

VI SEM BUSINESS REGULATIONS

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Module I.
BUSINESS LAWS

What is law ?

1. A **citizen** may think of 'law' as a set of rules which he must obey.
2. A **lawyer** who practices ' law' may think of law as a vocation.
3. A **legislator** may look at 'law' as a something created by him.
4. A **judge** may think of 'law' as a guiding principles to be applied in making decisions.

Law

▶ **Law** includes all those **rules and regulations** which regulate our relations with other individuals and with the state.

Meaning of law

▶ Law means a **set of rules**.

▶ It may be defined as the rules of conduct recognized and enforced by the state to control and regulate **the conduct of people, to protect their property and contractual rights with a view to securing justice, peaceful living and social security.**

Continue.....

▶ The law is not rigid, it is flexible.

▶ Since the value system of society keeps on changing , the law also keeps changing according to the changing requirements of the society.

▶ There are several branches of law such as International law, constitutional law, criminal law, civil law etc..

▶ Every branch of law regulates and controls a particular field of activity.

Why should one know law

▶ Because **ignorance of law is no excuse.**

▶ Ex : 1
If X is caught traveling in a train without ticket, cannot plead that he was not aware of the rule regarding the purchase of ticket and therefore, he may be excused.

▶ Ex : 2
If Y is caught driving scooter without driving license, he cannot plead that he was not aware of the traffic rule regarding the obtaining of a driving license and therefore, he may be excused.

Definition of **Law** by Salmond

▶ "**Law** is
 ...the body of principles recognized and applied by the State in the administration of the justice".

Object of law

▶ The object of law is order, and the result of order is that men are enabled to look ahead with some sort of security as to the future.

Need for the knowledge of law

▶ '**Ignorantia juris non excusat**' is a familiar maxim. **This means ignorance of law is not excusable.**
 The law now a days is a matter of great intricacy.
 As such **no sound business man would attempt to solve important legal questions affecting his business interest without expert legal advice.**

BUSINESS LAWS

▶ **Business laws** are those laws which regulate the conduct of the business.

Sources of Business Law

- ▶ 1. English Mercantile Law
- ▶ 2. The Statute Law
- ▶ 3. The Common Law (sometimes called as case law)
- ▶ 4. Customs and Usages

Continue.....

▶ **English Mercantile Law:** English laws are the primary sources of Indian Mercantile Law. English laws are based on customs and usages of merchants in England.

▶ **The Statute Law:** The various Acts passed by the Indian Legislature are the main sources of mercantile law in India, e.g. Indian Contract Act, 1872, The Sale of Goods Acts, 1930, The Partnership Act, 1932, The Negotiable Instruments Act 1881, The Companies Act, 1956.

Continue.....

- ▶ **The Common Law** : This source consists of all those unwritten legal doctrines embodying customs and traditions developed over centuries by the English courts. Thus, the common law is found in the collected cases of the various courts of law and is sometimes known as 'case law'.
- ▶ The common law emphasizes precedents.

Continue.....

- ▶ **Customs and usages**: The customs and usages of a trade are also one of the sources of mercantile law in India. These customs and usages govern the merchants of a trade in their dealings both each other. Some Acts passed by the Indian Legislature recognizes the importance of such customs and usages.

Module: II

Law of Contract

- ▶ The law of contract is regulated by Indian Contract Act, 1872

OBJECT OF THE LAW OF CONTRACT

The law of contract is that branch of law which determines the circumstances in which **promises made by the parties to a contract shall be legally binding on them.**

In simple words, the purpose of law of contract is to ensure the realization of reasonable expectation of the parties who enter in to contract.

OBJECT OF LAW OF CONTRACT

- ▶ According to Sir William Anson,

The law of contract is intended to ensure that, **'what a man has been led to expect shall come to pass, and that what has been promised to him shall be performed.'**

'JUS IN REM' & 'JUS IN PERSONAM'

Law of contract creates, **'jus in rem' and 'jus in personam'.**

- ▶ **'Jus in rem'** means, right against the world at large.
- 'jus in personam'** means, the right against particular persons.

Definition of Contract

- ▶ **Section 2(h) of Indian Contract Act, 1872** defines a contract as
"An agreement enforceable by law".

So, a contract is an agreement made between two or more parties which the law will enforce.

CONTRACT

▶ **An agreement enforceable by law is a contract.**

Contract = Agreement + Enforceability
Agreement = Offer + Acceptance

An agreement is defined as,
“every promise and set of promises, forming consideration for each other”
 [Sec2(e)].

Definition of Promise

▶ **A promise** is defined thus:
 “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.**” [Section 2(b)].
 An agreement is an accepted proposal.

Consensus ad idem

▶ The essence of an agreement is meeting of the minds of the parties. There must in fact, be **consensus ad idem**.

▶ Eg., **A**, (owns two horses named Rajhans & Hansraj), is selling horse Rajhans to **B**.
B thinks he is purchasing Hansraj.
 There is no consensus ad idem consequently no contract.

Agreement and its types

- ▶ **Legal Agreement**
- ▶ **Social Agreement**
- ▶ **Domestic Agreement**

Obligation

▶ An agreement, to become a contract, must give rise to a legal obligation or duty.

▶ An obligation is a legal tie which imposes upon a definite person or persons the necessity of doing or abstaining from doing a definite act or acts.

Ex. A agrees to sell his car to B for Rs.1,00,000/-. The agreement gives rise to an obligation on the part of A to deliver the car to B on the part of B to pay Rs.1,00,000/- to A. This is a **legal agreement**. This agreement is a contract.

Obligation

▶ **An agreement which gives rise to social obligation is not a contract .**

▶ An agreement is a wider term.

▶ An agreement may be a social agreement or a legal agreement.

▶ If A invites B to a dinner and B accepts the invitation, it is a **social agreement**.

Obligation

- ▶ A social agreement does not give rise to contractual obligations and is not enforceable in a Court of law.
- ▶ It is only those agreements which are enforceable in a court of law which are contracts.
- ▶ A father promises to pay his son Rs.100/- every month as pocket allowance. Later he refuses to pay.
The son cannot recover as it is a **domestic agreement** and there is no intention on the part of the parties to create legal relations.

contracts are agreements, but all agreements are not necessarily contracts

▶ **ESSENTIALS OF A VALID CONTRACT: Sec 2(h) & sec(10)**

1. Offer and Acceptance
2. Intention to create legal relationship
3. Lawful consideration
4. Capacity of parties-Competency
5. Free and genuine consent
6. Lawful object
7. Agreement not declared void
8. Certainty and possibility of performance
9. Legal formalities

ESSENTIALS OF A VALID CONTRACT:

1. Offer and Acceptance:
There must be two parties to an agreement, i.e., one party making the offer and the other accepting it
 The terms of the offer must be definite and the acceptance of the offer must be absolute and unconditional.
 The acceptance must also be according to the mode prescribed.

ESSENTIALS OF A VALID CONTRACT:

2. Intention to create legal relationship:
When two parties enter into an agreement, their intention must be to create legal relationship between them. If there is no intention on the part of the parties, there is no contract between them.
E.g., A husband promised to pay his wife a house hold allowance of 30 pounds every month. Later the parties separated and the husband failed to pay the amount. The wife sued for the allowance.
 Held, the agreement such as these were outside the realm of contract altogether (**Balfour vs. Balfour, 1919 & s Carbolic smoke ball Co. v s Carlill**)

ESSENTIALS OF A VALID CONTRACT:

▶ **3. Lawful consideration :**
 An agreement to be enforceable by law must be supported by consideration.
 'Consideration' means advantage or benefit moving from one party to the other. It is the essence of a bargain.
In simple words, it means 'something in return'.
A promise to do something and, getting nothing in return is usually not enforceable by law.
 Consideration need not be in cash or kind.
 It may be an act or abstinence.
 It may be past, present or future. But it must be real and lawful

ESSENTIALS OF A VALID CONTRACT:

▶ **4. Capacity of parties-Competency:**
 The parties to the agreement must be capable of entering in to a valid contract.
Every person is competent to contract if he,
 (a) is of the age of majority,
 (b) is of sound mind, and
 (c) is not disqualified from contracting by any law to which he is subject.
 The flaw in capacity to contract may arise from minority, lunacy, idiosyncrasy, drunkenness, etc.

ESSENTIALS OF A VALID CONTRACT:

► **5. Free and genuine consent:**
 It is essential to the creation of every contract that there must be free and genuine consent of the parties to the agreement.
 The parties are said to be of the same mind when they agree about the subject matter of the contract in the same sense and at the same time (Sec. 13).
 There is absence of free consent if the agreement is induced by coercion, undue influence, fraud, misrepresentation and mistake (Sec. 14).

ESSENTIALS OF A VALID CONTRACT:

► **6. Lawful object:**
 The object of the agreement must be lawful. In other words, it means that the object must not be (a) illegal, (b) immoral, or (c) opposed to public policy (Sec. 23).
 If an agreement suffers from any legal flaw, it would not be enforceable by law.

ESSENTIALS OF A VALID CONTRACT:

7. Agreement not declared void:
 The agreement must not have been expressly declared void by law in force in the country under the provisions of sections 24 to 30 of the Indian Contract Act, 1872.
 Under these provisions, agreement in restraint of marriage, agreement in restraint of legal proceedings, agreement by way of wager have been expressly declared as void.
A void agreement is one which is not enforceable by law.

ESSENTIALS OF A VALID CONTRACT:

8. Certainty and possibility of performance:
 The agreement must be certain and not vague or indefinite (Sec. 29).
 If it is vague and if it is not possible to ascertain its meaning, it cannot be enforced.
 Ex. 'A' agrees to sell to 'B' "a hundred tons of oil".
There is nothing whatever to show what kind of oil was intended. The agreement is void.

ESSENTIALS OF A VALID CONTRACT:

► **9. Legal formalities:**
A contract may be made by words spoken or written.
As regards the legal effects, there is no difference between a contract in writing and a contract made by word of mouth.
It is however in the interest of the parties that the contract should be in writing.
In some other cases, a contract, besides being a written one, has to be registered.

Classification of Contracts

Contracts may be classified according to,
 1. Validity 2. Formation, and 3. Performance

VALIDITY	FORMATION	PERFORMANCE
1. Voidable Contract [2(i)]	1. Express Contract [9]	1. Executed Contract
2. Void Agreement [2(g)]	2. Implied Contract [9]	2. Executory Contract
3. Void Contract [2(j)]	3. Quasi Contract	3. Unilateral Contract
4. Illegal Agreement		4. Bilateral Contract
5. Unenforceable Contract		

1. Classification according to 'Validity'

- ▶ i] **Voidable contract:** An agreement which is enforceable by law at the option of one party but not at the option of the other or others is a voidable contract [Sec.2(i)].
The party whose consent is not free may either rescind (avoid or repudiate) the contract, if he so desires, or elect to be bound by it.
 A voidable contract continues to be valid till it is avoided by the party entitled to do so.

Classification of Contract.....

- ▶ **Example of Voidable Contract:** A promises to sell his car to B for rs. 2000. His consent is obtained by use of force. The contract is voidable at the option of A .
 ▶ He may avoid the contract or elect to be bound by it.

Continue.....

- ▶ Example 2: X threatens to kill Y if he does not sell his house for rs. 1,00,000 to X. Y sells his house to X and receives payment.
- ▶ Here, Y's consent has been obtained by coercion and hence this contract is voidable at the option of Y, the aggrieved party.
- ▶ If Y decides to avoid the contract, he will have to return rs.1,00,000 which he had received from X.
- ▶ If Y does not exercise his option to repudiate the contract **within a reasonable time and** in the mean time, Z purchases that house from X for rs. 1,00,000 in good faith, Y cannot repudiate the contract.

Classification of Contract.....

- ▶ **ii] Void Agreement:** An agreement not enforceable by law is said to be void [Sec.2(g)].Such agreements are void-ab-initio which means that they are unenforceable right from the time they are made
 E.g., An agreement with a minor or a person of unsound mind is void-ab-initio because a minor or a person of unsound mind is incompetent to contract

Cont'd.....

- ▶ **iii] Void Contract:** A contract which ceases to be enforceable by law is a void contract. [2 (j)].
- ▶ A void contract is a contract which was valid when entered into but which subsequently became void due to impossibility of performance, change of law or some other reason.
- ▶ E.g., A contract to import goods becomes void, when war breaks out between the countries.

Cont'd.....

- ▶ **iv] Illegal Agreement:** An illegal agreement is one which is unlawful. Such an agreement cannot be enforced by law. Thus, illegal agreements are always void-ab-initio(i.e., void from the very beginning)
 ▶ E g :An agreement to import prohibited goods.

Continue.....

- ▶ Example: X agrees to pay Y rs.1,00,000 if Y kills Z and claims rs.1,00,000. Y cannot recover from X because the agreement between X and Y is illegal as its object is unlawful

Effect on collateral agreements: In case of illegal agreements, even the collateral agreements become void

Example: If in the above example, x borrows rs,1,00,000 from W who is aware of the purpose of the loan, the main agreement between X and Y is illegal and the agreement between X and W which is collateral to the main agreement is also void. Hence, W cannot recover the money from X.

Cont'd...

- ▶**Illegal Agreement:**
- ▶ An illegal agreement is not only void as between the parties but has this further effect that even the collateral transactions to it become tainted with illegality.

∥ A collateral transaction is one which is subsidiary, incidental or auxiliary to the principal or original contract.

Cont'd.....

- ▶ **v] Unenforceable Contract:**
- ▶ An unenforceable Contract is one which cannot be enforced in a Court of law because of some technical defect such as absence of writing or where the remedy has been barred by lapse of time.

∥ The contract may be carried out by the parties concerned; but in the event of breach or repudiation of such a contract, the aggrieved party will not be entitled to the legal remedies.

2.Classification according to 'Formation'

- ▶ A contract may be (a) made in writing or by word of mouth, or (b) inferred from the conduct of the parties or circumstances of the cases. These are the modes of formation of contract.
- ▶ On the basis of ' Formation' Contract can be classified as,
 - (i) Express Contract, (ii) Implied Contract, &
 - (iii) Quasi Contract.

Cont'd.....

- (i) **EXPRESS CONTRACT:** If the terms and conditions of contracts are expressly agreed upon (whether words spoken or written) at the time of formation of contract, the contract is said to be 'Express Contract'.

Ex: X says to Y "will you buy my car for rs. 1,00,000?" Y says to X " I am ready to buy your car for rs. 1,00,000".

- (ii) **IMPLIED CONTRACT:** One which is inferred from the acts or conduct of the parties or course of dealings between them.

Continue.....

- ▶ Ex: A transport company runs buses on different routes to carry passengers. This is an implied acceptance by X. Now, there is an implied contract and X is bound to pay the prescribed fare.
- ▶ Ex: X, a coolie in uniform picks up the baggage of Y to do so and Y allows it from platform to the taxi without being asked by to do so and Y allows it. In this case there is ay the coolie and an implied acceptance by the passenger. Now, there is an implied contract between the coolie and the passenger and the passenger is bound to pay for the services of the coolie

Contractsclassified.

(iii) **QUASI CONTRACT:** Strictly speaking Quasi Contract is not a contract at all.
 A contract is intentionally entered in to by the parties.
 A quasi contract, on the other hand is created by law. It rests on the ground of equity that, “ a person shall not be allowed to enrich himself unjustly at the expense of another ”.

Continue.....

- ▶ **Ex:** A finds some goods belonging to B, it is his duty to restore them to the rightful owner. These contracts are based on the principle of equity, justice and good conscience.
- ▶ The Indian Contract Act 1872, has described the obligations arising under these contracts as ‘**certain relations those created by contracts**’

III. Classification according to ‘Performance’

- ▶ (i) Executed Contract
- (ii) Executory Contract
 - Unilateral or One-sided Contract
 - Bilateral Contract

..... Classification according to ‘Performance’

(I) **EXECUTED CONTRACT:**
 ‘Executed’ means that which is done.
 An executed contract is one in which both the parties have performed their respective obligations.
 Ex: X offers to sell his car to Y for rs. 1,00,000. Y accepts x’s offer. X delivers the car to Y and Y pays rs. 1,00,000 to x. It is an executed contract

(ii) **EXECUTORY CONTRACT:**
 ‘Executory’ means that which remains to be carried in to effect.
 It is a contract where both the parties to the contract have still to perform their respective obligations.
 Ex: X offers to sell his car to Y for rs.1,00,000. Y accepts X’s offer. If the car has not yet been delivered by X and the price has not yet been paid by Y, it is an executory contract.

Continue.....

© **Partly Executed and partly Executory Contract:** It is a contract where one of the parties to the contract has fulfilled his obligation and the other party has still to perform his obligation.
 Ex. X offers to sell his car to Y for rs. 1,00,000 on a credit of one month. Y accepts X’s offer. X delivers the car to Y. Here, the contract is executed as to X and executory as to Y.

- ▶ **ONE-SIDED OR UNILATERAL CONTRACT**
 Performance of only one party is outstanding.
- ▶ **BILATERAL CONTRACT.**
 Performance of both the parties remains outstanding.

OFFER & ACCEPTANCE

► An **offer** is a **proposal** by one party to another to enter in to a legally binding agreement with him.

Offer [Proposal]

A person is said to have made a proposal, when, he,.....

“signifies to **another** his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other, to such act or abstinence”
[Sec.2(a)]

ELEMENTS REQUIRED FOR A VALID OFFER

► **1. It must be made by one person to another person.** In other words, there can be no proposal by a person to himself
ex: X says to Y that he wants to sell his car to himself for rs. 1 lakh.

There is no proposal because there can be no proposal by a person to himself.

Continued.....

► **2. It must be an expression of readiness or willingness to do (i.e., a positive act) or to abstain from doing something (i.e., a negative act)**
ex: X offers to sell his car to Y for rs. 1 lakh. It is a positive act on the part of X
ex: X offers not to file a suit against Y if Y pays X the outstanding amount of rs. 1,00,000 . It is a negative act on the part of X

Continued.....

► **3. It must be made with a view to obtain the consent of that other person to proposed act or abstinence.**
ex: X just for fun says to Y “I am ready to sell my car for rs.1000”. Y, knowingly that X is not serious in making the offer, says “ I accept your offer”.

In this case, X’s offer was not the real offer as he did not make it with a view to obtain the consent of Y.

PROMISOR-PROMISEE

► The person making the offer is known as the, offeror, proposer or promisor, and the person to whom it is made is called the, offeree or proposee.

When the offeree accepts the offer, he is called the acceptor or promisee [Sec.2(c)].

How an offer is made

- ▶ E.g., An offer may be made by express words, spoken or written. This is known as **Express offer**.

When **A** says to **B**, “will you purchase my house at Meerut for Rs.5,00,000” ?

.....How an offer is made

- ▶ An offer may be inferred from the conduct of the parties or the circumstances. This is known as **Implied Offer**.

E.g., When a transport company runs a bus on a particular route, there is an **implied offer** by the transport company to carry passengers for a certain fare.

‘Specific’ and ‘General’ Offer.....

When an offer is made to a particular person, it is called **specific offer**.

E.g. **A offers to sell car to B [only] for Rs.1,00,000.**

When an offer is made to the world at large, it is called **general offer**. A general offer can be accepted by any person by fulfilling the terms of offer.

E.g., **Mrs Carlill v. Carbolic Smoke Ball Co.[1893].**

MRS. CARLIL V. CARBOLIC SMOKE BALL CO.

- ▶ Carbolic Smoke Ball Co. advertised in the newspaper that it would pay rs.1000 to anyone who contracts influenza after using the smoke ball of the company according to the printed instructions.
- ▶ Mrs. Carlil uses the smoke ball according to the printed directions but subsequently she contracted influenza.
- ▶ She filed a suit for the reward.
- ▶ It was held that she was entitled to recover the reward because she had accepted the offer by fulfilling the terms of the offer.

What constitutes an offer.....

- ▶ **1.The offer must show an obvious intention on the part of the offeror to be bound by it.**

Thus, if **A** jokingly offers **B** Rs 10 for his typewriter and **B** knowing that **A** is not serious, says “**I accept**”, **A**’s proposal does not constitute an offer.

...What constitutes an offer

- ▶ **2.The offeror must make the offer with a view to obtaining the assent of the offeree to such act or abstinence.**
- ▶ **3.The offer must be definite.**
- ▶ **4.It must be communicated to the offeree.**

LEGAL RULES FOR A VALID OFFER

- ▶ 1.Intention to create legal relationship
- ▶ 2.Certain and unambiguous terms
- ▶ 3.Different from a mere declaration of intention
- ▶ 4.Different from an invitation to offer
- ▶ 5.Communication
- ▶ 6.A statement of price is not an offer
- ▶ 7.No term the Non-compliance of which amounts to Acceptance

LEGAL RULES AS TO OFFER

- ▶ 1.Offer must be such in law is capable of being accepted and giving rise to legal relationship.
- ▶ ex:

Rose & Frank Company v. Crompton Brothers

- ▶ Ex: Rose & Frank Company was appointed as selling agents in North America by Crompton Brothers by an agreement. One of the clauses in the agreement provided" this agreement is not entered into formal or legal agreement and shall not be subject to legal jurisdiction in the law courts"
- ▶ It was held that this agreement was not a legally binding contract because there was no intention to create legal relations.

2.Certain and Unambiguous Terms

- ▶ The terms of the offer must be certain and unambiguous and not vague.
- ▶ If the terms of the offer are vague, no contract can be entered into because it is not clear as to what exactly the parties intended to do.

Continued.....

- ▶ Ex 1: X offers to sell to Y " a 100 tons of oil".
- ▶ If X is a dealer in coconut oil or mustard oil, his **offer is not certain** because it is not clear that he wants to sell coconut oil or mustard oil.
- ▶ But if X is a dealer in coconut oil only, it is clear that he wants to sell coconut oil. Hence, the **offer is certain**.

.....LEGAL RULES AS TO OFFER

- ▶ 3.An offer must be **distinguished from**;
 - (i) **A declaration** of intention and an announcement.:
The offer must be distinguished from a mere declaration of intention . Such statement or declaration merely indicates that an offer will be made or invited in future,
 - (ii) **An invitation** to make an offer or to do business.

A mere declaration of intention

- ▶ Ex 1: A father wrote to his would be son-in-law that his daughter would have a share of what he left after the death of his wife.
- ▶ It was held, that the letter was a mere statement of intention and not an offer. (Farine v. Fickar)

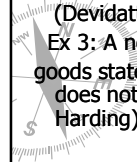


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- ▶ Ex 2: X, a broker of Bombay wrote to Y a merchant of Ghaziabad stating the terms on which he is willing to do business. It was held that the letter was a mere statement of intention and not an offer.

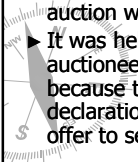
(Devidatt v. Shriram)

- ▶ Ex 3: A notice that the goods stated in the notice will be sold by tender does not amount to an offer to sell. (Spencer v. Harding)



Continued.....

- ▶ Ex 4: An auctioneer advertised in a newspaper that a sale of office furniture will be held on a particular day.
- ▶ Mr. X with the intention on buy to furniture came from a distant place for the auction but the auction was cancelled.
- ▶ It was held that Mr X cannot file a suit against the auctioneer for his loss of time and expenses because the advertisement was merely a declaration of intention to hold auction and not an offer to sell. (Harris v. N.Nickerson)



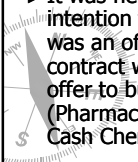
Invitation to offer

- ▶ An offer must be distinguished from an invitation to offer. In case of an invitation to offer, the person making an invitation invites others to make an offer to him.



Continued.....

- ▶ Ex 1: Goods were displayed in the shop for sale with price tags attached on each article and self service system was there. One customer selected the goods.
- ▶ It was held that the display of goods was only an intention to offer and the selection of the goods was an offer by the customer to buy and the contract was made when the cashier accepted the offer to buy and received the price. (Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd.)



Continued.....

- ▶ Ex 2: A prospectus issued by a company for subscription to its shares and debentures is only an invitation to general public to make an offer to buy the shares/debentures which may or may not be accepted by the company.



.....LEGAL RULES AS TO OFFER

- ▶ 4. Offer must be communicated:
An offer must be communicated to the person to whom it is made. An offer is complete only when it is communicated to the offeree. One can accept the offer only when he knows about it

Continued.....

- ▶ Thus , an offer accepted without its knowledge does not confer any legal rights on the acceptor.
- ▶ Ex 1: 'S' offered a reward to anyone who traces his lost dog. 'F' brought the dog without **any knowledge** of the offer of reward. It was held 'F' was not entitled to the reward because F cannot be said to have accepted the offer which he did not know. (Fitch v. Snedaker, 1868)

Lalman Shukla v. Gauri Dutt

- ▶ 'G' sent his servant 'L' to trace his lost nephew. When the servant had left, G announced a reward of Rs.500 to anyone who traces the missing boy. 'L' found the boy and brought him home. When 'L' came to know about the reward, he filed a suit against 'G' to recover the reward.
- ▶ It was held that 'L' was not entitled to reward **because he did not know about the reward when he found the missing boy.**

Legal rules as to offer.....

- ▶ **6.A statement of price is not an offer.**
- ▶ **HARVEY Vs. FACEY, [1893]**
E.g., Three telegrams were exchanged between **Harvey and Facey**.
- 1. "Will you sell your Bumper Hall Pen ? Telegraph lowest cash price-answer paid." [Harvey to Facey]
- 2. "Lowest price for Bumper Hall Pen 900 pounds." [Facey to Harvey]

.....6.A statement of price is not an offer. HARVEY Vs. FACEY, [1893]


- 3. "We agree to buy Bumper Hall Pen for the sum of 900 pounds asked by you" [Harvey to Facey]
Held, there was no concluded contract between **Harvey and Facey**
The first telegram asked **two** questions;
(i) the willingness of **Facey** to sell, and
(ii) the lowest price. **Facey** replied only to the second question and gave his lowest price, i.e., he supplied mere information and no offer had been made by him to sell. There could be contract only if he had accepted **Harvey's** last telegram.

Special Terms of Contract

- ▶ The special terms of the offer must also be communicated along with the offer.
- ▶ If the special terms of the offer are not communicated, the offeree will not be bound by those terms.


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- ▶ The question of special terms arises generally in case of standard form of contracts.
- ▶ Standard contracts are made with big companies such as insurance companies, railways, shipping companies, banking companies, hotels, dry cleaning companies.



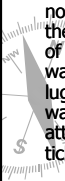
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- ▶ Since such companies are in position to exploit the weakness of general public by including certain terms in the contract which may limit their liabilities, it is provided that the special terms of the offer must be brought to the notice of general public.



Continued.....

- ▶ Ex 1: X purchased a ticket Dablin to White Haven and on the back of the ticket, certain conditions were printed one of which excluded the liability of the company for loss, injury or delay to the passengers or his luggage.
 X never looked at the back of the ticket and there was nothing to draw his attention to the conditions printed on the back side. His luggage was lost due to the negligence of the servants of the shipping company, it was held that X was entitled to claim compensation for the loss of his luggage in spite of the exemption clause because there was no indication on the face of the ticket to draw his attention to the special terms printed on the back of the ticket.




.....Special Terms of Contract

E.g., A hotel put up a notice in a bed room, exempting the proprietor from liability for loss of client's goods.


Held, the notice was not effective as it came to the knowledge of the client only when the contract to take a room had already been entered in to.

Olley v. Marlborough Court Ltd., [1949].




Example of Special Terms of Contract

- ▶ A deposited a bag in the cloak room of a railway station. On the face of the ticket, issued to him, was written "see back". One of the printed conditions, limited the liability of the company for loss of a package to 10 pounds. The bag was lost and P claimed 24.50 pounds, as it's value.
- ▶ **Held, 'P'** was bound by the conditions on the back of the ticket even if he had not read them [**Parker Vs. S E Rail Co.(1877)**]



Example of Special Terms of Contract

- ▶ If conditions are printed on the back of a ticket, but there are no words at all on the face of it to draw the attention of the person concerned to those conditions, he is not bound by them;
- ▶ Example: C hired a deck chair from Municipal Council. He paid a hire of 2 \$ for two sessions of 3 hours .He sat on the chair, it broke and injured him. Held ,Council was liable
- ▶ [**Chapleton Vs. Barry Urban District Council,1940**].



AGREEMENT TO AGREE IN FUTURE IS NOT A CONTRACT

- ▶ If the parties have not agreed upon the terms of the contract, but have made an agreement to agree in future, there is no contract.

An agreement to be finally settled must comprise all the terms which the parties intend to introduce in to the agreement.

E.g., An actress was engaged in a theatrical company for a certain period .One of the terms of the agreement was that if the play was shown in London, she would be engaged at a salary to be mutually agreed upon. **Held**, there was no contract.

Acceptance

- ▶ Acceptance means giving consent to the offer.
- ▶ It is an expression by the offeree of his willingness to be bound by the terms of the offer.
- ▶ According to sec 2(b) of the Indian Contract Act,1872," A proposal is said to have accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise".

Acceptance

- ▶ An acceptance may be express or implied.
- ▶ It is **express** when it is communicated by words, spoken or written or by doing some required act.
- ▶ It is **implied** when it is to be gathered from the surrounding circumstances of the cases or the conduct of the parties.

Acceptance

▶ Who can accept offer ?

Acceptance of a particular offer: Specific Offer

When an offer is made to a particular person, it can only be accepted by him alone. If it is accepted by any other person, there is no valid acceptance.

The rule of law is clear **that if you propose to make a contract with 'A', 'B' cannot substitute himself for without your consent.**

Acceptance of a general offer

- ▶ When an offer is made to world at large, any persons to whom the offer is made can accept it

[Mrs.Carill Vs.Carbolic Smokeball Co.(1893)]

Legal Rules as to Acceptance

- ▶ The acceptance of an offer is the very essence of a contract. To be legally effective, it must satisfy the following conditions:
 - ▶ 1.It must be absolute and unconditional i.e., it must conform with the offer.
 - ▶ 2.It must be communicated to the offeror
 - ▶ 3.It must be according to the mode prescribed or usual and reasonable mode.
 - ▶ 4.It must be given within a reasonable time

.....Legal Rules as to Acceptance

- ▶ 5.It cannot precede an offer.
- ▶ 6.It must show an intention on the part of the acceptor to fulfill terms of the promise.
- ▶ 7.It must be given by the party or parties to whom the offer is made.
- ▶ 8.It must be given before the offer lapses or before the offer is withdrawn.
- ▶ 9.It cannot be implied from silence.

1. It must be absolute and unconditional
i.e., it must conform with the offer.

- ▶ **An acceptance, in order to be binding, must be absolute and unqualified [Sec.7(1)] in respect of all terms of the offer, whether material or immaterial, major or minor.**
- ▶ **If the parties are not ad idem on all matters concerning the offer and acceptance, there is no contract.**
- ▶ Examples: a) 'A' made an offer to 'B' to purchase a house with possession from 25th July. The offer was followed by an acceptance suggesting possession from 1st August. Held, there was no contract. [Rutledge Vs .Grant (1828

.....1.It must be absolute and unconditional
i.e., it must conform with the offer.

- ▶ **Examples:**
- ▶ **b) M** offered to sell a piece of land to **N** at 280 sterling pounds. **N** accepted and enclosed 80 sterling pounds with a promise to pay the balance by monthly installments of 50 sterling pounds each. **Held**, there was no contract between **M** and **N**, as the acceptance was on condition. [Neale Vs. Merret (1930)].

.....1.It must be absolute and unconditional
i.e., it must conform with the offer

- ▶ **c) N** offered to buy **J's** horse if warranted quiet in harness. **J** agreed to the price and warranted the horse in *quiet double harness*. Held, there was no acceptance [Jordon Vs.Norton,1838]
- d) **A** says to **B**, I offer to sell my car for Rs.50,000".**B** replies, I will purchase it for Rs.45,000". This is no acceptance and amounts to counter offer.

2.It must be communicated to the offeror

To conclude a contract between the parties, the acceptance must be communicated in some perceptible form.

A mere resolve or mental determination on the part of the offeree to accept an offer, when there is no external manifestation of the intention of the intention to do so, is not sufficient. [Bhagwandas Kedia Vs. Giridharilal (1966)]

2.It must be communicated to the offeror

- ▶ Examples:
- ▶ a) 'A' tells 'B' that, he intends to marry 'C'. But tells 'C' 'nothing of his intention. There is no contract even if 'C' is willing to marry 'A'.
- ▶ b) A draft agreement relating to supply of coal was sent to the manager of a railway company for his acceptance. The manager wrote the word "approved" and put the draft in the drawer . **Held**, there was no contract. [Brogden Vs. Metropolitan Rail Co.(1877)].

2. It must be communicated to the offeror

F offered to buy his nephew's horse for 30 sterling pounds saying: **"If I hear no more about it I shall consider the horse is mine at 30 sterling pounds"**. The nephew did not write to **F** at all, but he told his auctioneer who was selling his horses not to sell that particular horse because it had been sold to his uncle. The auctioneer inadvertently sold the horse. **Held, F** had no right of action against the auctioneer as the horse had not been sold to **F**, his offer of 30 pounds not having been accepted Felthouse Vs. Brindley (1862).

3. It must be according to the mode prescribed or usual and reasonable mode

- ▶ The communication must be according to the mode prescribed [Sec.7(2)]
- ▶ Eg. If the Offeror has sought the communication of acceptance from offeree by telephone it cannot be given by post.
- ▶ In case, the acceptance is made in a manner other than the mode prescribed but the offeror does not raise any objection within a reasonable time, the acceptance will be binding.

4. It must be given within a reasonable time

- ▶ If any time limit is specified, the acceptance to an offer must be given within a reasonable time. If it is not given within the reasonable time, the offer lapses.
 - ▶ In Ramsgate Victoria Hotel Ltd. Vs. Montefiore(1886)
- M** applied for the shares of **R & Co.** on 8th June. But the Company did not intimate about allotment until November. **M** refused to take shares. **Held**, the offer was lapsed by unreasonable delay.

5. It cannot precede an offer.

- ▶ In a company shares were allotted to a person who had not applied for them. Subsequently when he applied for shares, he was unaware of the previous allotment. The allotment of shares previous to application is invalid.

6. It must show an intention on the part of the acceptor to fulfill terms of the promise.

- ▶ If no such intention is present, the acceptance is invalid.

7. It must be given by the party or parties to whom the offer is made.

- ▶ Acceptance must be communicated by the offeree himself or by a person who has the authority to accept.
- ▶ If acceptance is communicated by an unauthorized person, it will not give rise to legal relations.

Continued...

- ▶ Ex: 'P' applied for the post of a headmaster in a school. The managing committee passed a resolution approving P to the post but this decision was not communicated to P.

But one member of the managing committee in his individual capacity and without any authority informed P about the decision.

Subsequently, the managing committee cancelled its resolution and appointed someone else. P' filed a suit for breach of contract.

It was held that P's suit was not maintainable because there was no communication of acceptance as he was not informed about his appointment by some authorized person. (Powell v. Lee)

8.It must be given before the offer lapses or before the offer is withdrawn.

- ▶ The acceptance must be given before the offer lapses or is withdrawn. In other words, if an acceptance is made after the lapse or withdrawal of the offer, it will not give rise to legal relations.
- ▶ Ex: X offered by a letter to sell his car for Rs.1,00,000. Subsequently, x withdrew his offer by a telegram which was duly received by Y. After the receipt of telegram, Y sent his acceptance to X. In this case, the acceptance is invalid because it was made after the effective withdrawal of the offer.

9.It cannot be implied from silence.

- ▶ The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has by his previous conduct indicated that his silence means that he accepts. A wrote to B., I offer you my car for Rs.10,000. If I don't hear from you in seven days, I shall assume that you accept". B did not reply at all. There is no contract.

Communication of Offer, Acceptance and Revocation

- ▶ An offer, its acceptance and their revocation (withdrawal) to be completed must be communicated.
- ▶ When the parties are at distance and the offer and acceptance and their revocation are made through post, i.e., by letter or telegram, the rules contained in Secs.3 to 5 apply.

Mode of communication (Sec.3)

- ▶ The communication of offer, its acceptance and their revocation respectively are deemed to be made by any
- ▶ (a) act, or
- ▶ (b) omission, of the party offering, accepting or revoking.
- ▶ In other words, offer, acceptance or revocation may be communicated by words spoken or written, or by conduct.
- ▶ **Thus installation of a weighing machine at a public place is an offer, putting of a coin in the slot of the machine is the acceptance of the offer, and the switching off the machine amounts to revocation of the offer.**

When is communication complete

[Sec.4]

- ▶ **Communication of offer:** The communication of offer is complete when it comes to the knowledge of the person to whom it is made.

E.g., A proposes by a letter, to sell a house to B at a certain price. The letter is posted on 10th July.

It reaches B on the 12th July.

The communication of offer is complete when B receives the letter i.e., 12th July.

When is communication complete[S.4]

► **Communication of Acceptance:** Communication of acceptance is complete-

- * as against the proposer, when it is put in the course of transmission to him, so as to be out of power of the acceptor ;
- * as against the acceptor, when it comes to the knowledge of the proposer.

E.g., 'B' accepts 'A' s proposal, in the above case, by a letter sent by post on 13th instant. The letter reaches 'A' on 15th instant. The communication of Acceptance is complete, as against the 'A', when the letter is posted, i.e., on 13th. as against 'B', when the letter is received by 'A', i.e., on 15th.

When is communication complete.....

► The communication of revocation is complete:

► Revocation means "taking back" "recalling" or "withdrawal". It may be revocation of offer or acceptance. The communication of a revocation is complete--

- as against the person who makes it, when it is put in to the course of transmission to the person to whom it is made so as to be out of the power of the person who makes it ;
- as against the person to whom it is made, when it comes to his knowledge(Sec.4)

When is communication complete.....

Ex. A proposes, by a letter, to sell his house to B at a certain price .The letter is posted on 15th May. It reaches B on 19th May.

A revokes his offer by telegram on 18th May. The telegram reaches B on 20th May. The revocation is complete as against A when the telegram is dispatched i.e., on 18th May. It is complete as against B when he receives it, i.e., on 20th May.

Time for Revocation of Offer and Acceptance (Sec.5)

► **Time for Revocation of Proposal(Sec.5,para 1)**

A proposal may be revoked at any time before the communication of it's acceptance is complete as against the proposer, but not afterwards.

Ex. A proposes by a letter sent by post to sell his house to B. The letter is posted on the 1st of the month. B accepts the proposal by a letter sent by post on the 4th. The letter reaches A on the 6th.

A may revoke his **offer** at any time before **B** posts his letter of acceptance, i.e., on 4th but not afterwards.

B may revoke his **acceptance** at any time before the letter of acceptance reaches **A**, i.e., on 6th but not afterwards.

CONTRACTS OVER TELEPHONE OR TELEX OR ORAL COMMUNICATION

► A contract by telephone or telex has the same effect as an oral agreement entered into between the parties when they are face to face.

► But the offeree must make sure that his acceptance is properly received, i.e., heard and understood by the offeror (Kanhaiyalal v. Dineshwara Chandra)

Example

► A makes an offer to B across a river or a courtyard. B shouts back accepting A's offer, but A does not hear B's reply as it was drowned by an aircraft flying overhead. There is no contract at that moment. If B wishes to make a contract, he must wait till the aircraft is gone and then shout back his acceptance so that A can hear what B says. Until A hears B's reply, there is no contract.

WHEN DOES AN OFFER COME TO AN END?

- ▶ 1. By communication of notice of revocation by the offeror at any time before its acceptance is complete as against him

Ex: At an auction sale, A makes the highest bid for B's goods. He withdraws the bid before the fall of the hammer. The offer has been revoked before its acceptance.



Continued.....

- ▶ 2. By lapse of time:
 - ▶ If it is not accepted within the prescribed time, then it ends in revocation of offer.
 - ▶ If no time is prescribed, it lapses by the expiry of a reasonable time.

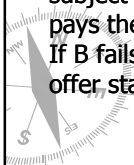
▶ Ex: On June 8 M offered to take shares in R company. He received a letter of acceptance on November 23. He refused to take the shares. Held, M was entitled to refuse as his offer had lapsed as the reasonable period during which it could be accepted had elapsed (Ramsgate Victoria Hotel Co. v. Montefiore)



Continued.....

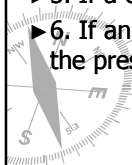
- ▶ 3. By non-fulfilment by the offeree of a condition precedent to acceptance:

Ex: S, a seller, agrees to sell certain goods subject to the condition that B, the buyer, pays the agreed price before a certain date. If B fails to pay the price by that date, the offer stands revoked.



Continued.....

- ▶ 4. By death or insanity of the offeror provided the offeree comes to know of it before acceptance.
- ▶ 5. If a counter-offer is made to it:
- ▶ 6. If an offer is not accepted according to the prescribed or usual mode:



OFFER AND ACCEPTANCE:PRACTICAL PROBLEMS

1. Are the following offers valid?

(a) A garment store gave the following advertisement in a newspaper: "Special sale for tomorrow only. Men's night suits reduced from Rs200 to Rs100."

(b) P says to Q "I will sell you a camera." P owns three different types of cameras of different prices.

(c) An auctioneer displays a refrigerator before a gathering in an auction sale.

(d) A advertises in The Statesman that he would pay Rs 200 to anyone who finds and returns his lost dog.



CONSIDERATION

- ▶ Consideration is one of the essential elements to support a contract. Subject to certain exceptions, an agreement made without consideration is "nudum pactum" (a nude contract) and is void.
- ▶ Justice Patterson defines **consideration** in the following words: "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.**" [Thomas vs. Thomas (1842)]. There are two leading cases which explain this point.



Abdul Aziz vs. Masum Ali (1914)

- ▶ The secretary of a Mosque, Committee filed a suit to enforce a promise which the promisor had made to subscribe Rs.500 to the rebuilding of a mosque.
- ▶ Held, "**the promise was not enforceable because there was no consideration in the sense of benefit**", as "**the person who made the promise gained nothing in return for the promise made**", and the secretary of the Committee to whom the promise was made, suffered no detriment as nothing had been done to carry out the repairs. Hence the suit was dismissed.

Kedarnath vs. Gauri Mohammad Calcutta [1886]

- ▶ The facts of this case were almost similar to those of the previous case, but the secretary in this case incurred a liability on the strength of the promise. Held, **the amount could be recovered, as the promise resulted in a sufficient detriment to the secretary**. The promise could, however, be enforced only to the extent of the liability (detriment-loss) incurred by the secretary.
- ▶ In this case, the promise, even though it was gratuitous, became enforceable because on the faith of the promise the secretary had incurred a detriment (loss).

Definition of Consideration

[Section 2(d) of Indian Contract Act, 1872]

- ▶ "When at the desire of the promisor, promisee or
- ▶ any other person has done or
- ▶ abstained from doing or
- ▶ does or
- ▶ abstains from doing, or
- ▶ promises to do or
- ▶ to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."

Analysis of Definition of Consideration

- ▶ (1) An act, i.e., doing of something. In this sense consideration is in an affirmative form.

Example: A promises B to guarantee payment of price of the goods which B sells on credit to C. Here selling of goods by B to C is consideration for A's promise.

- (2) An abstinence or forbearance, i.e., abstaining or refraining from doing something. In this sense consideration is in a negative form.

Example: A promises B not to file a suit against him if he pays him Rs.500. The abstinence of A is the consideration for B's payment.

- (3) A return promise.

Example: A agrees to sell his horse to B for Rs 10,000. Here B's promise to pay the sum of Rs.10,000 is the consideration for A's promise to sell the horse, and A's promise to sell the horse is the consideration for B's promise to pay the sum of Rs.10,000.

Legal Rules as to Consideration

1. It must move at the desire of the promisor.
2. It may move from the promisee or any other person.
3. It may be an act, abstinence or a return promise.
4. It may be past, present or future.
5. It need not be adequate.
6. It must be real and not illusory
7. It must be something which the promisor is not already bound to do.
8. It must not be illegal, immoral or opposed to public policy (Sec. 23).

Legal Rules as to Consideration.....

1. It must move at the desire of the promisor:
An act constituting consideration must have been done at the desire or request of the promisor. If it is done at the instance of a third party or without the desire of the promisor, it will not be a good consideration.

Example: A saves B's goods from fire without being asked to do so. A cannot demand payment for his services.

Legal Rules as to Consideration.....

- ▶ 2. It may move from the promisee or any other person.

Consideration may move from promisee or any other person, i.e., even a stranger. This means that as long as there is consideration for a promise it is immaterial who has furnished it.

But the stranger to consideration will be able to sue only if he is a party to the contract.

Legal Rules as to Consideration.....

- ▶ 2. It may move from the promisee or any other person

Example: An old lady, by a deed of gift, made over certain property to her daughter **D**, under the direction that she should pay her aunt, **P** (sister of the old lady), a certain sum of money annually. The same day **D** entered in an agreement with **P** to pay her the agreed amount. Later, **D** refused to pay the amount on the plea that no consideration had moved from **P** to **D**. Held, **P** was entitled to maintain suit as consideration had moved from the old lady, sister of **P**, to the daughter.

[Chinnaya vs. Ramaya (1882)]

Legal Rules as to Consideration.....

- ▶ 3. It may be an act, abstinence or a return promise. (The following are good consideration for a contract)

(1) **Forbearance to sue:** If a person who could sue another for the enforcement of a right agrees not to pursue his claim, this constitutes a good consideration for the promise by the other person. This results in a benefit to the person not sued and a detriment to the person who could sue.

Example: A borrows from B Rs. 100 at 20 percent p.a., and fails to pay the amount. When B is about to file a suit, A agrees to pay a higher rate of interest. B, as a result, does not file the suit. This forbearance on the part of B to file a suit is a sufficient consideration and B can enforce the promise by A to pay the higher rate of interest.

Legal Rules as to Consideration.....

- 3. It may be an act, abstinence or a return promise.

(2) **Compromise of a disputed claim:**

Compromise is a kind of forbearance. Originally, the claim should be reasonable and the person claiming should honestly believe that it is a valid claim. He should also act *bona fide* (in good faith).

(3) **Composition with creditors:** A debtor who is financially embarrassed may call a meeting of his creditors and request them to accept a lesser amount in satisfaction of their debt. If the creditors agree to it, the agreement is binding both upon the debtor and the creditors and this amounts to a compromise of the claims of the creditors.

Legal Rules as to Consideration.....

- ▶ 4. It may be past, present or future.

(1) **Past Consideration:**

When consideration by a party for a present promise was given in the past, i.e., before the date of the promise, it is said to be past consideration

Example: A renders some service to B at latter's desire. After a month B promises to compensate A for services rendered to him. It is past consideration. A can recover promised amount.

Legal Rules as to Consideration.....

- ▶ 4. It may be past, present or future.

(2) **Present or Executed Consideration:**

When consideration is given simultaneously with promise, i.e., at the time of promise, it is said to be present consideration. In case sale, for example, consideration is present or executed

Example: A receives Rs. 50 in return for which he promises to deliver certain goods to B. The money A receives which he promises to deliver certain goods to B. The money A receives is the present consideration for the promise he makes to deliver the goods.

Legal Rules as to Consideration.....

▶ **4. It may be past, present or future.**

(3) Future or executory consideration:
 When consideration from one party to the other is to pass subsequently to the making of the contract, it is future or executory consideration.

Example:
 D promises to deliver certain goods to P after a week; P promises to pay the price after a fortnight. The promise of D is supported by the promise of P. Consideration in this case is future or executory.

Legal Rules as to Consideration.....

▶ **5. It need not be adequate.**
 Consideration, as already explained, means "something in return".
 This something in return need not necessarily be equal to "something given".
 The law simply provides that a contract should be supported by consideration.
 So long as consideration exists, the Courts are not concerned as to its adequacy, provided it is of some value.

Continued.....

▶ **Ex:**

- ▶ A agrees to sell a horse worth rs.1,000 for rs.10.
- ▶ A denies that his consent to the agreement was freely given.
- ▶ The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Legal Rules as to Consideration.....

▶ **6. It must be real, and not illusory.**
 Although consideration need not be adequate, it must be real, competent and of some value in the eyes of the law.
 There is no real consideration in the following cases:

- (1) **Physical Impossibility:** A promises to put life in to B's dead wife and B should pay him Rs.500. A's promise is physically impossible of performance.
- (2) **Legal Impossibility:** A owes Rs 100 to B. He promises to pay Rs.20 to C, the servant of B, who in return promises to discharge A from the debt. This is legally impossible because C cannot give discharge for a debt due to B, his master [Harvey vs. Gibbons, (1675)].

Legal Rules as to Consideration.....

▶ **.....6. It must be real, and not illusory**

(3) Uncertain consideration:
 A engages B for doing a certain work and promises to pay a "reasonable" sum. There is no recognized method of ascertaining the "reasonable" remuneration. The promise is unenforceable as consideration is uncertain.

(4) Illusory consideration:
 Two of the crew of a ship deserted it half way through a voyage. The captain thereby promised to divide the salary of the deserters among the rest of the crew if they worked the vessel home. Held, they could not recover the amount as the consideration was illusory. They were already under an obligation to bring the vessel home.

Legal Rules as to Consideration.....

▶ **7. It must be something which the promisor is not already bound to do.**
 A promise to do what is already bound to do, either by general law or under an existing contract, is not a good consideration for a new promise, since it adds nothing to the pre-existing legal or contractual obligation.
 Likewise a promise to perform a public duty by a public servant is not a consideration.

Continued.....

- ▶ Ex:
- ▶ (1) A promised to pay B, who had received summons to appear at a trial in a civil suit, a certain sum being a compensation for the loss of time during his attendance.
- ▶ Held, the promise was without consideration, for B was under a duty imposed by law to appear and give evidence.
- ▶ (Collins v. Godefroy,(1831))

Continued.....

- ▶ Ex:
- ▶ (2) There was a promise to pay to a lawyer an additional sum if the suit was successful. Held, the promise was void for want of consideration.
- ▶ The lawyer was under a pre-existing contractual obligation to render the best of his services under the original contract.
- ▶ But where a person being already under a legal or contractual duty to do something undertakes to do something than he is bound to do under the original contract, this will be a good consideration for the promise.

Legal Rules as to Consideration.....

- ▶ **8.It must not be illegal, immoral or opposed to public policy.**

The consideration given for an agreement must not be unlawful.

Where it is unlawful, the Court do not allow an action on the agreement.

STRANGER TO CONTRACT

It is a general rule of law that only parties to a contract may sue and be sued on that contract. This rule is known as the "Doctrine of privity of contract."

- ▶ Privity of contract means relationship subsisting between the parties who have entered in to contractual obligations.
- ▶ It implies a mutuality of will and creates a legal bond or tie between the parties to contract.

Two Consequences of the "Doctrine of Privity of Contract"

- ▶ (1) A person who is not a party to a contract cannot sue upon it even though the contract is for his benefit and he provided consideration.
- ▶ (2) A contract cannot confer rights or impose obligation arising under it on any person other than the parties to it.

Thus, if there is a contract between A and B, C cannot enforce.

[Dunlop Pneumatic Tyre Co.Ltd. Vs. Selfridge & Co.Ltd.,(1915)]

Dunlop Pneumatic Tyre Co.Ltd. Vs. Selfridge & Co.Ltd. (1915)

- ▶ S bought tyres from the Dunlop Rubber Co. and sold them to P, a sub-dealer, who agreed with S not to sell below Dunlop's list price and to pay the Dunlop Co., 5 pounds as damages on every tyre P undersold.
- ▶ P sold two tyres at less than the list price and thereupon the Dunlop Co. sued him for the breach.
- ▶ Held, the Dunlop Co. could not maintain the suit as it was a stranger to the contract.

Exceptions to the rule "Stranger to a contract cannot sue."

▶ **1. A trust or charge:** A person (called beneficiary) in whose favor a trust or other interest is created can enforce it even though he is not a party to the contract.
Example: A agrees to transfer certain properties to be held by T in trust for the benefit of B. B can enforce the agreement (i.e., the trust) even though he is not a party to the agreement
 [M.K. Rapai vs. John(1965)]

Exceptions to the rule "stranger to a contract cannot sue."

▶ **2. Marriage settlement, partition or other family arrangements.**
Example: Two brothers, on a partition of joint properties, agreed to invest in equal shares a certain sum of money for the maintenance of their mother. **Held, she was entitled to require her sons to make the investment.**
 [Shuppu Ammal vs. Subramaniam (1910) Madras High Court.]

Exceptions to the rule "stranger to a contract cannot sue."

▶ **3. Acknowledgement or estoppel:**
Where the promisor by his conduct, acknowledges or otherwise constitutes himself as an agent of a third party, a binding obligation is thereby incurred by him towards the third party.
Example: 'A' receives some money from 'T' to be paid over to 'P'. A admits of this receipt to 'P'. 'P' can recover the amount from 'A' who shall be regarded as the agent of 'P'.

Exceptions to the rule "stranger to a contract cannot sue."

▶ **4. Assignment of contract :** Where a benefit under a contract has been assigned, the assignee can enforce the contract subject to all equities between the original parties to the contract
 ▶ e.g. the assignee of an insurance policy.
 ▶ **5. Contracts entered in to through an agent:**
The principal can enforce the contracts entered in to by his agent provided the agent acts within the scope of his authority and in the name of the principal.

"A contract without consideration is void"
 -Exceptions

▶ The general rule is *ex nudo pacto non oritur actio*, i.e., an agreement made without consideration is void.
 Sec.25 and 185 dealt with the exceptions to this rule.
 In such cases agreements are enforceable even though they are made without consideration. These cases are---

"A contract without consideration is void"
 -Exceptions.....

1. Love and Affection [Sec.25(1)]:
 Such agreement made without consideration is valid if:

- (i) It is expressed in writing
- (ii) It is registered under the law
- (iii) It is made on account of love and affection, and
- (iv) It is between parties standing in a near relation to each other.

Examples:

- (a) **F**, for natural love and affection, promises to give his son, **S**, Rs.1,000. **F** puts his promise to **S** in writing and registers it. There is a contract.
- (b) By a registered agreement, **V** on account of natural love and affection for his brother, **R**, promises to discharge his debt to **B**. If **V** does not discharge the debt, **R** may discharge it and then sue **V** to recover the amount.

[**Venkataswamy vs. Ramaswamy, (1903)**]

A contract without consideration is void -Exceptions

► **2. Compensation for voluntary services.** [Sec.25(2)]

A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable, even though without consideration. In simple words, a promise to pay for a past voluntary service is binding.

Examples: (a) **A** finds **B**'s purse and gives it to him. **B** promises to give rs. 50. There is a contract.

(b) **A** says to **B**, "At the risk of your life you saved me from a serious accident. I promise to pay you Rs.1,000." There is a contract between **A** and **B**.

Continued.....

- (c) **X**, a neighbor helped putting down the fire in **Y**'s house. Afterwards, **Y** promised **X** to give Rs.1000. This is a valid contract even though the consideration did not move at the desire of the promisor.
- (d) **X**, supported **Y**'s infant son. **Y** promised to pay **X**'s expenses in so doing. This is a valid contract. Here, **X** has done that act which **Y** was legally bound to do.

A contract without consideration is void -Exceptions

► **3. Promise to pay a time barred debt:**

- Such promise with out consideration is valid if:
- (1) It is made in writing
 - (2) It is signed by the debtor or his agent, and
 - (3) It relates to a debt which could not be enforced by a creditor because of limitation.

Note: According to the Law of limitation, a debt which remains unpaid or unclaimed for a period of 3 years becomes a time barred debt which is legally not recoverable.

A contract without consideration is void -Exceptions

Example: **D** owes **C** Rs.1,000 but the debt is barred by the Limitation Act. **D** signs a written promise to pay **C** Rs.500 on account of the debt. This is a contract.

A contract without consideration is void -Exceptions

4. Completed Gift:

The rule "No consideration, no contract" does not apply to completed gifts..

e.g., **X** transferred some property to **Y** by a duly written and registered deed as a gift. This is a valid contract even though no consideration.

5. Agency [Sec. 185]

No consideration is necessary to create an agency.

**A contract without consideration is void
-Exceptions**

▶ **6. Charitable Subscription:**
Where the promisee on the strength of the promise makes commitments, i.e., changes his position to his detriment
[Refer. Kedar Nath Vs. Gauri Mohammad].

Important Cases

▶ **Abdul Aziz, V. Masum Ali:**
 ▶ The secretary of a Mosque, Committee filed a suit to enforce a promise which the promisor had made to subscribe rs.500 to the re-building of a mosque.
 ▶ Held, "the promise was not enforceable because there was no consideration in the sense of benefit", and the secretary of the Committee to whom the promise was made, suffered no detriment as nothing had been done to carry out the repairs. Hence the suit was dismissed.

Continued.....

▶ **Kedar Nath v. Gauri Mohamed:**
 ▶ The facts of this case were almost similar to those of the previous case, but the secretary in this case incurred a liability on the strength of the promise.
 ▶ Held, the amount could be recovered, as the promise resulted in a sufficient detriment to the secretary.
 ▶ In this case, the promise, even though it was gratuitous, became enforceable because on the faith of the promise the secretary had incurred a detriment.

**CAPACITY TO CONTRACT
[COMPETENCY OF THE PARTIES]**

▶ The parties who enter in to contract must have capacity to do so. Capacity here means competency of the parties to enter in to contract. According to Sec.10 an agreement becomes a contract if it is entered in to between the parties who are competent to contract

▶ According to Sec.11 every person is competent to enter in to contract who

- (a) is of the age of majority.
- (b) is of sound mind, and
- (c) is not disqualified from contracting by any law to which he is subject.

▶ Thus Section 11 declares the following persons to be incompetent to contract; **1.Minor**
2.Persons of unsound mind
3.Persons disqualified by any law to which they are subject.

1.Minors

▶ According to Indian Majority Act,1875, a minor is a person who has not completed 18 years of age. In the following two cases, he attains majority after 21 years of age.

(1) Where a guardian of a minor's person or property has been appointed under the Guardians and Wards Act,1890 or

(2) Where the superintendence of a minor's property is assumed by a Court of Wards.

Minor's Agreements

▶ **1. An agreement with or by a minor is void and inoperative ab initio.**
[Mohiribibi vs. Dharmodas Ghose,(1903) Calcutta High Court]

▶ In this case a minor mortgage his house in favor of a money lender to secure a loan of Rs.20,000 out of which the mortgagee (the money lender) paid the minor a sum of Rs.8000. Subsequently the minor sued for setting aside the mortgage, stating that he was underage when he executed the mortgage.

▶ Held, the mortgage was void and, therefore, it was cancelled. Further the money lender's request for the repayment of the amount advanced to the minor as part of the consideration for the mortgage was also not accepted.

Minor's Agreements

▶ 2. He can be a promisee or a beneficiary:

Incapacity of a minor to enter in to a contract means incapacity to bind himself by a contract. There is nothing which debars from becoming a beneficiary. Such contracts may be enforced at his option, but not at the option of the other party. [Sharafat Ali Vs. Noor Mohammed(1924)].

Example: (a) **M**, aged 17, agreed to purchase a second-hand scooter for Rs.5,000 from **S**. He paid Rs.200 as advance and agreed to pay the balance the next day and collect the scooter. When he came with the money the next day, **S** told him that he had changed his mind and offered to return the advance. **S** cannot avoid the contract, though **M** may, if he likes.

Minor's Agreements

▶ 3. His agreement cannot be ratified by him on attaining the age of majority.

▶ “Consideration which passed under the earlier contract cannot be implied in to the contract which the minor enters on attaining majority.”

[Nazir Ahmed Vs. Jiwan Dass

▶ Thus consideration given during minority is no consideration.

▶ If it is necessary a fresh contract may be entered in to by the minor on attaining majority provided it is supported by fresh consideration.

[S.Shanmugam Pillai vs.K.S.Pillai (1973)SC].

Minor's Agreements

▶ 4. If he has received any benefit under a void agreement, he cannot be asked to compensate or pay for it.

▶ Sec.65 provides for restitution in case of agreements discovered to be void does not apply to a minor.

Example: **M**, a minor, obtains a loan by mortgaging his property. He is not liable to refund the loan. Not only this, even his mortgaged property cannot be made liable to pay the debt.

Minor's Agreements

▶ 5. He can always plead minority:

Even, if he has, by misrepresenting his age, induced the other party to contract with him, he cannot be sued in contract for fraud because if the injured party were allowed to sue for fraud, it would be giving him an indirect means of enforcing the void agreement.

Minor's Agreements

5. He can always plead minority:

Example: **S**, minor, by fraudulently representing himself to be of full age, induced **L** to lend him 400 POUNDS. He refused to repay it and **L** sued him for the money.

Held, the contract was void and **S** was not liable to repay the amount [Leslie vs. Shiel, 1914] Lawrence J observed that in this case “ Wherever an infant is still in possession of any property in specie which he has obtained by his fraud, he will be made to restore to it's former owner. But I think it is incorrect to say that he can be made to repay money which he has spent, merely because he received it under a contract induced by fraud”.


Minor's Agreements

5. He can always plead minority:

▶ The Court *may*, where some loan or property is obtained by the minor by some fraudulent representation and the agreement is set aside, direct him, on equitable considerations, to restore the money or property to the other party. Where as the law gives protection to the minors, it does not give them liberty “to cheat men.”

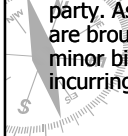
Minor's Agreements

- ▶ **6. He cannot enter in to a contract of partnership.**
But he may be admitted to the benefits of an already existing partnership with the consent of the other partners.
- ▶ **7. He cannot be adjudged insolvent.**
This is because he is incapable of contracting debts.




Minor's Agreements

- ▶ **8. He is liable for the 'necessaries' supplied or necessary services rendered to him or anyone whom he is legally bound to support.**
- ▶ **9. He can be an agent.** An agent is merely a connecting link between his principal and third party. As soon as the principal and the third party are brought together, the agent drops out. A minor binds the principal by his acts without incurring any personal liability.



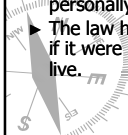
Minor's Agreements

- ▶ **10. A minor is liable in tort** (A civil wrong).
But where a tort arises out of contract a minor is not liable in tort as an indirect way of enforcing a invalid contract.



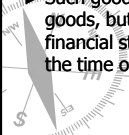
Minor's Liability for Necessaries of Life.

- ▶ A minor is liable to pay out of his property for 'necessaries' supplied to him or to anyone whom he is legally bound to support. (Sec.68). The claim arises not out of contract but out of what is known as 'quasi contracts'.
- ▶ Again it is only the property of the minor that is liable for meeting the liability arising out of such contracts. He is not personally liable.
- ▶ The law has provided this exception intentionally because if it were not so, it would be impossible for minors even to live.



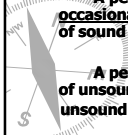
What are **necessaries** of life ?

- ▶ The term necessaries is not defined in, ICA, 1872. The English Sale of Goods Act 1893, defines it in Sec.2 as "goods suitable to the condition in life of such infant or other person, and to his actual requirement at the time of sale and delivery".
- ▶ Such goods need not necessarily belong to a class of goods, but they must be (i) suitable to the position and financial status of the minor, and (ii) necessaries both at the time of sale and at the time of delivery



2. Persons of Unsound Mind.


- ▶ One of the essential conditions of competency of parties to a contract is that they should be of sound mind. Sec.12 lays down a test of soundness of mind. It reads as follows:
"A person is said to be of sound mind, for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.
- ▶ **A person who is usually of unsound mind but occasionally of sound mind, may make a contract when he is of sound mind.**
- ▶ **A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind."** EXAMPLES.....



Persons of Unsound Mind.

▶ Examples:

- (a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.
- (b) A sane man who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract while such delirium or drunkenness lasts.



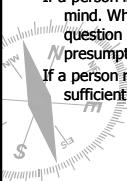
Persons of Unsound Mind

Soundness of mind of a person depends upon two facts:

1. His **capacity to understand the contents** of the business concerned, and
2. His **ability to form a rational judgment as to its effect upon his interests.**

If a person is incapable of both, he suffers from unsoundness of mind. Whether a party to a contract is of sound mind or not is a question of fact to be decided by the Court. There is a presumption in favor of sanity.

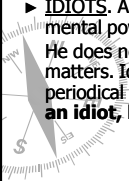
If a person relies on unsoundness of mind, he must prove it sufficiently to satisfy the Court.



Contracts of Persons of Unsound Mind

▶ **LUNATICS.** A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. He suffers from intermittent intervals of sanity and insanity. **He can enter in to contract when he is of sound mind.**

▶ **IDIOTS.** An idiot is a person who has completely lost his mental powers. He does not exhibit understanding of even ordinary matters. Idiocy is permanent where as lunacy denotes periodical insanity with lucid intervals. **An agreement of an idiot, like that of a minor, is void.**

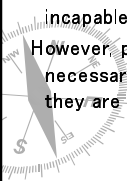


Contracts of Persons of Unsound Mind

▶ **DRUNKEN OR INTOXICATED PERSONS.**


A drunken or intoxicated person suffers from temporary incapacity to contract, i.e. at the time when he is so drunk or intoxicated that he is incapable of forming a rational judgment.

However, persons of unsound mind are liable for necessaries supplied to them or to anyone whom they are legally bound to support.



PERSONS DISQUALIFIED BY LAW (other persons)

- ▶ 1. Alien Enemies
- ▶ 2. Foreign Sovereigns
- ▶ 3. Convicts
- ▶ 4. Insolvents

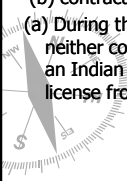


3. Other persons

▶ **ALIEN ENEMIES.** Contracts with alien enemy [an alien whose State is at war with the Republic of India] may be studied under two heads, namely-

- (a) contracts during the war, and
- (b) contracts made before the war

(a) During the continuance of the war, an alien enemy can neither contract with an Indian subject nor can he sue in an Indian Court. He can do so only after he receives a license from the Central Government.



3. Other persons

▶ ALIEN ENEMIES.

(b) Contracts made before the war may either be suspended or dissolved. They will be dissolved if they are against the public policy or if their performance would benefit the enemy. For this purpose even an Indian who resides voluntarily in a hostile country, or who is carrying on business there would be treated as an alien enemy.



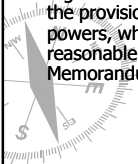
Foreign sovereigns, their diplomatic staff and accredited representatives of foreign states

▶ They have some special privileges and generally cannot be sued unless they of their own submit to the jurisdiction of our law Courts. But an Indian has to obtain prior sanction of the Central government in order to sue them in our law Courts.



CORPORATIONS & COMPANY

- ▶ A corporation is an artificial person created by law, having a legal existence apart from its members. It may come in to existence by a special Act of Legislature registration under Companies Act, 1956.
- ▶ A contractual capacity of a company [corporation] is regulated by the terms of Memorandum of Association and the provisions of Companies Act, 1956. If it exceeds its powers, whether expressly conferred on it or derived by reasonable implication from its objects clause in the Memorandum, the contract ultra vires and is void.



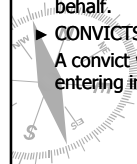
INSOLVENTS & CONVICTS

▶ INSOLVENTS:

When a debtor is adjudged insolvent is deprived of his power to deal in that property. It is only the official Receiver or Official Assignee who can enter in to contracts relating to his property, and sue and be sued on his behalf.

▶ CONVICTS:

A convict when undergoing imprisonment is incapable of entering in to contract.



Free Consent

▶ Meaning of "**Consent**" [Sec.13]

Consent means acquiescence or an act of assenting to an offer.

“Two or more persons are said to **consent** when they agree upon the same thing in the same sense”.

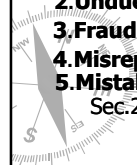


What is Free Consent ?

▶ Meaning of "**Free Consent**" [Sec.14]

▶ A consent is said to be **free when it is not caused by-**

1. **Coercion** as defined in Sec.15, or
2. **Undue Influence** in Sec.16 or
3. **Fraud** as defined in Sec.17, or
4. **Misrepresentation** as defined in Sec.18 or
5. **Mistake**, subject to the provisions of Sec.20,21 or Sec.22].



Coercion [Sec.15]

- ▶ When a person is compelled to enter in to a contract by the use of force by the other party or under a threat, “coercion” is said to be employed.
- ▶ Coercion is the committing or threatening to commit, any act forbidden by the Indian Penal Code, 1860 or unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of any person to enter in to an agreement. (Sec.15). Examples are.....

Examples of Coercion

- a. **A** threatens to shoot **B** if he (**B**) does not release him (**A**) from a debt which **A** owes to **B**. **B** releases **A** under the threat. The release has been brought about by Coercion.
- b. **A** threatens to kill **B** if he does not lend Rs.1,000 to **C**. **B** agrees to lend the amount to **C**. The agreement entered in to under coercion.

Consent is said to be caused by coercion when it is obtained by:

(1) Committing or threatening to commit any act forbidden by the Indian Penal Code, 1860. Example...

A threatens to shoot **B** if he (**B**) does not lend \$ Rs 500. **B** lends the amount. The threat amounts to coercion.

Examples of Coercion

- ▶ **2. Unlawful detaining or threatening to detain any property.**
- ▶ **An agent refused to hand over the account books of a business to the new agent unless the principal released him from all liabilities. The principal had to give a release deed as demanded. Held, the release deed was voidable at the option of the principal. [Muthia vs. Muthu Karuppa, (1927) Madras High Court]**

Effect of Coercion

- ▶ When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a **contract voidable** at the option of the party whose consent was so caused (Sec.19).
- ▶ According to Sec.72, a person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.

Threat to commit suicide-Does it amount to coercion? Chikham Amiraju vs. Seshamma (1917) Madras HC.

- ▶ In this case, a person held out a threat of committing suicide to his wife and son if they did not execute a release in favor of his brother in respect of certain properties. The wife and son executed the release deed under the threat.
- ▶ Held, “the threat of suicide amounted to coercion within Sec 15 and the release deed was, therefore, voidable”.

Threat to commit suicide-Does it amount to coercion? [Purabi Mukherjee vs. Basudev Mukherjee (1969) Calcutta]

- ▶ It was observed that, “one committing suicide places himself or herself beyond the reach of the law, and necessarily beyond the reach of any punishment too.
- ▶ But it does not follow that suicide is not forbidden by the Penal Code. Sec.306 of the Penal Code punishes abetment of suicide. Sec.309 punishes an attempt to commit suicide.
- ▶ Thus suicide as such is no crime, as indeed, it cannot be. **But its attempt is: its abetment too is. So, it may very well be said that the Penal Code does forbid suicide.**” As such a threat to commit to suicide amounts to coercion.

Duress

- ▶ In the English Law, the near equivalent of the term “coercion” is “duress”. Duress involves actual or threatened violence over the person of another (or his wife, parent, or child) with a view to obtaining his consent to the agreement.
- ▶ If the threat is with regard to the goods or property of the other party, it is not duress.”

UNDUE INFLUENCE

Section 16(1)

▶ **Definition:**
 “A contract is said to be induced by ‘undue influence’

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

(b) and uses that position to obtain an unfair advantage over the other.”

A person is deemed to be in a position to dominate the will of another.

Sec 16(2)

- (a) Where he holds real or apparent authority over the other. E.g., the relationship between master and servant, doctor and patient.
- (b) Where he stands in a fiduciary relation. [Relation of trust and confidence] to the other. E.g., father and son, solicitor and client, trustee and beneficiary, and promoter and company.
- (c) Where he makes a contract with person whose mental capacity is temporarily or permanently affected by reason of age, illness or bodily distress. E.g., Between a medical attendant and his patient.

Difference Between Coercion and Undue Influence

<ul style="list-style-type: none"> ▶ 1.The consent is given under the <u>threat of an offence</u> (Forbidden by Indian Penal Code) ▶ 2.Coercion is mainly of <u>physical character.</u> (Violent force) ▶ 3.It involves <u>criminal act.</u> ▶ 4. There must be an intention of <u>causing any person to enter in to contract.</u> 	<ul style="list-style-type: none"> ▶ 1.The consent is given by a person who is so situated in relation to another that the <u>other person is in a position to dominate the will of the other.</u> ▶ 2.Undue influence is of <u>moral character.</u> (Mental pressure) ▶ 3.No <u>criminal act</u> is involved. ▶ 4.Uses to <u>obtain an unfair advantage over the other.</u>
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Examples of UNDUE INFLUENCE

- ▶ 1. A spiritual guru induced his devotee to gift him the whole of his property in return of a promise of salvation of the devotee.
 Held, the consent of the devotee was given under undue influence
 [Mannu Singh vs.Umadat Pandey (1890)]

Examples of UNDUE INFLUENCE

- ▶ 2.An illiterate elderly woman made a deed of gift of practically the whole of her property to her nephew who managed her affairs. Held, the gift should be set aside on the ground of undue influence. [Inche Noriah vs.Shaikh Allie Bin Omar(1929)]

EFFECT OF UNDUE INFLUENCE

When a consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Discretion of Court: Any such contract may be set aside either absolutely or if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as the court may seem just and equitable.

Continued.....

- ▶ Ex 1: A's son forged B's name to a promissory note. B under threat of prosecuting A's son obtains a bond from A, for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.
- ▶ Ex 2: A, a money-lender, advances Rs.100 to B, an agriculturist, and by undue influence induces B to execute a bond for Rs.200 with interest at 6 per cent per month. The Court may set aside, ordering B to repay Rs.100 with such interest as may seem to it just.

RELATIONSHIP WHICH RAISE PRESUMPTION OF UNDUE INFLUENCE

- ▶ Parent and child
- ▶ Guardian and ward
- ▶ Trustee and beneficiary
- ▶ Religious adviser and disciple
- ▶ Doctor and patient
- ▶ Solicitor and client

The presumption of undue influence applies whenever the relationship between the parties is such that one of them is, by reason of confidence reposed in him by the other, able to take unfair advantage over the other.

NO PRESUMPTION OF UNDUE INFLUENCE IN THE RELATIONSHIP

- ▶ Landlord and tenant
- ▶ Creditor and debtor
- ▶ Husband and wife. (The wife should not be pardanashin otherwise the presumption will arise.)

In the above cases undue influence will have to be proved if any.

BURDEN OF PROOF

- ▶ When a contract is avoided on the ground of undue influence, the liabilities of dominant party and weaker party has to be proved.

The weaker party has to prove

- (a) That the other party was in a position to dominate the will
- (b) That the other party actually used his influence to obtain an unfair advantage
- (c) That the transaction is unconscionable (unreasonable)

Continued.....

- ▶ In case of unconscionable transaction, the dominant party has to prove that such contract was not induced by undue influence.
- ▶ Note: A transaction is said to be unconscionable if the dominant party makes an exorbitant profit of the other's distress.

Example of unconscionable transaction

X was in great need of money. The market rate of interest prevailing at that time was 15% to 24%. A lender agreed to grant the loan at 30% because of stringency in the money market. This cannot be called as unconscionable transaction because of an unusual high rate of interest.

However, if the lender agreed to grant the loan at a rate which is so high (say 75% or 100%) then the Court considers it unconscionable, and the transaction will be called unconscionable

CONTRACTS WITH PARDANASHIN WOMAN

- ▶ A woman who observes complete seclusion (i.e., who does not come in contact with people other than her family members) is called pardanashin woman.
- ▶ Legal Presumption: A contract with a pardanashin woman is presumed to have been induced by undue influence.
- ▶ Burden of Proof: The other party who enters into a contract with a pardanashin woman must prove —(a) that he made full disclosure of all the facts to her.
- ▶ (b) that she understood the contracts and the implications of the contract.
- ▶ (c) that she was in receipt of competent independent advice before entering into the contract.

Misrepresentation

- ▶ A statement of fact which one party makes in the course of negotiations with a view to inducing the other party to enter in to a contract is known as a representation.
- ▶ It may be expressed by words spoken or written or implied from the acts and conduct of the parties.
- ▶ A representation when wrongly made, either innocently or intentionally, is a **misrepresentation**.

MISREPRESENTATION & FRAUD

- ▶ Misrepresentation may be-
 - (I) An innocent or unintentional misrepresentation, or
 - (II) An intentional, deliberate or willful misrepresentation with an intent to deceive or defraud the other party.
 The former is called "**MISREPRESENTATION**" and the latter "**FRAUD**"

MISREPRESENTATION

- ▶ "Misrepresentation" is a misstatement of a material fact made innocently with an honest belief as to it's truth or non-disclosure of a material fact, without any intent to deceive the other party.

Examples of Misrepresentation

- ▶ 1. **A** while selling his mare to **B**, tells him that the mare is thoroughly sound. **A** genuinely believes the mare to be sound although he has no sufficient ground for the belief. Later on **B** finds the mare to be unsound. The representation made by **A** is a misrepresentation.

Examples of Misrepresentation

- ▶ 2. A company's prospectus contained a representation that it had statutory powers to run its tramways by steam provided the consent of a Government authority was obtained. The directors issued a prospectus stating there in that the permission for the use of steam power would be granted. The permission was refused. The company was then wound up. Held, the directors were guilty of misrepresentation and not of fraud. [Derry vs. Peek(1889)]

Requirements of MISREPRESENTATION

- ▶ 1. It must be a representation of material fact. **Mere expression of opinion does not amount to misrepresentation even if it turns out to be wrong.**
- ▶ 2. It must **be made before the conclusion of the contract** with a view to inducing the other party to enter into contract.
- ▶ 3. It must be **made with the intention that it should be acted upon by the person** to whom it is addressed.
- ▶ 4. **It must actually have been acted upon** and must have induced the contract.
- ▶ 5. **It must be wrong but the person who made it honestly believed it to be true.**

Requirements of MISREPRESENTATION

- ▶ 6. It must be **made without any intention to deceive** the other party.
- ▶ 7. It need not be made directly to the plaintiff. **A wrong statement of facts made to a third party with the intention of communicating it to the plaintiff, also amounts to misrepresentation.**

E.g., A told his wife within the hearing of their daughter that the bridegroom proposed for her was a young man. The bridegroom, however, was a over sixty years. The daughter gave her consent to marry him believing the statement by her father. Held, the consent was vitiated by misrepresentation and fraud.

[Babul vs. Singh(1968)Patiala High Court]

FRAUD

- ▶ **"Fraud"** exists when it is shown that,
 - (1) a false representation has been made
 - (i) **knowingly**, or
 - (ii) **with out belief in it's truth**, or
 - (iii) **recklessly, not caring whether it is true or false**, and
 - (iv) **the maker intended the other party to act upon it.**
 - (2) there is a **concealment** of material fact.

.....FRAUD

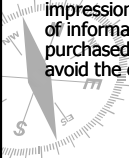
- ▶ The intention of the party making fraudulent misrepresentation must be to deceive the other party to the contract or to induce him to enter in to a contract.

.....FRAUD

- ▶ According to **Sec.17**. **"fraud"** means and includes **any of the following acts** committed by a party to a contract:
 1. The suggestion that a fact is true when it is not true and the person making the suggestion does not believe it to be true;
 2. The active concealment of a fact by a person having knowledge or belief of the fact;
 3. A promise made without any intention of performing it;
 4. Any other act fitted to deceive;
 5. Any such act or omission as the law specially declares to be fraudulent.

ESSENTIAL ELEMENTS OF FRAUD

▶ **1. There must be a representation and it must be false:**
 E.g., The prospectus of a company **did not refer to the existence of a document disclosing liabilities**. This gave the impression that the company was prosperous. If the existence of the document had been disclosed the impression would have been different. Held, non disclosure of information amounted to fraud and any one who purchased shares on the faith of this prospectus could avoid the contract. [Peek vs. Gurney(1873)]




ESSENTIAL ELEMENTS OF FRAUD

▶ **2. The representation must relate to a material fact which exists now or existed in the past.**

(i) A sells some spoons to B and makes the following statements. The spoons are as good as that of X. [This is a statement of opinion].

(ii) The spoons have as much silver in them as that of X [This is a statement of fact]


(iii) The spoons are the best available in the market for the price. [This is a puffing statement].



ESSENTIAL ELEMENTS OF FRAUD

▶ **3. The representation must have been made before the conclusion of the contract with the intention of inducing the other party to act upon it.**

▶ **4. The representation must have been made with a knowledge of its falsity or without belief in its truth or recklessly, not caring whether it is true or false.**




ESSENTIAL ELEMENTS OF FRAUD

▶ **5. The other party must have been induced to act upon the representation or assertion. A mere falsehood is not enough to give a right of action.**

Eg., A bought shares in a company on the faith of a prospectus which contained an untrue statement that one B was a director of the company. A had never heard of B and, therefore, the statement was immaterial from his point of view. A's claim for damages in this was dismissed because the untrue statement had not induced A to buy the shares.


[Smith vs. Chadwick(1884)]



ESSENTIAL ELEMENTS OF FRAUD

▶ **6. The other party must have relied upon the representation and must have been deceived.** If representation does not come to the notice of a party, it cannot be said to have misled that party because it does not lead that party at all.

▶ **7. The other party, acting on the representation or assertion, must have subsequently suffered some loss.**

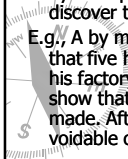


Contracts not necessarily voidable - Exceptions.

▶ When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. But in the following cases, the contract is not voidable:


▶ 1. Where the consent of a party to a contract was caused by misrepresentation or fraud and that party could discover the truth by ordinary diligence.

E.g., A by misrepresentation, leads B erroneously to believe that five hundred tonnes of indigo are made annually at his factory. B examines the accounts of the factory, which show that only four hundred tonnes of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.



MISTAKE

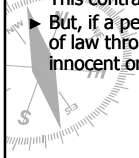
- ▶ **Mistake** is **erroneous belief about something**. It may be a (1) Mistake of law, or (2) Mistake of fact.
- ▶ (1) **Mistake of law**: It may be...
 - (a) Mistake of law of the **country**
 - (b) Mistake of law of **foreign country**
- ▶ (2) **Mistake of fact**: Mistake of fact may be,
 - (a) **Bilateral Mistake**, or
 - (b) **Unilateral Mistake**.



MISTAKE OF LAW

Example of (1) **Mistake of law of the country**

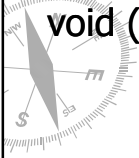
- ▶ A party cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of law. A mistake of law is, therefore, no excuse, and the contract cannot be avoided.
- ▶ **E.g.**, A and B enter in to contract on the erroneous belief that a particular debt is barred by Indian Law of Limitation. This contract is not voidable.
- ▶ **But**, if a person enters in to a contract by making a mistake of law through the inducement of another, whether innocent or otherwise, the contract may be avoided.



MISTAKE OF LAW

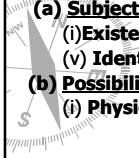
(2) **Mistake of law of a foreign country**

▶ Such a mistake is treated as mistake of fact and the agreement in such a case is **void (Sec.21)**.



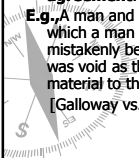
.....MISTAKE

- ▶ **Bilateral Mistake**: Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void [Sec.20]. It may be **Bilateral** or **Unilateral Mistake**
- ▶ **Bilateral Mistake**: It may relate to
 - (a) Subject matter, or (b) Possibility of performance
 - (a) **Subject matter** may relate to
 - (i) **Existence** (ii) **Price** (iii) **Quantity** (iv) **Quality**
 - (v) **Identity** or (vi) **Title**.
 - (b) **Possibility of performance** :It may relate to,
 - (i) **Physical**, or **Legal impossibility**.



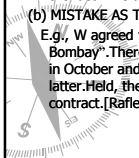
Bilateral Mistake

- ▶ The following **two conditions** have to be fulfilled.
- 1. The mistake must be mutual:**
E.g., A agreed to purchase B's motor car which was lying down in B's garage. Unknown to either party, the car and garage were completely destroyed by fire a day earlier. The agreement is void.
- 2. The mistake must relate to a matter of fact essential to the agreement:**
E.g., A man and woman entered in to a separation agreement under which a man agreed to pay a weekly allowance to the woman, mistakenly believing themselves lawfully married. Held, the agreement was void as there was mutual mistake on a point of fact which was material to the existence of the agreement.
 [Galloway vs. Galloway (1914)].



Bilateral Mistake

- ▶ i
 The various cases which fall under Bilateral mistake are as follows.
- 1. Mistake as to the Subject matter:**
- (a) **MISTAKE AS TO THE EXISTENCE OF THE SUBJECT MATTER:**
 E.g., A agrees to buy a horse from B a certain horse. It turns out that the horse was dead at the time of the bargain, though the neither party was aware of the fact. The agreement is void.
- (b) **MISTAKE AS TO THE IDENTITY OF THE SUBJECT MATTER:**
 E.g., W agreed to buy from R a cargo of cotton "to arrive ex-peerless from Bombay". There were two ships of that name sailing from Bombay. One sailing in October and the other in December. W meant the former ship and R, the latter. Held, there was a mutual or bilateral mistake and there was no contract. [Raffles vs. Wichelhaus (1864)]

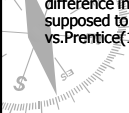


....Bilateral Mistake

.....1.BILATERAL MISTAKE:

(c) MISTAKE AS TO THE **QUALITY** OF THE SUBJECT MATTER:
 E.g., Table Napkins were sold at an auction by y description "with the crest of Charles 1 and the authentic property of that monarch". In fact the napkins were Georgian. Held the agreement was void as there was a mistake as to the quality of the subject matter.
 [Nicholson & Venn vs. Smith Mariott(1947)]

(d) MISTAKE AS TO THE **QUANTITY** OF THE SUBJECT MATTER:
 E.g., A silver bar was sold under a mistake as to its weight. There was a difference in value between the weight as it was and as it was supposed to be. Held, the agreement was void. [Cox vs. Prentice(1815)]

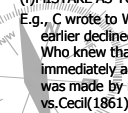


....Bilateral Mistake

.....1. BILATERAL MISTAKE:

(e) MISTAKE AS TO THE **TITLE** OF THE SUBJECT MATTER:
 E.g., A person took a lease of a fishery which, unknown to either party, already belonged to him. Held, the lease was void.
 [Cooper vs. Phibbs (1815)]

(f) MISTAKE AS TO THE **PRICE** OF THE SUBJECT MATTER:
 E.g., C wrote to W offering to sell certain property for 1,250 pounds. He had earlier declined an offer from W to buy the same property for 2000 pounds. W Who knew that this offer of 1,250 pounds was a mistake for 2,250 pounds, immediately accepted the offer. Held, W knew perfectly well that that the offer was made by mistake and hence the contract could not be enforced. [Webster vs. Cecil(1861)]

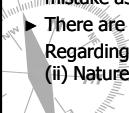


.....MISTAKE

► **Unilateral Mistake:** Where only one of the parties is under a mistake as to a matter of fact, the contract is not voidable(Sec.22).

► E.g., A offers to sell his house for Rs.44,000. By mistake he makes an offer in writing for Rs..40,000. He cannot plead mistake as a defense.

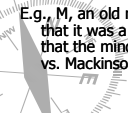
► There are however, **two exceptions**.
 Regarding the (i) identity of the person contracted with.
 (ii) Nature of contract.



.....MISTAKE

► **(I) Mistake at to the identity of the person contracted with:**
 E.g., If A intends to enter in to a contract with B, C cannot give himself any right in respect of the contract by accepting the offer.
 In such a case the contract is **void**.


► **(ii) Mistake as to the nature of the contract:**
 Where a person is made to enter in to a contract through the inducement of another but through no fault.
 E.g., M, an old man of poor sight, endorsed a bill of exchange thinking that it was a guarantee. Held, there was no contract on the ground that the mind of the signer did not accompany the signature [Foster vs. Mackinson (1869)]



Legality of Object

► An agreement is a contract if it is made for a lawful consideration and with a lawful object (Sec.10)

► Every agreement of which the object or consideration is unlawful is void.



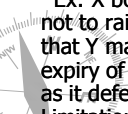
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► The consideration or object of an agreement is unlawful if-

(a) It is forbidden by law; or

(b) If it is of such a nature that, if permitted it would defeat the provisions of any law.

Ex: X borrowed Rs.1,00,000 from Y and agreed not to raise any objection as to the limitation and that Y may recover the amount even after the expiry of limitation period. This agreement is void as it defeats the provisions of the Law of Limitation Act; or



Continued....

- (c) It is fraudulent; or
- (d) It involves or implies injury to the person or property of another; or
- (e) The Court regards it as immoral, or opposed to public policy.

▶ No action is allowed on an illegal agreement.



Void Agreements

- ▶ A void agreement is one which is not enforceable by law. [Sec.2(g)]
- ▶ **The following agreements are declared to be void.**
 1. An agreement made by incompetent persons (Sec.11).
 2. Agreement made under mutual mistake of fact (Sec.20)
 3. Agreements the consideration or object is unlawful (Sec.23)
 4. Agreements the consideration or object is unlawful in part. (Sec.24)
 5. Agreement made without consideration is void (Sec.25)
 6. Agreement in restraint of marriage (Sec.26)
 7. Agreement in restraint of trade (Sec.27)
 8. Agreement in restraint of legal proceedings (Sec.28)
 9. Agreement the meaning of which is uncertain (Sec.29)
 10. Agreement by way of wager (Sec.30)
 11. Agreement contingent on impossible events (Sec.36)
 12. Agreement to do impossible acts. (Sec.56)

Wager or Wagering Agreement [Sec.30]

- ▶ A wager agreement is an agreement between two persons under which money or money's worth is payable, by one person to another on the happening or non-happening of a future uncertain event. Ex. X promises to pay rs.1,000 to Y if it rains on a particular day, and Y promises to pay rs.1,000 to X if it did not. Such agreement is a wagering agreement.

...Wager or Wagering Agreement [Sec.30]

- ▶ "The essence of gambling and wagering is that one party is to win and the other to lose upon a future event, which at the time of the contract is of an uncertain nature, that is to say, if the event turns out one way, A will lose but if it turns out the other way he will win".
[Thacker Vs. Hardy(1878)]

Essentials of a wagering Agreement

- ▶ 1. Promise to pay money or money's worth
- ▶ 2. Uncertain event
- ▶ 3. Each party must stand to win or lose.
- ▶ 4. No control over the event
- ▶ 5. No other interest in the event

The following transactions however are, not wagers

- ▶ 1. A crossword competition involving a good measure of skill for its successful solution
- ▶ 2. Games of skill, e.g., picture puzzles or athletic competitions
- ▶ 3. A subscription or contribution or an agreement to subscribe or contribute toward any event (a cup or other prize for a race or other contest), prize or sum of money of the value of Rs.500 or above to be awarded to the winner or winners of a horse race (Exception to Sec.30)
- ▶ 4. Share market transactions in which delivery of stocks and shares is intended to be given and taken.
- ▶ 5. A contract of insurance.

AGREEMENTS CONTINGENT ON IMPOSSIBLE EVENTS

- ▶ According to Section 36 of the Indian Contract Act, 1872 contingent agreements to do or not to do anything, if an impossible event happens are void whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made. Ex: A agrees to pay Rs.1,000 if B marries C (a Hindu) who is already married to D. This is a void agreement.

AGREEMENTS TO DO IMPOSSIBLE ACTS

- ▶ According to Section 56 of the ICA 1872, 'An agreement to do an impossible act is void'.
Ex: A undertakes to put life to the dead wife of B. This agreement is void

RESTITUTION

- ▶ Restitution means "return or restoration of benefit".
- ▶ Ex 1: A, a singer contracts with B the manager of a theatre to sing at his theatre for two nights every week during the next two months and B agrees to pay her Rs.100 for each night's performance. On the sixth night, A willfully absents herself from the theatre and B in consequence rescinds the contract, B must pay A for the five nights on which she had sung.

Continued.....

- ▶ Ex 2: A contracts to sing for B on a specified day and receives an advance of Rs.1000 but is unable to sing due to serious illness on that day. Since the contract has become void, A must return Rs.1,000 to B.

Contingent Contracts

- ▶ **Contingent contract is a contract to do something, if some event, collateral to such contract, does or does not happen.**
- ▶ Characteristics of a contingent contract.
 1. Its performance depends upon the happening or non happening in future of some event.
 2. The event must be uncertain.
 3. The uncertain future event must be collateral to the contract.

THREE ESSENTIAL ELEMENTS OF CONTINGENT CONTRACT

- ▶ 1. Its performance depends upon the happening or non-happening in future of some event
- ▶ 2. The event must be uncertain
- ▶ 3. The event must be collateral. (incidental to the contract)

Example of the event must be collateral

- ▶ There was a contract for the sale of American parachute cloth by A to B. The goods were to be delivered when they arrived. A failed to give delivery and B sued for damages for breach. A pleaded that the contract was a conditional one and as the goods had not arrived he had no obligation to give delivery. Held, the contract was an absolute one and the obligation of A was not contingent upon the arrival of the goods
- ▶ Contracts of insurance, indemnity and guarantee

WAGERING AND CONTINGENT CONTRACT

- ▶ 1. A wagering agreement consists of reciprocal promises whereas a contingent contract may not be of a wagering nature
- ▶ 2. A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a wagering nature
- ▶ 3. A wagering agreement is void whereas a contingent contract is valid
- ▶ 4. In a wagering agreement, the parties have no other interest in the subject-matter of the agreement except the winning or losing of the amount of the wager
- ▶ 5. In a wagering agreement the future event is the sole determining factor while in a contingent contract the future event is only collateral

Performance of Contract

- The parties to a contract either perform or offer to perform their respective promises.
- **By whom the contract must be performed ?**
 - (a) By promisor himself
 - (b) By agent
 - (c) By legal representative
 - (d) By Joint promisors
 - (e) By Third Party

Who can demand performance ?

(a) **Promisee:** It is only the promisee himself. In case of his death, the legal representative, who can demand performance.

Ex: X promises Y to pay Rs.1000 to Z. It is only Y who can demand performance and not Z.

(b) **Joint Promisees:** In case of joint promisees, any of the joint promisees can demand performance.

When all promisees die, the legal representatives of all the deceased persons can demand performance.

Ex: X promises Y and Z jointly to repay loan of Rs.1,000 on a specified day. Y's representative jointly with Z can demand the

Continued...

- Performance from X on specified day. If Y and Z die before that specified day, the representatives of Y and Z jointly can demand the performance from X on specified day.
- **(c) Third Party:** A third party can also demand the performance of the contract in some exceptional cases like beneficiary in case of trust, the person for whose benefit the provision is made in family arrangements.

Continued.....

- **(d) Legal representative:** In case of death of the promisee, his legal representative can demand performance unless a contrary intention appears from the contract or the contract is of a personal nature.
- Ex: X promises to marry Y on the specified day. Y dies before the specified day. The legal representatives of Y cannot demand performance of the promise from X because the contract is of personal nature.

Who must Perform

- (a) **Promisor**: If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor.
- Ex: X promises to marry Y. X must perform this promise personally.
- Ex: X promises to paint a picture for Y. X must perform the promise personally,

Continued.....

- (b) **Promisor's Agent**: If it was not the intention of the parties that the promise should be performed by the promisor himself, such contracts can be performed by the promisor himself or any competent person employed by him.
- Ex: A promises to pay B a sum of money. A may perform this either by personally paying the money to B, or by causing it to be paid to B by another, and if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

Continued.....

- (c) **Legal Representatives**: In case of death of promisor, his legal representative can perform the contract unless a contrary intention appears or the contract is of personal nature.
- Ex: X promises to marry Y. X dies. X's legal representatives cannot perform this promise.
- (d) **Third Party**
 - (e) **Joint Promisors**

Discharge ... of Contract

▶ **A contract is said to be discharged when the obligations created by it come to an end.**

The various modes of discharge of contract are as follows:

1. Discharge by performance
2. Discharge by agreement or consent
3. Discharge by impossibility
4. Discharge by lapse of time
5. Discharge by operation of law
6. Discharge by breach of contract.

DISCHARGE... OF CONTRACT

▶ **1. Discharge by performance:**

It takes place when the parties to a contract fulfill their obligations arising under the contract within the time and the manner prescribed.

▶ **2. Discharge by agreement or consent:**

The contract rests on the agreement of the parties. The parties may get discharged from the obligations of performance of contract by agreement or mutual consent.

Discharge.. of Contract

2. Discharge by agreement or consent: The discharge by consent may be *express or implied*. Discharge by consent –

- ▶ (a) **Novation** : When a new contract is substituted for an existing one, either between the same parties or between the one of the parties and the third party.
- ▶ (b) **Rescission**: When all or some of the terms of contract are cancelled.
- ▶ (c) **Alteration** : When one or more terms of the contract is/are altered by the mutual consent of the parties to a contract.
- ▶ (d) **Remission**: Acceptance of a lesser fulfillment of the promise made
- ▶ (e) **Waiver**: Intentional relinquishment or giving up of a right by a party entitled thereto under a contract.
- ▶ (f) **Merger**: When an inferior right accruing to a party under a contract merges in to a superior right accruing to the same party under a new contract.

Discharge ...of Contract

▶ **3. Discharge by impossibility:**
 Impossibility of performance may be-
 (1) Initial impossibility or (2) Supervening impossibility.

(1) **Initial impossibility:** An agreement to do an impossible act in itself is void.

(2) **Supervening impossibility:** Impossibility which arises subsequent to the formation of contract (which could be performed at the time when the contract was entered in to) is called supervening impossibility. The cases covered by of supervening impossibility include: (a) Destruction of the subject mater
 (b) Non-Existence or non-occurrence of a particular state of things
 (c) Death or incapacity for personal service
 (d) Change of law, & (e) Outbreak of war

The contract is discharged in these cases.

Discharge of Contract

▶ **The following cases are not covered by supervening impossibility:**

- (a) Difficulty of performance
- (b) Commercial impossibility
- (c) Failure of a third person on whose work the promisor relied
- (d) Strikes, lock outs and civil disturbances
- (e) Failure of one of the objects

The contract is **not- discharged** in these cases.

Discharge of Contract

▶ **4. Discharge by lapse of time:**
 If the contract is not performed within the period of limitation and if no action is taken by the promisee in a law court, the contract is discharged.

▶ **5. Discharge by operation of law:**
 This includes discharge by,

- (a) death
- (b) merger
- (c) insolvency
- (d) unauthorized alteration of the terms of a written agreement, and
- (e) rights and liabilities becoming vested in the same person.

Discharge of Contract

▶ **6. Discharge by breach of contract:**
 If a party breaks his obligation which the contract imposes, there takes place breach of contract.

Breach of contract may be, (a) Actual or (b) Anticipatory breach.

(1) **Actual breach of contract may occur,**

- (a) at the time when the performance is due, or
- (b) during the performance of the contract.

(2) **Anticipatory breach of contract occurs** when a party repudiates his liability or obligation under the contract before the time for performance arrives.

Remedies for Breach of Contract

▶ In case of breach of contract, the injured party has one or more of the following remedies:

1. **RESCISSON:** When there is breach of a contract by a party, the injured party may sue to treat the contract as rescinded. He is also absolved of all the obligations under the contract.
2. **DAMAGES:** Damages are monetary compensation awarded to the injured party by Court for the loss or injury suffered by him.

The foundation for modern law of damages, both in India and England, is to be found in the case of **Hadley vs. Baxandile.**

2. Hadley vs. Baxandile (1854)

▶ **X's** mill was stopped by the breakdown of a shaft. He delivered the shaft to **Y**, a common carrier, to be taken to a manufacturer to copy it and make a new one. **X** did not make known to **Y** that delay would result in loss of profits. By some neglect on the part of **Y** the delivery of the shaft was delayed in transit beyond a reasonable time (so that the mill was idle for a longer period than otherwise would have been the case had there been no breach of the contract of carriage).

▶ **Held,** **Y** was not liable for loss of profits during the period of delay as the circumstances communicated to **Y** did not show that a delay in the delivery of the shaft would entail loss of profits to the mill.

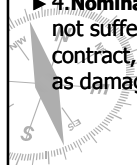
2. Damages may be of four types:

- ▶ (1) **Ordinary Damages:** These are damages which actually arise in the usual course of things from the breach of a contract.
- ▶ (2) **Special Damages:** Damages which may reasonably be supposed to have been in the contemplation of both the parties at the time when they made the contract as the probable result of the breach of it, are known as special damages and may be recovered.



.....Damages may be of four types:

- ▶ **3. Vindictive or Exemplary Damages:** These damages are allowed in case of the breach of a contract to marry or dishonor of a cheque by a banker wrongfully.
- ▶ **4. Nominal Damages:** Where the injured party has not suffered any loss by reason of the breach of a contract, the Court may award a very nominal sum as damages.



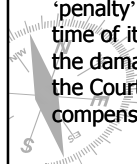
3. **QUANTUM MERUIT:**
[As much as earned]

A right to sue on a quantum meruit (as much as earned) arises where a contract, partly performed by one party, has become discharged by the breach of the contract by the other party.
This right is founded on the implied promise by the other party arising from the acceptance of a benefit by that party.



Liquidated Damages and penalty.

- ▶ 'Liquidated damages' represent a sum, fixed or ascertained by the parties in the contract, which is a fair and genuine pre estimate of the probable loss that might ensue as a result of breach. A 'penalty' is a sum named in the contract at the time of its formation, which is disproportionate to the damage likely to accrue as a result of breach. The Courts in India allow only 'reasonable compensation'.



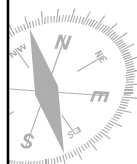
4. **Specific Performance**

- ▶ **4. Specific Performance :** In certain cases the Court may direct the party in terms of the contract to actually carry out the promise, exactly according to the terms of the contract. This is called "specific performance of the contract".



5. **Injunction**

- ▶ **5. Injunction:** It is a mode of securing the specific performance of the negative terms of a contract.



Module.III
INTELLECTUAL PROPERTY LAWS:
Patents Act,1970

- ▶ Intellectual property law **awards** to inventors, artists and institutions certain **exclusive rights** to produce, copy, distribute and license goods and technologies.
- ▶ IPR s provide **incentives to inventors** to develop new knowledge and to authors and artists to create forms of artistic expression. Thus, over time there are dynamic gains from the introduction of new products, information and creative activities.
- ▶ But from the perspective of efficiency, they are only a second means of encouraging invention, because the market exclusively conferred by IPR s **reduce current competition** and may therefore lead to a static distortion in the allocation of resources. Patents and copyrights have limited term, which minimizes the costs of market exclusivity.

Source: Intellectual Property and Development: Pp.3 The World Bank,2005

Module.III
INTELLECTUAL PROPERTY LAWS: Patents Act,1970

▶ **BACKGROUND:**
The term '**property**' poses **different meaning to different people**.
To a **scientist** 'property' means "**identifiable characteristics or elements of matter**", to an **economist** it may mean "**any means of production**", but to a **lawyer** it is equivalent to a "**bundle of rights**".

Understanding of the importance of
STONE

- ▶ Perhaps as soon as the earliest human being just used a big stone to kill the enemy, human being understood the importance of '**stone**' in the early monolithic age itself and started collecting **stones to protect himself**. Perhaps with this '**urge for belonging**' heralded the **birth of the concept of property**.

Attributes of 'Property'

- ▶ 1.It is scarce [limited]
- ▶ 2.It possesses value
- ▶ 3.Availability through acquisition or possession
- ▶ 4.Inherent quality of satisfying possessiveness
- ▶ 5.Uniqueness of uses

SOURCE: Intellectual Property/MBL/NL SIU,Bangalore

Introduction to Intellectual Property

- ▶ The immaterial product of a man's brains may be valuable as his land or his goods.
- ▶ The law, therefore, gives him a **proprietary right** in it, and the **unauthorized use of it by other persons is violation of his ownership and considered not less than theft**.

Intellectual Property [I.P.] Laws

NEED FOR IP PROTECTION: No one can deny the importance of individual's **intellectual ability to positively contribute to the wealth and human happiness**.

SOURCES OF I.P. LAWS: I.P. laws are comparatively **new in origin**. **Britain obviously was the first country to search for a legal regime to protect intellectual property**. Patent system had its origin in the royal grants under its prerogative. It finally came within the domain of legislation in 1624.

- [a] Attempts to globalize the I.P. I regime: Paris Convention,1883
- [b] National Statutes
- [c] Judicial Decisions

ECONOMIC CONSIDERATION

SOURCE: Intellectual Property/MBL/NLSIU, Bangalore

► 1. NATURE OF INTELLECTUAL PROPERTY RIGHT:

Intellectual property right is a right exclusively designed in law to own, possess, produce, reproduce, sale, give license or otherwise dispose of.

2. ECONOMICS OF IPR: All IPR s create monopoly and the result would be;

(a) the inventor can use the economies of scale to maximize his return so that he gets back the amount invested in R&D by way of maximum return;

(b) the inventor, as a monopolist can determine the quantity he has to produce in order to maximize his profit;

© the inventor having the monopoly power, can himself regulate the market in different ways like reducing production to charge more, creating shortage in supply or take a long term policy decision in favor of expanding investment on regional consideration to create an artificial scarcity in certain regions to exploit the market conditions.

Statutory Framework

► 1. Indian Patents Act.1970 regulating patents;

[Process, Products, Apparatus ,Capable of Industrial application].

► 2. The Copy Right Act.1957;

[Musical work, Artistic work, Literary work, e.g., books, periodicals].

► 3. The Designs Act.1911; [Shapes and Ornamentation]

► 4. The Trade and Trade Marks Act,1958;

[Marks used to distinguish goods-words, signs or combinations , formulae, patterns, methods, programs, techniques, or compilations of information that provide one's business with a competitive advantage].

Global Influence

► The I.P. statutes reflect the legal philosophy of IPR protection. However, this legal philosophy has become largely globalize with the GATT Agreement in 1994 containing the TRIPS (Trade Related Intellectual Property Rights) Agreement.

► Besides, there exist several other conventions on various areas like:

(i) Patent and Trade Mark: Paris Convention,1883 for Protection of Industrial Property.

(ii) Copyright: The Berne Convention,1971, The Universal Copy-Right Convention

(iii) Washington Treaty on Intellectual Property in respect of Integrated Circuits.1989 and also there is WIPO.

IMPORTANCE OF INTELLECTUAL PROPERTY

► A] Social Benefits:

Recognition of intellectual property is important because an inventor or a creator of an idea may keep it secret either consciously or unconsciously.

Consciously because he wants to exploit his idea fully through keeping the matter a trade secret. If he consciously wants to maximize his advantage by keeping the trade secret, he also runs the danger of 'reverse engineering' and consequential non-protection.

.....IMPORTANCE OF INTELLECTUAL PROPERTY

B] **New Ideas and New Markets:** New dimension and new ideas have as a rule opened up new markets for consumer and industrial goods.

C] **Role of Intellectual Property in Development:** The rewards granted to the innovator/ creator of ideas are reflected by the benefits which the innovation/ creation confers on the consumer

HISTORY AND PHILOSOPHY OF PATENT PROTECTION

► The word patent originated from the Latin word 'patene' which means 'to open'. The English Crown had the practice of addressing open letters to all it's subjects notifying them of the grant of monopoly rights or privileges to individuals in respect of inventions.

► The rights and privileges by means of 'open letters', i.e., documents on which the royal seal were intended for public view. Open letters were intended for display and inspection by any interested party. The language of government in medieval England was Latin and Latin for open letter is *litterate patente*.

As English slowly took over from Latin as official language, the documents became known as 'letters patent' and later just 'patents'.

HISTORY AND PHILOSOPHY OF PATENT PROTECTION

- ▶ Justification for the Patent System:
- (i) Patents as an instrument of justice to the inventor
- (ii) Patents as aiding industrial growth
- ▶ Aiding Industrial Growth: Swan Committee(England,1946) identified four benefits from exclusive rights in an invention.
 - (i) It encourages research
 - (ii) It induces an investor to disclose his or her discoveries
 - (iii) It rewards investment for inventions up to the stage at which they are commercially practicable
 - (iv) It provides an inducement to invest capital in new lines of production

Patent as an **asset**

- ▶ Patent = Property E.g., House Property)
- ▶ Use = Live
- ▶ Sell = Sell
- ▶ License = Rent
- ▶ Mortgage = Mortgage
- ▶ Abandon = Abandon

Inventor

- ▶ In all countries except U.S.A the first to file is entitled to a patent; who first invented is not the criteria.
- ▶ A consideration in U.S.A-first to invent is entitled to a patent, who first filed is not a criteria.
- ▶ Proper maintenance of records in chronological order in an accepted format is essential to establish patent-ship.

Who can apply for patents ?

- ▶ First and true inventor of the invention.
- ▶ An assignee of the first and true inventor
- ▶ Legal representative of any deceased person who was entitled to make such an application before his death.
- ▶ The true and first inventor can have others as joint applicants.

Patents

- ▶ **Patents** are granted to individuals and organizations who can lay claim to a new product or manufacturing process, or to an existing product or process which was not previously known.
- ▶ The granting of patent **gives the 'patentee' a monopoly to make, use, or sell the invention for a fixed period of time.**

PATENT

- ▶ In technical language, it is an **official document conferring an exclusive right or privilege on the inventor of a new thing or process of manufacture for a term of years to use or sell his invention.** After the expiry of the term of the patent, it becomes *public juris* (of public right) i.e., any member of the public can manufacture that thing or article. The law relating to patents in India is contained in the **Patents Act, 1970** which is based on the English Patents Act of 1949.
- ▶ The Act extends to the whole of India (Sec.1)

What is patent ?

- ▶ “A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something , or offers a new technical solution to a problem.

In order to be patentable, the invention must fulfill certain conditions”.

-World Intellectual Property Organization (WIPO)

What does a patent do ?

- ▶ A patent provides protection for the invention to the owner of the patent.

The protection is granted for a limited period, generally 14 years.

How to keep patents alive ?

- ▶ To keep patents in force, a **yearly fee has to be paid**.
- ▶ The **fee goes up with the age** of the patent
- ▶ **Failure to pay fees** within the prescribed time **leads to lapse of the patent**.
- ▶ Patents **cannot be renewed at the end of their lifetime** when they lapse.
- ▶ The **patent then becomes open to all and be used by anyone without the fear of infringement**.

Advantages of obtaining a patent

- ▶ 1. The patentee **gets exclusive right to use** his invention.
- ▶ 2. The patentee **can bring a suit for infringement of his patent**.
- ▶ 3. If the patentee does not have the means or is not himself in a position to work the invention patented commercially, **he can sell his patent and grant licenses to others to exploit, and thereby earn money**.
- ▶ 4. The holder of an exclusive license would have the rights of the patentee. He would also be able to enforce such rights.

...Advantages of Obtaining a Patent

- ▶ 5. The patentee can make improvements in or modification in an invention described or disclosed in the complete specification of the main invention and **obtain the grant of a patent for the improvement or modification as a “patent of addition”**. A patent of addition remains in force as long as the patent for the invention remains in force.
- ▶ 6. The grant of a patent enables the inventor to **obtain an official record of his inventor-ship from the Government**.

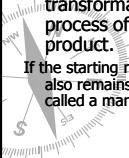
Important Definitions

- ▶ **CONTROLLER**[Sec.2(1) (b)]. “Controller” means **Controller-General of Patents, Designs and Trade Marks**.
- ▶ **EXCLUSIVE LICENSE** [Sec.2(1)(f)]. It means a license from a patentee (grantee or proprietor of patent) which confers on the licensee and persons authorized by him, any right in respect of the patented invention. **The right of the licensee must be to the exclusion of all others** (including the patentee himself) .“ Executive license” shall be construed accordingly.

.....Important **Definitions**


- ▶ **INVENTION** [Sec.2(1)(f)]. It means a new product or process involving an inventive step and capable of industrial application. The three basic requirements of an invention are: manner of manufacture, novelty and utility. Manufacturing primarily denotes the making of something out of some material, by application of power in transformation of the material and art and skill in the process of that improves, restores or preserves a saleable product.

If the starting material remains unaltered by the process and the product also remains the same as the starting material, the process cannot be called a manufacture for the purpose of patent-ability.



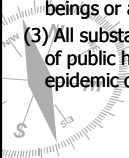
.....Important **Definitions**

- ▶ **PATENT** [Sec(1) (m)]: It means a patent under the Patents Act, 1970.
- ▶ **PATENTED ARTICLE AND PATENTED PROCESS** [Sec.2(1) (o)]: They mean respectively an article or process in respect of which a patent is in force.
- ▶ **PATENTEE**[Sec.2 (1)(p)]: “Patentee” means the person for the time being entered on the Register as the grantee or proprietor of the patent.



.....Important **Definitions**

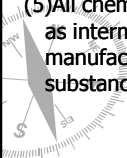
- ▶ **Medicine or drug**[Sec.2(1)(l)] includes-
 - (1)All medicines for internal or external use of human beings or animals;
 - (2)All substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of diseases in human beings or animals;
 - (3) All substances intended to be used for in the maintenance of public health, or the prevention or control of any epidemic disease among human beings or animals;



.....Important **Definitions**


Cont'd.....[**Medicine or drug**[Sec.2(1)(l)] includes-]

- (4) Insecticides, germicides, fungicides, and all other substances intended to be used for the protection or preservation of plants;
- (5)All chemical substances which are ordinarily used as intermediates in the preparation or manufacture of any of the medicines or substances referred to above.




.....Important **Definitions**

- ▶ **PERSON**[Sec.2(1) (s)]: “Person” includes the Government.
- ▶ **PERSON INTERESTED**[Sec.2(1)(t)]: “Person interested” includes a person engaged in, or in promoting, research in the same field as that to which the invention relates.



.....Important **Definitions**

- ▶ **TRUE AND FIRST INVENTOR** [Sec. 4(1)(y)]: “True and first inventor” is a **person who first made the invention and applied for the patent**. It does not include either the first importer of an invention in to India, or a person to whom an invention is first communicated from outside India.



.....**TRUE AND FIRST INVENTOR**
[Sec. 4(1)(y)]:

▶ Cont'd[TRUE AND FIRST INVENTOR [Sec. 4(1)(y)]]

If two persons have independently made the same invention and neither has used it or disclosed it to the world, the ***one who applies first for the patent is considered in law the true and first inventor***, although the other might have made it earlier in time.

INVENTIONS NOT PATENTABLE
[Sec.3 to 5 of Indian Patent Act,1970]

- ▶ **WHAT ARE NOT INVENTIONS(SEC.3)** It is not in public interest to grant rights in respect of certain items, e.g., discovery of a scientific principle, or an invention injurious to public health, or a process for the treatment of human beings, animals or plants, or a method of agriculture or horticulture.

Cont'd[What is not PATENTABLE in India ?]
[Sec.3 to 5 of Indian Patent Act,1970]

The following are therefore not inventions within the meaning of his Act and hence non patent-able:-

- (a) **Trifling invention:** i.e., an invention which is frivolous or which claims anything obviously contrary to well-established natural laws.
- (b) **Invention prejudicial to public order or environment,** i.e., an invention, the primary or intended use or commercial exploitation of which, could be contrary to public order or morality or which causes serious to human, animal or plant life or health or to the environment.

Cont'd[What is not PATENTABLE in India ?]
[Sec.3 to 5 of Indian Patent Act,1970]

- (c) **Scientific principle or abstract theory**
i.e., the mere discovery of a scientific principle or the formulation of an abstract theory, or discovery of any living thing or non-living substance occurring in nature.
- (d) **Discovery of new property or use of a known substance,** i.e., the discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus. If the known process results in a new product or employs at least one new reactant (a chemically reacting substance), it will be an invention.

Cont'd[What is not PATENTABLE in India ?]
[Sec.3 to 5 of Indian Patent Act,1970]

- e) **Admixture,** i.e., a substance obtained by a mere admixture (mixing with something) resulting only in the aggregation of the properties of the components thereof or a process for producing such substance.
- (f) **Arrangement, re-arrangement or duplication,** i.e., the mere arrangement omitted by Amendment Act,2002 or re-arrangement or duplication of known devices, each functioning independently of one another in a known way.

Cont'd[What is not PATENTABLE in India ?]
[Sec.3 to 5 of Indian Patent Act,1970]

- ▶ (g) **Omitted by Amendment Act,2002**
- ▶ (h) **A method of agriculture or horticulture**
- ▶ (i) **A process of treating human beings or animals,** i.e., any process for the medicinal, surgical, curative prophylactic (preventing of disease diagnostic, therapeutic, or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.

Cont'd[What is not PATENTABLE in India ?]
[Sec.3 to 5 of Indian Patent Act,1970]

- ▶ (j) **Plants and animals**, i.e., plants and animals in whole or any part thereof other than micro-organisms but, including seeds varieties and species and essentially biological process for production or propagation of plants and animals.
- ▶ (k) **Mathematical program** i.e., a mathematical or business method or a computer program per se or algorithms

Cont'd[What is not PATENTABLE in India ?]
[Sec.3 to 5 of Indian Patent Act,1970]

- ▶ (l) **Literary program** i.e., a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions.
- ▶ (m) **Mental act or method of playing game** i.e., a mere scheme or rule or method of performing mental act or method of playing game.

Cont'd[What is not PATENTABLE in India ?]
[Sec.3 to 5 of Indian Patent Act,1970]

- ▶ (n) **A presentation of information.**
- ▶ (o) **Topography of integrated circuits**
- ▶ (p) **Traditional knowledge**, i.e., an invention which in effect or traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

Cont'd[What is not PATENTABLE in India ?]
[Sec.3 to 5 of Indian Patent Act,1970]

- ▶ **Inventions relating to atomic energy not patent-able(Sec.4)**

No patent shall be granted in respect of an invention relating to atomic energy.

Process and Product Patent

- ▶ (1) **Meaning of Process Patent:** Process patent means that when a substance is invented or produced a patent is not granted to the substance itself but it is only the method or the process of manufacture of a substance that is granted a patent.
- ▶ (2) **Cases where only Process patent is available :** It must be remembered that under the scheme of the Indian Patent Act,1970, Patent is granted not for the benefit of the Patentee but for the benefit of the public at large. Therefore Indian Patent Act,1970 provides only a process patent in particular cases.

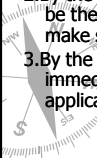
....Process and Product Patent

- ▶ (3) **Product Patent and Mandate under the G.A.T.T:** In product patents, patent is granted not to the method or process of manufacture of a substance but to the substance itself. Therefore, it is the "product" that is covered by the patent. Under the Patents Act, 1970 both product and process patents are available in India. Now India is a signatory to the Agreement on Trade Related Intellectual Property Rights (TRIPS), India is under obligation to provide Product patents to all inventions

APPLICATION FOR PATENTS
[Sec.6 to 11]

▶ **Application entitled to apply for patents**(Sec.6):
An application for a patent for invention may be made by any of the following persons, singly or jointly, that is to say-


1. By any person claiming to be the *first and true inventor* of the invention;
2. By the person being the assignee of the person claiming to be the *true and first inventor* in respect of the right to make such application;
3. By the *legal representative* of any deceased person who immediately before his death was entitled to make such an application.



APPLICATION FOR PATENTS
[Sec.6 to 11]

Form of Application (Sec.7)

- ▶ Application for one invention only.
- ▶ Application by assignee to be accompanied by proof of right to apply.
- ▶ Applicant to be in possession of invention
- ▶ Specifications

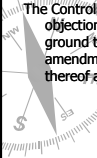


APPLICATION FOR PATENTS
[Sec.6 to 11]

Information and undertaking regarding foreign applications(Sec.8)
Where an applicant for a patent under this Act is prosecuting an application for a patent in a foreign country in respect of the same or substantially the same invention, he shall file along with his application-


- ▶ (1) A statement setting out detailed particulars
- ▶ (2) An undertaking that, up to the date of the acceptance of his complete specification filed in India

The Controller may also require the applicant to furnish details relating to the objections, if any, taken to the application filed in a foreign country on the ground that the invention is lacking in novelty or patent-ability, the amendments effected in the specifications, the claims allowed in respect thereof and such other particulars as he may require.



APPLICATION FOR PATENTS
[Sec.6 to 11]

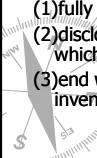
▶ **Provisional and complete specifications**(Sec.9)
Time for filing specifications: Where an application for a patent is accompanied by a provisional specification, a complete specifications within 12 months from the date of filing application. If the complete application is not so filed, the application shall be deemed to be abandoned.



APPLICATION FOR PATENTS
[Sec.6 to 11]


▶ **Contents of specifications**(Sec.10)
Every specification whether provisional or complete Shall begin with a title sufficiently indicating the subject matter to which the invention relates. Every complete specification shall-

- (1) fully describe the invention and its operation or use
- (2) disclose the best method of performing the invention which is known to the applicant
- (3) end with a claim or claims defining the scope of the invention for which protection is claimed.



APPLICATION FOR PATENTS
[Sec.6 to 11]

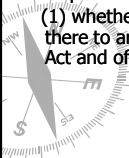
▶ Section 11 deals with priority dates for each claim of complete specification.



Examination of Application [Sec.12 to 24]

▶ **Examination of application(Sec.12)**
When the complete specification has been filed in respect of an application for a patent, the application and the specification relating there to shall be referred by the Controller to an examiner for making a report to him in respect of the following matters, namely-

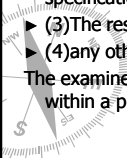
- (1) whether the application and the specification relating there to are in accordance with the requirements of this Act and of any rules made there under:



.....Examination of Application [Sec.12 to 24]

- ▶ (2) whether there is any lawful ground of objection to the grant of the patent under this Act in pursuance of the application. This will include an examination as to formal matters (like the prescribed form, fees to be paid) and substantive matters (patent-ability of invention and specifications);
- ▶ (3) The result of investigations made for prior claim
- ▶ (4) any other matters which may be prescribed

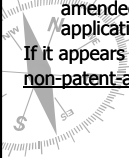
The examiner shall ordinarily make report to the Controller within a period of 18 months of such reference.



Refusal of application (Sec.15)

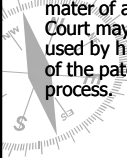
- ▶ Where the Controller is satisfied that the application or any specification filed in pursuance thereof does not comply with the requirements of this Act or any rules made there under, the Controller may either,
 - (a) Refuse to proceed with the application; or
 - (b) Refuse the application, specification or drawings to be amended to his satisfaction before he proceeds with the application.

If it appears to the Controller is not an invention, or non-patent-able then he shall refuse the application.




Infringement of Patents [Sec.104-117]

- ▶ This Act grants statutory right to patentee, his agents and licensees to work or exploit the invention. If some other person violates these and encroaches upon their rights, it amounts to infringement.
- ▶ **Burden of Proof.**
In any suit for infringement of a patent, where the subject matter of a patent is a process for obtaining a product, the Court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process.




Penalties [Sec.118-124]

- ▶ For unauthorized claim of patent rights-fine up to Rs.10,000
- ▶ Falsification of entries in Registry etc-Imprisonment up to 2 years or fine of Rs.10,000 or both.



The IPR tools can help to preserve the rights of the innovator against wrongful use by others.

- ▶ Various features of the **Gillette's** non-electric razor are protected by 17 patents, which are displayed on the pack. **Gillette**, as a name, is a registered trademark in several countries. Similarly, the U.S-based Golden Valley Microwave Food Inc.'s Micro-wave Popcorn is protected by number of U.S patents.
- ▶ Globally, patent related disputes and their settlement is on the rise.
- ▶ A sum of \$800 million was exchanged in 1994 by way of licensing fees compared to \$300 million in 1991. **Texas Instruments** earned \$1.2 billion for licensing IPRs.



LAW OF TRADEMARKS

[Trade & Merchandise Marks Act, 1958]

► **Introduction:**

When a person sells his goods under a particular trade mark he acquires a kind of limited exclusive right to use the mark in relation to those goods.

► **Trade Mark as Intellectual Property:**

Trade Mark for long has been identified and grouped along with patent, design and copy right as a form of intellectual property.

Trade Marks have gained recognition as signifying property rights on the basis of that the owner of the trade mark acquired value in the mark by it's constant use.

FUNCTIONS OF TRADE MARK

► It gives an indication to the purchaser about the identity of the manufacturer or the quality of the goods.

► It gives the purchases a satisfactory assurance of the quality.

The purchaser simply would **make his purchase on the implicit faith of the mark being genuine** and that it possesses a quality equal that previously found with same trade mark.

Where does the statute step in ?

► The statute, i.e., **Trade and Merchandise Marks Act, 1958** (herein after TMM) codifies the law and provides for registration of trade marks already in use and even those proposed to be used. Hence the statute recognizes ownership of trade marks, and provides various rights there in.

► In broad terms, the TMM provides for the following:

1. Nature of rights a person can acquire in respect of TM
2. Mode of acquisition and method of transfer of rights
3. Nature of infringements and remedies.

Statutory Definitions

► 1. Trade Mark: Trade Mark in India is governed by the Trade and Merchandise Marks Act, 1958. A trade mark is defined under section 2(1)(v) as follows..

“Trade Mark” means a registered trade mark or a mark used to in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having a right as proprietor to use the mark.

► 2. Under Section 2(1)(j) **“mark” includes a device, a brand, heading, label, ticket, name, signature, word, letter or numeral or any other combination thereof.**

...Statutory Definitions

► 3. **“Goods”** Goods are simply defined under TMM Act

as *“Anything which is the subject of trade or manufacture”*.

► 4. **“Name”** A name includes any abbreviation of a name according to Section 2(1)(b) of the TMM Act.

...Statutory Definitions

► 4.3 **Different Types of Trade Marks:**

1. **Letter Mark:** Mark includes letter mark under Section 2(1)(j) of the Act. The identity created out of letter forms have been very useful elements for designers to work with and develop successful mark. Some popular examples of letter marks as trade marks are **IBM, GM, 3M, ELBEE** etc.

...Statutory Definitions

► 4.3 Different Types of Trade Marks

2.Symbol:Symbols may take the shape of brands or logos.A logo is a visual depiction of a manufacturer or a company and gives an identity to it.Today logos are identified by consensus as symbols that belong to a particular company and as representing quality,elegance etc.The best example of popular logo as a trade mark are those of **Daimler Benz, BMW** etc.



...Statutory Definitions

► 4.3 Different Types of Trade Marks

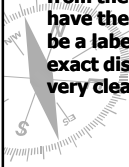
3.Brand:Brands refer to those kinds of marks which are branded on goods themselves constituting the trade mark.For example, Cycle brand of Agarbathis or Camel Brand Safety Matches.



...Statutory Definitions

► 4.3 Different Types of Trade Marks

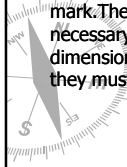
4. Label and Ticket:Label means a composite mark containing various features including devices, words, usually painted on paper and attached to the goods themselves.The label may contain ,apart from the trademark even matter which does not have the trade mark value. A ticket may be said to be a label attached to goods by a string etc.The exact distinction between label and ticket is not very clear.



...Statutory Definitions

► 4.3 Different Types of Trade Marks

5.Color Combinations: Color schemes can also constitute marks within the definition of the Act.
6.Containers: In one of the cases, it was pointed out that, a container would not fall within the definition of the mark. Therefore for registration of trade mark ,it is necessary for an applicant to show the mark in two dimensions, so that others may more readily know what they must not use in two dimensions.



...Statutory Definitions

► **Certified Trade Mark Sec.2(1)(c):**Certified Trade Mark means a mark adopted to distinguish in the course of trade, goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristics, from goods not so certified and registrable.



Rights conferred upon registration:

► Rights include;

- *Right to use
- *Right to license
- *Right to sell
- *Right to sue (upon infringement).



Unregistered Trade Mark

- ▶ The 1958 Act does not make marks compulsorily registrable. Therefore, there is no ban on a person using the mark without being registered.



Remedies for Infringement of Unregistered Mark

- ▶ If a MARK is unregistered under the 1958 Act then the civil remedies provided by the Act for infringement of trade marks cannot be availed by the person who has been using such unregistered mark. Section.27(1) provides that, **“no person shall be entitled to institute any proceedings to prevent or recover damage for infringement of an unregistered trade mark”**.



Unregistered Trade Mark and Goodwill

- ▶ Trade mark is always considered as an inseparable part of goodwill of business, as a part of which it is used.
- ▶ The 1958 Act has also incorporated the common law principle in Section38(1) which reads as follows, “An unregistered trade mark shall not be assignable or transmissible except along with the goodwill of the business concerned”.

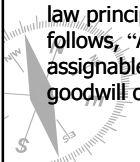


Table of Prohibited Marks

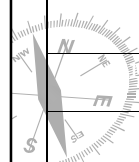
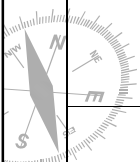
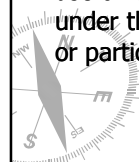


Table of Prohibited Trademark




Ownership of Trademark and Rights of Owners

- ▶ Registration is not a pre-condition to assume ownership of trade mark. The ownership in a mark can be acquired by it's use on specified goods or on registration under the Act in respect of particular goods or particular class of goods.




IPR Laws: Copyrights

► **Introduction: General Meaning.**
 Copyright means an exclusive right given by law for certain period, to an author or composer of work conferring him the right to produce copies of work.




IPR Laws: Copyrights

► **Object of Copyright:**
 Copyright deals with the protection of rights of various types of works, yielding from the intellectual labor of human being. Therefore it can be considered as a reward of labor.




IPR Laws: Copyrights

The **object of copyright is to encourage** authors, artists and composers to produce original works by rewarding them with exclusive rights for a limited period.




IPR Laws: Copyrights

► **Relevance of Copyright Law:** Copyright protection is essential to encourage exploitation of copyrighted work for the benefit of the public by entrepreneurs, like publishers, film producers, or sound recorders.



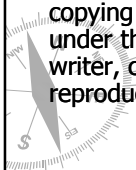
IPR Laws: Copyrights

► **International Implications of Copyright Law:** Copyright has gained international dimension because being an intellectual property it is transferred more easily and quickly across national boundaries. The speed with which intellectual property can be copied today has led to large scale infringement of copyrights



IPR Laws: Copyrights

► **Nature of Copyright:** Copyright-purely a statutory right.
Negative and multiple nature of Copyright:
 The copyright law essentially concerns itself with the negative right of preventing copying or multiplication of material covered under the copyright, so as to protect the writer, composer or artist from unlawful reproduction and exploitation.



IPR Laws: Copyrights

► What to be protect by Copyright:

For a work to be protected under the copyright there must be sufficient “skill, labor and judgment” or “selection, Judgment and Experience”.

Copy protects the skill and labor employed by the author.

Lord Atkinson in Macmillan vs.Cooper(1924) pointed out that,

- “it is the product of labor,skill and capital of one man which must not be appropriated by another, not elements, the raw materials, if one may use the expression, upon which the labor,skill and capital of the first have been expended to secure copyright for his product. It is necessary that the labor, skill and capital expended should be sufficient to impart to the product some quality or character which the raw material did not possess and which differentiate the raw material from product”.

Copyrights

- Copyright protects form and not idea.

- Work must be in a permanent form.

- Copyright must be distinguished from monopoly right.

FERA, 1973

The FERA came in to force on 1st January,1974

It extends to the whole of India and to the branches and agencies of overseas Indian companies including Indian citizens.It seeks to regulate in particular;

- 1.The assets held in India by non-residents
- 2.Holding immovable property outside India by Indians
- 3.Employment of foreign nationals, and repatriation of foreign currency,
- Establishment or place of business in India, and
- 5.Acquisition, holding, etc of business interest and immovable property in India

FERA, 1973

► Objectives of FERA:


- 1.To regulate dealings in foreign exchange and securities, as well as transactions indirectly affecting foreign exchange;
- 2.To regulate imports and exports of currency and bullion;
- 3.To conserve foreign exchange resources of the country
- 4.To regulate holding of immovable property of Indians outside India
- 5.To regulate acquisition, holding,etc, of immovable property by non-residents in India;
- 6.To regulate employment of foreign national in India

The Foreign Exchange Management Act, 1999

- **Introduction:** FEMA, 1999 replaces the FERA,1973.
- FERA aimed at having stringent controls to conserve India's foreign exchange.
- FERA amended in 1993 to bring about certain changes, as a result of introduction of economic reforms and liberalization of the Indian economy.
- But it was soon realized that FERA had by and large outlived it's utility in the changed economic scenario and there fore was replaced by FEMA in 1999.

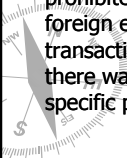
FERA(1973) VS FEMA(1999)

- ▶ 1.To consolidate and amend the law regulating the(then existing) law relating foreign exchange and for the conservation of the FX resources of the country
- ▶ 1.To consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and development & maintenance of FX market in India




FERA(1973) VS FEMA(1999)

- ▶ 2.FERA focused on control of foreign exchange
- ▶ 2.Whereas, FEMA focused on management of foreign exchange
- ▶ 3. FERA almost prohibited almost all foreign exchange transactions unless there was general specific permission
- ▶ 3.All current account transactions are permissible by the law itself.




FERA(1973) VS FEMA(1999)

- ▶ 4.Under FERA, however, the offence was of criminal nature.
- ▶ 4.FEMA is a civil law unlike FERA.The contravention of provision under FEMA will be dealt with through civil procedure.




FERA(1973) VS FEMA(1999)

- ▶ 5. Under FERA there was a presumption of existence of a guilty mind, unless the accused proved otherwise.
- ▶ 5.The burden of proof under FEMA will be on the enforcement agency and not on the person implicated.




FERA(1973) VS FEMA(1999)

- ▶ 6.Offences under FERA, were subjected to penalty as well as severe imprisonment.
- ▶ 6.Offences under FEMA are compoundable by paying penalty. FEMA prescribes an elaborate redressal machinery for total justice and fairness to the person implicated.



Definitions [Section.2]

- ▶ **AUTHORIZED PERSON:**
It means an authorized dealer, money changer, off-shore banking unit or any other person for the time being authorized under the law to deal in foreign exchange or foreign securities.



Export

Export means,

- ▶ (I) 'taking out of India to a place outside India any goods',
- ▶ (ii) 'Provision of services from India to any persons outside India'.



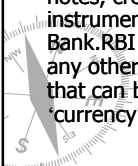
Import

- ▶ Import means bringing in to India any goods or services.



CURRENCY

- ▶ This expression includes all currency notes, postal notes, postal orders, money orders, checks (cheques), drafts, traveler (checks) cheques, letters of credit, bill of exchange and promissory notes, credit cards or such other similar instrument may be notified by the Reserve Bank. RBI has notified 'debit cards' 'ATM' cards or any other instrument by whatever, name called that can be used to create a financial liability, as 'currency'.



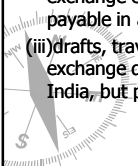
CURRENCY NOTES

- ▶ It means and includes cash in the form of coins and bank notes.



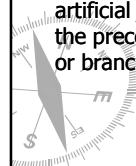
Foreign Exchange

- ▶ It means foreign currency and include:
 - (i) deposits credits and balances payable in any foreign currency;
 - (ii) drafts, travelers' cheques, letters of credit or bills of exchange expressed or drawn in Indian currency but payable in any foreign currency;
 - (iii) drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.



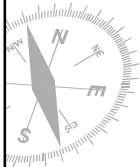
Person

- ▶ A 'person' includes: (i) an individual, (ii) a Hindu Undivided family, (iii) company (iv) a firm, (v) an association of persons or body of individuals, whether incorporated or not (vi) every artificial judicial person, not falling within any of the preceding sub clauses, (vii) any agency, office, or branch owned or controlled by such persons.



Person Resident Outside India

- ▶ It means a person who is not resident in India.



Foreign Security

- ▶ Any security in the form of shares, bonds, debentures, or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency.



Duties of authorized person

- ▶ 1.To comply with RBI directions
- ▶ 2.Not to engage in unauthorized transactions
- ▶ 3.To ensure compliance of FEMA provisions
- ▶ 4:Duty to produce books accounts etc.



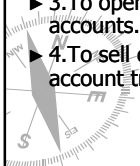
Powers of RBI

- ▶ Sec.12(1) empowers RBI to cause an inspection to be made, by an officer of the RBI specially authorized in writing by RBI of the business of any authorized person as may appear it to be necessary.



Powers of the Authorized Person

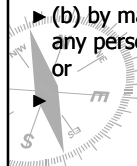
- ▶ 1.To deal in or transfer any foreign exchange or foreign security
- ▶ 2. Receive any payment by order or on behalf of any person resident outside India in any name.
- ▶ 3.To open NRO,NRE,NRNR, NRSR and FCNR accounts.
- ▶ 4.To sell or purchase foreign exchange for current account transactions



Regulation and Management of Foreign Exchange

It prohibits any person other than an authorized person from

- ▶ (a) dealing in or transferring any foreign exchange or foreign security to any person or
- ▶ (b) by making any payment to or to the credit of any person resident outside India in any manner; or



.....Regulation and Management of Foreign Exchange

- ▶ © receive otherwise than through an authorized person any payment by order or on behalf of any person resident outside India in any manner,
- ▶ (d) entering in to any financial transactions in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Holding of Foreign Exchange

- ▶ Section.4 provides that except as otherwise provided in the Act; no person resident in India shall acquire, hold, own possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

Module.IX Competition Act, 2002

[Competition Law]

- ▶ In pursuit of globalization, India has responded by opening of it's economy, by removing controls and resorting to liberalization.
- ▶ The natural corollary of this is that the Indian market should be geared to face competition from within the country and from outside.
- ▶ MRTP Act,1969 had become obsolete and hence replaced by Competition Act 2002.

The objectives of Competition Act,2002

- ▶ 1. To prevent practices having adverse effect on competition;
- ▶ 2. To promote and sustain competition in market;
- ▶ 3. To protect the interest of consumers;
- ▶ 4. To ensure freedom of trade carried on by other participants in markets in India.

Important Definitions Under Competition Act, 2002

- ▶ **Acquisition**[Sec.2(a)].It means, directly or indirectly, acquiring or agreeing to acquire-
 - (i) shares, voting rights or assets of any enterprise
 - (ii) control over management or control over assets of any enterprise.

Definitions

- ▶ **Agreement**[Sec.2(b)].It includes any arrangement or understanding or action in concert-
 - (i) Whether or not, such arrangement, understanding or action is formal or in writing;
 - or
 - (ii) Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.

Definitions

- ▶ **Consumer**[Sec.2(f)]. "Consumer" means any person who-
 - (i) Buys any goods for a consideration. The consideration may have been paid or promised or partly paid and partly promised, or under any system of deferred payment.
"Consumer" includes any user of the goods other than the person who buys them for consideration paid or promised to be paid in the above manner. When such use is made with the approval of the owner, it makes no difference whether the purchase of goods is for resale or for any commercial purpose or for personal use;
 - (ii) Hires or avails of any services for a consideration.
 - (iii) Consumer includes any beneficiary of services.

Definitions

- ▶ **Enterprise**[2(h)]. It means a person or a department of the Government, who or which is, or has been or is proposed to be, engaged in any activity, relating to the-
 - (i) production, storage, supply, distribution, acquisition, or control of articles or goods, or
 - (ii) provision of services of any kind, or
 - (iii) investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries.

Definitions

- ▶ **Goods**[2(i)]. "Goods" means goods as defined in the Sale of Goods Act, 1930 and includes-
 - (A) Products manufactured, processed or mined.
 - (B) Debentures, stocks and shares after allotment;
 - (C) In relation to goods supplied, distributed or controlled in India, goods imported in India.

Definitions

- ▶ **Person**[Sec.2(l)]. "Person" includes-
 - (i) an individual;
 - (ii) a Hindu undivided family;
 - (iii) a company
 - (iv) a firm;
 - (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; [cont'd..]

Definitions

- [being cont'd..]
- ▶ (vi) any corporation established by or under any Central, State or Provincial Act or a Government Company as defined in the Sec.617 of the Companies Act, 1956;
 - ▶ (vii) any body corporate incorporated by or under the laws of a country outside of India;
 - ▶ (viii) a co-operative society registered under any law relating to co-operative societies;
 - ▶ (ix) local authority; and
 - ▶ (x) every artificial judicial person, not falling within any of the preceding sub-clauses.

Definitions

- ▶ **Price**[Sec.2(o)] "Price" in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred. It also includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or things.

Definitions

- **Relevant Market**[2(r)]: It means a market which may be determined by the Competition Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.

Definitions

- **Relevant Geographic Market** [Sec.2(s)]: It means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogeneous and can be distinguished from the conditions prevailing in the neighboring areas .

Definitions

- **Relevant Product Market** [Sec.2(t)]: It means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.

Definitions

- **Services**[Section2(u)]. It means service of any description which is made available to potential users. It includes the provision of services in connection with business of any industrial or commercial matters such as accounting, banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment , processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

Definitions


- **Shares**[Sec.2(v)]. It means shares in the capital of a company carrying voting rights and includes-
- (i) any security which entitles the holder to receive shares with voting rights;
 - (ii) stock except where a distinction between stock and share is expressed or implied.
- Trade**[Sec.2(x)]. It means any trade, business industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services.

Definitions

- **Turnover** [Sec.2(y)].
It includes value of sale of goods or services. Words and expressions used but defined in this Act and defined in the Companies Act, 1956 shall have the same meanings respectively assigned to them in that Act [Sec.2(z)].


Prohibition of certain agreements, abuse of dominant position and regulation of combinations
[Chapter II-Sec. 3 to 6]

- ▶ **SECTION.3** provides for **prohibition of entering in to anti-competitive agreements.**
- ▶ **SECTION.4** prohibits **abuse of dominant position** by any enterprise.
- ▶ **SECTION.5 deals with combination of enterprises and persons:** Acquisition of one or more enterprises by one or more persons or acquiring of control or merger or amalgamation of enterprises under certain circumstances specified, shall be construed as combination.
- ▶ **SECTION.6** provides that **no person or enterprise shall enter in to combination which is likely to cause or causes an appreciable adverse effect on competition within the relevant market in India.**



Anti-Competitive Agreements (Sec.3)

- ▶ Sec.3 provides that **no enterprise or person shall enter in to any agreement in respect of production, supply, distribution, storage acquisition or control of goods or provision of services, which causes or likely to cause an appreciable adverse effect on competition within India.** This rule applies to association of enterprises and association of persons while entering in to any such agreement[Sec.3(1)]
- ▶ Any agreement entered in to contravention of the provisions contained in Sec.3(1) shall be void[Sec.3(2)]



Anti-Competitive Agreements (Sec.3)

- ▶ **Adverse effect on competition:**Any agreement entered in to between enterprises or associations of enterprises or persons or association of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which-
 - ▶ (a) directly or indirectly determines purchase or sale prices;



.....Anti-Competitive Agreements

- ▶ (b) limits or controls production, supply, markets, technical development, investment or provision of services;
- ▶ © shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services or number of customers in the market or any other similar way;
- ▶ (d) directly or indirectly results in bid rigging or collusive bidding.

Shall be presumed to have an appreciable adverse effect on competition.



Anti-Competitive Agreements (Sec.3)

- ▶ "Bid rigging" means any agreement, between enterprises or persons referred to above engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition forbids or adversely affecting or manipulating the process for forbidding.
- ▶ "Cartel" includes an association or producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or trade in goods or provision of services[Sec.3(3)].



Anti-Competitive Agreements (Sec.3)

- ▶ An agreement which causes or is likely to cause an appreciable adverse effect on competition, includes the following agreements also:
 - (a) **tie- in arrangement;** requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods
 - (b) **Exclusive supply agreement;** restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller.



[cont'd].....An agreement which causes or is likely to cause an appreciable adverse effect on competition, includes the following agreements also;

- © **Exclusive supply agreement;** to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.
- (d) **Refusal to deal;** restricts by any method the persons or classes of any persons to whom goods are sold or from whom goods are bought.
- (e) **Resale price maintenance:** Any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the **prices stipulated by the seller** unless it is clearly stated that prices lower than those prices may be charged [Sec.3(4)].

Horizontal Practices

- ▶ Horizontal merger: Two firms in the same industry merge
- ▶ Horizontal Price Fixing(Collusion):Explicit or implicit agreements in an industry to control prices.
- ▶ Price Discrimination:Charging customers different prices that are not justified by cost differences of serving these customers.
- ▶ Predatory pricing: Selling at price below cost to drive out arch rival firms.

Vertical Practices

- ▶ **Refusal to deal:** A manufacturer refuses to sell to distributor or retailer.
- ▶ **Exclusive dealing:**A manufacturer grants another firm an exclusive right to distribute a product.
- ▶ **Exclusive Territory:**A manufacturer grants an exclusive territory to a seller and no other is permitted to sell in that territory.
- ▶ **Retail Price Maintenance:** A manufacturer sets a minimum price below which a retailer cannot sell.

[Non-application of Section.3]

Section.3 does not apply to-

- ▶ 1.The right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been conferred under the Copy rights Act,1957,Patents Act,1970, the Trade and Merchandise Marks Act, 1958, the Trade Marks Act, 1999, the Geographical indications of Goods(Regulation and Protection) Act,1999, the Designs Act, 2000 and Semi Conductor Integrated Circuits Layout Designs Act,2000.

Competition Commission of India [CCI]

Establishment of commission(Sec.7): With effect from such date as the Central Govt. may appoint, there shall be established, for the purposes of this Act, a Commission to be called the “Competition Commission of India”.

Corporate body:It shall be a body corporate.

Offices: The head office shall be at a place as the Central Govt. may decide from time to time.

Composition of Commission(Sec.8)

- ▶ A chairperson and not less than two and not more than ten members to be appointed by the Central Govt.
- ▶ The Central Govt. shall appoint the Chairperson and the members during the first year of operation.(Sec.8(1))
- ▶ Qualifications:The Chairperson and every member shall be he persons of ability,integrity and standing, who-
 - (a) are, or have been, or qualified to be , a Judge of a High Court;
 - (b) Have special knowledge of, and professional experience in, not less than 15 years, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, be useful to the Commission(Sec.8(2))
 - (c) The chairperson and other members shall be whole time members.(Sec.8(3)).

CCI

- ▶ Selection of Chairperson and other Members(Sec.9)
- ▶ Term of office of Chairperson and other Members(Sec.10)
Vacancy and Oath of Office
- ▶ Resignation, Removal and Suspension of Chairperson and other members(Sec.11)
- ▶ Restriction on employment in certain cases (Sec.12)
- ▶ Salary and Allowances(Sec.14)
- ▶ Vacancy not to invalidate the proceedings of the Commission(Sec.15)
- ▶ Appointment of Director General, etc.(Sec.16)
salary and appointment
- ▶ Registrar and officers and other employees of he Commission(Sec17).

Duties, Powers and Functions of Commission

▶ **Duties(Sec.18)**

1. To eliminate practices having adverse effect on competition
2. To promote and sustain competition
3. To protect the interest of the consumers
4. Ensure of freedom of trade carried by other participants, in markets in India.

Consumer (Protection) Act,1986

- ▶ Law relating to consumer protection is contained in the Consumer Protection Act,1986. Act applies to all the goods and services.
- ▶ The objects of the Act are as follows:

1. BETTER PROTECTION OF INTERESTS OF CONSUMERS.
2. PROTECTION OF RIGHTS OF CONSUMERS:
IT SEEKS TO PROMOTE AND PROTECT THE RIGHTS OF CONSUMERS SUCH AS-
 - a) Right to protection against marketing of goods or services which are hazardous to life and property;

The objects of the Act are as follows:

2. PROTECTION OF RIGHTS OF CONSUMERS. IT SEEKS TO PROMOTE AND PROTECT THE RIGHTS OF CONSUMERS SUCH AS-

[being Cont'd.....]

- b) Right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumers against unfair trade practices;
- c) Right to be assured, wherever possible, access to goods and services at competitive prices;
- d) Right to be heard and to be assured that consumers' interest will receive due consideration at appropriate forums;

The objects of the Act are as follows:

- e) Right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- f) Right to consumer education.

- ▶ 3. Consumer Protection Councils.
- ▶ 4. Quasi-judiciary machinery for speedy redressal of consumer disputes.
 - a) to give relief of a specific nature, and
 - b) to award, wherever appropriate, compensation to consumer.

COPRA TERMS: Definitions

- ▶ 1. Appropriate laboratory[Sec.2(1)]
- ▶ 2. Complainant[Sec.2(1) (b)]
- ▶ 3. Complaint[Sec.2(1) (c)]
- ▶ 4. Consumer[Sec.2(1)(d)]
- ▶ 5. Consumer Dispute[Sec.2(1)(e)]
- ▶ 6. Defect [Sec2(1) (f)]
- ▶ 7. Deficiency[Sec.2(1)(g)]
- ▶ 8. District Forum[Sec.2(1)(h)]
- ▶ 9. Goods[Sec.2(1) (i)]
- ▶ 10. Manufacturer[Sec(1)(j)]

COPRA TERMS: Definitions

- ▶ 11. National Commission [Sec.2(1) (k)]
- ▶ 12. Person [Sec.2(1)(m)]
- ▶ 13. Restrictive trade practice [Sec.2(1)(n)]
- ▶ 14. Service [Sec.2(1)(o)].
- ▶ 15. State Commission [Sec.2(1)(p)]
- ▶ 16. Trader [Sec.2(1) (q)]
- ▶ 17. Unfair trade practice [Sec.2(1) ®]

Consumer Protection Council
[Sec.4 to 6]

- ▶ The Central Consumer Protection Council
Establishment [Sec.4]
Membership
Procedure for meeting of the Central Council [Sec.5]
Objects of the Central Council (Sec.6)
- ▶ The State Consumer Protection Council [Sec.7 & 8]
Establishment (Sec.7)
Membership
Meetings
Time and place of meetings and procedure.

Consumer Disputes Redressal Agencies

- ▶ (a) a Consumer Disputes Redressal Forum (District)
- ▶ (b) a Consumer Disputes Redressal Commission (State)
- ▶ © a National Consumer Disputes Redressal Commission (National).

The Information Technology Act,2000

- ▶ The modern age is the age of computers, new communication systems and digital technology.
- ▶ International trade through the medium of **e-commerce** has been growing rapidly in the fast few years and many countries have switched over from traditional paper based commerce to e-commerce.
- ▶ The United Nations Commission on International Trade Law (UNCITRAL) adopted the **Model Law on Electronic Commerce** in 1996. The Model provides for equal legal treatment of users of electronic communication and paper based communication.

The Information Technology Act,2000

▶ The IT Act,2000 was by both the houses of parliament, and it received the assent of the president on the 9th June,2000. It came in to force on 17th October, 2000. The Act extends to the whole of India.

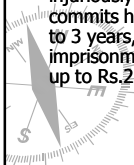
Offences
[Sec65-78]

- ▶ **Tampering with computer source documents:** (Sec.65)
If any person knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer program, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, he shall be punishable with imprisonment up to 3 years, or with fine which may extend to Rs.2,00,000 or with both.

Offences

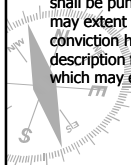
► Hacking with computer system(Sec.66).

Who ever intent to cause or knowing that he is likely to cause wrongful loss or damage to public or any person destroys or deletes or alters any information residing in a computer resource or diminishes it's value or utility or affects it injuriously by any means, commits hacking. Whoever commits hacking shall be punished with imprisonment up to 3 years, or with fine which shall be punished with imprisonment up to 3 years, or with fine which may extend up to Rs.2,00,000 or with both.



Publishing of information which is obscene in electronic form(Sec.67).

- Who ever publishes or transmits or causes to be published in the electronic form, any material which is lascivious(lustful,lewd) or appeals to the prurient(exciting to lasciviousness) interest or if it's effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished. On first conviction he shall be punishable with imprisonment of either c and with fine, which may extent to Rs.1,00,000. In the event of a second or subsequent conviction he shall be convicted with imprisonment of either description for a term which may extend to 10 years and also with fine which may extend Rs.2,00,000.



Power of Controller to give directions (Sec.68)

► Power of Controller to give directions(Sec.68).

The controller may, by order, direct a certifying Authority or any employee of such authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made there- under. Any person who fails to comply with any such order shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding Rs.2,00,000 or to both.

