

UNIT – I

MERCANTILE AND COMMERCIAL LAW

THE INDIAN CONTRACT ACT 1872

Contract is an agreement made between two or more parties which the law will enforce. It has two elements 1. Agreement 2. Its enforceable by law

Agreement = offer + Acceptance

Contract = Agreement + Enforceability by law

Essential Elements of Valid Contract

1. **Offer & acceptance** – Offer must be definite acceptance of offer must be absolute and unconditional
2. **Intention to create legal relationship** – When the two parties enter in to an agreement, their intention must be to create legal relationship.
3. **Lawful consideration** – It means something in return.
4. **Capacity of parties - competency** – must be capable of entering into the contract. Ie, sound mind, major.
5. **Free and genuine consent** – There must be a free and genuine consent of the parties to the agreement
6. **Lawful object** – Object must not be illegal, immoral, opposed to policy
7. **Agreement not declared void** - Must not have been expressly declared void by law in force in the country
8. **Certainty and possibility of performance** – The agreement must be certain and not vague
9. **Legal formalities** – Contract should be made in writing or in the presence of witness or registered.

Void agreement

An agreement not enforceable by law is said to be void

Void Contract

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

Quasi – contract

A quasi – contract is not a contract at all. A contract is intentionally entered into by the parties.

The Essentials For Formation Of Contract

The requirements for formation of contract are **agreement** and **consideration**. There is sometimes said to be a third element, namely, intention to create legal relations. But this third element is rarely a problem and it is true to say that, if it is a separate element, it goes without saying in the vast majority of cases.

Agreement

Agreement entails the transformation of negotiations into a settled bargain or deal. The negotiating process is obviously not contract and the law needs to be able to determine when that process has ceased and the parties have reached finality in their commercial arrangement. The traditional approach to answering the question: have the parties reached agreement? is to apply the rules of **offer and acceptance**. When a properly constituted offer has been made by one party and accepted by the other, then there is agreement at the moment of acceptance or, more precisely, at the moment of *communication* of acceptance.

This apparently simple process raises a number of questions which we have to look at, such as: Was an offer made at all? Who makes an offer in certain types of transactions, for example, in auctions or tenders? Is a price list an offer? Is an advertisement an offer? Then it is also necessary to answer further questions about the act of acceptance, such as: does acceptance have to be communicated? Can you accept by silence? Can you accept by just getting on with the commercial task? and so forth.

Consideration

We have already seen that consideration involves a notion of exchange. There are rules about what constitutes an exchange and what might be exchanged in order to amount to a good consideration. We will look at these rules after we have examined the requirements of offer and acceptance. The relationship between the rules of offer and acceptance on the one hand and the rules of consideration on the other hand is that the exchange which constitutes an acceptance of an offer - in effect an exchange of promises is brought about by acceptance - is at the same time the necessary exchange which constitutes the consideration. All this will become clearer when we examine the doctrine of consideration in detail.

Performance of contract

Execution of a contract by which the contracting parties are automatically discharged of their obligations under it. Although contracts usually call for full and precise performance, a substantial performance may be acceptable under certain circumstances, on a pro rata basis, or on payment of damages for the unfinished or defective performance.

Discharge of Contract – A contract may be discharged

1. By performance – Actual performance, Attempted performance
2. By agreement or consent – Express consent, Implied consent (novation, rescission, alteration)
3. By impossibility of performance
4. By lapse of time
5. By operation of law – By death, By merger, By insolvency
6. By breach of contract – actual breach, anticipatory breach

THE SALE OF GOODS ACT 1930

An Act to define and amend the law relating to the sale of goods

1. Short title, extent and commencement

(1) This Act may be called the Sale of Goods Act, 1930.

2 It extends to the whole of India [except the State of Jammu and Kashmir].

(3) It shall come into force on the 1st day of July, 1930.

2. Application of provisions of Act 9 of 1872

The unreppeated provisions of the Indian Contract Act, 1872, save insofar as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts for the sale of goods.

FORMATION OF THE CONTRACT OF SALE

Sale and agreement to sell

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

FORMALITIES OF THE CONTRACT

Contract of sale how made

(1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price of both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

SUBJECT MATTER OF CONTRACT

Existing or future goods

(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods perishing before making of contract

Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before sale but after agreement to sell

Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

THE PRICE

Ascertainment of price

(1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation

(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided;

PROVIDED that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefore.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

CONDITIONS AND WARRANTIES

Stipulations as to time

Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Condition and warranty

(1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

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

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

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

When condition to be treated as warranty

(1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, 5[***] the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied undertaking as to title, etc.

In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is-

(a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

Sale by description

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied conditions as to quality or fitness

Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:-

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgement, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:

PROVIDED that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality;

PROVIDED that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Sale by sample

(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample there is an implied condition-

(a) that the bulk shall correspond with the sample in quality;

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

EFFECTS OF THE CONTRACT TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

Goods must be ascertained

Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass

- (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
- (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
- (3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Specific goods in a deliverable state

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Specific goods to be put into a deliverable state

Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price

Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Sale of unascertained goods and appropriation

- (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.
- (2) Delivery to carrier-Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Goods sent on approval or "on sale or return"

When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

- (a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

Reservation of right of disposal

(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

6[(2) Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or, as the case may be, the railway receipt, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading or the railway receipt if he does not honour the bill of exchange; and, if he wrongfully retains the bill lading or the railway receipt, the property in the goods does not pass to him.

Explanation : In this section, the expressions "railway" and "railway administration" shall have the meanings respectively assigned to them under the Indian Railways Act, 1890.]

Risk prima facie passes with property

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not:

PROVIDED that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault:

PROVIDED ALSO that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

TRANSFER OF TITLE

Sale by person not the owner

Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:

PROVIDED that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the

same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by one of joint owners

If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by person in possession under voidable contract

When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872, but the contract has not rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Seller or buyer in possession after sale

(1) Where a person, having sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods, obtains with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

PERFORMANCE OF THE CONTRACT

Duties of seller and buyer

It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Delivery

Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Effect of part delivery

A delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Buyer to apply for delivery

Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Rules as to delivery

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, if not then in existence, at the place at which they are manufactured or produced.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

PROVIDED that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

Delivery of wrong quantity

(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

Instalment deliveries

(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the

breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Delivery to carrier or wharfing

(1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at distant place

Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods

(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods

Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods

When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller

for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods:

PROVIDED that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

"Unpaid seller" defined

(1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act.-

(a) When the whole of the price has not been paid or tendered;

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's rights

(1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

(a) a lien on the goods for the price while he is in possession of them;

(b) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;

(c) a right of re-sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

UNPAID SELLER'S LIEN

Seller's lien

(1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-

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

(b) where the goods have been sold on credit, but the term of credit has expired;

(c) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien

(1) The unpaid seller of goods loses his lien thereon-

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(b) when the buyer or his agent lawfully obtains possession of the goods;

(c) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

STOPPAGE IN TRANSIT

Right of stoppage in transit

Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

52. How stoppage in transit is effected

(1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, shall be given at such time and in such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

Effect of sub-sale or pledge by buyer

(1) Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

PROVIDED that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's

right of lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

SUITS FOR BREACH OF THE CONTRACT

Suit for price

(1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

(2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

Damages for non-acceptance

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Damages for non-delivery

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Specific performance

Subject to the provisions of Chapter II of the Specific Relief Act, 1877, in any suit for breach of contract to deliver specific or ascertained goods, the court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the court may deem just, and the application of the plaintiff may be made at any time before the decree.

Remedy for breach of warranty

(1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may-

(a) set up against the seller the breach of warranty in diminution or extinction of the price, or

(b) sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

Repudiation of contract before due date

Where either party to a contract of sale repudiates the contract before the date of delivery, the other may

either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

NEGOTIABLE INSTRUMENTS ACT 1881

The Negotiable Instruments Act was passed in 1881. Some provisions of the Act have become redundant due to passage of time, change in methods of doing business and technology changes.

The instrument is mainly an instrument of credit readily convertible into money and easily passable from one hand to another.

LOCAL USAGE PREVAILS UNLESS EXCLUDED - The Act does not affect any local usage relating to any instrument in an oriental language. However, the local usage can be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties will be governed by provisions of Negotiable Instruments Act and not by local usage. [section 1]. - - Thus, unless specifically excluded, local usage prevails, if the instrument is in regional language.

BILL OF EXCHANGE AND PROMISSORY NOTES EXCLUDED FROM INFORMATION TECHNOLOGY ACT - Section (1)(4)(a) of Information Technology Act provides that the Act will not apply to Bill of Exchange and Promissory Notes. Thus, a Bill of Exchange or Promissory Note cannot be made by electronic means. However, cheque is covered under of Information Technology Act and hence can be made and / or sent by electronic means.

CHANGES MADE BY AMENDMENT ACT, 2002 - (a) Definition of ‘cheque’ and related provisions in respect of cheque amended to facilitate electronic submission and/or electronic clearance of cheque. Corresponding changes were also made in Information Technology Act. (b) Bouncing of cheque - Provisions amended * Provision for imprisonment upto 2 years against present one year * Period for issuing notice to drawer increased from 15 days to 30 days * Government Nominee Directors excluded from liability * Court empowered to take cognizance of offence even if complaint filed beyond one month * Summary trial procedure permitted for imposing punishment upto one year and fine even exceeding Rs 5,000 * Summons can be issued by speed post or courier service * Summons refused will be deemed to have been served *

Evidence of complainant through affidavit permitted * Bank’s slip or memo indicating dishonour of cheque will be *prima facie* evidence unless contrary proved * Offence can be compounded. - - ***The amendments have been made effective from 6-2-2003.***

Transferee can get better title than transferor – Normal principle is that a person cannot transfer better title to property that he himself has. For example, if a person steals a car and sells the same, the buyer does not get any legal title to the car as the transferor himself had no title to the car. The real owner of car can anytime obtain possession from the buyer, *even if* the buyer had purchased the car in good faith and even if he had no idea that the seller had no title to the car. This provision is no doubt sound, but would make free negotiability of instrument difficult, as it would be difficult to verify title of transferor in many cases. Hence, it is provided that if a person acquires ‘Negotiable Instrument’ in good faith and without knowledge of defect in title of the transferor, the transferee can get better title to the negotiable instrument, even if the title of transferor was defective. This is really to ensure free negotiability of instrument so that persons can deal in the instrument without any fear.

DIFFERENCE BETWEEN NEGOTIATION AND TRANSFER/ASSIGNMENT - Difference between –Negotiation’ and assignment/transfer is that in case of negotiation, the transferee can get title better than transferor, which can never happen in assignment/transfer.

STATUTORY DEFINITION OF NEGOTIABLE INSTRUMENT - A –negotiable instrument|| means a promissory note, bill of exchange or cheque payable either to order or to bearer. A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. [section 13(2)].

Promissory Note - A –promissory note is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. [Section 4].

Bill of Exchange – As per statutory definition, –bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. [Para 1 of section 5]. A cheque is a special type of Bill of Exchange. It is drawn on banker and is required to be made payable on demand.

DRAWER, DRAWEE AND PAYEE - The maker of a bill of exchange or cheque is called the –drawer; the person thereby directed to pay is called the –drawee [section 7 para 1]. - - The person named in the instrument, to whom, or to whose order the money is by the instrument directed to be paid, is called the –payee [section 7 para 5]. - - However, a drawer and payee can be one person as he can order to pay the amount to himself.

AT SIGHT, ON PRESENTMENT, AFTER SIGHT - In a promissory note or bill of exchange the expressions –at sight and –on presentment mean ‘on demand’. The expression –after sight means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance. [section 21]. - - Thus, in case of document ‘after sight’, the countdown starts only after document is ‘sighted’ by the concerned party.

Stamp duty on Negotiable Instrument – A negotiable instrument is required to be stamped. Stamp duty on Bill of Exchange and Promissory Note is a Union Subject. Hence, stamp duty is same all over India.

Hundi – a local instrument – Hundi is an indigenous instrument similar to Negotiable Instrument. The term is derived from Sanskrit word ‘hund’ which means ‘to collect’. If it is drawn in local language, it is governed by local usage and customs.

Provisions in respect of Cheques - A –cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. ‘Cheque’ includes electronic image of a truncated cheque and a cheque in electronic form. [section 6]. The definition is amended by Amendment Act, 2002, making provision for electronic submission and clearance of cheque. The cheque is one form of Bill of Exchange. It is addressed to Banker. It cannot be made payable after some days. It must be made payable ‘on demand’.

Crossing of Cheque – The Act makes specific provisions for crossing of cheques.

CHEQUE CROSSED GENERALLY - Where a cheque bears across its face an addition of the words –and company or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words –not negotiable, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally. [section 123]

CHEQUE CROSSED SPECIALLY - Where a cheque bears across its face an addition of the name of a banker, either with or without the words –not negotiable, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker. [section 124].

PAYMENT OF CHEQUE CROSSED GENERALLY OR SPECIALLY - Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection. [section 126].

CHEQUE BEARING –NOT NEGOTIABLE - A person taking a cheque crossed generally or specially, bearing in either case the words –not negotiable, shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had. [section 130].

Electronic Cheque - Provisions of electronic cheque has been made by Amendment Act, 2002. As per *Explanation 1(a)* to section 6, 'A cheque in the electronic form' means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed by a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system.

Truncated Cheque - Provisions of electronic cheque has been made by Amendment Act, 2002. As per *Explanation 1(b)* to section 6, 'A truncated cheque' means a cheque which is truncated during the clearing cycle, either by the clearing house during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Penalty in case of dishonour of cheques for insufficiency of funds - If a cheque is dishonoured even when presented before expiry of 6 months, the payee or holder in due course is required to give notice to drawer of cheque within 30 days from receiving information from bank.. The drawer should make payment within 15 days of receipt of notice. If he does not pay within 15 days, the payee has to lodge a complaint with Metropolitan Magistrate or Judicial Magistrate of First Class, against drawer within one month from the last day on which drawer should have paid the amount. The penalty can be upto two years imprisonment or fine upto twice the amount of cheque or both. The offense can be tried summarily. Notice can be sent to drawer by speed post or courier. Offense is compoundable.

It must be noted that even if penalty is imposed on drawer, he is still liable to make payment of the cheque which was dishonoured. Thus, the fine/imprisonment is in addition to his liability to make payment of the cheque.

Return of cheque should be for insufficiency of funds - The offence takes place only when cheque is dishonoured for insufficiency of funds or where the amount exceeds the arrangement. Section 146 of NI Act only provides that once complainant produces bank's slip or memo having official mark that the cheque is dishonoured, the Court will presume dishonour of the cheque, unless and until such fact is disproved.

Calculation of date of maturity of Bill of Exchange - If the instrument is not payable on demand, calculation of date of maturity is important. An instrument not payable on demand is entitled to get 3 days grace period.

Presentment of Negotiable Instrument - The Negotiable Instrument is required to be presented for payment to the person who is liable to pay. Further, in case of Bill of Exchange payable 'after sight', it has to be presented for acceptance by drawee. 'Acceptance' means that drawee agrees to pay the amount as shown in the Bill. This is required as the maker of bill (drawer) is asking drawee to pay certain amount to payee. The drawee may refuse the payment as he has not signed the Bill and has not accepted the liability.

In case of Promissory Note, such acceptance is not required, as the maker who has signed the note himself is liable to make payment. However, if the promissory note is payable certain days 'after sight' [say 30 days after sight], it will have to be presented for 'sight'.

If the instrument uses the expressions 'on demand', 'at sight' or 'on presentment', the amount is payable on demand. In such case, presentment for acceptance is not required. The Negotiable Instrument will be directly presented for payment.

Acceptance and payment for honour and drawee in need - Provisions for acceptance and payment for honour have been made in case when the negotiable instrument is dishonoured. Bill is accepted for honour when it is dishonoured when presenting for acceptance, while payment for dishonour is made when Bill is dishonoured when presented for payment.

Negotiation of Instrument - The most salient feature of the instrument is that it is negotiable. Negotiation does not mean a mere transfer. After negotiation, the holder in due course can get a better title even if title of

transferor was defective. If the instrument is 'to order', it can be negotiated by making endorsement. If the instrument is 'to bearer', it can be negotiated by delivery. As per definition of 'delivery', such delivery is valid only if made by party making, accepting or indorsing the instrument or by a person authorised by him.

Liability of parties - Basic liability of payment is as follows – (a) Maker in case of Promissory Note or Cheque and (b) Drawer of Bill till it is accepted by drawee and acceptor after the Bill is accepted. They are liable as 'principal debtors' and other parties to instrument are liable as sureties for maker, drawer or acceptor, as the case may be. When document is endorsed number of times, each prior party is liable to each subsequent party as principal debtor. In case of dishonour, notice is required to be given to drawer and all earlier endorsees.

PRESUMPTIONS AS TO NEGOTIABLE INSTRUMENTS - Until the contrary is proved, the following presumptions shall be made :— (a) **of consideration** - that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration; - - (b) **as to date** - that every negotiable instrument bearing a date was drawn on such date; - - (c) **as to time of acceptance** - that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity; - - (d) **as to time of transfer** - - that every transfer of a negotiable instrument was made before its maturity; - - (e) **as to order of endorsements** - that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon; (f) **as to stamps** -that a lost promissory note, bill of exchange or cheque was duly stamped; - - (g) **that holder is a holder in due course** - that the holder of a negotiable instrument is a holder in due course : provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder in due course lies upon him.

AGENCY

An agent is a person employed to do any act for another, or to represent another in dealings with third person, the person to whom such act is done, or who is so represented is called the principal.

Creation of Agency

1. Agency by express agreement
2. Agency by implied agreement – agency by estoppels, agency by holding out, agency by necessity
3. Agency by ratification

Classification of Agents

1. Extent of their authority – Special Agent, General Agent, Universal Agent
2. Nature of work performed – Commercial or mercantile agent, Banker, Non mercantile agent

Duties and rights of the agent

Agency termination

1. By act of party – Agreement, revocation by principal and by agent
2. By operation of law – performance of contract, Expiry of time, Death, Destruction of subject matter, becoming alien enemy, dissolution of company

UNIT II

THE COMPANY ACT 1956 :

Company act 1956 :

Company act 1956 The company act came into force from 1 April 1956. The act was based upon the recommendation of company law committee appointed under the chairmanship of Mr. C. H. Bhaba on 25 - 10-1950. The committee submitted its report in 1952. The Indian company act extends to the whole India.

COMPANY :

COMPANY Section 3(1)(i)&(ii) of the Companies Act, 1956 defines a company as: –a company formed and registered under this Act or an existing Company. 'Existing Company' means a company formed and registered under any of the earlier Company Laws

INCORPORATION UNDER COMPANY ACT 1956.. :

1. Separate legal entity :

1. Separate legal entity A company is an separate legal entity means it is different from its members. It works as a individual body. It can make contracts, open a bank account, can sue and be sued by others.

Artificial person :

Artificial person A company is a purely a creation of law. It is invisible, intangible and exists only in the eyes of law. It has no soul, no body, but has a position to enter or exit into a contract. In short it can do every thing just like a natural person.

Perpetual existence sec 34(2) :

Perpetual existence sec 34(2) Section 34(2) of the act states that an incorporated company has perpetual life. The life of the company is not related to the life of the members . Law create the company and law alone can dissolve it. The existence of the company is not affected by death, insolvency, retirement or transfer of share of members.

Common seal :

Common seal A company being an artificial person can not work as a natural being. Therefore, it has to work through its directors, officers and other employees. Common seal used as a official signature of a company.

Limited liability :

Limited liability It means that the liability of a member shall be limited to the value of the share held by him, he cannot be called upon to bear the loss from his personal property.

Transferability of share sec 82 :

Transferability of share sec 82 The share of a company are freely transferable. The shareholder can transfer his share to any person without the consent of other members. A company cannot impose absolute restrictions on the rights of member to transfer their shares

Types of companies (Registered under company act 1956) :

Types of companies (Registered under company act 1956)

INCORPORATED :

1.CHARTERED COMPANIES These companies are incorporated under a special charter such as the east India company. The bank of England. the company act does not apply to it. 2.STATUTORY COMPANIES These companies are incorporated by special act of legislature(act of parliament or state legislature) eg. RBI, UTI, LIC

REGISTERED COMPANIES companies registered under the Indian Companies Act, 1956 are called registered companies. To become a registered company one has to take the certification of incorporation from the registrar. Cont....

COMPANY WITH LIABILITY :

COMPANY WITH LIABILITY COMPANY LIMITED BY SHARE [sec12(2)a] companies in which the liability of its members is limited to the extent of the amount unpaid on the shares held by a particular member. COMPANY LIMITED BY GUARANTEE The liability of members is limited to a fixed amount which members undertake to contribute to the assets of the company in case of its winding up.

UNLIMITED LIABILITY wherein members are liable for the debts of the company irrespective of their interest in the company

Number of members :

Number of members PRIVATE COMPANIES [sec 3(1)(iii)] A private company is one which, by its Article of association restricts the right to transfer its share, if any limits the maximum number of its member to fifty prohibits any invitation to the public to subscribe for any share or debenture of the company.

PUBLIC COMPANY [SEC 3(1)(iv)] A public company means a company which is not a private company. In other words, a public company, means a company which by its article does not- limit the number of its member. prohibit any invitation to the public to subscribe for any share in, or debentures, of the company.

companies according to control :

HOLDING AND SUBSIDIARY COMPANY where a company has control over another company, it is known as the holding company The company over which control is exercised is called the subsidiary company.

ownership :

GOVERNMENT COMPANY (sec617) a government company means any company in which at least 51% of the paid up share capital is held by the central government or by any state government or partly by one or more state Government.

MEMORENDUM OF ASSOCIATION:

The first step in the formation of the company is to prepare memorandum of association. it is one of the documents which has to be filed with registrar of the companies at the time of incorporation of a company. It is vital document; tell about the object of the company's formation, the power of the company as well as the boundaries beyond which the action of the company cannot go.

Contents of Memorendum of association

Name clause, Registered office clause, Object clause, Doctrine of ultra-vires, Liability clause, Capital clause

Importance of memorandum:

It defines the rights and liabilities of the members. It shows the capital structure of the company It shows the object of the company It specifies the state in which the registered office of the company is situated. It shows the constitution of the company It specify the conditions under which the company has been incorporated.

Article of association :**Contents of article of association :**

Rights of different classes of shareholder. Use of common seal of the company. Keeping of book of accounts and their audit. Appointment , powers, duties, salary of MD, manager, and secretary. Borrowing power of directors. Voting rights of member . Board meetings and proceedings. Winding up company.

Prospectus

A prospectus, as per Section 2(36), means any document described or issued as prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares or debentures of a body corporate.

Thus, a prospectus is not merely an advertisement; it may be a circular or even a notice. A document shall be called a prospectus if it satisfies two things:

- (a) It invites subscription to shares or debentures or invites deposits.
- (b) The aforesaid invitation is made to the public.

Duties of Director

Statutory Duties:

1. **To file return of allotment:** Section 75 of the Companies Act, 1956 requires a company to file with the Registrar, within a period of 30 days, a return of the allotments stating the specified particulars. 2.

Not to issue irredeemable preference share or shares or share redeemable after 20 years

3. **To disclose interest**

4. **To disclose receipt from transfer of property.**

5. **To disclose receipt of compensation from transferee of shares**

6. **Duty to attend Board meetings**

7. **Other Duties:**

A. To convene statutory, Annual General meeting (AGM) and also extraordinary general meetings

B. To prepare and place at the AGM along with the balance sheet and profit & loss account a report on the company's affairs including the report of the Board of Directors

C. To authenticate and approve annual financial statement

D. To appoint first auditor of the company

E. To appoint cost auditor of the company

General Duty:

1. Duty of good faith, 2. Duty to care, 3. Duty not to delegate

Director's Liability:

1. Breach of fiduciary duty, 2. Ultra vires acts, 3. Negligence, 4. Mala fide acts

UNIT III

INDUSTRIAL LAW

Factories Act 1948

In India the first Factories Act was passed in 1881. This Act was basically designed to protect children and to provide few measures for health and safety of the workers. This law was applicable to only those factories, which employed 100 or more workers. In 1891 another factories Act was passed which extended to the factories employing 50 or more workers.

–Factory is defined in Section 2(m) of the Act. It means any premises including the precincts thereof-

i. Where on ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or

ii. Where on twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on;

But does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the Armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Employer to ensure health of workers pertaining to

Cleanliness Disposal of wastes and effluents -Sec 12

Ventilation and temperature dust and fume -Sec 13
Overcrowding Artificial humidification Lighting – Sec. 14
Drinking water Spittoons.- Sec. 18

Safety Measures

Fencing of machinery – Sec. 21
Work on near machinery in motion. – Sec 22
Employment prohibition of young persons on dangerous machines. – Sec 23
Striking gear and devices for cutting off power. – Sec 24
Self-acting machines.- Sec 25
Casing of new machinery.- Sec 26
Prohibition of employment of women and children near cotton-openers.- Sec27
Hoists and lifts.- Sec 28.

Welfare Measures

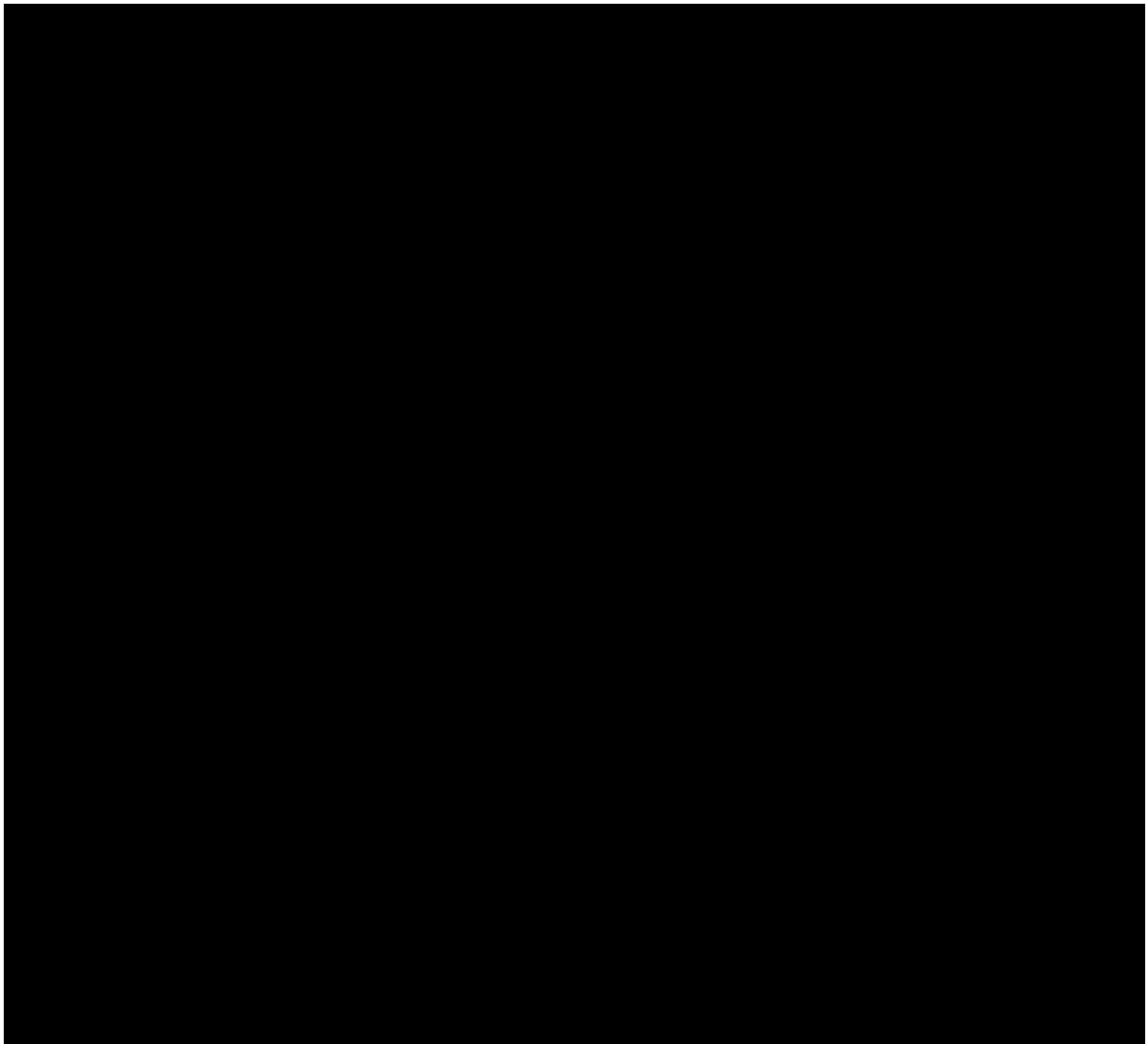
- Washing facilities – Sec 42
- Facilities for storing and drying clothing – Sec 43
- Facilities for sitting – Sec 44
- First-aid appliances – one first aid box not less than one for every 150 workers– Sec 45
- Canteens when there are 250 or more workers. – Sec 46
- Shelters, rest rooms and lunch rooms when there are 150 or more workers. – Sec 47
- Creches when there are 30 or more women workers. – Sec 48
- Welfare office when there are 500 or more workers. – Sec 49

Working Hours, Spread Over & Overtime of Adults

- Weekly hours not more than 48- Sec: 51
- Daily hours, not more than 9 hours. - Sec: 54
- Intervals for rest at least ½ hour on working for 5 hours. - Sec: 55
- Spread over not more than 10½ hours. - Sec: 56
- Overlapping shifts prohibited. - Sec: 58
- Extra wages for overtime double than normal rate of wages - Sec:59
- Restrictions on employment of women before 6AM and beyond 7 PM. - Sec: 60

Annual Leave with Wages

- A worker having worked for 240 days @ one day for every 20 days and for a child one day for working of 15 days.
- Accumulation of leave for 30 days.



THE PAYMENT OF WAGES ACT, 1936

OBJECT OF THE ACT

To regulate the payment of wages to certain classes of employed persons. Two

fold:-First the date of payment of wages and

Secondly the deductions from wages whether as fine or

otherwise. **APPLICABILITY OF THE ACT**

Persons employed in:-

Any factory (a saw mill, ginning factory, godowns, yards etc as defined in Factories Act, 1948).

Tramway service or motor transport service engaged in carrying passengers or good or both by road for hire or reward.

Air transport service Dock, Wharf or Jetty, Inland vessel, mechanically propelled Mine, quarry or oil-field plantation

Workshop or other establishment etc.

WAGE

Wage includes any remuneration:-

Payable under any award or settlement between the parties or order of a Court;

Over time work or holiday or any leave period;

Any additional remuneration under the terms of employment.

Wage does not include any bonus, pension fund or provident fund, travelling allowance and any gratuity.

WAGES TO BE PAID IN CURRENT COINS OR CURRENCY NOTES

a . All wages shall be paid in current coins or currency notes or in both.

After obtaining the authorization, either by Cheque or by crediting the wages in employees banks Account {Section 6}

TIME OF PAYMENT OF WAGES

The wages of every person employed is paid. When less than 1000 persons are employed shall be paid before the expiry of the 7th day of the following month. When more than 1000 workers, before the expiry of the 10th day of the following month. (Section 5). Drawing average wage upto Rs.6500 pm as amended with effect from 6th September 2005.

COVERAGE OF EMPLOYEES

DEDUCTION MADE FROM WAGES

Deductions such as, fine, deduction for amenities and services supplied by the employer, advances paid, over payment of wages, loan, granted for house-building or other purposes, income tax payable, in pursuance of the order of the Court, Provident Fund contributions, cooperative societies, premium for Life Insurance, contribution to any fund constituted by employer or a trade union, recovery of losses, Employees State Insurance contribution etc. (Section 7).

DEDUCTION FOR ABSENCE FROM DUTIES FOR UNAUTHORISED ABSENCE

Absence for whole or any part of the day – If ten or more persons absent without reasonable cause, deduction of wages upto 8 days {Section 9}

For default or negligence of an employee resulting into loss. Show cause notice has to be given to the employee. {Section 10}

DEDUCTION FOR DAMAGE OR LOSS DEDUCTIONS FOR SERVICE RENDERED

When accommodation amenity or service has been accepted by the employee. {Section 11}

Deductions for recovery of Advance.

Deduction for recovery of loans.

Deductions for payment to co-operative societies and Insurance schemes.

AUTHORITIES UNDER THIS ACT

INSPECTORS.

AUTHORITY TO HEAR CLAIMS.

Any commissioner for Workmen's Compensation; or Any Regional Labour Commissioner Any Assistant Labour Commissioner. Presiding Officer of any Labour Court or Industrial Tribunal.

PRESENTATION OF CLAIM APPLICATION

SINGLE APPLICATION IN RESPECT OF CLAIMS FROM UNPAID GROUP

APPEAL

Payment Of Bonus Act,1965.

Applicability :

Applicability Every factory or an establishment employing not less than 20 employees during an accounting year. The establishment once covered under the Act shall continue the coverage even if the number of employees falls below 20 subsequently.

Employee :

Employee Any person other than apprentice, engaged for hire or reward Includes supervisors Includes Managers. Includes all administrative staff. Includes a person who has worked not less than 30 days in an accounting year. But does not include any person whose salary exceeds 10000/- pm.

Can a person drawing wages more than 10000 make a claim? :

Can a person drawing wages more than 10000 make a claim? No. It is not maintainable under the Act.

Maximum salary :

Maximum salary Employees drawing salary upto Rs. 10000/- are eligible for Bonus. But their salary will be limited to Rs. 3500/- for the purpose of Bonus.

Max and Min Bonus :

Max and Min Bonus Maximum of 20% and Minimum of 8.33% of the Salary/ Wages. Maximum amount of Bonus is limited to Rs.84000/- ($3500 \times 12 \times 20 / 100$)

Can Bonus be denied to an employee on the condition that on the day of declaration of Bonus he was not in employment ? :

Can Bonus be denied to an employee on the condition that on the day of declaration of Bonus he was not in employment ? NO. It violates the provisions of Sec. 8 of the Act.

Whether a Probationer is eligible for Bonus ? :

Whether a Probationer is eligible for Bonus ? A probationer will be eligible for bonus as there is no exclusion in the definition of 'employee' under the Act.

Forfeiture of Bonus. :

Forfeiture of Bonus. Sec. 9. Bonus can be forfeited to an employee who has been dismissed from service on grounds of fraud, theft, misappropriation, or sabotage of any property of the establishment.

Industrial Disputes Act 1947

Purpose of the Act

The Industrial Disputes Act, 1947 came into existence in April 1947. It was enacted to make provisions for investigation and settlement of industrial disputes and for providing certain safeguards to the workers.

AUTHORITIES UNDER THIS ACT Works Committee

In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer.

Conciliation officers

The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

Boards of Conciliation

(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting, the settlement of an industrial dispute.

(2) A Board shall consist of a Chairman and two or four other members, as the appropriate Government thinks fit.

(3) The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party: **Provided** that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its members or any vacancy in its number

Courts of Inquiry

(1) The appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Court of Inquiry for inquiring into a matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman.

(3) A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number

Labour Courts

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a Labour Court, unless -

(a) he is, or has been, a Judge of a High Court; or

(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

- (c) he has held any judicial office in India for not less than seven years ; or
- (d) he has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

Tribunals

- (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter and for performing such other functions as may be assigned to them under this Act.
- (2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.
- (3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless:
 - (a) he is, or has been, a Judge of a High Court; or
 - (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge.
- (4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

National Tribunals

- (1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.
- (2) A National Tribunal shall consist of one person only to be appointed by the Central Government.
- (3) A person shall not be qualified for appointment as the presiding officer of a National Tribunal unless he is, or has been, a Judge of a High Court.
- (4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

Disqualifications for the Presiding Officers of Labour Courts, Tribunals and National Tribunals

No person shall be appointed to, or continue in, the office of the Presiding Officer of a Labour Court, Tribunal or National Tribunal, if -

- (a) he is not an independent person; or
- (b) he has attained the age of sixty-five years.

UNIT IV

INCOME TAX ACT AND VAT RIGHT TO INFORMATION ACT

It is the implementation of freedom of information legislation in India on a national level "to provide for setting out the practical regime of right to information for citizens." The Act applies to all States and Union Territories of India, except the State of Jammu and Kashmir - which is covered under a State-level law. Under the provisions of the Act, any citizen (excluding the citizens within J&K) may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. This law was passed by Parliament on 15 June 2005 and came fully into force on 13 October 2005

Information

The Act specifies that citizens have a right to:

- request any information (as defined).
- take copies of documents.
- inspect documents, works and records.

- take certified samples of materials of work.
- obtain information in form of printouts, diskettes, floppies, tapes, video cassettes 'or in any other electronic mode' or through printouts.

Process

Under the Act, all authorities covered must appoint their **Public Information Officer** (PIO). Any person may submit a request to the PIO for information in writing. It is the PIO's obligation to provide information to citizens of India who request information under the Act. If the request pertains to another public authority (in whole or part) it is the PIO's responsibility to transfer/forward the concerned portions of the request to a PIO of the other within 5 days. In addition, every public authority is required to designate **Assistant Public Information Officers** (APIOs) to receive RTI requests and appeals for forwarding to the PIOs of their public authority. The citizen making the request is not obliged to disclose any information except his name and contact particulars.

The Act specifies time limits for replying to the request.

- If the request has been made to the PIO, the reply is to be given within **30 days** of receipt.
- If the request has been made to an APIO, the reply is to be given within **35 days** of receipt.
- If the PIO transfers the request to another public authority (better concerned with the information requested), the time allowed to reply is **30 days** but computed from the day after it is received by the PIO of the transferee authority.
- Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within **45 days** but with the prior approval of the Central Information Commission.
- However, if life or liberty of any person is involved, the PIO is expected to reply within **48 hours**.

Since the information is to be paid for, the reply of the PIO is necessarily limited to either denying the request (in whole or part) and/or providing a computation of "further fees". The time between the reply of the PIO and the time taken to deposit the further fees for information is excluded from the time allowed.

If information is not provided within this period, it is treated as deemed refusal. Refusal with or without reasons may be ground for appeal or complaint. Further, information not provided in the times prescribed is to be provided free of charge.

For Central Departments as of 2006, there is a fee of Rs. 10 for filing the request, Rs. 2 per page of information and Rs. 5 for each hour of inspection after the first hour. If the applicant is a Below Poverty Card holder, then no fee shall apply. Such BPL Card holders have to provide a copy of their BPL card along with their application to the Public Authority. States Government and High Courts fix their own rules.

What is not open to disclose?

- The following is exempt from disclosure [S.8)]
- information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, "strategic, scientific or economic" interests of the State, relation with foreign State or lead to incitement of an offence;
- information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

- information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- information received in confidence from foreign Government;
- information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- information which would impede the process of investigation or apprehension or prosecution of offenders;
- cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption);
- Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. (NB: This provision is qualified by the proviso to sub-section 11(1) of the Act which exempts disclosure of "trade or commercial secrets protected by law" under this clause when read along with 8(1)(d))

VAT

Value Added Tax (VAT) Definition

Most of the states in India, with effect from April 1, 2005 have adopted Value added Tax. Value added tax or VAT is an indirect tax, which is imposed on goods and services at each stage of production, starting from raw materials to final product. VAT is levied on the value additions at different stages of production.

Concept of VAT

- VAT is a multi – point sales tax with set – off for tax paid on purchase.
- VAT being a multi – stage levy, it allows registered dealers to take credit for the tax paid on purchase from registered suppliers against the tax payable on the sales.

What is Value Added Tax?

VAT is a multi –point tax with set-off for tax paid on purchases. It is collected in installments at each transaction in the production and distributions system. It does not have cascading effect due to the system of deduction or tax credit mechanism.

The following illustration will help in highlighting the differences between a single point tax and Vat.

Assumptions:

First Stage

Selling price of manufacturer (Excluding tax) Rs. 100.00

Tax rate applicable- 20% Rs. 20.00

Selling price including tax Rs. 120.00

Second Stage

Cost price to Wholesale dealer Rs. 120.00

Overheads and profit margin Rs. 60.00

Selling price Rs. 180.00

Third stage:

Cost price to retail trader Rs.180.00

Overheads and profit margin at 50% Rs. 90.00

Selling price to consumer Rs.270.00

Thus, from the above illustration it is clear that the government gets only Rs. 20.00 whereas due to the cascading effect of tax the consumer is under compulsion to pay Rs. 45.00 indirectly towards tax.

By the introduction of vat the Tax base is widened and every intermediary is required to pay tax only on the value addition made by him.

Objectives of VAT

1. Eliminates multiplicity of taxes such as entry tax, turnover tax, sales tax, surcharge, Excise duty etc,
2. Prevents double taxation with cascading effect.
3. Eliminates inter – state tax (eg. Central Sales Tax)
4. Rationalize all tax burdens in the cases of goods and services until sold for consumption.
5. Makes the tax structure, simple, efficient and transparent.
6. Improve tax compliance.
7. Development of fair and healthy competition in the interest of consumers.

What are the advantage of VAT?

- Less chances for tax evasion as the incidence of tax spread over every dealer.
- Lower tax rate.
- Increased revenue to state gets the tax on the sale price.
- A check on creation of black money.
- No procedural hazards.
- Uniformity of prices all over the country

VAT Rate Structure

- ❖ 1% on gold, Silver, precious metals, gems, and precious stones.
- ❖ 4% on Essential goods and primary raw materials.

- ❖ 12.5% on goods not covered in any schedule.

What is INPUT TAX

Input generally mean goods purchased by a dealer in the course of his business for re – sale or for use in the manufacture, processing, packing and storing of other goods or any other business use. The tax paid on inputs is known as Input Tax.

Methodology of VAT

Primary Producer: Farmer

Sale of wheat to miller Rs.100

VAT payable @10% Rs.10

Secondary producer : Miller

Input Rs.100

Value added Rs.200

Sales to Baker Rs.300

VAT @ 10% Rs.30

Less: Input tax credit Rs.10

VAT payable Rs.20

Government

VAT collection =

$Rs(10+20+60) = Rs.90$

(Actually borne by customer)

Secondary Producer : Baker

Input Rs.300

Value added Rs.600

Sales to customer Rs.900

VAT @10% Rs.90

Less: Input tax credit Rs. 30

VAT payable Rs.60

Customer

Gross Value of purchase Rs.900

Add: VAT @ 10% Rs.90

Total purchase price Rs.990

Advantages of VAT

1) Coverage

If the tax is carried through the retail level, it offers all the economic advantages of a tax that includes the entire retail price within its scope, at the same time the direct payment of the tax is spread out and over a large number of firms instead of being concentrated on particular groups, such as wholesalers or retailers.

2) Revenue security

VAT represents an important instrument against tax evasion and is superior to a business tax or a sales tax from the point of view of revenue security for three reasons.

3) Selectivity

VAT may be selectively applied to specific goods or business entities.

4) Co-ordination of VAT with direct taxation

Most taxpayers cheat on their sales not to evade VAT but to evade personal and corporate income taxes.

Disadvantages of VAT

1. No uniformity of price among the state – every stage has alter the vat
2. Other taxes also available along with VAT, so it is confused.
3. Continuance of CST under VAT regime
4. Sweeping powers given to Commissioners.

Goods covered under VAT

All goods (other than Petrol, Diesel, Aviation Turbine Fuel, IMFL and Sugarcane) including declared goods will be covered under VAT and will get the benefit of input tax credit.

Goods not covered under VAT

Petrol, Diesel, Aviation Turbine Fuel, Indian Made Foreign Liquor and sugarcane will not be taxed under VAT.

Dealers under VAT

1. Local authority, Company, Hindu undivided family, Association of persons, Firm.
2. Casual traders, factory, commission agent, Del – Credere agent, auctioneer, local branch of a firm or company situated out side the state.
3. Person who effects transfer of property in goods other than by way of sale.
4. Dealer in hire purchase works contract and persons who transfer rights to use the goods.
5. Dealers in eatables including food and drinks (eg. Hotels, restaurants and sweet stalls)
6. Port Trust, Railway administration, Shipping, Transport and Construction companies, Airlines
7. Any person of holding a permit for transport vehicles.
8. Tamil Nadu State Transport Corporation
9. Customs Department, Insurance Company, Advertising Agencies
10. Corporation or Companies of State and Central Govt.

Registration

All Traders should registered for VAT

TIN (Taxpayer Identification Number)

An eleven digit number to be quoted in all VAT transactions and correspondences

All registered dealers under NGST ACT 1959 shall be provided with TIN automatically without any fee. On receipt of TIN, the dealers have to file application for obtaining certificate of registration under VAT.

UNIT V

Consumer Protection Act

The Act is designed to make available cheap and quick remedy to a small consumer. The Act was passed in 1986 and was made effective in 1987. Amendments were made in 1991 to provide for situations of absence of President of Forum. Major changes were made in 1993 (effective from 18-6-1993). - - On getting further experience of implementation of the Act, substantial changes have been made by Amendment Act, 2002. Major changes made in the Amendment Act are - * Enhancement in monetary limit of District Forum from Rs 5 lakhs to 20 lakhs and of State Commission from Rs 20 lakhs to Rs one crore * Payment of fees for filing complaint/appeal * Complaint/appeal will have to be admitted first * Reason to be recorded if decision not given within specified time * Cost of adjournment can be imposed * Interim orders can be passed * In absence of President, senior most member can discharge functions of President * Pre-deposit of certain amount before appeal is entertained * Notice can be sent by Fax/courier. ***The amendments have been made effective from 15-3-2003.***

Procedure under CPA - Section 12(1) provides that a complaint in relation to any goods sold or delivered or to be sold or delivered or any service provided or agreed to be provided may be filed with consumer forum.

The Act envisages setting up of 'Consumer Disputes Redressal Agency' at local, i.e., district level, state level and national (Central) level. District Forum has jurisdiction to decide consumer disputes where value of goods or services and the compensation claimed does not exceed Rs. 20 lakhs. State Commission has jurisdiction to decide the cases where value of goods and services plus compensation is over Rs. 20 lakhs but not over Rs. 100 lakhs. In addition, it decides appeals filed against order of District Forum. National Commission (HQ at New Delhi) has original jurisdiction where matter is over Rs. 100 lakhs. It also has appellate jurisdiction over State Commission. Appeal against order of State Commission can be filed only in case of original order by State Commission i.e. when matter was over Rs. 20 lakhs. No appeal can be filed to National Commission in case where State Commission has passed order in appeal against original order of District Forum.

Appeal against order of National Commission lies with Supreme Court only in matters where it exercises original jurisdiction, i.e., when matter is over Rs. 100 lakhs. There is no provision of appeal in cases where National Commission decides under its appellate jurisdiction, i.e., when it decides appeal against order of State Commission.

Complaint can be filed by a consumer, a voluntary consumer association or Central/State Government. Class Action i.e., some consumers filing complaint on behalf of many consumers is also permitted. Complaint can be filed against (a) deficiency in goods or service (b) unfair trade practice or restrictive trade practice (c) charging of higher prices (d) Supplying hazardous goods or services. Fees are required to be paid along with the complaint. Complaint must be filed within two years from 'cause of action'. This period can be extended on showing sufficient cause. Appeal against order of District Forum/State Commission/National Commission must be filed within 30 days from date of order. Penalty upto Rs. 10,000 can be imposed on a complainant, if it is found that he has made frivolous (bogus) complaint. Persons not complying with order of redressal authorities can be punished with imprisonment upto three years and/or fine upto Rs. 10,000.

Provisions are made for enforcement of order and imposition of penalty in case order of consumer forum is disobeyed.

Complaint to consumer forum - Section 12(1) provides that a complaint in relation to any goods sold or delivered or to be sold or delivered or any service provided or agreed to be provided may be filed with consumer forum.

District, State Commission and National Commission are consumer forums, termed as Consumer Dispute Redressal Agencies. It is necessary to understand meaning of 'complaint' and who can file the same.

Defect - The word 'defect' means any fault, imperfection or shortcoming in the quality, quantity potency, purity or standard that is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods (Section 2(1)(f) of CPA).

Consumer Dispute - 'Consumer Dispute' means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint [section 2(1)(e)]. - Obviously, if the person against whom complaint is made agrees to the complaint, there is no 'consumer dispute'.

Who is 'Complainant' - Section 2(1)(b) of CPA defines that "Complainant" means (i) a consumer; or (ii) any voluntary consumer association registered under the Companies Act, or under any other law for the time being in force; or (iii) the Central Government or any State Government, who or which makes a complaint or (iv) One or more consumers, where there are numerous consumers having the same interest or (v) in case of death of a consumer, his legal heir or representative; - - who or which makes a complaint.

Exclusion if goods or a service for Commercial purpose - A person who buys goods for resale or commercial purposes or avails services for commercial purposes is specifically excluded from definition of 'consumer'.

Trader - Complaint can be lodged against a trader in case of goods and against service provider in case of services. 'Trader' includes manufacturer.

Deficiency in service - Complaint can be lodged against service provider if there is deficiency in service, or if he charges higher prices or provides services which are hazardous or where service provider follows unfair or restrictive trade practice.

Deficiency - 'Deficiency' means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard, which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. [section 2(1)(g) of CPA].

Restrictive and Unfair Trade Practices - Consumer Protection Act makes specific provisions in respect of Restrictive Trade Practices (RTP) and Unfair trade Practices (UTP).

Restrictive Trade Practice - Section 2(1)(nnn) of CPA [As amended by Amendment Act, 2002] define Restrictive Trade Practice ('RTP') as one which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include— (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price; (b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services.

Unfair Trade Practice - Unfair Trade Practice is defined under section 2(1)(r) of CP Act. -Unfair trade practice|| means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.

IPR - Copyright Act, 1957

Copyright is right of artist, author, producer of films etc. who have created a work by use of their artistic skills. On the other hand, Patents Act, 1970 is designed to protect inventions in respect of manufacture, machine or process of manufacture. Copyright Act has provisions to protect copyrights of foreign work also. This Act has attained special significance in view of GATT agreement. Under this international agreement, all signatory nations have to take steps to protect intellectual property rights (IPRs). It may be noted that registration of patent is compulsory, while registration of copyright or trade mark is optional. Rights in a patent can be availed only if it is registered, but copyrights or rights to trade mark are available even if the work is not registered.

Copyright protection is limited to an author's particular expression of idea, process and concept in a tangible medium. However, the law permits fair use.

Copyright is only in expression of an idea. There is no copyright in an idea. Copyright protects skill, labour and capital employed by the author. Its object is to protect the writer and author from the unlawful reproduction, plagiarism, piracy, copying and imitation. Thus, copyright is negative in nature. It is not a right in novelty of ideas.

Works in which copyright subsists - Section 13(1) of Copyright Act provides that copyright subsists in (a) original literary, dramatic, musical and artistic works (b) cinematograph films and (c) sound recording.

Artistic work - 'Artistic Work' means (i) a painting, sculpture, a drawing (including a diagram, map, chart or plan), an engraving or photograph. It does not matter whether or not any such work possesses artistic quality and (ii) work of architecture [section 2(c)]. 'Work of Architecture' means any building or structure having an artistic character or design, or any model for such building or structure [section 2(b)]. Note that a trade mark designed in an artistic way can be protected under Trade Mark Act (as Trade Mark) as well as under Copyright Act (as artistic work).

Dramatic work - 'Dramatic Work' includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise; but does not include a cinematograph film.

Literary Work - The term 'Literary Work' includes computer programmes, tables and compilations including computer databases [section 2(o)].

Computer programme - It means set of instructions expressed in words, codes, schemes or in any other form including a machine readable medium capable of causing computer to perform a particular task or achieve a particular result [section 2(ffc)]. Computer includes any electronic or similar device having information processing capabilities [section 2(ffb)].

Musical work - 'Musical work' means a work consisting of music and includes any graphical notation of such work, but does not include any words or any action intended to be sung, spoken or performed with the music [section 2(p)]. Composer means a person who composes the work whether or not it is recorded in form of graphical notation [section 2(ffa)].

Rights of a copyright owner - As per section 14, Copyright means exclusive right to do or authorise doing any of the following acts in respect of a work or any substantial part thereof (this right is subject to provisions of the Copyright Act).

RIGHTS IN LITERARY, DRAMATIC OR MUSICAL WORK - (i) To reproduce the work in any material form including the storing of it in any medium by electronic means (ii) to issue copies of work to the public - this clause does not apply to copies which are already in circulation (iii) to perform work in public or communicate to public (iv) to make any cinematograph film or sound recording (v) to make translation (vi) to make adaptation of work (vii) to do, in relation to translation or an adaptation of work, any of the aforesaid acts mentioned in clause (i) to clause (vi).

RIGHTS IN COMPUTER PROGRAMME - (i) To do any of the acts specified above in relation to literary work (ii) to sell or give on commercial rental or offer to sale or for commercial rental any copy of the computer programme. However, such 'commercial rental' does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.]. [proviso to section 14(b)(ii)]

RIGHTS IN ARTISTIC WORK - (i) to reproduce in any material form including depiction in two dimensions from three dimensions or *vice versa* (ii) to communicate work to public (iii) to issue copies of work to the public which are not already in circulation (iv) to include the work in any cinematograph film (v) to make any adaptation of the work (vi) to do in relation to an adaptation of the work, any of the acts specified in clause (i) to (iv) above.

RIGHTS IN CINEMATOGRAPH FILM - (i) To make a copy of the film, including a photograph of any image forming part thereof (ii) to sell or give on hire or offer for sale or hire, any copy of the film. It does not matter whether or not such copy was sold or given on hire on earlier occasions. (iii) to communicate the work to public.

RIGHTS IN SOUND RECORDING - (i) To make any other sound recording embodying it (ii) to sell or give on hire or offer for sale or hire, any copy of the film. It does not matter whether or not such copy was sold or given on hire on earlier occasions (iii) to communicate the sound recording to public.

Ownership of Copyright - Normally, author of work is the first owner (section 17). Author means (a) author of literary or dramatic work (b) composer of musical work (c) artist of artistic work (d) person taking the photograph (e) producer of cinematographic film or sound recording [section 2(d)]. Right of author is subject to some limitations.

Assignment of Copyright - The owner of copyright can assign the copyright to a work. Such assignment can be partial or full or subject to limitations and for limited term or full term. Even rights of future work can be assigned, but the assignment becomes effective only when the work comes into existence. [Some leading and popular authors sell their work at fat price even before it is complete.] After assignment, the assignee gets rights assigned and balance rights remain with the assignor (section 18).

Term of copyright - Normal term of copyright is throughout the lifetime of author plus 60 years from beginning of calendar year next following the year in which the author dies. In case of joint authorship, the author who dies last will be considered (section 22).

Compulsory licensing - If owner does not grant permission for re-publication, performance or communication to public, Copyright Board can direct Registrar of Copyrights to grant compulsory licence to complainant on such terms and conditions as it deems fit [section 31(1)].

Registration of Copyright is optional - Copyright may be registered with Registrar of Copyrights (section 44). Registration is not compulsory. The register will contain details like name or title of work, name and addresses of authors, publishers and owners of copyright. Application for registration has to be made in prescribed form with fees.

Infringement of Copyright - The Act provides for remedies in case of infringement of Copyright.

Civil and Criminal Remedies under Copyright Act - Owner of copyright has civil remedies against Infringement of Copyright Offences are also punishable

Patents Act, 1970

Patents Act, 1970 is designed to protect inventions in respect of manufacture, machine or process of manufacture. On the other hand, the Copyright Act, 1957 is to protect rights of artists, authors, producers of films, computer software owners etc. Patent is an exclusive rights granted to the patent holder, for a limited

period, as a reward for creative work based on his private initiative. 'Creativity' is accorded the status of 'property' which can be bought, sold, licensed or hired like any other commodity. The principle behind patent protection is that creativity will not get encouragement if it cannot be protected from pirating or copying.

Major changes have been made by Patents (Amendment) Act, 2002, which was passed on 25-6-2002 aligning it to TRIPS in many aspects. Highlights are - * It provides for uniform protection for 20 years. * Appellate Authority is provided. Appeal against order of Controller and Central Government and application for rectification of register of patents will be to appellate Board and not to High Court. [However, suit for infringement of Patent or revocation of patent will lie with Court only] * Person other than patent holder to obtain marketing approval from regulatory authorities within 3 years before expiration of terms of patent * Provisions for protection of bio-diversities of traditional knowledge * Reversal of burden in case of process patent * Procedural simplifications.

The amendments have not yet been brought into force. However, these have been incorporated in this write up at appropriate places.

What is a Patent - Section 2(1)(m) merely states 'Patent' means a patent granted under this Act'. - - Thus, word 'patent' is not defined under the Act, though what can be patented and what cannot has been specified.

- - A patent, generally speaking, is a grant from Government, which confers on the grantee for a limited period of time the exclusive privilege of making, selling and using the invention for which a patent has been granted and also of authorising others to do so.

Varieties of Patents - Three kinds of patents are granted under the provisions of the Act : (a) Ordinary patent (b) Patent of Addition (c) Patent in respect of convention

International Application - Patents Act allows grant of patents to persons out of India, on the basis of international arrangements. Such grant is available only if there is a convention, treaty or arrangement with the foreign country for grant of patents on reciprocal basis i.e., if that country also agrees to grant patents to Indian applicants (section 133). Government has to specify such countries by issue of notification in official gazette. India has signed Paris Convention in August 1998. Hence, any country which is signatory to Paris convention is a convention country.

What can be patented - Requirements of patent are : (a) The subject matter should be new. This is test of 'novelty'. (b) It should be useful. This is test of 'utility'. (c) It should be an 'invention'. It should be non-obvious. (d) It should be a manner of manufacture, i.e. it should be capable of industrial application. (e) 'Vendibility' test (i.e. test of marketability) is important - the subject matter should have commercial purpose. Any invention which satisfies the definition of the 'invention' given in the Act may be patented.

Invention means a new product or process involving an inventive step and capable of industrial application. [section 2(1)(j)]. - - 'Inventive step' means a feature that makes the invention not obvious to a person skilled in that art. [section 2(1)(ja)]. 'Capable of industrial application', in relation to invention, means that the invention is capable of being made or used in an industry. [section 2(1)(ac)].

Life of Patent - Subject to the payment of prescribed renewal fee within the prescribed period, the term of every patent granted under the Act is do years from date of filing the application for patent. [section 53(1)]. [The period was 5 or 7 years for process of manufacture of food/medicine/drug and 14 years in other cases, prior to Amendment Act, 2002].

Rights of a patentee - Patentee has following rights (a) where the patent is for a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India (b) where the subject matter of patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product directly obtained from that process, in India. However, that product should not be such that no patent can be granted for that product in India. [section 48].

Working of patent and compulsory licensing - The general principle is that patents are granted to encourage inventions. *However, Patent is for use and not for hoarding or exploitation.*

Infringement of Patent - Patentee and his agents and licensees have exclusive rights to make, use, exercise or distribute the invention in India under section 48. Infringement means violating the statutory rights of patentee. Innocent infringement, i.e. infringement without knowledge that a patent exists does not require payment of damages and a share of profit (section 111). Suit for infringement can be filed only in District Court (section 104). The reliefs that can be claimed are (a) damages and a share of profit to patentee. (b) Injunction on infringer on the terms the Court may deem fit [section 108(1)]. Court can also order that the infringing goods shall be seized, forfeited or destroyed, as the Court deems fit.

Trade Marks Act, 1999

A 'trade mark' is a very important and valuable asset of a company in a market oriented economy. The Act is designed to protect this valuable property. Customers identify a product by its trade mark. Value and importance of trade mark increases as business grows. Trade Marks Act, 1999 is enacted (in place of earlier 1958 law) with an intention to protect rights of trade marks of business. It is a self-contained and comprehensive code to deal with both the civil and criminal law relating to trade and merchandise marks. Procedures and forms are prescribed in Trade Mark Rules, 2002.

The 1999 Act has not yet been made effective.

Trade Mark under Common law as well as Trade Mark Act - Protection to Trade Marks was first introduced in India in 1940. Prior to that, the law relating to trade mark was based on common law. At common law, right to property in trade mark was in the nature of monopoly enabling the holder of the said right to restrain others from using the trade mark. The trade mark had to be distinctive.

After passing of the Act, registration of trade mark is provided. However, registration of trade mark is not compulsory.

What is a 'Trade mark' - Trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours. It also includes 'certification trade mark' or 'collective mark'.

Mark can be in respect of goods or services. It should be capable of distinguishing the goods or services of one person from those of others. The mark should indicate a connection in the course of trade between the goods or services and some person having the right to use the mark.

[PDF to Word](#)