

**Business regulations**

**2020 Solved Question paper**

**Section-A**

**1 a) what is Business Law?**

Ans: Commercial law or business law is the body of law which governs business and commerce and is often considered to be a branch of civil law and deals both with issues of private law and public law. Commercial law regulates corporate contracts, hiring practices, and the manufacture and sales of consumer goods.

**b) Who is minor?**

Ans: A person who is under the age of 18 years is regarded as minor.

**c) Expand TRIPS**

Ans: Trade Related Aspects Of Intellectual Property Rights.

**d) Give any four examples of environment pollutants:**

Ans: CFC

Nitrogen oxides

Methane

Sulphur dioxide

**e) Define “consumer” as per COPRA act 1986.**

Ans: According to COPRA act 1986 defines A person who buys a good or service for his own personal use and not for further manufacture is called a consumer.

**F) Give the meaning of quantum meruit.**

Ans: It is the legal action brought to recover compensation for work done and labour performed “where no price has been agreed”.

**G) What do you mean by offer?**

Ans: An offer is a conditional proposal made by a buyer or seller to buy or sell an asset which becomes legally binding if accepted.

## **Section-B**

### **2) What is breach of contract? What are the remedies for the breach of contract?**

Ans: Breach of contract occurs when one party refuses or fails to perform his/her part of the contract or by his/her act makes it impossible to perform his obligation under contract.

#### **1] Rescission of Contract:**

When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations. As per section 65 of the Indian Contract Act, the party that rescinds the contract must restore any benefits he got under the said agreement. And section 75 states that the party that rescinds the contract is entitled to receive damages and/or compensation for such a recession.

#### **2] Sue for Damages:**

Section 73 clearly states that the party who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of business. Such damages will not be payable if the loss is abnormal in nature, i.e. not in the ordinary course of business. There are two types of damages according to the Act,

- **Liquidated Damages:** Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.
- **Unliquidated Damages:** Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.

#### **3] Sue for Specific Performance:**

This means the party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement. So if any of the parties fails to perform the contract, the court may order them to do so. This is a decree of specific performance and is granted instead of damages.

### **3) Briefly write the objectives of FEMA.**

Ans: i. It is consistent with full current account convertibility and contains provisions for progressive liberalization of capital account transactions.

ii. It is more transparent in its application as it lays down the areas requiring specific permissions of the Reserve Bank/Government of India on acquisition/holding of foreign exchange.

iii. It classified the foreign exchange transactions in two categories, viz. capital account and current account transactions.

iv. It provides power to the Reserve Bank for specifying, in consultation with the central government, the classes of capital account transactions and limits to which exchange is admissible for such transactions.

v. It gives full freedom to a person resident in India, who was earlier resident outside India, to hold/own/transfer any foreign security/immovable property situated outside India and acquired when s/he was resident.

vi. This act is a civil law and the contraventions of the Act provide for arrest only in exceptional cases.

vii. FEMA does not apply to Indian citizen's resident outside India.

#### **4) Explain the sources of business law.**

Ans: **English Mercantile Law:** This is the most important source of the Indian mercantile law. The principal source of English Mercantile law is the common law of England. It also takes important references from "Lex Mercatoria" a Latin expression for a body of trading principles used by the merchant throughout Europe in the medieval. Meaning literally 'law merchant', it evolved as a system of customs and best practice, which was enforced through a system of merchant courts along with main trade routes. It functioned as the international law of commerce.

The English Mercantile law constitutes the foundation on which the superstructure of the Indian Mercantile law has been built and is supplemented by

**a) Common law :** It refers to a system of law based upon English customs usages and traditions which were developed over centuries by the English Courts. It is unwritten and its principles are applied whenever subsequent disputes of similar nature arise.

**b) Equity:** It refers to that branch of English law which developed separately from the Common law. It is based upon concepts of justice developed by the judges whose decisions became precedents. These precedents now constitute Equity law.

**c) Statute Law:** The Statute law refers to the laid down in the acts of parliament. It is superior to and overrides any rule of the common law of equity.

**d) Case Law:** It is built up on previous judicial decisions i.e on the principle that what has been decided in an earlier case is binding in a similar future case, unless there is a change in the circumstances

**2. Statutory Law:** Statutory law is written law set down by the legislature or other governing authority such as the executive branch of the government in response to the need to clarify the functioning of the government, improve civil order to codify existing law, or for an individual or company to obtain special treatment. In context to India, all laws are statutory i.e when 'Bill' is passed by the Parliament and signed by the President of India; it becomes an 'Act' or a 'Statute'. The bulk of Indian of Indian Mercantile law is a statutory law. The contract act 1872, the Sale of Goods Act 1930, The partnership act, The Companies Act 1956 are all examples of Statutory Law.

**3. Judicial Decisions:** The past judicial decisions of courts are important sources of law. Sometimes there is no statutory provision which can answer a legal question raised in a law

suit. In such cases the court will look into the previous court decisions on similar matters to find the relevant law. The precedents set by the higher courts have a binding force on lower

courts and the precedents set by the same courts of the same status like High Courts of different states have persuasive value for each other.

**4. Customs and Usages:** Customs and usages of a trade play an important role in business dealings of that trade. Customs and usages established by long use and constantly put into practise become binding on the parties entering into commercial transactions. A custom in order to be binding on the parties must be ancient reasonable certain definite consistent with other customs and uniformly recognised in the ordinary course of business. When a custom is accepted by a court and is Incorporated in a judicial decision, it becomes a legally recognised custom. As a matter of fact they have a binding force on the parties, like by the mercantile usage prevailing in the Delhi Iron Market among big merchants, no interest can be charged on the unpaid price for transactions before 1917. To have a binding force, the custom or usage must be certain, reasonable and well known.

**5) Briefly explain any 6 unfair trade practices.**

Ans: unfair trade practices

- False representation or quality standard
- False representation of quality standard of service
- Rebuilt and second hand goods as new
- Represents that goods have certain uses or benefits which they do not have.
- Represents that the seller has approval or affiliation which he does not have.
- Misleading representation of goods or services.
- Warranty or guarantee not based on proper test
- Misleads the public regarding the price

**6) Explain the scope of competition act 2002.**

Ans: Make the markets work for the benefit and welfare of consumers.

- Ensure fair and healthy competition in economic activities in the country for faster and inclusive growth and development of the economy.
- Implement competition policies with an aim to effectuate the most efficient utilization of economic resources.
- Develop and nurture effective relations and interactions with sectoral regulators to ensure smooth alignment of sectoral regulatory laws in tandem with the competition law.
- Effectively carry out competition advocacy and spread the information on benefits of competition among all stakeholders to establish and nurture competition culture in Indian economy.

### **Section-C**

#### **7) Explain the essential elements of a valid contract.**

Ans: According to Sec 10, all agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not expressly declared void.

In order to become a contract an agreement must have the following essential elements:

**1. Proper offer and proper acceptance:** There must be 2 parties to an agreement based on a lawful offer made by one person to another and lawful acceptance of that offer by the latter. The terms of offer must be definite and the acceptance of the offer must be absolute and unconditional. Sections 3 to 9 of the Contract Act, 1872 lay down the rules for making valid acceptance.

**2. Intention To Create Legal Relationships:** When the two parties enter into an agreement, there must be intention to create a legal relationship between them. If there is no such intention on the part of the parties. There is no contract between them. Agreements of a social or domestic nature do not contemplate legal relationship; as such they are not contracts.

**3. Lawful consideration:** An agreement to form a valid contract should be supported by consideration. Consideration means something in return (quid pro quo). It can be cash, kind, an act or abstinence. It can be past, present or future. However, consideration should be real and lawful and not fictional.

**4. capacities of parties:** In order to make a valid contract the parties to it must be competent to be contracted. According to section 11 of the Contract Act, a person is considered to be competent to contract if he satisfies the following criterion:

- The person has reached the age of majority.
- The person is of sound mind.
- The person is not disqualified from contracting by any law.

**5. Free Consent:** To constitute a valid contract there must be free and genuine consent of the parties to the contract. It should not be obtained by misrepresentation, fraud, coercion, undue influence or mistake.

**6. Lawful Object and Agreement:** The object of the agreement must not be illegal or unlawful. In other words the object must not be a. illegal, b. immoral, c. opposed to public policy. If an agreement suffers from any legal flaw it will not be enforceable by law.

**7. Certainty, Possibility of Performance:** the agreement must be certain not vague or indefinite (sec 29) if it is vague and it is not possible to ascertain its meaning, it cannot be enforced.

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**8. Legal Formalities:** A contract may be by words spoken or written. As regards the legal effects there is no difference between a contract in writing and a contract made by words of mouth. But there are some other formalities also which have to be complied with in order to make an agreement legally enforceable.

**9. Agreement not declared void or illegal:** Agreements which have been expressly declared void or illegal by law are not enforceable at law; hence they do not constitute a valid contract.

### **8) Explain consumer redressal agencies.**

Ans: The Act provides for the establishment of three consumer forums at three levels i.e.

1. District Forum at district level
2. State Consumer Disputes Redressal Commission at state level
3. National Commission at the national level.

### **District Forum**

A District Forum will be established in each district and the responsibility of establishing district forums lies with the respective State Governments.

### **Jurisdiction of District Forum**

The district forum has jurisdiction to decide consumer disputes where the value of goods and services and the compensation claimed does not exceed Rs. 20 lakhs.

### **Composition of District Forum**

According to the provisions of the Act, each district forum shall consist of—

1. a President, who has been or is qualified to be a district judge; and
2. two other members, one of whom must be a woman. The members shall be of not less than 35 years of age ; possess a bachelor degree from a recognized university and persons of ability, integrity and standing having knowledge or experience of problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. The salary and other terms and conditions of the job of the members are prescribed by the State Government.

### **Tenure of the members**

All the members of district forum shall be in office for 5 years or up to the age of 65 years, whichever is earlier. Any member can resign his office by addressing the letter to State Government.

### **3. State Consumer Disputes Redressal Commission**

The State Consumer Disputes Redressal Commission or State Commission is established by the State Governments in the respective states by notification [ section 9(b)].

### **Jurisdiction of State Commission**

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The State Commission has original jurisdiction to decide consumer disputes where the value of goods and services and the compensation claimed exceed Rs. 20 lakhs but does not exceed Rs. 1 crore.

The Commission has appellate jurisdiction against the orders of the district forums within the state. Revisional jurisdiction empowers the Commission to call for records and pass appropriate orders in any consumer dispute that is pending or has been decided by district forum, if the State Commission is of the view that district forum is exercising jurisdiction not vested in it or not exercising the jurisdiction.

### **Composition of the State Commission**

According to the provisions of the Act, each State Commission shall consist of –

1. a President, who has been or is qualified to be a judge of High Court; and
2. two other members, one of whom must be a woman [section 10(1)]. The members shall be persons of ability, integrity and standing having knowledge or experience of problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

The salary and other terms and conditions of the job of the members are prescribed by the State Government.

### **Tenure of the members**

All the members of State Commission shall be in office for 5 years or up to the age of 67 years, whichever is earlier. Any member can resign his office by addressing the letter to the State Government [section 16(3)].

### **National Commission**

The Central Government has established a National Commission at national level to redress consumer disputes [section 9( c)].

### **Jurisdiction of National Commission**

The National Commission has original jurisdiction to decide consumer disputes where the value of goods and services and the compensation claimed exceed Rs. 1 crore.

The National Commission has appellate jurisdiction against the original orders of any State Commission.

The National Commission has revisional jurisdiction to call for records and pass appropriate orders in any consumer dispute that is pending or has been decided by any State Commission, if the

National Commission is of the view that the State Commission is exercising jurisdiction not vested in it or not exercising the jurisdiction.

### **Composition of the National Commission**

According to the provisions the Act, the National Commission shall consist of –

1. a President, who has been or is qualified to be a judge of Supreme Court; and

2. four other members, one of whom must be a woman. The members shall be not less than 35 years of age, possess a bachelor's degree from a recognized university and persons of ability, integrity and standing having knowledge or experience of problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. Provided that not more than fifty percent of the members shall be from amongst the persons having a judicial background (section 20) prescribed by the Central Government.

### **Tenure of the members**

All the members of the National Commission shall be in office for 5 years or up to the age of 70 years, whichever is earlier [section 20(2)]. Any member can resign his office by addressing the letter to the Central Government. Appeal against original orders of National Commission can be made with Supreme Court.

### **9) Explain the rights and duties of buyer under sale of goods act 1930.**

Ans: **RIGHTS OF BUYER:**

- 1. Right to have delivery as per the contract (sec 31 & 32)-** The first right of the buyer is to have delivery of the goods as per the contract.
- 2. Right to reject the goods (sec 37)-** If the seller sends to the buyer a larger or smaller quantity of goods than he ordered, the buyer may (a) reject the whole (b) accept the whole, or (c) accept the quantity he ordered and reject the rest.
- 3. Right to repudiate [sec 38(1)]-** Unless otherwise agreed, the buyer of the goods has right not to accept delivery thereof by instalments.
- 4. Right to notice of insurance [sec 39(3)]-** Unless otherwise agreed, where goods are sent by the seller to the buyer by a sea route, the buyer has a right to be informed by the seller so that he may get the goods insured.
- 5. Right to examine (sec 41)-** The buyer has a right to examine the goods which he has not previously examined before he accepts them. The seller is bound to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

### **DUTIES OF THE BUYER:**

- 1. Duty to accept the goods and pay for them (sec 31 and 32)-** It is the duty of the buyer to accept and pay for them, in accordance of the terms of contract of sale (sec 31). Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say the buyer shall be ready and willing to pay the price in exchange for the possession of the goods.
- 2. Duty to apply for delivery (sec 35)-** Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for the delivery.
- 3. Duty to demand delivery at a reasonable hour (sec 36(4))-** It is the duty to demand delivery at a reasonable hour.



**4. Duty to accept instalment delivery and pay for it (sec 38(2))-** If agreed the buyer of the goods is to receive the delivery of the goods in instalments, it is the duty of the buyer to accept the instalment delivery of the goods and pay for the same. In other words, when there is a contract for the sale of goods to be delivered by instalments which are to be separately paid for, the buyer has to pay for the goods.

**5. Duty to intimate the seller for rejecting goods ( Sec 43):** Unless otherwise agreed where goods are delivered to the buyer & he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

**6. Duty to take Delivery ( Sec 44 ):** When the seller is ready & willing to deliver the goods within the reasonable time & request the buyer to take delivery, it is the duty of the buyer to take delivery of the goods. The buyer does not within the reasonable time after such request to take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery & also for a reasonable charge for the care & custody of the goods.

**7. Duty to pay the Price for the Received goods: ( Sec 55):** Where under a contract of sale the property in the goods has passed to the buyer, it is the duty of the buyer to pay the price according to the terms of contract of sale.

**8. Duty to pay damages for non performance ( Sec 56):** Where the buyer wrongfully neglects or refuses to accept & pay for the goods, he'll have to pay damages for the seller for damages for non acceptance.

**10) Explain the different types of pollution under Environment protection Act.**

Ans: Following are the Main Types of Pollution

The effects of pollution are undoubtedly many and extensive. Extreme levels of pollution are causing scores of harms to human health, animal health, tropical rain-forests etc. All kinds of pollution including air, water, soil pollution, etc. have an impact on the environment.

1. Air Pollution
2. Water Pollution
3. Land Pollution (soil pollution)
4. Noise Pollution
5. Radioactive/ Nuclear Pollution
6. Thermal Pollution, etc
7. Light pollution
8. Marine Pollution/ Ocean Pollution

### **Water Pollution**

One of the most common forms of pollution is water pollution. Generally, it is the contamination of any body of water including lakes, groundwater, sea, oceans, etc. A few examples include raw sewage and waste water running into the lake or streams; Industrial waste drips polluting groundwater, the illicit putting of stuff or items within bodies of water, etc. The most explicit kind of water pollution affects surface waters including oceans, lakes, and rivers which are used as drinking water. Sewage, Nutrients, Chemical waste, radioactive waste, etc. can make water polluted. Water pollution also results in death of water bodies, kill organisms and fish, crabs, birds ;seagull.s, dolphins, etc.

### **Air Pollution**

Air Pollution is another main environmental pollution faced by our world today. It takes place when damaging stuff including particulate matter and biological molecules are dumped into Earth's atmosphere. It results in diseases, allergies or premature death in humans. Air pollution can bring harm to other living organisms such as animals and food crops that we eat. In general, it is the pollution of air by smoke and dangerous gases, chiefly oxides of carbon, sulfur, and nitrogen. Exhausting fumes from vehicles, natural gas, the burning of fossil fuels, Radiation spills or nuclear accidents, destructive off-gassing from things such as paint, plastic production, and so on can cause pollution. Such a type is generally regarded as "external pollution" only however it is not true. Pollutants outside the home is as dangerous as inside the home and offices. Such pollution which is present in a closed space of home or office space is called indoor air pollution.

### **Soil Pollution**

Soil Pollution takes place when the existence of toxic chemicals, pollutants or impurities in the soil is in high. Soil contamination presents a high risk to plants, wildlife, humans and indeed, the soil itself. The surplus, escalating the use of chemicals such as pesticides, herbicides, insecticides, and fertilizers is one of the main contributory factor.

### **Noise Pollution**

Noise pollution has become more of an environmental issue since the industrial age. It is disturbing or extreme noise that can harm the activity or balance of human as well as animal life. The cause of most outdoor noise globally is primarily originated from machines and transportation systems, motor vehicles engines, factory machine sounds, aircraft, and trains. Noise pollution can result from machines, construction activities, and music performances. Noise pollution can cause tinnitus, hearing loss, sleep disturbances, hypertension, high-stress levels, and other destructive effects on humans. It causes uneasiness and damage to living being's mental and physical health.

### **Radioactive/ Nuclear Pollution**

Radioactive pollution is a different type of pollution, it is caused because of radioactive contamination (radio-logical contamination). Such pollution is not very common in everyday life but of particular concern where radioactive material and radioactive substances are used.

The risk of radioactive contamination increases in vicinity of Nuclear thermal power plants, factories, in major hospitals etc. and can cause serious problems if the radiation and exposure is not controlled. Generally, the use of such harmful substance is very careful manner in controlled environment. This is because of the widespread and long-lasting damage in case of any leak or contact with such substance. Dealing with radioactive waste becomes particularly important because of the lack of safe disposal of such waste, thus mishandling of radioactive waste can cause huge damage.

**11) what is infringement of patents rights? What are the remedies available to the patentee in case of infringement of patents rights?**

Ans: A patent confers the exclusive right on the patentee to make distribute or sell the invention in india. An infringement would be when any of three rights is violated. A patentee may assign license all or some of these rights. The infringement can be classified as:

- a) **Product patents rights:** The patentee is infringed by anyone who makes or supplies that substance commercially.
- b) **Process patent rights:** The use of such a method or process in india by anyone other than the patentee amounts to infringement.

**Reasons for infringement:**

The reasons for infringement are:

1. The colorable imitation of an invention
2. Immaterial variation in the invention
3. Mechanical equivalents
4. Taking essential features of the invention

**Action of infringement:**

The action of infringement includes the following:

- Interim injunction
- Damages or account of profits
- Permanent injunction

**Suit for infringement:**

The procedure followed in conducting a suit for infringement is governed by the provisions of code of civil procedure. Only the person who has a right in the patent can institute a suit for infringement.

The following persons entitled to sue:

1. The patentee
2. The exclusive licensee if license is registered

**2021 Solved question paper**

**Section-A**

**1. a) what is business law? Repeated question in 2020**

**b) What is an Agreement?**

Ans: A business agreement is any statement or contract that is formed between two or more business organizations. ... Because business agreements are contracts, they must fulfill all of the legal requirements for a valid contract.

**c) Who is a minor? Repeated question in 2020**

**d) What is hazardous substance?**

Ans: it means any substance having chemical or physico-chemical properties that are liable to cause harm to human being other living creatures and plants in the environment.

**e) Give the meaning of IPR**

Ans: Intellectual property is a property right that can be protected under federal and state law, including copyrightable works, ideas, discoveries, and inventions. The term intellectual property relates to intangible property such as patents, trademarks, copyrights, and trade secrets.

**f) What is quasi contract?**

Ans: The law imposes obligations of contractual nature on one party and confers rights in favour of the other even though there is no offer no acceptance no consensus ad these contracts are constituted by law and are therefore termed as quasi contract.

**g) Define consumer dispute?**

Ans: Consumer dispute, means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

**Section-B**

**2) Explain the rights of consumer?**

Ans: A person who buys a good or service for his own personal use and not for further manufacture is called a consumer. Consumers play an important role in the market. The market for a good or service constitutes all the consumers and producers of that good or service. If there is no consumer, producers will have no one to provide the good.

**Consumer Rights**

There are six broad consumer rights defined as per the Consumer Protection Act, 1986. These are:

### **Right to Safety**

The Consumer Protection Act defines this right as a protection against goods and services that are 'hazardous to life and property'. This particularly applies to medicines, pharmaceuticals, foodstuffs, and automobiles. The right requires all such products of critical nature to life and property to be carefully tested and validated before being marketed to the consumer.

### **Right to Information**

This right mentions the need for consumers to be informed about the quality and quantity of goods being sold. They must be informed about the price of the product and have access to other information specific to the product that they wish to consume.

### **Right to Choose**

The consumer must have the right to choose between different products at competitive prices. Thus, the concept of a competitive market where many sellers sell similar products must be established to ensure that the consumer can actually choose what to consume and in what quantity. This is to avoid monopoly in the market.

### **Right to Seek Redressal**

When a consumer feels exploited, he/she has the right to approach a consumer court to file a complaint. A consumer court is a forum that hears the complaint and provides justice to the party that has been hurt. Thus, if the consumer feels he/she has been exploited, they can approach the court using this right.

### **Right to be Heard**

The purpose of this right is to ensure that the consumer gets due recognition in consumer courts or redressal forums. Basically, when a consumer feels exploited, he has the right to approach a consumer court to voice his complaint. This right gives him/her due respect that his/her complaint will be duly heard. The right empowers consumers to fearlessly voice their concerns and seek justice in case they are exploited.

### **Right to Consumer Education**

Consumers must be aware of their rights and must have access to enough information while making consumption decisions. Such information can help them to choose what to purchase, how much to purchase and at what price. Many consumers in India are not even aware that they are protected by the Act. Unless they know, they cannot seek justice when they are actually hurt or exploited.

**3) Explain the objectives of FEMA**

Ans: The aim of FEMA is to simplify, consolidate and amend the law relating to foreign exchange with a view to facilitating external trade and payments, promoting orderly development and maintenance of foreign exchange market in India.

**Needs or Objectives of FEMA:**

- To regulate dealings in foreign exchange and foreign securities
- To regulate the transactions indirectly affecting foreign exchange
- To regulate import and export of currency
- To conserve the foreign exchange reserves of the country and to utilize the same in interests of the economic development of the country
- To regulate holding of immovable property outside India
- To regulate employment of foreign nationals.

**4) Explain the sources of business law. (repeated question in 2020).**

**5) write the salient features of competition act. (Repeated question in 2021).**

**6) what is contract of sale. Difference between sale and agreement of sale**

**Ans:**

<b>Basis</b>	<b>sale</b>	<b>Agreement to sell</b>
1. Transfer of property	The property or ownership in the goods immediately passes from seller to buyer.	The property in goods transfers on some future date or subject to fulfillment of some conditions. The seller continues to be the owner of goods.
2. Kinds of goods	Sale is always of existing, specific or ascertained goods.	An agreement to sell may relate to existing goods, unascertained goods and mostly to future or contingent goods.
3. Type of contract	Sale is an executed contract.	It is an executor or future contract.

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4. Risk	The goods belong to the buyer even if they remain in the possession of seller. In case of loss or damage, the buyer will suffer the loss.	The goods belong to the seller and he will suffer the loss if goods are destroyed, even if these are in the possession of the buyer.
5. Remedy for breach of contract	If the buyer fails to pay the price, the seller can sue him for price, but cannot resell the goods.	The seller can recover the goods, can sue for damages and can resell the goods, but cannot sue the intended buyer for recovery of price.
6 .Insolvency of buyer	If buyer gets insolvent before he pays the price, the seller cannot retain the goods. He must return the goods to the buyer's Official Receiver and shall be entitled only to a returnable dividend.	The seller can recover the goods, can sue for damages and can resell the goods, but cannot sue the intended buyer for recovery of price.
7 Insolvency of seller	If seller gets insolvent, the buyer can recover goods from seller's Official Receiver.	If the buyer has already paid the price, buyer cannot recover the goods. He can only claim returnable dividend.

**Section-C**

**7) Explain the breach of contract.**

Ans: A breach of contract occurs if any party refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. A breach of contract may arise in two ways, (a) anticipatory breach and (b) actual breach. A remedy is the course of action available to an aggrieved party (i.e., the party not at default) for the enforcement of a right under a contract. The various remedies available to an aggrieved party are as follows:

- Suit for rescission of the contract.
- Suit for damages.
- Suit for specific performance
- Suit for injunction
- Suit upon quantum meruit. □ Restitution.

## I. RESCISSION OF THE CONTRACT

Rescission of a contract means annulment of it. When all or some of the terms of the contract are cancelled, rescission of a contract takes place. When there is a breach of contract by one party, the aggrieved party may rescind the contract and need not perform his part of the contract. The aggrieved party has to file a suit for rescission. When rescission is granted, the aggrieved party is absolved from all his obligations under the contract.

The court grants rescission in the following cases:

- a) Where the contract is voidable at the option of the plaintiff.
- b) Where the contract, is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

The court, may, however, refuse to grant rescission, in the following cases:

- a) Where the plaintiff has expressly or impliedly ratified the contract; or
- b) Where owing to change in the circumstances of the contract, the parties cannot be restored to their original position; or
- c) Where the third parties have, during the subsistence of the contract, acquired right's in the contract in good faith and for value; or
- d) Where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract

## II. SUIT FOR DAMAGES

“Damages” are monetary compensation allowed for loss suffered by the aggrieved party due to breach of contract. The object of awarding damages is not to punish the party at fault but to make good the financial loss suffered by the aggrieved party due to the breach of contract.

### Types of Damages

**a) General or ordinary damages:** These are the damages which are payable for the loss arising naturally and directly, in the usual course, from the breach of contract. In a contract for the sale of goods, the measure of ordinary damages is the difference between the contract price and the market price of such goods on the date of breach.

**b) Special damages:** These are the damages which are payable for the loss arising due to some special or unusual circumstances.

**c) Exemplary or punitive or vindictive damages:** These are the damages which are in the nature of punishment. The court may award these damages in case of: i) Breach of contract to marry School

ii) Wrongful dishonour of cheque by a banker in violation of Section 31 of the Negotiable Instruments Act. The damages are estimated on the basis of loss of prestige and goodwill of the customer. The rule applied in this case is that smaller the amount of cheque, the higher shall be the damages.



**d) Nominal damages:** These are the damages which are very small in amount. Such damages are awarded simply to establish the right of the party to claim damages for the breach of contract even though the party has suffered no loss.

**e) Liquidated damages and penalty:** When the amount of compensation fixed by an agreement between the parties to be paid in case of breach of contract is in the nature of a fair and honest pre-estimation of probable damages. It is called liquidated damages. When the amount named in the contract at the time of its formation is disproportionate to the damages likely to accrue in the event of breach.

### **III. SUIT FOR SPECIFIC PERFORMANCE**

This means demanding the court's direction to the defaulting party to carry out the promise according to the terms of the contract.

**Specific performance of the contract may be directed by the court in the following circumstances:**

- (i) Where actual damages arising from breach are not measurable.
- (ii) Where monetary compensation is not an adequate remedy.

**Specific performance of an agreement will not be granted –**

- a) Where the damages are considered as an adequate remedy;
- b) Where the contract is of personal nature, e.g. contract to marry;
- c) Where the contract is made by a company beyond its powers as laid down in its Memorandum of Association;
- d) Where the court cannot supervise the performance of the contract;
- e) Where one of the parties is a minor;
- f) Where the contract is inequitable to either party.

### **IV. SUIT FOR INJUNCTION**

An injunction is an order of the court requiring a person to refrain from doing some act which has been the subject matter of contract. The power to grant injunction is discretionary and it may be granted temporarily or for an indefinite period.

### **V. SUIT UPON QUANTUM MERUIT**

The word 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done". When a person has begun the work and before he could complete it, if the other party terminates the contract or does something which makes it impossible for the other party to complete the contract, he can claim for the work done under the contract.

**8) Explain the consumer redressal agencies.**

**Repeated question in 2020**

**9. a) Rights of buyer – repeated question in 2020**

**b) Explain the competition commission in india.**

Ans: The Competition Law deal with enterprise behaviour by prohibiting such restrictive business practices as competition – restricting horizontal as agreements acquisitions, and abuse a dominant position, as well as substantially restrictive vertical distribution as agreements.

**Scope of the Competition Law:**

- The act extends to the whole of India exempt the state of Jammu and Kashmir
- It covers the various Anti – trade practices like Abuse of dominant position, Acquisitions, Regulation of combination etc.
- Composition of Competition Commission of India (CCI) – It includes selection of Chair Person and members, their term, resignation, removal etc.
- Financial and Administrative power of CCI
- Duties of Director – General to investigate contraventions, offences and petition in front of CCI

**Features or Objectives:**

- Ensure fair competition in India by prohibiting Anti – Trade Practices
- Prohibition of Abuse of Dominance
- Regulation of Combinations (such as Acquisition, Mergers, and Amalgamations of certain stage
- It aims at curbing negative aspects of Competition through the establishment of Competition Commission of India
- Relief for provisions under MRTP Act 1969
- Establishment of standards for Newly Liberalized and Global Market
- Ensure protection of Consumers against Anti – Trade Practices.

**Competition Commission of India (CCI)**

**Establishment of Commission** – With effect from such date as the Central Government may, by notification. It is a corporate body under perpetual succession and a common deal with power. The Commission may establish offices at other places in India.

**Composition of Commission** – The commission shall consist of a Chairperson and not less than two and not more than six other members appointed by the Central Government. Chairperson and every other member shall have ability integrity and standing and shall have special knowledge of , and professional experience of not less than fifteen years in International Trade, Economics, Business, Commerce, Law, finance etc

**Selection of Chairperson and other Members** – Shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of– Chief Justice of India, The Secretary of Company Affairs, The Secretary of Law and justice, Two experts who have special knowledge and professional knowledge.

**The of Office of Chairperson and other Members** – For a term of five years from the date on which he enters upon his office and shall be eligible for reappointment.

**10) Explain the essentials of valid contract.**

**Repeated question in 2020**

**11) Explain the role of the central government in the prevention, control and abatement of the environmental pollution.**

Ans: Power of Central Government to take measures to protect and improve environment.-

(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely :-

(i) co-ordination of actions by the State Governments, officers and other authorities,-

(a) under this Act, or the rules made thereunder, or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

- (v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall be carried out or shall not be carried out subject to certain safeguards;
- (vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
- (vii) laying down procedures and safeguards for the handling of hazardous substances;
- (viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;
- (ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;
- (x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;
- (xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;
- (xii) collection and dissemination of information in respect of matters relating to environmental pollution;
- (xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;
- (xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

### **Explanation if Needed**

## **PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION**

7. Persons carrying on industry operation, etc, not to allow emission or discharge of environmental pollutants in excess of the standards.- No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutants in excess of such standards as may be prescribed.(9)

8. Persons handling hazardous substances to comply with procedural safeguards. - No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.(10)

9. Furnishing of information to authorities and agencies in certain cases. -

(1) Where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which such

APS COLLEGE OF COMMERCE

NR Colony

Bangalore-560019

discharge occurs or is apprehended to occur shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge and shall also forthwith-

(a) intimate the fact of such occurrence or apprehension of such occurrence; and

(b) be bound, if called upon, to render all assistance, to such authorities or agencies as may be prescribed.(11)

(2) On receipt of information with respect to the fact or apprehension of any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the authorities or agencies referred to in sub-section (1) shall, as early as practicable, cause such remedial measures to be taken as are necessary to prevent or mitigate the environmental pollution.

(3) The expenses, if any, incurred by any authority or agency with respect to the remedial measures referred to in sub-section (2), together with interest (at such reasonable rate as the Government may, by order, fix) from the date when a demand for the expenses is made until it is paid, may be recovered by such authority or agency from the person concerned as arrears of land revenue or of public demand.

10. Powers of entry and inspection.-

(1) Subject to the provisions of this section, any person empowered by the Central Government in this behalf(12) shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place-

(a) for the purpose of performing any of the functions of the Central Government entrusted to him;

(b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorisation served, made, given or granted under this Act is being or has been complied with;

(c) for the purpose of examining and testing any equipment, industrial plant, record, register, document or any other material object or for conducting a search of any building in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such equipment, industrial plant, record, register, document or other material object if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made there under or that such seizure is necessary to prevent or mitigate environmental pollution.

(2) Every person carrying on any industry, operation or process of handling any hazardous substance shall be bound to render all assistance to the person

empowered by the Central Government under sub-section (1) for carrying out the functions under that sub-section and if he fails to do so without any reasonable cause or excuse, he shall be guilty of an offence under this Act.

APS COLLEGE OF COMMERCE  
NR Colony  
Bangalore-560019

(3) If any person wilfully delays or obstructs any persons empowered by the Central Government under sub-section (1) in the performance of his functions, he shall be guilty of an offence under this Act.

(4) The provisions of the Code of Criminal Procedure, 1973, or, in relation to the State of Jammu and Kashmir, or an area in which that Code is not in force, the provisions of any corresponding law in force in that State or area shall, so far as may be, apply to any search or seizures under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code or as the case may be, under the corresponding provision of the said law.

**11. Power to take sample and procedure to be followed in connection**

**therewith. -**

(1) The Central Government or any officer empowered by it in this behalf, (13) shall have power to take, for the purpose of analysis, samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed. (14)

(2) The result of any analysis of a sample taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub sections (3) and (4) are complied with.

(3) Subject to the provisions of sub-section (4), the person taking the sample under sub-section (1) shall -

(a) serve on the occupier or his agent or person in charge of the place, a notice, then and there, in such form as may be prescribed, of his intention to have it so analyzed;

(b) in the presence of the occupier or his agent or person, collect a sample for analysis;

(c) cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent or person;

(d) send without delay, the container or the containers to the laboratory established or recognized by the Central Government under section 12.

(4) When a sample is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent or person, a notice under clause (a) of sub-section (3), then,-

(a) in a case where the occupier, his agent or person wilfully absents himself, the person taking the sample shall collect the sample for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample, and

(b) in a case where the occupier or his agent or person present at the time of taking the sample refuses to sign the marked and sealed container or containers of the sample as required under clause (c) of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the samples, and the container or containers shall be sent

APS COLLEGE OF COMMERCE

NR Colony

Bangalore-560019

without delay by the person taking the sample for analysis to the laboratory established or recognised under section 12 and such person shall inform the Government Analyst appointed or recognized under section 13 in writing, about the wilful absence of the occupier or his agent or person, or, as the case-may be, his refusal to sign the container or containers.

**12. Environmental laboratories.- (1) The Central Government(15) may, by notification in the Official Gazette,-**

(a) establish one or more environmental laboratories;

(b) recognise one or more laboratories or institutes as environmental laboratories to carry out the functions entrusted to an environmental laboratory under this Act.(16)

(2) The Central Government may, by notification in the Official Gazette, make rules specifying-

(a) the functions of the environmental laboratory;(17)

(b) the procedure for the submission to the said laboratory of samples of air, water, soil or other substance for analysis or tests, the form of the laboratory report thereon and the fees payable for such report;(18)

(c) such other matters as may be necessary or expedient to enable that laboratory to carry out its functions.

13. Government Analysts - The Central Government may by notification in the Official Gazette, appoint or recognize such persons as it thinks fit and having the prescribed qualifications(19) to be Government Analysts for the purpose of analysis of samples of air, water, soil or other substance sent for analysis to any environmental laboratory established or recognised under sub-section (1) of section 12.

14. Reports of Government Analysts - Any document purporting to be a report signed by a Government analyst may be used as evidence of the facts stated therein in any proceeding under this Act.

15. Penalty for contravention of the provisions of the Act and the rules, orders and directions.

- (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

**16. Offences by companies. -**

(1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the

APS COLLEGE OF COMMERCE

NR Colony

Bangalore-560019

company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.