collective bargaining council.

7. Privileges of Registered Trade Unions

Management will respond to the issues of the Trade Unions if the membership of the union is greater in number. If the union has smaller membership, then the management of the firm will consider the issues and appeals. In such circumstances, if the union has political support then they can proceed through the minister for adjudication. In India, the registered Trade Union can effect the union dynamics of the industry through the government.

8. Submission of Returns

According to section 28 of this Act, the registered Trade Union should submit the returns report including the receipts and expenditure during a particular year. Registered Trade Union should send a copy of the changed rules to the registrar within 15 days.

9. Power to Make Regulations (Sec- 29)

The suitable government is given authority to make regulations in the following affairs,

(a) The way in which trade unions and its rules shall be registered and the fees that shall be paid on registration.

(b) When a registered Trade union has shifted its head office from one state to another, the registration or transfer is required.

(c) The process that might be followed by the registrar in

(i) Checking the registered trade unions membership under Section 28 A, or

(ii) The judgement of any conflict brought to him under section 28 C.

10. Penalties and Procedure

The registrar of trade unions has the power to levy penalty on the trade unions under sections 31 to 33 if they furnish incorrect statements or information regarding returns.

Q13. Briefly discuss the provisions of Factories Act, 1948.

Answer :

The following are some of the important provisions of Factories Act, 1948,

1. Provisions Relating to Approval, Licensing and Registration of Factories

The various provisions for approval, licensing and registration of factories under factories act 1948 (section 6) are as follows,

(a) Each and every employer who wants to construct the factory, must take the permission of state government in writing.

(b) The employer must register his factory and should acquire the licence to operate it by paying the prescribed licensing and registration fees.

(c) The licence shall not be granted or renewed unless a notice is given by the employer/ occupier.

(d) In order to get permission, the applicant sends an application to the state government along with all the plans and specifications. If he/she did not receive any order from government within 3 months from the date it was sent, then the applicant can consider that the permission is granted.

2. **Provisions Regarding Health**

The provisions regarding health are explained below,

(a) **Cleanliness (Section 11)**

As per section 11 of the Act, each and every factory should be kept clean and free from liquid flows acquiring from drain, privy or other inconvenience.

(b) **Disposal of Wastes and Effluents (Section 12)**

In order to prevent wastes and effluents, some rules have to be laid down by state government with respect to disposal of wastes and effluents.

(c) **Ventilation and Temperature (Section 13)**

The temperature at working area should be kept at comfortable level to workers and temperature at work location should not cause harm to the health of workers. Suitable ventilation should be maintained at work place for fresh air.

(d) **Lighting (Section 17)**

According to the Act, sufficient and appropriate lighting should be arranged at the places where workers of a factory are working or passing through.

(e) **Drinking Water (Section 18)**

Proper arrangements must be made in each and every factory to make available sufficient amount of pure drinking water to workers. Drinking water should be placed atleast 6 metres away from toilets or washing place.

3. **Provisions Regarding Safety**

Some of the safety provisions include,

(a) **Fencing of Machinery (Section 21)**

Each and every dangerous component involved in the manufacturing process should be fenced to provide safety to the workers.

(b) **Employment of Young Persons on Dangerous Machines (Section 23)**

Young persons are permitted to work on dangerous machines when,

(i) They are provided with clear instructions regarding the dangers attached with the machine and corrective action to be taken up.

(ii) They are well trained to work on dangerous machines or had already worked on dangerous machines under the guidance of experienced person.

(c) **Prohibition of Employment of Women and Children Near Cotton Openers (Section 27)**

Women and children are not allowed to engage in activities like pressing cotton wherein cotton opener is at work.

(d) **Floors, Stairs and Means of Access (Section 32)**

Each and every factory should properly construct and maintain all floors, stairs, steps, passages and gangways in the factory.

(e) **Pits, Sumps, Openings in Floors etc (Section 33)**

Each and every pit, sumps, openings in floors etc., should be properly fenced to prevent danger at work place.

(f) **Excessive Weights (Section 34)**

No individual should be appointed in a factory to lift, move or carry heavy load which might cause him/her injury.

(g) **Protection of Eyes (Section 35)**

In order to protect the eyes of workers from particles or fragments coming out from the manufacturing process or from exposure to heavy lightnings, the state government might need the provision of effective screens and protecting goggles.

(h) **Precautions in Case of Fire (Section 38)**

In each and every factory precautions have to be taken up against fire. The exit doors should not be locked and should get opened quickly.

4. **Provisions Regarding Welfare of Workers**

The different provisions stated in the welfare of workers Act are as follows,

(a) **Washing Facilities (Section 42)**

Every factory must provide sufficient and appropriate facilities to the worker for washing and should maintain it for the worker's use in the future.

(b) **Facilities for Sitting (Section 44)**

Section 44 states that, every factory must arrange suitable sitting and maintenance facility for all workers who are usually required to work in a standing position.

(c) **Canteens (Section 46)**

According to section 46, canteens needs to present in those factories that hold more than 250 workers.

Warning : Your [illegible] of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

(d) Shelter, Rest Room and Lunch Rooms (Section 47)

According to Section 47, every factory where its ordinary employed workers are more than 150 shall be provided with adequate and appropriate shelters or rest rooms and a proper lunch room with the facility of good drinking water where the workers can eat meals brought by them.

5. Provisions Regarding Working Hours and Holiday for Adults

Some of the provisions regarding hours and holiday for adults,

(a) Hours of Work (Section 51)

As per this provision, an adult worker can be allowed to work for maximum 48 hour a week. According to section 54, the daily working hours of an employee/worker must not exceed nine hours.

(b) Weekly Holidays (Section 52)

The employee/worker must be provided with a holiday on Sunday. If he/she is made to work on weekly holiday (i.e. Sunday), then it is necessary to provide him/her a full day holiday within three days.

(c) Extra Wages for Overtime (Section 59)

An adult worker must be paid extra on working more than nine hours a day and 48 hours a week. This payment must be double the ordinary/base pay and is given for working overtime.

(d) Double Employment (Section 60)

An Adult worker should not be allowed to work in a factory on a day, if he/she had already worked in another factory on the same day.

(e) Overlapping of Shifts (Section 58)

According to this provision, the shifts must be arranged in such a manner that the two workers are not assigned with the same type of work at the same time.

6. Provisions Relating to Hazardous Process

The provisions relating to hazardous processes are discussed below,

(a) Compulsory Disclosure of Information by the Occupier

The occupier should disclose the information about the health hazards, dangers and take corrective actions to overcome dangers and hazards.

(b) Power of Central Government to Appoint an Inquiry Committee

The central government appoints an inquiry committee when extraordinary situation takes place like factory involved in hazardous process.

(c) Workers Right to Give Warning Regarding Imminent Danger

If the workers are appointed in a factory which is involved in hazardous process and feels that there are the chances of imminent danger to their lives or health, then they have right to inform directly to occupier, agent, manager or other people having authority over the factory.

(d) Some Special Responsibilities of Occupier in Connection with Hazardous Process

As per section 41(c), an occupier of a factory involving hazardous process is responsible to appoint people who have required qualification and expert knowledge to handle hazardous process and have capability to manage such handling task and to make facilities available at the working are to safeguard the workers.

Q14. What do you mean by Intellectual Property? Write about the various Indian Acts enacted for the protection of IPRs.

OR

Explain the law relating to Intellectual property rights.

(Jan./Feb.-20, Q9(b) | May/June-18, Q9(b))

(Refer Only Topic: Indian Acts Enacted for the Protection of IPRs)

OR

Discuss the law relating to Intellectual property rights in India.

(Refer Only Topic: Indian Acts Enacted for the Protection of IPRs)

Answer : ***Oct./Nov.-21, Q13***

Intellectual Property

When writers, inventors and artists create a tangible property by transforming their ideas, it is regarded as an intellectual property. The creator needs security and rights over their creative work and the law that gives rights to the creators of intellectual property is known as intellectual property law. The IP laws protect the authors, inventors and artists by restricting their books, inventions and arts from copying. The rights are given for a specific time period and after the completion of the given time period, the books, arts or inventions are available publicly and can be copied.

Indian Acts Enacted for the Protection of IPRs

The Indian government has formulated various acts for the protection of Intellectual Property Rights (IPRs). These acts are as follows,

1. The Copyright Act

The Copyright Act was first formulated and introduced in the year 1957. Amendments were made to the Copyright Act later in the years 1983, 1984, 1992, 1994 and 1999. The last amendment to this act was made in the year 1999. The Copyright (Amendment) Act, 1999 was accepted by parliament and was signed by Indian president on 30th of December 1999. The Copyright(Amendment) Act 1999, came into effect from 15th Jan 2000. The main objective of copyright Act is to protect the original works by giving ownership to the individuals/businesses.

2. The Trademark Act

The Trademarks Act 1999 was introduced by Indian Government in the year 1999. This act was the replacement of Trade and Mechandise Act 1958. This act was passed by Indian parliament on 23rd December 1999. Later on, the Trademarks Rules 2002 is also included in the Trademark Act, 1999. The main objective of this Act is protect the trademark or service mark of companies from being copied by others.

3. The Patent Act

The Patent Act was first introduced in the year 1970. This act was amended in the year 1999. The Patent (Amendment)Act, 1999 was approved by Rajya Sabha on 20th December, 1999. Amendments to this act was also made in the year 2002 and 2005. The Patent (Amendment) Act, 2005 came into effect from 1st Jan 2005. The patient Act is enacted to give a right to the owner of the product to prevent others from making, using or selling his inventions.

4. The Geographical Indications of Goods Act

The Geographical Indications of Goods Act was also first introduced by the Indian Government in the year 1999. The Geographical indications of Goods (Registration and Protection) was passed by both the houses of Parliament on 23rd December 1999. The Geographical Indications of Goods (Registration and Protection) Rules 2002, was also included in this Act.

The basic objective of the Geographical Indication of Goods (Registration and Protection) Act 1999 is to protect Geographical Indications (GI) of goods. The Geographical Indications (GI) refers to a signature or name that a manufacturer uses on his/her product to specify the geographic location of origin.

5. The Designs Act

The Designs Act also known as 'The Industrial Designs Act'. It was introduced in the year 1999. This act was passed by the Parliament on 23rd December 1999. Basically, the Industrial Design Act, 1999 was the replacement of the Designs Act, 1911. This act came into effect from the year 2000. Later on, the Design Rules 2001 was included in this Act. The basic objective of this act is to protect design which means protecting the formal or ornamental appearance of products manufactured industrially.

Presently, according to the 'The Design Act 2000', only those designs or industrial designs are protectable which are new, original and not disclosed publicly in any part of the world.

Q15. Explain the important provisions relating to intellectual property rights.

Answer : *July/August-17, Q9(b)*

The various IP laws and their provisions are given as follows,

I. Provisions of Copyright Act

The important provisions of Copyright Act are as follows,

1. Section 12 of this Act clearly explains the procedures and powers of the copyright board, where the board can regulate its own procedure which includes the fixation of places and timings.
2. Section 13 of this act clearly explains that copyrights can be obtained all over India in the areas of,
   (a) Literary, musical, dramatic and artistic works
   (b) Cinematograph films and
   (c) Sound recordings.
3. Article 13(3) of this section clearly states the non-protectable matter under Copyright Act, 1957
   (a) Any cinematograph film in which most of it is the infringement of any other work.
   (b) Recordings of original literary, dramatic or musical works.
4. According to section 13(5), copyrights will be obtained only for the artistic character and design in case of architectural art but not for the process and methods of construction.
5. Section 15 of this Act explains the special provisions regarding the copyrights for the designs as,

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

(a) Copyright shall not be provided to the designs, which have already got registered under the designs Act, 1911.

(b) Copyright shall not be provided to the designs, which are applied to get registration under designs Act 1911.

II. Provisions of the Trademark Act

Some of the important provisions of Trademark Act are as follows,

1. The owners should use the ® symbol only for federally registered mark and that too when it is being used for goods or services stated in the application. The ® symbol is not mandatory when mark is being used as a trade name. Improper use of this symbol is likely to affect the mark.
2. The owner should file a section 8 declaration, stating that the mark has been in use during the fifth or sixth year of federal registration. If the mark has been transferred to others, then it should be mentioned in the patent and trademark office and section 8 declaration should be filed by the current owner.
3. The mark is declared incontestable after its use for five years. It is considered useless and cannot be challenged. But if the incontestable mark was a generic term of considered incontestable for not being used or acquired fraudulently, than it can be challenged. The owner should therefore file the declaration describing that,
   (a) The mark is not a generic term
   (b) The mark is not the result of decision against their registrants's claim of ownership and
   (c) The mark has no case registered against it in the patent and trademark office or in a court. The section 15 declaration provides additional rights to the owner of federally registered mark on the principal register.
4. The validity of a trademark has been extended to a period of 10 years by the trademark office on November 16th, 1989. The owner should therefore fill in the section 9 application for renewal in order to increase the trademark period by 6 years, this renewal should also include a section 8 declaration. Failure of the owner to meet the deadlines will lead to loss of the mark.

III. Provision of the Patent Act

The important provisions of Patent Act are as follows,

1. The act permitted the applicability of patents for products, starting 1st January 2005.
2. The Act allowed double publication of the patent application. First time 18 months after the application date and second time, 18 months from the date of acceptance.
3. The act permitted patentability of computer software programs. Such programs were previously not patentable.
4. The term duration of patents for inventions is permitted upto 20 years from the date of application filing.
5. The act permitted only a single patent per invention. Further the act allowed patents for inventions only.
6. According to the act, the time for putting the application in order is 12 months only. Previously the time allowed was 15 to 18 months.
7. Section 39 of the act prohibits patent filing outside India except for inventions with respect to atomic energy and defence.

Q16. Compare and contrast between different types of Intellectual Property Rights (IPRs).

Answer :

The differences between four important Intellectual Property Rights (IPRs) are as follows,

S.No.	Basis	Patent	Copyright	Trademark	Tradesecret
1.	Definition	Patent is a right that is provided to the owner of the product by the government to prevent others from making, using or selling his inventions for a limited period of time.	Copyright is a form of protection provided to the original works by giving ownership to the individuals or businesses. It is applied to the results/ out comes of human intellectual activities.	Trademark is a word, symbol, design, logo or name that is used to identify and differentiate the product or service from others.	Tradesecret is a valuable and confidential information of a business firm which helps in gaining competitive advantage over the rivals.

2.	Protectable Matter	The items that are included under patents for protection are machines, compositions, plants, processes, articles of manufacture, ornamental designs, scientific inventions etc.	Copyrights include the protection for books, photographs, music recordings, fine arts, graphics, video, film recordings, choreography, architecture and computer programs.	Trademarks include words, symbol, name, logo, device, design, slogan that are used to identify the product or service.	Formula, method, marketing plans, firm strategies, compilation of facts, financial projections, recipies, manufacturing techniques, alogorithms are the items included under trade secrets.
3.	Registrability	Registration is necessary and mandatory. Patents should be certified by Patents and Trademark Office (PTO).	Registration of a copy-right is not required for protection but it is recommended to add value to copyrighted work.	Registration is not necessary and it does not create trademark rights but registration offers special rights in case of infringement.	No registration process is required for trade secret protection.
4.	Examples	Digital camera, chemical fertilizer, box shaped guitar, Biological equipments etc.	Harry potter(books and movie), Davinci paintings, Microsoft windows computer program.	Vodafone zoo-zoo's character, Kingfisher logo and name, Revelon company's advertising slogan etc.	Paracetamol formula, survey methods used by professional pollster, buying habits of ethnic groups,new inventions for which patent application has not been filed.
5.	Acts or Legislation	Patents can be exercised and maintained under Patent Law.	Copyrights can be exercised and maintained under Copyright Act of 1976, 1909 and 1999.	Trademarks can be exercised under Trademark Law and Lanham Act.	Trade secrets can be exercised under Uniform Trade Secrets Act (UTSA), 1985.
6.	Durability or Length of Protection	Plant and utility patents can enjoy protection for 20 years from the date of filing (if filed after 1995). In case of design patents protection will be given for 14 years.	In case if the work is created by single inventor, the copyright can enjoy a protection for life of author plus 70 years. Other works are protected for 120 years from the date of creation or 95 years after first publication of the works.	Trademarks can enjoy protection as long as the business is using the trademark for goods and services.	Trade secrets can enjoy protection as long as the business information remains confidential or secret.

4.6 CYBER LAW

Q17. What is Cyber Law? What are its objectives? What are the types of cyber laws? What is the need for cyber laws in India?

Answer :

Definition of Cyber Law

The term cyber law refers to the set of rules and regulations related to the use of internet. It is a generic term which covers a variety of fields such as internet privacy, freedom of expression, intellectual property rights and so on in the context of the cyber world (i.e.,) the World Wide Web. India is the twelveth nation in the world with separate cyber legislation.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Objectives of Cyber Laws

The key objectives of cyber laws in India are,

1. To protect the internet users from cyber crimes.
2. To protect the financial transactions from unauthorized use.
3. To protect the rights and interests of internet users against abuse, fraud and infringement.
4. To provide legal recognition to the digital signatures for authentication.
5. To detect the cyber crimes and lay down regulations to punish the cyber offences.

Types of Cyber Laws

Cyber law deals with communications and automatic control systems. It is catagorized into two laws, i.e.,

1. **Communication Law**

   The communication law governs telecommunication and broadcasting including telephony, television, radio, cable etc. Presently the communication laws in India include the wireless telegraphy Act, 1933, the cable television networks regulations Act, 1995 and the Indian telegraph Act, 1885.

2. **Information Technology Law**

   The information technology law governs computer and internet related transactions.

Need for Cyber Laws in India

Cyber law is a framework which is established to legally identify all the possible risks that may be associated with the usage of computers and computer networks. There are various aspects within the cyberlaw. They are, intellectual property, protection and restoration of private data, freedom of expression and crimes committed using computers. The following are the reasons for the enactment of cyberlaws in India,

1. Indian legal system covers almost all situations and cases that took place or might occur in the future. But, in case of recently developed internet technology sector, there are no such laws made. Therefore, it is important to enact cyber relevant laws as there has been an increased usage of internet in India.
2. Cyber law is required to provide legal recognition to the internet because, in modern era, internet has become the main source for dealing with the business activities.
3. Cyber terrorism has emerged with the growth of the internet. Cyber terrorism is a type of cybercrime which deals with disruptive activities i.e., causing problems or intentionally offensing social, ideological, religious and political objectives or to offence any person relating to such objectives in the cyber world. Hence, cyber laws are essential to protect the users from cyber terrorism and other unethical activities which imposes risks to the interest of users.

Considering all the above reasons, Indian parliament passed the information technology bill on 17th May, 2000 which is commonly referred to as ITA, 2000. UNCITRAL law for E-commerce forms the basis for the introduction of this law. It emphasizes on cyber laws and establishes a legal system for maintaining electronic records and also for maintaining information related to business activities performed electronically.

Q18. Explain Information Technology Act, 2000.

Answer :

Meaning of Information Technology Act, 2000

The ITA 2000 was the first cyberlaw passed by the Indian parliament with the purpose of providing legal infrastructure for successfully carrying out E-commerce in India. This law mainly deals with all kinds of issues, legal results and conflicts related to cyberspace and internet. Indian ITA, 2000 Act provides security to electric data interchange and also to the transactions taking place through electronic networks.

Objectives of Information Technology Act, 2000

The key objectives of the IT Act 2000 are as follows,

1. To provide legal recognition to all 'e-commerce' transactions.
2. To encourage and facilitate e-governance.
3. To encourage and facilitate e-commerce.
4. To encourage the use of electronic storage of data and information as a eco-friendly alternative instead of paper based storage.
5. To provide legal recognition for transactions which are conducted in electronic format vie electronic data exchange.

Features of Information Technology Act, 2000

Some of the features or important aspects of IT Act 2000 are as follows,

1. IT Act 2000 encourages e-transactions, electronic commerce (e-commerce) and other such commerce and trade related activities and provides regulations concerning the same.
2. It facilitates electronic governance (e-governance) through reliable electronic records.
3. It legalizes the usage of electronic records and digital signatures in government organizations and establishments to make sure that citizens can easily interact with government offices.
4. It provides regulatory framework to govern the certifying authorities that issue digital signature certificates. The main reason behind such regulation is to avoid misuse of dealings taking place over electronic medium.
5. It provides regulations with respect to digital signature facilitating legal recognition to the digital signatures.

Scope of Information Technology Act, 2000

The scope of IT Act 2000 is broad to such an extent that it covers whole of India. It can be applied to all the internet or computer related offences or contraventions that are committed outside the country also. However, following categories are the exception to this law,

1. A will.
2. A negotiable instrument but not cheque. This shows that the law applies to cheque.
3. A power of attorney.
4. Any class of transactions or documents which are specified by the central government in the official gazette.
5. Any contract of sale or conveyance of immorable properties.
6. A trust as defined in India trusts Act.

Q19. Define the following terms with reference to IT Act, 2000.

(a) E-Commerce.
(b) E-Governance.
(c) Electronic record.
(d) Digital signature.
(e) Digital signature certificate.

Answer :

(a) E-Commerce

The business carried out electronically is referred to as electronic commerce. In other words, it is simply an online business where buying and selling of goods are carried out through internet. Today, everything is being carried out online. Businesses are also switching from traditional paper-based commerce to e-commerce. To ensure secure e-commerce, necessary amendments are being made under the IT Act 2000 and legal recognition is being provided to electronic records and digital signatures.

(b) E-Governance

Electronic governance (E-Governance) refers to the process of filling and submission of any form or application or any other document with the government department in the electronic format. For example, submission of the passport form online, filing of income tax returns online etc.

The main benefit of E-governance is that it is less costly, quick, effective and efficient in nature. It also ensures accuracy in the performance of transactions.

(c) Electronic Record

IT Act 2000 defines "electronic record as data record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche".

(d) Digital Signature

A digital signature is one of the methods of encryption used to provide authentication. The main idea of the digital signature is to protect the message or data from modifications. Digital signature is very popular in the world of network security. Basically it is a kind of asymmetric cryptography used to support the security properties of a handwritten signature on paper. The digital signature scheme provides two algorithms, one algorithm is for signing, which requires the user's secret or private-key, and the other algorithm is for verifying signatures which requires the user's public-key. The result of the signature process is called the "digital signature". Digital signatures are used to provide authentication of any electronic information.

(e) Digital Signature Certificate

Digital signature certificates are the certificates that are used to verify one's identity when he/she is doing any business or transactions on the Internet. These certificates are issued by a trusted third party called as Certificate Authority or Certification Authority (CA). A digital certificate contains the user's name, a serial number, a copy of the certificate holder's public key (which is useful for message encryption and digital signature generation), expiration data and also the digital signatures of the CA (so as to verify the identity of CA).

4.7 COMPETITION LAW

Q20. Explain competition law in India.

(Model Paper-II, Q9(b) | Nov.-20, Q13)

OR

Explain the salient provisions of competition law in India. *Jan.-18, Q9(a)*

OR

Explain the various legal provisions regarding competition law.

Jan./Feb.-11, Q5(b)

OR

State the provisions of the competition Act for prohibition of anti-competitive agreements.

(Refer Only Topic: Prohibition of Anti-Competitive Agreements)

Answer : *July/August-18, Q9(b)*

The important provisions relating to competition law are,

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

1. Prohibition of Anti-Competitive Agreements

Under the Act, the individuals and undertakings are prohibited to enter into any agreement which has negative impact or effect on competition in any department such as supply, distribution, production, storage, acquisition, management of goods or supply of services in the country.

2. Prohibition of Abuse or Misuse of Dominant Position

The abuse or misuse of dominant position by any firm is restricted under Sec. 4(1). The section states that an abuse of dominant position exists, if an enterprise,

(a) Either directly or indirectly enforces unfair or discriminatory, purchase or sale condition of goods or services, or Purchase or sale price of goods or services.

(b) Imposes restrictions on production of goods or provision of services or technical or scientific improvements associated with goods or services towards the discrimination of consumers.

(c) Deal in practices which result in the rejection of market access, or

(d) Makes use of its dominant position in one significant market to enter into other market.

3. Regulation of Combinations

According to Sec 5 combination means, the acquisition of one or more enterprises by one or more persons. Any merger or amalgamation of enterprises and persons will be considered as a combination.

According to sec 6(1), a person or enterprise must not enter into a combination which leads to or has a chance of causing a negative impact on competition in the market in India and considered such a combination as void.

Exemption

The person or enterprise who or which is willing to enter in to a combination must provide notice to the competition commission of India, the fee that is fixed by regulations and should disclose the details of the proposed combination, within 7 days of the,

(a) Acceptance of the proposal associated with the merger or amalgamation.

(b) Implementing any agreement or other document for acquisition.

After receiving the notice, the commission must deal with such notice according to provisions mentioned in sections 29, 30 and 31 [sec 6(3)]. These sections are related with the (i) Procedure for investigation combinations (sec 29), Inquiry into disclosures (sec 30) and orders of the commission on certain combinations (sec 31).

4.8 LAND AND REAL ESTATE LAWS

Q21. Explain in detail about Land Acquisition Act, 2013.

Answer :

Land Acquisition Act, 2013

In India, land is a scarce resource so government has introduced some provisions to provide infrastructure facilities in areas which are privately owned or used for agriculture purpose. Land acquisition refers to a process wherein government acquires private land and pay compensation to land owner.

Land acquisition Act, 2013 was formed to control the process of land acquisition. The Act explains provision for providing fair remuneration to land owners, transparency in system and instruct government to rehabilitate the affected persons.

Objectives of Land Acquisition Act

Following are the objectives of land acquisition act,

1. To make sure that process of acquiring land is transparent and in consultation with stakeholders and local governing bodies.
2. To make sure that displacement of people who own or stay on land is less.
3. To offer fair compensation to families who are affected by land acquisition.
4. To offer sufficient provision for rehabilitation and resettlement to affected families.

Drawbacks of Land Acquisition Act

In 2015, the land acquisition act was amended and it has resulted into following drawbacks,

1. After amendment, multi-cropped land can also be acquired and used for security and social infrastructure projects instead of agriculture.
2. After amendment, act made it compulsory to have social impact assessment for every acquisition.
3. In latest amendment, consent is not compulsory for government projects.

Q22. Write a note on Rent Control Law. Discuss its objectives and basic terminologies used in rent law.

Answer :

Rent Control law

Rent control laws were introduced to prevent landlords from charging high rents and vacating tenants from premises as they will. Rent control measures were followed by all major cities and towns but they were all temporary to provide relief to tenants from high rents and indiscriminate eviction by landlords because of scarcity of houses.

Objectives of Rent Control Law/Legislations

Rent control legislations were made with an aim to control landlord and tenant relationships and develop peaceful and harmonious relation between them. Following are the main objectives of rent control law/legislations,

1. To make the law to behave impartially, it must not favour either landlords or tenants.
2. To make the law to maintain balance between both the parties because landlord–tenant relationship is important.
3. To protect tenants against indiscriminate eviction by unscrupulous landlords.
4. To carefully draft the statutory grounds for eviction, so that both the parties are treated equally.
5. To evict the tenant if in case landlord requires premises for his bonafide use.
6. To evict the tenant, if he misuses any rented premises or default in payment of rent.
7. To protect the tenant against unlawful eviction and also landlord can get possession based on certain grounds.

Basic Terminologies Used in Rent Law

Following are some of the terminologies used in rent law,

1. Rent

Rent is the amount of money paid by tenant to landlord for using the premises of landlord either for personal or commercial purpose.

2. Landlord

Landlord is the person who is actual owner of premises. Landlord lets out his premises to tenant in consideration of some specific amount. Landlord can evict the tenant in case of any default or rent.

3. Tenant

Tenant is a person who is bound by law to pay rent. It includes sub-tenant, family members of tenant in case of death of actual tenant and any person continuing in possession of premises.

4. Eviction

Eviction is derived from Latin word "evincere' which implies to dispose by judicial process. Eviction means removing tenant from premises in which he or she resides. Landlord can evict the tenant either through court or by re-entry in the premises.

5. Premises

Premises is the subject which is let out to tenant by the landlord. Premises means building or part of building which can be used for residing or commercial purpose.

Q23. Explain the different grounds of eviction of a tenant.

Answer :

Following are the grounds of eviction of a tenant,

1. Non Payment of Rent

Non payment of rent is a ground for eviction of tenant in case of default in paying rent. Controller directs the tenant to pay to landlord or deposit with controller arrears and future rent. If tenant clears arrears, then eviction cannot be done.

2. Misuse of Premises

Misuse of premises means damaging the premises, disturbance to public or detrimental to the interest disturbance to public or detrimental to the interest of landlord. If tenant uses premise for any purpose which does not include any of the above activity, then it is not considered as misuse. Landlord must give notice to tenant and file an application for eviction to the controller.

3. Residential Premises Kept Vacant

Landlord can recover possession of premises if it is kept vacant for six months.

4. Subletting without Obtaining Consent of Landlord

The ground of lawful eviction of tenant is subletting or sharing premises without consulting the landlord. Under the Act, many sections explain about this ground. If premises is sublet before 9th June 1952, it is lawful but if it is sub-let after 9th June 1952, then it is not valid. Tenant must get consent from landlord in writing before letting the premises.

5. Bonafide Requirement of the Premises by the Landlord

If landlord has bonafide requirement of premises, then it is sufficient for eviction of a tenant. The Act states three purposes for eviction of tenant i.e.,

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

(a) Premises required for residing himself or any other family member.

(b) Premises become unsafe or unfit for human habitation.

(c) Premises require renovation which should be carried out in vacant premises.

6. Bonafide Requirement by Landlord for Occupation as Residence

Landlord is entitled to order eviction of tenant if he requires premises for occupation or for residing, as he has no other suitable residential accommodation.

7. Bonafide Requirement for Carryingout Repairs on Premises

If landlord have bonafide requirement for carrying out repairs on premises, then it is a ground of eviction of tenant. The purpose of eviction of tenant is safety of tenant. If building is unfit, then it will cause monetary loss along with loss of life. Hence, it is temporary eviction till completion of repairs.

8. Bonafide Requirement for Building or Rebuilding

If landlord proves that premises requires any additions or alterations, then controller may give possession of premises to landlord. Controller must get satisfied with requirement of rebuilding, then only eviction of tenant is possible.

9. Alternate Premises Available to the Tenant

If tenant have an alternate premises for accommodation then he can be evicted by law. Under the law, a person is not allowed to have more than one residence either build by him or acquired by him. He must vacate the rented premises.

10. Termination of Service Tenancy

Termination of service tenancy is also a ground of eviction of tenant wherein premises is given to tenant because he is being in service or employment of the landlord. When he ceases to be in service, he can be evicted from premises.

11. Limited Tenancy

In this ground, with permission of controller, landlord lets out premises after written agreement and after expiry of time period, he is entitled to vacant possession.

12. Damage or Substantial Alteration Caused to the Premises by Tenant

Landlord is entitled to evict the tenant, if he caused any damage to the premises. Tenant cannot be evicted if he repairs the damages or pays compensation to landlord which satisfies the controller.

13. Tenant Violating Condition Imposed by the Government

Controller can pass order of recovery of premises if tenant has violated any condition imposed on landlord by government. This ground of eviction is different from other grounds as it is to serve the purpose of government and not the landlord.

Q24. Under what situations landlord can recover the possession of premises.

Answer :

According to Section 14(1) of Delhi Rent control Act, 1958 no order shall be passed for the recovery of ownership of any premises by court or towards the favour of landlord which is against a tenant except in the following situations stated under 14(1)(*a*) to 14(1)(*l*),

(a) Landlord issues a notice as per the Section 106 of Transfer of Property Act, 1882 for the rent due by the tenants.

(b) The tenant without the written permission from landlord sublets or divides the possession of premises on or after 9th of June, 1952.

(c) The tenant uses the premises for the other purpose for which it was let out.

(d) The tenant or his family member does not occupy the premises for about six months.

(e) Landlord can get the possession of premises for his bonafide occupation which has been let out for residential purpose.

(f) Landlord is entitled to evict the tenant in case premises is not suitable for human habitation and repairing of premises of possible only when it is vacant.

(g) When landlord decides to make any additions or alternation to the premises after the premises is vacant.

(h) When tenant has acquired another premises or built a residence, the landlord is entitled to evict the tenant.

(i) Landlord can evict the tenant from the premises which was let out for use as a residence as the tenant was in service or employment of landlord.

(j) When premises is substantially damaged because of tenant.

(k) When tenants violate the regulations given by the government to the landlord while giving him a lease of land.

(l) Landlord can evict the tenant to carryout any improvement or development scheme relating to premises.

Q25. Discuss in detail about the real estate law in India.

Answer :

Following are some of the important Acts which are governing real estate in India,

1. Indian Easement Act, 1882

In this Act, laws which are related to easementary rights to immovable property are governed.

2. Transfer of Property Act, 1882

It is a central Act and states must follow the provisions of this Act. It provides general principles relating to movable and immovable property like sale, exchange, mortgage, lease and gift of property.

3. The Indian Contract Act, 1872

This Act manages laws which are related to contracts in India such as capacity to enter into a contract, execution and implementation and breach and remedies available for parties.

4. Registration Act, 1908 and Indian Stamp Act, 1899

These Acts manage laws which are related to payment of stamp duty and requirements for registration of various deeds, documents and instruments relating to transfer of interest with respect to immovable property.

5. Land Revenue Codes

In India, different states formulated different land revenue codes which manages the laws relating to agricultural land-holding, land revenue, types of tenancy and related matters. These codes contain division and classes of immovable property in a state, transfer restrictions, powers and duties of revenue officers, rules and regulations of codes and penalties for violating these codes.

6. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

The Act manages land acquisition by government for public purposes or for company and also governs the compensation and rehabilitative measures which are to be taken by government.

7. FEMA, 1999 and FDI Policy

FEMA and other regulation control the purchase/sale of immovable property by foreign entities in India. FDI policy controls foreign investments made in real estate sector of India.

8. The Real Estate (Regulation and Development) Act, 2016 (RERA)

This Act controls development, marketing and sale of real estate projects in order to secure consumer's interests in real estate sector. The Act has also established an adjudicating mechanism for speedy dispute redressal.

Beside this, real estate sector in India is controlled by several state/local/municipal laws, policies and customers.

Q26. What is Real Estate Act? State its features and shortcomings.

Answer :

Real Estate Act 2016

Real estate Act, 2016 was published in the Gazette for giving information to public. It was notified by the ministry of housing and urban poverty alleviation on 27 April 2016. The Act was introduced to have transparency and safety for consumers of residential and commercial projects by developing a sectoral regulatory mechanism.

The Act aims to address distortions, prevent abuse of dominance, increase consumer satisfaction and set strict liabilities for irregularities. It makes operational rules and create infrastructure for protecting the interests of consumers. To have time bound execution of projects, it creates an environment of trust and efficiency and promotes growth of real estate sector.

Salient Features of the Act

Following are the salient features of the Act,

1. Regulator

Under the Act, it is mandatory to set up real estate regulatory authorities and real estate appellate tribunals in all states and union territories excluding Jammu & Kashmir within one year of notification.

2. Disclosures

It is compulsory to disclose details of the project to public such as promoter details, self-declared timeline of project by promoter, etc. Every quarter project related information must be disclosed online.

3. Standardization

In order to homogenize sector practices and prevent abuse of consumers some key terms are defined by the Act such as 'apartment', 'carpet area' and 'rate of interest'.

4. Registration

It is mandatory to get real estate projects registered with RERA in two situations,

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

(a) If proposed land area for development is more than 500 square meters.

(b) If number of apartments which are proposed for development are more than 8 (including all phases).

Without registration, projects cannot be advertised, booked or sold in any form.

5. Ring-Fencing of Project Receivables

Promoters need to maintain separate account for project receivables. Drawings from this account should be done for land and construction costs only.

6. Bar on Encumbrance

The promoter is not allowed to create any charge or encumbrance on any apartment after its agreement.

7. Warranties

Promoter needs to get authentication of title if land belongs to other person. Promoter must also acquire insurance of title and buildings with construction insurance.

8. Project Sancity

Promoter is not allowed to make changes in plans, structural designs and specifications without prior approval of two-third of allottes.

9. Defects Liability

It is responsibility of promoter to look after structural defects till 5 years from date of delivery of possession.

10. Model Agreement

To avoid biased provisions, a specified form of sale agreement between promoters and consumers is provided by the Act.

11. Agents

The Act restricts real estate agents from purchase/sale of plots or apartments in projects without getting registration from RERA.

12. Legal Recourse

With the help of RERA, the Act offers time-bound resolution of complaints and disputes and real estate appellate tribunals. Consumers are eligible to get refund of amounts incase failure of possession as per sale agreement.

13. Existing Projects

Projects which are incomplete and have not received completion certificate on commencement date must get registration from RERA within 3 months of commencement.

14. Penalties

Monetary penalties are charged to promoter upto 5% of cost of project incase of any defaults in disclosure. Penalty of 10% with imprisonment of 3 years is also charged for other defaults.

15. Interplay with State Laws

The Act cancels the Maharashtra housing (Regulation and Development) Act, 2012 and have predominant effect on conflicting state laws.

Shortcomings of the Act

Following are the shortcomings of the Act,

1. Capital Efficiency

The requirement of depositing 70% of sale proceeds in separate account will be expensive and increase project costs which ultimately is passed on to the consumers.

2. Approval Process

According to Act, all approvals must be obtained before project launch. It may result in delay of project initiation and restrict supply of new properties.

3. Systemic Issues

The Act does not issue a conclusive title system for land. It neither resolves issue of availability of housing stock nor issue of black money in real estate.

4.9 LAW OF INSURANCE

Q27. What is Contract of Insurance? Define the basic concepts and briefly discuss the nature of insurance contract.

Answer :

Contract of Insurance

The contract of insurance can be defined as a contract in which the insurer or professional risk bearer agrees to protect the insured against financial loss or a specific risk in exchange for a certain amount of money (premium).

According to Riegal and Miller, "Insurance is a contract, the insurer agreeing to make good any financial loss, the insured may suffer within the scope of the contract and the insured agreeing to pay a consideration" (premium).

Basic Concepts

The basic concepts related to insurance are as follows,

1. Insurer

Insurer is the person or company that agrees to bear the risk of loss and makes the payment to the insured at the time of loss in exchange for a payment of premium.

2. Insured

Insured may be a person or an organization covered or protected under an insurance policy.

3. **Policy**

Policy (document) is a proof of contract between insurer and policy holder. Note that it is not a contract.

4. **Premium**

The amount which is paid by the insured in the contract of insurance is called as Premium.

5. **Subject Matter of Insurance**

The subject matter of insurance refers to the property or thing which is insured.

6. **Insurable Interest**

The insurable interest refers to the interest of a person (assured) in the subject matter.

7. **Perils Insured Against**

Perils are the events that can cause damage to property but that it is protected by insurance policy and the policy will compensate in case of damage/loss.

Nature of Insurance Contract

The nature of the insurance contract is summarized as follows,

1. **Risk Sharing**

Insurance is a contract through which an individual or his family shares their financial losses on the occurrence of any particular incident/accident. Example: Event of death in case of life insurance contract or event of fire in case of fire insurance contract.

2. **Co-operative Device**

Insurance is considered as the co-operative device because in every insurance plan co-operation of large number of individuals is present for sharing financial losses against the event which is insured.

3. **Premium Amount**

The amount which is paid by the insured in the contract of insurance is called as premium. The amount of insurance premium paid usually depends upon the degree of risk involved in a specific event.

4. **Division of Risk and Premium**

The degree of risk involved and the amount of premium which has to be paid for the insurance would be reduced to a great extent when the number of individual/contributors are more in number.

5. **Insurance is Not Charity**

Insurance is the protection provided to the insured or to his property in consideration of the premium amount. On the other hand, charity is provided without any security, protection and consideration. Thus, insurance is different from charity.

Q28. Explain the fundamental principles or elements of insurance.

Answer :

The fundamental principles or elements of insurance are as follows,

1. **Principle of Subrogation**

Principle of subrogation is one of the legal principles of insurance contract and supports the principle of indemnity. This principle provides the benefit to insured to claim the insurer for any loss incurred due to the negligence of third party. The insurer then can proceed against the third party to recover the loss paid to the insured.

Example

If '*x*' incurred damage to his car due to the negligence of '*y*', then the insurer of '*x*' will pay the loss amount to '*x*' and then collect that amount from the '*y*'.

2. **Principle of Utmost Good Faith (Uberrima Fides)**

The principle of utmost good faith specifies that both the parties to the contract should openely and honestly disclose the information without concealing any material facts that may affect the judgement of the other party.

Example

If a person is applying for a life insurance, he should disclose all his previous health problems. In the similar manner, the insurance agent who sells the coverage should also disclose all the important information relating to the contract and its items.

3. **Principle of Proximate Cause**

Proximate cause is a legal term that describes how exactly the loss occurred. One should establish the cause of a loss as only risks particularly against can be compensated. The dominant and effective cause will be taken into consideration if there exists more than one cause for a loss. Thus, remote cause will not be considered here.

Example

A ship carrying meat was delayed due to the storm in the sea. As a result of this, the meat got decomposed and had to be thrown into the water (or sea). It was held that no damage will be recovered as the loss of meat didn't occur due to the perils of the sea.

4. **Principle of Contribution**

Contribution refers to the insurer's right (who has paid compensation for the loss under a policy), to recover a specific amount from the other insurers who are supposed to cover the loss. The principle of contribution supports the principle of indemnity.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Example

There are three companies namely X, Y, and Z. In these companies, 'A' has a fire insurance policy for ₹ 50,000; ₹ 70,000 and ₹ 90,000 respectively. All companies cover the same subject matter. 'A' incurs a fire loss of ₹ 40,000. The contribution made by X, Y and Z companies are as follows,

$$\text{Contribution of X} = \frac{50,000}{2,10,000} \times 40,000$$

$$= ₹\ 9,524.$$

$$\text{Contribution of Y} = \frac{70,000}{2,10,000} \times 40,000$$

$$= ₹\ 13,333.$$

$$\text{Contribution of Z} = \frac{90,000}{2,10,000} \times 40,000$$

$$= ₹\ 17,143.$$

$$\text{Total claim} = ₹\ 9,524 + ₹\ 13,333 + ₹\ 17,143$$

$$= ₹\ 40,000$$

The principle of contribution is not applicable in life insurance contracts as there is no measurable loss that can be indemnified in life insurance contracts.

5. Principle of Indemnity

The principle of indemnity states that the insurer should not pay more than the actual amount of loss. In other words, it states that the insured should not make profits from the loss incurred by him. Several property and casualty insurance contracts are the contracts of indemnity.

Example

X agreed to sell his house to *Y* and had his house insured. The house was destroyed due to fire even before the sale took place. *X* claimed for damages and received its value from the insurance company. As per the sales contract, *X* also received the price from *Y*. It was held that the money paid to the *X* can be recovered by the insurance company.

6. Principle of Insurable Interest

Principle of insurable interest is one of the legal principles of insurance contracts that supports the principle of indemnity. Insurable interest is the interest which can be covered or is covered by an insurance contract. The law considers this interest as a form of property.

According to Rodda, "Insurable interest may be defined as an interest of such a nature that the occurrence of the event insured against would cause financial loss to the insured".

An insured should satisfy the requirement of insurable interest while collecting the amount by proving the loss that occured due to misused peril.

Example

A person has insurable interest in his car because he may lose financially if the car is stolen or damaged.

7. Principle of Loss Minimization/Mitigation

The principle of loss minimization states that the insured should not be irresponsible i.e., he must be careful and should take all the necessary steps to reduce the losses. He should not be careless after getting insured through a insurance contract. Thus, it is the responsibility of an insured to take safety measures.

Example

Wearing seat belts in a car to protect himself from an accident or fixing a CCTV camera to protect his valuables so that thefts do not occur.

If the assured doesn't take precautions to mitigate the loss, the insurance company will not compensate for the loss and will attribute the loss to negligence on the part of assured.

Q29. Write about,

(a) Premium.

(b) Re-insurance.

(c) Double Insurance.

Answer :

(a) Premium

Premium is the amount of money or consideration which is paid by the insured to the insurance company for providing any insurance coverage. The insurance coverage begins with the first premium payment. The policy holder can use first premium deposit receipt to lodge a claim even if he/she have not received the policy document. The premium can be single premium, annual, half-yearly, quarterly or monthly. The Indian Insurance Law needs that the payment of premium should be done in advance. When the policy holder premium pays a premium for reinsurance, it is known as re-insurance premium.

Return of Premium

The premium can be returned,

1. When there is a delay in commencing the voyage without any valid reason, the insurer is entitled to return the premium by cancelling the insurance contract.

2. When the assured had short interest in the policy, the premium can be returned by cancelling the policy, with the condition that there was no further interest in the policy.

3. When the assured does not have insurable interest at any point of time during the currency of the risk.

4. When there is no involvement of the part of policy interest, the apportioned part of the premium can be returned.

5. When the assured over-insures by double-insurance.

(b) Re-Insurance

Reinsurance is termed as insuring the risk of an insurer or insurance company. Most of the insurance companies are willing to share the risk of bearing high losses of insureds with other insurers, which is called reinsurance. In simple words, sharing the risk with other insurers in order to avoid catastrophic effect or hazards in insurance. Reinsurance is most commonly observed in general life insurance companies. In return of risk insurers need to pay a premium to reinsurer.

(c) Double Insurance

When the same subject matter is insured with more than one insurance company, it is known as double insurance. In other words, when a person gets his assets insured by numerous insurance companies this is known as double insurance. The insurance companies which are in contract will contribute their share of amount as per the insurance policy and aid in compensating the losses incurred by the insured. However, the insured cannot demand from each insurer, an amount exceeding the proportionate value of the damage occurred.

Example

A person insures his property with two insurers, with insurer A for ₹ 2,00,000 and with insurer B for ₹ 3,00,000. Suppose a damage of ₹ 2,50,000 occurs to the property. The proportion of compensation to be paid by the A and B can be calculated as follows,

$$\text{Compensation paid by insurer } A = \frac{\text{Amount insured with } A}{\text{Total amount insured}} \times \text{Damages}$$

$$= \frac{2,00,000}{5,00,000} \times 2,50,000$$

$$= ₹\ 1,00,000/-$$

$$\text{Compensation paid by insurer } B = \frac{\text{Amount insured with } B}{\text{Total amount insured}} \times \text{Damages}$$

$$= \frac{3,00,000}{5,00,000} \times 2,50,000$$

$$= ₹\ 1,50,000/-$$

Hence, all the insurance companies are legally bound to contribute their proportionate share towards the loss.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

SHORT QUESTIONS AND ANSWERS

Q1. Consumer Councils. *(Model Paper-I, Q4 | August-21, Q4 | July/August-16, Q1(g) | Jan./Feb.-15, Q1(g) | Jan.-14, Q1(g) | Jan./Feb.-11, Q1(g))*

OR

Write about consumer councils.

Answer : *Oct./Nov.-21, Q4*

In India, consumer movement has resulted in the establishment of various organizations locally. These organizations are called as consumer forums (or Consumer Protection Councils).

The consumer protection council is established at central, state and district level. The consumer protection council established at central level is known as 'central consumer protection council', the consumer protection council at state level is known as state consumer protection council' and consequently the consumer protection council at district level is known as 'district consumer protection council'.

The Consumer Protection Act provides that the central government may establish a council called the central consumer protection council.

According to the consumer protection act 2019, state consumer protection council should be established by the state government to protect the rights of consumers at state level.

The state government by notification will set up a council for every district which is called as the 'district consumer protection council' and shortly known as 'district council'.

Q2. Objectives of Consumer Councils.

Answer : *April/May-14, Q1(h)*

The main objectives of the consumer council are to protect the following rights of consumer. These rights are as follows,

1. Right to be protected against marketing of hazardous goods.
2. Right to be informed about the quality, quantity, purity, standard, potency and price of the goods.
3. Right to be assured to a variety of goods.
4. Right to be assured that consumer interests will receive due consideration.
5. Right to seek redressal against unfair trade practices.
6. Right to consumer education.

Q3. Rights of Consumer. *Jan.-19, Q4*

OR

Rights of Consumers.

Answer : *(Feb.-17, Q4 | May-15, Q1(h))*

As per the consumer protection Act 2019, the rights of consumers are as follows,

1. Right to be Protected

This right provides protection against the products or services which are harmful to health and life of a consumer.

2. Right to be Informed

This right makes it compulsory for the firms to disclose the facts required for making informed choice.

3. Right to Choose

A consumer has the right to choose the product he/she likes.

4. Right to be Heard

If the consumer has incurred a loss or damages due to some product or if he/she was exploited by marketers, then in such a case, he/she has a right to be heard and be assured that their case will be considered by the proper forums at district, state or national level.

5. Right to Seek Redressal

The consumer has a right to seek redressal incase he/she is exploited by marketers or he/she is a victim of unfair trade practices.

6. Right to Consumer Awareness

The consumer has a right to become well-aware of their rights, the provision of law (in case of exploitation or damages), available remedies.

Q4. Functions of Consumer Councils.

Answer : *July/August-18, Q4*

The functions of consumer councils are as follows,

1. Consumer councils work for the protection of rights of consumers.
2. Consumer councils give guidance to consumers on how to approach consumer court to file a suit.
3. Consumer councils represent the consumers in the consumer court.
4. Consumer councils bring awareness in consumers regarding consumer rights.
5. Consumer councils motivate business units and professional associations to set code of conduct which govern the activities undertaken by their members.
6. Consumer councils gather, receive and distribute information regarding goods and services and immovable property.
7. Consumer councils receive and analyze the complaints given by the consumers.
8. Consumer councils may perform some other additional functions with the prior permission from the chief executive in council.

Q5. Competition Law.

Answer : *May/June-18, Q4*

Competition law is formed to prohibit anti-competition agreements, prohibit abuse or misuse of dominant position and for regulation of combinations.

1. Prohibition of Anti-Competitive Agreements

Under the Act, the individuals and undertakings are prohibited to enter into any agreement which has negative impact or effect on competition in any department such as supply, distribution, production, storage, acquisition, management of goods or supply of services in the country.

2. Prohibition of Abuse or Misuse of Dominant Position

The abuse or misuse of dominant position by any firm is restricted under Sec. 4(1). The Section states that an abuse of dominant position exists, if an enterprise,

(a) Either directly or indirectly enforce unfair or discriminatory, purchase or sale condition of goods or services, or purchase or sale price of goods or services.

(b) Imposes restrictions on production of goods or provision of services or technical or scientific improvements associated with goods or services towards the discrimination of consumers.

(c) Deal in practices which result in the rejection of market access, or

(d) Makes use of its dominant position in one significant market to enter into other market.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

3. Regulation of Combinations

According to Sec 5, combination means the acquisition of one or more enterprises by one or more persons. Any merger or amalgamation of enterprises and persons will be considered as a combination.

Q6. Consumer Forum Vs State Consumer Redressal Commission.

Answer : *(Model Paper-II, Q4 | Feb.-13, Q1(e))*

The following are the differences between consumers forum and state consumer redressal commission,

S.No.	Basis	Consumers Forum	State Consumer Redressal Commission
1.	Meaning	Consumers forum refers to the forum designed for the protection of consumer. Consumers forum includes, District forum, Consumer disputes redressal commission i.e., state commission and Consumer disputes redressal commission i.e., national commission.	Consumer disputes redressal commission at state level is known as 'state commission' or state consumer redressal commission.
2.	Scope	Consumer forum is a broader concept and has a wider scope.	State commission is a narrower concept and has limited scope.
3.	Objectives	The main objective of consumer forum is to promote and protect the rights of the consumers at district, State and National level.	The main objective of State consumer redressal commission is to promote and protect the rights of the consumers at the 'State level'.
4.	Term	Every member of the district forum and National Commission shall hold office for a term of 5 years.	Every member of the State Commission shall hold office for a term of 5 years.

Q7. Intellectual Property Rights.

Answer : *(Jan./Feb.-15, Q1(h) | April/May-14, Q1(i) | May-13, Q1(h) | Feb.-17, Q5)*

When writers, inventors and artists create a tangible property by transforming their ideas, it is regarded as an intellectual property. The creator needs security and rights over their creative work and the law that gives rights to the creators of intellectual property is known as intellectual property law. The IP laws protect the authors, inventors and artists by restricting their books, inventions and arts from copying. The rights are given for a specific time period and after the completion of the given time period, the books, arts or inventions are available publicly and can be copied.

Q8. What is Misleading Advertisement? What is the penalty for misleading advertisement?

Answer :

Misleading Advertisement

The Act 2019 has defined the term "misleading advertisement" as any advertisement which,

(a) Gives false information about the product/service.

(b) Purposely hides the important information.

(c) Gives a false guarantee to the consumer regarding products.

Penalty for Misleading Advertisement

The penalty for misleading advertisement will be as follows,

1. In case of false description of a product, the CCPA may impose a fine upto ₹ 10 lakh and may declare imprisonment upto 2 years. This penalty is imposed on the endorser or manufacturer of the product.
2. For all other offenses of misleading advertisements, the CCPA may impose fine upto ₹ 50 lakhs and may declare imprisonment upto 5 years.

Further, the endorses of the misleading Ad may also be prevented from endorsing that specific product for upto 1 year.

Q9. What are the negative effects of Rent Control Act.

Answer :

The negative effects of Rent Control Acts are as follows,

1. **Social Effects**

Rent control Act negatively impacts the underprivileged sections of society. Poor people face the difficulties due to poor quality of house which is due to less maintenance cost. They cannot move to new areas. As a result, slum areas and poverty increases. However, rent control has been initiated to assist the poor as an anti-poverty strategy but it has been seen benefitting the higher income groups.

2. **Economic Effects**

Decrease in rate of return of property results in reduction in value of property and the owners of property don't have an extra income to maintain the property. Therefore, property owners avoid their vacant houses from rental market to have a proper control over their property. This leads to less supply and less amount of liquidity in housing market.

3. **Legal Effects**

The rights of landlord with reference to eviction of tenants are stated under transfer of property Act, 1882. According to section 106 of the Act, the landlord can directly evict the tenant on expiry of notice, but he cannot take any action for eviction unless it has been stated under the Rents Act.

FREQUENTLY ASKED QUESTIONS AND IMPORTANT QUESTIONS

ESSAY QUESTIONS

Q1. Define Consumer Protection. Explain in detail consumer protection Act, 2019.

(Jan.-16, Q5(a) | July/August-16, Q5(a)) REPEATED 2 TIMES

Ans:

For answer refer Unit-IV, Page No. 98, Q.No. 1.

Q2. Write a note on consumer protection councils. State the functions of consumer councils in India.

(Feb.-17, Q9(a) | Jan./Feb.-20, Q9(a)) REPEATED 2 TIMES

Ans:

For answer refer Unit-IV, Page No. 99, Q.No. 3.

Q3. What is consumer councils and redressal machinery in India? Explain.

(August-21, Q13 | May/June-18, Q9(a)) REPEATED 2 TIMES

Ans:

For answer refer Unit-IV, Page No. 101, Q.No. 5.

Q4. Define 'Consumer'. What are the rights of consumers as per consumer protection Act.

(Important Question | July/August-17, Q9(a))

Ans:

For answer refer Unit-IV, Page No. 103, Q.No. 7.

Q5. What are the rights of consumers? Explain in detail consumer awareness in India.

(Important Question | July/August-18, Q9(a))

Ans:

For answer refer Unit-IV, Page No. 104, Q.No. 8.

Q6. List and explain the laws regulating industries.

Important Question

Ans:

For answer refer Unit-IV, Page No. 105, Q.No. 9.

Q7. What do you mean by Intellectual Property? Write about the various Indian Acts enacted for the protection of IPRs.

(Jan./Feb.-20, Q9(b) | May/June-18, Q9(b) | Oct./Nov.-21, Q13) REPEATED 3 TIMES

Ans:

For answer refer Unit-IV, Page No. 112, Q.No. 14.

Q8. What is Cyber Law? What are its objectives? What are the types of cyber laws? What is the need for cyber laws in India?

Important Question

Ans:

For answer refer Unit-IV, Page No. 115, Q.No. 17.

Q9. Explain competition law in India.

(Nov.-20, Q13 | Jan.-18, Q9(a) | Jan./Feb.-11, Q5(b) | July/August-18, Q9(b)) REPEATED 4 TIMES

Ans:

For answer refer Unit-IV, Page No. 117, Q.No. 20.

Q10. Explain in detail about Land Acquisition Act, 2013.

Important Question

Ans:

For answer refer Unit-IV, Page No. 118, Q.No. 21.

Q11. Write a note on Rent Control Law. Discuss its objectives and basic terminologies used in rent law.

Important Question

Ans:

For answer refer Unit-IV, Page No. 119, Q.No. 22.

Q12. Under what situations landlord can recover the possession of premises.

Important Question

Ans:

For answer refer Unit-IV, Page No. 120, Q.No. 24.

Q13. What is contract of insurance? Define the basic concepts and briefly discuss the nature of insurance contract.

Important Question

Ans:

For answer refer Unit-IV, Page No. 122, Q.No. 27.

Q14. Explain briefly the provisions relating to,

(a) Payment of Bonus Act, 1965.

(b) Minimum Wages Act, 1948.

Important Question

Ans:

For answer refer Unit-IV, Page No. 107, Q.No. 10.

Q15. What are the main provisions of the Payment of Wages Act, 1936? Explain.

Important Question

Ans:

For answer refer Unit-IV, Page No. 108, Q.No. 11.

Q16. Explain the provisions relating to,

(a) Industrial Disputes Act, 1947.

(b) Trade Unions Act, 1926.

Important Question

Ans:

For answer refer Unit-IV, Page No. 109, Q.No. 12.

Q17. Briefly discuss the provisions of Factories Act, 1948.

Important Question

Ans:

For answer refer Unit-IV, Page No. 110, Q.No. 13.

Q18. Discuss in detail about the real estate law in India.

Important Question

Ans:

For answer refer Unit-IV, Page No. 121, Q.No. 25.

Q19. What is Real Estate Act? State its features and shortcomings.

Important Question

Ans:

For answer refer Unit-IV, Page No. 121, Q.No. 26.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

SHORT QUESTIONS

Q1. Consumer Councils.

Ans: *(August-21, Q4 | July/August-16, Q1(g) | Jan./Feb.-15, Q1(g) | Jan.-14, Q1(g) | Jan./Feb.-11, Q1(g) | Oct./Nov.-21, Q4)* REPEATED 6 TIMES

For answer refer Unit-IV, Page No. 126, Q.No. 1.

Q2. Rights of Consumer.

Ans: *(Jan.-19, Q4 | Feb.-17, Q4 | May-15, Q1(h))* REPEATED 3 TIMES

For answer refer Unit-IV, Page No. 126, Q.No. 3.

Q3. Functions of Consumer Councils.

Ans: *(Important Question | July/August-18, Q4)*

For answer refer Unit-IV, Page No. 127, Q.No. 4.

Q4. Competition Law.

Ans: *(Important Question | May/June-18, Q4)*

For answer refer Unit-IV, Page No. 127, Q.No. 5.

Q5. Consumer Forum Vs State Consumer Redressal Commission.

Ans: *(Important Question | Feb.-13, Q1(e))*

For answer refer Unit-IV, Page No. 128, Q.No. 6.

Q6. Intellectual Property Rights.

Ans: *(Jan./Feb.-15, Q1(h) | April/May-14, Q1(i) | May-13, Q1(h) | Feb.-17, Q5)* REPEATED 4 TIMES

For answer refer Unit-IV, Page No. 128, Q.No. 7.

INTERNAL ASSESSMENT

I. Short Questions and Answers (2 Marks Questions)

Q1. Write briefly about Information Technology Act, 2000.

Answer :

The ITA 2000 was the first cyberlaw passed by the Indian parliament with the purpose of providing legal infrastructure for successfully carrying out E-commerce in India. This law mainly deals with all kinds of issues, legal results and conflicts related to cyberspace and internet. Indian ITA, 2000 Act provides security to electric data interchange and also to the transactions taking place through electronic networks.

Q2. What is Contract of Insurance?

Answer :

The contract of insurance can be defined as a contract in which the insurer or professional risk bearer agrees to protect the insured against financial loss or a specific risk in exchange for a certain amount of money (premium).

Q3. What is Consumer Protection Act, 2019?

Answer :

The old Consumer Protection Act 1986 is replaced by the new Consumer Act 2019. The new Act, 2019 was passed on 9th August 2019 by the Government of India. It came into effect on 20 July 2020. COPRA 2019 is a law that focusses on protecting the consumer interests. This can surely and speedily resolve a large number of complaints that remained pending in the consumer courts throughout the country.

Q4. What is Intellectual Property?

Answer :

When writers, inventors and artists create a tangible property by transforming their ideas, it is regarded as an intellectual property. The creator needs security and rights over their creative work and the law that gives rights to the creators of intellectual property is known as intellectual property law.

Q5. Write about Factories Act, 1948.

Answer :

The Factories Act was enacted on September 23, 1948 with an aim to regulate the working conditions in factories and for providing relief and some minimum benefits to the workers. The Factories Act is a Central Act enacted by the Government of India for the welfare of the workers. It is applicable all over the country.

II. Long Questions and Answers (5 Marks Questions)

Q1. Consumer Councils.

Answer :

For answer refer Unit-IV, Page No. 126, Q.No. 1.

Q2. Rights of Consumer.

Answer :

For answer refer Unit-IV, Page No. 126, Q.No. 3.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

UNIT 5

International Business Law and Business Ethics

SYLLABUS

Law of Export – Import Regulation, International and Comparative Commercial Arbitration. Ethical and Value Based Considerations in Business, Need and Justification of Ethics, Efficiency and Integrity in Business Operations – Corporate Social Responsibility.

LEARNING OBJECTIVES

After studying this unit, one would be able to understand,

- Laws Regulating Export and Imports.
- Concept, Features, Process and Legal Framework of International Commercial Arbitration.
- Definition, Nature, Objectives of Business Ethics.
- Ethical Based and Value Based Consideration in Business.
- Need and Justification of Ethics.
- Efficiency and Integrity in Business Operations.
- Definition, Propositions, Scope of Corporate Social Responsibility.

INTRODUCTION

In India, there are various laws that regulate export and imports. These act include Foreign Trade Act 1992, Foreign Exchange Management Act, 1999, The Customs Act, 1962 and Exports Act 1963.

International Commercial Arbitration (ICA) is a technique of settling disputes arising from the International Commercial Contracts. ICA is a private process of resolving the disputes where the parties belonging to different countries get their disputes resolved through arbitrators without consulting the court of a specific country.

According to Keith Davis, business ethics are the application of general ethical rules to business behaviour. Business ethics is necessary for giving support to stakeholders. It is also needed for reminding duties to business firm. Business ethics provide guidance based on moral principles developed from ethics to all entrepreneurs of businesses. Business ethics facilitates in preventing work-related conflicts which exists within and outside the firm.

According to World Business Council for sustainable development, "CSR is a continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large". The scope of CSR includes promoting common welfare programmes, wealth creation, maintaining ecological balance, focusing the human element, Good corporate governance etc.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

5.1 LAW OF EXPORT – IMPORT REGULATION

Q1. Explain the laws regulating export and import.

Answer : *Model Paper-I, Q10(a)*

The laws that regulate export and import are,

1. Foreign Trade (Development & Regulation) Act, 1992.
2. Foreign Exchange Management Act, 1999.
3. The Customs Act, 1962.
4. Exports (Quality Control and Inspection) Act, 1963.

1. Foreign Trade (Development & Regulation) Act, 1992

Foreign Trade (Development & Regulation) Act, 1992 regulates the foreign trade by promoting export and imports of India. It replaced the Import and Export (control) Act, 1947.

(a) Objectives

The main objectives of FTDR are,

(i) To promote the development and regulation of foreign trade by facilitating imports and exports of India.

(ii) To encourage the central government to formulate and to make changes in the EXIM policy depending upon the changes prevailing in the markets.

(iii) To resolve the issues and complexities associated with the foreign trade.

(b) Provisions of Foreign Trade (Development & Regulation) Act, 1992

Government should allow imports and exports in accordance with the provisions laid down in the Foreign Trade (Development & Regulation) Act, 1992.

(i) The Act delegates the authority to the central government to make the provisions for the development and regulation of foreign trade.

(ii) It grants the authority to Government to prohibit, restrict or regulate the imports and exports of goods whenever, they are required.

(iii) The Act provides that the central government has the power to formulate and announce the EXIM policy and can even make amendments in the policy.

(iv) The Act empowers the central government to appoint the director general of foreign trade and other officers for the evaluation and the implementation of this act.

(v) The director general and foreign trade and other authorized officers are empowered to issue the unique Importer Exporter Code number (IEC) without which no export and imports are possible. The director general can suspend or cancel the IEC code number if the person or organization violates the law or having misconduct in trade relations with any foreign country.

(vi) The authorized officers and the director general of foreign trade are liable to suspend and cancel the issued licence of exports and imports after giving the enough opportunity to the licence holder of being heard.

(vii) A person appointed by the central government is authorized to search, inspect and seize the goods, documents, things, conveyances for ensuring that they are as per the prescribed requirements and conditions.

2. Foreign Exchange Management Act, 1999

The Foreign Exchange Management Act (FEMA), 1999 governs or regulates the payment for import and export transactions. The Act has replaced Foreign Exchange Regulation Act (FERA), 1973. Following are the objectives of FEMA,

(a) To facilitate external trade and payments.

(b) To promote the systematic development and maintenance of foreign exchange market.

The FEMA Act deals with,

(a) Foreign exchange regulations such as hoding and transaction of foreign exchange, realization and repatriation of foreign exchange, export of goods and services etc.

(b) Role of authorized person, contravention and penalties provisions, adjudication and appeal procedures, directorate's power for enforcement.

3. The Customs Act, 1962

The Customs Act 1962 regulates the physical transfer of goods/services using different transportation modes. The Act has set aside the earlier three Acts i.e., sea customs Act, 1878, The Aircraft Act, 1934 and land customs Act 1924, each of which have dealt with a specific transportation mode. The key objectives of customs Act 1962 are,

(a) To investigate smuggling.

(b) To collect revenue.

(c) To obtain statistics of trade.

(d) To carryout different activities on behalf of other agencies.

(e) To govern the transactions of import and export in compliance with national economic objectives and policies.

4. Export (Quality Control and Inspection) Act, 1963

Export (Quality Control and Inspection) Act, 1963 was introduced for the purpose of making India the quality producer and exporter of goods and services. The Act aims at controlling the quality and assuring pre-shipment inspection to strengthen the export trade. Under this Act, the government is empowered to inform about the commodities which should be inspected compulsorily for export purpose. The Act provides that no goods of sub standard quality should be exported. The same applies to goods that do not meet the requirement provided by the Act.

5.2 INTERNATIONAL AND COMPARATIVE COMMERCIAL ARBITRATION

Q2. Define International Commercial Arbitration. What are its essential features? Explain the process of International Commercial Arbitration.

Model Paper-II, Q10(a)

Answer :

Definition of International Commercial Arbitration

International Commercial Arbitration (ICA) is a technique of settling disputes arising from the international commercial contracts. ICA is a private process of resolving the disputes, where the parties belonging to different countries get their disputes resolved through arbitrators without consulting the court of a specific country.

Essential Features of International Commercial Arbitration

The essential features of International Commercial Arbitration (ICA) are as follows,

1. A Private Mechanism

Unlike national courts which are public, The International Commercial Arbitration is a private mechanism where press and public are not present.

2. An Alternative To National Courts

Generally, businesses turn to national courts to get their disputes resolved and these national courts are maintained by the respective states of different countries. On the other hand, International Commercial Arbitration is a special system and a quasi-judicial institution that works for the parties based on a private agreement. It is not a part of national court system, but rather an alternative to National Courts.

3. Selected and Managed by Parties

ICA is powered, choosen and controlled by the parties. It is the parties who determine the structure, forum, system and other aspects of the arbitration.

4. Final and Binding Determination of Parties Rights and Obligations

Under the arbitration agreement, the parties to disputes are supposed to agree that arbitrators will resolve their disputes and they are also required to abide by the final decision made in the arbitration tribunal.

Process/Steps Involved in International Commercial Arbitration

The process/steps of International Commercial Arbitration (ICA) are as follows,

Step-1: An Agreement to Arbitrate

The first step in the International Commercial Arbitration involves an agreement between parties to arbitrate.

Step-2: Selection of Arbitrators

In the next step, the parties to dispute will select the arbitrators to resolve their dispute.

Step-3: Procedure to be Followed

Now, the parties to dispute will make an agreement regarding the procedure they want the arbitrator to follow.

Step-4: An Arbitration Hearing

After the agreement is made regarding the procedure to be followed, the arbitrator conducts a hearing with the parties or listen to the parties as they present evidence. There can be a single arbitrator (or) panel of arbitrators who will declare a binding or irrevocable decision.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Step-5: Award or Decision

The award or decision made by the arbitrators will be considered final and binding in a jurisdiction.

Step-6: Enforcement of the Arbitration Award

Finally, the arbitration award or decision will be enforced. In case of a party's refusal to enforcement, the case will be considered based on limited criteria.

Q3. Discuss the legal framework of International Commercial Arbitration.

Answer :

The legal/regulatory framework of arbitration is given in the form of an inverted pyramid as follows,

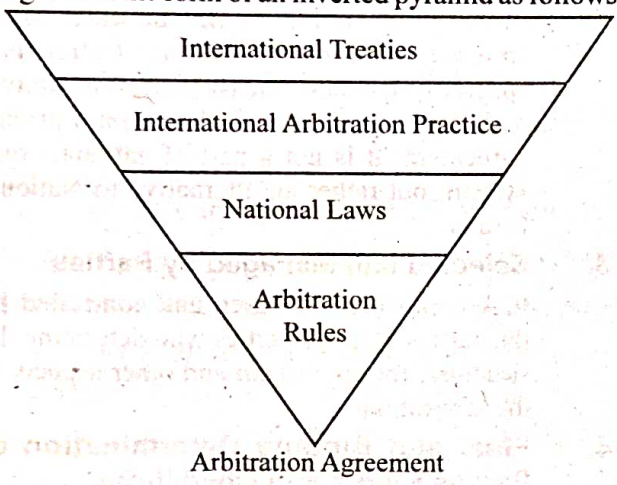


Figure: Legal Framework of ICA

1. Arbitration Rules

From the bottom of the pyramid, the level that comes above the Arbitration Agreement is "Arbitration Rules". These rules may be chosen by the parties. There is a scope of modifications in these rules in a specific case by the arbitration agreement. In a rule, the provision states that "unless otherwise agreed in writing by the parties". This indicates that the rule is not enforceable or mandatory, but rather it will be applied as a default rule in case if the parties have not arrived at their own agreement on a specific topic. If they reached a particular matter, then in such a case the arbitration rules will be replaced by the agreement of parties.

2. National Laws

National laws are the next level on the pyramid. Here, both the laws i.e., the substantive law selected by the parties and also the arbitration law of the seat of the Arbitration (the lex arbitri) will work together. Substantive law could be "different national laws" as the parties may belong to different nations. UNICITRAL model is adopted by several countries as their arbitration law on ICA. The various arbitration rules work in connection with the model law. The provisions of model law will be applied by default. But if the parties have selected arbitration rules, then the model law will not be applied. Rather, the arbitration rules will be applicable because of the choice of parties.

3. National Arbitration Practice

The next level of the pyramid is "National Arbitration Practice" which is used in all arbitrations to some extent. It involves different practices that have developed in international arbitration. For example, "Rules of Ethics" and "Rules on the taking of Evidence" developed by International Bar Association (IBA). These rules may be used as guidelines by both arbitrators and parties in the arbitration process.

4. International Treaties

There are international treaties or conventions which are relevant for international commercial arbitrations. One of the well-known and most significant treaty is "New York Convention" which not only manages the enforcement of arbitration agreements, but also the awards. Further, there are many countries that are parties to the this treaty. Apart from this, the other conventions include,

(a) The Inter-American Convention on International Commercial Convention (or) The Panama Convention.

(b) The European Convention on International Commercial Arbitration.

Q4. Write about different Arbitral Institutions. State the advantages and disadvantages of International Commercial Arbitration.

Answer :

Arbitral Institutions

The major arbitral institutions are as follows,

1. The International Chamber of Commerce (ICC) International Court of Arbitration.
2. The London Court of International Arbitration (LCIA).
3. The American Arbitration Associations (AAA) International Centre for Dispute Resolution (ICDR).
4. Other Arbitral Institutions.

1. The International Chamber of Commerce (ICC) International Court of Arbitration

The ICC International Court of Arbitration is not an ordinary court, but a reputed and highly regarded arbitral institution. It is viewed as an administrative body which is accountable for controlling the process of arbitration. Different professionals from around the world are the members of this institution.

2. The London Court of International Arbitration (LCIA)

LCIA is not a judicial system, but an institution that supervises the arbitration process. It is the responsibility of LCIA to appoint the tribunals, control the costs and determine the challenges to arbitrators. It is the first authority that applies the LCIA rules in the effective manner.

The disputes referred to LCIA are managed by the secretariate who is headed by the registrar. The head quarter of the LCIA is in London and it was founded in the late 19th century.

3. The American Arbitration Association (AAA) International Centre for Dispute Resolution (ICDR)

ICDR is an institution which is accountable for handling the arbitration. There is an increase in the number of arbitrations it handles each year. The institution has opened several offices in different countries, made agreements with other institutions, entered into a joint venture for arbitration purpose.

4. Other Arbitral Institutions

The various other arbitral institution/centres that carryout international arbitration include,

(a) The China International Economic Trade Arbitration Commission (CIETAC).

(b) The World Intellectual Property Organization (WIPO) Arbitration and mediation centre.

(c) The Arbitration Institute of the Stockholm chamber of Commerce (SCC).

(d) Grain and Feed Trade Association (GAFTA).

(e) The London Machine Arbitration Association (LMAA).

Advantages of International Commercial Arbitration

Some of the advantages or strengths of International Commercial Arbitration (ICA) are as follows,

1. The parties can arrive at a neutral decision after arbitration, which is not the case with national courts which may be biased and in competent.
2. The decision made by the tribunal under ICA is not a recommendation, but rather an enforceable decision i.e., the parties are suppose to abide by it.
3. ICA provides flexibility to the parties in disputes. The parties can "select procedural rules and the decision maker who is most appropriate to resolve their unique dispute.
4. The ICA ensures confidentiality of parties information as public and press is not involved.

Disadvantages of International Commercial Arbitration

The disadvantages or weak points of ICA are as follows,

1. The ICA process may involve high cost and expenses as the parties to dispute need to pay the fees to arbitrators and administrative fee should also be paid for arbitral institution.
2. At times, the private arbitrators may declare an unbiased decision for their personal gains and interest.
3. In ICA system, as the flexibility is provided to parties to select the procedural rules and process of arbitration, the parties may misuse this freedom leading to malpractice and misconduct in arbitration.
4. ICA doesn't give guarantee of confidentiality of the dispute, if the issue being resolved is of the general public interest.

5.3 ETHICS AND VALUE BASED CONSIDERATIONS IN BUSINESS

Q5. Define Business Ethics. State its nature and objectives.

Answer :

Business Ethics

According to Keith Davis, "business ethics are the application of general ethical rules to business behaviour".

John Donaldson defines business ethics "as a study of moral (ethical) matters pertaining to business, industry or related activities, institutions or practices and beliefs".

Nature of Business Ethics

Following five dimensions explain the nature of business ethics,

1. Business ethics is diagnostic in nature. It diagnose all business dealings, management techniques and operations to know whether business is ethical based or unethical.
2. Business ethics is prescriptive in nature. It gives various prescriptions to remove unethical behaviour of the firm. Many corrective ways are suggested to make ethical firm.
3. Business ethics is analytical as it analyze things in their present condition.
4. Business ethics is evaluative in nature. It evaluates business dealings, discloses behaviour and performance of firm. It makes the judgement whether firm is ethical or not.
5. Business ethics decide moral standard in business which acts as guiding principle while dealing with public, consumers, employees and suppliers.

Objectives of Business Ethics

The objectives of business ethics are as follows,

1. To determine good conduct of a person and set a standard.
2. To analyze human behaviour by conducting an assessment regarding moral and immoral values.
3. To develop moral standards and norms of behaviour.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

4. To make judgement on human behaviour on the basis of achieved standards and norms.
5. To suggest moral behaviour and make recommendations regarding the ideal behaviour of the employers.
6. To give an opinion or attitude regarding human conduct.

Q6. Discuss about the ethical based considerations and value based considerations in business.

Answer :

Ethical Based Considerations in Business

Ethical considerations can be studied under different levels. They are,

1. Societal Level

Ethical considerations to be followed at societal level are,

(a) Concern about clean environment.
(b) Contributing towards betterment of quality of life.
(c) Preserving scarce resources for future use.
(d) Concern about poor and needy people.
(e) No favouratism for any specific group of people.

2. Stakeholders Level

Ethical considerations to be followed at stakeholder's level are,

(a) Security of job, welfare facilities and better working conditions for employees.
(b) Good quality of goods at reasonable price, no false advertising and no discriminating prices for customers.
(c) Following rules and regulations given by the government.
(d) Guarantee for safety of borrowed funds and repayment of loans to banks.
(e) Regular dividends, disclosure of information and protecting interests of shareholders at the time of merger, amalgamation and takeover.

3. Internal Policy Level

Ethical consideration to be followed at internal policy level are,

(a) Effective communication at all levels.
(b) Fair practices in recruitment, compensation, perks, promotion etc.
(c) Transformational leadership to encourage employees to set up high goals in life.

4. Personal Policy Level

Ethical considerations to be followed at personal policy level are,

(a) Avoid politics and misuse of others for personal benefit.
(b) Maintain promise and develop mutual help.
(c) Avoid violence and respect persons and property.

Value Based Consideration in Business

Value based considerations in business are as follows,

1. Righteousness

Righteousness is necessary for every business in creating and sharing wealth and to maintain standards of ethics and integrity in every activity.

2. Innovation

Business must always strive for innovation. Economic and social expectations should be met with more effective solutions.

3. Public Good

Individuals and organizations must focus on well being of community and stakeholders apart from private benefit.

4. Learning

Business must always learn from feedback. Health of nation and global society is based on learning skills and utilization of learning by business.

5. Efficacy

Business must continue efficiency. Productive utilization of resources and protect resources so that value of efficacy can be used in preserving mother earth for future generations.

5.4 NEED AND JUSTIFICATION OF ETHICS

Q7. Define Business Ethics. Explain the need and justification/significance of Business Ethics. *Model Paper-I, Q10(b)*

OR

What is Business Ethics? Examine the need for following business ethics in the present day business environment. *July/August-17, Q10(a)*

(Refer Only Topics: Definition of Business Ethics, Need for Business Ethics)

OR

What do you understand by Business Ethics? Examine the need and significance of following business ethics. *Feb.-17, Q10(b)*

(Refer Only Topics: Definition of Business Ethics, Need for Business Ethics, Justification/Significance/Importance of Business Ethics)

OR

Explain the need and justification of business ethics.

(Refer Only Topics: Need for Business Ethics, Justification/Significance/Importance of Business Ethics)

Answer : *Jan.-18, Q10(a)*

Definitions of Business Ethics

According to Keith Davis, "business ethics are the application of general ethical rules to business behaviour".

John Donaldson defines, "business ethics as a study of moral (ethical) matters pertaining to business, industry or related activities, institutions or practices and beliefs".

Need for Business Ethics

The need for business ethics can be understood from following points,

1. Business ethics is necessary for giving support to stakeholders which includes consumers, shareholders, distributors, suppliers and investors in order to maintain their interests.
2. Business ethics is also needed for reminding duties to business firm for being a part of society.
3. Business ethics is needed to encourage firms to undertake some social responsibilities.

Justification/Significance/Importance of Business Ethics

The justification/significance/importance of business ethics can be understood from following points,

1. Business ethics provide guidance based on moral principles developed from ethics to all entrepreneurs of businesses.
2. Business ethics facilitates in preventing work related conflicts which exists within and outside the firm.
3. Business which follows ethical principles can develop more trust among all stakeholders.
4. Employees and management which concentrate on ethics can easily change work culture without any coercion.
5. Companies with ethical foundation have strong team work, commitment and higher productivity.
6. Business ethics develops long standing goodwill by improving social image of the firm.
7. Business ethics enable company to develop a sense of empowerment and security among its employees and stakeholders.

5.5 EFFICIENCY AND INTEGRITY IN BUSINESS OPERATIONS

Q8. What are Business Ethics and Efficiency? Explain in detail. *Nov.-20, Q14*

OR

Define Business Ethics. Discuss its nature and efficiency in detail.

Answer : *Jan.-19, Q10(a)*

Business Ethics

According to Keith Davis, "business ethics are the application of general ethical rules to business behaviour".

John Donaldson defines, "business ethics as a study of moral (ethical) matters pertaining to business, industry or related activities, institutions or practices and beliefs".

Nature of Business Ethics

For answer refer Unit-V, Page No. 139, Q.No. 5, Topic: Nature of Business Ethics.

Efficiency

Efficiency means performing the job in shortest time period at minimum cost, by maintaining quality. Alternatively, efficiency is doing things right.

Business Ethics and Efficiency

Basically, efficiency and effectiveness are the pillars of arete. Efficiency is linked with effectiveness which means attaining goal within the limits imposed by planning. It involves financial plan, time schedule and human resources. Hence, efficiency emphasize on the means and effectiveness emphasize on result.

Generally, business efficiency and ethics are considered as fair dealing with other people. Such as making false promises about products and services does not come under business ethics. Business efficiency is a quality of person who identifies his or her mistakes and try to rectify them.

There is correlation between ethical values and efficiency and are also correlated with business effectiveness. Social ethics withdraw when it is confronted by managerial indifference. Ethical and efficiency challenges are prevailing in many activities like public administration, financial industry, manufacturing and services.

Practically, business efficiency is nothing but making choices and implementing tools and processes which gives best results at least cost. Cost is not only referred to money, but resources of the company. Most of the time, people emphasize on financial aspects of efficiency by neglecting effects on other areas.

One of the useful tool to evaluate efficiency without effecting others negatively is Pareto improvement which was named after Vilfredo Pareto. For example, increasing salary of a person without reducing anyone else's salary is Pareto improvement.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Q9. Illustrate integrity and ethical based consideration in Business Operations.

Jan./Feb.-20, Q10(b)

OR

Explain the integrity and ethical consideration in Business Operation.

Jan.-18, Q10(b)

OR

Discuss the need and importance of integrity and ethical based considerations in business operations.

Answer : *Oct./Nov.-21, Q14*

Definition of Integrity

Integrity is defined as doing the right thing even if no one is around. It is the ability of person to perform things with honesty, reliability and fairness. One of the important aspect of integrity is that managers can stand firmly, resist temptation and does not misuse their position. Integrity is bound up with business ethics and forms social responsibility.

Need for Integrity

Following are the reasons which explains why integrity is needed in business,

1. For Building Trust

Integrity enable businesses to build trust and loyalty with public, customers, suppliers and other stakeholders in the business. As a result, trust increase confidence of customers and brand loyalty.

2. For Employee Satisfaction and Retention

Employees working in organization with high level of integrity are more satisfied and likely to stay in organization for longer period.

3. For Enhanced Business Results

Businesses with high integrity concentrate on maximizing value of both shareholders and customers and deliver products which meet customer expectations. As a result, business have better customer relations and fast improvement.

4. For Change and Improvement

Organization which accept truth and rectify mistake are highly integrated. Business with high level of integrity identify defect, take responsibility and resolve it. As a result, it enhance customer trust and loyalty.

Importance of Integrity

The importance of integrity in business can be understood from following points,

1. Integrity helps in building strong reputation to gain trust of consumers and other stakeholders. Lack of integrity in business will spoil the reputation of business.
2. Integrity helps in building long-term relationships to have long-term success. Business with high level of integrity may face problems in initial stage but they will succeed in long run.
3. Integrity helps in developing employee satisfaction. Employee are more satisfied to work in organization which have high level of integrity. Integrity is very powerful tool to acquire overall success in business.
4. Integrity helps in maintaining clarity in doing things. Dishonest and unethical organizations deceive customers and ends up in losses.
5. Integrity helps in boosting culture of company and encourage employee performance. It also helps in avoiding internal disputes as they trust each other and work as a team.
6. Integrity helps in building trust and faith. Business with high level of integrity may run into losses but never cheat customers. Ultimately, quality products are offered which increases customers trust and faith for business.

Ethical Based Considerations in Business Operation

For answer refer Unit-V, Page No. 140, Q.No. 6, Topic: Ethical Based Considerations in Business.

5.6 CORPORATE SOCIAL RESPONSIBILITY

Q10. Define Corporate Social Responsibility. Explain the Propositions of Corporate Social Responsibility.

Answer : *Model Paper-II, Q10(b)*

Corporate Social Responsibility (CSR)

According to World Business Council for Sustainable Development, "CSR is a continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large".

CSR is defined in different ways by different countries,

According to Philippines, "CSR is about business giving back to society".

According to Dr. Manmohan Singh, "Corporate social responsibility is no philanthropy. It is not charity. It is an investment in our collective future".

Propositions of CSR

The propositions made from above definitions relating to CSR are as follows,

1. Companies which are willing to become voluntarily responsible to ethical and social considerations take the initiative of CSR.
2. Unlike corporate accountability, CSR does not create legal binding for the company to follow legal and social norms.
3. Firms which are socially responsible must try to generate profit, adhere to the law, behave ethically and become a good corporate citizen.
4. CSR creates some rules and regulations for continuing the policies, making decisions or following actions which are acceptable by the objectives and values of society.
5. Social responsibility for business is not so advanced in developing and emerging economies as compared to united states and in 'western' societies.
6. CSR indicates the relationship of the corporate with all stakeholders including customers, employees, suppliers, government, and competitors.
7. The economic, legal, ethical and environmental expectations of society from organization at specific time are included under social responsibility of business.
8. Social responsibility of business is secular and society-based in nature which changes with time and varies from society to society.
9. CSR creates some regulations for organization to secure, improve and work for the development of the society where it operates.
10. Societal variations exist in CSR such as every society has its own history, culture and institution and every society demands and receives different roles and actions from specific institutions.

Q11. Discuss the scope of Corporate Social Responsibility (CSR).

Answer :

The scope of corporate social responsibility covers the following areas,

1. Promoting Common Welfare Programmes

The companies organize and promote common welfare programmes as a part of their social responsibility to benefit the poor people.

2. Wealth Creation

Social responsibility contributes to the creation of wealth. According to a professor of business ethics and social responsibility, if the resources of earth are utilized to produce goods and services in order to fulfill the needs of millions of people, then it will improve the quality of human living and will add value in economic terms. Thus, resulting in the creation of wealth.

3. Maintaining Ecological Balance

When companies produce goods, the environment gets polluted, atmosphere and water bodies get effected. Thus, it is the moral responsibility of corporation to restore/maintain ecological balance.

4. Complying with Rules and Regulations

An ethically responsible organization is required to observe rules and regulations which govern the transactions of business. Corporations should abide by the rules and regulations laid down by stock exchanges, SEBI, department of company affairs etc.

5. Focusing on the Human Element

Corporations which are socially responsible tend to focus on human element by reducing hazards, improving quality of work-life, providing equality in employment opportunities, ensuring job security and setting industrial disputes with minimum economic disruption.

6. Improving Productivity

Companies committed to social responsibility work on making their employees more creative and productive by treating them fairly and by providing them effective training and advanced technologies.

7. Sponsoring Social and Charitable Causes

The are few entrepreneurs who have not only succeeded in industrial growth, but have also made, great contributions in social and charitable causes. Some examples include J.R.D TATA in the growth of Indian Airlines Industry.

8. Good Corporate Governance

An important ingredient of CSR is good corporate governance. The attributes of good corporate governance include corporate democracy, maximization of long-term shareholder value and professional management.

9. Rendering Social Service

Few industries make contributions in promoting activities which supplement the efforts of public authorities in specific areas which are essential for all-round human development.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Q12. What are the arguments for and against corporate social responsibility?

Answer :

Arguments for Corporate Social Responsibility

Arguments which favour the implementation of corporate social responsibility are as follows,

1. **Attracting and Retaining Employees**

   Companies which are highly committed to CSR can easily recruit employees specifically in tight labour markets. They can reduce turnover and related recruitment and training costs by increasing the levels of retention.

2. **Improvement in Financial Performance**

   A study conducted by Harvard university identified that 'stakeholder balanced' companies grow four times and generate employment eight times more in comparison to companies emphasizing on shareholders and profit maximization.

3. **Reduction in Operating Cost**

   Initiatives taken by companies to avoid or reduce the usage of agrochemicals and greenhouse gases will minimize operating costs and enhance environmental performance. Companies can increase productivity by reducing absenteeism and attrition through flexible scheduling. Even worst disposal costs can be reduced by selling recycled materials.

4. **Improved Brand Image and Reputation**

   A company which is regarded as socially responsible can enjoy the benefit of high reputation in public and within the business community, which inturn increases the ability of company to attract capital.

5. **Innovation and Learning**

   Long term survival of any business mainly depends on learning and innovation. Corporate responsibility develops learning and innovation in the organization which further helps in recognizing new market opportunities, developing effective business processes and maintaining competitiveness.

6. **Increased Sales and Customer Loyalty**

   Many studies have stated that companies which are socially responsible will increase their sales. Customers are willing to purchase products depending on value based criteria.

Arguments Against Corporate Social Responsibility

Arguments which are against implementation of corporate social responsibility are as follows,

1. **Focus on Business**

   Milton Friedman states that "the business of business is business". Business firms must focus on their business operations as government and social organizations perform social activities.

2. **Cost**

   Cost incurred in carrying out social obligations will ultimately affect the economic condition of business enterprise.

3. **Burden on Society**

   Costs relating to corporate social responsibility are indirectly imposed on society by increasing prices of products or services. Hence, society have to bear the burden of additional costs.

4. **Avoiding Tax**

   Most of the corporations engage in corporate social responsibility with the purpose of avoiding tax and not for the benefit of society.

5. **Fall in Investment Funds**

   Investment funds will reduce in socially responsible firms because of lower profits, they could generate lower rates of return.

SHORT QUESTIONS AND ANSWERS

Q1. Business Ethics.

Answer : *(Model Paper-I, Q5 | Jan.-18, Q5 | August-21, Q5)*

According to Keith Davis, "business ethics are the application of general ethical rules to business behaviour".

John Donaldson defines, "business ethics as a study of moral (ethical) matters pertaining to business, industry or related activities, institutions or practices and beliefs".

Q2. Ethics Vs Morals

Answer : *(Model Paper-II, Q5 | July/August-18, Q5)*

The differences between ethics and morals are as follows,

S.No.	Basis	Ethics	Morals
1.	Meaning	Ethics refers to the attitude, beliefs, values and habits of a person or a group of people.	Morals refers to the act of respecting people, care for oneself and others.
2.	Involvement	Ethics involves professional conduct.	Morals involves good conduct.
3.	Derived	The term ethics is derived from Greek word 'Ethos'.	The term morals is derived from a Latin word 'Mores'.
4.	Nature	It can be an attitude or belief which makes a person to behave morally in professional manner.	It is a system which includes rules and principles for guiding and evaluating the human conduct.
5.	Relevance	Ethics are completely related to a person's professional principles relating to right and wrong acts.	Morals are completely related to a person's own beliefs and ideas relating to right and wrong.

Q3. Corporate Social Responsibility.

Answer :

According to World Business Council for sustainable development, "CSR is a continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large".

CSR is defined in different ways by different countries.

According to Philippines,"CSR is about business giving back to society".

According to Dr. Manmohan Singh, " Corporate social responsibility is not philanthropy. It is not charity. It is an investment in our collective future".

Q4. What are the objectives of Business Ethics?

Answer :

The objectives of business ethics are as follows,

1. To determine good conduct of a person and set a standard.
2. To analyze human behaviour by conducting an assessment regarding moral and immoral values.
3. To develop moral standards and norms of behaviour.
4. To make judgement on human behaviour on the basis of achieved standards and norms.
5. To suggest moral behaviour and make recommendations regarding the ideal behaviour of the employers.
6. To give an opinion or attitude regarding human conduct.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Q5. Write about the need for Business Ethics?

Answer :

The need for business ethics can be understood from following points,

1. Business ethics is necessary for giving support to stakeholders which includes consumers, shareholders, distributors, suppliers and investors in order to maintain their interests.
2. Business ethics is also needed for reminding duties to business firms for being a part of society.
3. Business ethics is needed to encourage firms to undertake some social responsibilities.

Q6. Write a short note on,

(a) Institutional Arbitration.

(b) Ad hoc Arbitration.

Answer :

The parties to dispute need to choose between the type of arbitration they want to opt for. Each choice will be associated with its own advantages and disadvantages. Following are the two arbitration options,

(a) Institutional Arbitration

Under institutional arbitration, the administrative functions are performed by the institution. The institution makes sure that the payment of fees and expenses is made in advance, appointment of arbitrators is done in timely fashion and arbitration runs smoothly in an effective way. The institutions have rules which are very effective for handling different kinds of situations.

(b) Ad hoc Arbitration

Under Ad hoc arbitration, no institution is there to administer the disputes, which inturn saves the parties from paying fees and expenses of administration. Ad hoc administrations are helpful, especially when the parties is a state and where more flexible proceeding are needed. This arbitration enables the parties to design a procedure for specific type of dispute. They are given the chance to develop their own rules or they can opt for UNCITRAL arbitrations rules.

FREQUENTLY ASKED QUESTIONS AND IMPORTANT QUESTIONS

ESSAY QUESTIONS

Q1. Explain the laws regulating export and import.

Ans: *Important Question*

For answer refer Unit-V, Page No. 136, Q.No. 1.

Q2. Define International Commercial Arbitration. What are its essential features? Explain the process of international commercial arbitration.

Ans: *Important Question*

For answer refer Unit-V, Page No. 137, Q.No. 2.

Q3. Discuss about the ethical based considerations and value based considerations in business.

Ans: *Important Question*

For answer refer Unit-V, Page No. 140, Q.No. 6.

Q4. Define Business Ethics. Explain the need and justification/significance of Business Ethics.

Ans: *(July/August-17, Q10(a) | Feb.-17, Q10(b) | Jan.-18, Q10(a))* REPEATED 3 TIMES

For answer refer Unit-V, Page No. 140, Q.No. 7.

Q5. What are Business Ethics and Efficiency? Explain in detail.

Ans: *(Nov.-20, Q14 | Jan.-19, Q10(a))* REPEATED 2 TIMES

For answer refer Unit-V, Page No. 141, Q.No. 8.

Q6. Illustrate integrity and ethical based consideration in business operations.

Ans: *(Jan./Feb.-20, Q10(b) | Jan.-18, Q10(b) | Oct./Nov.-21, Q14)* REPEATED 3 TIMES

For answer refer Unit-V, Page No. 142, Q.No. 9.

Q7. What are the arguments for and against corporate social responsibility?

Ans: *Important Question*

For answer refer Unit-V, Page No. 144, Q.No. 12.

SHORT QUESTIONS

Q1. Business Ethics.

Ans: *(Jan.-18, Q5 | August-21, Q5)* REPEATED 2 TIMES

For answer refer Unit-V, Page No. 145, Q.No. 1.

Q2. Ethics Vs Morals.

Ans: *(Important Question | July/August-18, Q5)*

For answer refer Unit-V, Page No. 145, Q.No. 2.

Q3. Corporate Social Responsibility.

Ans: *Important Question*

For answer refer Unit-V, Page No. 145, Q.No. 3.

Q4. Write about the need for Business Ethics?

Ans: *Important Question*

For answer refer Unit-V, Page No. 146, Q.No. 5.

Q5. Write a short note on,

(a) Institutional Arbitration.

(b) Ad hoc Arbitration.

Ans: *Important Question*

For answer refer Unit-V, Page No. 146, Q.No. 6.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

INTERNAL ASSESSMENT

I. Short Questions and Answers (2 Marks Questions)

Q1. What is International Commercial Arbitration?

Answer :

International Commercial Arbitration (ICA) is a technique of settling disputes arising from the international commercial contracts.

Q2. Define Business Ethics.

Answer :

According to Keith Davis, "Business Ethics are the application of general ethical rules to business behaviour".

Q3. What is Integrity?

Answer :

Integrity is defined as doing the right thing even if no one is around. It is the ability of person to perform things with honesty, reliability and fairness.

Q4. Define Corporate Social Responsibility (CSR).

Answer :

According to World Business Council for Sustainable Development, "CSR is a continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large".

Q5. What do you mean by Morals?

Answer :

Morals refers to the act of respecting people, care for oneself and others. Morals involves good conduct.

II. Long Questions and Answers (5 Marks Questions)

Q1. Business Ethics.

Answer :

For answer refer Unit-V, Page No. 145, Q.No. 1.

Q2. Ethics Vs Morale.

Answer :

For answer refer Unit-V, Page No. 145, Q.No. 2.

Q3. What are the objectives of Business Ethics?

Answer :

For answer refer Unit-V, Page No. 145, Q.No. 4.

Q4. Write about the need for Business Ethics?

Answer :

For answer refer Unit-V, Page No. 146, Q.No. 5.

Q5. Write a short note on,

(a) Institutional Arbitration.

(b) Ad hoc Arbitration.

Answer :

For answer refer Unit-V, Page No. 146, Q.No. 6.

R 2022-23

MODEL PAPER 1

FACULTY OF MANAGEMENT

MBA II-Semester Examinations

Model Paper-I

BUSINESS LAW AND ETHICS

Time: 3 Hours Max. Marks: 70

Instructions : This question paper contains two section A and B.
Section A is compulsory which carries 20 marks. Answer **all** questions in **Section A**.
Section B consists of 5 Units. Answer any **one** full question from each unit. Each question carries 10 marks

SECTION-A (5 × 4 = 20 Marks)

Answer All Questions

Solutions

1. Distinguish between Agreement and Contract. **(Unit-I / Page No. 26 / Q7)**
2. Negotiable Instrument. **(Unit-II / Page No. 59 / Q1)**
3. Define Company. State the characteristics of a company. **(Unit-III / Page No. 88 / Q1)**
4. Consumer Councils. **(Unit-IV / Page No. 126 / Q1)**
5. Business Ethics. **(Unit-V / Page No. 145 / Q1)**

SECTION-B (5 × 10 = 50 Marks)

6. (a) "All contracts are agreements but not all agreements are contracts". Explain. **(Unit-I / Page No. 5 / Q3)**

OR

(b) Define performance of contract and breach of contract. What are the remedies for breach of contract. **(Unit-I / Page No. 22 / Q20)**

7. (a) What is contract of Agency? What are the essentials/features of valid contract of Agency? **(Unit-II / Page No. 34 / Q1)**

OR

(b) What is Sale of Goods Act? Distinct between Sale and agreement to sell. **(Unit-II / Page No. 45 / Q12)**

8. (a) Differentiate between companies Act, 1956 and companies Act, 2013. **(Unit-III / Page No. 68 / Q2)**

OR

(b) Define 'Company'. Examine the process involved in the formation of company. **(Unit-III / Page No. 73 / Q6)**

9. (a) Define Consumer Protection. Explain in detail consumer protection Act, 2019. **(Unit-IV / Page No. 98 / Q1)**

OR

(b) List and explain the laws regulating industries. **(Unit-IV / Page No. 105 / Q9)**

10. (a) Explain the laws regulating export and import. **(Unit-V / Page No. 136 / Q1)**

OR

(b) Define Business Ethics. Explain the need and justification/significance of Business Ethics. **(Unit-V / Page No. 140 / Q7)**

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

MODEL PAPER 2

R 2022-23

FACULTY OF MANAGEMENT

MBA II-Semester Examinations

Model Paper-II

BUSINESS LAW AND ETHICS

Time: 3 Hours Max. Marks: 70

Instructions : This question paper contains two section A and B.
Section A is compulsory which carries 20 marks. Answer all questions in Section A.
Section B consists of 5 Units. Answer any one full question from each unit. Each question carries 10 marks

Solutions

SECTION-A (5 × 4 = 20 Marks)

Answer All Questions

1. Define a contract and identify the essential requirement of a contract. (Unit-I / Page No. 25 / Q1)
2. Types of Crossing. (Unit-II / Page No. 59 / Q2)
3. Articles of Association. (Unit-III / Page No. 89 / Q4)
4. Consumer Forum Vs State Consumer Redressal Commission. (Unit-IV / Page No. 128 / Q6)
5. Ethics Vs Morals (Unit-V / Page No. 145 / Q2)

SECTION-B (5 × 10 = 50 Marks)

6. (a) Define contract and valid contract. What are the essential elements of a valid contract. (Unit-I / Page No. 6 / Q4)

OR

(b) What is Capacity to contract? Who are the incompetent persons to contract? What are the effects of agreement made by incompetent persons to contract. (Unit-I / Page No. 12 / Q9)

7. (a) Define contract of Indemnity and contract of Guarantee. Distinguish between them. (Unit-II / Page No. 39 / Q7)

OR

(b) Define Negotiable Instrument. What are the different types of negotiable instruments? Explain the characteristics of various types of negotiable instruments. (Unit-II / Page No. 51 / Q16)

8. (a) Define company. Explain in detail classification of companies. (Unit-III / Page No. 70 / Q4)

OR

(b) What are the law relating to meetings and proceedings of Board of Directors? (Unit-III / Page No. 81 / Q14)

9. (a) What is Consumer Councils and Redressal Machinery in India? Explain. (Unit-IV /Page No. 101 / Q5)

OR

(b) Explain competition law in India. (Unit-IV /Page No. 117 / Q20)

10. (a) Define International Commercial Arbitration. What are its essential features? Explain the process of International Commercial Arbitration. (Unit-V / Page No. 137 / Q2)

OR

(b) Define Corporate Social Responsibility. Explain the Propositions of Corporate Social Responsibility. (Unit-V / Page No. 142 / Q10)

FACULTY OF MANAGEMENT

Code No. 9004

MBA (CBCS) I-Semester Examination

February - 2017

BUSINESS LAW AND ETHICS

Paper Code – MB –104

Open Elective – I

Time: 3 Hours Max. Marks: 80

Note: Answer All the Questions from Part-A and Part-B

Each question carries 4 marks in Part-A and 12 marks in Part-B

PART-A (5 × 4 = 20 Marks)

(Short Answer Type)

1. Capacity to Contract (Unit-I / Page No. 26 / Q5)
2. Promissory Note (Unit-II / Page No. 61 / Q8)
3. Prospectus (Unit-III / Page No. 88 / Q2)
4. Rights of Consumers (Unit-IV / Page No. 126 / Q3)
5. Intellectual Property Rights (Unit-IV / Page No. 128 / Q7)

PART-B (5 × 12 = 60 Marks)

(Essay Answer Type)

6. (a) Define 'Contract'. Write about classification of contracts. (Unit-I / Page No. 2 / Q1)

OR

(b) What is breach of contract? What are the remedies for breach of contract? (Unit-I / Page No. 22 / Q20)

7. (a) Outline the important features of contract of agency. (Unit-II / Page No. 34 / Q1)

OR

(b) What is meant by Negotiable Instrument? What are its characteristics? (Unit-II / Page No. 51 / Q16)

8. (a) Define 'Company'. Examine the process involved in the formation of company. (Unit-III / Page No. 73 / Q6)

OR

(b) What is Articles of Association? Briefly write about the contents of Articles of Association. (Unit-III / Page No. 75 / Q8)

9. (a) Explain the functions of Consumer Councils in India. (Unit-IV / Page No. 99 / Q3)

OR

(b) Outline the reasons for Environmental Pollution. Suggest measures to prevent it. (Out of Syllabus)

10. (a) "Social Responsibility of Business is gaining more importance in today's business environment" – Discuss. (Out of Syllabus)

OR

(b) What do you understand by Business Ethics? Examine the need and significance of following business ethics. (Unit-V / Page No. 140 / Q7)

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Code No. 9014

FACULTY OF MANAGEMENT

MBA (CBCS) I-Semester Examination

July/August - 2017

BUSINESS LAW AND ETHICS

Paper Code – MB –104

Time: 3 Hours Max. Marks: 80

Note: Answer All the Questions from Part-A and Part-B

Each question carries 4 marks in Part-A and 12 marks in Part-B

PART-A *(5 × 4 = 20 Marks)*

(Short Answer Type)

1. Quasi Contract (Out of Syllabus)
2. Types of crossing (Unit-II / Page No. 59 / Q2)
3. Articles of Association (Unit-III / Page No. 89 / Q4)
4. Arbitration (Out of Syllabus)
5. Social Responsibility of Business (Out of Syllabus)

PART-B *(5 × 12 = 60 Marks)*

(Essay Answer Type)

6. (a) What is meant by a valid contract ? What are the essentials of a valid contract? (Unit-I / Page No. 6 / Q4)

OR

(b) What are the remedies for breach of contracts? (Unit-I / Page No. 22 / Q20)

7. (a) Outline the provisions of the sale of Goods Act in brief. (Unit-II / Page No. 44 / Q11)

OR

(b) What is a promissory Note? Distinguish between promissory note and bills of exchanges. (Unit-II / Page No. 56 / Q24)

8. (a) Define 'Company'. What are the different types of Companies? (Unit-III / Page No. 70 / Q4)

OR

(b) Briefly write about the powers of Board of Directors of a company. (Unit-III / Page No. 83 / Q16)

9. (a) Define 'Consumer'. What are the Rights of Consumers as per Consumer Protection Act? (Unit-IV / Page No. 103 / Q7)

OR

(b) Explain the important provisions relating to Intellectual property Rights. (Unit-IV / Page No. 113 / Q15)

10. (a) What is Business Ethics? Examine the need for following business ethics in the present day business environment. (Unit-V / Page No. 140 / Q7)

OR

(b) Critically examine about Indian Value System and its relevance in Management. (Out of Syllabus)

Code No. 4504

FACULTY OF MANAGEMENT

MBA I-Semester (CBCS) Examination

January - 2018

BUSINESS LAW AND ETHICS

Paper Code – MB – 104

Open Elective – I

Time: 3 Hours Max. Marks: 80

Note: Answer All the Questions

PART-A (5 × 4 = 20 Marks)

(Short Answer Type)

1. Consideration (Unit-I / Page No. 26 / Q4)
2. Bills of Exchange (Unit-II / Page No. 59 / Q3)
3. Prospectus (Unit-III / Page No. 88 / Q2)
4. Air Pollution Act-Importance (Out of Syllabus)
5. Business Ethics. (Unit-V / Page No. 145 / Q1)

PART-B (5 × 12 = 60 Marks)

(Essay Answer Type)

6. (a) What do you mean by performance of contract? Explain the remedies available for breach of contract. (Unit-I / Page No. 22 / Q20)

OR

(b) What is Free Consent? Explain the characteristics of Free Consent. (Unit-I / Page No. 16 / Q13)

7. (a) Define Negotiable Instrument. Explain the characteristics of various types of Negotiable Instruments. (Unit-II / Page No. 51 / Q16)

OR

(b) Distinguish between Sales and Agreement to sell. (Unit-II / Page No. 45 / Q12)

8. (a) Explain the different types of Shareholders Meetings. (Unit-III / Page No. 79 / Q12)

OR

(b) Explain the Clauses of Memorandum of Association. (Unit-III / Page No. 74 / Q7)

9. (a) Explain the salient provisions of Competition Law in India. (Unit-IV / Page No. 117 / Q20)

OR

(b) Define Arbitration. Distinguish between Arbitration and Conciliation. (Out of Syllabus)

10. (a) Explain the Need and Justification of Business Ethics. (Unit-V / Page No. 140 / Q7)

OR

(b) Explain the Integrity and Ethical consideration in Business Operation. (Unit-V / Page No. 142 / Q9)

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Code No. 4534

FACULTY OF MANAGEMENT

MBA I-Semester (CBCS) Examination

May/June - 2018

BUSINESS LAW AND ETHICS

Paper – MB – 104

Time: 3 Hours Max. Marks: 80

PART-A (5 × 4 = 20 Marks)

(Short Answer Type)

1. Free Consent (Unit-I / Page No. 25 / Q2)
2. Bailment (Unit-II / Page No. 61 / Q7)
3. Memorandum of Association (Unit-III / Page No. 89 / Q6)
4. Competition Law (Unit-IV / Page No. 127 / Q5)
5. Fair Market Wages. (Out of Syllabus)

PART-B (5 × 12 = 60 Marks)

(Essay Answer Type)

6. (a) Define Contract. Explain various elements of a valid contract. (Unit-I / Page No. 6 / Q4)

OR

(b) Define Quasi Contract. Explain various quasi contracts. (Out of Syllabus)

7. (a) Distinguish between indemnity and guarantee. (Unit-II / Page No. 39 / Q7)

OR

(b) What are the various negotiable instruments? Explain various types of crossing cheque. (Unit-II / Page No. 55 / Q22)

8. (a) Define Public Limited company. Explain the contents of Articles of Association. (Unit-III / Page No. 75 / Q8)

OR

(b) Explain the Qualification, Appointment and Powers of Board of Directors. (Unit-III / Page No. 83 / Q16)

9. (a) Explain the Redressal Machinery available with regard to Consumer Protection in India. (Unit-IV / Page No. 101 / Q5)

OR

(b) Explain the Laws relating to Intellectual Properties Rights. (Unit-IV / Page No. 112 / Q14)

10. (a) Explain the Social Responsibility of a Business Organization. (Out of Syllabus)

OR

(b) Discuss the role of Indian Value system and its relevance in Management. (Out of Syllabus)

QP.5

Code No. 4584

FACULTY OF MANAGEMENT

MBA I-Semester (CBCS) Examination

July/August - 2018

BUSINESS LAW AND ETHICS

Paper – MB – 104

(Open Elective – I)

Time: 3 Hours Max. Marks: 80

Note: Answer All the Questions from Part-A and Part-B

Each question carries 4 marks in Part-A and 12 marks in Part-B

PART-A (5 × 4 = 20 Marks)

(Short Answer Type)

1. Define a contract and identify the essential requirements of a contract. (Unit-I / Page No. 25 / Q1)
2. Distinguish between Promissory Note and Bill of Exchange. (Unit-II / Page No. 61 / Q6)
3. Write a note on Statutory Meeting. (Unit-III / Page No. 89 / Q5)
4. Functions of Consumer Councils (Unit-IV / Page No. 127 / Q4)
5. Ethics Vs. Morals. (Unit-V / Page No. 145 / Q2)

PART-B (5 × 12 = 60 Marks)

(Essay Answer Type)

6. (a) "All contracts are agreements but not all agreements are contracts". Explain. (Unit-I / Page No. 5 / Q3)

OR

(b) Explain the remedies available for breach of contract. (Unit-I / Page No. 22 / Q20)

7. (a) Explain the rights and duties of bailee. (Unit-II / Page No. 35 / Q3)

OR

(b) Distinguish between condition and warranty and discuss the implied conditions and warranties under contract of sale of goods. (Unit-II / Page No. 48 / Q15)

8. (a) Explain the process of formation of a company. (Unit-III / Page No. 73 / Q6)

OR

(b) What is memorandum of association? Explain its contents. (Unit-III / Page No. 74 / Q7)

9. (a) What are the rights of consumers? Critically analyze the level of consumer awareness in India. (Unit-IV / Page No. 104 / Q8)

OR

(b) State the provisions of the competition act for prohibition of anti-competitive agreements. (Unit-IV / Page No. 117 / Q20)

10. (a) Critically analyse the relationship between social responsibility of business of survival, profitability and growth of business. (Out of Syllabus)

OR

(b) Comment on the Indian value system and its relevance to management. (Out of Syllabus)

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Code No. 1004

FACULTY OF MANAGEMENT

MBA I-Semester (CBCS) Examination

January - 2019

BUSINESS LAW AND ETHICS

Paper Code – MB –104

Open Elective – I

Time: 3 Hours Max. Marks: 80

PART-A (5 × 4 = 20 Marks)

(Short Answer Type)

Note: Answer all the questions in not more than one page each

1. Coercion (Unit-I / Page No. 25 / Q3)
2. Caveat Emptor (Unit-II / Page No. 60 / Q5)
3. Articles of Association (Unit-III / Page No. 89 / Q4)
4. Rights of the Consumer (Unit-IV / Page No. 126 / Q3)
5. Social Responsibility (Out of Syllabus)

PART-B (5 × 12 = 60 Marks)

(Essay Answer Type)

Note: Answer all the questions by using internal choice in not exceeding four pages each

6. (a) Discuss types of consideration. What will happen if consideration is missing in an agreement. (Unit-I / Page No. 11 / Q8)

OR

(b) What are quasi-contracts? Enumerate the quasi-contract under the Indian Contract Act, 1872. (Out of Syllabus)

7. (a) Define bailment. Discuss the rights and responsibilities of bailee. (Unit-II / Page No. 35 / Q3)

OR

(b) Explain the significance and legal implications of marking a cheque and state whether the marking of a post-dated cheque binds the banker who certifies it. (Unit-II / Page No. 56 / Q23)

8. (a) How is a company formed under the Companies Act, 1956? Enumerate the various documents to be filed with the registrar. (Unit-III / Page No. 73 / Q6)

OR

(b) What do you understand by Quorum? Must a quorum be present throughout a meeting? Where is the procedure if a quorum is never formed? (Unit-III / Page No. 82 / Q15)

9. (a) What is the jurisdiction of a Consumer Dispute Redressal Forum? In what manner is a complaint filed before it? What procedure is followed by it after receiving a complaint? (Unit-IV / Page No. 102 / Q6)

OR

(b) Explain pollution control law in detail. (Out of Syllabus)

10. (a) Define business ethics. Discuss its nature and efficiency in detail. (Unit-V / Page No. 141 / Q8)

OR

(b) Explain Indian value system and its relevance in Management. (Out of Syllabus)

QP.7

Code No. 12004

FACULTY OF MANAGEMENT

MBA I-Semester (CBCS) Examination

January/February-2020

BUSINESS LAW AND ETHICS

Paper Code – MB – 104

Generic Elective – I

Time: 3 Hours Max. Marks: 80

PART-A (5 × 4 = 20 Marks)

(Short Answer Type)

Note: Answer all the questions in not more than one page each.

1. Quasi Contract (Out of Syllabus)
2. Rights of unpaid seller (Unit-II / Page No. 59 / Q4)
3. Alteration of Memorandum (Unit-III / Page No. 89 / Q3)
4. Arbitration and conciliation (Out of Syllabus)
5. Fair Market Wages (Out of Syllabus)

PART-B (5 × 12 = 60 Marks)

(Essay Answer Type)

Note: Answer all the questions by using internal choice in not exceeding four pages each.

6. (a) What do you understand by 'capacity to contract'? What is the effect of agreement made by persons not qualified to contract? (Unit-I / Page No. 12 / Q9)

OR

(b) State briefly the principles on which damages are awarded on the breach of a contract. (Unit-I / Page No. 24 / Q21)

7. (a) Distinguish between a sale and a hire-purchase agreement. (Unit-II / Page No. 46 / Q13)

OR

(b) Present the salient features of Negotiable Instruments Act, specifying the characteristics of Promissory note and Bill of exchange. (Unit-II / Page No. 54 / Q20)

8. (a) How does a private company differ from a public company? Describe briefly the procedure for effecting the conversion of a private company into a public company. (Unit-III / Page No. 72 / Q5)

OR

(b) What are the statutory provisions regarding the holding of an annual general meeting? What business is transacted at such a meeting? (Unit-III / Page No. 80 / Q13)

9. (a) What are the functions of the State and Central Consumer Protection Councils? (Unit-IV / Page No. 99 / Q3)

OR

(b) Explain the law relating to Intellectual Property Rights. (Unit-IV / Page No. 112 / Q14)

10. (a) Describe the need and importance of Corporate Governance. (Out of Syllabus)

OR

(b) Illustrate integrity and ethical based consideration in business operations. (Unit-V / Page No. 142 / Q9)

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Code No. 12034

FACULTY OF MANAGEMENT

MBA I-Semester (CBCS) Examination

November - 2020

BUSINESS LAW AND ETHICS

Paper – MB –104

Open Elective – I

Time: 2 Hours Max. Marks: 80

PART-A *(4 × 5 = 20 Marks)*

Note: Answer any four questions.

1. Free Consent (Unit-I / Page No. 25 / Q2)
2. Bill of Exchange (Unit-II / Page No. 59 / Q3)
3. Prospectus (Unit-III / Page No. 88 / Q2)
4. Role of Public Awareness (Out of Syllabus)
5. Fair Market Wages. (Out of Syllabus)

PART-B *(4 × 15 = 60 Marks)*

Note: Answer any four questions.

6. What is a definition of contract? Explain the essential elements of a valid contract. (Unit-I / Page No. 6 / Q4)
7. What are the remedies for breach of contract and quasi contracts? (Unit-I / Page No. 22 / Q20, Topic: Remedies for Breach of Contract) (Out of Syllabus)
8. Explain the salient features of contract of agency. (Unit-II / Page No. 34 / Q1)
9. What are the essential elements and distinctions between promissory note, bill of exchange and cheque? (Unit-II / Page No. 56 / Q24)
10. Explain the ingredients of Memorandum of Association. (Unit-III / Page No. 74 / Q7)
11. Explain in detail Memorandum and Articles of Association. (Unit-III / Page No. 75 / Q8)
12. Discuss in brief pollution control law in Air, Water and Environment. (Out of Syllabus)
13. Explain competition law in India. (Unit-IV / Page No. 117 / Q20)
14. What are Business Ethics and efficiency? Explain in detail. (Unit-V / Page No. 141 / Q8)
15. What is Indian Value System and its relevance in Management? (Out of Syllabus)

Code No. 4004

FACULTY OF MANAGEMENT

MBA I-Semester (CBCS) Examination

August - 2021

BUSINESS LAW AND ETHICS

Paper – MB –104

Open Elective – I

Time: 2 Hours Max. Marks: 80

PART-A *(4 × 5 = 20 Marks)*

Note: Answer any four questions.

Void Contract (Unit-I / Page No. 26 / Q6)

Types of Cheque Crossing (Unit-II / Page No. 59 / Q2)

Minutes of Meeting (Unit-III / Page No. 90 / Q7)

Consumer Councils (Unit-IV / Page No. 126 / Q1)

Business Ethics (Unit-V / Page No. 145 / Q1)

PART-B *(4 × 15 = 60 Marks)*

Note: Answer any four questions.

Explain the definition of contract and agreement. Explain classification of contract? (Unit-I / Page No. 2 / Q1)

Explain the concept of offer and acceptance with suitable examples? (Unit-I / Page No. 9 / Q6)

What is indemnity and guarantee of contracts? Explain with suitable examples? (Unit-II / Page No. 39 / Q7)

What is sale of Goods Act? Distinct between Sale and Agreement to sell? (Unit-II / Page No. 45 / Q12)

What are the law relating to meetings and proceedings of Board of Directors? (Unit-III / Page No. 81 / Q14)

What are powers and legal position of Directors, Board of Directors and Chairman under Companies Act? (Unit-III / Page No. 87 / Q19)

Write note on Arbitration and Conciliation? (Out of Syllabus)

What is Consumer Councils and Redressal Machinery in India? Explain. (Unit-IV / Page No. 101 / Q5)

What is social responsibility of Business? Explain in details? (Out of Syllabus)

Write note about fair market wages in perspective on ethical consideration in business operations? (Out of Syllabus)

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Code No. 4054

FACULTY OF MANAGEMENT

MBA I-Semester (CBCS) Examination

October/November - 2021

BUSINESS LAW AND ETHICS

Paper – MB –104

Open Elective – I

Time: 2 Hours Max. Marks: 80

PART-A *(4 × 5 = 20 Marks)*

Note: Answer any four questions.

1. Explain legality of object. (Unit-I / Page No. 27 / Q8)
2. Distinctions between promissory note and bills of exchange. (Unit-II / Page No. 61 / Q6)
3. Classification of companies. (Unit-III / Page No. 90 / Q8)
4. Write about consumer councils. (Unit-IV / Page No. 126 / Q1)
5. Indian value system and its role in Business. (Out of Syllabus)

PART-B *(4 × 15 = 60 Marks)*

Note: Answer any four questions.

6. Explain how a contract is performed. (Unit-I / Page No. 19 / Q17)
7. Write about offer, acceptance, consideration and free consent. (Unit-I / Page No. 6 / Q4)
8. Explain the characteristics of a negotiable instrument and the main provisions of the Negotiable Instruments Act. (Unit-II / Page No. 52 / Q17)
9. Explain the distinctions between sale and agreement to sell. (Unit-II / Page No. 45 / Q12)
10. Describe the appointment, powers and legal position of directors. (Unit-III / Page No. 85 / Q17)
11. Explain the different types of shareholders meetings. (Unit-III / Page No. 79 / Q12)
12. Discuss the legislation and practices of environment pollution control in India. (Out of Syllabus)
13. Discuss the law relating to Intellectual Property Rights in India. (Unit-IV / Page No. 112 / Q14)
14. Discuss the need and importance of integrity and ethical based considerations in business operations. (Unit-V / Page No. 142 / Q9)
15. Discuss the social responsibility of business in Indian context. (Out of Syllabus)

Code No: D-17814/N

FACULTY OF MANAGEMENT

MBA (CBCS) II-Semester (New) Examination

November - 2022

BUSINESS LAW AND ETHICS

Paper No. MB – 206

Time: 3 Hours. Max. Marks: 80

PART-A (5 × 4 = 20 Marks)

Note: Answer all the questions

1. What is Offer?
2. Explain Bill of Exchange.
3. Explain Board meetings.
4. Explain Cyber Law.
5. Explain Law of export and import regulation.

PART-B (5 × 12 = 60 Marks)

Note: Answer all the questions

6. (a) Describe the classification of contracts.

OR

(b) What are the remedies for breach of contract?

7. (a) Write a note on sale of Goods Act.

OR

(b) Write about negotiable instruments Act.

8. (a) What is prospectus? Explain

OR

(b) Write about the powers of Managing Director and Chairman.

9. (a) Write a note on consumer councils.

OR

(b) Write about redressal mechanism of consumer protection.

10. (a) What is comparative commercial arbitration?

OR

(b) What is the need and justification of ethics in business?

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

SOLUTIONS TO NOVEMBER-2022, QP

PART-A (5 × 4 = 20 Marks)

Note: Answer all the questions

Q1. What is Offer?

Answer :

For answer refer Unit-I, Page No. 7, Q.No. 5, Topic: Definition of Offer.

Q2. Explain Bill of Exchange.

Answer :

For answer refer Unit-II, Page No. 59, Q.No. 3.

Q3. Explain Board meetings.

Answer :

The meetings conducted and held by the board of directors of a company are called board meetings. Board meetings are called and conducted according to the provisions of the companies Act and rules made there under. But, each company must also observe the secretarial standards relating to board meetings provided by the institute of company secretaries of India and approved by the Central Government (Sec. 118 (10)).

For remaining answer refer Unit-III, Page No. 81, Q.No. 14 (Side Headings Only).

Q4. Explain Cyber Law.

Answer :

For answer refer Unit-IV, Page No. 115, Q.No. 17, Topics: Definition of Cyber Law, Objectives of Cyber Laws.

Q5. Explain Law of export and import regulation.

Answer :

The laws that regulate export and import are,

1. Foreign Trade (Development & Regulation) Act, 1992

Foreign Trade (Development & Regulation) Act, 1992 regulates the foreign trade by promoting export and imports of India. It replaced the Import and Export (control) Act, 1947.

The main objectives of FTDR are,

(a) To promote the development and regulation of foreign trade by facilitating imports and exports of India.

(b) To encourage the central government to formulate and to make changes in the EXIM policy depending upon the changes prevailing in the markets.

(c) To resolve the issues and complexities associated with the foreign trade.

2. Foreign Exchange Management Act, 1999

The Foreign Exchange Management Act (FEMA), 1999 governs or regulates the payment for import and export transactions. The Act has replaced Foreign Exchange Regulation Act (FERA), 1973. Following are the objectives of FEMA,

(a) To facilitate external trade and payments.

(b) To promote the systematic development and maintenance of foreign exchange market.

The FEMA Act deals with,

(a) Foreign exchange regulations such as hoding and transaction of foreign exchange, realization and repatriation of foreign exchange, export of goods and services etc.

(b) Role of authorized person, contravention and penalties provisions, adjudication and appeal procedures, directorate's power for enforcement.

3. The Customs Act, 1962

The Customs Act 1962 regulates the physical transfer of goods/services using different transportation modes. The key objectives of customs Act 1962 are,

(a) To investigate smuggling.

(b) To collect revenue.

(c) To obtain statistics of trade.

(d) To carryout different activities on behalf of other agencies.

(e) To govern the transactions of import and export in compliance with national economic objectives and policies.

4. Export (Quality Control and Inspection) Act, 1963

Export (Quality Control and Inspection) Act, 1963 was introduced for the purpose of making India the quality producer and exporter of goods and services. The Act aims at controlling the quality and assuring pre-shipment inspection to strengthen the export trade. Under this Act, the government is empowered to inform about the commodities which should be inspected compulsorily for export purpose. The Act provides that no goods of sub standard quality should be exported. The same applies to goods that do not meet the requirement provided by the Act.

PART-B (5 × 12 = 60 Marks)

Note: Answer all the questions

Q6. (a) Describe the classification of contracts.

Answer :

For answer refer Unit-I, Page No. 2, Q.No. 1, Topic: Classification of Contracts.

OR

(b) What are the remedies for breach of contract?

Answer :

For answer refer Unit-I, Page No. 22, Q.No. 20, Topic: Remedies for Breach of Contract.

Q7. (a) Write a note on sale of Goods Act.

Answer :

For answer refer Unit-II, Page No. 43, Q.No. 10, Topic: Sale of Goods Act, 1930 and Page No. 44, Q.No. 11.

OR

(b) Write about negotiable instruments Act.

Answer :

For answer refer Unit-II, Page No. 52, Q.No. 17, Topic: Provisions of Negotiable Instruments Act.

Warning : Xerox/Photocopying of this book is a CRIMINAL act. Anyone found guilty is LIABLE to face LEGAL proceedings.

Q8. (a) What is prospectus? Explain

Answer :

For answer refer Unit-III, Page No. 77, Q.No. 10.

OR

(b) Write about the powers of Managing Director and Chairman.

Answer :

For answer refer Unit-III, Page No. 86, Q.No. 18, Topics: Powers of Managing Director, Powers of Chairman.

Q9. (a) Write a note on consumer councils.

Answer :

For answer refer Unit-IV, Page No. 99, Q.No. 3.

OR

(b) Write about redressal mechanism of consumer protection.

Answer :

For answer refer Unit-IV, Page No. 101, Q.No. 5, Topic: Redressal Machinery for Consumer Protection in India.

Q10. (a) What is comparative commercial arbitration?

Answer :

Comparative law is used in international commercial arbitration.

For remaining answer refer Unit-V, Page No. 137, Q.No. 2.

OR

(b) What is the need and justification of ethics in business?

Answer :

For answer refer Unit-V, Page No. 140, Q.No. 7, Topics: Need for Business Ethics, Justification/ Significance/Importance of Business Ethics.

Notes