

DIRECTORATE OF DISTANCE & CONTINUING EDUCATION

MANONMANIAM SUNDARANAR UNIVERSITY

TIRUNELVELI- 627 012



BBA Course Material

Business Regulatory Framework

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SYLLABUS

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II	Sale of goods Act - Contract of Agency
III	Brief outline of Indian Companies Act 1956.- kinds-formation-MOA-AOA-Prospectus- Appointment of Directors- Duties-Meeting- Resolutions-Winding up -
IV	Consumer Protection Act – RTI
V	Brief outline of Cyber laws – IT Act 2000 & 2008

READING LIST

- Tulsian.P.C Business Law (2018) Third Edition, McGraw Hill Publications
- Pillai R S N, Bhagavati, Business Law, Third Edition, Sultan Chand
- N D Kapoor(2019), Elements of Merchantile Law, Sultan Chand & Sons
- Constitutional Law – Dr. M.R. Sreenivasan & Ananda Krishna Deshkulkarni
- Business Law (Commercial Law) – Dr. M.R. Sreenivasan

REFERENCES BOOKS

- Business Regulatory Framework, Sahitya Bhawan Publications. Revised, 2022.
- Business regulatory framework, garg k.c., sareen v.k., sharma mukesh, 2013
- Business Regulatory Framework, Pearson Education India, 2011
- Bare Acts- RTI, Consumer Protection Act
- Business Regulatory Framework , Dr. Pawan Kumar Oberoi, Global Academic Publishers & Distributors, 2015

UNIT I

Indian Contracts Act

1.1 Indian Contracts Act

1.2 Types or kinds of contracts

1.3 Difference between Agreement and Contract

1.4 Valid contract

1.5 Valid Offer

1.6 Valid Acceptance

1.7 Free consent in Indian Contract Act

1.8 Consideration

1.9 Capacity to Contract

1.1 Indian Contracts Act

Contract

A contract is an agreement, either written or spoken, between two or more parties that create a legal obligation. The terms of a contract are enforceable by law; with clearly defined penalties and remedies should the contract be breached.

Contract is formed in 3 steps given below: –

Offer + acceptance = Promise

Promise + consideration = Agreement

Agreement + enforceable by law = Contract

Indian Contract Act, 1872

The Indian Contract Act is one of the oldest mercantile laws of our country. It came into effect on the 1st of September 1872 and is applicable to the whole of India with the exception of Jammu & Kashmir. Containing a total of 266 sections it is the principal law regulating contracts in India.

The Indian Contract Act, 1872 defines the term “Contract” under its section 2 (h) as “An agreement enforceable by law”. In other words, we can say that a contract is anything that is an agreement and enforceable by the law of the land.

Meaning

The Indian Contract Act, 1872 prescribes the law relating to contracts in India and is the key act regulating Indian contract law. The Act is based on the principles of English Common Law. It is applicable to all the states of India.

Nature

- The nature of contract is that it's the branch of law which determines the circumstances in which promises made by the parties to a contract shall be legally binding on them.
- It does not lay down the duties and responsibilities which the law will enforce but It consists a number of limiting principles, subject to which; the parties may create rights & duties for themselves which the law will upload.
- Nature of contract, a contract is an understanding enforceable at law, made between two or more persons, by which rights are acquired on the one side to acts or forbearances on the other.
- To make an agreement which results in a contract, there must be an offer and an

acceptance; and to the promises which stem from the offer and acceptance the law attaches a binding force of obligation.

Features

The Contract Act defines the term 'Contract' under its section 2 (h) as 'An agreement enforceable by law'. This definition has two key elements: agreement and enforceable by law.

Agreement- An agreement is every promise or the set of promises that form the consideration for each other.

Objectives

The Indian Contract Act 1872 was enacted to ensure that contracts are entered into freely and fairly and with full knowledge of the rights and obligations of all parties involved. It also aims to protect the interests of both parties in a contract, by spelling out the consequences of breaking it.

Importance

It determines the circumstances under which promises made by the contracting parties shall be legally binding on them. It specifies the remedies that are available against a person who fails to perform the contract entered into by him, in a Court of law.

1.2 Types or kinds of contracts

Contracts are divided as follows:-

1. Validity/Enforceability
2. Formation
3. Performance

Validity/Enforceability	Formation	Performance
Valid contracts	Express contract	Executed contract
Void contracts	Implied contract	Executory contracts
Voidable contracts	Quasi contact	• Unilateral contracts • Bilateral contract
Illegal contracts, Enforceable agreement	E.com. contract	

Now, let us understand the types of contracts in detail.

Validity/enforceability

- Valid contract – It is an agreement, which is binding and enforceable.
- Void contract – It is a contract, which cannot be enforced by law.

- Voidable contract – If consent of a party is not free then, the contract becomes voidable contract.
- Illegal contract – the law forbids it to be made for a contract.
- Unenforceable contract – If both the parties cannot sue on contract due to technical reasons, it is an unenforceable contract.

Formation

- Express contract– the terms are expressed in writing in an express contract.
- Implied contract – If a contract comes into existence due to implications, it is an implied contract.
- Quasi contract – If a contract resembles a contract, then it is a quasi-contract.
- E.com. contract – If the parties enter into a contract using E-commerce, it is an E.com. Contract.

Performance

- Executed contracts – Forbearance is brought on record.
- Executory contract – the contracts which are performed in future. There are two types of executory contracts which are as follows –
- Unilateral contract– it is a one-sided contract. One party performs their duty and the other is outstanding.
- Bilateral contract– the obligations and outstanding are on both the parties.

1.3 Difference between Agreement and Contract

No.	Basis	Agreement	Contract
1	Meaning	The meaning of agreement can be understood as an acceptance of an offer given by one party to another	A contract can be defined as an agreement that is enforced by law
2	Definition	Section 2(e) of the Indian Contract Act, 1872 defines an agreement as, “Every promise and every set of promises, forming the consideration for each other, is an agreement.”	Section 2(h) of the Indian Contract Act, 1872 defines a contract as, “an agreement enforceable through the law.”
3	Elements	Agreement = Offer + Acceptance	Contract = Agreement + Enforceable by Law
4	Written Form	The agreement cannot necessarily be in written form.	A contract is normally written and registered.
5	Scope	An agreement has a wider scope	A contract has a narrower

		than a contract.	scope as compared to an agreement.
6	Risk	It involves a higher risk factor because it is not enforceable by law.	A contract is abided by the law, so it ensures a low-risk factor.
7	One in Another	All agreements cannot be considered a contract.	All contracts can be considered an agreement.
8	Legal Obligation	An agreement does not create a legal obligation.	Contracts are meant to create a legal obligation.
9	Consideration	Agreements can be formed without consideration.	There should be some consideration to form a contract.

1.4 Valid contract

Essentials of a valid contract

Essentials of a valid contract are as follows: –

Two Parties: – A valid contract must include at least two parties identified by the contract. One of these parties will propose the offer and the other party will eventually accept it. Both parties should have legal existence, e.g. must be companies, schools, organizations, etc. or natural persons.

Agreement: – A contract is initially an agreement when the person to whom the offer is made indicates his acceptance to it. There is an agreement that is the foundation of a contract.

Free Consent: – The parties must agree on the same thing in the same sense and at the same time. An agreement without consent is not legally binding. The parties are called to consent when they agree on the same thing in the same sense; moreover, the parties to the contract must have free and genuine consent to constitute a valid contract i.e., not to be obtained by misrepresentation, fraud, undue influence or mistake. If the agreement is not free, the contract is void.

Contractual Capacity:– The parties to the agreement must be able to enter into a valid contract. According to the Act, every person is capable of entering into a agreement, if he/ she: –

- is of the age of majority;
- is of sound mind; and
- is not disqualified from contracting by any law.

Intention to create a Legal Relationship: – There should be an intention by both parties to

form a legal relationship and to bind themselves legally as a result of such agreement. Thus, agreements of a social or domestic nature are not contracts, as the parties do not intend to have a legal relationship. For Example: – where two parties agree to move together, a legal contract will not amount.

Consideration: – An agreement by an incompetent person is not valid. A valid contract should be supported by consideration. The idea means “something in return”. It can be cash, kind or an act. It can be past, present or future. The idea must be genuine and valid.

No Unlawful Considerations:– According to the Act, the consideration of an agreement is called unlawful if: –

- it is prohibited by law,
- it is of such a nature that, if allowed, it will defeat the provisions of any law,
- it is fraudulent,
- it includes or means injury to the property of the person/other, and the court considers it immoral.

Lawful Consideration: – Something in return is a consideration. In each contract, the agreement must be supported by consideration. It must be valid and genuine.

Lawful Object: – Section 23 of the Indian Contract Act, 1872, The consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

1.5 Valid Offer

Essentials of a valid Offer (or) elements of an offer

Offers to be valid and enforceable, following conditions are to be satisfied.

- **There must be two parties**

There must be at least two persons, a person to make proposal and the other person to accept it. Legal persons, artificial person all are included in person.

- **Every proposal must be communicated**

Communication of proposal is compulsory. An offer is valid if it is communicated to the offeree. The communication may be express or implied. It may be communicated by means of words of mouth, messenger, telegram etc. Section 4 of the Indian Contract Act says

that the communication of proposal is complete when comes to the knowledge of the person to whom it is made.

- **It must create legal relations**

To create a contract intention of the party to enter into legal obligation is compulsory, means the intention of offer should be to perform a legal obligation if it is to perform a social obligation it is not a proper proposal.

- **It must be certain and definite**

To create a valid contract the terms of the offer must be certain and definite and must not be vague.

- **It may be specific or Public**

Specific offer : Offer to specific person or group are known as specific offer.

General Offer : Offer to public are known as general offer

The specific offer can be accepted by the person or group to whom it is made. The general offer can be accepted by any person.

1.6 Valid Acceptance

Essential Elements of a Valid Acceptance

- **Acceptance must be communicated**

To constitute a Valid Contract, the acceptance must be communicated and moreover, such communication should be made to offeror. Mere intention or mental determination to accept on the part of the offeree is no acceptance.

- **Acceptance should be absolute and unqualified**

According to Section 7 of the Indian Contract Act 1872, acceptance must be absolute and unqualified, means without any deviation of any kind in the proposal or without any condition. An acceptance gives rise to a binding contract only when it is unqualified and coincides in its terms with those of the offer.

- **Reasonable Time**

To be legally effective acceptance must be given within the specified time limit, and if no time is stipulated, acceptance must be given within a reasonable time. Because an offer cannot be kept open indefinitely.

- **Acceptance should be expressed in some usual and reasonable manner, unless the proposal prescribes the manner of acceptance**

The acceptance should be expressed in usual manner or as per mode prescribed. According to Section 7(2) of the Indian Contract Act, 1872 the acceptance must be expressed in some usual and reasonable manner unless the proposal prescribed the manner in which it is to be accepted.

- **Acceptance must be made before Revocation of offer**

Section 5 of the Indian Contract Act says that Offer can revoke at any time before the communication of acceptance is posted but not afterwards. Therefore acceptance must be made before such revocation.

1.7 Free consent in Indian Contract Act

Free consent is defined by the Indian Contract Act of 1872 to protect the interest of the parties to a contract. This protects the parties from fraud, misrepresentation, and undue influence. But there are certain factors that also impact it negatively, like common mistakes, mutual mistakes, and unilateral mistakes.

Free consent is one of the most essential elements of a legal contract. The term free consent mentions to meeting of free and fresh minds of two parties or more of an agreement when two parties take and understand, purpose, subject matter and terms and conditions of the agreement in the same sense it is free consent.

Objectives

- to make an agreement a valid contract, free consent is required
- The significance of free consent cannot be overstated.
- The consent of the contract's parties must be free and voluntary.
- Consent to the contract must be given freely and without undue pressure or delusions.
- It is critical that the parties' consent is given freely, as this can affect the contract's validity.

Elements of the Free Consent

For consent to be considered Free Consent, it should meet certain requirements as given below :

- The contract should not be formed under Someone's pressure or undue influence.
- The contract should be a result of the agreement of both the companies. There should be consent and willingness to work together in both companies.
- The contract should be free of any fraud.

- There should be mutual trust in both parties.
- All the points in the contract should be clearly stated to avoid misconceptions.

Factors that contribute to the violation of Free Consent

Some common factors that contribute to the violation of Free Consent are given below:

- **Coercion:** When one party compels or forces the other party to enter into a contract with it by means of threatening or blackmailing. So there exists no free will, and hence it violates Free Consent.
- **Mistake or Misrepresentations:** When there is a lack of communication between two parties, or some other party gets involved in the decision-making, then it gives birth to quarrels and misconceptions. It violates the rule of Free Consent as there is no room for quarrels or fights. It promotes peace.
- **Undue Influence:** Undue influence occurs when an individual is able to persuade another's decisions due to the relationship between the two parties. Often, one of the parties is in a position of power over the other due to elevated status, higher education, or emotional ties. The more powerful individual uses this advantage to coerce the other individual into making decisions that might not be in their long-term best interest. It's mostly seen in husband and wife or tenants and landlords. Free Consent as both the parties have equal rights in decision making.

Undue influence is an equitable doctrine that involves one person taking advantage of a position of power over another person. This inequity in power between the parties can vitiate one party's consent as they are unable to freely exercise their independent will. In exerting undue influence, the influencing individual is often able to take advantage of the weaker party. In contract law, a party claiming to be the victim of undue influence may be able to void the terms of the agreement.

- **Fraud:** When one party cheats another party or hides or is dishonest or disloyal or then is no complete transparency between both the parties or if one of the parties fails to commit to its promises, then it's a case of Fraud.

1.8 Consideration

Consideration is necessary for the one formation of a contract. It means "something returns". It is the price paid for the contract. It must be Lawful. A contract without consideration is void.

Example:-

Sale of Car:- In a contract for sale of a car is consideration for one party, while the price is consideration for the other party.

Definition of Consideration

According to Pollock Consideration is the price for which the promise of the offer is brought, and the promise thus given for value is enforceable.

Kinds of Consideration

According to Section 2(d) of the Indian Contract Act 1872, there are three kinds of Consideration, viz Past, Present and Future Consideration. In English law consideration may be present or future, but not past.

Kinds of Consideration are as follows -

- Past Consideration
- Present (Executed) Consideration
- Future (Executory) Consideration

Past Consideration:

In case of past consideration, the promisor had received the consideration before the date of promise, such consideration is called Past Consideration.

Example :-

A's Bike on his way to office is stopped due to lack of petrol. A requested B who was petrol seller, B gave petrol to him. Later A promised B to pay Rs. 500/- in consideration of his past consideration. In English Law past consideration is no consideration.

Present consideration:

Present consideration is one in which one of the parties to the contract has performed his part of the promise, which constitutes the consideration for the promise by the other side it is known as present consideration.

Example :-

A lost his Bicycle, he makes an offer of the reward of Rs. 200 to anyone who finds his lost Bicycle. B finds the lost Bicycle and delivers to A. Here A is bound to pay Rs. 200. The consideration, in this case, is the present consideration.

Future Consideration:-

Future Consideration is one in which one party makes a promise in exchange for the promise by the other side the performance of the obligation by each side to be made subsequent to the making of the contract the consideration is known as Future Consideration.

Example :

A agrees to supply wheat bags to B and B agrees to pay for them on a future date. This consideration is the future consideration.

Essentials of a valid consideration

- The consideration must move at the desire of the promisor
- The consideration may move from the promisee to any other person
- The consideration must be lawful
- The consideration must be real and possible
- The consideration may not be adequate

1.9 Capacity to Contract

One of the most essential elements of a valid contract is the competence of the parties to make a contract. Section 11 of the Indian Contract Act, 1872, defines the capacity to contract of a person to be dependent on three aspects; attaining the age of majority, being of sound mind, and not disqualified from entering into a contract by any law that he is subject to.

So, we have three main aspects: (i) Attaining the age of majority, (ii) Being of sound mind and (iii) Not disqualified from entering into a contract by any law that he is subject to

i. Attaining the Age of Majority

According to the Indian Majority Act, 1875, the age of majority in India is defined as 18 years. For the purpose of entering into a contract, even a day less than this age disqualifies the person from being a party to the contract. Any person, domiciled in India, who has not attained the age of 18 years is termed as a minor.

Let's look at certain laws governing a minor's agreement:

- A Contract made with a Minor is Void
- A Minor can be a Beneficiary of a Contract
- Claim for Necessaries Supplied to Minors
- Insolvency
- Joint contract by a Minor and an Adult

ii. Person of Sound Mind

According to Section 12 of the Indian Contract Act, 1872, for the purpose of entering into a contract, a person is said to be of sound mind if he is capable of understanding the contract and being able to assess its effects upon his interests.

It is important to note that a person who is usually of an unsound mind, but occasionally of a sound mind, can enter a contract when he is of sound mind. No person can enter a contract when he is of unsound mind, even if he is so temporarily. A contract made by a person of an unsound mind is void.

iii. **Disqualified Persons**

Apart from minors and people with unsound minds, there are other people who cannot enter into a contract. i.e. do not have the capacity to contract. The reasons for disqualification can include, political status, legal status, etc. Some such persons are foreign sovereigns and ambassadors, alien enemy, convicts, insolvents, etc.

Review Questions

1. Define contract.
2. Classify the different kinds of contracts.
3. State the Difference between Agreement and Contract.
4. Spell out the Essentials of a valid contract.
5. Discuss the contractual capacity of minor.
6. Define misrepresentation? Explain the different between fraud and misrepresentation?
7. What is free consent? Why it is important?
8. Explain the essentials of valid acceptance.
9. Discuss in detail about undue influence.

UNIT II
Sale of Goods Act, 1930

- 2.1 Sale of Goods Act, 1930**
- 2.2 Condition and Warranties**
- 2.3 Unpaid seller**
- 2.4 Contracts of Agency**
- 2.5 Formation and Termination of Agency**
- 2.6 Rights and duties of the Agent**

2.1 Sale of Goods Act, 1930

The Sale of Goods Act, 1930 herein referred to as the Act, is the law that governs the sale of goods in all parts of India. It doesn't apply to the state of Jammu & Kashmir. The Act defines various terms which are contained in the act itself. Let us see below:

- **Buyer and Seller**

As per the sec 2(1) of the Act, a buyer is someone who buys or has agreed to buy goods. Since a sale constitutes a contract between two parties, a buyer is one of the parties to the contract.

The Act defines seller in sec 2(13). A seller is someone who sells or has agreed to sell goods. For a sales contract to come into existence, both the buyers and seller must be defined by the Act. These two terms represent the two parties of a sales contract.

- **Goods**

One of the most crucial terms to define is the goods that are to be included in the contract for sale. The Act defines the term "Goods" in its sec 2(7) as all types of movable property. The sec 2(7) of the Act goes as follows:

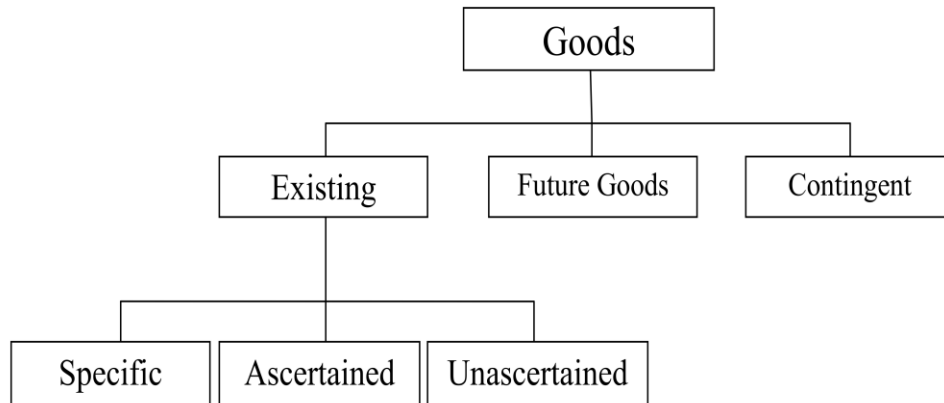
"Every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale will be considered goods"

Classification of goods

Goods may be further understood in the following subtypes:

1. Existing goods: Existing goods are those goods that are owned by or possessed by the seller at the time of making the contract and the seller has the right to sell the goods. Further classified into three types-

- **Specific goods:** Goods identified and agreed upon at the time a contract of sale is made.
- **Ascertained goods:** Existing goods that have been both specified and identified by both the parties at the time of sale.
- **Unascertained goods:** These are the goods which are not identified and agreed upon at the time when sale is made.



2. Future goods :The goods which are neither in existence nor in possession of the seller at the time of contract of sale, but will be manufactured, produced or acquired by him after making the contract.

3. Contingent goods: are the goods the acquisition of which depends upon happening and non-happening of the contingency.

Essential Elements in a Contract of Sale

- Two parties: A contract of sale is between two parties, where one party transfers goods to another party.
- Goods: The subject of the contract must be goods. This is usually the most important element in a contract of sale because if the goods are not described precisely, confusion could result.
- Transfer of ownership: Ownership of the goods must be moved from the seller to the buyer, or there should be an agreement in which the transfer of ownership is made.
- Price: The buyer in the contract must pay a price for the goods.
- A sales contract is a special type of contract. In order for it to be valid, it must contain clauses about free consent and the competency of the signing parties.
- A sale and an agreement to sell are part of a sales contract.
- No formalities. There is no particular form to define a valid contract of sale. A contract of sale can be made simply by offering and accepting.

2.2 Condition and Warranties

Condition

Meaning- A condition is a stipulation (stipulation means to demand something):-

- Which is essential to the main purpose of the contract
- The breach of condition gives the aggrieved party a right to terminate the contract, reject the goods and recover the price
- Non fulfillment of condition upsets the contract.

Example: A (buyer) told B (car dealer) that he wants to buy a car for the purpose of touring. B suggested Maruti Car to A for the same purpose.

After buying the car A realized, that the car is not suitable for the purpose. Now, here A has the right to return the car to B and receive the refund for the same.

Explanation for above mentioned example: In this example there was a condition that the car should be suitable for touring purpose. And later on buyer realized that this condition was not fulfilled/ breached. Hence, buyer has the right to terminate the contract and can recover the amount paid by him to car dealer.

Types of Conditions

- **Express Conditions**

These are conditions which are expressly incorporated/ mentioned by the parties in the contract. It can be oral or written.

- **Implied Conditions**

These are such conditions which are automatically incorporated/ applicable by the law/ conduct/ behaviour in the contract.

Various implied conditions are mentioned below:

- **Condition as to title/ ownership**
Seller has the right to sell the goods when seller has the title/ownership of the goods.
- **Condition as to sale by description**
The implied condition is that if seller is selling the goods by giving/ stating the description to the buyer then the goods must correspond with the description.

- **Condition as to sale by sample**

The implied condition is that if seller is selling the goods by giving sample to the buyer first then buyer must be supplied with goods corresponding with the sample as well for all the orders placed later on.

- **Condition as to sale by sample as well as by description**
- **Condition as to quality/ fitness**

As a normal rule buyer is responsible to examine the goods and see whether it's suitable for him or not. But when buyer specifically informs the seller about the purpose and relies on the skills and judgement of the seller so, in this case seller is responsible to provide quality product to the buyer. If seller cheats with buyer then there will be a breach of implied condition as to quality/fitness.

- **Condition as to merchantability** (means there should be no defects in the goods supplied).
- **Condition as to wholesomeness** (goods supplied should not be adulterated or goods should be suitable for consumption).

Difference between guarantee and warranty

Guarantee	Warranty
1.Promise that a particular thing will happen for sure	1.It means an assurance given (positive declaration regarding something).
2.Option for repair/ replacement/ refund is there	2.Option for repair/ replacement is there
3.Applicable to products/ services	3.Applicable to products/ products parts only

Warranties

Meaning- **A warranty is a stipulation (stipulation means to demand something):-**

- Which is not essential to the main purpose of the contract
- The breach of warranty gives the aggrieved party a right to claim for damages but not the right to reject the goods
- Even if there is breach of warranty, the main contract can be completed
- Breach of warranty can't be treated as breach of condition

Example: A (buyer) told B (shop keeper) that he wants to buy a good watch. B showed him a watch saying that it is made in Thailand. A buys the watch and later on realized that watch is made in China and not Thailand. There is breach of warranty because the stipulation made by the seller was not correct.

Explanation for above mentioned example: In this example, the main purpose was to buy a good watch by A. And there was a warranty/ assurance by the shop keeper to buyer that watch is made in Thailand and as you wanted a good watch so, you can buy the same. But, the assurance is proved to be wrong later on as the watch was made in China not Thailand. So,

here buyer gets the right to claim for the damages only and can't reject the goods.

Types of Warranties

- **Express Warranties**

Warranty which is expressly incorporated/ mentioned by the parties in the contract. It can be oral or written.

- **Implied Warranties**

These are such warranties which are automatically incorporated/ applicable by the law/ conduct/ behaviour in the contract.

An implied warranty is a lot like an assumption. For example, when you buy a new car from a car dealer, the implied warranty is that the car works. When you order a burger at a restaurant, it comes with the implied warranty that it is edible.

Various implied warranties are mentioned below:

- **Implied warranty of quiet (undisturbed) possession of goods**

Once the goods are sold to buyer then there should be no disturbance by the seller or any third party to the buyer.

- **Implied warranty to disclose the dangerous nature of the goods**

In case of selling the goods of dangerous nature to the buyer, there is an implied warranty that seller should disclose all the relevant information to the buyer. If seller fails to do the same, then seller will be liable to pay for the damages to the buyer.

Example of dangerous goods: Disinfectant, chemicals etc.

- **Implied warranty as to quality/ fitness**

An implied warranty as to the quality or the fitness for a particular purpose should be made known to the buyer in advance. Example: any damage to goods which can happen should be made known to the buyer in advance, otherwise it will be considered breach of warranty.

- **Implied warranty as to free from liability/ loan charges**

Any goods which are being sold by the seller to buyer should be free from loan/ liability.

Example: A took loan from bank for Rs. 1,00,000 by pledging the bike with bank. There was a loan going on and A sold the bike to C, here in this case there is an implied warranty that A can't sell the bike to C as the bike is not free from liability/ loan. So, C has the right to recover the damages from A.

Doctrine of Caveat Emptor (buyer is responsible for what he do)

Here, Caveat means beware and emptor means buyer. So, Caveat Emptor means buyer

beware. This concept says that let the buyer beware (alert to risks or dangers). Which means buyer is responsible for wrong selection made by him during buying something. Seller is not responsible or bound to disclose any defect in the goods i.e buyer is liable for his/ her acts.

Essentials of Doctrine of Caveat Emptor:

- It is the duty of the buyer to thoroughly examine the goods
- Buyer can't blame anyone if goods turn out to be defective or do not serve his purpose
- Seller is under no obligation to reveal defects
- There is no implied undertaking by the seller that he shall supply the goods which will suit the buyer's purpose

Exceptions to Doctrine of Caveat Emptor: (seller is responsible not the buyer)

Here, exceptions means buyer is not responsible for the actions taken. Only the seller will be responsible in below mentioned cases:

- Buyer relies on the seller's judgement regarding the quality
- Sale as sample
- Sale as per the description
- Sale by both sample as well as description
- Sale by fraud or misrepresentation
- Goods must be free from adulteration
- Goods must be of merchantable quality (there should be no defects or goods should be fit for the purpose they are bought for)

Example: Cold drinks or chocolates- If seal of the cold drink selling in the market is opened or wrapper of the chocolate is damaged. Then these goods will not be called as goods of merchantable quality.

2.3 Unpaid seller

A person who has sold goods to another person but has not been paid for the goods or been paid partially is called an unpaid seller. According to section 45 of Sale of goods act an unpaid seller is one who has been given a negotiable instrument like a bill of exchange that has been dishonored.

Who is unpaid seller?

He is the seller to whom:-

- Whole of the price is not paid
- Conditional payment

Bill of exchange/ promissory note/ cheque has been received by seller but it dishonours. Till the time bill of exchange/ promissory note/ cheque is with the seller so, till that time he is only called as seller but when any of the mentioned instruments dishonours then after this seller is called unpaid seller.

Features of an unpaid seller

- Seller must sell the goods on cash basis and must be unpaid (in cash transactions payment becomes due instantly)
- Seller must be unpaid either wholly or party
- The decided period has expired and the price has not been paid to seller
- Seller must not refuse to accept the payment
- Where the price paid through negotiable instrument (bill of exchange/ promissory note/ cheque) and the same has been dishonoured.

Example: A sells his bike to B for Rs. 60,000 and receives a cheque for the price. Till this timeseller will only be called as seller. But when subsequently, the cheque is dishonoured due to insufficiency of funds in B's bank account, then only A becomes an unpaid seller.

Rights of Unpaid Seller

(The unpaid seller has the rights/ remedies against goods and buyer both)

1. Rights of unpaid seller against goods

➤ **Right of possession/ lien**

If the buyer fails to pay the price within the decided time, then unpaid seller has the right to keep the goods in his possession and he can refuse to deliver the goods until the due payment is paid.

- ✓ When right of possession can be exercised:-
 - When goods are sold on cash basis, but payment is unpaid
 - When goods have been sold on credit basis and the term of credit has expired
 - When the buyer becomes insolvent even within the decided period for payment
 - So, far as the goods are in the possession of unpaid seller, he can exercise this right. If goods are lost/ given up then right of possession/ lien is also lost/ given up
- ✓ Termination of Right of Possession:
 - By delivery of goods to the buyer/ his agent
 - By delivery of goods to the carrier/ courier company
 - By waiver

- This means that it's specifically mentioned in the contract that seller can't retain the possession of the goods even if the price has not been paid
- When buyer has obtained the possession of goods lawfully

➤ **Right of stoppage of goods in transit**

If a buyer fails to pay the price within the decided time, then unpaid seller has the right to stop the goods in transit.

- ✓ Conditions for stoppage of goods:-
 - When seller is unpaid either wholly or partially
 - When the buyer becomes insolvent
 - Goods must be in the course of transit- This means that goods must not be in the possession of the seller and have not reached the buyer's possession as well
- ✓ Termination of Transit
 - By delivery to the buyer/ his agent
 - Interception by the buyer (Interception means the act of catching/ receiving)
 - When buyer or his agent obtains the delivery of the goods before their arrival at the appointed destination hence, the transit comes to an end
 - Acknowledgement to the buyer by the carrier/ courier company that they are holding the goods on buyer's behalf, then also transit comes to an end
 - Part delivery of goods

➤ **Right of resale**

The unpaid seller has the right to resell the goods.

Conditions for resale:

- When goods are of perishable nature
- Where unpaid seller gives the notice to buyer and buyer still don't pay for it
- Where the right of resale is reserved/ mentioned in the contract If contract clearly specifies that reselling can't be done or vice versa
- Buyer becomes insolvent
- Buyer fails to pay the price of the goods

➤ **Suit for damages for non-acceptance**

Suit can be filed against the buyer if the buyer wrongfully refuses to accept the goods.

2. Rights of unpaid seller against buyer

- Suit for price
- Suit for interest and special damages

Here, suit can be filed for interest and special damages. Where, interest will be paid on the amount of the deal between seller and buyer on the choice/ discretion of the court.

Rights (Remedies) of Buyer against Seller

- Suit for damages for non-delivery
- Suit for interest and special damages
- Suit for specific performance
- Suit for breach of contract

2.4 Contracts of Agency

The contract of agency is a contract whereby a person employs another person to represent him or to act on his behalf to deal with any third person. The person who employs another person to act on his behalf is known as the principal, and the person who is employed to act on behalf of the principal is known as an agent. The act of the agent binds the principal in the same manner as he himself has done the act.

Definition of Agent and Principal

As per section 182 of the Indian Contract Act, an agent is such a person who is employed to do any act or to represent any person in dealings with a third person. And, the principal is a person who is represented.

- The principal can authorise an agent to act on his behalf either expressly or impliedly.
- An agent is simply a connecting link between his principal and the third person.
- Although the agent is acting on behalf of the principal, he has the capacity of the principal.
- The owner acts as principal.
- The person he hires for his representation is the agent.

Two examples of principals and agents in the real world are:

- LIC company is the principal. LIC agent is an agent.
- The flat owner is the principal. Auctioneer and broker are agents.

Characteristics of Contract of Agency

The features or characteristics of a contract of agency can be learnt from sections 183 to 185 of the Indian Contract Act. A brief discussion about the characteristics of a contract of agency is given below.

1. Section 183: The Capacity of the Principal.

For the contract of agency, the principal should be competent to form a contract. That is, he must be of the age of majority (18+) and must be of sound mind. Since in a contract of agency, the agent builds a contractual relationship between the principal and the third person, it is necessary for them to be competent to contract. Read section 183 Contract Act.

2. Section 184: The Capacity of the Agent.

The capacity of an agent in the contract of agency is immaterial. Any person can become an agent between the principal and the third person. In other words, any person, minor or otherwise incompetent to contract, is competent to create a valid contract between his principal and the third person. However, an agent is not responsible to the principal if he is not competent to contract. Read section 184 Contract Act.

3. Section 185: Consideration Is Not Required.

The law does not require or mandate any consideration for the validity of a contract of agency.

An agent is generally compensated by giving commission for services provided by him. But no consideration is provided immediately at the time of his appointment. Read section 185 Contract Act.

4. Legal Binding.

The principal is legally bound to the acts done by the agent in the same manner as he has done that act himself.

2.5 Formation or Creation of Agency

The agency can be formed or created in the following ways:

- Actual power is granted to the agent to act on behalf of the principal.
- Agent's authority to act in a situation of emergency.
- Agency by the law of estoppel.
- By ratification.

Let us learn more about the above four points.

▪ Actual Power Is Granted to the Agent to Act on Behalf of the Principal.

A contract of agency may be created by conferring authority to the agent. Such authority can be either express or implied.

(a) **Express authority:** An express authority is directly granted to the agent by words, spoken or written.

(b) **Implied authority:** When the authority granted to the agent can be determined from the circumstances or necessity of the case or situations of the parties, the agency is said to be formed impliedly.

▪ **Agent's Authority to Act in a Situation of Emergency.**

According to section 189 of the Indian Contract Act, an agent has the authority to do every such act that is necessary for protecting his principal from any kind of loss at the time of emergency. For example, an agent for completing the sale can get the goods repaired for passing on to the buyer.

▪ **Agency by the Law of Estoppel.**

Sometimes the agent does not have any authority to do an act on behalf of the principal. However, the principal develops a thought in the mind of the third person that the agent has the authority to act on his behalf. And, in such cases, the principal is liable for the acts done by the agent for the third person. This is known as the creation of agency by estoppel.

▪ **By Ratification**

When an act is done by the agent on behalf of the principal, without the authority to act, the principal can either refuse from performing the liability or can ratify (authorise, give formal consent) the same. When the principal ratifies the act i.e. approves an act done without his authority, but on his behalf, he is bound towards such an act. And consequently, this creates an agency by ratification between the two.

Termination of Agency

There are various methods for the termination of the agency of an agent. These are mentioned under section 201 of the Indian Contract Act. As per this section, the agency can be terminated in the following ways:

- By revocation of the agent's authority by the principal.
- By renunciation of the business of agency by the agent.
- By the completion of the business of the agency.
- By the death of the principal or the agent or when they become of unsound mind.
- By insolvency of the principal.

2.6 Rights and duties of the Agent

Rights under the Indian Contract Act.

- Right of Retainer (Section 217).
- Right to Remuneration (Section 219 & 220).
- Right of Lien (Section 221).
- Right to Indemnity (Section 222 & 223).
- Right to Compensation (Section 225).

Duties under the Indian Contract Act.

- Duty to avoid conflict of interest (Section 215 & 216).
- Duty to maintain accounts (Section 213).
- Duty of reasonable care and skills (Section 214).
- Duty not to delegate his duties (Section 190 – 195).
- Duty to follow instructions or customs (Section 211).
- Duty to remit sums (Section 218).

Review Questions

1. Narrate the essential elements in a contract of sale.
2. Explain the different types of Conditions.
3. State the difference between guarantee and warranty
4. Discuss in detail about Doctrine of Caveat Emptor.
5. Who is Unpaid Seller? What are his rights?
6. How can the agency be created? Explain.
7. What is Agency by Ratification?
8. Enumerate the Rights and duties of agent.

UNIT III

The Companies Act, 1956

3.1 The Companies Act, 1956

3.2 Types of Companies

3.3 Company formation

3.4 Memorandum of Association (MoA)

3.5 Articles of Association (AOA) of a Company

3.6 Appointment of Directors

3.7 Board Meetings

3.1 The Companies Act, 1956

The Companies Act of 1956 established the duties of companies, their directors, and secretaries while allowing for the establishment of new companies. It explains what a company is and the several forms that can be created, such as public, private, holding, subsidiary, limited by shares, and unlimited firms. The Ministry of Corporate Affairs and the Offices of the Registrar of Companies, Official Liquidators, Public Trustee, Company Law Board, Director of Inspection, etc., are responsible for its administration on behalf of the Government of India.

The Companies Act of 1956 gives the Central Government the authority to examine a company's books of accounts, to order a special audit, to order an investigation into a company's operations, and to bring legal action for violations of the Companies Act of 1956. The Companies Act of 1956 describes the entire process of how to form a company, including the fee procedure, name, charter, members, and purpose of the company. It also covers the share capital, general board meetings, management, and administration of the firm.

Objectives

- A minimal bar of good behaviour and business honesty in company promotions and management.
- Having due regard for the rights of shareholders and creditors, as well as the obligation of management not to impair or threaten those rights.
- Provision for shareholders to have more effective control over and participation in management.
- A fair and accurate picture of a company's financial situation that is presented in its annual balance sheet and profit and loss reports.
- Proper accounting and auditing standards.
- Acknowledgement of the shareholders' rights to reasonable information and the ability to make informed decisions about the management.
- A cap on the portion of profits that can be paid to management as remuneration for services.
- A review of their transactions to look for potential conflicts of interest and responsibility.
- A clause that allows for an investigation of any business that is run unfairly against some shareholders or the interests of the business overall.
- Management of public firms and private companies that are subsidiaries of public

companies must enforce the fulfillment of their tasks by imposing consequences in the event of a violation and subjecting the latter to the more stringent legal requirements that apply to public companies.

3.2 Types of Companies

A company is a legal entity formed by a group of individuals to engage in and operate a business enterprise in a commercial or industrial capacity. A company's business line depends on its structure, which can range from a partnership to a proprietorship, or even a corporation. It defined below.

Companies on the Basis of Liabilities

- Companies Limited by Shares
- Companies Limited by Guarantee
- Unlimited Companies

Companies on the Basis of Members

- One Person Companies
- Private Companies
- Public Companies

Companies on the Basis of Control

- Holding and Subsidiary Companies
- Associate Companies

Companies on the Basis of Liabilities

When we look at the liabilities of members, companies can be limited by shares, limited by guarantee or simply unlimited.

a) Companies Limited by Shares

Sometimes, shareholders of some companies might not pay the entire value of their shares in one go. In these companies, the liabilities of members is limited to the extent of the amount not paid by them on their shares.

This means that in case of winding up, members will be liable only until they pay the remaining amount of their shares.

b) Companies Limited by Guarantee

In some companies, the memorandum of association mentions amounts of money that some members guarantee to pay.

In case of winding up, they will be liable only to pay only the amount so guaranteed. The company or its creditors cannot compel them to pay any more money.

c) Unlimited Companies

Unlimited companies have no limits on their members' liabilities. Hence, the company can

use all personal assets of shareholders to meet its debts while winding up. Their liabilities will extend to the company's entire debt.

Companies on the basis of members

a) One Person Companies (OPC)

These kinds of companies have only one member as their sole shareholder. They are separate from sole proprietorships because OPCs are legal entities distinct from their sole members. Unlike other companies, OPCs don't need to have any minimum share capital.

b) Private Companies

Private companies are those whose articles of association restrict free transferability of shares. In terms of members, private companies need to have a minimum of 2 and a maximum of 200. These members include present and former employees who also hold shares.

c) Public Companies

In contrast to private companies, public companies allow their members to freely transfer their shares to others. Secondly, they need to have a minimum of 7 members, but the maximum number of members they can have is unlimited.

Companies on the basis of Control or Holding

In terms of control, there are two types of companies.

a) Holding and Subsidiary Companies

In some cases, a company's shares might be held fully or partly by another company. Here, the company owning these shares becomes the holding or parent company. Likewise, the company whose shares the parent company owns becomes its subsidiary company.

Holding companies exercise control over their subsidiaries by dictating the composition of their board of directors. Furthermore, parent companies also exercise control by owning more than 50% of their subsidiary companies' shares.

b) Associate Companies

Associate companies are those in which other companies have significant influence. This "significant influence" amounts to ownership of at least 20% shares of the associate company.

The other company's control can exist in terms of the associate company's business decisions under an agreement. Associate companies can also exist under joint venture agreements.

Other Types of Companies

a) Government Companies

Government companies are those in which more than 50% of share capital is held by either the central government, or by one or more state government, or jointly by the central government and one or more state government.

b) Foreign Companies

Foreign companies are incorporated outside India. They also conduct business in India using a place of business either by themselves or with some other company.

c) Charitable Companies (Section 8)

Certain companies have charitable purposes as their objectives. These companies are called Section 8 companies because they are registered under Section 8 of Companies Act, 2013. Charitable companies have the promotion of arts, science, culture, religion, education, sports, trade, commerce, etc. as their objectives. Since they do not earn profits, they also do not pay any dividend to their members.

d) Dormant Companies

These companies are generally formed for future projects. They do not have significant accounting transactions and do not have to carry out all compliances of regular companies.

e) Nidhi Companies

A Nidhi company functions to promote the habits of thrift and saving amongst its members. It receives deposits from members and uses them for their own benefits.

f) Public Financial Institutions

Life Insurance Corporation, Unit Trust of India and other such companies are treated as public financial institutions. They are essentially government companies that conduct functions of public financing.

3.3 Company formation

Steps required for the formation of a company

The followings steps are essential for the formation of a Company. They are

- Name of a Company & Location of the registered address of the said Company.
- The amount and forms of its capital
- Preparation of Memorandum of Association (MOA) u/s 4 and Article of Association(AOA) u/s 5.
- Registration of the Company according to the provision of the Act, 2007. (Sec. 7)
- The capital subscription must be raised and thereafter the allotment of shares must be made.
- The prospectus must be issued and registered with the Registrar.

- To arrange for loans and other financial assistance from various financial institutions.
- To obtain certificate of Incorporation (FORM NO. INC 11) of the business from the Registrar.

3.4 Memorandum of Association (MoA)

A Memorandum of Association (MoA) represents the charter of the company. It is a legal document prepared during a company's formation and registration process. The company's entire structure is written down in a detailed manner in the MoA. It defines the company's relationship with shareholders and specifies the objectives for which the company has been formed. The company can undertake only those activities mentioned in the Memorandum of Association.

The Memorandum of Association is a public document. Any person can get the MoA of the company by paying the prescribed fees to the ROC. Thus, it helps the shareholders, creditors and any other person dealing with the company to know the basic rights and powers of the company before entering into a contract with it. Also, the contents of the MoA help by the prospective shareholders make the right decision while considering investing in the company. MoA must be signed by at least 2 subscribers in the case of a private limited company and 7 members in the case of a public limited company.

Contents of Memorandum of Association

Every company's MOA should contain the following five clauses:

- Name clause
- Registered office clause
- Object clause
- Liability clause
- Capital clause

The memorandum of association clauses/contents are as follows:

1. Name Clause:

This clause specifies the name of the company. The name of the company should not be identical to any existing company. Also, if it is a private company, then it should have the word 'Private Limited' at the end. In the case of a public company, then it should add the word "Limited" at the end of its name. For example, ABC Private Limited in the case of the private, and ABC Ltd for a public company. The name should be in compliance with the provisions laid down in the Companies Act and Rules.

2. Registered Office Clause:

This clause specifies the name of the State in which the registered office of the company is situated. It helps to determine the jurisdiction of the Registrar of Companies. The company must inform the registered office location and address to the Registrar of Companies within 30 days from the date of incorporation or commencement of the company. The registered office is the official office of the company. All communications, legal notices and documents will be sent to the registered office address.

3. Object Clause:

This clause states the objective with which the company is formed. The company must carry out its business activities to fulfill the objectives mentioned in this clause. It helps to protect the interests of the stakeholders since the company must operate within the scope of its object clause and should not engage in any activities not specified in this clause. The objectives can be further divided into the following three subcategories:

- Main Objective: It states the main business of the company
- Incidental Objective: These are the objects ancillary to the attainment of main objects of the company
- Other objectives: Any other objects which the company may pursue and are not covered in above (a) and (b)

4. Liability Clause:

It states the nature of liability of the members of the company in case of any loss or debts incurred by it. In the case of an unlimited company, the liability of the members is unlimited. Whereas, in the case of a company limited by shares, the liability of the members is restricted by the amount unpaid on their share. For a company limited by guarantee, the liability of the members is restricted by the amount each member has agreed to contribute.

5. Capital Clause:

This clause details the maximum capital a company can raise, also called the authorized/nominal capital of the company. It provides the maximum amount of capital that can be issued to the company shareholders. It also explains the division of such capital amount into the number of shares of a fixed amount each. It should also specify the type of shares the company is authorised to issue, i.e. equity shares, preference shares, or debentures.

3.5 Articles of Association (AOA) of a Company

The Articles of Association (AOA) of the company contains its rules or bye-laws and regulations that control or govern the conduct of its business and manage its internal affairs.

The AOA is subordinate to the MOA of a company and is governed by the MOA. Every company must have an AOA as it plays a vital role in defining its internal rights, workings, management and duties. The contents of AOA should be in sync with the MoA and the Companies Act, 2013.

Contents of AOA

- Details regarding the share capital
- Details of director's qualification, appointment, powers, remuneration, duties etc.
- Rules regarding company dividends and reserves
- Details regarding company accounts and audit
- Provisions relating to the company's borrowing powers
- Provisions relating to conducting meetings
- Process of winding up of the company

Details included in AOA

If a company's constitution contains any restrictions on the objects at all, those restrictions will form part of the articles of association. The Articles of Association also include, among other details:

- Liability of members
- Directors' powers and responsibilities
- Directors' meetings, voting, delegation to others and conflicts of interest
- Retaining records of directors' decisions
- Appointment and removal of directors
- Shares, unless a limited by guarantee company:
 - ❖ issuing shares
 - ❖ different and their particulars
 - ❖ share certificates
 - ❖ share transfers
- Dividends and other distributions to members
- Members' decision making and attendance at general meetings
- Means of communication
- Use of the company seal, if applicable
- Directors' indemnity and insurance.

3.6 Appointment of Directors

Director is someone elected by the company shareholders to manage the company affairs as per the Memorandum of Association (MOA) and Articles of Association (AOA). The person wishing to be a director must have a Digital Signature Certificate (DSC) and Director Identification Number (DIN).

Any person above 21 years can become a director of a company. The AOA of a company should contain provisions for adding a director. The Companies Act, 2013 prescribes the procedure that a company must follow to add a new director. A private company should have a minimum of two directors at all times. However, the company can have a maximum of only fifteen directors.

Documents Required for appointing a Director

- PAN card of the director
- Identification proof, such as Voter ID, driving license, Aadhaar card, etc
- Proof of residence, such as utility bills, rental agreement, etc
- Passport size photograph
- Digital Signature Certificate (DSC)
- Why Add/Change Directors

Why a company may want to add or change directors:

- Get new talent on the company board
- Prevent dilution of ownership
- The inefficiency of existing directors
- Meeting the statutory limit

Duties of a director

- Act within powers.
- Promote the success of the company.
- Exercise independent judgment.
- Exercise reasonable care, skill and diligence.
- Avoid conflicts of interest (a conflict situation)
- Not accept benefits from third parties.
- Declare interests in proposed or existing transactions or arrangements with the company.

3.7 Board Meetings

The board of directors is the supreme authority in a company and they have the powers to take all major actions and decisions for the company. The board is also responsible for managing the affairs of the whole company.

For the effective functioning and management, it is imperative that board meetings be held at frequent intervals. For this, Section 173 of Companies Act, 2013 provides –

- In the case of a Public Limited Company, the first board meeting has to be held within the first 30 days, since the incorporation date. Additionally, a minimum of 4 board meetings must be held in a span of one year. Also, there cannot be a gap of more than 120 days between two meetings.
- In the case of small companies or one person company, at least two meetings must be conducted, one in each half of the financial year. Additionally, the gap between the two meetings must be at least 90 days. In a situation where the meeting is held at a short notice, at least one independent director must be attending the meeting.

Requirements for Conducting a Valid Board Meeting

- **Right Convening Authority**

The board meeting must be held under the direction of proper authority. Usually, the company secretary (CS) is there to authorize the board meeting. In case the company secretary is unavailable, the predetermined authorized person shall act as the authority to conduct the board meeting.

- **Adequate Quorum**

The proper requirements of the quorum or the minimum number of Directors required to conduct a Board meeting must be present for it to be considered a valid board meeting.

- **Proper Notice**

Proper notice is one of the major requirements to be fulfilled when planning a board meeting. Formal notice has to be served to all members before conducting a board meeting.

- **Proper Presiding Officer**

The meeting must always be conducted in the presence of a chairman of the board.

- **Proper Agenda**

Every board meeting has a set agenda that must be followed. The agenda refers to the topic of discussion of the board meeting.

- **Resolution**

A resolution is a legally binding agreement or decision made by company members or directors. The outcome of a resolution is determined by the votes cast for and against the decision. If the required majority is reached, the resolution is 'passed'.

It is a formal statement of opinion or a decision to take an action. In judicial proceedings, “resolution” means a judgment or decision of the court. There are two types of resolutions: ordinary and special.

- **Winding up**

Winding up is the process by which a company's assets are collected and sold to pay off its debts. Any monies remaining after all debts, expenses and costs have been paid off are distributed amongst the company's shareholders. The company will be dissolved and will no longer exist after winding up.

There are two ways in which a company may be wound up: by the company voluntarily (voluntary winding up), or by the court (compulsory winding up). Conceptually there is no relationship at all between how a winding up commences and whether the company is solvent or insolvent.

The MVL(Members’ Voluntary Liquidation) process

- Engage the services of a professional Insolvency Practitioner to advise and oversee the process
- Convene a board meeting to discuss voluntary liquidation as an option
- The majority of directors sign a Declaration of Solvency – this is confirmation that the company can repay all its debts within 12 months of the liquidation date
- A Liquidator is appointed at an Extraordinary General Meeting with shareholders, at which a resolution is passed to wind up the company if 75% of shareholders (by value) are in agreement
- The Liquidator sells company assets, pays all creditors in full and distributes any remaining capital amongst shareholder

Review questions

1. What is a company? How are companies classified?
2. Explain the objectives of Companies Act, 1956.
3. Enumerate the Steps required for the formation of a company.

4. Narrate the Contents/Clauses of Memorandum of Association.
5. State the Articles of Association (AOA) of a Company.
6. What are the Documents Required for appointing a Director
7. State the Duties of a director.
8. Spell out the Requirements for Conducting a Valid Board Meeting.

UNIT IV
Consumer Protection Act

4.1 Consumer Rights

4.2 Consumer protection

4.3 The Consumer Protection Act, 1986 (COPRA)

4.4 Right to Information Act (RTI)

4.5 Other legal measures related to consumer protection

4.1 Consumer Rights

Consumption is the name given to a set of rules aimed at protecting the consumer or user of goods and services, providing certain rights and obligations.

Definition of consumer rights

Consumer right is 'the right to have information about the quality, potency, quantity, purity, price and standard of goods or services', as it may be the case, but the consumer is to be protected against any unfair practices of trade. It is very essential for the consumers to know these rights.

Consumer rights in India

- The right to be protected from all kind of hazardous goods and services
- The right to be fully informed about the performance and quality of all goods and services
- The right to free choice of goods and services
- The right to be heard in all decision-making processes related to consumer interests
- The right to seek redressal, whenever consumer rights have been infringed
- The right to complete consumer education

Consumer Rights

Six rights of the consumers under Consumer Protection Act are given below.

❖ Right to Safety:

This is the first and the most important of the Consumer Rights. They should be protected against the product that hampers their safety. The protection must be against any product which could be hazardous to their health – Mental, physical or many of the other factors.

❖ Right to Information:

They should be informed about the product. The product packaging should list the details which should be informed to the consumer and they should not hide the same or provide false information.

❖ Right to Choose:

They should not be forced to select the product. A consumer should be convinced of the product he is about to choose and should make a decision by himself. This also means consumer should have a variety of articles to choose from monopolistic practices are not legal.

❖ **Right to Heard:**

If a consumer is dissatisfied with the product purchased then they have all the right to file a complaint against it. And they said complaint cannot go unheard, it must be addressed in an appropriate time frame.

❖ **Right to Seek Redressal:**

In case a product is unable to satisfy the consumer then they have the right to get the product replaced, compensate, and return the amount invested in the product. We have a three- tier system of redressal according to the consumer protection act 1986.

❖ **Right to Consumer Education:**

Consumer has the right to know all the information and should be made well aware of the rights and responsibilities of the government. Lack of Consumer awareness is the most important problem our government must solve.

❖ **Right to Receive After-Sale Service:**

It is essential in costly and durable goods i.e., mechanical and electrical/electronic appliances.

✓ **Freedom from Pollution:**

It is the latest addition to consumer bill of rights. Community life should be free from various modes of pollution. This will enhance the quality of human life.

Consumer protection means protecting the rights of consumers. It also helps to protect fair trade competition and truthful information in a market economy. Various laws and organisations are designed to do this. The laws are designed to stop companies using unfair practices to gain an advantage over their competitors.

4.2 Consumer protection

Consumer protection is the practice of safeguarding buyers of goods and services, and the public, against unfair practices in the marketplace. Consumer protection measures are often established by law. Such laws are intended to prevent businesses from engaging in fraud or specified unfair practices to gain an advantage over competitors or to mislead consumers. They may also provide additional protection for the general public which may be impacted by a product (or its production) even when they are not the direct purchaser or consumer of that product. For example, government regulations may require businesses to disclose detailed information about their products particularly in areas where public health or safety is an issue, such as with food or automobiles.

Need for consumer protection

- Protection of consumers from hazards to their health and safety;
- Promotion and protection of the economic interests of consumers;
- Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- Consumer education, including education on the environmental, social and economic impacts of consumer choice;
- Availability of effective consumer redress;
- Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them;
- Promotion of sustainable consumption patterns.

How to protect the consumer/Importance of Consumer Protection:

- ✓ The consumer should be educated on their rights and responsibilities
- ✓ Their grievances should be redressed
- ✓ The judicial body requires to provide them with the justice.
- ✓ **To shape Consumers-** Indian customers are not well-organised and vendors exploit them easily.
- ✓ **Impart Market Information-** Most of the consumer is clueless and have no information about the product they are buying and this might cause them losses.
- ✓ **Physical Safety-** Some products are adulterated and can hamper consumer health. So, they need to be protected.
- ✓ **Avert Monopoly-** Irrespective of different restriction many organisations follow monopoly practice and consumers get influenced and should be protected.
- ✓ **Malpractices-** Company pursues biased trade practices and unlawful trade practices and this protection plays a crucial role.
- ✓ **Misleading advertisement-** Many enterprises, intentionally trick consumers through incorrect or deceptive advertisements. This act will shield consumers from getting exploited.
- ✓ **Education Consumers about their Basic Rights-** Most consumers ignore or don't know about their rights. The Consumer Protect Act educates them and secures their rights and interests.

4.3 The Consumer Protection Act, 1986 (COPRA)

It is an Act of the Parliament of India enacted in 1986 to protect the interests of consumers in India. It is replaced by The Consumer Protection Act 2019. It is made for the establishment of consumer councils and other authorities for the settlement of consumer's grievances and matters connected therewith it. The act was passed in Assembly in October 1986 and came into force on December 24, 1986.

Objectives

- ✓ The right to be protected against marketing of goods which are hazardous to life and property;
- ✓ The right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
- ✓ The right to be assured, wherever possible, access to an authority of goods at competitive prices;
- ✓ The right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
- ✓ The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
- ✓ Right to consumer education

Three tier consumer grievances machinery under the Consumer protection act

▪ District Forum:

District forum consists of a president and two other members. The president can be a retired or working judge of District Court. They are appointed by state government. The complaints for goods or services worth Rs 20 lakhs or less can be filed in this agency.

The agency sends the goods for testing in laboratory if required and gives decisions on the basis of facts and laboratory report. If the aggrieved party is not satisfied by the jurisdiction of the district forum then they can file an appeal against the judgment in State Commission within 30 days.

▪ State Commission:

It consists of a president and two other members. The president must be a retired or working judge of high court. They all are appointed by state government. The complaints for the goods worth more than Rs 20 lakhs and less than Rs 1 crore can be filed in State Commission on receiving complaint the State commission contacts the party against whom the complaint

is filed and sends the goods for testing in laboratory if required. In case the aggrieved party is not satisfied with the judgment then they can file an appeal in National Commission within 30 days.

▪ **National Commission:**

The national commission consists of a president and four members one of whom shall be a woman. They are appointed by Central Government. The complaint can be filed in National Commission if the value of goods exceeds Rs 1 crore. On receiving the complaint the National Commission informs the party against whom complaint is filed and sends the goods for testing if required and gives judgment? If aggrieved party is not satisfied with the judgment then they can file a complaint in Supreme Court within 30 days.

Features or Key points of consumer protection act

The Consumer Protection Act covers all public, private and cooperative sectors. This applies to all the goods and services until and unless the Union government exempts it. Provisions of the Consumer Protection Act are compensatory in nature.

District Forum:

- Each District has a District Forum.
- District Forum consists of three members.
- Out of the three, one is President, who is or has been or is qualified to be a District Judge.
- One of the members shall be a woman.
- It entertains complaints where the value of claim is up to Rs. 20 Lakhs.

State Commission:

- Each state has one State Commission.
- It consists of a President, who is or has been a Judge of a High Court and two other members, one of whom shall be a woman.
- Complaints can be filed in State Commission where the value of claim is above Rs. 20 Lakhs up to Rupees one Crore.
- Appeals against the Orders of the District Forums can also be filed in the State Commission.

National Commission:

- The National Commission is located in Delhi.
- It consists of a President who is or has been a Judge of the Supreme Court and not less than four other members, one of whom shall be a woman.

- Complaints for value of claim exceeding rupees one crore can be filed in the National Commission. It takes appeals against Orders passed by the State Commissions.
- The Orders of this Commission can only be challenged in the Supreme Court.

4.4 Right to Information Act (RTI)

The Right to Information

The right to information is a fundamental right under Article 19 (1) of the Indian Constitution. In 1976, in the Raj Narain vs the State of Uttar Pradesh case, the Supreme Court ruled that Right to information will be treated as a fundamental right under article 19. The Supreme Court held that in Indian democracy, people are the masters and they have the right to know about the working of the government. Thus the government enacted the Right to Information act in 2005 which provides machinery for exercising this fundamental right.

The act is one of the most important acts which empower ordinary citizens to question the government and its working. This has been widely used by citizens and media to uncover corruption, progress in government work, expenses-related information, etc.

The primary goal of the Right to Information Act is to empower citizens, promote openness and accountability in government operations, combat corruption, and make our democracy truly function for the people. It goes without saying that an informed citizen is better equipped to keep a required track on governance instruments and hold the government responsible to the governed. The Act is a significant step in informing citizens about the activities of the government.

All constitutional authorities, agencies, owned and controlled, also those organisations which are substantially financed by the government comes under the purview of the act. The act also mandates public authorities of union government or state government, to provide timely response to the citizens' request for information.

The act also imposes penalties if the authorities delay in responding to the citizen in the stipulated time.

What type of information can be requested through RTI?

- The citizens can seek any information from the government authorities that the government can disclose to the parliament.
- Some information that can affect the sovereignty and the integrity of India is exempted from the purview of RTI.

- Information relating to internal security, relations with foreign countries, intellectual property rights (IPR), cabinet discussions are exempted from RTI.

Objectives of the RTI Act

- Empower citizens to question the government.
- The act promotes transparency and accountability in the working of the government.
- The act also helps in containing corruption in the government and work for the people in a better way.
- The act envisages building better-informed citizens who would keep necessary vigil about the functioning of the government machinery.

Important provisions under the Right to Information Act, 2005

- Section 2(h): Public authorities mean all authorities and bodies under the union government, state government or local bodies. The civil societies that are substantially funded, directly or indirectly, by the public funds also fall within the ambit of RTI.
- Section 4 1(b): Government has to maintain and proactively disclose information.
- Section 6: Prescribes a simple procedure for securing information.
- Section 7: Prescribes a time frame for providing information(s) by PIOs.
- Section 8: Only minimum information exempted from disclosure.
- Section 8 (1) mentions exemptions against furnishing information under the RTI Act.
- Section 8 (2) provides for disclosure of information exempted under the Official Secrets Act, 1923 if the larger public interest is served.
- Section 19: Two-tier mechanism for appeal.
- Section 20: Provides penalties in case of failure to provide information on time, incorrect, incomplete or misleading or distorted information.
- Section 23: Lower courts are barred from entertaining suits or applications. However, the writ jurisdiction of the Supreme Court of India and high courts under Articles 32 and 226 of the Constitution remains unaffected.

Significance of the RTI Act

- The RTI Act, 2005 empowers the citizen to question the secrecy and abuse of power practised in governance.
- It is through the information commissions at the central and state levels that access to such information is provided.

- RTI information can be regarded as a public good, for it is relevant to the interests of citizens and is a crucial pillar for the functioning of a transparent and vibrant democracy.
- The information obtained not only helps in making government accountable but also useful for other purposes which would serve the overall interests of the society.
- Every year, around six million applications are filed under the RTI Act, making it the most extensively used sunshine legislation globally.
- These applications seek information on a range of issues, from holding the government accountable for the delivery of basic rights and entitlements to questioning the highest offices of the country.
- Using the RTI Act, people have sought information that governments would not like to reveal as it may expose corruption, human rights violations, and wrongdoings by the state.
- The access to information about policies, decisions and actions of the government that affect the lives of citizens is an instrument to ensure accountability.
- The Supreme Court has, in several judgments, held that the RTI is a fundamental right flowing from Articles 19 and 21 of the Constitution, which guarantee to citizens the freedom of speech and expression and the right to life, respectively.

Recent Amendments

- The RTI amendment Bill 2013 removes political parties from the ambit of the definition of public authorities and hence from the purview of the RTI Act.
- The draft provision 2017 which provides for closure of case in case of death of applicant can lead to more attacks on the lives of whistleblowers.
- The proposed RTI Amendment Act 2018 is aimed at giving the Centre the power to fix the tenures and salaries of state and central information commissioners, which are statutorily protected under the RTI Act. The move will dilute the autonomy and independence of CIC.
- The Act proposes to replace the fixed 5-year tenure with as much prescribed by the government.

Criticism of RTI Act

- One of the major set-back to the act is that poor record-keeping within the bureaucracy results in missing files.

- There is a lack of staffing to run the information commissions.
- The supplementary laws like the Whistle Blower's Act are diluted, this reduces the effect of RTI law.
- Since the government does not proactively publish information in the public domain as envisaged in the act and this leads to an increase in the number of RTI applications.
- There have been reports of frivolous RTI applications and also the information obtained has been used to blackmail the government authorities.

4.5 Other legal measures related to consumer protection

The Consumer Protection Act, 1986

In this, it protects the right of the consumer and makes user aware of their rights. They have developed or formed three-tier system wherein there is District Forums, state Commission, and National Commission thus to protect the right of the consumer.

Indian Contract Act, 1972

They lay down the conditions in which the parties promise each other of the services to be provided and agree on certain terms. The contract is made that is binding on each other. They protect the interest that the contract is not breached and in case if breached the remuneration to be provided.

The Sales of Good Act, 1930

To ensure the consumer rights in case the goods offered to the consumer is not up to the standard which was promised and the false claim was made.

The Essential Commodities Act, 1955

To keep track of the commodities which are essential and monitor their production and supply Also keep a track of any hoarders, black marketers,

The Agricultural Produce Act, 1937

To implement the grading standard and hence monitoring the same whether standard checks are been done to issue the grading. In this, AGMARK is the standard introduced for agricultural goods.

The Prevention of Food Adulteration Act, 1954

This act makes sure the purity of the food items and the health of the consumers which could be affected by the adulterated items.

The Standards of Weights and Measures Act, 1976

The Standards of Weights and Measures Act protects the right against the goods which is underweight or under measured.

The Trade Marks Act, 1999

This act protects users from false marks which could mislead the consumer and hence cheat them in the ground of quality of the product.

The Competition Act, 2002

The Competition Act replaced from the Monopolies and the Restrictive Trade Practices Act following to take action against the firms which use such practice which in turn affect the competition in the market.

The Bureau of Indian Standards Act, 1986

The Bureau of Indian Standards Act ensures about the quality of the product to be used by the consumer and have introduced BIS Mark to certify the quality of the product and have set up grievance cell which can take complaints regarding the quality of the product.

Review questions

1. Explain the need for consumer protection.
2. What are the rights of the consumers under Consumer Protection Act 1986 in India?
3. How to protect the consumer? Explain.
4. What are the Objectives of Consumer Protection Act, 1986?
5. Discuss in detail about the three tier consumer grievances machinery under the Consumer protection act.
6. explain the Objectives of the RTI Act
7. State the important provisions under the Right to Information Act, 2005.
8. Narrate the significance of the RTI Act.

UNIT IV
Cyber laws

5.1 Cyber Law

5.2 Cyber Crimes

5.3 Information Technology Act 2000

5.4 Information Technology Amendment Act 2008 (IT Act 2008)

5.1 Cyber Law

Any laws or regulations which involve how people use Smartphone, computers, and other related technology is nothing but called CyberLaw. It is also called a digital law. As digital technologies changes, electronic communication changes too.

The term cyber or cyberspace has today come to signify everything related to computers, the Internet, websites, data, emails, networks, software, data storage devices (such as hard disks, USB disks etc) and even Airplanes, ATM machines, Baby monitors, Biometric devices, Bitcoin wallets, Cars, CCTV cameras, Drones, Gaming consoles, Health trackers, Medical devices, Power plants, Self-aiming rifles, Ships, Smart-watches, Smartphones & more.

Meaning of cyber law

Cyber law is the law governing cyber space. cyber space includes computers, networks, softwares, data storage devices such as hard disks and USB disks etc the internet, websites, emails and even electronic devices such as cell phones, ATM machines etc.

The need for cyber law

“The modern thief can steal more with a computer than with a gun. Tommarow ‘s terrorist may be able to do more damage with a keyboard than with a bomb.”

(National research council, USA”computers at risk”.1991)

- Internet has dramatically changed the way we think, the way we govern, the way we do commerce and the way we perceive ourselves,
- Information technology is encompassing all walks of life all over the world.
- Cyber space creates moral, civil and criminal wrongs. It has now given a new way to express criminal tendencies.
- It has brought transition from paper to paperless world.
- Internet requires an enabling and supportive legal infrastructure in tune with the time.
- Cyberspace is open to participation by all.
- The laws of real world cannot be interpreted in the light of emerging cyberspace to include all aspects relating to different activities in cyberspace.

Scope of cyber law

The scope of cyber law is huge in now a day. Due to large scale use of internet technology the cyber space has also become a place to conduct malicious activities like as-

- Electronic commerce

The term electronic commerce or E-commerce is used to refer to electronic data used in commercial transactions. Electronic commerce laws usually address issues of data authentication by electronic and/digital signatures.

- Electronic Records

Electronic record means data, record or data generated, images or sound stored, received or sent in an electronic form or micro film and etc. An electronic record shall be attributed the originator:

- if it was sent by the originator himself.
- By a person who had the authority to act on behalf of the originator in respect of that electronic record.
- By an information system programmed by or on behalf of the originator to operate automatically.

- Electronic and Digital Signature-

Electronic records are used to authenticate electronic records. and digital signature are one type of electronic signatures. Digital signature satisfies three major legal requirements.

- Signer authentication
- Message authentication
- Message integrity

The technology and efficiency of digital signature makes them more trustworthy than hand written signature.

5.2 Cyber Crimes

The computer may be used in various activities such as; sale of illegal articles (like weapons, wildlife, and Narcotics), financial crimes like EFT frauds, credit card frauds, online gambling, virus attack, web jacking, pornography, salami attacks, forgery, e-mail spoofing, service attack, denial of service attack, cyber terrorism, cyber defamation, cyber stalking, etc. The Indian Cyber Law, as well as the Indian Cyber Police, helps to protect all sorts of things.

- Any crime with the help of computer and telecommunication technology
- Any crime where either the computer is used as an object or subject.

Categories of cyber crime:-

- **Cybercrime against person** (cyber stalking, impersonation, loss of privacy, transmission of obscene material, harassment with the use of computer)

- **Cybercrime against property** (unauthorized computer trespassing, computer vandalism, transmission of harmful programmes, siphoning of funds from financial institutions,stealing secret information and data, copy right)
- **Cybercrime against government** (hacking of government website, cyber extortion, cyber terrorism, computer viruses)
- **Some other crimes** (logic bomb, spamming, virus worms, trojan horse, e-mail bombing, e-mail abuse etc.)

Intellectual Property

Intellectual property refers to creations of the human mind e.g. a book, a story, a song, a painting, a design, a domain name etc. The facets of intellectual property that relate to cyber space are covered by cyber law. These include

- Copyright law relating to computer software, source code, websites, cell phone content etc.
- Software and sources code licenses.
- Trademark law with relation to domain names, mirroring, linking, meta tags, framing etc.
- Patent law in relation to computer hardware and software.

Data protection and privacy laws

Data protection and privacy laws aim to achieve a fair balance between the privacy rights of the individual and the interests of data controllers such as bank, hospitals, email service providers etc. These laws seek to address the challenges to privacy caused by collecting, storing and transmitting data using new technologies.

Reasonable Security Practices

- ❖ Site certification
- ❖ Security initiatives
- ❖ Awareness Training
- ❖ Conformance to Standards, certification
- ❖ Policies and adherence to policies
- ❖ Policies like password policy, Access Control, email Policy etc
- ❖ Periodic monitoring and review.

List of offences and sections

Section 66

Computer related offences are dealt with under this Section.

Section 66A

Sending offensive messages thro communication service, causing annoyance etc through an electronic communication or sending an email to mislead or deceive the recipient about the origin of such messages (commonly known as IP or email spoofing) are all covered here. Punishment for these acts is imprisonment upto three years or fine.

Section 66B

Dishonestly receiving stolen computer resource or communication device with punishment upto three years or one lakh rupees as fine or both.

Section 66C

Electronic signature or other identity theft like using others' password or electronic signature etc. Punishment is three years imprisonment or fine of one lakh rupees or both.

Section 66D

Cheating by personation using computer resource or a communication device shall be punished with imprisonment of either description for a term which extend to three years and shall also be liable to fine which may extend to one lakh rupee.

Section 66E - Privacy violation

Publishing or transmitting private area of any person without his or her consent etc. Punishment is three years imprisonment or two lakh rupees fine or both.

Section 66F - Cyber terrorism

Intent to threaten the unity, integrity, security or sovereignty of the nation and denying access to any person authorized to access the computer resource or attempting to penetrate or access a computer resource without authorization. Acts of causing a computer contaminant (like virus or Trojan Horse or other spyware or malware) likely to cause death or injuries to persons or damage to or destruction of property etc. come under this Section. Punishment is life imprisonment.

Section 67

-deals with publishing or transmitting obscene material in electronic form. The earlier Section in ITA was later widened as per ITAA 2008 in which child pornography and retention of records by intermediaries were all included.

Section 67-A

-deals with publishing or transmitting of material containing sexually explicit act in electronic form. Contents of Section 67 when combined with the material containing sexually explicit material attract penalty under this Section. **Child Pornography** has been exclusively dealt with under Section 67B.

Section 67C

- fixes the responsibility to intermediaries that they shall preserve and retain such information as may be specified for such duration and in such manner as the Central Government may prescribe. Non-compliance is an offence with imprisonment upto three years or fine.

Section 69

This is an interesting section in the sense that it empowers the Government or agencies as stipulated in the Section, to intercept, monitor or decrypt any information generated, transmitted, received or stored in any computer resource, subject to compliance of procedure as laid down here.

Section 69A

-inserted in the ITAA, vests with the Central Government or any of its officers with the powers to issue directions for blocking for public access of any information through any computer resource, under the same circumstances as mentioned above.

Section 69B

-discusses the power to authorise to monitor and collect traffic data or information through any computer resource.

Steps for preventing a cybercrime

No doubt that the cyber security laws or cyber laws in India provide protection from cybercrime. However, prevention is always better than cure. Therefore, one should take the following steps for preventing a cybercrime:

- **Unsolicited text message** - We all get text messages from an unknown number. One should be cautious and try to avoid responding to text messages or automated voice messages from an unknown number.
- **Downloads on the mobile phone** - Download everything on the mobile phone from a trustworthy source only.
- **Rating and feedback** - Always check for the seller's rating and feedback of customers for the seller. Be sure that you are checking current feedbacks. Also, beware of feedbacks that are 100% seller favoring or have an entry on the same date.

- **Personal Information Request** - Everyone must have received a call or mail. In which, the person on the other side asks for personal information. This includes your card CVV or an mail containing an attachment, which requires you to click on embedded links. Be sure to never respond to such emails or calls.

Advantages of Cyber Laws

- Secured E-Commerce Infrastructure for online businesses.
- Digitally sign your contracts/ papers
- Introduced new businesses for Certifying Authorities
- Proficient use of E-Forms as prescribed
- Secured websites with Digital Certificates
- Meticulous monitoring on the web traffics
- Electronic Transactions safeguarded
- Emails are a legal form of communication and are approved in the court of law.

5.3 Information Technology Act 2000

- India is the 12th nation in enactment of cyber law with the passage of Information Technology Act, 2000.
- The United Nations Commission on International Trade Law (UNCITRAL) adopted the model law on electronic commerce in 1996 in order to bring uniformity in the law of different countries.
- The first draft of legislation was created by the Ministry of Commerce, Government of India as E commerce Act 1998.
- A redraft of legislation was prepared as “Information Technology Bill 1999” which was placed before the Parliament in December 1999 and passed in May 2000.

Aim and objectives of the act

- To grant legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication commonly referred as e-commerce in place of paper based method of communication,
- To give legal recognition to digital signature for authentication of any information or matter which requires authentication under any law,
- To facilitate electronic filling of documents with Government departments,
- To facilitate electronic storage of data,

- To facilitate and give legal sanction to electronic fund transfer between banks and financial institutions,
- To give legal recognition for keeping books of accounts by bankers in electronic form under the Evidence Act 1891 and the Reserve Bank of India Act 1934.

Features of the act

- Electronic contracts have been made legally valid if made through secure electronic communications
- Legal recognition has been granted to digital signatures
- Security procedures for electronic records and digital signature have been laid down
- A procedure for appointment of adjudicating officers for holding inquiries under the Act has been laid down for the establishment of Cyber Regulatory Appellant Tribunal under the Act
- An appeal against the order of the Controller or Adjudicating officer can be made to Cyber Appellant Tribunal and not to any civil court
- Appeals against order of the Cyber Appellant Tribunal are to be made in the High court
- Digital signatures are to be effected by use of asymmetric crypto system and hash function
- A provision has been made for appointment of Controller of Certifying Authorities (CCA) to license and regulate the working of Certifying Authorities
- The controller is to act as repository (a storehouse, that is who will maintain an authentic and complete information) of all digital signature certificates
- The Act is to apply to offences or contraventions committed outside India
- Senior police officers and other officers have been given power to enter any public place and search and arrest without warrant
- Provisions have been made for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government and the Controller.

Applicability and Non Applicability

- The Act extends to the whole of India, including Jammu and Kashmir.
- The Act can be applied to any offence or contravention committed outside India by any person irrespective of his/her nationality, if his/her conduct constituting the

offence or contravention involves a computer, computer system or computer network located in India.

Non Applicability

- Execution of Negotiable Instrument under Negotiable Instruments Act, 1881 except cheques.
- Execution of a Power of Attorney under the Powers of Attorney Act, 1882.
- Creation of Trust under Indian Trust Act, 1882.
- Execution of a Will under the Indian Succession Act, 1925 including any other testamentary disposition.
- Entering into a contract for the sale of conveyance of immovable property or any interest in such property.
- Any such class of documents or transactions as may be notified by the Central Government in the Gazette.

5.4 Information Technology Amendment Act 2008 (IT Act 2008)

The Information Technology Amendment Act 2008 (IT Act 2008) is a substantial addition to India's Information Technology Act 2000. It was passed by the Indian Parliament in October 2008 and came into force a year later. The act is administered by the Indian Computer Emergency Response Team (CERT-In) and corresponds to the Indian Penal Code.

The Information Technology Amendment Act has been widely hailed as a progressive step forward in protecting India's cyber infrastructure and citizens. It is one of the most comprehensive pieces of legislation addressing IT-related issues and sets a strong precedent for other countries working to update their own laws.

The original version of the act was developed to promote the IT industry, regulate e-commerce, facilitate e-governance and prevent cybercrime. However, it also sought to foster security practices within India that would serve the country in a global context. In addition, the Information Technology Amendment Act established the office of the Cyber Appellate Tribunal to hear appeals from any person aggrieved by an order made under the act.

Difference between the IT Act, 2000 and the IT Act 2008

The IT Act, 2000 consists of 90 sections spread over 13 chapters [Sections 91, 92, 93 and 94 of the principal Act were omitted by the Information Technology (Amendment) Act 2008 and has 2 schedules. [Schedules III and IV were omitted by the Information Technology

(Amendment) Act 2008]. the major update in IT Act 2008 was introduced Section 66A which penalized sending "offensive messages".

Provisions of IT Act 2008

The Information Technology Amendment Act 2008 has nine chapters and 117 sections and covers a wide range of topics related to IT, cybercrime and data protection.

The act includes provisions for the following:

- tightening cyber security measures
- establishing a legal framework for digital signatures
- recognizing and regulating intermediaries
- regulating interception, monitoring and decryption of electronic records
- cyber forensics
- cyber terrorism

Amendments to the act have been created to address issues that the original bill failed to cover and to accommodate further development of IT and related security concerns since the original law was passed.

Procedure for updation

Changes to the amendment over the years have included the following:

- redefining terms such as communication devices to reflect current use;
- validating electronic signatures and contracts;
- making the owner of a given IP address responsible for content accessed or distributed through it;
- making corporations responsible for implementing effective data security practices and liable for data breaches.

In recent years, the IT Act has also been updated to include provisions for the regulation of intermediaries, penalties for cybercrime and restrictions on certain types of speech.

These changes included expanding the definition of cybercrime and adding new penalties for offenses such as identity theft, publishing private images without consent, cheating by impersonation, and sending offensive messages or those containing sexually explicit acts through electronic means.

Applicability of IT Act 2008

The Information Technology Amendment Act is applicable to any person, company or organization that uses computer systems, computer networks or other information technology in India. This includes but is not limited to the following:

- web hosting service providers
- internet service providers
- network service providers
- telecom service providers

This includes foreign companies and organizations with a presence in India, as well as Indian companies and organizations with operations outside of India.

Penalties for violation of IT Act 2008

- Penalties for violating the Information Technology Amendment Act can range from a fine of 1 lakh rupees (approximately \$1,250) to imprisonment for up to three years.
- More serious offenses can result in a person being liable to pay damages up to 5 lakh rupees (approximately \$6,300) and include imprisonment of up to seven years.
- Cyber terrorism offenses are punishable by imprisonment of up to 10 years.
- In addition to these penalties, the court can also order the offender to pay compensation to the victim of the offense.

Challenges with the IT Act 2008

The amendment has been criticized for decreasing the penalties for some cybercrimes and for lacking sufficient safeguards to protect the civil rights of individuals. Subsection 69, for example, authorizes the Indian government to intercept, monitor, decrypt and block data at its discretion.

According to Pavan Duggal, a cyber law consultant and advocate at the Supreme Court of India: "The Act has provided the Indian government with the power of surveillance, monitoring and blocking data traffic. The new powers under the amendment act tend to give Indian government a texture and color of being a surveillance state." Still, the IT Act has been instrumental in developing a comprehensive legal framework for IT in India. It has been successful in establishing procedures for electronic governance and the prevention of cybercrime. The act will likely continue to be amended as needed to reflect the ever-changing landscape of IT.

Review questions

1. Narrate the Scope of cyber law.
2. Elucidate the Categories of cyber crime.
3. Discuss any five offense sections in detail.
4. How to Prevent Cyber Crime?
5. What are the Advantages of Cyber Laws?
6. Explain the Aim and objectives of the IT Act 2000.
7. What are the salient features of the IT Act, 2000?
8. Enumerate the Provisions of IT Act 2008.
9. Spell out the Penalties for violation of IT Act 2008.