



Foundation

Fundamentals of  
**Business Laws and  
Business Communication**

Paper

1



**The Institute of Cost Accountants of India**  
Statutory Body under an Act of Parliament

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**T**he Institute of Cost Accountants of India is a Statutory Body set up under an Act of Parliament in the year 1959. The Institute as a part of its obligation, regulates the profession of Cost and Management Accountancy, enrolls students for its courses, provides coaching facilities to the students, organizes professional development programmes for the members and undertakes research programmes in the field of Cost and Management Accountancy. The Institute pursues the vision of cost competitiveness, cost management, efficient use of resources and structured approach to cost accounting as the key drivers of the profession.

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## Mission Statement

“The Cost and Management Accountant professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.”

## Motto

असतोमा सद्गमय  
तमसोमा ज्योतिर् गमय  
मृत्योर्मा मृतं गमय  
ॐ शान्तिं शान्तिं शान्तिः

From ignorance, lead me to truth  
From darkness, lead me to light  
From death, lead me to immortality  
Peace, Peace, Peace

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**Behind Every Successful Business Decision, there is always a CMA**

**FOUNDATION**

**Paper 1**

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# **Fundamentals of Business Laws and Business Communication**

**Study Notes**  
**SYLLABUS 2022**



**The Institute of Cost Accountants of India**

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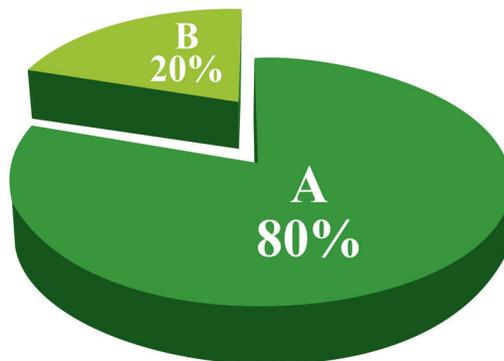
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# PAPER 1: FUNDAMENTALS OF BUSINESS LAWS AND BUSINESS COMMUNICATION

## Syllabus Structure:

The syllabus in this paper comprises the following topics and study weightage:

| Module No.                                | Module Description               | Weight |
|---|----------------------------------|--------|
| Section A : Fundamentals of Business Laws |                                  | 80%    |
| 1   | Introduction                     | 10%    |
| 2   | Indian Contracts Act, 1872       | 30%    |
| 3   | Sale of Goods Act, 1930          | 20%    |
| 4   | Negotiable Instruments Act, 1881 | 20%    |
| Section B : Business Communication        |                                  | 20%    |
| 5   | Business Communication           | 20%    |



# Contents as per Syllabus

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# SECTION - A

## FUNDAMENTALS OF BUSINESS LAWS



# INTRODUCTION

1

**This Module includes:**

- 1.1 Sources of Law**
- 1.2 Legislative Process in India**
- 1.3 Legal Methods and Court System in India**
- 1.4 Primary and Subordinate Legislation**

# INTRODUCTION

## **Module Learning Objectives:**

After studying this module, the students will be able to -

- ✦ Know the development of legal system in India over the years.
- ✦ Understand the sources of law and legislative process in India.
- ✦ Develop and understanding of the court system in India.
- ✦ Know primary and subordinate legislation prevailing in India with a brief introduction to the alternative dispute resolution process.

**L**aw, as a tool of governance, has been dynamic in nature, expanding its horizons to accommodate the requirements of the society, over centuries. As we trace the sources, let us understand what law is, in the simplest of terms.

“Law is a set of rules...” (for the society) – Concept of Law by H.L.A. Hart.

In order to understand the law in greater detail, we shall cover the below mentioned modules, beginning from what is construed to be law, to the process of how it is formulated. We shall briefly cover the following topics for a better understanding:

- Sources of Law
  - ✦ Sources of Law and Legal System in India before Independence - Brief History
- Legislative Process in India
- Court System in India
- Primary and Subordinate Legislation

## Introduction

The founding stone of source of law in modern India, post Independence, is the Constitution of India, 1950 which provides us the basic principles of law. However, there are various other sources of law, which has been developed with respect to customs, personal beliefs, pre-existing statutes, ordinances, regulations and judicial pronouncements. Its sources of law in India can be broadly classified as the below mentioned:

- 1) All statutes (preceding and proceeding the adoption of the Constitution of India, 1950),
- 2) Case Laws (judicial precedents) and customary law (personal laws)
- 3) Ordinances, regulations and other mandates that effect us.

**Statutes** - The statutes are enacted by the Parliament and State Legislatures according to their domain, mentioned in the 7th Schedule of the Constitution of India (the Union List, The State List and the Concurrent List). There are laws known as delegated legislation in the form of rules, and regulations, as well as bye-laws made by Central Government, State Governments and local authorities under the authority conferred or delegated by Parliament or the concerned State Legislature. Laws made by Parliament may extend throughout, or in any part of the territory of India and those by State Legislatures may generally apply only within the territory of the State concerned. This is also inclusive of all the statutes which have already been enacted before the adoption of the Constitution of India, 1950 unless repealed in part or in whole.

**Judicial Precedents** - As, we try and enhance our understanding of the law and its sources, it is very pertinent to know that all laws, go through rigorous scrutiny under the public eye, once it comes into effect. The concerned

entities therefore, challenge laws, regulations before the court of law accordingly. The Constitution of India, 1950 therefore provides for provision under Article 141 for the same, which illustrates - Law declared by Supreme Court to be binding on all courts.— The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Although, the Supreme Court of India or the High Courts of the respective states do not legislate, they have time and again provided with the correct interpretations for our understanding, and thereby acted as a source of law.

**Personal Laws** – Personal Laws are mostly based on individual faith, hence mostly guided by customs and practice. Example – Hindu Marriage Act, 1955, The Indian Christian Marriage Act, 1872, The Kazis Act, 1880, etc.

**Ordinance/Regulations** -Article 13.3 (a) on the Constitution of India, 1950 mentions law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

Therefore, in times of these exigencies The President of India 123. Power of President to promulgate Ordinances during recess of Parliament. Similar powers have been provided to the Governor of a State, under Article 213 of the Constitution of India, 1950, in territorial limit of the concerned state.

The authorities (Panchayati Raj), are notified under Article 243 of the Constitution of India, 1950, have the power delegated, to frame the required regulations for governance as local rural administration along with various institutions/organisations empowered to legislate rules/regulations.

As we delve into law and its sources in the modern times, it is pertinent to know the development of the same over centuries, and what it is today, and how it came to be so in brief. In this module of Indian Legal History we shall try and explore contemporary legal system with the one that already existed over various period of time over the geographical boundaries of present day India.

### 1.1.1 Sources of Law and Legal System in India before Independence – Brief History

The study of Indian legal history can primarily be divided into four periods:

- 1) The Ancient Period
- 2) The Medieval Period
- 3) The British Administrative Period
- 4) Indian Legal Period

**1. The Ancient Period** of law and governance can be found in and around the geographical boundaries of modern day India, 1500 years before and after the beginning of approximately the first decade of the Gregorian calendar. This era is mostly ruled and governed by kings having their own territories, and having laws and regulations that were very localized and specific to their geographical boundaries. So, with every passing territory, the set of laws differed. Therefore, bringing the ancient period of law with reference to the geographical idea of modern day India under the same umbrella, is a subject matter of great deliberation in itself. However, there were some underlying texts that have had their universal presence, i.e. Vedas, Smritis (Manu-Smriti being one of the most popular texts to have been in circulation), Upanishads and Arthashastra in the post Mauryan Empire era. One of the salient features of the ancient Indian law was that it was based on the principle of “dharma”, basing righteousness and duty as its guiding principle, which was a conglomeration of both legal and religious duties.

The jurisdiction of each was determined by the importance of the dispute, the minor disputes being decided by the lowest court and the most important by the king. The decision of each higher Court superseded that of the court below.

**Ancient Indian Courts** can be divided into six categories based on their rank.

They are as follows:

- ⦿ **The Kula** - Family Councils or groups
- ⦿ **The Shreni** - Trade or Professional Councils
- ⦿ **The Gana** - Village Assembly
- ⦿ **Adhikrita** - Court appointed by the King
- ⦿ **Sasita** - King's Court
- ⦿ **Nripa** – The King

But, as foreign invasions began to rise in numbers along-with the magnitude of these attacks, it became inevitable that the Indian sub-continent continue in the model of governance, that it had for centuries. Alongwith it, came changes to administration and subsequently to the legal system concerned.

**2. The Medieval Period** begins around the 12th century majorly influenced by foreign invasions and the idea of justice and laws they imported along-with themselves (overlapping with other legal systems under rulers of different faith). In 12th century when Mohammed Ghori defeated Prithviraj Chauhan at the Second Battle of Tarain in 1192 AD, shortly after which Qutubuddin Aibak became the first Sultan of Delhi, belonging to the slave dynasty. The medieval period in India had major influence from Delhi Sultanate ruled by Slave Dynasty to Lodhi Dynasty(1206-1526) after that Zahiruddin Babur defeated Ibrahim Lodhi which started the rule of the Mughal Empire effectively up to A.D. 1707 and then after the death of Bahadur Shah Zafar, the Mughal rule and influence in India practically came to an end.

During the **Sultanate period**, there were several courts of Justice, related to different branches of law. For example- Diwan-i-Mazlim deals with disputes concerning with administration or bureaucracy.

During the **Mughal period** courts were categorized according to the subject and requirement in contention, the central administration of justice was done by the central judicial system. The chief judicial functionary of the state was the Qazi-ul-Quzat who was appointed by the emperor to hear appeals and supervise the provincial courts. He was to be assisted by Mufti and Mir Ad'l: the former was given the duty to expound the law on which the Qazi would deliver the verdict, whereas the latter was associated with the functions of bringing the parties to the court and enforcing the decrees. Similarly, there was a Chief Qadi of the provincial court that dealt with all the cases which were civil and criminal nature and served as the highest forum of appeal within the province. In the capital, the military had its own judge, Qadi-e-Askar, who moved from place to place with the troops and whose office corresponds to the present day Court Martial.

With the decline of the of the Mughal Empire, prominence of the European Powers rose in the sub-continent, and the introduction of modern legal system took place.

**3. The British Administrative Period** lasted for approximately around 200 years. They entered India as traders, during the medieval period, however they were not alone in their endeavour. The Portuguese, the British, the Danes, the Dutch, and the French also reached India. All of these nations came to India for trade, but, out of them, the English people succeeded to establish their presence in India.

The East India Company enjoyed more than trade rights, if one is to see the complete picture, and what followed in the aftermath of its arrival in India. The Charter of Elizabeth, 1600 empowered them legislative right, although limited, it led to the establishment of a new judicial system in India.

But over time, new charters were executed along with several new powers being granted. The Britishers over a period of time, exercised these powers to set up institutions for administration of disputes, however with limited jurisdiction.

The East India Company turned from the perspective of an entity interested in revenue, to one that was invested in

administrative and political influence over the region, which was strengthened during the Battle of Plassey in 1757, and the subsequent grant of Dewani rights (1765) in Bengal.

However, in this process of acquiring territories after territories, the need for resolution of disputes, also arose, and it's out of this necessity the introduction of British legal system, as suited for the Britishers, was implemented in territories under British occupancy.

To name a few reforms that are still prevalent till date:

- a) Establishment of Mayor's Court – 1726
- b) Warren Hastings with his Judicial Plan of 1772 which is known as The Adalat System now.
- c) Establishment of High Courts - The Indian High Courts Act, 1861 which suggested the establishment of High Courts in place of Supreme Court in three Presidencies: Calcutta, Madras, and Bombay.
- d) The Government of India Act, 1935 (alongwith the introduction of the Federal Court in 1937)

Along-with the above mentioned introductions, the British have introduced law as a codified subject, which till then, in it's previous era, was that of an abstract idea of justice.

In this course of time, they have also provided us with The Indian Penal Code, 1860, the Indian Contract Act, 1872, the Indian Evidence Act, 1872, etc. An essential set of laws which govern the modern day world.

The Indian Contracts Act becomes one of the branches of law, that requires our special attention, which in fact had many more parts than its present version. Over time separate legislations were enacted for the same. They are:

- i) The Sale of Goods Act, 1930
- ii) The Indian Partnership Act, 1932.

**4. Indian Legal Period (1950 – Present Day)** – The Indian (post Independence) legal history, begins with the Abolition of Privy Council Jurisdiction Act, 1949 (earlier Privy Council seated in England acted as the Highest Court of Appeal, since 1726) which was passed by the Indian Government. This Act accordingly abolished the jurisdiction of Privy Council to entertain new appeals and petitions as well as to dispose of any pending appeals and petitions. It also provided for transfer of all cases filed.

The Drafting Committee for the Constitution was formed and appointed with Mr. B.R. Ambedkaras its Chairman on 29th August 1947. On 26 November 1949, the Constitution of India was passed and adopted by the Constituent Assembly (celebrated as Law Day). On 26th January 1950, the Constitution of India was adopted.

With this, India gained its autonomy in Independent judicial system and infrastructure under the Constitution of India, 1950 and over the years been empowered with the same, to have a sovereign entity, with segregation of powers at all levels and all branches of administration.

With this, the Supreme Court of India was established on 26th January 1950, established under Article 124 (1) of the Constitution of India, 1950 with a strength of 8 (1 + 7) judges. Currently it has a strength of 34 judges (33 judges of the Supreme Court of India and 1 Chief Justice of India).

# Legislative Process in India

## 1.2

The statutes enacted by the Parliament of India and/or the State Legislature is one of the most important source of law, in present day India. Therefore it becomes important to understand the process of distribution of power to legislate and structure of legislature in the Indian democracy.

The legislative process in India derives its authority from the Constitution of India, 1950. The structure of the Indian polity is that of federal (two tier structure - Central and State Government) in nature (S.R. Bommai vs Union of India, Supreme Court of India judgment - (1994 SCC (3) 1). However, India is a federation with a unitary bias and is referred as a quasi federal state because of its strong central machinery. The Indian legislative process has two major law making bodies, The Parliament of India and the State Legislature.

**Parliament of India and State Legislature** - Article 79 of the Constitution of India states that The Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Article 168 of The Constitution of India, 1950 - Constitution of Legislatures in States - For every State there shall be a Legislature which shall consist of the Governor and one House (Legislative Assembly). In some states, there are two houses, Article 168 (2) of the Constitution of India, where there are two Houses of the Legislature of a State:

- 1) Legislative Council and
- 2) Legislative Assembly.

The legislative bodies in India, i.e. at the Central Level (the Parliament) and State Level (Legislative Assembly) derive its power to frame laws from Article 245 of the Constitution of India.

**Power to Legislate** - Part XI of the Constitution of India, Article 245, states-

- (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

The power to make laws can further be found in Article 246 of the Indian Constitution which is to be read along-with the Schedule 7 of the Indian Constitution. The Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I. (Seventh Schedule-Union List).

- (2) The Parliament and the Legislature of any State have power to make laws with respect to any of the matters enumerated in List III. (Seventh Schedule-Concurrent List). The Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II (Seventh Schedule-State List).

However, despite demarcations, disputes arise on powers being transgressed between the two law making bodies, Article 254 of the Indian Constitution illustrates: Inconsistency between laws made by Parliament and laws made by the Legislatures of States—

- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List,
- (2) Law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail

Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

**Introduction of Bill** - In order to formulate a law, all legislative proposals have to be brought in the form of bills. The process of law making begins with the introduction of a Bill in either House of Parliament. A bill can be introduced either by a Minister or a member other than a Minister. In the former case, it is called a Government Bill and in the latter case, it is known as a Private Member's Bill.

Article 107 of the Indian Constitution, 1950 specifies the provisions as to introduction and passing of Bills — Subject to the provisions of Articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament. (a money bill is not introduced in the Council of States/Rajya Sabha – Article 109 of The Constitution of India, 1950).

A bill undergoes readings in each House, i.e., the Lok Sabha and the Rajya Sabha, before it is submitted to the President for assent. Therefore, as every bill goes through several rounds of debates and scrutiny before it becomes a law, therefore the time frame for the same too is one that takes time, weeks or sometimes months.

Many times, there are certain exigencies where the time and/or the circumstances do not permit for a law to be passed through the normal procedure, i.e. the legislative procedure vide the Parliament and/or the State Legislature.

Article 13.3 (a) on the Constitution of India, 1950 mentions law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

Therefore, in times of these exigencies The President of India 123. Power of President to promulgate Ordinances during recess of Parliament — If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require. (the tenure of an ordinance can vary from six weeks to six months, depending upon the circumstance)

Similar powers have been provided to the Governor of a State, under Article 213 of the Constitution of India, 1950, in territorial limit of the concerned state.

The Article 243 of the Constitution of India, 1950 illustrates how the power sharing has gone a step down further (w.r.t rural India), in order to incorporate local governance and required adequate support for the same.

Alongwith all the power to formulate the laws, what becomes a necessity is to amend the same over time. Article 368 of the Constitution of India, 1950 states that notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

However, with all these powers conferred there remains a risk of introduction/deletion of certain laws, which are in contravention of the rights that are fundamental to human survival with a dignified life and enhancement of the same. The Supreme Court of India, in *Keshavananda Bharati vs State of Kerala* (AIR 1973 SC 1461), mentioned any amendment which is in contravention of the Fundamental Rights of an individual, will be unconstitutional.

However, despite all such checks and balances, powers are transgressed, and disputes arise. In order to seek the correct understanding and validity of the law/bye law concerned, we approach the Court to address the merit in the situation, and decide accordingly.

The judiciary has been established under the Constitution of India, 1950 as an institution of last resort, for common public, as well as all legal entities under law, inclusive of the State Governments and the Government of India. The Supreme Court of India is the apex institution, in its hierarchy, followed by the High Courts in respective States, followed by the Sub-Ordinate Courts.

### Hierarchy of Courts in India

The Constitution of India, 1950 has provided us with a single integrated judicial system with a pyramidal structure which consists of different types of courts each having varying powers depending on their tier and jurisdiction. The framework of the current legal system has been laid down by the Constitution of India, 1950 in Part V (Chapter IV-Supreme Court of India) and Part VI (Chapter V-High Courts) and (chapter VI-Subordinate Courts).

### Supreme Court

Supreme Court is the apex court under the Indian Judicial system governed under Chapter IV of Part V- Art 124-147 of the Constitution comprising of the Chief Justice and other Judges appointed by the President. The Constitution bestows the following powers to the Supreme Court-

- a. **Original Jurisdiction** - Art 131 provides for the original jurisdiction whereby the Court can decide disputes between the Government of India and one or more states, between two or more states, between Government of India and State (s) on one side and State(s) on the other side.
- b. **Writ Jurisdiction** - Any person has the right to approach the Court against violation of his fundamental rights prescribed under Part-III, as expressly provided under Article 32 which guarantees constitutional remedies in the form of writs.
- c. **Appellate Jurisdiction** - Being the highest court of appeal, the Supreme Court has power to hear all appeals against any order of the High Court.
- d. **Advisory Jurisdiction** - The Supreme Court can advise the President on any question of public importance etc as desired.
- e. **Punishment for Contempt** - Under Article 129 of the Constitution of India, 1950 The Supreme Court of India and the High Court of each state under Article 215 of the Constitution of India, 1950 are declared as a Court of record with the power to punish for contempt of itself.
- f. **Review Jurisdiction** - The Court under Art 137 can review its own orders or judgments.

The Supreme Court of India was established on 26th January 1950, established under Article 124 (1) of the Constitution of India, 1950 with a strength of 8 (1 + 7) judges. Currently it has a strength of 34 judges (33 judges of the Supreme Court of India and 1 Chief Justice of India).

## High Court

High Courts are the second highest courts in the hierarchy dealt in Chapter V of Part VI of the Constitution. The Constitution bestows the following powers to the High Court-

- a. **Original Jurisdiction** - The Court has original jurisdiction and can decide disputes related to enforcement of fundamental rights, settlement of disputes relating to election to the Union and State Legislatures and jurisdiction over revenue matters.
- b. **Writ Jurisdiction** - Any person has the right to approach the Court against violation of his fundamental rights as well as legal rights under Article 226. Thus, it has a wider scope than that with the Supreme Court.
- c. **Appellate Jurisdiction** - An appeal against orders of subordinate courts in both civil and criminal matters lies with the High Court.
- d. **Power of superintendence** - Article 227 of Constitution empowers all High Courts to practice superintendence over all the courts or tribunals within its territorial jurisdiction. Moreover, under Article 228, the High Court can transfer any case pending before a subordinate court to itself if it involves a substantial question of law.
- e. **Punishment for Contempt** - Like the Supreme Court, the High Court is also declared as a Court of record with the power to punish for contempt of itself.

## Lower/Subordinate Courts

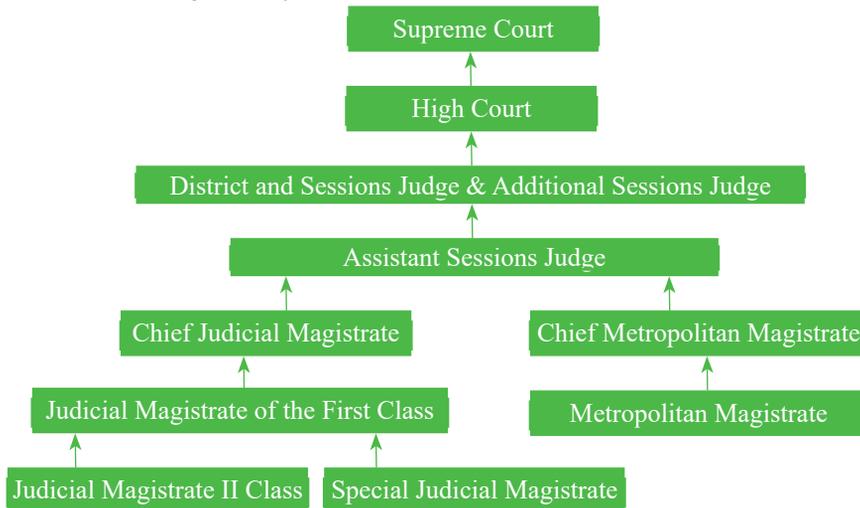
Chapter VI of Part VI of the Indian Constitution incorporates provisions related to the subordinate courts. These courts are established and controlled by the High Court taking into account various factors. The Lower/Subordinate court structure can be divided into the following two branches of the legal system-

### Criminal Court Structure

Section 6 of the Criminal Procedure Code, 1973 prescribes for the constitution of following four classes of criminal courts:

- a) **Court of Session** - Every State has session divisions with each of them having a Court of Sessions to be presided over by the Sessions Judge who is appointed by the High Court. The court has power to try any criminal matter and pass any punishment authorized by law, but punishment of death penalty has to be confirmed by the High Court.
- b) **Court of Metropolitan Magistrate** - This is a special court established by the State Government in consultation with the High Court in metropolitan areas, i.e., areas with population of more than a million. These Courts are subordinate to the Sessions Court. Chief Metropolitan Magistrate can pass any punishment authorized by law, except death penalty, penalty of life imprisonment or imprisonment for a term of more than seven years.
- c) **Court of Chief Judicial Magistrate** - The State Government in consultation with the High Court establishes number of Courts of the Judicial Magistrate- Judicial Magistrate of First Class (JMFC) and second class headed by the Chief Judicial Magistrate (CJM). These Courts can pass any punishment authorized by law, except death penalty, penalty of life imprisonment or imprisonment for a term of more than seven years.
- d) **Executive Magistrates** - The functions and powers of an Executive Magistrate are more or less administrative in nature and are for maintaining law and order. They are appointed by the respective State Government. Their essential job is not as a judicial officer.

### Hierarchy of Courts – Criminal justice system in India



**Fig. 1.1 : Hierarchy of Courts – Criminal justice system in India**

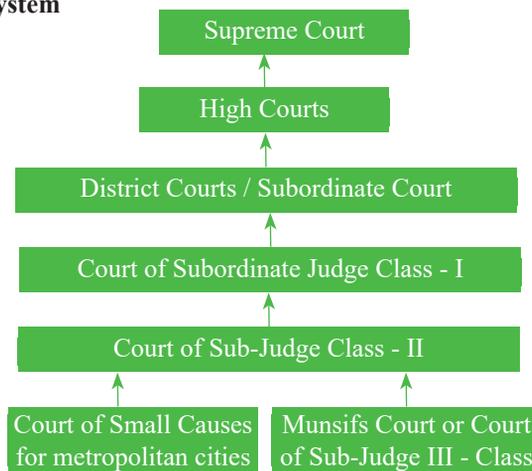
### Civil Court Structure

The district court is the highest civil court in a district and has judicial as well as administrative powers including the power of superintendence with both appellate and original jurisdiction. According to Article 233 of the Constitution the appointment of district judges that shall be done by the Governor in consultation with the High Court in every district or more than one district. Following are the courts subordinate to the district courts which have jurisdiction based on subject matter, pecuniary or territorial jurisdictions-

- a. Sub-Judge
- b. Additional Sub-Judge
- c. Munsif Courts

Thus, judiciary comprising of the court system is one of the most vital organs of the state that not only acts as a watchdog of democracy but also as the guardian of the Constitution. It is evident from the strong base and the proven efficiency of the structure of the Indian judiciary being independent and impartial that the existing system is ideal for a big country like India to ensure proper administration of justice at all levels starting from the grass root.

### Hierarchy of Civil Judicial System



**Fig. 1.2 : Hierarchy of Civil Judicial System**

## The Tribunal System in India

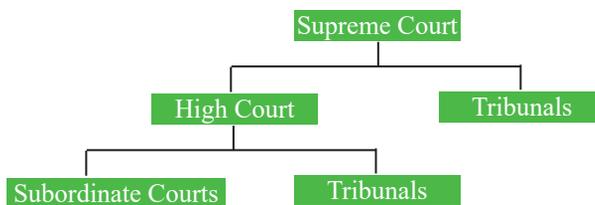
### Key insights

- Tribunals are institutions established for discharging judicial or quasi-judicial duties. The objective may be to reduce case load of the judiciary or to bring in subject expertise for technical matters.
- The Supreme Court has ruled that tribunals, being quasi-judicial bodies, should have the same level of independence from the executive as the judiciary. Key factors include the mode of selection of members, the composition of tribunals, and the terms and tenure of service.
- In order to ensure that tribunals are independent of the executive, the Supreme Court had recommended that all administrative matters be managed by the law ministry rather than the ministry associated with the subject area. Later, the Court recommended creation of an independent National Tribunals Commission for the administration of tribunals. These recommendations have not been implemented.
- Whereas the reasoning for setting up some tribunals was to reduce pendency of cases in courts, several tribunals are facing the issue of a large case load and pendency.

### Evolution of the Tribunal System

Tribunals are judicial or quasi-judicial institutions established by law. Currently, tribunals have been created both as substitutes for High Courts and as subordinate to High Courts (see Figure). In the former case, appeals from the decisions of Tribunals (such as the Securities Appellate Tribunal) lie directly with the Supreme Court. In the latter case (such as the Appellate Board under the Copyright Act, 1957), appeals are heard by the corresponding High Court.

### Structure of Indian tribunal system



**Fig. 1.3 : Structure of Indian tribunal system**

- **Composition of Tribunals:** The Supreme Court has noted that the members of a tribunal may be selected from departments of the central government as well as from various other fields of expertise. The presence of expert members (technical members) along with judicial members is a key feature of tribunals which distinguishes them from traditional courts. Only persons with a judicial background (such as Judges of the High Court and lawyers with the prescribed experience who are eligible for appointment as High Court Judges) may be considered for appointment as Judicial Members.

The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 has abolished nine tribunals and transferred their functions to High Courts. This action would add to the pending cases in such High Courts.

Appeals from tribunals usually lie with the concerned High Court. However, some laws specify that appeals will be heard by the Supreme Court. Table illustrates some tribunals and the court with appellate jurisdiction over them.

**Table: Appellate courts for some Tribunals in India**

| Name of Tribunal                                   | Act establishing the Tribunal  | Appellate Court |
|--|--|-----------------|
| Industrial Tribunal                                | The Industrial Disputes Act, 1947  | High Court      |
| Income-Tax Appellate Tribunal                      | The Income-tax Act, 1961   | High Court      |
| Customs, Excise and Service Tax Appellate Tribunal | The Customs Act, 1962  | High Court      |
| Appellate Tribunal                                 | The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 | High Court      |
| Central Administrative Tribunal                    | The Administrative Tribunal Act, 1985  | Supreme Court   |
| Railway Claims Tribunal                            | The Railway Claims Tribunal Act, 1987  | High Court      |
| Securities Appellate Tribunal                      | The Securities Exchange Board of India Act, 1992                                   | Supreme Court   |
| Debts Recovery Appellate Tribunal                  | The Recovery of Debts Due to Banks and Financial Institutions Act, 1993            | High Court      |
| Telecom Disputes Settlement and Appellate Tribunal | The Telecom Regulatory Authority of India Act, 1997                                | Supreme Court   |
| National Company Law Appellate Tribunal            | The Companies Act, 2013  | Supreme Court   |
| National Consumer Disputes Redressal Commission    | The Consumer Protection Act, 2019  | Supreme Court   |
| Appellate Tribunal for Electricity                 | The Electricity Act, 2003  | Supreme Court   |
| Armed Forces Tribunal                              | The Armed Forces Tribunal Act, 2007  | Supreme Court   |
| National Green Tribunal                            | The National Green Tribunal Act, 2010  | Supreme Court   |

### Alternate Dispute Resolution (ADR)

The process by which disputes between the parties are settled or brought to a result without the intervention of Judicial Institution and without any trial is known as Alternative Dispute Resolution ADR offers to resolve all type of matters including civil, commercial, industrial and family etc., where people are not being able to start any type of negotiation and reach the settlement.

Generally, ADR uses neutral third party who helps the parties to communicate, discuss the differences and resolve the dispute.

### Modes of Alternate Dispute Resolution (ADR)

#### Arbitration

The dispute is submitted to an arbitral tribunal which makes a decision (an “award”) on the dispute that is mostly binding on the parties. Except for some interim measures, there is very little scope for judicial intervention in the arbitration process.

#### Conciliation

A non-binding procedure in which an impartial third party, the conciliator, assists the parties to a dispute in reaching a mutually satisfactory agreed settlement of the dispute.

The parties are free to accept or reject the recommendations of the conciliator. However, if both parties accept the settlement document drawn by the conciliator, it shall be final and binding on both.

## Mediation

In mediation, an impartial person called a “Mediator” helps the parties try to reach a mutually acceptable resolution of the dispute.

The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties. This is more or less an informal way of arriving at a settlement/arrangement.

## Lok Adalat

An interesting feature of the Indian legal system is the existence of voluntary agencies called Lok Adalat (People’s Court). The Legal Services Authorities Act was passed in 1987 to encourage out-of-court settlements.

Lok Adalat or “People’s Court” comprises of a forum which facilitates negotiations in the presence of a judicial officer. The order of the Lok-Adalat is final and shall be deemed to be a decree of a civil court and shall be binding on the parties to the dispute. The order of the Lok-Adalat is not appealable in a court of law.

## Important Provisions Related To ADR

Section 89 of the Civil Procedure Code, 1908 provides that opportunity to the people, if it appears to court there exist elements of settlement outside the court then court formulate the terms of the possible settlement and refer the same for: Arbitration, Conciliation, Mediation or Lok Adalat.

The Acts which deal with Alternative Dispute Resolution are

- i. Arbitration and Conciliation Act, 1996 and,
- ii. The Legal Services Authority Act, 1987

Since courts in India are already burdened by a huge backlog of cases, many statutory provisions make mediation a compulsory prerequisite to filing of a suit in court. Some of these statutes are:

- **Industrial Disputes Act, 1947** – Section 4 of the Act assigns conciliators the responsibility to mediate and settle industrial disputes and prescribes the procedure to be followed in great detail.
- **Code of Civil Procedure, 1908** – The Code was amended in 2002 which provided for the reference of all pending court cases to mediation. The amendment also prescribes mediation for all family and personal matters due to their sensitive nature.
- **Companies Act, 2013** – Section 442 provides for the referral of disputes to mediation by the National Company Law Tribunal and the Appellate Tribunal.
- **Micro, Small and Medium Enterprises Development Act, 2006** – The Act mandates mediation and conciliation when disputes arise. (Section 18)
- **Real Estate (Regulation and Development) Act, 2016** – Section 32(g) provides for the amicable settlement of disputes through an established dispute resolution forum.
- **Commercial Courts Act, 2015** – The new amendment made to the Act in 2018 provide for mandatory mediation between parties before filing of a suit. The amendment allows litigation only if the parties meaningfully engage in mediation proceedings and still fail to resolve the matter.
- **Consumer Protection Act, 2019** – The new rendition of the Consumer Protection Act dedicates an entire Chapter to the resolution of disputes through mediation first before approaching a consumer redressal agency.

## Advantages of Alternative Dispute Resolution

**Less Time Consuming:** People resolve their disputes in short period as compared to traditional litigation forums.

**Cost effective method:** ADR as a process in general is less expensive than litigation process. Also, as a platform this is a less aggressive dispute resolution process, which often leads to an amicable settlement.

## Regulatory Bodies in India

Along with Courts, Tribunals and other forums in India, we have various regulatory bodies in India, which are the part and parcel of governance in their respective sectors, a watchdog and also a guardian in case of any irregularity. Listed below, are few of the most important one's affecting on our day to day life.

### 1. Securities and Exchange Board of India (SEBI)

The Securities and Exchange Board of India (SEBI) is a statutory body established under the SEBI act of 1992, as a response to prevent malpractices in the capital markets that were negatively impacting people's confidence in the market. Its primary objective is to protect the interest of the investors, prevent malpractices, and ensuring the proper and fair functioning of the markets. SEBI has many functions, they can be categorized as:

- (i) **Protective functions:** To protect the interests of the investors and other market participants. It includes – preventing insider trading, spreading investor education and awareness, checking for price rigging, etc.
- (ii) **Regulatory functions:** These are performed to ensure the proper functioning of various activities in the markets. It includes – formulating and implementing code of conduct and guidelines for all types of market participants, conducting an audit of the exchanges, registration of intermediaries like brokers, investment bankers, levying fees, and fines against misconduct.
- (iii) **Development functions:** These are performed to promote the growth and development of the capital markets. It includes – Imparting training to various intermediaries, conducting research, promoting self-regulation of organizations, facilitating innovation, etc.

**To perform its functions and achieve its objectives, SEBI has the following powers:**

- a. To change laws relating to the functioning of the stock exchange
- b. To access records and financial statements of the exchanges
- c. To conduct hearing and give judgments on cases of malpractices in the markets.
- d. To approve the listing and force delisting of companies from any exchanges.
- e. To take disciplinary actions like fines and penalties against participants who involve in malpractice.
- f. To regulate various intermediaries and middlemen like brokers.

### 2. Reserve Bank of India (RBI)

The Reserve Bank of India (RBI) is India's central bank and was established under the Reserve Bank of India act in 1935. The primary purpose of RBI is to conduct the monetary policy and regulate and supervise the financial sector, most importantly the commercial banks and the non-banking financial companies. It is responsible to maintain price stability and the flow of credit to different sectors of the economy.

**Some of the main functions of RBI are:**

- a. It issues the license for opening banks and authorizes bank branches.
- b. It formulates, implements, and reviews the prudential norms like the Basel framework.

- c. It maintains and regulates the reserves of the banking sector by stipulating reserve requirement ratios.
- d. It inspects the financial accounts of the banks and keeps a track of the overall stress in the banking sector.
- e. It oversees the liquidation, amalgamation or reconstruction on financial companies.
- f. It regulates the payment and settlement systems and infrastructure.
- g. It prints, issues and circulates the currency throughout the country.

The RBI is the banker to the government and manages its debt issuances, and is also responsible to maintain orderly conditions in the government securities markets (G-Sec). RBI manages the foreign exchange under the Foreign Exchange Management Act, 1999.

### 3. Insurance Regulatory and Development Authority of India (IRDAI)

The Insurance Regulatory and Development Authority of India (IRDAI) is an independent statutory body that was set up under the IRDA Act, 1999. Its purpose is to protect the interests of the insurance policyholders and to develop and regulates the insurance industry. It issues advisories regularly to insurance companies regarding the changes in rules and regulations.

It promotes the insurance industry but also controls the various charges and rates related to insurance.

#### The three main objectives of IRDA are:

- (i) To ensure fair treatment and protect the interests of the policyholder.
- (ii) To regulate the insurance companies and ensure the industry's financial soundness.
- (iii) To formulate standards and regulations so that there is no ambiguity.

#### Some important functions of IRDA are:

- a. Granting, renewing, canceling or modifying the registration of insurance companies.
- b. Levying charges and fees as per the IRDA act.
- c. Conducting investigation, inspection, audit, etc. of insurance companies and other organizations in the insurance industry.
- d. Specifying the code of conduct and providing qualifications and training to intermediaries, insurance agents etc.
- e. Regulating and controlling the insurance premium rates, terms and conditions and other benefits offered by insurers.
- f. Provides a grievance redressal forum and protect the interests of the policyholder.

### 4. Pension Funds Regulatory and Development Authority (PFRDA)

The Pension Fund Regulatory and Development Authority (PFRDA) is a statutory body, which was established under the PFRDA act, 2013. It is the sole regulator of the pension industry in India. Initially, PFRDA covered only for employees in the government sector but later, its services were extended to all citizens of India including NRI's. Its major objectives are – to provide income security to the old aged by regulating and developing pension funds and to protect the interest of subscribers to pension schemes.

The National Pension System (NPS) of the government is managed by the PFRDA. It is also responsible for regulating custodians and trustee banks. The Central Record Keeping Agency (CRA's) of the PFRDA performs record keeping, accounting and provides administration and customer services to subscribers of the pension fund.

Some functions of PFRDA are:

- (i) Conducting enquiries and investigations on intermediaries and other participants.
- (ii) Increasing public awareness and training intermediaries about retirement savings, pension schemes etc.
- (iii) Settlements of disputes between intermediaries and subscribers of pension funds.
- (iv) Registering and regulating intermediaries.
- (v) Protecting the interest of pension fund users.
- (vi) Stipulating guidelines for investment of pension funds.
- (vii) Formulating code of conduct, standards of practice, terms and norms for the pension industry.

## 5. Association of Mutual Funds in India (AMFI)

The Association of Mutual Funds in India (AMFI) was set up in 1995. It is a non-profit organization that is self-regulatory and works for the development of mutual fund industry by improving professional and ethical standards, thus aiming to make the mutual funds more accessible and transparent to the public. It provides spreads awareness vital information about mutual funds to Indian investors.

The Association of Mutual Funds in India is the regulatory body for mutual funds sector in India. It is a division of the Securities and Exchange Board of India, Ministry of Finance, Government of India. Most mutual funds firms in India are its members.

AMFI ensures smooth functioning of the mutual fund industry by implementing high ethical standard and protects the interests of both – the fund houses and investors. Most asset management companies, brokers, fund houses, intermediaries etc in India are members of the AMFI. Registered AMC's are required to follow the code of ethics set by the AMFI. These code of ethics are – integrity, due diligence, disclosures, professional selling and investment practice.

The AMFI updates the Net Asset Value of funds on a daily basis on its website for investors and potential investors. It has also streamlined the process of searching mutual fund distributors.

## 6. Ministry of Corporate Affairs (MCA)

The Ministry of Corporate Affairs (MCA) is a ministry within the government of India. It regulates the corporate sector and is primarily concerned with the administration of the Companies Act, 1956, the Companies Act, 2013 and other legislations. It frames the rules and regulations to ensure the functioning of the corporate sector according to the law.

The objective of MCA is to protect the interest of all stakeholders, maintain a competitive and fair environment and facilitate the growth and development of companies. The Registrar of Companies (MCA), is a body under the MCA that has the authority to register companies and ensure their functioning as per the provisions of the law. The issuance of securities by the companies also comes under the purview of the Companies Act.

## 7. National Housing Bank (NHB)

National Housing Bank, is the apex regulatory body for overall regulation and licensing of housing finance companies in India. It is under the jurisdiction of Ministry of Finance, Government of India. It was set up on 9 July 1988 under the National Housing Bank Act, 1987.

The primary function of NHB is to “operate as a principal agency to promote housing finance institutions both at local and regional levels and to provide financial and other support to such institutions and for matters connected therewith or incidental thereto”.

# Primary and Subordinate Legislation

## 1.4

In modern day world, government activity influences almost every field of human behaviour, thus necessitating laws in regulating this ever-widening sphere of activity. Therefore, there is constant need to legislate, at a rapid pace, with a localized understanding, which however is cumbersome and impractical to perform, for the Union Legislature and State Legislature. As we move towards a more dynamic society, therefore the governance of the same extends to various levels of government bodies, as according to the complexity, furthermore delegated power (subordinate legislation) to authorities and officials.

**Primary Legislation** is the law that derives its source from the enactments passed by the Parliament or the State Legislatures, the bodies empowered by the Constitution of India, 1950 by its provisions. In addition to these the President and the Governor have limited powers to issue ordinances when the Parliament or the State Legislature are not in session.

**Secondary Legislation/Sub-Ordinate Legislation** arises from the need for empowering authorities (to legislate) working at the grass-root level to counter the daily challenges to the existing laws becomes a necessity. The provision for secondary legislation (in the form of regulations/bye laws) has been ingrained in the Constitution of India, 1950. Article 13.3 (a) of the Constitution of India, 1950 mentions law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; therefore provision for such delegation (subordinate legislation) gains its prominence.

The Constitution of India, 1950 in its provisions illustrates of power delegation (if need be), Article 312- All India Services (1) Notwithstanding anything in Chapter VI of Part VI or Part XI, if the Council of States (Rajya Sabha) has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all India services (including an all India judicial service) common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service. (the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article)

Supreme Court of India in the Gwalior Rayon Mills Mfg. (Wing.) Co. Ltd. V. Asstt. Commissioner of Sales Tax and Others (All India Reporter 1974 SC 1660 (1667)), The legislatures because of limitations imposed upon by the time factor hardly go into matters of detail. Provision is, therefore, made for delegated legislation to obtain flexibility, elasticity, expedition and opportunity for experimentation. The practice of empowering the executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of a modern welfare state.

Subordinate legislation is the legislation made by an authority subordinate to the legislature. Subordinate legislation is that which proceeds from any authority other than the sovereign power and is, therefore, dependent for its continued existence and validity on some superior or supreme authority. Most of the enactments provide for the powers for making rules, regulations, bye-laws or other statutory instruments which are exercised by the specified subordinate authorities. Such legislation is to be made within the framework of the powers so delegated by the legislature and

is, therefore, known as delegated or subordinate legislation. The sub-ordinate legislation cannot go beyond the act or the objective of the act, or the same would be held invalid.

There are instances where pieces of subordinate legislation which tended to replace or modify the provisions of the basic law or attempted to lay down new law by themselves had been struck down as ultra vires either because of transgressing the ambit of the Act or the Act itself is inconsistent with the provisions of the Constitution of India.

**Local Governance** - The Constitution of India, 1950 itself provides provisions for decentralization of governance, for effective and adequate authority over a territory to look after the requirements. Part IX (Panchayat System) and Part IXA (Municipalities) of the Constitution of India, 1950 give them adequate powers and autonomy over their jurisdiction. These two bodies are one of the largest sources of sub-ordinate legislation, as regulations in these territories need to be revised very rapidly.

As, we have observed in the Covid-19 pandemic, how frequently, guidelines and regulations have been required to cater to the unprecedented circumstances we have been through. This would have been a cumbersome task for the Parliament or the State legislature to be able to analyse and react to the situation in a localized manner, taking adequate measures for the general well being and requirements of the population.

## Exercise

### Multiple Choice Questions (MCQ)

1. What are the sources of law?
  - (a) Constitution of India
  - (b) Constitution of India, judicial precedents, customary laws, statutes and ordinance
  - (c) Statutes enacted by the Parliament of India and State Legislatures
  - (d) Religion
2. Which Article in the Constitution of India, 1950 has provisions for introduction of a bill in the Parliament of India?
  - (a) Article 119
  - (b) Article 141
  - (c) Article 107
  - (d) Article 243
3. Money Bill is introduced in which House of the Parliament?
  - (a) Council of People – Lok Sabha
  - (b) Council of States – Rajya Sabha
  - (c) Both the Houses
  - (d) None of the Houses
4. Under what Article of the Constitution of India, 1950 is The President of India empowered to make an Ordinance?
  - (a) Article 243
  - (b) Article 123
  - (c) Article 129
  - (d) Article 368
5. The essence of Sub-Ordinate legislation can be found in which Article of the Constitution of India, 1950?
  - (a) Article 12
  - (b) Article 32
  - (c) Article 13
  - (d) Article 14

6. When was the Constitution of India passed by the Constituent Assembly?
  - (a) 26th January 1950
  - (b) 26th November 1949
  - (c) 25th November 1949
  - (d) 15th August 1947
7. Which is the highest Court in India?
  - (a) High Court
  - (b) Supreme Court of India
  - (c) International Court of Justice
  - (d) Sessions Court
8. Which Articles of the Constitution of India have the power to entertain petitions of violation of Fundamental Right?
  - (a) Article 32
  - (b) Article 226
  - (c) Article 226 and Article 32
  - (d) Article 356
9. Which is the highest civil court in a district?
  - (a) Sessions Court
  - (b) Supreme Court of India
  - (c) District Court
  - (d) High Court
10. Which Article of the Constitution of India empowers the legislature to make laws?
  - (a) Article 12
  - (b) Article 243
  - (c) Article 141
  - (d) Article 245
11. When was the Supreme Court of India established?
  - (a) 26th November 1949
  - (b) 26th January 1950
  - (c) 28th January 1950
  - (d) 1st October 1937

12. Which Article of the Constitution of India stipulates law made by the Supreme Court of India?
- (a) Article 141
  - (b) Article 245
  - (c) Article 368
  - (d) Article 352
13. What is the Schedule in the Constitution of India, for Separation of Subject for Legislature?
- (a) 9th Schedule
  - (b) 7th Schedule
  - (c) 32nd Schedule
  - (d) 14th Schedule
14. What kind of structure does the Indian Constitution have?
- (a) Unitary
  - (b) Federal
  - (c) Autocracy
  - (d) Totalitarian
15. Under which Article can we amend the provisions of the Constitution of India?
- (a) Article 356
  - (b) Article 368
  - (c) Article 254
  - (d) Article 245
16. Which is the lowest court to approach for criminal matters?
- (a) Munsif Court
  - (b) Judicial Magistrate
  - (c) Sessions Court
  - (d) District Court
17. Mention the number of judges in the Supreme Court of India including Chief Justice of India currently.
- (a) 23
  - (b) 32

- (c) 34
- (d) 46
18. Fundamental Rights are mentioned under which part of the Constitution of India?
- (a) Part-II
- (b) Part-III
- (c) Part-IX
- (d) Part-XII
19. Municipalities are provided for authority under which part of the Constitution of India?
- (a) Part IX
- (b) Part IXA
- (c) Part III
- (d) Part I
20. Under what Article of the Constitution of India, 1950 is the Governor of a State empowered to make an Ordinance?
- (a) Article 123
- (b) Article 243
- (c) Article 245
- (d) Article 213
21. What Are Personal Laws?
- (a) Laws relating to inter personal behaviour
- (b) Customs (religious beliefs) that have now been codified
- (c) Laws that a person makes
- (d) Laws based on opinion
22. Which Article of the Constitution of India, deal with inconsistency between laws made by Parliament and laws made by the Legislatures of States?
- (a) Article 245
- (b) Article 254
- (c) Article 368
- (d) Article 32

23. What is a Private Bill?
- (a) A bill introduced by a member other than a Minister
  - (b) Bill introduced by a private citizen
  - (c) Bill introduced by a Private company
  - (d) A bill relating affairs which are private to individual
24. The Parliament for the Union of India which shall consist?
- (a) The President, the Council of States (Rajya Sabha) and the House of the People (Lok Sabha)
  - (b) Rajya Sabha
  - (c) Lok Sabha
  - (d) Legislative Assembly
25. Secondary/Sub-ordinate legislation cannot go beyond:
- (a) The ambit of the Act
  - (b) The ambit of the Act or the Constitution of India
  - (c) The Constitution of India
  - (d) Directive Principles of State Policy

**State True or False:**

1. Sessions Court is the lowest court to approach for criminal matters.
2. Money Bill is introduced in Lok Sabha.
3. Any Elected Minister can pass an ordinance.
4. There is no punishment for Contempt of Court.
5. The Supreme Court of India was established by Britishers.
6. We can approach the Court for violation of our Fundamental Rights.
7. The International Court of Justice is the highest court in the hierarchy of Indian Judicial System.
8. The President of India and the Governor of a State can pass an Ordinance.
9. Executive Magistrates have responsibilities only related to the judicial system.
10. Only acts passed by the Parliament of India or State Legislature are the laws.

**Fill in the Blanks:**

1. Law is a \_\_\_\_\_ of rules.
2. The need for empowering authorities to frame \_\_\_\_\_ working at the grass-root level.
3. The Part \_\_\_\_ provides for provisions for the Panchayat Raj system.
4. Mr. \_\_\_\_\_ was the head of the drafting committee of the Constitution of India, 1950.
5. Under Article \_\_\_\_\_ of the Constitution of India, 1950, The Supreme Court of India and the High Court of each state under Article \_\_\_\_\_ of the Constitution of India, 1950 have the powers to initiate action for contempt of Court.
6. Some states are provided with Legislative \_\_\_\_\_ and Legislative \_\_\_\_\_, both.
7. Article \_\_\_\_ of the Indian Constitution illustrates about recourse in situations of inconsistency between laws made by Parliament and laws made by the Legislatures of States.
8. An appeal against orders of subordinate courts in both \_\_\_\_\_ and \_\_\_\_\_ matters lies with the High Court.
9. The Supreme Court of India can under Article \_\_\_\_\_ can review its own orders or judgments.
10. Article \_\_\_\_\_ of Constitution of India, 1950 empowers all High Courts to practice superintendence over all the courts or tribunals within its territorial jurisdiction.
11. Case laws are \_\_\_\_\_ precedents.
12. The \_\_\_\_\_ Court can decide disputes between the Government of India and one or more states.
13. An ordinance is law, that can be brought into place by the \_\_\_\_\_ for the whole of India or any territory within and/or the \_\_\_\_\_ of any state for the concerned territory in case of any exigency.
14. Article \_\_\_\_ of the Constitution of India states that The Parliament for the Union shall be headed by the President and shall have two house.
15. The jurisdiction of Privy Council was established by the \_\_\_\_\_.

**Short Essay Type Questions (Give the answers in one (or) two sentences)****1. Law/s**

Ans: Law is a set of rules, all statutes, case laws (judicial precedents) and customary law, Ordinances, regulations and other mandates that affect us.

**2. Lists in the Constitution**

The statutes are enacted by the Parliament and State Legislatures according to their domain, mentioned in the 7th Schedule of the Constitution of India (the Union List, The State List and the Concurrent List).

**3. Ordinance**

In times of these exigencies The President of India 123. Power of President to promulgate Ordinances during recess of Parliament. Similar powers have been provided to the Governor of a State, under Article 213 of the Constitution of India, 1950, in territorial limit of the concerned state.

**4. Bill**

Article 107 of the Indian Constitution, 1950 specifies the provisions as to introduction and passing of Bills. (1) Subject to the provisions of Articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament. (a money bill is not introduced in the Council of States/Rajya Sabha – Article 109 of The Constitution of India, 1950).

**5. Writ Jurisdiction**

The right to approach the Court against violation of his fundamental rights prescribed under Part-III, as expressly provided under Article 32 which guarantees constitutional remedies in the form of writs.

**Answers**

**Multiple Choice Questions (MCQ)**

|    |    |    |    |    |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |
|----|----|----|----|----|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|
| 1  | 2  | 3  | 4  | 5  | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| b  | c  | a  | b  | c  | b | b | c | c | d  | b  | a  | b  | b  | b  | b  | c  | b  | b  | d  |
| 21 | 22 | 23 | 24 | 25 |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |
| b  | b  | a  | a  | b  |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |

**State True or False**

|   |   |   |   |   |   |   |   |   |    |
|---|---|---|---|---|---|---|---|---|----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| F | T | F | F | F | T | F | T | F | F  |

**Fill in the blanks:**

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| 1  | Set  | 2  | Regulation                                   |
| 3  | IX   | 4  | MR. B.R.Ambedkar                             |
| 5  | 129, 215   | 6  | Legislative Council and Legislative Assembly |
| 7  | 254  | 8  | Civil & Criminal                             |
| 9  | 137  | 10 | Article 227                                  |
| 11 | Judicial   | 12 | The Supreme Court of India                   |
| 13 | President, Governor                              | 14 | Article 79                                   |
| 15 | Abolition of Privy Council Jurisdiction Act,1949 |    |  |

# INDIAN CONTRACTS ACT, 1872

## 2

**This Module includes:**

**2.1. Essential elements of a Contract, Types of Contract, Offer and Acceptance**

**2.2. Void and Voidable Agreements, No Consideration No Contract**

**2.3. Consideration, Legality of Object and Consideration**

**2.4. Capacity of Parties, Free Consent**

**2.5. Quasi and Contingent Contracts**

**2.6. Performance of Contracts**

**2.7. Meaning of Indemnity, Guarantee, Pledge, Agent**

**2.8. E-Contracts and E-Signature – Meanings and Requirements**

**2.9. Discharge of Contracts**

**2.10. Breach of Contract and Remedies for Breach of Contract**

# INDIAN CONTRACTS ACT, 1872

## **Module Learning Objectives:**

After studying this module, the students will be able to -

- ✦ Know the essential elements of a contract.
- ✦ Understand the difference between a void and a voidable contract.
- ✦ Appreciate the importance of consideration in a contract.
- ✦ Know the capacity of parties to a contract and the importance of free consent
- ✦ Understand the meaning of important terms like Indemnity, Guarantee, Pledge and Agent.
- ✦ Understand the meaning of performance of contract.
- ✦ Appreciate the meaning and requirement of E-Contracts and E-Signature.
- ✦ Know the various modes of discharging the contract.
- ✦ Develop an understanding about the breach of contract and remedies for the same.

# Essential Elements of a Contract, Types of Contract, Offer and Acceptance

## 2.1

The world of commerce is based on reciprocal act and/or considerations. Along with these acts, the law governing these commercial activities, revolves around rights and liabilities. The Indian Contract Act, 1872 prescribes the law relating to contracts in India and is the key act regulating enforceable agreements. The act is based on the principles of English Common Law and is applicable to all the states of India.

The basis of the rights and liabilities, is the terms of the transaction created voluntarily between the parties by making legally enforceable agreements.

Before enactment of Indian Contract Act, 1872, the courts in India used to apply English Common laws as suited to Indian conditions, customs and usages. Some difficulties were noticed in using English Common laws. Accordingly later the courts started deciding cases based on Hindu Personal laws and Muslim personal laws. But the same were still not found fit to address the business complexities.

Accordingly, the Indian Contract Act, 1872 was framed. This act is based on English Common law, which is to a large extent made up of judicial precedents.

The law relating to contracts is contained in the Indian Contract Act, 1872. The Act as originally enacted is divided into four parts:

1. Law relating to general principles of contract. [Sec 1 - 75]
2. Law relating to sale of goods. [Sec. 76 – 123] - Repealed and the Sale of Goods Act, 1930 originated
3. Law relating to special contracts [Sec. 124 – 238]
4. Law relating to Partnership Business - Repealed and The Partnership Act, 1932, enacted.

### **Definition of Contract:**

Section 2(h) of the Act defines the term contract as “an agreement between two or more parties enforceable by law”.

An agreement and its enforceability are two essential components of a contract. If either of these two is missing there is no contract. Agreement has been defined in section 2(e) as “every promise and every set of promises forming consideration for each other”.

According to Sec 2 (b), ‘when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted and a proposal when accepted becomes a contract.

The essence of agreement or in turn contract is meeting of mind of the parties. The parties to an agreement must have agreed upon the subject in the same sense and at the same time. Unless there is consensus ad idem, there cannot be any contract.

**Example:**

A had two motor cars Maruti Alto and Maruti 800; he intends to sell Maruti 800 to B. But B thought he is selling Maruti Alto agrees to his proposal. Since there is no meeting of mind both understood the same transaction differently, there is no consensus ad idem. Accordingly there is no consent and thus there is no contract.

**Will all agreements give rise to a contract?**

An agreement to become a contract must give rise to a legal obligation. Agreement can be social obligation or legal obligation. An agreement giving rise to social obligation is not a contract. That is why it is said that the term agreement is a wide term it includes both social and legal obligations but only those agreements which the parties intend to enforce legally culminates into contract. An agreement is regarded as a contract when it is enforceable by law.

Legal obligations arise to make an agreement, a contract. It means that an agreement must give rise to legal obligations. There must be an intention to create legal obligation. In case of agreement regulating business relations it is assumed that the parties intended legal consequences.

**Basics of a Contract and Important definitions under Contract Act, 1872:**

The Indian Contract Act, 1872 defines contract as an agreement between two or more parties for the buying/selling of goods or services for a valid consideration. The essentials to a valid contract are:

1. An offer and acceptance have to be made.
2. There should be a lawful consideration.
3. There should be free consent between the parties to a contract.
4. The object of the agreement should be lawful.
5. Parties must be competent to contract.
6. The contract must be enforceable by law.

**Section 2 (a) Defines Proposal or Offer** - When one person signifies to another, his willingness to do or to abstain from doing anything, to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

**Section 2 (b) Acceptance or Promise** - When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise

**Section 2 (c) Promisor and Promisee** - The person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”

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

**Section 2 (e) Agreement** Every promise and every set of promises, forming the consideration for each other, is an agreement;

Agreement = Offer + Acceptance

Contract = Agreement + Enforceability by Law

**Section 2 (f) Reciprocal Promises** - Promises which form the consideration or part of the consideration for each other are called reciprocal promises. Reciprocal promises requires both the parties to the agreement to do something.

**Section 2 (g) Void Agreement** - An agreement not enforceable by law is said to be void;

**Section 2 (h) Contract** - An agreement enforceable by law is a contract;

**Section 2 (i) Voidable Contract** - An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract. The contract will be void if the party having the option do not make it valid.

**Section 2 (j) Void Contract** - A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

### Essential Elements of a Valid Contract:

- (i) **Agreement:** In order to constitute a contract, there must be an agreement in first place. An agreement in turn is composed of two elements-offer and acceptance. Thus there must be at least two parties-one making the offer and another accepting it. The terms of offer must be definite and the acceptance must be absolute and unconditional.
- (ii) **Free Consent:** All contracts need to be voluntary - Sec 14 of the Indian Contract Act, 1872, illustrates that - 'Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. If consent is not free, then no valid contract comes into existence. This will be discussed in detail subsequently.
- (iii) **Lawful consideration:** The agreement must be supported by a lawful consideration. Consideration means 'something in return'. 'Something in return' may be an act or abstinence. But it must be real and lawful. This will be discussed in detail subsequently.
- (iv) **Parties are competent:** The parties to an agreement must be capable of entering into a contract. A person is considered competent if he is (a) eighteen years of age (b) of sound mind (c) not disqualified from contracting by any law to which he is subject. Existence of free consent implies the consent of the parties must be free and genuine i.e. not induced by coercion, undue influence, fraud or misrepresentation.
- (v) **Legality of object:** There must be legality of object and consideration failing which it will not be a valid contract. This will be discussed in detail subsequently. This contract should not violent the provision of any other laws and regulations of the country.
- (vi) **Legal Relationship:** The parties must intend to create a legal relationship. Agreements of social or domestic nature do not contemplate legal relationship, so they are not contracts.  
**Example:** A husband promising his wife to buy her a 'necklace' on occasion of her birthday is not a contract.
- (vii) **Agreements not expressly declared to be void:** The agreement not expressly declared void or illegal by law. This will be discussed in detail subsequently.
- (viii) **Consensus ad idem/Meeting of Minds:** The essence of agreement or in turn contract is meeting of mind of the parties. The parties to an agreement must have agreed upon the subject in the same sense and at the same time. Unless there is consensus ad idem, there cannot be any contract.
- (ix) **Certain and Capable of Performance:** The terms of agreement must be certain and capable of performance.  
**Example:** Mr. Y agrees to sell Mr. V some toys. The type, quality, value etc are not discussed. The agreement cannot be enforced as terms are uncertain.
- (x) **Legal formalities:** Where nature of agreement is such that it requires compliance with certain formalities, such requirements should be fulfilled. A contract may require registration in addition of being in writing. However as regards to legal effects, an oral contract has same effect as a contract in writing.

### Types of Contract:

#### (A) Based on enforceability:

- (i) **Valid Contract:** An agreement enforceable by law is a valid contract. In other words it satisfies all the requirements of a valid contract as laid down in section 10. If any of the essential requirements is missing it becomes a void contract.
- (ii) **Void agreement:** An agreement not enforceable by law is said to be void. A void agreement has no legal consequences.
- (iii) **Voidable contract:** An agreement which is enforceable at the option of one or more parties thereto but not at the option of other or others is a voidable contract.
- (iv) **Void contract:** A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. Void agreement and void contract are different. Void agreement is void ab-initio but void contract is a valid contract at the beginning but subsequently becomes void when it ceases to be enforceable.
- (v) **Unenforceable contracts:** These are the contracts which cannot be enforced in a court of law because of some technical defects, these contracts become fully enforceable if the technical defects are removed.
- (vi) **Illegal Contracts:** An illegal agreement is destitute of any legal effect from the very beginning. All illegal agreements are void agreements but all void agreements are not illegal.

#### (B) Based on method of formation:

- (i) **Formal contracts:** This term is usually found in English laws. Validity of these contracts depends upon their form. They are valid even if they lack consideration. These contracts are of two types; Contract under seal and contract of Records.  
Contract under seal are in writing and signed by the parties to them.  
Contract of Records includes the court judgements and recognisance, obligations in such cases arise out of judgement and not under the contract.
- (ii) **Simple Contract:** All contracts other than formal are called simple contracts or parole contracts.

#### (C) Based on extent of performance:

- (i) **Executed contracts:** An executed contract is one which has been completely completed by both the parties.
- (ii) **Executory contracts:** It is a contract which is wholly unperformed. If one party has performed his part of obligation but the other party has not yet completed his obligation on the contract, the contract still remains executory contract.

#### (D) Based on Obligation:

- (i) **Unilateral contract:** Under this type of contract, there is an obligation on the part of only one party when the contract is concluded.
- (ii) **Bilateral contract:** Here there is an obligation on both the parties to the contract.
- (iii) **Multilateral contract:** In this type of contract more than two parties are involved. These are very complex contracts and generally take international character.

#### (E) On the basis of mode of creation:

- (i) **Express contract:** According to section 9, in so far as the proposal or acceptance of any promise is made in words, the promise is said to be expressed. Therefore the contracts entered into between the parties by words spoken or written are known as express contracts.

- (ii) Implied or inferred contract:** As per section 9, in so far such proposal or acceptance is made otherwise than in words, the promise is said to be implied. Thus the contracts which are made by an act or conduct of the parties and not by words are termed an implied contract.
- (iii) E-contract:** This is a kind of contract formed in the course of E-commerce by interaction of two or more person competent to contract using electronic means, such as e-mail. This involves interaction of an individual with an electronic agent, such as computer program or interaction of at least two electronic agents that are programmed in such a way to generate contract. This contract are conceptually akin to the traditional paper contract and requires all the essential requirements of a valid contract like free consent, capacity of the parties, consideration and legality of objects and consideration.

## Offer and Acceptance

**Meaning and Definition of Offer:** For an agreement to come into force, there should be a definite offer by one party and unqualified acceptance by the party to whom offer is made. Thus ‘An offer is an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed, the “offeree”.

The term proposal [Sec 2(a)] used in the Indian Contract Act is like the term “offer” used in English laws. The person making proposal or offer is called the promisor or offeror and the person to whom offer is made is called the offeree and the person accepting the offer is called the promisee or acceptor. [Sec 2(c)]

### Types of Offer:

#### i) Express and Implied offer:

An offer may be made either by words or by conduct. An offer, which is made by words, is called express offer and the one, which is inferred from the conduct of a person or the circumstances of the case, is called an implied offer.

An example of implied offer is “Calcutta State Transport Corporation on different routes to carry passengers at the scheduled tariff rates. This is a case of implied offer by CSTC and once a person board in the CSTC bus he/she is said to have accepted the offer by his act/conduct.”

#### ii) Offer and Invitation to offer:

In the case of invitation to offer the person sending out invitation does not make an offer but only invites the other parties to make an offer. An advertisement for sale of goods by auction, quotations, catalogues of prices or display of goods at show room with price tag etc is invitation of offer rather than offer.

The main difference between an offer and an invitation to offer is that in the case of former there should be expression of willingness to do or to abstain from doing with a view to obtaining the assent of the other party, while in the later one, the party without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, he only invites the other party to make an offer on those terms. The person who responds to the invitation to offer makes the offer which may or may not be accepted by the person inviting the offer. Invitation to offer also occurs for instance when tenders are invited. Advertisement for tender is merely an invitation to offer. The tender constitutes the offer which can be accepted or rejected. Simply putting goods up for auction, catalogue of goods, a prospectus of a company, invitation for jobs, invitation for public subscription etc are merely invitation and not an offer.

#### iii) Offer can be specific or general:

An offer is said to be specific when it is addressed to a definite person or persons. Such offer can be accepted only by the person or persons to whom it is made. A general offer on the other hand is addressed to public in large and may be accepted by anybody fulfilling the terms and conditions.

### Legal Rules Regarding Offer:

An offer to be valid must comply with the following rules:

1. **Offer may be expressed or implied:** An offer may be expressed or may be implied from the conduct of the parties or circumstances of the case.

**Express Offer:** An express offer is made by words spoken or written.

**Implied Offer** - An implied offer is not made by words spoken or written. It is implied from the conduct of the parties or from the circumstances.

2. **Offer may be specific or general:** A specific offer is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer. A general offer is an offer made to the public at large.
3. **Offer must give rise to legal obligation:** An offer to be valid must create legal relationship between the parties. The very purpose of entering into an agreement is to make it enforceable at a Court of law.
4. **Terms of an offer must be definite and certain:** The terms of an offer should not be vague or indefinite.
5. **Offer must be distinguished from an invitation to offer:** An offer must be distinguished from an invitation to offer. The shopkeepers generally display their goods in showcases with price tags. The shopkeeper in such cases is not making an offer so that you can accept it. He is, on the other hand, inviting you to make an offer which he may or may not accept. Thus you cannot compel a shopkeeper to sell the goods displayed in the showcase at the marked price. However, if there is a specific law to sell goods at marked price then the seller will have to sell at marked price. For example, during National Emergency essential commodities have to be sold at marked price.
6. **Offer must be communicated:** An offer must be communicated to the person to whom it is made. A person can accept the offer only when he knows about it. If he does not know it, he cannot accept it.
7. **Communication of Special Terms:** Special terms of a contract must be communicated. Generally, such cases arise in respect of general offers, like tickets or receipts for depositing luggage at the Railway Station or receipts for clothes given for dry cleaning etc. The rule in these cases is that parties are not bound unless conditions printed are properly communicated. The special terms must be brought to the customer's notice either
  - (a) by drawing his attention to them specifically or
  - (b) by inferring that a man of ordinary prudence could find them by exercising ordinary prudence. However, if the special conditions forming part of the offer are contained in a document which is delivered after the contract is complete. Then the customer is not bound by them.
8. **Offer must be made with a view to obtaining the consent of the other party to do or to abstain from doing the act:** The offer must be made with an intention to get the consent of the other party to do or to abstain from doing the act and not simply with a view to making known the intention of making an offer.
9. **Offer should not impose an unnecessary obligation to communicate non acceptance:** Thus an offeror cannot say that if acceptance is not communicated by Sunday next, the offer would be considered as accepted.
10. **Offer to make an offer is not an offer.**

### Meaning and Definition of Acceptance:

Once an offer has been made, it has to be accepted to make a valid contract.

Section 2(b) defines acceptance and offer can be accepted by only the person or persons for whom the offer is

intended. An offer made to a particular person can only be accepted by him alone, on the other hand an offer made to a class of persons can be accepted by any member of that class of persons. An offer made to the world at large can be accepted by any person whatsoever.

### **Essentials of a valid acceptance:**

The following are the essentials of a valid acceptance. They are:

#### **1. Acceptance must be absolute and unqualified: [Sec. 7(1)]**

In order to be effective, there must be an absolute and unqualified acceptance of all the terms of the offer. Qualified acceptance would amount to rejection of the offer.

#### **2. Acceptance must be communicated:**

For an acceptance to be valid, it must not only be made by the offeree but must also be communicated by or with the authority of the offeree to the offeror. Acceptance must be communicated by the acceptor. In order to result in a contract it must be a 'matter of fact'.

Silence cannot be construed as acceptance.

#### **3. Acceptance must be in a prescribed or reasonable mode: [Sec. 7(2)]**

It should be in a prescribed or reasonable mode. [Sec. 7(2)] If the offer or prescribes no mode of acceptance, the acceptances must be communicated according to some usual and reasonable mode. The usual modes of communication are by words spoken or written or by conduct, it is called an implied acceptance.

#### **4. Acceptance must be given within a reasonable time and before the offer lapses:**

Acceptance must be given within the specified time limit, if any and if no time is stipulated, acceptance must be given within a reasonable time because an offer cannot be kept open indefinitely. Again the acceptance must be given before the offer is revoked or lapses by reason of offeree's knowledge of the death or insanity of the offeror. Acceptance given to a revoked offer is not valid.

#### **5. Acceptance cannot precede an offer:**

It cannot precede an offer. Acceptance must be given after receiving the offer. It should not precede the offer.

#### **6. Acceptance must be given only by the person to whom the offer is made:**

An offer can be accepted only by the person or persons to whom it is made and with whom it imports an intention to contract. It cannot be accepted by another person without the consent of the offer.

#### **7. Rejected offer can be accepted only on renewal:**

Rejected offer can be accepted only, on renewal; offer once rejected can't be accepted again unless a fresh offer is made.

#### **8. Revocation of acceptance:**

Under English Law acceptance is revocable, whereas under Indian Law acceptance is irrevocable.

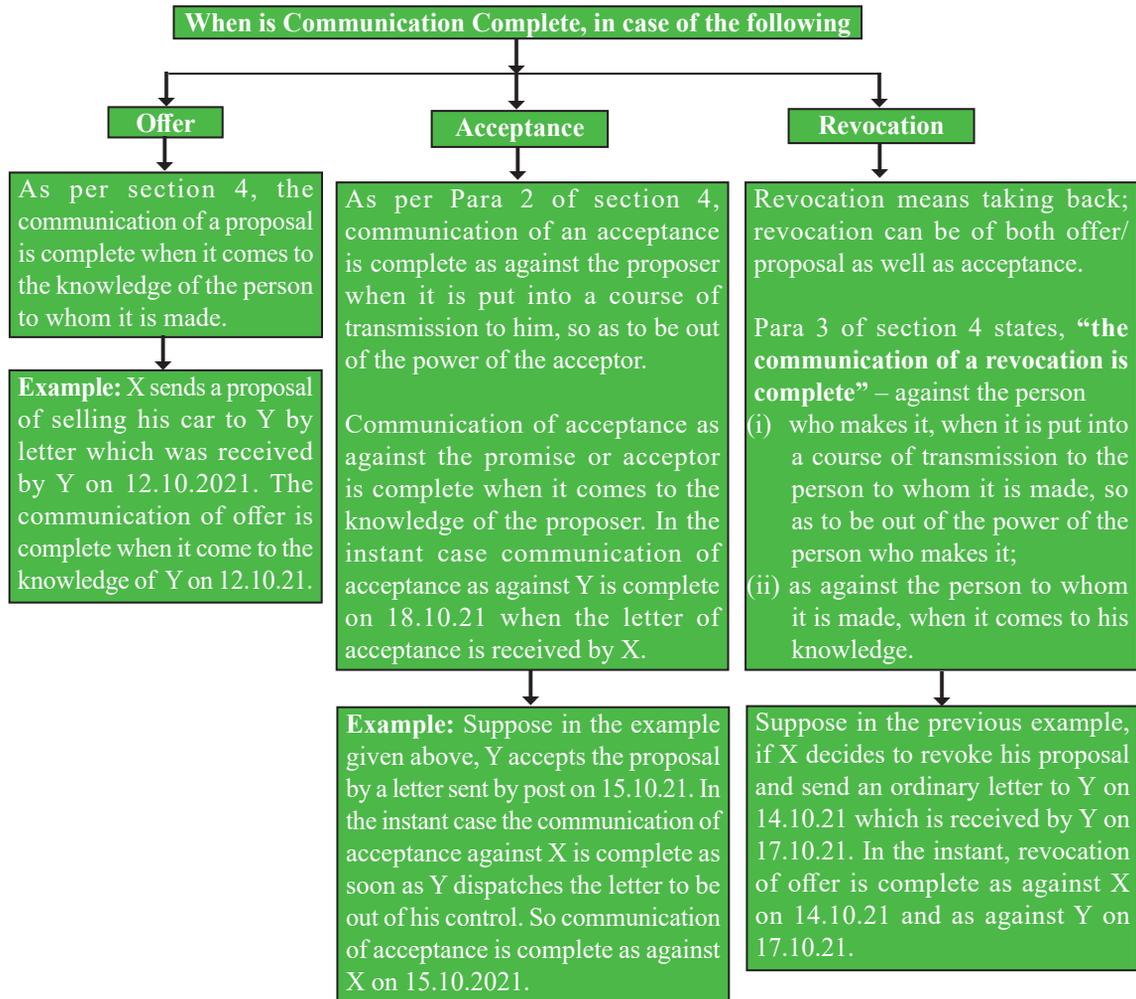
#### **9. Acceptance to give an acceptance is not an acceptance.**

### **Communication, Acceptance and Revocation of Proposals**

The term "communication" can be explained as, the process of sending or bringing any matter to the knowledge

of the person to whom it is directed. The process of sending or bringing to the notice may be by letters, fax, telegram, telephone etc.

Communication is very important in case of contract and it can be explained as below:



**Fig. 2.1 : Communication in case of Offer, Acceptance and Revocation**

**Revocation of offer and acceptance: [Sec. 5]**

Revocation means taking back or withdrawal of offer or acceptance. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance, is complete against the acceptor, but not afterwards.

**Example:**

A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

**Revocation:** Section 6 of the Act provides the modes for revocation of an offer or acceptance.

- (i) By the communication of notice of revocation by the proposer to the other party. The offer or may revoke his proposal any time before the letter of acceptance is posted to him and not afterwards. Similarly acceptance can be revoked any time before the letter of acceptance is received by the offer or.
- (ii) By the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;  
What is a reasonable time is a question of fact in each case.
- (iii) By the failure of the acceptor to fulfill a condition precedent to acceptance.
- (iv) By the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance. Where an offeree writes his acceptance but dies before posting, the offer lapse and posting of the letter after his death will not create a contract.
- (v) If a counter offer is made to it. Where the offer is accepted with some modification in terms of the offer or with some other condition not forming part of the offer, such qualified acceptance amounts to a counter offer.
- (vi) If an offer not accepted according to prescribed or usual mode. However, the offeror gives notice to the offeree within the reasonable time that the acceptance is not according to the prescribed or usual mode of acceptance.
- (vii) An offer comes to an end if the law is changed so as to make the contract contemplated by the offer illegal or in capable of performance.

# Void and Voidable Agreements, No Consideration No Contract

## 2.2

**A**n agreement becomes a contract when it fulfills all essential elements of a valid contract. In case one or more of the essential elements of a valid contract are missing, the contract is void, voidable, illegal or unenforceable. Let us discuss them one by one.

**A. Voidable contract [Sec. 2(i)]:** An agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of other, is a voidable contract.

A contract becomes voidable when it is enforceable at the option of one or more party thereto but not other. How this happens? When in one of the essential elements of a valid contract, free consent is absent.

**Illustration:** A promise to sell his farm to B for ₹ 5.0 lakh. B was not prepared for this but A by force compelled B to sign the agreement. Here the consent of B was obtained by coercion or fraud.

**Solution:** The contract is voidable at the option of B.

**B. Void agreement [Sec. 2(g)]:** An agreement not enforceable by law is said to be a void agreement. A void agreement does not create any legal rights or obligations, hence is null and void ab initio.

**C. Void contract [Sec. 2(j)]:** A contract which ceases to be unenforceable by law becomes void when it ceases to be enforceable by law. Void contract is initially a perfectly valid contract but subsequent development turns it into a void contract.

**The following agreements have been expressly declared to be void by the Indian Contract Act:**

- (i) Agreement by a minor or a person of unsound mind. [Sec(11) and Sec(12)]
- (ii) Agreement of which the consideration or object is unlawful. [Sec(23)]
- (iii) Agreement made under a bilateral mistake of fact material to the agreement. [Sec(20)]
- (iv) Agreement of which the consideration or object is unlawful in part and the illegal part cannot be separated from the legal part. [Sec(24)]
- (v) Agreement made without consideration. [Sec(25)]
- (vi) Agreement in restraint of marriage. [Sec(26)] - Every agreement in restraint of the marriage of any person, other than a minor, is void.
- (vii) Agreement in restraint of trade. [Sec(27)]- Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. The exception is an agreement not to carry on business of which goodwill is sold.
- (viii) Agreement in restraint of legal proceedings. [Sec(28)]- Every agreement —

- (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
  - (b) Which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.
- (ix) Agreements the meaning of which is uncertain. [Sec(29)] - Agreements, the meaning of which is not certain, or capable of being made certain, are void.
- (x) Agreements by way of wager. [Sec(30)] - Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to a person to abide by the result of any game or other uncertain event on which any wager is made.
- (xi) Agreements contingent on impossible events. [Sec(36)]
- (xii) Agreements to do impossible acts. [Sec(56)] - According to section 56 an agreement to do impossible event is void. Impossibility may be at the time of entering into a contract or subsequent to the formation of the contract but before performance of the contract.
- (xiii) In case of reciprocal promises to do things legal and also other things illegal, the second set of reciprocal promises is a void agreement [Sec(57)]

# Consideration, Legality of Object and Consideration

## 2.3

**C**onsideration means something in return. When someone promises to do or not to do something for somebody else he also in turn needs some reciprocal gesture from other party in return which in common parlance we mean consideration. It may be either some benefit conferred on one party or some detriment suffered by other. It may be an act or abstinence or promise.

Section 25 of the Indian Contract Act provides that “An agreement made without consideration is void.”

Sec.2(d) defines consideration as, ‘When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.’

An agreement without consideration is not enforceable and therefore is void. The reason why law enforces only those promises which are made for consideration is that gratuitous or voluntary promises are often made rashly and without due deliberation. To prevent the parties seeking legal recourse for dispute arising due to non fulfillment of such rash contractual obligations which lack consideration, it is essential to put consideration as one of the essential element in order to be construed as a binding contract.

### Legal Rules Regarding Consideration:

#### 1. Consideration must move at the desire of the promisor:

It must move at the desire of the promisor. Any act or abstinence at the desire of third party is not consideration.

#### 2. Consideration may move from the promisee or any other person:

Consideration may be furnished even by a stranger under Indian Law. Consideration can be from any direction, even a stranger to contract can offer consideration. Under English law consideration must move from promisee and no one else.

#### 3. Consideration must be something of value:

One of the important things to note about consideration is that consideration need not be adequate. So long as the consent of the parties is free inadequacy of consideration is immaterial.

However inadequacy of consideration may be taken into account by the courts in determining the question whether the consent of the parties is free or not.

#### 4. It may be an act, abstinence or forbearance or a return promise:

Promise to not to smoke is a negative act (abstinence),

Promise to not to refer the matter to court (abstinence).

Promise to perform at the wedding anniversary or birthday party (promise to do).

**5. It may be past, present or future which the promisor is already not bound to do:**

According to Indian Law Consideration may be past, present or future. But under English Law consideration may be present or future. Past consideration is no consideration according to English Law.

**6. It must not be unlawful:**

The consideration or object of an agreement is lawful, unless —

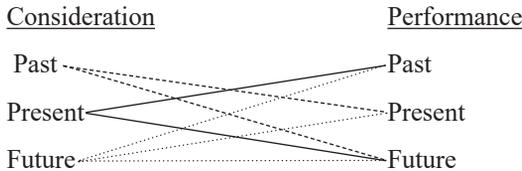
- a. It is forbidden by law;
- b. or is of such a nature that, if permitted, it would defeat the provisions of any law;
- c. or is fraudulent;
- d. or involves or implies injury to the person or property of another;
- e. or the Court regards it as immoral, or opposed to public policy

**Types of Consideration:**

Consideration may be past, present and future.

- (i) Past consideration is something wholly done or suffered before making the agreement.
- (ii) Present consideration is basically an act, which has been done in response to a positive promise. It is also called executed consideration.
- (iii) Executory or future consideration is when consideration is to move at a future date.

Consideration, depending on time can be in any combination as mentioned below:



**No Consideration – No Contract: [Sec. 25]**

The general rule is ex-nudopacto non oritur action i.e. an agreement made without consideration is void. For example if A promises to pay B Rs. 1000 without any obligation from B. This is a void agreement for want of consideration. However, the Act itself provides exceptions to this rule in section 25 itself. As per section 25, an agreement made without consideration is not void in the following circumstances:

- 1. Promise made on account of natural love and affection. [Sec. 25(1)]
- 2. Promise to compensate for voluntary services. [Sec. 25(2)]
- 3. Promise made to pay a time barred debt. [Sec. 25(3)]
- 4. Completed Gifts [Explanation 1 to Sec. 25]
- 5. Creation of agency [Sec. 185]
- 6. Contract of Guarantee [Sec. 127]
- 7. Remission [Sec. 63]

**1. Promise made out of natural love and affection:**

An agreement made without consideration is valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other.

Thus, an agreement without consideration will be valid provided.

- a. It is expressed in writing.
- b. It is registered under the law.
- c. It is made on account of natural love and affection.
- d. It is between parties standing in near relation to each other.

Normally, these types of transfers are called gift.

**2. Promise to compensate for voluntary services:** Voluntary service means service done without any request. An agreement made without consideration is valid if it is a promise to compensate a person who has already voluntarily done something for the promisor. To apply this rule the following essentials must exist.

- a. The service should have been done voluntarily.
- b. The service should have been done for the promisor.
- c. The promisor must have been in existence at the time when the service was done.
- d. The intention of promisor must have been to compensate the promisee.
- e. The service rendered must also be legal.

**3. Promise to pay time-barred debt:** A promise by a debtor to pay a time-barred debt is also enforceable. But the promise must be in writing. It must be signed by the promisor or his authorised agent. The promise may be to pay the whole or part of the debt.

**Illustration:**

A owes B ₹ 1,000 but the debt is barred by the Limitation Act. A signs a written promise to pay ₹ 500 on account of the debt.

**Solution:** The promise will be valid and binding without any fresh consideration.

**4. Creation of Agency:** According to Section 185 of the Contract Act, no consideration is necessary to create an agency. Thus when a person is appointed as an agent, his appointment is valid even if there is no consideration.

**5. Completed Gifts:** Gifts once made cannot be recovered on the ground of absence of consideration. Absence of consideration will not affect the validity of any gift already made. Thus if a person gives certain properties as gift to another according to the provisions of the Transfer of Property Act, he cannot subsequently demand the property back on the ground there was no consideration.

**Example:** A gave a watch as a gift to B on his birthday. Later on A cannot demand the watch back on the ground there was no consideration.

**6. Contract of guarantee:** Under section 127, no consideration is needed for a contract of guarantee. In other words, contract of guarantee needs no consideration.

**7. Remission:** Remission means lesser performance of the contract than what is actually to be performed.

### Stranger to Contract / Doctrine Privities of Contract:

The doctrine of privities of contract means that a contract is between the parties only and no third person can sue upon it. It means that a stranger to contract cannot sue upon it. The Supreme Court of India recognized this rule in *MC Chacko v State Bank of Travancore*, (1970 SCR (1) 658) “It is settled law that a person not a party to a contract cannot subject to certain well recognized exceptions, enforce the terms of the contract. Under the English Common law only a person who is party to a contract can sue upon it. In India the common law doctrine of privities of contract is applicable. In the course of time, the courts have introduced a number of exceptions to rule of privities of contract.

#### Indian Law:

The law in India is the same as the English Law. According to the Indian Contract Act, Consideration for an agreement may proceed from a third party, but the third party who is a stranger to the agreement cannot sue on the agreement. A person who is a party to the contract alone can enforce the legal rights arising there from. So a stranger to contract as a rule, cannot sue upon the contract.

#### Exceptions:

The following are the exceptions to the rule that a stranger to a contract cannot sue:

1. Beneficiary of a trust.
2. Provision in marriage settlement.
3. Provision for maintenance or marriage expenses of female members under a family arrangement.
4. Assignee of a contract.
5. Acknowledgement of liability
6. Agency contract.

#### 1. Beneficiary of a trust:

A trust is created for the benefit of a beneficiary. Hence, the beneficiary can enforce the provisions of the trust even though he is a stranger to the contract.

2. **Provision in marriage settlement:** A stranger to the contract can sue on the contract where a provision is made for him in marriage settlement.
3. **Provision for maintenance or marriage expenses of female members under a family arrangement:** In case a provision is made for the marriage or maintenance of a female member of the family on the partition of a Hindu undivided family, the female member can enforce the promise though she may be a stranger to a contract.
4. **Assignee of a contract:** The benefits of a contract may be assigned. The assignee of a contract can enforce the benefits of a contract though he is not a party to it.

**Example:** ‘A’ assigns his insurance policy in favour of his wife. The wife can enforce it although she is not a party to it.

5. **Acknowledgement of liability:** Where the promisor either by his conduct or acknowledgement or by part payment or by estoppel creates privity of contract between himself and the stranger, the stranger can sue.
6. **Agency contract:** Contracts which are entered into by the agent on behalf of the principal can be enforced by the principal even though he is not a party to the contract.

### Capacity to Contract (Section 11)

As per Section 11 every person is competent to contract who has attained the age of majority and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

From the above provisions of the section it means the following types of persons are not competent to contract:

- (a) A person who has not attained the age of majority, i.e. minor.
- (b) A person of unsound mind
- (c) A person who is disqualified from contracting by some law.

#### Minor:

As per section 3 of the Indian Majority Act of 1875, every person in India is a minor if he has not attained the age of 18 years of age. However in case of a minor of whose person or property or both a guardian has been appointed under the Guardian and Wards Act, 1890 or whose property is under the superintendence of any court of wards before he attains 18 years of age is 21 years.

The position of Minor's agreement and effect thereof is as under:

1. An agreement with a minor is void ab-initio.
2. The law of estoppels does not apply against a minor. It means a minor can always his plead his minority despite earlier misrepresenting to be a major. In other words he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority.
3. Doctrine of Restitution does not apply against a minor and no relief can be granted.
4. No Ratification on Attaining Majority. Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.
5. Contract beneficial to Minor: A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.
6. Minor as an agent: A minor can be appointed an agent, but he is not personally liable for any of his acts.
7. Minor's liability for necessities. If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable
8. A minor cannot be adjudged insolvent as he is incapable of entering into a contract.
9. Where a minor and an adult jointly enter into an agreement with another person the minor is not liable and the

contract can be enforced against the major person.

### Sound Mind Person:

Sound Mind person for the Purposes of Contracting (Section 12)

A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

### Illustrations:

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

**Solution:** Going by the spirit of the section it is clear that a person is of sound mind if he fulfills the following two conditions.

- (i) He/she is capable of understanding the contract.
- (ii) He/she is capable of forming a rational judgment about the effects of such contract on his interest.

In both the cases the person not satisfying any of these two conditions is not treated as a person of sound mind.

### Other Disqualified Persons:

The persons who are disqualified from entering into contract due to certain other reasons may be from legal status, political status or corporate status. Some of such categories of persons are given below:

1. **Alien Enemy:** An agreement with an Alien Enemy is void. But agreement with an Alien friend is perfectly valid and enforceable. When the Government of an Alien is at war with the Government of India, the alien is called Alien enemy who cannot enter into any contract with any Indian citizen without the permission of Government of India as the same is against the public policy.  
Contract entered into with an alien before war is put into suspension during the duration of war.
2. **Foreign Sovereign and Ambassadors:** Foreign sovereigns and their representatives enjoy certain privileges and immunities in every country. They cannot enter into contract except through their agents residing in India. They can sue the Indian citizen but an Indian citizen cannot sue them.
3. **Convicts:** A convict cannot enter into a contract while he is undergoing imprisonment.
4. **Insolvents:** An insolvent person is one who is unable to discharge his liabilities and therefore has applied for being adjudged insolvent or such proceedings have been initiated by any of his creditors. An insolvent person cannot enter into any contract relating to his property.
5. **Company or Statutory bodies:** A contract entered into by a corporate body or statutory body will be valid only to the extent it is within its Memorandum of Association and is entered into with authorised persons.
6. **Drunken or intoxicated** person cannot enter into valid contracts while such drunkenness lasts.

### **Free Consent:**

#### **Consent [Sec. 13]:**

‘Two or more persons are said to consent when they agree upon the same thing in the same sense.’ - [Sec 13].

If the parties have not agreed upon the same thing in the same sense there is no real consent and hence no contract is formed.

As per section 14 of the Contract act consent is said to be free when it is not caused by—

- (1) Coercion (Sec 15), or
- (2) Undue influence (Sec 16), or
- (3) Fraud (Sec 17), or
- (4) Misrepresentation (Sec 18), or
- (5) Mistake, subject to provisions of Sec 20, 21 and 22.

#### **Coercion: [Sec. 15]**

The term coercion has been defined in section 15 of the Act as “Coercion” is the committing or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

**Explanation:** It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed.

From the above definition of coercion given in section 15, consent is said to be caused by coercion when it is obtained by any one of the following;

- (i) committing or threatening to commit any act forbidden by the Indian Penal Code;
- (ii) unlawful detaining or threatening to detain the property of another person.

Coercion may come from a person party to the contract or even third person not connected with the contract directly.

**Unlawful detaining also amount to coercion:** If a person unlawfully detains or give a threat to detain any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement amount to coercion.

#### **Effect of coercion:**

According to section 19 when the consent is caused by coercion, fraud, misrepresentation, the agreement is avoidable at the option of the party whose consent was so caused. The aggrieved party may opt to rescind the contract. If the aggrieved party seeks to rescind the contract he must restore the benefit so obtained under the contract from other party. It should be noted that threat to commit suicide also amounts to coercion.

Some special cases which are prone to be construed cases of coercion are discussed as under;

1. **Prosecution:** A mere threat to prosecute a man or file suit against him does not constitute a coercion. In the case of *Andhra Sugar Lts V State of AP AIR 1968 SC 599* it was held that compulsion of law is not a coercion, fraud, misrepresentation, mistake or even undue-influence.
2. **High prices and high interest Rates:** Charging high interest rate, high price etc is not a coercion as the same is not prohibited under the Indian Penal code.
3. **A threat to commit suicide:** Consent to an agreement may at times be obtained by threatening to commit suicide.

**Undue Influence: [Sec. 16]**

Section 16 of the Indian Contract Act defines undue influence as under:

- (1) A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
- (2) In particular and without prejudice to the generality of the forgoing principle, a person is deemed to be in a position to dominate the will of another—
  - (a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
  - (b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- (3) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872). There is presumption of undue influence in the following relationships:

- (i) Parent and child
- (ii) Guardian and ward
- (iii) Doctor and patient
- (iv) Solicitor and client
- (v) Trustee and beneficiary
- (vi) Religious advisor and disciple
- (vii) Fiancé and fiancée

There is however no presumption of undue influence in case of relationship of —

- (i) landlord and tenant
- (ii) debtor and creditor
- (iii) husband and wife.

The wife has to be pardanashin for such presumption. In these relationships undue influence has to be proved.

Going through the definition of undue influence in section 16 we find that two elements are found in undue influence:

- (i) The relationship subsisting between the parties is such that one is in a position to dominate the will of other and
- (ii) He uses that position to obtain an unfair advantage over the other. The person intending to avoid the contract on the ground of undue influence must prove both the above two elements.

### Effect of undue influence:

Section 19A provides that when the consent is caused by undue influence, the agreement is avoidable at the option of the party whose consent was so caused.

The aggrieved party may opt to rescind the contract. If the aggrieved party seeks to rescind the contract he must restore the benefit so obtained under the contract from other party, upon such terms and conditions as to the court may seem just.

### Illustrations:

(1) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note.

**Solution:** If B sues on this bond, the Court may set the bond aside.

(2) A, a moneylender, advances ₹ 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for ₹ 200 with interest at 6% per month.

**Solution:** The Court may set the bond aside; ordering B to repay ₹ 100 with such interest as may seem just.

The court has discretion to direct the aggrieved party for giving back the benefit whether in whole or in part or set aside the contract without any direction for refund of benefit.

### Fraud: [Sec. 17]

As per section 17 of the Contract Act:

“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- (i) The suggestion, as a fact, of that which is not true by one who does not believe it to be true;
- (ii) The active concealment of a fact by one having knowledge or belief of the fact;
- (iii) A promise made without any intention of performing it;
- (iv) Any other act fitted to deceive;
- (v) Any such act or omission as the law specially declares to be fraudulent.

**Explanation:** Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. In fraud intention of the person alleged to have committed a fraud is important. Fraud often results into criminal liability.

### Does silence amount to fraud?

At times one of the party to a contract makes studied silence to some of the facts relating to the subject matter of contract. The matter on which silence is maintained by party may be material fact. Does this amount to passive fraud under the Indian Contract Act or not depends upon various factors.

Explanation to section 17 of the Indian Contract Act provides that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of case are such that having regard to them it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech.

Thus we can say that there is exception to the rule that mere silence does not amount to silence.

These two exceptions are provided in explanation to section 17 as under which we have already discussed above.

- (i) When there is a duty to speak.
- (ii) Where silence is equivalent to speech.

However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases:

- (a) **Where there is change in circumstances:** A representation may be true when made but with the passage of time or changed circumstances it may become false. Accordingly this must be communicated to other party otherwise it amount to fraud.
- (b) **When there is half-truth:** Thus even when a person is not bound to disclose a fact he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

**Effect of Fraud:** According to section 19 when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representations made had been true.

However there is one exception to the rule of voidability of contract at the option of aggrieved party. If such consent was caused by misrepresentation, or by silence, fraudulent within the meaning of section 19 the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means to discover the truth with ordinary diligence.

### **Misrepresentation: [Sec. 18]**

A statement of fact which one party makes in the course of negotiation with a view to inducing the other party to enter into a contract is known as misrepresentation. It must relate to some fact which is material to the contract. It may be expressed by words spoken or written or implied from the acts and conduct of the parties. A representation when wrongly made either innocently or intentionally is a misrepresentation. When it is made innocently or unintentionally it is misrepresentation and when made intentionally or willfully it is fraud.

Misrepresentation has been defined in section 18 of the Act as under:

“Misrepresentation” means and includes—

- (1) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him ;
- (3) Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

From the above definition of the term Misrepresentation, the following two types of misrepresentations are noticed:

- (i) **Unwarranted statements:** When a person positively asserts, makes an absolute and explicit statement of facts, that fact is true, though he has no reliable source to form this opinion, but he believes it to be true. This is one type of misrepresentation.
- (ii) **Breach of duty:** Any breach of duty which brings advantages to the person committing it by misleading the other to his prejudice is a misrepresentation. This is another type of misrepresentation.

### **Effect of Misrepresentation:**

As per section 19 when consent to an agreement is caused by misrepresentation, the agreement is a contract avoidable at the option of the party whose consent was so caused. A party to a contract, whose consent was caused by misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representations made had been true.

**Exception:** If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. This is also called 'doctrine of constructive notice'.

### **Mistake: [Sec. 20, 21 and 22]**

Mistake means an erroneous belief about something. It has not been defined in the Indian Contract Act.

Mistake can be -

(A) Mistake of law, or

(B) Mistake of fact

#### **(A) Mistake of law may be:**

- (i) Mistake of law of the country
- (ii) Mistake of law of a foreign country

##### **(i) Mistake of law of the country:**

When a party enters into a contract, without the knowledge of law in the country, the contract is affected by such mistake but it is not void. A contract is not voidable because it was caused by a mistake as to any law in force in India. The reason here is that ignorance of law is not an excuse at all. However if a party is induced to enter into a contract by the mistake of law then such a contract may be avoided. The principle of ignorance of law is not an excuse.

**(ii) Mistake of law of foreign country:** Such a mistake is treated as mistake of fact and agreement in such case is void. Ignorance of foreign law may be excused.

#### **(B) Mistake of fact may be:**

(I) Bilateral mistake, or

(II) Unilateral mistake

##### **(I) Bilateral mistake**

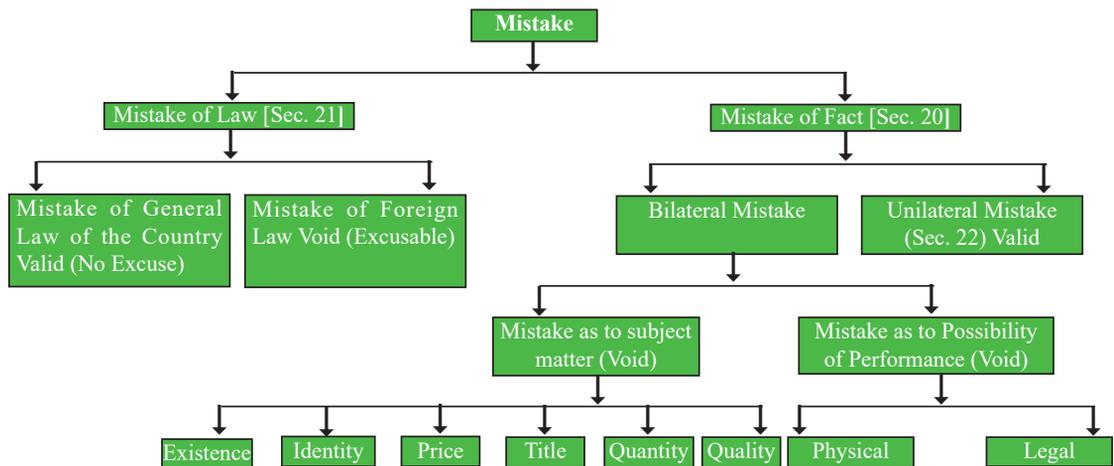
Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

**Explanation:** An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

In order to render a contract void due to bilateral mistake the following two conditions must be met.

**(a) Mistake must be mutual:** Both the parties must misunderstand each other and should be at cross purpose.

**(b) Mistake must relate to a matter of fact essential to the agreement:** What is essential fact of an agreement depends upon the nature of promise in each case.



**Fig. 2.2 : Types of Mistake**

The various types of mistakes falling under bilateral mistakes are as under:

**(i) Mistake as to subject matter covers following cases:**

- (a) **Mistake as to existence of subject matter:** If both the parties are at mutual mistake as to existence of the subject matter the agreement is void.
- (b) **Mistake as to identity of subject matter:** It usually happens when both the parties have different subject matter of contract in their mind. The contract is void due to mistake of identify of subject matter.
- (c) **Mistake as to the quality of the subject matter:** If the subject matter is something essentially different from what the parties thought to be, the agreement is void.
- (d) **Mistake as to quantity of subject matter:** Bilateral mistake as to quantity of subject matter would render the contract void.
- (e) **Mistake as to title of subject matter:** The agreement is void due to bilateral mistake as to title of the subject matter.
- (f) **Mistake as to price of the subject matter:** Mutual mistake as to price of the subject matter would render the agreement void.

**(ii) Mistake as to possibility of performance of Contract.**

Impossibility may be:

- (a) **Physical impossibility:** A contract is void if it is identified to be non-feasible due to physical factors, like time, distance, height, etc.
- (b) **Legal impossibility:** A contract is void if it provides that something shall be done which as a matter of law cannot be done.

**(II) Unilateral Mistake as to fact:**

As per section 22 a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. A unilateral mistake is not allowed as a defense in avoiding a contract unless the mistakes are brought about by another party's fraud or misrepresentation.

# Quasi and Contingent Contracts

## 2.5

**U**nder certain circumstances, the law creates and enforces legal rights and obligations although the parties have never entered into a contract. Such obligations imposed or created by law are known as “Quasi-Contracts”. In other words, Contracts constituted by law are known as Quasi- Contracts. In other words, relationship in nature of a contract is also a quasi contract.

The Indian Contract Act describes them as “certain relations resembling those created by contracts”. In English law, they are referred to as “implied contracts or constructive contracts”.

Quasi-contracts are based on the principles of equity and justice. The claim based on a quasi-contracts is generally for money. The remedy in quasi-contracts is only compensation and not damages.

### **Example:**

A delivers goods to B mistaking him to be C, and B consumes them. B is bound to pay compensation to A for the value of goods. Law imposes such a duty on B. This is a quasi-contract.

### **Features of a Quasi Contract:**

The salient features of a quasi contract are as under:

1. It is imposed by law and does not arise by agreement.
2. The duty of a party and not the promise of any party is the basis of such contract.
3. The right under it is always a right to money and though not always to a liquidated sum of money.
4. The right is available against specific persons and not the whole world.
5. A suit for breach may be filed in the same way as in case of a complete contract.

### **Types of Quasi-Contracts:**

The Indian Contract Act deals with the following quasi-contractual obligations. They are:

1. Claims for necessities supplied to a person incompetent to contract. (Sec 68).
2. Payment by an interested person. (Sec 69)
3. Benefits of non-gratuitous act. (Sec 70)
4. Responsibility of finder of goods. (Sec 71)
5. Money paid by mistake or under coercion. (Sec 72)

#### **1. Claims for necessities supplied to a person incompetent to contract:**

Where necessities are supplied to a person who is incompetent to contract, the supplier is entitled to recover

the price from the property of the incompetent person under section 68 of the Indian Contract Act.

**Example:**

A supplies B, a minor, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

**2. Payment by an interested person:**

Section 69 provides that a person who is interested in the payment of money of which another is bound by law to pay, and who therefore, pays it, is entitled to be reimbursed by the other".

In order to apply section 69, the following conditions must be satisfied.

- a. The payment made should be bonafide for the protection of one's interest.
- b. The payment should not have been made gratuitously or voluntarily.
- c. Another person must be bound by law to pay.
- d. The payment must be made to a third party and not to himself.

**3. Benefits of non-gratuitous act:**

Section 70 deal with the obligation of a person enjoying benefit of a non-gratuitous act. When a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, such person who enjoys the benefit must reimburse the former or must restore to him the thing so delivered.

For the application of section 70, the following conditions must be fulfilled.

- a. The act must have been done lawfully.
- b. It must have been done by the person not intending to act gratuitously, i.e., without any consideration.
- c. The person for whom the act is done must have enjoyed the benefit of that act.

**4. Responsibility of finder of goods:** A person who finds goods belonging to another and takes them into his custody is liable as a bailee. The finder of goods must try to find out the real owner of the goods and deliver the goods to him on demand. The obligations are imposed on finder of goods by Section 71 of the Indian Contract Act.

**5. Money paid by mistake or under coercion:** According to section 72, a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

**Exmample:** A and B jointly owe ₹ 100 to C. A alone pays the amount to C, and B, not knowing this fact, later on also pays ₹ 100 to C. C is bound to repay the amount to B.

**Distinction between Quasi Contracts and Contracts:**

| Basis  | Quasi Contracts   | Contracts  |
|--|---|--|
| Essential elements for formation of contracts. | The essential elements for formation of contracts are absent. | Essential elements for formation of contracts are present. |
| Obligation.                                    | Obligation is imposed by law.                                 | Obligation is created by consent of parties.               |

**Contingent Contracts:**

A contract may be an absolute contract or a contingent contract. An absolute contract is one where the promisor

undertakes to perform the contract in all events without any conditions. Hence, it is also known as 'unconditional contract'. A contingent contract is also called 'conditional contract'. It is a contract in which the performance becomes due, only upon the happening of some event, which may or may not happen. Contracts of insurance, indemnity and guarantee are good examples of contingent contracts.

Section 31 of the Indian Contract Act, defines a contingent contract as "a contract to do or not to do something if some event, collateral to such contract, does or does not happen".

**Example:** A contracts to pay B ₹ 50,000 if B's house is burnt. This is a contingent contract.

### **Essentials of Contingent Contract:**

The following are the essentials of a contingent contract. They are:

1. There must be a contract to do or not to do something.
2. The performance of the contract depends upon the happening or non-happening of some event in future.
3. The event must be uncertain.
4. The event must be collateral or incidental to the contract.

### **Rules regarding contingent contract:**

Rules regarding contingent contracts are contained in sections 32 to 36 of the Indian Contract Act.

They are as follows:

1. Enforcement of contracts contingent on an event happening [Sec. 32]
2. Enforcement of contracts contingent on an event not happening [Sec. 33]
3. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person (Sec. 34)
4. When contracts become void which are contingent on happening of specified event within fixed time (Sec. 35)
5. Agreements contingent on impossible events void [Sec. 36]

#### **1. Enforcement of contracts contingent on an event happening: [Sec. 32]**

Contracts, contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

#### **2. Enforcement of contracts contingent on an event not happening: [Sec. 33]**

Contracts contingent upon the non-happening of an uncertain future event can be enforced when the happening of that event becomes impossible.

**Example:** A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced after the ship sinks.

#### **3. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person (Sec. 34)**

If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

**Example:** A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now

be considered impossible, although it is possible that D may die and that C may afterwards marry B.

**4. When contracts become void which are contingent on happening of specified event within fixed time (Sec. 35)**

Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time —

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

**Example:**

- a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.
- b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

**5. Agreements contingent on impossible events void [Sec. 36]**

Contingent agreements to do or not to do anything if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

**Example:**

- a) A agrees to pay B ₹ 1,000 if two-straight lines should enclose a space. The agreement is void.
- b) A agrees to pay B ₹ 1,000 if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

**E**very Contract creates certain obligation on each of the parties involved in it. When both the parties to the Contract fulfill their obligations towards each other, the contract is said to be performed. When both the parties to the contract have performed their obligations, the contract is said to be discharged by performance.

### **Obligation of Parties to Contracts (Sec. 37)**

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisor in case of the death of such promisor before performance, unless a contrary intention appears from the contract.

#### **Example:**

- (a) A promises to deliver goods to B on a certain day on payment of ₹ 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay ₹1,000 to A's representatives.
- (b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

### **Effect of Refusal to accept offer of performance (Sec. 38)**

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfill the following conditions:

- (i) it must be unconditional
- (ii) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.
- (iii) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

### **Effect of Refusal of Party to Perform Promise Wholly (Sec. 39)**

When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

**Example:**

A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A willfully absents herself from the theatre. B is at liberty to put an end to the contract.

**Person by whom promise is to be performed (Sec. 40)**

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

**Example:**

A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

**Effect of accepting performance from third person (Sec. 41)**

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

**Devolution of Joint Liabilities (Sec. 42)**

When two or more persons have made a joint promise then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of any of them, his representative jointly with the survivor, or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfill the promise.

**Any one of Joint Promisors may be compelled to perform (Sec. 43)**

When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution— Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution— If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

**Explanation :** Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

**Example:**

A, B and C jointly promise to pay D ₹ 3,000. D may compel either A or B or C to pay him ₹ 3,000.

**Effect to release of one Joint Promisor (Sec. 44)**

Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

**Devolution of Joint Rights (Sec. 45)**

When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from

the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

**Example:**

A, in consideration of ₹ 5,000, lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

**Time and Place of Performance [Sec. 46 – 50]** - The time and place of performance of a contract are determined by an agreement between the parties. The rules regarding time and place of performance are summarized below :

**Time for Performance of Promise, where no application is to be made and no time is specified (Sec. 46)**

Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. Reasonable time would depend on the nature of contract. In case of dispute, court will decide reasonable time.

**Time and Place for Performance of Promise, where time is specified and no application to be made (Sec. 47)**

When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

**Example:**

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

**Application for Performance on certain day to be at proper time and place (Sec. 48)**

When a promise is to be performed on a certain day, and the promisor has not to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

**Place for Performance of Promise, where no application to be made and no place fixed for performance (Sec. 49)**

When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

**Example:**

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

**Performance in manner or at time prescribed or Sanctioned by Promisee (Sec. 50)**

The performance of any promise may be made in any manner, or at any time which the promise prescribes or sanctions.

**Example:**

B owes A ₹ 2,000. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C.

Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

**Performance of Reciprocal Promises [Sec. 51 – 54 and 57]**

There are situations where in a single contract there may be multiple promises and both the parties need to perform with a sequence.

Promisor is not bound to perform unless reciprocal promisee is ready and willing to perform (Section 51) When a contract consists of reciprocal promises to be simultaneously performed, no promisor need to perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

**Example:**

A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery. B need not pay for the goods, unless A is ready and willing to deliver them on payment.

**Order of Performance of Reciprocal Promises (Sec. 52)**

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

**Example:**

A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

**Liability of party preventing event on which the contract is to take effect (Sec. 53)**

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

**Example:**

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

**Effect of default as to that promise which should be first performed, in contract consisting of Reciprocal Promises (Sec. 54)**

When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promiser of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

**Example:**

A contract with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

**Reciprocal Promises to do things legal, and also other things illegal (Sec. 57)**

Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, underspecified

circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

### **Time is Essence of the Contract (Sec. 55)**

When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

**Effect of such failure when time is not essential** — If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

**Effect of acceptance of performance at time other than that agreed upon** — If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

### **Appropriation of Payments:**

#### **Application of Payment where debt to be discharged is indicated (Sec. 59)**

Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

#### **Example:**

- (a) A owes B, among other debts, ₹ 1,000 upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B ₹ 1,000. The payment is to be applied to the discharge of the promissory note.
- (b) A owes to B, among other debts, the sum of ₹ 567. B writes to A and demands payment of this sum. A sends to B ₹ 567. This payment is to be applied to the discharge of the debt of which B had demanded payment.

#### **Application of payment where debt to be discharged is not indicated (Sec. 60)**

Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

#### **Application of Payment where neither party appropriates (Sec. 61)**

Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

# Meaning of Indemnity, Guarantee, Pledge, Agent

## 2.7

### Contract of Indemnity

**C**ontract of indemnity meaning is a special kind of contract. The term ‘indemnity’ literally means “security or protection against a loss” or compensation. According to Section 124 of the Indian Contract Act, 1872 “A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.” Example: P contracts to indemnify Q against the consequences of any proceedings which R may take against Q in respect of a certain sum of money.

### Objective of Contract of Indemnity

The objective of entering into a contract of indemnity is to protect the promisee against unanticipated losses.

### Parties to the Contract of Indemnity

A contract of indemnity has two parties.

1. The promisor or indemnifier
2. The promisee or the indemnified or indemnity-holder.

**The promisor or indemnifier:** He is the person who promises to bear the loss.

**The promisee or the indemnified or indemnity-holder:** He is the person whose loss is covered or who are compensated.

In the above-stated example, P is the indemnifier or promisor as he promises to bear the loss of Q. Q is the promisee or the indemnified or indemnity-holder as his loss is covered by P.

### Essentials of Contract of Indemnity

1. **Parties to a Contract:** There must be two parties, namely, promisor or indemnifier and the promisee or indemnified or indemnity-holder.
2. **Protection of loss:** A contract of indemnity is entered into for the purpose of protecting the promisee from the loss. The loss may be caused due to the conduct of the promisor or any other person.
3. **Express or implied:** The contract of indemnity may be expressed (i.e. made by words spoken or written) or implied (i.e. inferred from the conduct of the parties or circumstances of the particular case).
4. **Essentials of a valid contract:** A contract of indemnity is a special kind of contract. The principles of the general law of contract contained in Sections 1 to 75 of the Indian Contract Act, 1872 are applicable to them. Therefore, it must possess all the essentials of a valid contract.
5. **Number of contracts:** In a contract of Indemnity, there is only one contract that is between the Indemnifier

and the Indemnified.

### **Rights of promisee/ the indemnified/ indemnity holder**

As per Section 125 of the Indian Contract Act, 1872 the following rights are available to the promisee/ the indemnified/ indemnity holder against the promisor/ indemnifier, provided he has acted within the scope of his authority.

1. **Right to recover damages paid in a suit [section 125(1)]:** An indemnity-holder has the right to recover from the indemnifier all damages which he may be compelled to pay in any suit in respect of any matter to which the contract of indemnity applies.
2. **Right to recover costs incurred in defending a suit [section 125(2)]:** An indemnity-holder has the right to recover from the indemnifier all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit.
3. **Right to recover sums paid under compromise [section 125(3)]:** An indemnity-holder also has the right to recover from the indemnifier all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit
4. **Right to sue for specific performance-** The indemnity holder is entitled to sue for specific performance if he has incurred absolute liability and the contract covers such liability.

### **Commencement of Liability of Promisor/ Indemnifier**

Indian Contract Act, 1872 does not provide the time of the commencement of the indemnifier's liability under the contract of indemnity. But different High Courts in India have held the following rules in this regard: Indemnifier is not liable until the indemnified has suffered the loss. Indemnified can compel the indemnifier to make good his loss although he has not discharged his liability. In the leading case of Gajanan Moreshwar vs. Moreshwar Madan(1942), an observation was made by the judge that " If the indemnified has incurred a liability and the liability is absolute, he is entitled to call upon the indemnifier to save him from the liability and pay it off".

Thus, Contract of Indemnity is a special contract in which one party to a contract (i.e. the indemnifier) promises to save the other (i.e. the indemnified) from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person. Section 124 and 125 of the Indian Contract Act, 1872 are applicable to these types of contracts.

### **Contract of Guarantee**

Contract of Guarantee means a contract to perform the promises made or discharge the liabilities of the third person in case of his failure to discharge such liabilities.

As per section 126 of the Indian Contract Act, 1872, a contract of guarantee has three parties: – Surety: A surety is a person giving a guarantee in a contract of guarantee. A person who takes responsibility to pay a sum of money, perform any duty for another person in case that person fails to perform such work. Principal Debtor: A principal debtor is a person for whom the guarantee is given in a contract of guarantee. Creditor: The person to whom the guarantee is given is known as the creditor. For example, Mr. X advances a loan of 25000 to Mr. Y and Mr. Z promises that in case Mr. Y fails to repay the loan, then he will repay the same. In this case of a contract of guarantee, Mr. X is a Creditor, Mr. Y is a principal debtor and Mr. Z is a Surety.

### **Essential**

1. Essentials of valid contract
2. Consideration for guarantee

3. Competency of the parties
4. Existence of a recoverable debt
5. No misrepresentation or concealment of facts
6. Conditional liability of surety
7. Concurrence of all the three parties
8. Mode of creation of contract

#### **Kinds of guarantee**

1. Retrospective or prospective
2. Specific or continuing
3. Entire or partial debt

#### **Revocation of continuing guarantee**

1. By notice
2. By death of surety

#### **Nature and extent of surety's liability**

1. Secondary
2. Contingent or dependent
3. Arises immediately on the default of the principal debtor
4. Co-extensive
5. Entitled to limit his liability
6. Continuing guarantee
7. Where the original contract between the principal debtor and creditor becomes void or voidable

#### **Rights of surety**

1. Against the principal debtor
  - a. Right of subrogation
  - b. Right of indemnity
  - c. Right to insist the principal debtor to honour his obligation
  - d. Right to securities with the creditor
2. Against the creditor
  - a. Right to request the creditor to proceed against the debtor
  - b. Right of set off
  - c. Right to benefit of creditor's securities
  - d. Right to require the employer to terminate the employee services
  - e. Right to share reduction

3. Against co-sureties
  - a. When liable to contribute equally
  - b. Bound to pay in different sums
  - c. Right to share benefits of securities
  - d. Effect of release of surety

#### **Discharge of surety**

1. By revocation
  - a. By notice
  - b. By death of surety
  - c. By novation
2. By act or conduct of creditor
  - a. Variation in the terms of the contract
  - b. Release or discharge of principal debtor
  - c. Compounding with or giving time to the principal debtor
  - d. Creditors act or omission impairing surety eventual remedy
  - e. Loss of security
3. By invalidation of contract of guarantee
  - a. Obtained by misrepresentation
  - b. Obtained by concealment
  - c. Co-sureties does not join
  - d. Lacks essential element of a valid contract.

#### **Exceptions**

- a. Agreement made with third person
- b. Mere forbearance to sue
- c. Release of one co-surety
- d. Death or insolvency of principal debtor

#### **“Pledge”, “pawnor” and “pawnee” defined [Section 172]:**

The bailment (Section 148 in The Indian Contract Act, 1872-Bailment’, ‘bailor’ and ‘bailee’ defined.—A ‘bailment’ is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the ‘bailor’. The person to whom they are delivered is called the ‘bailee’.) of goods as security for payment of a debt or performance of a promise is called “pledge”.

The bailor is in this case called the “pawnor”. The bailee is called the “pawnee”. Pledge is a variety or specie of bailment. It is bailment of goods as security for payment of debt or performance of a promise. The person who

pledges [or bails] is known as pledgor or also as pawnor, the bailee is known as pledgee or also as pawnee. In pledge, there is no change in ownership of the property. Under exceptional circumstances, the pledgee has a right to sell the property pledged.

Section 172 to 182 of the Indian Contract Act, 1872 deals specifically with the bailment of pledge.

**Example:**

A lends money to B against the security of jewellery deposited by B with him i.e. A. This bailment of jewellery is a pledge as security for lending the money. B is a pawnor and A is a pawnee.

**Essentials of pledge:**

Since Pledge is a special kind of bailment, therefore all the essentials of bailment are also the essentials of the pledge.

Apart from that, the other essentials of the pledge are:

- a. There shall be a bailment for security against payment or performance of the promise,
- b. The subject matter of pledge is goods,
- c. Goods pledged for shall be in existence,
- d. There shall be the delivery of goods from pledger to pledgee.

**Pawnee's rights Rights of Pawnee can be classified as under the following headings:**

1. **Right to retain the pledged goods [Sec. 173]:** The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged. Example: Where 'M' pledges stock of goods for certain loan from a bank, the bank has a right to retain the stock not only for adjustment of the loan but also for payment of interest.
2. **Right to retention of subsequent debts [Sec. 174]:** The Pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the Pawnee.
3. **Pawnee's right to extraordinary expenses Incurred [Sec. 175]:** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged. For such expenses, however, he does not have the right to retain the goods.
4. **Pawnee's right where pawnor makes default [Sec. 176]:** If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawnor reasonable notice of the sale. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

**Duties of the Pawnee Pawnee has the following duties:**

- a. Duty to take reasonable care of the pledged goods
- b. Duty not to make unauthorized use of pledged goods
- c. Duty to return the goods when the debt has been repaid or the promise has been performed

- d. Duty not to mix his own goods with goods pledged
- e. Duty not to do any act which is inconsistent with the terms of the pledge
- f. Duty to return accretion to the goods, if any.

**Rights of Pawnor-** As the bailor of goods pawnor has all the rights of the bailor.

**Enforcement of Pawnee's duties Right to redeem [Sec. 177]:** If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default. Duties of Pawnor Pawnor has the following duties:

- a. The pawnor is liable to pay the debt or perform the promise as the case may be.
- b. It is the duty of the pawnor to compensate the Pawnee for any extraordinary expenses incurred by him for preserving the goods pawned.
- c. It is the duty of the pawnor to disclose all the faults which may put the pawnee under extraordinary risks.
- d. If loss occurs to the pawnee due to defect in pawnors title to the goods, the pawnor must indemnify the pawnee.
- e. If the Pawnee sells the good due to default by the pawnor, the pawnor must pay the deficit.

#### **Pledge by non-owners**

Ordinarily, it is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. But in order to facilitate mercantile transactions, the law has recognised certain exceptions. These exceptions are for bonafide pledges made by those persons who are not the actual owners of the goods, but in whose possession the goods have been left.

#### **Pledge by mercantile agent [Sec. 178]**

Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge 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 pawnee acts in good faith and has not at the time of the pledge notice that the Pawnor has no authority to pledge.

#### **Contract of Agency**

According to Section 182 of the Contract Act an 'Agent' is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'.

Thus, It is clear from the definition, that an agent is a connecting link between his principal and third parties. Principles of Agency Contracts of agency are based on two important principles, namely:

- a) Whatever a person can do personally shall also be allowed to be done through an agent except in case of contracts involving personal services such as painting, marriage, singing, etc.
- b) He who does not act through a duly authorized agent does it by himself, i.e., the act of the agent are considered the acts of the principal.

#### **Essential features of contract of agency (Sec. 226):**

- a) Agreement between agency and principal

- b) Competency of principal
- c) Competency not required for an agent
- d) Contractual relationship
- e) Creation of legal relations
- f) Consideration not required
- g) Intention of the person to act

**Creation of agency Agency may be created under the following ways:**

1. **By Express Agreement (Sec. 186)** - According to section 186 of the Indian Contract Act, 1872, the contract of agency may be express or implied. Express in the sense, it may be oral or in writing. It is a practice in many cases, to appoint agents by using the power of attorney on a stamped paper.
2. **By Implied Agreement (Sec. 187):** Section 187 defines express and implied authority as follows. An authority is said to be expressed when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.”

An Implied Agency may be created from the conduct, situation or relationship of the parties. It may be inferred from the circumstances of the case.

**Implied agency includes:**

- a. **Agency by Estoppel** - It is based on the ‘Doctrine of Estoppel’. If the principal by his conduct or statement leads another person to believe that a person is his agent, he cannot deny him as his agent later. Eg- ‘A’ says ‘B’ in the presence of ‘C’ that he is the agent of ‘C’. If ‘C’ does not deny the statement, he cannot deny ‘A’ as his agent later.
- b. **Agency by Holding Out**- It is branch of the Agency by Estoppel. If one person knowingly admits another to act on his behalf and allows him to do so, later he cannot deny the act of that person. If he does not want to do so he should express his objection to that act immediately. Example: ‘A’ allowed his wife ‘B’ to manage his property and to mortgage it. A is bound by her acts.
- c. **Agency by necessity**- Agency of necessity is created in case of emergencies. In these cases, the persons who perform their services as agents do not seek prior permission or appointment from the principals. The principals are also in certain difficult situations and they could not give their assent or refusal, but accept the services rendered by such persons. Therefore, law confers authority on a person to act as an agent for another, without the consent of that person (principal). Such an agency is called ‘Agency by Necessity’.

Cases where agency by necessity may arise:

- a) When an agent exceeds his authority in an emergency (Sec. 189)
  - b) Relationship between husband and wife-
  - c) Living together
  - d) Living separately
  - e) Carrier of goods acting as Bailee does anything to protect or preserve the goods
3. **By ratification** - As per Section 196 of the Indian Contract Act, agency by ratification is said to arise when a person, on whose behalf the acts are done without his knowledge or authority, expressly or impliedly accept

such acts. Essentials of Ratification (Sec.196-200)

- a. Full knowledge
- b. Whole transaction
- c. No damage to 3rd parties
- d. Act on behalf of an other person
- e. Existence of Principal
- f. Within reasonable time
- g. Lawful acts
- h. Acts within Principal's power
- i. Communication

4. **By Operation of law-** Agency by operation of law arises where the law treats one person as an agent of another. Nature and extent of Agent's authority 1. Actual or real Sec. 188 – An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

**Sec. 190** - An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

**Exceptions:**

1. Express consent of principal
2. Implied consent of principal
3. Nature of agency
4. Custom of trade
5. Ministerial acts
6. Unforeseen emergencies

**Sub agent [Sec. 191]** - A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency. Relationship between sub agent and principal.

**Sec. 192** - Where a sub-agent is properly appointed,

- 1) The principal is, so far as regards third person, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal. Agent's responsibility for sub-agent. The agent is responsible to the principal for the acts of the subagent.
- 2) Sub-agent's responsibility.-The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

**Sec. 193** - Where a sub-agent is improperly appointed, Where an agent, without having authority to do so, has appointed a person to act as a sub-agent,

- a) the agent stands towards such person in the relation of a principal to an agent, and is responsible for

his acts both to the principal and to third persons;

- b) The principal is not represented by or responsible for the acts of the person so employed,
- c) The sub agent is not responsible to the principal.

**Substituted agent – Sec. 194:** Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

**Example:**

- (a) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.
- (b) A authorizes B, a merchant in Calcutta, to recover the money due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

**Agent's duty in naming such person - Sec. 195:** In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

**Example:**

- (a) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.
  - (b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.
- Liability of principal 1. Agent Acting for a Named Principal**  
The rights and liabilities of a named principal for the acts of his agent may be discussed as below:
- a. Acts of an Agent within the Scope of his Authority  
If an act is carried on by an agent within his authority, his acts are binding on the principal. However, the act done should be lawful.

**Acts of an Agent Exceeding his Authority It can be discussed under two heads as shown below:**

1. Where the work can be separated – Where an agent exceeds his agency to do the work of the principal, the principal is bound by that part of the work which is within his authority if it can be separated from the part of the work which is beyond his authority.

**Example:** A, owner of a ship and cargo, authorizes B to procure an insurance policy for ₹4,000 on the ship. B procures a policy for ₹4,000 on the ship and another for ₹6,000 on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

2. Where the work cannot be separated – When an agent does more than what he is authorized to do, and such act cannot be separated from that which is within his authority, the principal is not bound by the transaction. He is in such a case entitled to repudiate the whole transaction. So if the agent does something in excess of his powers, the transaction is not binding on the principal.

**Example:** A authorized B, an agent to buy 500 sheep. But B purchased 500 sheep and 200 lambs, for a sum of ₹6,000. In this case, the principal may repudiate the whole transaction.

- a. **Notice Given to Agent:** The principal is bound by the notice given to the agent in the course of business.

Thus, the knowledge of the agent is the knowledge of the principal. However, if the knowledge is not acquired by the agent in the course of his employment, it cannot be imputed to the principal.

- b. Liability by Estoppel:** The principal is liable for the unauthorized acts of the agent, if the principal has created an impression on the third party by his conduct, that the agent has the authority to do such acts. Example: A, an owner of a house held out that B, the auctioneer had authority to sell the house. B sold the house by auction to a third party for an amount less than the amount authorized by A. It was held that the purchaser is not affected by A's instructions to the auctioneer not to sell below a certain price.
  - c. Liability for Misrepresentation or Fraud:** The principal is liable for the misrepresentation or fraud committed by his agent while acting in the course of his business. It is immaterial whether the misrepresentation or fraud has been committed for the benefit of the principal or of the agent himself. Example: A offered to buy a residential flats consisting of number of flats in it and enquired C, the property manager of B, whether all the tenants were paying their rents regularly. C informed A that the tenants were paying rent regularly with immaterial exceptions. This statement turned out to be false. B was held liable for fraud because his agent (property manager) who knew the real facts had made a false statement.
3. **Agent Acting for an Unnamed Principal** When an agent contracts, as an agent for a principal but does not disclose his name, the principal is liable for the contract of the agent. But the unnamed principal should be in existence at the time of the contract and the acts must be within the scope of agent's authority. **Example:** A appointed B as his agent to purchase some goods. B entered into an agreement with C for purchasing those goods. B signed the agreement as a broker "to my principal" but did not disclose the name of the principal. Here, B is not personally liable because he contracted in the capacity of an agent. However, the agent is personally liable if he declines to disclose the identity of the principal when asked by the third parties.
  4. **Agent Acting for an Undisclosed Principal** In case of an agent acting for an undisclosed principal, the mutual rights and liabilities of the agent, principal and the third party are as follows:

    - a) **Rights and Liabilities of Agent** Here agent contracts in his own name-So he is bound by the contract. He is personally liable to the third party also. On such contracts, he can sue and be sued in his own name because in the eyes of law he is the real contracting party. In such cases, the principal and the agent have their respective rights against each other.
    - b) **Rights and Liabilities of Principal**-The principal has the right to intervene and require the performance of the contract from the third party. In such cases, the other party may sue either the principal or the agent or both. The principal if he likes may also require the performance of the contract from the other party. But in such a case, he should allow, the benefit of all payments made by the third party to the agent, to the third party.

**Example:** A contracted with B, a shopkeeper, to purchase furniture. A advanced a part payment of the price to B. Afterwards, A discovered that B is the agent of C. In this case, C may ask A to perform the contract. But he must account for the advance money received by his agent B.
  - c) **Rights and Liabilities of Third Party** If the third party has discovered that there is a principal, he may file a suit against the principal, or his agent or both. In such a case, the third party must allow the principal, the benefit of all payments received by him from the agent.

**Example:** A sold 100 bales of cotton to B on credit. Afterwards, A discovered that B was acting as an agent of C. In this case, A may sue either B or C, or both for the performance of the contract.

**Personal Liability of Agent- Sec. 230:** In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.-Such a contract shall be presumed to exist in the following cases:-

- (1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) Where the agent does not disclose the name of his principal;
- (3) Where the principal, though disclosed, cannot be sued. An agent is not personally liable for the contracts entered into by him on behalf of his principal unless there is a contract to the contrary. Such a contract is presumed in the following circumstances:
  - i. Where the Contract Expressly Provides
  - ii. Where the Agent Acts for a Foreign Principal
  - iii. Where the agents acts for an unnamed principal
  - iv. Where the principal cannot be sued
  - v. Where the Agent Contracts in Excess of his Authority
  - vi. Where the Agent Acts for an Undisclosed Principal
  - vii. Where the Trade Usage or Customs makes him Personally Liable
  - viii. Where the Agent Acts for a Non-existing Principal
  - ix. Where an Agent Receives or Pays Money by Mistake or Fraud
  - x. Where the Agent Signs the Negotiable Instruments in his own Name
  - xi. Pretended Agent
  - xii. Where the Agent's Authority is Coupled with Interest.

# E-Contracts and E-Signature – Meanings and Requirements

2.8

**E**-contracts are contracts that are not paper based and are electronic in nature. These contracts are generally made for speedy entering into a contract or for the convenience of the parties. They are best made between parties who live in 2 different parts of the world and have to enter into an agreement. A digital signature is all they need to enter into a contract as a party even though both the parties to the contract are sitting miles away from each other. In this proliferating world, it is the most convenient method to enter into a contract without being physically exhausted.

Section 10A. Of the Information Technology Act, 2008 states that: Validity of contracts formed through electronic means.—Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

For any contract to be valid, signatures from both the parties are required. In the case of an e-contract, an electronic signature comes to play. An electronic signature is defined by the Information Technology Act, section 2(p) as the authentication of any electronic record by a subscriber by means of the electronic technique specified in the second schedule and it includes a digital signature (Further illustrated in Section 3 & 3A of the Information Technology Act. Further, Section 5 of the Information Technology Act says that where any law requires that information or any other matter be authenticated by affixing a signature or any document signed by or bearing the signature of any person, then such requirement shall be deemed to have been satisfied. Electronic signature serves the same purpose as a handwritten signature. Section 85 c of The Indian Evidence Act states that as far as a digital signature is concerned, the courts presume that the information provided in that certificate is true and correct.

## **The parties to an e-contract are- The Originator and the Addressee:**

“**Originator**” according to the Sec 2 (za), Information Technology Act, 2008 is a person, who sends, generates, stores or transmits any electronic message to be sent, generated, stored or transmitted to any other person and does not include an Intermediary.(In the present context, the person who initiates the process of making an e-contract to send it to the other party.)

An “**Addressee**” according to the Sec 2 (b) of Information Technology Act, 2008 is a person, who is intended by the originator to receive the electronic record but does not include any Intermediary. (In the present context, the party which receives the e-contract made by the other party.)

## **Types of E-Contracts**

Three common kinds of electronic contracts are browse wrap, shrink wrap and click wrap contracts.

a) A browse wrap agreement is intended to be binding on the contracting party by the use of the website. Such

contracts are usually used by websites wherein the continued use of a website by a user is deemed to be acceptance of its revised terms of use and other policies.

- b) A shrink wrap contract is a license agreement where the terms and conditions of the contract are enforced upon the consumer as soon as he opens the package. Such contracts can be generally observed in the case of buying of software products. The license agreement indemnifies the user for any copyright or intellectual property rights violation of the manufacturer as soon as the buyer opens the pack (containing the software product).
- c) Click wrap or click through agreements require the user to manifest his consent or assent to the terms and conditions governing the licensed usage of the software by clicking “ok” or “I agree” button on the dialogue box. A user may choose to disagree or reject the terms by clicking cancel or closing the window. Such a user will not be able to buy or use the service upon rejection. One regularly comes across such a type of contract during online transactions, while downloading software or creating an e-mail account. Unlike the shrink wrap agreements where the terms of the agreement are hidden inside the box, in case of click wrap agreements, all the terms and conditions are accessible prior to acceptance, either in the same window or through a hyperlink.

### **Validity of E-contracts**

Along with traditional agreements the Indian Contract Act, 1872 has also accorded recognition to oral contracts provided they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void. Thus, nothing in the Indian Contract Act prohibits the enforceability of electronic agreements if such agreements possess all the essentials of a valid contract.

Free consent is an essential characteristic of a valid contract. Generally there is no scope for negotiations on E-Contracts and it is usually a ‘take it or leave it’ transaction. Indian courts have dealt with instances where the terms of contract were negotiated between parties wherein one party to the contract was in an unfair dominant position and have held unfair contracts as void.

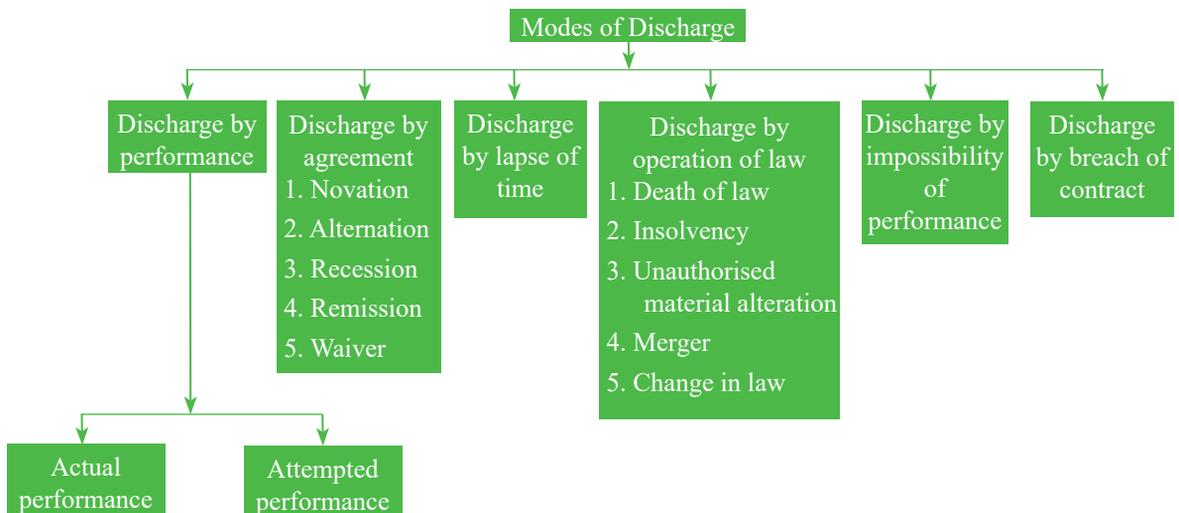
In the case of LIC India v. Consumer Education and Research Center, the Supreme Court held that “In dotted line contracts there would be no occasion for a weaker party to bargain as to assume to have equal bargaining power. He has either to accept or leave the service or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forgo the service forever.”

# Discharge of Contracts

## 2.9

**W**hen the rights and obligations created by a contract come to an end, the contract is said to be discharged or terminated. In other words, discharge of contract means termination of contractual relationship between the parties.

### Modes of discharge:



**Fig. 2.3 : Modes of Discharge**

### 1. Discharge by performance:

Performance is the usual mode of discharge of a contract. Performance may be:

- (a) actual performance
- (b) attempted performance.

Actual performance is the fulfillment of the obligations arising from a contract by the parties to it, in accordance with the terms of the contract.

Offer of performance is also known as attempted performance or tender of performance. A valid tender of performance is equivalent to performance.

## 2. Discharge by agreement:

The parties may agree to terminate the existence of the contract in any of the following ways:

- (a) Novation (Sec. 62)
- (b) Alteration (Sec. 62)
- (c) Rescission (Sec. 62)
- (d) Remission (Sec. 63)
- (e) Waiver (Sec. 63)

**a. Novation:** Substitution of a new contract in place of the existing contract is known as “Novation of Contract”. It discharges the original contract. The new contract may be between the same parties or between different parties. Novation can take place only with the consent of all the parties.

**Example:** A owes money to B under a contract. It is agreed between A, B and C that B should accept C as his debtor, instead of A. The old debt of A and B is at an end and a new debt from C to B has been contracted. There is novation involving change of parties.

**b. Alteration:** Alteration means change in one or more of the terms of the contract. In case of novation there may be a change of the parties, while in the case of alteration, the parties remain the same. But there is a change in the terms of the contract.

**c. Rescission:** Rescission means “cancellation”. All or some of the terms of a contract may be cancelled. Rescission results in the discharge of the contract.

**d. Remission:** Remission means acceptance of a lesser performance than what is actually due under the contract. There is no need of any consideration for remission.

**e. Waiver:** Waiver means giving up or foregoing certain rights. When a party agrees to give up its rights, the contract is discharged.

**Example:** A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

**3. Discharge by lapse of time:** Every contract must be performed within a fixed or reasonable period. Lapse of time discharges the contract. The Indian Limitation Act has prescribed the period within which the existing rights can be enforced in courts of law.

**Example:** If a creditor does not file a suit within three years of debt, the debt becomes time barred.

He is deprived of his legal remedy.

**4. Discharge by operation of law:** A contract may be discharged by operation of law in the following cases.

- a. Death
- b. Insolvency
- c. Unauthorized material alteration.
- d. Merger

**a. Death:** In contracts involving personal skill or ability, death terminates the contracts. In other cases, the rights and liabilities of the deceased person will pass on to his legal representatives.

- b. Insolvency:** The insolvency of the promisor discharges the contract. The promisor is discharged from all liabilities incurred prior to his adjudication.
- c. Unauthorized material alteration:** Material alteration in the terms of the contract without the consent of the other party discharges the contract. Change in the amount of money to be paid, date of payment, place of payment etc. are examples of material alteration.
- d. Merger:** When inferior rights of a person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end.

**Illustration:** Where a part-time lecturer is made full-time lecturer, merger discharges the contract of part-time lecturer ship.

- 5. Discharge by breach of contract:** Breach means failure of a party to perform his obligations under a contract. Breach brings an end to the obligations created by a contract.
- 6. Discharge by impossibility of performance:** Impossibility of performance results in the discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible things.

**Example:** A and B wanted to marry each other. Before the time fixed for marriage, A goes mad.

The contract becomes void.

# Breach of Contract and Remedies for Breach of Contract

2.10

## **Breach of Contract:**

**P**arties to a contract are bound to perform their respective obligations. If any party fails to perform the obligation imposed upon him, he is said to have committed breach of contract. Thus breach means “failure or refusal of a party to perform his obligation under a contract without any lawful excuse”. The breach of contract may be:

- a) Actual breach of Contract
- b) Anticipatory breach of Contract.

## **Actual Breach of Contract:**

It is also called “Present breach”. Actual breach of contract occurs:

- (a) when during the performance of the contract, or
- (b) at the time of performance is due, one party fails or refuses or neglects to perform his obligation under the contract.

Actual breach discharges the contract. It gives right to the aggrieved party to sue the party at fault for damages for breach of contract.

**Example:** A agrees to deliver to B, 5 tons of sugar on 5th July. He fails to do so on 5th July. There is a breach of contract by A.

## **Anticipatory breach of contract:**

It is also called “constructive breach”. Anticipatory breach of contract occurs:

- (a) When a party repudiates his liability under the contract before the time for performance is due, or
- (b) When a party by his own act conduct disables himself from performing the contract.

## **Example:**

1. A agrees to marry B. Before the agreed date of marriage, he marries X. The marriage contract has been repudiated by A by his conduct before the due date of its performance. The breach here is anticipatory breach.
2. X enters into a contract to supply Y with certain articles on the 1st of June. Before 1st June, X informs Y that he will not be able to supply the articles. The breach committed by X here is anticipatory breach of contract.

Anticipatory breach of contract does not by itself discharge the contract. The contract is discharged only when the aggrieved party accepts the repudiation of the contract. If he does not accept the repudiation, the contract continues to exist and may be performed by the other party, if possible.

**Consequences of Breach of Contract [Section 73]:**

Compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

**Explanation.**—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

**Example:**

- (A) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.
- (B) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

**Compensation for breach of contract where penalty stipulated for. (Sec. 74):** 1 [When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

**Explanation.**—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.]  
Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the 2 [Central Government] or of any 3 [State Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

**Explanation.**—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

**Example:**

- (a) A contracts with B to pay B ₹1,000, if he fails to pay B ₹500 on a given day. A fails to pay B ₹500 on that day. B is entitled to recover from A such compensation, not exceeding ₹1,000, as the Court considers reasonable.
- (b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B ₹5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation; not exceeding ₹5,000, as the Court considers reasonable.

**Party rightfully rescinding contract, entitled to compensation (Sec. 75):** A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

**Remedies for breach of contract:**

When there is breach of contract, the aggrieved party has one or more of the following remedies.

1. Suit for Rescission of the contract.
2. Suit for damages
3. Suit upon Quantum meruit
4. Suit for specific performance of the contract.
5. Suit for Injunction.

**1. Suit for Rescission of the contract:**

Rescission means the cancellation of a contract. When there is a breach of contract by one party, the other party may sue to treat the contract as rescinded. When the court grants rescission, the aggrieved party is free from all his obligations under the contract. He becomes entitled to compensation for any damage which he suffered

**Example:** X promises to deliver a book on 5th January and Y agrees to pay its price on receipt of the book. X fails to deliver the book for no valid reason. Y may repudiate and may refuse to pay the price.

**2. Suit for damages:**

Remedy by way of damages is the most common remedy available to the injured party. When a contract is breached, the injured party is entitled to file a suit for damages. Damages are a monetary compensation allowed to the injured party by the court for the loss or injury suffered by him. The fundamental principle underlying damages is not punishment but compensation.

**3. Suit upon Quantum meruit:**

Quantum meruit means as much as is merited or as much as earned. In other words, it means payment in proportion to the amount of work done. A right to sue on a quantum meruit arises where a contract partly performed by one party has become discharged by the breach of the other party. The claim on quantum arises in the following cases.

- a. where the contract is discovered to be void.
- b. When something has been done without any intention to do so gratuitously.
- c. Where one party refuses to perform the contract.

**4. Suit for specific performance of the contract:**

In certain special cases of breach of contract, damages are not an adequate remedy. The court may, in such cases, order specific performance of the contract. The defaulting party will be forced to perform the act promised under the contract. It is granted only in the following cases:

- a. Where compensation in money is not an adequate relief.
- b. Where there is no standard for ascertaining the actual damage caused by the non-performance.
- c. Where compensation in money cannot be obtained.

**5. Suit for Injunction:**

Injunction is an order of the court restraining a person from doing a particular act. The court, by issuing injunction restrains a person from doing what he has promised not to do. Injunction may be temporary or permanent. It is a preventive relief granted at the discretion of the court.

## Exercise

### Multiple Choice Questions (MCQ)

- Voidable contract is one
  - Which is lawful
  - Which is invalid
  - Which is valid so long it is not avoided by the party entitled to do so
  - None of these
- The difference between an advertisement for sale and a proposal is
  - No difference at all
  - That a proposal becomes a promise as soon as the party to whom it is made accepts it but an advertisement does not
  - Every case will be viewed according to the circumstances
  - None of these
- In a Book depot a catalogue of books enlisting the price of each book and specifying the place where the particular book is available is
  - An invitation to offer
  - An offer
  - An invitation to visit the book shop
  - None of these
- A catalogue of the goods of a company for sale ..... a series of offers but only an invitation for offers.
  - Is
  - Is not
  - In normal cases is
  - In normal cases is not
- An offer does not lapse if the
  - offeror dies before acceptance
  - The offeree dies before acceptance
  - Acceptance is made by the offeree in ignorance of the death of the offeror
  - Acceptance is made by the offeree with knowledge of the death of the offeror
- A telephonic acceptance is complete when the offer is
  - spoken into the telephone
  - heard but not understood by the offeror
  - heard and understood by the offeror
  - is received, heard and understood by some person in the offeror's house

7. With regard to the contractual capacity of a person of unsound mind, which one of the following statements is most appropriate?
- (a) A person of unsound mind can never enter into a contract
  - (b) A person of unsound mind can enter into a contract
  - (c) A person who is usually of unsound mind can contract when he is, at the time of entering into a contract, of sound mind
  - (d) A person who is occasionally of unsound mind can contract although at the time of making the contract, he is of unsound mind
8. While obtaining the consent of the promisee, keeping silence by the promisor when he has a duty to speak about the material facts, amounts to consent obtained by:
- (a) Coercion
  - (b) Misrepresentation
  - (c) Mistake
  - (d) Fraud
9. 'A' threatened to commit suicide if his wife did not execute a sale deed in favour of this brother. The wife executed the sale deed. This transaction is:
- (a) Voidable due to under influence
  - (b) Voidable due to coercion
  - (c) Void being immoral
  - (d) Void being forbidden by law
10. A contract which is vitiated by undue influence is declared as which one of the following by the Indian Contract Act?
- (a) Invalid
  - (b) Void
  - (c) Illegal
  - (d) Voidable
11. Consider the following:
1. Active concealment of fact.
  2. Promise made without any intention of performing it.
  3. Breach of duty which gains an advantage to the person committing it.
  4. Inducing mistakes as to subject matter. Which of the above amount to fraud?
- (a) 1 and 2
  - (b) 2 and 3
  - (c) 3 and 4
  - (d) 1 and 4

12. Factors vitiating consent are:
- (a) Coercion, Undue influence
  - (b) Fraud, Misrepresentation
  - (c) Mistake
  - (d) All of these
13. Misrepresentation means:
- (a) Unwarranted assertion
  - (b) Any breach of duty without an intent to deceive
  - (c) Innocent mistake
  - (d) All the above
14. If a party stands in a fiduciary relation to the other:
- (a) He cannot dominate
  - (b) He can dominate the will of another
  - (c) The trust should be maintained
  - (d) None of these
15. A person is deemed to be in a position to dominate the will of another if he:
- (a) Holds real or apparent authority
  - (b) Stands in a fiduciary relationship
  - (c) Both (a) and (b)
  - (d) Either (a) or (b)
16. If both the parties to a contract believe in the existence of a subject, which in fact does not exist, the agreement would be
- (a) Unenforceable
  - (b) Void
  - (c) Voidable
  - (d) None of these
17. For a valid contract
- (a) Both the parties should have given their consent
  - (b) The consent should be free
  - (c) Both (a) and (b)
  - (d) Either (a) or (b)
18. When both the parties to an agreement are under a mistake as to a matter of fact essential to an agreement, the agreement is:
- (a) Void

- (b) Valid
  - (c) Voidable
  - (d) Illegal
19. In Indian Contract Act, the term consensus ad idem means
- (a) Parties under a mistake
  - (b) Parties under the free consent
  - (c) Parties agreeing upon the same thing in same sense
  - (d) None of these
20. To prove undue influence, the plaintiff has to prove that:
- (a) The relations, subsisting between the parties are such that the defendant was in a position to dominate the will of the plaintiff
  - (b) The defendant used that position to obtain an unfair advantage from the plaintiff
  - (c) Both (a) and (b)
  - (d) None of these
21. The validity of contract is not affected by
- (a) Mistake of fact
  - (b) Mistake of Indian law
  - (c) Misrepresentation
  - (d) Fraud
22. Unlawful agreements comprise
- (a) Illegal agreements
  - (b) Immoral agreements only
  - (c) Agreements opposed to public policy only
  - (d) All the agreements mentioned above
23. The exceptions to the rule that an agreement in restraint of trade is void, are contained in
- (a) The provisions of Sec. 27 of the Contract Act only
  - (b) Secs. 11, 36, 54 and 55 of the partnership Act only
  - (c) Both the above mentioned provisions of the Contract Act & Partnership Act respectively
  - (d) None of the above provisions
24. A contract to trade with an enemy is
- (a) an immoral agreement
  - (b) a valid agreement
  - (c) an agreement opposed to public policy
  - (d) an enforceable agreement

25. An agreement will be unlawful if:
- (a) There is no consent
  - (b) Consent is not free
  - (c) There is no consideration
  - (d) The object is forbidden by law
26. In a wagering agreement:
- (a) Both the parties win
  - (b) Both the parties lose
  - (c) None of the parties wins
  - (d) One party wins and the other loses
27. Which one of the following statements is correct?
- (a) Void agreements are always illegal
  - (b) Illegal agreements are voidable
  - (c) Illegal agreement can be ratified by the parties
  - (d) Illegal agreements are always void
28. Which one of the following is not a wagering agreement?
- (a) A lottery
  - (b) An agreement to buy a ticket for a lottery
  - (c) Commercial transaction, the intention of which is not to deliver the goods but only to pay the difference in price
  - (d) A contract of insurance
29. A wagering agreement in India is declared by the Contract Act as
- (a) Illegal and void
  - (b) Void but not illegal
  - (c) Voidable at the option of the aggrieved party
  - (d) Immoral
30. Which one of the following is a void agreement?
- (a) An agreement without consideration
  - (b) An agreement in restraint of marriage
  - (c) An agreement in restraint of trade
  - (d) All of the above
31. An agreement which restricts a person's freedom to marry or to marry any person of his choice is against public policy and is
- (a) Lawful

- (b) Illegal
  - (c) Void
  - (d) None of these
32. An agreement of service under which an employee agrees that he will serve a particular employer for a certain duration and that he will not serve anybody else during that period, is
- (a) Valid agreement
  - (b) Void agreement
  - (c) Illegal agreement
  - (d) None of these
33. If the seller agrees to supply all the goods produced by him to a certain buyer and to nobody else, and the buyer also, in turn undertakes to accept the whole of the quantity, the agreement is
- (a) Void agreement
  - (b) Solus agreement
  - (c) Illegal agreement
  - (d) None of these
34. M, who is a dealer in mustard oil only, agrees to sell to N '500 litres of oil'. This agreement is
- (a) Valid contract
  - (b) Void contract
  - (c) Voidable contract
  - (d) Unenforceable contract
35. A and B agree that A shall pay ₹ 1,000 for which B shall afterwards deliver to an either rice or smuggled opium. In this case
- (a) The first agreement is void and the second voidable
  - (b) The first is voidable and the second is void
  - (c) The first is valid and the second is void
  - (d) The first is void and the second is valid
36. A agrees to sell to B a 'hundred tons of oil'. There is nothing whatever to show what kind of oil was intended. The agreement is
- (a) Valid
  - (b) Void for uncertainty
  - (c) Voidable
  - (d) Illegal
37. A agrees to sell to B 'my white horse for ₹ 500 or ₹ 1,000'. There is nothing to show which of the two prices was to be given. The agreement is
- (a) Valid

- (b) Void
  - (c) Voidable
  - (d) Unenforceable
38. Agreements between a husband and wife living in friendly environment are
- (a) Valid contracts
  - (b) A void contracts
  - (c) Domestic arrangements
  - (d) Voidable contract
39. A promised to marry none else than Miss B and in default to pay her a sum of ₹1,000. Subsequently A married Miss C and Miss B sued for recovery of ₹1,000. The contract is
- (a) Valid
  - (b) Void
  - (c) Voidable
  - (d) Enforceable
40. A promises B to pay ₹100 if it rains on Monday, and B promises A to pay ₹100 if it does not rain on Monday. This agreement is
- (a) a valid agreement
  - (b) avoidable agreement
  - (c) a wagering agreement
  - (d) an illegal agreement
41. P engages B to kill C and borrows ₹100 from D to pay B. If D is aware of the purpose of the loan, the transaction is
- (a) Valid
  - (b) Void
  - (c) Illegal
  - (d) Not enforceable
42. A leaves a firm doing a particular business in Mumbai. He agrees with the other partners of the firm not to start a similar business as that of the firm in and around Mumbai for 3 years. This agreement is
- (a) Valid
  - (b) Immoral
  - (c) Illegal
  - (d) Void
43. A, while filling up the insurance application form, states his age as 25 believing it to be true. His actual age was 27. The Life Insurance Corporation issued a policy in his favour charging a lower premium than what it should have charged if the actual age had been given. This is a case of
- (a) Fraud

- (b) Misrepresentation
  - (c) Undue influence
  - (d) Mistake of fact
44. B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Owing to A's ignorance B is enabled to buy the estate at a low- price. The contract is
- (a) Valid
  - (b) Void
  - (c) Voidable at the option of A
  - (d) Invalid
45. B let a cabin on hire to P a prostitute, knowing that it would be used for immoral purposes. The agreement is
- (a) Enforceable
  - (b) Valid
  - (c) Voidable
  - (d) Void
46. A enters into an agreement with B who has robbed A of ₹10,000 to drop prosecution against him (B) in consideration of B's returning ₹8,000. Afterwards B refused to pay. A can get from B
- (a) ₹ 8,000
  - (b) ₹ 100
  - (c) Nothing
  - (d) ₹ 10,000 plus damages
47. A agrees with B to discover treasure by magic for a consideration of ₹ 500. This is
- (a) A void agreement
  - (b) A void contract
  - (c) A valid agreement
  - (d) An unenforceable contract
48. X, a tailor, employed Y as his assistant under an agreement that Y, on termination of his employment shall not start the business of a tailor. This restraint is
- (a) Void
  - (b) Valid
  - (c) Illegal
  - (d) Voidable
49. X leaves a firm doing a particular business in Delhi. He agrees with other partners of the firm not to start a similar business as that of the firm in Delhi for 2 years. This agreement is
- (a) Void
  - (b) Valid

- (c) Voidable at X's option
  - (d) Invalid
50. X promises to supply Y one tola of gold brought from the sun. This is
- (a) a valid contract
  - (b) an illegal contract
  - (c) a void agreement
  - (d) a voidable agreement
51. A promises B not to carry on a similar business as that of B if B pays him a certain amount. B pays the money but A continues to carry on the business. B can
- (a) Do nothing
  - (b) Compel A to stop the business
  - (c) Get him imprisoned for fraud
  - (d) Sue A for damages
52. A purchases B's business of selling neckties in Delhi. A can restrain B from
- (a) Doing the business of selling neckties again in his life
  - (b) Doing any business in Delhi
  - (c) Doing the business of selling neckties in Delhi for a limited period
  - (d) None of the above
53. A promised to marry B and none else and promised her to pay a sum of ₹ 5,000 in addition to what he gets from the other party if he marries someone else. A marries C and gets ₹10,000 from C. B can get from A
- (a) ₹15,000
  - (b) ₹10,000
  - (c) Nothing
  - (d) ₹15,000 plus damages
54. A promised B to obtain an employment for him in a public office. B promised to pay ₹ 2,000 to A for this. B gets a job through A but refuses to pay the money. A can
- (a) Challenge B's appointment on the ground of non-payment of money
  - (b) Sue B for ₹ 2,000
  - (c) Do nothing
  - (d) Do both given at (a) and (b) above
55. A, a Hindu already married with a living wife B, enters into a marriage agreement with a widow of 30 years of age. This agreement is
- (a) Void, because of being opposed to public policy
  - (b) Valid and can be enforced by either party
  - (c) Voidable, because A has obtained B's consent by exercising undue influence against her

- (d) Void, because of being forbidden by law
56. Rajeev entered into a contract with Lata to marry her on a fixed date. However, before the marriage date, Rajeev went mad. With reference to the Indian Contract Act which is the valid response?
- Lata can't marry till Rajeev dies
  - The executors of Rajeev can enforce the contract against Lata
  - The contract becomes void
  - All the statements are correct
57. A and B agree to deal in smuggled goods and share the profits. A refuses to give B's share of profit. In this case:
- B can enforce the agreement in the court.
  - B can only claim damages.
  - B has no remedy as the contract is illegal.
  - B can enforce the contract or claim damages
58. A and B agree that law of limitation shall not apply to them. A debt becomes time barred and A refuses to pay the amount. Can B recover the amount under the terms of the agreement?
- yes, the agreement between them is valid and enforceable.
  - yes, the agreement is not opposed to public policy.
  - no, the agreement is a voidable agreement and can be avoided by A.
  - no, the agreement falls under section 23 and hence void
59. A borrows ₹ 5,000 from B to purchase a revolver to shoot C. Can B recover his loan of ₹ 5,000.
- yes, the agreement between them is valid and enforceable.
  - yes, the agreement is not opposed to public policy.
  - no, the agreement is a voidable agreement and can be avoided by A.
  - no, the agreement falls under section 23 and hence void
60. A borrows from B ₹ 500 to bet with C. Can B recover the amount of his loan?
- yes, the agreement between them is collateral to a wagering agreement and hence enforceable
  - yes, the agreement is not opposed to public policy
  - no, the agreement is a voidable agreement and can be avoided by A
  - no, the agreement is a wagering agreement and falls under section 23 and hence void
61. A paid ₹500 to a Government servant to get him a contract for the canteen. The Government servant could not get the contract. Can A recover ₹500 paid by him to the Government servant?
- yes, the agreement between them is valid and enforceable
  - yes, the agreement is not opposed to public policy
  - no, the agreement is a voidable agreement and can be avoided by A
  - no, the agreement is void

62. A person contracted to deliver a part of a specific crop of potatoes. The potatoes were destroyed by blight though no fault of the party. The contract is
- (a) Valid
  - (b) Voidable
  - (c) Void due to frustration of contract
  - (d) Illegal
63. A contracts to sing for B at a concert for ₹ 1,000 which are paid in advance. A is too ill to sing. Which of the following options is correct?
- (a) A is bound to make compensation
  - (b) A is not bound to make compensation to B for the loss of the profit which B would have made if A had been able to sing, but must refund to B ₹ 1,000 paid in advance
  - (c) A is not liable to refund to B ₹ 1,000 paid in advance
  - (d) A is liable for loss of profit as well as for refund
64. A contractor entered into an agreement with Government to construct a godown and received advance payments for the same. He did not complete the work and the Government terminated the contract.
- (a) The Government can claim damages
  - (b) The Government under sec. 65 could recover the amount advanced to the contractor
  - (c) The Government cannot claim damages
  - (d) Both (a) & (b)

**State True or False:**

1. Communication of offer is complete when the offeror writes the letter but does not post it.
2. Performance of conditions of a proposal is an acceptance to the proposal. Is it true or not.
3. An acceptance will be revoked at any time before the communication of acceptance is complete against the acceptor, but not afterwards.
4. An offer need not be made to a ascertained person.
5. When the mode of acceptance is prescribed in the proposal then acceptance can be given in usual or reasonable mode.
6. A price list hanging outside the shop is meant for an offer by the owner of the shop.
7. A contract is said to be executed when it has been performed wholly on two sides.
8. Is telegraphing lowest price on request a mere invitation for an offer?
9. Can there be an acceptance of an offer which has not come to the knowledge of the offeree?
10. In the absence of any express or implied directions from the offeror to the contrary, can an offer be accepted by a letter?

**Fill in the blanks:**

1. A mortgage executed by minor is \_\_\_\_\_.
2. If there is no consent the agreement is \_\_\_\_\_.
3. An agreement caused by unilateral mistake of fact is \_\_\_\_\_.
4. Coercion is defined in section \_\_\_\_ of the Indian Contract Act.
5. A threatens to shoot B, if B does not agree to sell his property to A at a stated price. B's consent in this case has been obtained by \_\_\_\_\_.
6. Section 17 of the Indian Contract Act define \_\_\_\_\_.
7. If A unlawfully detains B's son in order to coerce B to enter into the agreement, the case would be covered within Section \_\_\_\_\_.
8. When the consent of a party to the contract has been obtained by fraud, in such a case the contract is \_\_\_\_\_.
9. When there is duty to speak, keeping silence is \_\_\_\_\_.
10. When the person making a false statement believes the statement to be true and does not intend to mislead the other party to the contract it is known as \_\_\_\_\_.
11. A \_\_\_\_\_ means an agreement which is enforceable by law.
12. The Indian Contract law is based on \_\_\_\_\_.
13. Section 2(b) defines, "When the person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a/an \_\_\_\_\_.
14. When the consent of a party to a contract has been obtained by undue influence, fraud or misrepresentation, the contract is \_\_\_\_\_.
15. All illegal agreements are \_\_\_\_\_.
16. An agreement created by words spoken or written is called \_\_\_\_\_ agreement.
17. An agreement consists of reciprocal promises between the \_\_\_\_\_ parties.
18. Parol contracts are also known as \_\_\_\_\_ contracts.
19. An offer made by words spoken or written is called \_\_\_\_\_ offer.
20. Partial acceptance of offer result in \_\_\_\_\_ offer.
21. A tender is an \_\_\_\_\_.
22. When counter offer is given, the original offer \_\_\_\_\_.
23. For an acceptance to be valid, it must be \_\_\_\_\_.
24. An agreement to agree in future upon terms to be settled afterwards between the parties is not \_\_\_\_\_.
25. Acceptance once given cannot be \_\_\_\_\_.
26. A tender and a bid at an auction sale are \_\_\_\_\_.
27. A quotation is \_\_\_\_\_.

28. A proposal when accepted becomes a \_\_\_\_\_.
29. The term 'proposal' used in the Indian Contract Act is synonymous with the term \_\_\_\_\_.
30. The term 'Proposal or offer' has been defined in section \_\_\_\_\_.
31. When the offers made by two persons to each other containing similar terms of bargain cross each other in post, they are known as \_\_\_\_\_.
32. When the proposal or acceptance is made otherwise than words, the promise is said to be \_\_\_\_\_.
33. Various modes of revocation of offer have been described in \_\_\_\_\_.
34. An advertisement inviting tender is \_\_\_\_\_.
35. Goods displayed in a shop window with a price label will amount to \_\_\_\_\_.
36. An offer which is allowed to remain offer for acceptance over a period of time is known as a \_\_\_\_\_.
37. When the contract is perfectly valid in its substance but which cannot be enforced because of certain technical defects. This is called a \_\_\_\_\_ contract.
38. When goods are displayed in a show-window bearing price-tags, it indicates an invitation to make an \_\_\_\_\_.
39. A counter offer is a rejection of the \_\_\_\_\_ offer.
40. Where a particular mode of communication of acceptance is not prescribed and the parties are not in each other's presence, the most authentic mode of communication of acceptance is the \_\_\_\_\_.
41. When a person without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he makes \_\_\_\_\_.
42. A notice in the newspapers inviting tenders is \_\_\_\_\_.
43. If there is no consideration, then the agreement is \_\_\_\_\_.
44. Consideration is defined under section \_\_\_\_\_.
45. The latin term "quid pro quo" refers to \_\_\_\_\_.
46. Consideration must move at the desire of \_\_\_\_\_.
47. A promise to pay a time-barred debt must be \_\_\_\_\_.
48. An agreement not supported by consideration is called \_\_\_\_\_.
49. 'Consideration is the price for which the promise of the other is bought, and the promise thus given for the value is enforceable.' This definition of consideration is given by \_\_\_\_\_.
50. A minor is a person who has not attained the age of \_\_\_\_\_.

### Short Essay Type Questions (Give the answers in one (or) two sentences)

#### 1. Wagering Contract

Ans: A wager is a contingent contract. It is an agreement to pay money or money's worth on the happening or non-happening of a specified uncertain event. A wagering is void.

#### 2. Contingent Contract

Ans: Section 31 of the Indian Contract Act, defines a contingent contract as "a contract to do or not to do something if some event, collateral to such contract, does or does not happen".

**3. Actual Breach of Contract**

Ans: It is also called “Present breach”. Actual breach of contract occurs:

- (a) when during the performance of the contract, or
- (b) at the time of performance is due, one party fails or refuses or neglects to perform his obligation under the contract.

Actual breach discharges the contract. It gives right to the aggrieved party to sue the party at fault for damages for breach of contract.

**4. Anticipatory Breach of Contract**

Ans: It is also called “constructive breach”. Anticipatory breach of contract occurs:

- (a) When a party repudiates his liability under the contract before the time for performance is due, or
- (b) When a party by his own act conduct disables himself from performing the contract.

**5. Void Agreement**

Ans: An agreement not enforceable by law is said to be void. A void agreement has no legal consequences. Void Agreement is void at the time of agreement itself.

**6. Void Contract**

Ans: A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. Void agreement and void contract are different. Void agreement is void ab-initio but void contract is a valid contract at the beginning but subsequently becomes void when it ceases to be enforceable.

**7. Offer**

Ans: A proposal is defined as, ‘when one person signifies to another his willingness to do or abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

**Answers**

**Multiple Choice Questions (MCQ):**

|    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| c  | b  | c  | b  | c  | c  | c  | d  | b  | d  | a  | d  | d  | b  | c  | b  | c  | a  | c  | c  |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 |
| b  | d  | a  | c  | d  | d  | d  | d  | b  | d  | c  | a  | d  | a  | c  | b  | b  | c  | b  | c  |
| 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 |
| c  | d  | b  | c  | d  | c  | a  | a  | b  | c  | a  | c  | c  | c  | d  | c  | c  | d  | d  | d  |
| 61 | 62 | 63 | 64 |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| d  | c  | b  | d  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |

**State True or False**

|   |   |   |   |   |   |   |   |   |    |
|---|---|---|---|---|---|---|---|---|----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| F | T | T | F | F | F | T | T | F | T  |

**Fill in the blanks:**

|    |                        |    |  |
|----|------------------------|----|--|
| 1  | Void                   | 2  | Void   |
| 3  | Valid                  | 4  | Section 15                                     |
| 5  | Coercion               | 6  | Fraud  |
| 7  | Section 15             | 8  | Voidable                                       |
| 9  | Fraud                  | 10 | Misrepresentation                              |
| 11 | Contract               | 12 | English law                                    |
| 13 | Promise                | 14 | Voidable                                       |
| 15 | Void                   | 16 | Express  |
| 17 | Two                    | 18 | Simple   |
| 19 | Express                | 20 | Counter  |
| 21 | Offer                  | 22 | Lapses   |
| 23 | Absolute & Unqualified | 24 | Valid  |
| 25 | Revoked                | 26 | Offers   |
| 27 | Invitation to Offer    | 28 | Promise  |
| 29 | Offer                  | 30 | 2(a)   |
| 31 | Cross Offers           | 32 | Implied  |
| 33 | Section 6              | 34 | An invitation to offer                         |
| 35 | Invitation to offer    | 36 | Standing Offer (or) Open (or) Continuing offer |
| 37 | Unenforceable          | 38 | An invitation to make an offer.                |
| 39 | Original               | 40 | Letter   |
| 41 | Invitation to offer    | 42 | Invitation to Proposal                         |
| 43 | Void                   | 44 | 2(d)   |
| 45 | Something in return    | 46 | Promisor                                       |
| 47 | Written and signed     | 48 | Nudum Pactum                                   |
| 49 | Pollock                | 50 | 18 years                                       |

# SALE OF GOODS ACT, 1930

3

**This Module includes:**

**3.1. Definition**

**3.2. Transfer of Ownership**

**3.3. Essential Conditions of a Contract of Sale**

**3.4. Conditions and Warranties**

**3.5. Performance of the Contract of Sale**

**3.6. Rights of Unpaid Seller**

# SALE OF GOODS ACT, 1930

## **Module Learning Objectives:**

After studying this module, the students will be able to -

- ✦ Understand the meaning of transfer of ownership.
- ✦ Know the essential conditions of a contract of sale.
- ✦ Appreciate the meaning of and difference between condition and warranty.
- ✦ Understand the meaning of performance of the contract of sale.
- ✦ Know the rights of an unpaid seller.

**B**efore the enactment of The Sale of Goods Act, 1930 the relating to sale and purchase of goods were regulated by the Indian Contract Act, 1872. In 1930, Sections 76 to 123 of the Indian Contract Act, 1872 were repealed and a separate Act called “The Indian Sale of Goods Act, 1930” was passed.

It came into force on 1st July, 1930. With effect from 22nd September, 1963 the word ‘Indian’ was also removed. Now the present Act is called ‘The Sale of Goods Act, 1930. This act extends to the whole of India.

Sale is the most common transfer in business effected by contract of sale or to sale. It is the only transfer in business which non reversionary which means that goods will never be transferred to seller. It is called absolute transfer.

### **Definition - Basic Concepts:**

Section 2 of the Act defines various terms used in the Act. They are:

#### **1. Buyer [Sec. 2(1)]:**

Buyer means a person who buys or agrees to buy goods.

#### **2. Seller [Sec. 2(13)]:**

Seller means a person who sells or agrees to sell goods.

#### **3. Delivery [Sec. 2(2)]:**

Delivery means voluntary transfer of possession from one person to another.

#### **4. Goods [Sec. 2(7)]:**

Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

**Money means current money and it includes rare and old coins** - Actionable claim means a person cannot make a present use of or enjoy, but can recover it by means of a suit or an action. Thus, a debt due to a man from another is an actionable claim and cannot be sold as goods, although it can be assigned.

#### **5. Document of Title to goods [Sec. 2(4)]:**

It includes bill of lading, dock warrant, warehouse keeper’s certificate, wharfinger’s certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods.

**6. Future goods: [Sec. 2(6)]**

Future goods means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.

**7. Price: [Sec. 2(10)]**

Price means the money consideration for a sale of goods.

**8. Property: [Sec. 2(11)]**

Property means the general property in goods and not merely a special property.

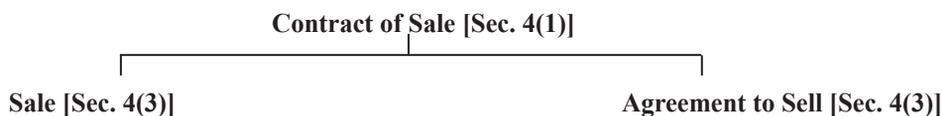
**9. Specific Goods: [Sec. 2(14)]**

It means goods identified and agreed upon at the time a contract of sale is made.

**Definition of Contract of Sale: [Sec. 4(1)]**

“A contract of sale of goods is a contract where by the seller transfers or agrees to transfer the property in the goods to the buyer for a price”.

Contract of Sale is a generic term which includes both sales as well as an agreement to sell:



“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” - [Sec. 4(3) of The Sale of Goods Act, 1930]. Also called agreement of sale.

“Where the property in the goods (legal ownership of goods) is to be transferred to the buyer at some future date or on the fulfillment of a certain conditions, the contract of sale is called an agreement to sell” - [Sec. 4(3) of The Sale of Goods Act, 1930].

**Agreement to sell is called as Conditional Sale.**

“Where an agreement to sell provides that the ownership of the goods shall be transferred at some future date, it becomes sale when that date arrives. If the ownership is to be transferred on the fulfillment of some conditions the agreement to sell becomes a sale when those conditions are fulfilled” - [Sec. 4(3) of The Sale of Goods Act, 1930]. In sale, both ownership and possession have to be transferred.

**Differences between Sale and Agreement to Sell:**

The following are the differences between Sale and Agreement to Sell:

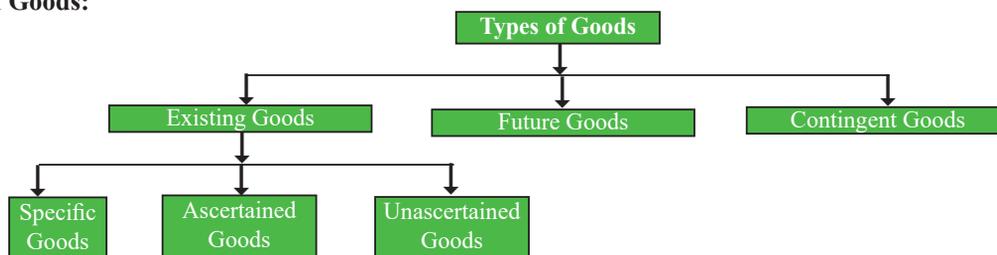
|    | Sale   | Agreement to Sell  |
|----|--|--|
| 1. | In case of sale the property transfers from seller to the buyer immediately.   | The ownership of the goods is transferred to the buyer at some future date.  |
| 2. | It is an executed contract.  | It is an executory contract.   |
| 3. | It creates right in rem.   | It creates right in personam.  |
| 4. | The buyer is responsible for any loss or destruction of the goods even if the goods are in the possession of the seller. | The seller is responsible for any loss or destruction of goods even if the goods are in the possession of the buyer. |

|    | Sale  | Agreement to Sell  |
|----|---|--|
| 5. | The seller cannot resale the goods.   | In this case, if the subsequent buyer takes in good faith and for consideration, he gets a good title. The original buyer may only sue the seller for damages. |
| 6. | If goods are destroyed, the loss will be borne by the buyer even though they may be in possession of the seller.                                | The loss will be borne by the seller even though the goods may be in possession of the buyer.  |
| 7. | If the buyer becomes insolvent before payment is made, the seller has to deliver the goods to the official receiver unless he has lien on them. | Seller may refuse to deliver the goods to the official receiver.   |
| 8. | If the seller becomes insolvent after payment of price, the buyer can claim the goods from the official receiver.                               | The buyer cannot claim the goods. He can only claim rateable dividend for the amount paid by him.  |
| 9. | Sale is liable for sales tax.   | Agreement to sell is not liable for GST. It is liable for GST when it is ripens in to sale.  |

**Definition of Goods:** The term “Goods” has been defined in Section 2(7) and it can be of three type.

**Example:** Where the trees were sold so that they were to be cut out and separated from land and taken away by the buyer. The contract was for sale of trees as moveable goods.

**Types of Goods:**



**Fig. 3.1 : Types of Goods**

### 1. Existing goods:

Goods owned and possessed by the seller at the time of the making of the contract of sale are called existing goods. Sometimes the seller may be in possession but may not be the owner of the goods.

**Example:** Mercantile Agent.

**The existing goods can be further classified as under:**

- (a) Specific goods.
- (b) Ascertained goods.
- (c) Unascertained goods.

#### (a) Specific goods:

“Specific goods” are those goods which are identified and agreed upon at the time of contract of sale is made. It is essential that the goods are identified and separated from the other goods.

**Example:** In the case of sale of one table out of 25 tables, goods shall be specific if the table is selected before the contract of sale is made.

**(b) Ascertained goods:**

Ascertained goods are identified after the contract of sale as per the terms decided. Ascertained goods may be further classified as apportioned goods and unapportioned goods. Even the goods are same, the identity of goods in packets, lots or otherwise has to be allotted to a specific buyer. Goods are normally apportioned by the seller and the buyer agrees. Buyer can himself apportion goods with consent of the seller. However, all goods has to be ascertained and apportioned before transfer of possession.

**(c) Unascertained goods:**

When the goods are not separately identified or ascertained at the time of making a contract of sale, are known as unascertained goods. When the buyer does not select the goods for him from a lot of goods, but are defined or indicated only by description, we call them unascertained goods.

**Example:** Sale of 25 chairs for an office out of a lot of 200 such chairs of the same design and quality, the goods are unascertained till 25 particular chairs are selected. When the required 25 chairs are selected out of the lot, the goods are said to be ascertained goods for the contract of sale.

**2. Future Goods:**

It means goods to be manufactured or produced or acquired by the seller after making of the contract of sale. A contract to sell oil not yet pressed from seeds in his possession is a contract for the sale of future goods.

**Example:** X agrees to sell to Y all the apples which will be produced in his garden next year. This is an agreement for the sale of future goods.

**3. Contingent Goods:**

These are a type of future goods, the acquisition of which by the seller depends upon a contingency which may or may not happen. Goods which might be expected to come into existence, as

(a) goods to arrive (b) future crops (c) the eggs.

Such contracts give no right of action if the contingency does not happen. However, all goods has to be ascertained and apportioned before transfer of possession.

**Doctrine of Caveat Emptor**

The term Caveat Emptor is a Latin word which means 'let buyer be aware'. This principle underlines the concept that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality required by him. It is a fundamental principle of law of sale of goods and implies that the seller is under no obligation to point out the defects in his own goods. The buyer must take care while purchasing the goods and if he makes a wrong selection he cannot blame the seller if the goods turn out to be defective or do not serve his purpose. However the doctrine of Caveat Emptor does not mean that the buyer must take a chance, it only means he must take care. However this rule is not without any exception. With the passage of time this doctrine has been considered to be too unreasonable to the buyers. Hence the law in section 16 recognized certain exceptions to the rule.

The doctrine is however subject to following exceptions as provided in section 16 of the Act.

- (i) Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required and relied upon the skill and judgment of the seller and the goods are of description which it is the course of the sellers business to supply, there is an implied condition that the goods shall be reasonably fit for such purpose. Accordingly the seller cannot get any immunity on the grab of Caveat Emptor.
- (ii) Implied condition as to salability where the goods are bought by description from the seller in goods of that description.
- (iii) Condition as to Wholesomeness in case of foodstuffs and other goods meant for human consumption.
- (iv) When the seller commits fraud.
- (v) When there is a usage of trade.

# Transfer of Ownership

## 3.2

**A** Sale is defined as transfer of ownership of the goods from the seller to the buyer for a price. Therefore what is important in a transaction of sale is the transfer of the ownership. It is essential to determine the exact point of time at which the Property in the goods is transferred in favor of the buyer. The term Property in goods means the ownership of the goods. The term transfer of property means the transfer of ownership from seller to buyer so as to constitute the buyer the real owner of the goods. When the ownership of the goods is transferred to the buyer, he becomes the real owner of the goods and the seller ceases to be the owner from that point of time. This ultimately determines the various rights and liabilities of the buyers and sellers in respect of the goods sold. Sections 18 to 25 of the Sale of Goods Act, determine when the property passes from the seller to the buyer.

### Passing of Property

The primary rules for ascertaining when the property in goods passes from seller to buyer may be summarized as follows:

#### (A) Goods must be ascertained

As per section 18 in a contract for sale of unascertained goods, the property in the goods does not pass to the buyer unless and until the goods are ascertained.

**Example:** Under a contract B was entitled to cut teak trees of more than 12 inches girth. The stumps of trees after cutting had to be 3 inches high. It was held that property in the timber that was cut could pass to B when the trees were felled. Till the trees were felled, they were not ascertained.

#### (B) Intention of the parties for such transfer

As per section 19(2) in 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 intended to be transferred. The intention of the parties is ascertained from the terms of the contract, the conduct of the parties and the circumstances of the case. When intention of the parties cannot be ascertained, rules contained in sections 20-24 are required to be applied for ascertaining the time of transfer of property which are discussed hereunder :

#### (I) Specific goods

##### (i) Specific goods in a deliverable state

In 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. (Sec 20). Goods are said to be in deliverable state when they are in such a state that the buyer would under the contract is bound to take delivery thereof.

**Example:** X selected some party wears in a retail show room. He agreed to take the delivery next day agree to pay next week. The party wears are destroyed by fire that took place same day. The property in goods has passed on to

the buyer and he is liable to pay for it whether delivery is taken or not or paid or not.

### **(ii) 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 (Sec 21).

**Example:** There was a contract for sale of timber from oak trees. The buyer marked out the selected parts of the tree. As per trade practice the seller was required to remove the rejected portion from the trees. But before he could do so, he was declared bankrupt. It was held that the property in goods has not passed on to the buyer so he cannot take away the timber. Until the seller had severed the rejected portion, the goods cannot be said to be in a deliverable conditions to enable transfer of property therein. Unless otherwise agreed, delivery to buyer's premises is not to be made by seller.

Goods are supposed to be sold "as is where is".

### **(iii) Specific goods in a deliverable state, when the seller has to do something thereto in order to ascertain price**

If 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. (Sec 22)

**Example:** A makes a contract to sell 200 books to Q. The books are stored in racks and P has to select the titles and separate them before they can be delivered. If there is fire and books are destroyed the loss will be A's as ownership is yet to be transferred.

## **(II) Unascertained goods (Sec 23)**

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. In case of transfer of property from buyer to seller when the goods are unascertained, their ascertainment and unconditional appropriation to the contract are two pre-conditions. Ascertainment is the process by which the goods answering the description to the contract are identified and set apart. Ascertainment is the unilateral act of seller; appropriation involves selection of goods with the intention of using them in the performance of the contract and with the mutual consent of the seller and buyer.

**Example:** In a sale of 20 hogsheads of sugar out of a larger quantity, 4 were filled and taken away by the buyer. The remaining 16 hogsheads were subsequently filled and the buyer was informed of the same. The buyer promised to take them away, but before he could do so, the goods were lost. Held the property had passed to the buyer at the time of the loss.

**Delivery to carrier:** Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have appropriated the goods for the purpose of the contract.

## **(III) Goods on approval or 'on sale or return' (Sec 24)**

In order to push up the sales generally there is a practice of sending goods to the customer with the clear cut understanding that he has option to approve or return the goods within a given period. This type of sales is known as "approval on sale or return". In such cases the transaction does not culminate into sale until the goods are approved by the customer and the property in goods still remains with the seller.

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**

**Example:** A sends 3 dozen of Silk Saris to B on approval on sale or return basis with an option to return the same within 21 days. B sends a letter of approval of goods to A within 15 days. Sales has taken place after 15 days and the property in goods get transferred to B.

**(b) When he does any other act adopting the transaction.**

**Example 1:** A sends 25 tons of cement to B on approval on sale or return basis, with the option to return the goods within 30 days receipt if not acceptable to him. B used the cement in his project. Since B has appropriated the goods, the sale has crystallized, property in goods stands transferred to B.

**Example 2:** A sends 20 bales of cotton to B on approval on sale or return basis. B has a choice to return the goods within 3 weeks. However, B instead of conveying his approval or rejection of the goods sold the same to C. Here also B by his act has signified his approval, the sale is complete and property in goods passes on to B.

**(c) 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.**

**Example 3:** A horse was delivered to B on the condition of sale or return within 8 days. The horse died within 8 days. It was held that the loss would fall on the seller as the property in goods has not been passed on to the buyer. [Elphick v Barnes (1880)]

**Example 4:** A delivered some jewellery to B on sale for cash only or return. Before B paid price, he pledged the jewellery with C. Held the pledge was not valid and A could recover jewellery from C.

**Example 5:** S Ltd agreed to sell a tractor to HC Municipality on the condition that if the latter was not satisfied, it could reject the tractor. The municipality used the tractor for a month and a half and then wanted to reject. Held a reasonable time to reject having elapsed, the property in the tractor had passed to the municipality and therefore it could not reject

**Risk prima facie passes with property (Sec 26)**

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.

**Effect of Destruction of Goods**

**Goods perishing before making of contract (Sec 7)** – 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 (Sec 8)** – 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 void. Sec (7 & 8) are applicable only in case of specific goods and not uncertain/generic goods.

**Example 1:** In Demby Hamiltan & Co V Barden Engineering Works Ltd 1949 ALL ER 435, A contracted to purchase 30 tones of apple juice from B. Deliveries were to be made in weekly truckload. B crushed the apples and put the juice in casks for delivery. A delayed the taking of delivery as a result juice got deteriorated in quality. It was held

that the property in goods has passed on to A. Accordingly the loss will be borne by A only.

**Example 2:** B of Benaras writes C of Chennai to send him 50 pieces of wrist watches by post parcel. C sends the 50 pieces of wrist watches by parcel post with correct address of B. However, the parcel was misplaced in the post and never reached B. This loss will be borne by B as the property in goods has passed on to the buyer the moment the parcel is delivered to the post office with correct address.

**Example 3:** A of Delhi agreed to purchase 500 lts of Engine oil from B. As per the terms of agreement, delivery was to be made in special pouches of 500 ML supplied by A. While B was making filling 500 ml pouches for delivery to A, the store got fire as a result the entire quantity of Engine oil lying therein lost in fire. As per section 26 the risk and property in the goods still remained with the seller and the entire loss will be borne by B the seller only.

It may further be noted that if the seller was aware of the destruction of goods and still enters into a contract. He is stopped from disputing the contract. In such case the buyer can sue him for breach of contractual obligations and claim damages.

### **Sale by person not the owner (or) Nemo dat qui habet**

In normal course, a buyer may assume that the seller is the owner of the goods or having authority from the owners to sell the goods. 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 conduct precluded from denying the seller's authority to sell.

Generally the owner alone can transfer property in goods "Nemo dat qui habet" means that no one can give what he himself does not have. It means a non owner cannot make valid transfer of property in goods. If the title of the seller is defective, the buyer's title will also be subject to same defect. If the seller has no title, the buyer does not acquire any title although he might have acted honestly and might have acquired the goods after due payment. This rule is to protect the real owner of the goods.

Though this doctrine seeks to protect the interest of real owners, but in the interest of the trade and commerce there must be some safeguard available to a person who acquired such goods in good faith for value; accordingly the Act provides the following exceptions to this doctrine which seeks to protect the interest of bonafide buyers.

### **Sale by mercantile agent (Sec. 27)**

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 authorized by the owner of the goods to make the same, provided that the buyer's act is in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

**Example:** F the owner of a car, deliver it to H, a mercantile agent for sale at not less than ₹20,000. H sold the car for ₹15,000 to K who bought it in good faith and without notice of any fraud. H misappropriated the money. F sued to recover the car from K. Held as H was in possession of the Car with F's consent for the purpose of sale, K obtained a good title to the Car.

### **Sale by one of joint owners (Sec. 28)**

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 no authority to sell. 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.

**Example:** A, B and C are three joint owner of a car which is with B with the consent of A and C. B wrongfully sold the car to D without any knowledge and authority of remaining partner. D in good faith purchased the car and

paid the price there of after taking the delivery. The property in goods stand transferred to D despite that B is not the owner of the car.

### **Sale by person in possession under voidable contract (Sec. 29)**

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.

**Example:** A purchased a mobile set from B by fraud. A has avoidable title to the mobile set at the option of B. Before B could rescind the contract, A sold the same to C who purchased it from A in good faith and without knowledge of fraud by A and paid for it. C had a good title to the goods.

### **Seller or buyer in possession after sale (Sec. 30)**

**Explanation (a):** Where a person, having sold goods, continues or is in possession of the 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 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 to transfer were expressly authorized by the owner of the goods to make the same.

**Example:** A sells his blackberry mobile to B. He promised to deliver the same after one week. However A instead of delivering to B sold it to C who purchased it from A in good faith and paid the price. C gets a good title to it.

**Explanation (b):** 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 sell have effect as if such lien or right did not exist.

### **Sale by estoppel (Sec. 27)**

Where the owner by his conduct or omission, leads the buyer to believe that the seller has authority to sell, he is stopped from denying the fact afterwards. The buyer thus gets a better title than the seller.

**Example:** A tells B in the presence of C that A is agent of C. C maintains silence instead of denying it.

Later if A sells C's goods to B, C cannot dispute B's title to the goods.

**Sale by a finder of goods:** Under section 169 of the Contract Act, if a finder of lost goods could not reasonably find the true owner or the true owner refuses to pay the lawful charges of the finder of lost goods, the finder of lost goods can sell the goods when the goods are perishable in nature or when the lawful charges of the finder of lost goods amount to 2/3rd of its value.

**Sale by official receiver or assignee:** In case of insolvency of any individual his official receiver or liquidator of a company can sell the goods and buyer thereof gets good title to it.

### **Definition of Contract of sale:**

**A**s per Sec 4 (1) of the Sale of Goods Act, 1930-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.

### **Essential Elements of Contract of Sale:**

Following are the essential elements of a valid contract of sale. They are:

1. Two parties. - Seller and Buyer
2. Subject matter. - Goods (Movable property)
3. Transfer of Property - Transfer of ownership rights i.e. absolute ownership (General Property)
4. Delivery - Immediate, Delivery in installments, Delivery at a future date.
5. Price - It means money consideration for sale of goods.
6. A contract of sale may be absolute or conditional.
7. Essential elements of a valid contract.

# Conditions and Warranties

## 3.4

### Definition:

- (a) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a or a warranty. [Sec12 (1)]
- (b) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated. [Sec 12(2)]
- (c) 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. [Sec 12(3)]
- (d) 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 warranty in a contract. [Sec 12(4)]

### Distinction between a condition and a warranty

| Sl. No. | Basis of Distinction | Condition   | Warranty   |
|---------|----------------------|---|--|
| 1       | Value                | A Condition is a stipulation which is essential to the main purpose of the contract.  | A Warranty is a stipulation which is collateral to the main purpose of the contract. |
| 2       | Rights               | The aggrieved party can repudiate the contract of sale in case there is a breach of a condition   | The aggrieved party can claim damages only in case of breach of a warranty.          |
| 3       | Treatment            | A breach of condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contended with damages only. | A breach of a warranty cannot be treated as a breach of a condition.                 |

### Conditions and Warranties may be either expressed or implied:

When terms of contract expressly provide for them, they are known as express conditions or warranties.

Implied conditions and warranties are incorporated in every contract of sale unless the circumstances show a different intention.

### Types of Implied Conditions and Implied Warranties:

#### Implied Conditions:

Implied conditions are those that the law incorporates into the contract unless the parties agree to the contrary. Sections 14 to 17 of the Sale of Goods Act lay down implied conditions. They are as follows, Condition as to -

- (i) Condition as to title

- (ii) Condition as to description
- (iii) Condition as to sample
- (iv) Condition as to description and sample
- (v) Condition as to fitness or quality
- (vi) Condition as to merchantability
- (vii) Condition as to wholesomeness

**(i) Condition as to title:**

In every contract of sale, there is an implied condition that the seller has the right to sell the goods. This condition is called “condition as to title”. If a person sells goods without having title to it, the buyer is entitled to reject the goods and can recover the purchase price from the seller.

**(ii) Condition as to description:**

Where goods are sold by description, there is an implied condition that the goods shall correspond with the description. If they are not, the buyer may reject them or accept them and claim damages.

**Example:**

A wants to sell his type-writer. He says to B an intending buyer who has not seen the machine, that it is a brand new machine. B agrees to purchase it. On delivery B finds that the machine is old and repaired. B can repudiate the contract and return the machine to A and claim damages.

**(iii) Condition as to sample:**

Where goods are sold by sample, there is an implied condition:

- a) that the bulk of the goods shall correspond with the sample in quality.
- b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and
- c) that the goods shall be free from latent defects. Defects which are not discoverable on reasonable examination.

**(iv) Condition as to description and sample:**

Where the goods are sold by sample as well as by description, there is an implied condition that the goods shall correspond both with the sample and with the description. If the goods supplied correspond only with the sample and not with the description or vice versa, the buyer is entitled to reject the goods.

**Example:**

A seller undertakes to supply 100 tons of Java sugar warranted to be equal to the sample. The sugar when supplied corresponds to the sample but is not Java sugar. The buyer can repudiate the contract.

**(v) Condition as to fitness or quality:**

As a general rule in a contract of sale, there is no implied condition as to quality, or fitness of the article for any particular purpose. It is the buyer’s duty to select the goods of his requirement. If subsequently the goods are found unsuitable for his purpose, the seller will not be responsible.

But there is implied condition as to quality or fitness of goods for the purpose of the buyer under the following conditions:

- a) Where the buyer has made known to the seller the particular purpose for which he needs the goods.

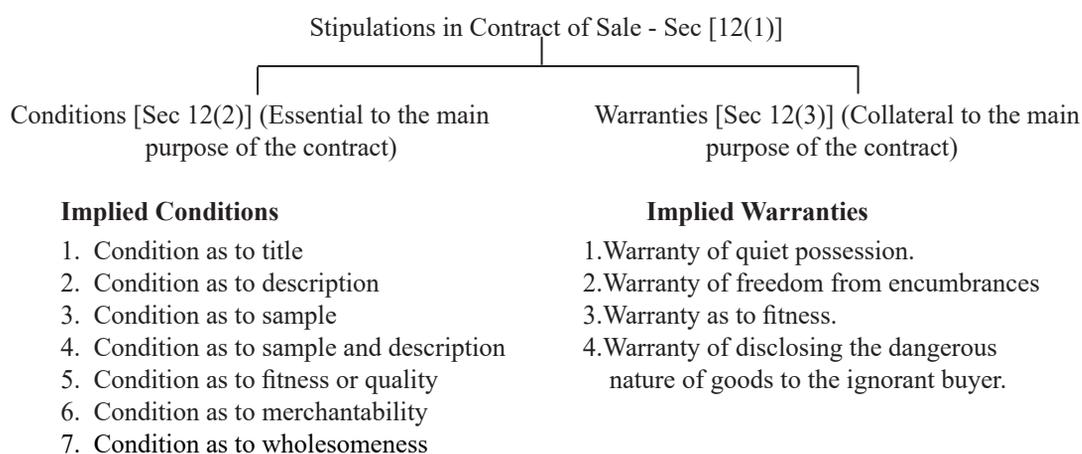
- b) The buyer should rely on the skill and judgement of the seller.
- c) Where the consent of buyer was obtained by the seller by fraud or misrepresentation.

**(vi) Conditions as to merchantability:**

Merchantability means “acceptability in the market”. In a contract of sale, there is an implied condition that the goods purchased are of merchantable quality. A watch that will not keep time and a pen that will not write cannot be regarded as merchantable.

**(vii) Condition as to wholesomeness:**

This condition is implied only in a contract of sale of eatables and provisions. In such cases, the goods supplied must not only answer to description and be merchantable but also be wholesome. In other words, the goods must be free from any defect which makes them unfit for human consumption.



**Implied Warranties:**

In the absence of a contract to the contrary, the following warranties are implied in every contract of sale. They are:

1. Warranty of quiet possession
2. Warranty of freedom from encumbrances
3. Warranty of disclosing the dangerous nature of goods to the ignorant buyer.
4. Warranty as to fitness

**1. Warranty of quiet possession:**

In a contract of sale, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. In case the buyer is in any way disturbed, he has a right to sue the seller for damages. Such a situation arises when the seller’s title to goods is defective.

**2. Warranty of freedom from encumbrances:**

There is an implied warranty on the part of the seller that goods shall be free from any charge or encumbrance in favour of any third party. Where there is a breach of this implied warranty, the remedy of the buyer is to sue for damages.

**3. Warranty as to fitness:**

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

**4. Warranty of disclosing the dangerous nature of goods to the ignorant buyer:**

The third implied warranty on the part of the seller is that in case the goods sold are of dangerous in nature, he must warn the ignorant buyer of the probable danger. If there is a breach of this warranty, the buyer is entitled to claim compensation for the injuries caused to him.

# Performance of the Contract of Sale

## 3.5

**P**erformance of the contract of sales means due discharge of the contractual obligations by both the parties to the contract i.e., Buyer and Seller. The obligation of the seller is to deliver the goods in accordance with the terms of the contract as to time and place and obligation of the buyer is to accept the goods and pay the price agreed upon. As per section 31 performance of a contract of sale means as regards the seller, delivery of the goods to the buyer, and as regards the buyer, acceptance of the delivery of the goods and payment for them, in accordance with the terms of sale.

Delivery of goods and payment for thereof are concurrent conditions, however the parties may agree otherwise also. In order to discharge the contractual obligations the seller must be ready and willing to deliver the goods. However, unless otherwise provided in the contract, seller cannot demand payment in advance of delivery. Refusal to deliver the goods unless agreed price is paid in advance is breach of contract. But the buyer is required to apply for delivery.

Performance of a contract involves two things timely delivery on the part of the seller and payment of the price as per the terms of contract by the buyer. 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 means “Voluntary transfer of possession of goods from one person to another”.

### **Modes of delivery:**

Delivery defined in Sec 2(2) of the Sale of Good Act and Delivery of goods may be in three different ways.

1. Actual delivery
2. Symbolic delivery
3. Constructive delivery

#### **1. Actual delivery:**

It is also called “Physical delivery”. Where the goods are physically handed over by the seller to the buyer or his agent, the delivery is said to be actual delivery.

#### **Example:**

The seller of a car hands over the car to the buyer.

#### **2. Symbolic delivery:**

Where the goods are bulky and incapable of actual delivery “the means of obtaining possession” of the goods

are delivered by the seller to the buyer. Such delivery is said to be “Symbolic”.

**Example:** Handing over the key of a ware-house to the buyer is symbolic delivery.

### 3. Constructive delivery:

Where the third party, who is in possession of goods of the seller at the time of sale, acknowledges to the buyer that he holds goods on his behalf, the delivery is constructive delivery.

**Example:**

A sells to B 50 bags of wheat lying in C’s godown. A gives an order to C, asking him to transfer the goods to B. C assents to such order and transfers the goods in his books to B. A then hands over the order to B. This is a constructive delivery.

### Rules regarding delivery of goods:

Sections 31 to 44 provide certain rules with regard to delivery of goods. They are as follows:

#### 1. Mode of Delivery

The mode of delivery of goods is provided in section 33 which says that, 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. Delivery as contemplated in the Act may be actual, symbolic or constructive.

#### 2. Delivery of goods and payment of price

Delivery of goods and payment of price are concurrent conditions unless otherwise agreed upon. In other words seller must be ready and willing to make delivery and buyer must also be willing to take delivery and willing and ready to pay the price (Sec 32).

**Example:** A agrees and delivers his car to B and B in turn pays price for it.

#### 3. Effect of part delivery

As per section 34, 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.

**Example:** A directed the wharfinger to deliver his goods lying at the wharf to B to whom these goods had been sold. B weighed the goods and took away a part of them. Held, the delivery of a part of the goods had taken place which has the effect as delivery of the whole.

#### 4. 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. (Section 35) It may also happen that the goods are subsequently acquired by the seller, he is to intimate the buyer and the buyer then should apply for delivery. Buyer has no cause of action against the seller if he does not apply for delivery, unless otherwise agreed upon.

**Example:** S agreed to sell his old car to T and T agreed to take delivery thereof on the auspicious day of Deepawali, S kept the car ready for delivery to T but T did not approach him for delivery. T has no reason to take any action against S if delivery of car did not take place on that day.

#### 5. Place of delivery

As per section 36(1), Goods must be delivered at the place and time specified in the contract. 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.

Goods are supposed to be taken by the buyer on “as is where is” basis, unless agreed otherwise.

## 6. Time of delivery

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. If demand or tender of delivery is not at reasonable time tender of delivery may be treated as ineffectual.

What is a reasonable hour is a question of fact which has to be decided taking into consideration various factors. [Sec 36(2)]

## 7. Goods in possession of a third person

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. [Sec 36(3)]

**Example:** X sold 50 ton of rice to Y, the goods are lying in the godown of Z. X ask Y to take delivery from the godown of Z. Delivery shall not be treated as completed unless Z acknowledges to Y that he holds the goods on his behalf.

## 8. Cost of delivery

Unless otherwise agreed, the expense of and incidental to putting the goods into a deliverable state are borne by the seller. [Sec 36(5)] Similarly all the expenses relating to taking possession the goods must be borne the buyer.

**Example:** S agrees to sell 50 ton of Basmati Rice to B at FOR Delhi. All the expenses for delivering the goods up to Delhi will be borne by S. Subsequent expenses from Delhi Railway station to office of B will be borne by B himself.

## 9. Delivery of wrong quantity [Sec. 37]

a) It is not necessary that the delivered quantity always confirm to the ordered quantity. If less than contracted quantity is supplied, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Sec 37(1)]

**Example:** A sells to B 2000 gross of 200 yards reels of swing cotton. After taking delivery B finds that the length of the cotton per reel is less than 200 yards, the average being shortage of about 6%. B may reject the goods. If he waives the right of rejection, he is liable to pay the price of the goods at the contract price.

b) Similarly if a quantity of goods larger than contracted to sell is delivered, the buyer may accept the goods included in the contact 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. [Sec 37(2)]

c) If the goods agreed to be supplied are delivered with goods 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.[Sec 37(3)]

**Example:** A buyer inspected certain timber and branded by hammer marks those which he accepted. When the timber arrived, it contained a large quantity of unbranded timber. Held, the buyer could reject the whole

consignment. The above provisions are subject to any usage of trade, special agreement or course of dealing between the parties.

#### 10. Installment delivery [Sec. 38]

Buyer is not bound to accept installment unless agreed by the parties. If the contract provide for installment delivery which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, 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 a right to treat the whole contract as repudiated.

**Example:** X brought from Y 25 tonnes of pepper Oct-Nov shipment. Y shipped 20 tonnes in November and 5 tonnes in December. Since the goods have not delivered as per the contractual provisions, X is not bound to accept installment delivery unless they had already agreed for it. X could reject the whole lot.

#### 11. Delivery to carrier or wharfinger [Sec. 39]

If, in pursuance of a contract of sale, the goods are delivered to a carrier for transmission to the buyer or to a wharfinger for safe custody, delivery of goods to them is prima facie deemed to be delivery of goods to the buyer. In such a case the seller must enter into a reasonable contract with the carrier or wharfinger on behalf of the buyer for same transmission or custody of goods. Failure to do so coupled with loss of goods in transit, buyer may reject delivery to carrier/wharfinger as delivery to himself and may hold the seller responsible for such loss. Unless otherwise agreed, if 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 is required to 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 are deemed to be at his risk during such sea transit.

#### 12. Risk where goods are delivered at distant place

It is quite possible sometimes for the buyer ask the seller to deliver the goods at the place they were agreed to be delivered. If the seller agrees to deliver the goods at the risk of the buyer at place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, buyer take any risk of deterioration in the goods necessarily incident to the course of transit.

#### 13. Buyer's right of examination of the goods

Section 41 gives the buyer right to examine the goods which are delivered to him which he has not previously examined. He is not deemed to have accepted them unless and until he has a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

# Rights of Unpaid Seller

## 3.6

### Unpaid Seller:

**T**he seller who has not received the whole of the price of the goods sold is called an “unpaid seller”.

According to Section 45, the seller of goods is deemed to be an unpaid seller:

- (a) When the whole of the price has not been paid, or
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the same has been dishonoured.

A seller who has been partly paid is also an unpaid seller.

### Rights of an unpaid seller:

According to the Sale of Goods Act the unpaid seller has the following rights. They are:

- A. Rights against the goods
- B. Rights against the buyer

#### A. Rights against the goods:

An unpaid seller has some rights against the goods sold when the property in the goods has passed to the buyer. They are as follows:

1. Right of Lien
2. Right of stoppage of goods in transit
3. Right of Re-sale
4. Right of withholding delivery

#### 1. Right of Lien: [Sec. 47]

Lien is a right to retain possession of goods until payment of price. According to section 47(1) an unpaid seller can exercise the right of lien in the following cases:

- i. Where the goods have been sold without any stipulation as to credit.
- ii. Where the goods have been sold on credit, but the period of credit has expired.
- iii. Where the buyer becomes insolvent.

#### Conditions for the exercise of lien:

The following are the conditions precedent to the exercise of the lien.

- a) The ownership must have passed to the buyer.
- b) The goods must be in the possession of the seller.
- c) The whole or part of the price must remain unpaid.

**2. Right of stoppage of goods in transit: [Sec. 50]**

The right of stoppage in transit is a right of stopping the goods, while they are in transit and retaining the possession until payment of the price. This right is conferred on the seller by Section 50 of the Act.

This right can be exercised under the following cases:

- i. the seller must be an unpaid seller.
- ii. the goods must be in-transit
- iii. the buyer must have become insolvent.
- iv. the property in the goods must have passed from the seller to the buyer.

**3. Right of Re-sale: [Sec. 54]**

An unpaid seller who has exercised either the right of lien or the right of stoppage-in-transit can resell such goods. The right to resell the goods is called 'right of resale'. This right is conferred by section 54. An unpaid seller can exercise the right of resale in the following cases:

- i. where the goods are of a perishable nature,
- ii. where the seller expressly reserves the right of resale in case the buyer makes a default in the payment of price.
- iii. where the seller has exercised his right of lien or stoppage in transit, and gives notice to the buyer of his intention to resell the goods.

**B. Rights against the buyer personally:**

An unpaid seller in addition to his rights against the goods, has the following rights against the buyer personally.

**1. Suit for price: [Sec. 55]**

Where the property in goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay the price, the seller can sue the buyer for price.

**2. Suit for damages for non-acceptance: [Sec. 56]**

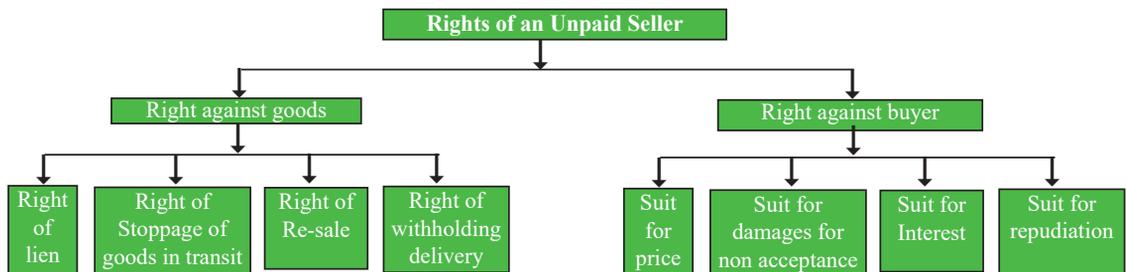
Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller can sue him for damages for non-acceptance of the goods.

**3. Suit for repudiation:**

Where the buyer repudiates the contract before the date of delivery, the seller may wait till the date of delivery or may treat the contract as cancelled and sue for damages for breach.

**4. Suit for interest: [Sec. 61]**

Where there is specific agreement between the seller and the buyer regarding interest on the price of goods, the seller may claim it from the date when payment becomes due. If there is no specific agreement, the interest is payable from the date notified by the seller to the buyer.



**Fig. 3.2 : Rights of an unpaid seller**

## Exercise

### Multiple Choice Questions (MCQ)

- In case of appropriation of goods, which are the essential requirements:
  - The goods should confirm to the description and quality stated in the contract.
  - The goods must be in a deliverable state.
  - The appropriation must be by the seller with the assent of the buyer.
  - All the above
- Appropriation of goods means
  - separating the goods sold from other goods
  - putting the quantity of goods sold in suitable receptacles
  - delivering the goods to the carrier or other bailee for the purpose of transmission to the buyer with reserving the right of disposal
  - all the above
- The general rule of Sale of Goods Act is, risk prima facie passes with
  - Ownership
  - Possession
  - Delivery
  - Custody
- "Nemo dat quad non habet", means:
  - no one is greater than god
  - none can give who does not himself possess
  - every one can give everything he has
  - everyone is bound by is habit
- Transfer of documents of title to the goods sold to the buyer, amounts to
  - actual delivery
  - symbolic delivery
  - constructive delivery
  - none of these
- Under Sec.2(4) of the Sale of Goods Act, a delivery order enabling a person to obtain delivery on payment of price is
  - Deemed as a Document of Title
  - Not a Document of Title
  - Document enabling title to Goods
  - Not a valid document at all

7. A Share Certificate is a —
  - (a) Document of Title to Goods
  - (b) Bill of Exchange
  - (c) Document Showing Title to Goods
  - (d) Instrument of Transfer
8. A Bill of Lading is a —
  - (a) Bill of Exchange
  - (b) Promissory Note
  - (c) Cheque
  - (d) Document of Title to Goods
9. Section 19 of the Sale of Goods Act, deals with passing of property of.....goods.
  - (a) Unascertained Goods
  - (b) Future Goods
  - (c) Specific or Ascertained Goods
  - (d) Contingent Goods
10. Voluntary transfer of possession from one person to another is called as
  - (a) Ownership
  - (b) Delivery
  - (c) Gift
  - (d) License
11. Which of the statement is incorrect in connection with duties of seller and buyer:
  - (a) It is the duty of the seller to deliver the goods
  - (b) It is the duty of the buyer to accept and pay for them
  - (c) It is not the duty of the seller to deliver the goods
  - (d) It is the duty of the buyer to take delivery of goods
12. Delivery of goods means-
  - (a) Voluntary transfer of possession
  - (b) Compulsory transfer of possession
  - (c) Exchange of goods
  - (d) Voluntary transfer of ownership
13. For a valid contract of sale, delivery may be:
  - (a) Actual delivery
  - (b) Symbolic delivery
  - (c) Constructive delivery

- (d) All of these
14. Delivery of the keys of a godown where goods are kept amounts to:
- (a) Actual delivery
  - (b) Symbolic delivery
  - (c) Constructive delivery
  - (d) All of these
15. There are.....modes of delivery
- (a) Three
  - (b) Two
  - (c) Four
  - (d) Five
16. The term “Unpaid Seller” includes —
- (a) Agent of the Buyer
  - (b) Agent of the Seller
  - (c) Agent of the Carrier/Transporter
  - (d) All of the above
17. The term “Unpaid Seller” includes —
- (a) Buyer’s agent to whom the Bill of Lading is endorsed
  - (b) Buyer’s agent to whom the goods have been delivered
  - (c) Seller’s agent to whom the Bill of Lading is endorsed
  - (d) Seller’s agent to whom the goods have been delivered
18. Unpaid Seller can exercise his right of lien —
- (a) even when property in goods has passed to the Buyer
  - (b) only when property in goods has not passed to the Buyer
  - (c) either (a) or (b)
  - (d) neither (a) nor (b)
19. Unpaid Seller can exercise his right of re-sale of goods—
- (a) even when property in goods has passed to the Buyer
  - (b) only when property in goods has not passed to the Buyer
  - (c) either (a) or (b)
  - (d) neither (a) nor (b)
20. Unpaid Seller can exercise his right of withholding delivery of goods —
- (a) even when property in goods has passed to the Buyer
  - (b) only when property in goods has not passed to the Buyer

- (c) either (a) or (b)
- (d) neither (a) nor (b)

**State True or False**

1. Generally the owner or any other person can transfer the property in goods.
2. Nemo dat quod habet means that no one can give what he himself does not have.
3. The doctrine of Nemo dat quod habet seeks to protect the interest of buyer.
4. Voluntary transfer of possession of goods from one person to another is called delivery of goods.
5. Delivery of goods can be actual and constructive.
6. When goods are physically handed over by the seller to the buyer it is called symbolic delivery.
7. Symbolic delivery occurs by doing some act, which has the effect of putting the goods in the possession of the buyer. Delivery of the keys to a godown or warehouse is symbolic delivery.
8. Change in possession of goods without any change in their actual and visible custody, which has the effect of delivery, is called Constructive delivery.
9. A person to whom the whole of the price has not been paid or when a bill of exchange or other instrument has been receive but which has been dishonoured is called an unpaid seller.
10. Unpaid seller has right of lien, stoppage of goods in transit, resale, sue for price, sue for specific damages, sue for interest etc.

**Fill in the blanks:**

1. Only \_\_\_\_\_ goods are subject matter of Sale of Goods Act.
2. Property means general property in goods and not merely \_\_\_\_\_ in goods.
3. Goods identified and agreed upon at the time of making contract of sale are called \_\_\_\_\_ goods.
4. Goods not identified and agreed upon at the time of making contract of sale are called \_\_\_\_\_ goods.
5. Goods which are to be manufactured/produced or acquired by the seller after making the contract of sale are called \_\_\_\_\_ goods.
6. In case of \_\_\_\_\_ goods, their acquisition is contingent upon a contingency which may or may not happen.
7. Contract of Sale creates right in \_\_\_\_\_.
8. Agreement to sell creates right in \_\_\_\_\_.
9. A sale in an executed contract whereas an agreement to sell is an \_\_\_\_\_ contract.
10. Stipulations as to time of payment are not essence of the \_\_\_\_\_.
11. 'Delivery' within the meaning of section 2(1) of the Sale of Goods Act, 1930, can be \_\_\_\_\_.
12. 'The documents of title to goods' in the Sale of Goods Act, 1930 have been described, under \_\_\_\_\_.
13. The term Price has been defined in section \_\_\_\_\_ of the Sale of Goods Act.

14. The term 'goods' has been defined in the Sale of Goods Act, 1930, under Section \_\_\_\_.
15. The term Actionable claim is defined in \_\_\_\_.

### Short Essay Type Questions (Give the answers in one (or) two sentences)

#### 1. Auction Sale

Ans: Auction sale is a model of selling property by inviting bids publicly and the property is sold to the highest bidder.

In an Auction sale, the auctioneer warrants the following:

- The auctioneer warrants his authority to sell.
- He warrants that he has no knowledge of any defect in his principal's title.
- He warrants to give quiet possession of the goods to the buyer against payment of price.

#### 2. Unpaid Seller

Ans: The seller who has not received the whole of the price of the goods sold is called an "unpaid seller". According to Section 45 of the Sale of Goods Act, the seller of goods is deemed to be an unpaid seller:

- When the whole of the price has not been paid, or
- When a bill of exchange or other negotiable instrument has been received as conditional payment, and the same has been dishonoured.

A seller who has been partly paid is also an unpaid seller.

#### 3. Actual Delivery

Ans: It is also called "Physical delivery". Where the goods are physically handed over by the seller to the buyer or his agent, the delivery is said to be actual delivery.

#### 4. Symbolic Delivery

Ans: Where the goods are bulky and incapable of actual delivery "the means of obtaining possession" of the goods are delivered by the seller to the buyer. Such delivery is said to be "Symbolic".

Example: Handing over the key of a ware-house to the buyer is symbolic delivery.

#### 5. Constructive Delivery

Ans: Where the third party, who is in possession of goods of the seller at the time of sale, acknowledges to the buyer that he holds goods on his behalf, the delivery is constructive delivery.

#### 6. Doctrine of Caveat Emptor

Ans: The term Caveat Emptor is a Latin word which means 'let buyer be aware'. This principle underlines the concept that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality required by him.

#### 7. Condition

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

#### 8. Warranty

Ans: 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.

**Answer**

**Multiple Choice Questions (MCQ):**

|   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| d | d | a | b | b | a | c | d | c | b  | c  | a  | d  | b  | a  | b  | c  | a  | a  | a  |

**State True or False**

|   |   |   |   |   |   |   |   |   |    |
|---|---|---|---|---|---|---|---|---|----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| F | T | F | T | F | F | T | T | T | T  |

**Fill in the blanks:**

|    |                                  |    |                          |
|----|----------------------------------|----|--------------------------|
| 1  | Movable                          | 2  | Special Property         |
| 3  | Specific                         | 4  | Generic or Unascertained |
| 5  | Future                           | 6  | Contingent               |
| 7  | Rem                              | 8  | Personam                 |
| 9  | Executory                        | 10 | Contract of sale         |
| 11 | Actual, Symbolic or Constructive | 12 | Sec. 2 (4)               |
| 13 | Sec. 2(10)                       | 14 | Sec. 2(7)                |
| 15 | Transfer of Property Act, 1882   |    |                          |

# NEGOTIABLE INSTRUMENTS ACT, 1881 4

**This Module includes:**

- 4.1. Characteristics of Negotiable Instruments**
- 4.2. Definitions of Promissory Note, Bill of Exchange and Cheque**
- 4.3. Difference between Promissory Note, Bill of Exchange and Cheque**
- 4.4. Crossing – Meaning, Definition and Types of Crossing**
- 4.5. Dishonour of Cheques (Section 138)**

# NEGOTIABLE INSTRUMENTS ACT, 1881

## **Module Learning Objectives:**

After studying this module, the students will be able to -

- ✦ Know the meaning and characteristics of negotiable instruments.
- ✦ Appreciate various types of negotiable instruments including bill of exchange, promissory note and cheque.
- ✦ Understand the difference between various types of negotiable instruments.
- ✦ Appreciate the different types of crossing.
- ✦ Understand meaning and possible reasons for dishonour of cheques.

# Characteristics of Negotiable Instruments

## 4.1

**A**n instrument is a document by which right and liability of any person is created, modified, satisfied, transferred or documented. Negotiable Instrument Act, 1881 primarily contains the law relating to negotiable instruments. The term 'negotiable' means transferable and the term 'instrument' means 'any written document creating a right in favour of some person.' Thus by negotiable instrument we mean a written document by which a right is given to a person and which is transferable in accordance with provisions of Negotiable Instrument Act, 1881.

### What is Negotiable Instrument?

In common parlance a negotiable instrument can be understood as a piece of paper which entitles to a sum of money and which is transferable from one person to another merely by delivery or by endorsement and delivery. The person to whom it is so transferred becomes entitled to the sum mentioned therein and also to the right to further transfer it. Though there is a general principle that no one can become owner of any property unless the person who sold the property to him is the true owner of the said property, yet this rule is not applicable in the case of Negotiable instrument. Now let us refer to the Act how the term Negotiable instrument is defined in the section.

**Sec. 13 of the Act defines a negotiable instrument as 'a promissory note, bill of exchange or cheque payable either to order or to bearer.'**

Thus, a Negotiable Instrument means an instrument, the property in which is acquired by anyone who takes a bona fide and for value, not withstanding any defect in the title of the Transferor. It need not necessarily be a promissory note, bill of exchange or a cheque.

### Explanation:

- (i) A promissory note, bill of exchange or cheque is payable to the order, to which it is expressed to be payable or which is expressed to be payable to a particular person, and does not contain words, prohibiting transfer or indicating an intention that it shall not be transferable.
- (ii) A promissory note, bill of exchange or a cheque either originally which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.
- (iii) Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person and not to him or his order, it is nevertheless payable to him or his order at his option.

A negotiable instrument may be payable to two or more persons jointly or it may be made payable in the alternative to one of two or one or some of several payees.

### Characteristics of a Negotiable Instrument

The term negotiability may also be extended to other instruments like Bill of Lading; Hundies, etc. provided it satisfies the following characteristics -

**(a) Free and innumerable Transfers:**

- i) A Negotiable Instrument may be transferred by - (i) Delivery, or (ii) by Endorsement and Delivery.
- ii) Negotiable Instruments can be transferred ad infinitum, i.e. transferred any number of times till its satisfaction on date of maturity.

**(b) Free from defects:** The Holder in due course obtains the good title to the instrument, notwithstanding any defect in a previous holder's title. A Holder in due course is one who receives the instrument -

- i) For Consideration,
- ii) Before maturity, and
- iii) Without any notice as to the defect in title of the Transferor.

**(c) Holder to sue in his own name:** The Holder in due course of a Negotiable Instrument can sue on the instrument in his own name.

**(d) Presumptions:** A Negotiable Instrument is subject to certain presumptions listed u/s 118 and 119 as to consideration, date, time of acceptance and transfer, endorsements, etc.

**Note:** Share Certificates with Blank Transfer Deeds, Deposit Receipts and Mate's Receipts are not Negotiable Instruments.

### Special Presumptions:

**Presumptions:** Until the contrary is provide, the following aspects are presumed in respect of Negotiable Instruments –

| Presumption as to..         | Description   |
|-----------------------------|---|
| Consideration               | <ul style="list-style-type: none"> <li>• Every Negotiable Instrument was made or drawn for consideration, and</li> <li>• Such Negotiable Instrument was accepted, Endorsed, negotiated or transferred for consideration.</li> </ul> |
| Date                        | Every Negotiable Instrument bearing a date was made or drawn on that date.  |
| Time of Acceptance          | Every Bill of Exchange was accepted within a reasonable time after the date mentioned therein but before the date of its maturity.  |
| Time of Transfer            | Every transfer of a Negotiable Instrument was made before its maturity.   |
| Order of Endorsements       | Endorsements appearing on a Negotiable Instrument were made in the order in which they appear thereon.  |
| Stamp                       | That a lost Promissory Note, Bill of Exchange or Cheque was duly stamped.   |
| Holder in due course        | That the holder of a Negotiable Instruments is a holder in due course.  |
| Fact of Dishonour [Sec.119] | In a suit for the dishonour of a Negotiable Instrument, the Court shall, on proof of protest, presume the fact of dishonour, unless and until it is disproved.  |

**Note:**

- (a) Where the Negotiable Instruments has been obtained from its lawful owner/custodian by means of an offence/ fraud or for unlawful consideration, the burden of proving that a Holder is a Holder in due course, lies upon him.
- (b) The NI Act will not affect Sec.21 of the Indian Paper Currency Act, 1871, or any local usage relating to any instrument in a local language. [Sec. 1].

**Types of Negotiable Instruments****Negotiable Instruments are of two types:**

- (i) **Negotiable by statute** – Section 13 of the Act, provides that a negotiable Instrument includes promissory note, bill of exchange and cheque, whether payable to bearer or order.
- (ii) **Negotiable by custom or usage** – Though the Act speaks of only three types of Negotiable Instrument, but it does consider other kinds of instruments from being treated as a negotiable instrument provided they possess the characteristics of a negotiable instruments. Accordingly certain other instruments take the character of negotiable instruments by custom or usage. Dividend warrant, circular notes, bearer debentures are some of them though they are not specifically mentioned in the Act as negotiable instrument.

**Classification of Negotiable Instruments****1. Bearer and order instruments**

A negotiable instrument is said to be payable to bearer when

- (i) It is expressed to be so payable
- (ii) Only or last endorsement is a blank endorsement.

A negotiable instrument is said to be payable to order when

- (a) It is expressed to be so payable
- (b) Expressed to be payable to a particular person with restricting its transferability.

**2. Inland and foreign instruments**

A bill, promissory note or cheque if both drawn and payable in India or drawn on a person resident in India is said to be an inland bill.

A bill which is not an inland bill is deemed to be a foreign bill. Foreign bill must be protested for dishonor if such protest is required by the law of the place where it was drawn, this is not case with Inland bills where protest for nonpayment is optional as per section 104 of the Act.

**3. Demand and time instruments**

An instrument is payable on demand when it is expressed to be so payable or when no time is specified on it. A cheque is always payable on demand.

A note or bill if payable after a specified period or happening of a specified event which is certain, it is a time instrument. If a promissory note or bill of exchange bears the expression “at sight” and “on presentation” means on demand (section 21). The words “on demand” are usually found in a promissory note, whereas the words “at sight” are found in a bill of exchange.

**4. Genuine, accommodation and fictitious bill**

When a bill is drawn, accepted, or endorsed for consideration it is a genuine bill. When it is drawn, accepted, or endorsed without consideration it is accommodation bill. When drawer or payee or both are fictitious the bill is called fictitious bill. If both drawer and payee of a bill are fictitious person, the acceptor is liable to a holder in due course, if the holder in due course can show that the signature of the supposed drawer and that of first payee are in the same handwriting.

**5. Clean and documentary bill**

When no documents relating to goods are annexed to the bill, it is clean bill. When documents of title or other documents relating to goods are attached, it is documentary bill.

**6. Ambiguous instrument**

When an instrument due to faulty drafting may be interpreted either as bill or note, it is an ambiguous instrument. It is for holder to decide how he wants the bill to be treated. Ambiguity may also arise when the amount is stated differently in words and figures. In such case the amount stated in words will be taken into account.

**7. Inchoate instrument**

An instrument incomplete in some respect is known as inchoate instrument. When a person signs and delivers to another a blank or incomplete stamped paper, he authorizes the other person to make or complete upon it a negotiable instrument for any amount not exceeding the amount covered by the stamp. The effect of such signing is that the person signing the instrument is liable upon such instrument in the capacity in which he signed it to holder in due course of the instrument.

**8. Escrow Instrument**

When an instrument is drawn conditionally or for a special purpose as a collateral security and not for the purpose of transferring property therein, it is called Escrow instrument. The liability to pay in case of an Escrow instrument does not arise if the conditions agreed upon are not fulfilled or the purpose for which the instrument was delivered is not achieved.

| Parties                | Meaning   |
|------------------------|---|
| Drawer                 | The Maker of a Promissory Note, Bill of Exchange or Cheque.   |
| Drawee                 | The person on whom the instrument is drawn and thereby directed to pay.   |
| Drawee in case of need | <ul style="list-style-type: none"> <li>• Meaning: The person whose name is given in the bill or on any Endorsement thereof, in addition to the name of the Drawee, who should be resorted to in case of need.</li> <li>• Where a Drawee in case of need is named in a Bill of Exchange or any endorsement thereon, the Bill of Exchange is not dishonoured, unless it has been dishonoured by such Drawee [Sec.115]</li> <li>• A Drawee in case of need may accept and pay the Bill of Exchange, without previous protest. [Sec.116]</li> </ul> |
| Acceptor               | When the Drawee signs his assent upon the Bill, and delivers the same to the holder or some other person on his behalf, he becomes the "Acceptor".  |
| Acceptor for honour    | <ul style="list-style-type: none"> <li>• Meaning: Person accepting a Bill of Exchange (which has been noted or protested for non acceptance or for better security) supra protest for honour of the Drawer or of any one of endorsers.</li> <li>• Acceptor for Honour must specify as to whose honour he is accepting the Bill of Exchange. Otherwise, it shall be deemed to be made for the honour of the Drawer.</li> </ul>   |

|        |   |
|--------|---|
| Payee  | Payee is the person to whom the amount is payable, which may be the Drawer himself or any other person.   |
| Holder | <ul style="list-style-type: none"> <li>• Meaning: Any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.</li> <li>• Where the instrument is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction. [Sec.8]</li> </ul> |

### Capacity to become a party to a Negotiable Instrument

A person competent to contract can become a party to a negotiable instrument. If a party who makes, draws, endorses, or negotiates a negotiable instrument is incompetent to do so, the agreement is void as against him. But the contract is still valid against the other parties competent to contract. The manner or conditions under which certain categories of person like a Minor, Corporate body, Agent and Legal representatives can be a party to a negotiable instrument are as under:

- (a) **Minor** - A minor person is not competent to contract; therefore he cannot bind himself by becoming a party to a negotiable instrument. But mere presence of a minor as one of the party in a negotiable instrument does not make it invalid. A minor can draw, indorse, deliver and negotiate an instrument so as to bind all parties except himself.

**Example:** A, B and C, a minor executed a promissory note in favor of P. Held, C's immunity from liability did not absolve A and B, other joint promisors, from liability.

A minor is not personally liable on a bill or note given by him for necessities supplied to him. It is only his estate which is liable for such a bill or note.

- (b) **Corporation** - Corporation can be a party to a negotiable instrument if authorized by its Article of Association, otherwise it is ultra vires.
- (c) **Agent** - As per section 27 an agent can bind his principal by acting on his behalf only in the manner in which he is duly authorized to be become a party to a negotiable instrument. The agent is required to make it clear that he is acting in representative capacity which must be evidenced by the manner he sign such document. The form of signature must show that he does not intend to incur personal liability.

Otherwise he becomes personally liable.

**Example 1:**

A manager of ABC ltd accepted a bill of exchange and signed A as manager. It was held that A was personally liable.

**Example 2:**

A manager of ABC ltd accepted a bill of exchange and signed as for ABC ltd. It was held that A was not personally liable.

- (d) **Legal Representative** - As per section 30 a legal representative of a deceased person who signs his name to a negotiable instrument incurs personal liability unless by clear words he limits his liability to the extent of the assets of the deceased received by him as legal representative.

# Definitions of Promissory Note, Bill of Exchange and Cheque

## 4.2

A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

### **Promissory Note:**

#### **Section 4 of the Negotiable Instruments act, 1881 defines “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.

### **Parties:**

1. Maker.
2. Payee.

#### **1. Maker:**

The person who makes the promissory note and promises to pay is called the maker.

#### **2. Payee:**

The person to whom the payment is to be made is called the payee.

### **Requisites of a Promissory Note:**

- i. The promissory note must be in writing.
- ii. It must contain an undertaking to pay. There must be an express promise to pay.
- iii. The promise to pay should be unconditional.
- iv. The promissory note must be signed by the maker.
- v. The sum payable must be certain.
- vi. The instrument must contain a promise to pay money and money only.
- vii. The maker and payee must be certain.
- viii. Stamping of Promissory Note is essential under The Indian Stamp Act, 1899. An unstamped promissory note is not admissible in evidence and no suit can be maintained.
- ix. It must contain date.
- x. The limitation period for a promissory note to file a suit is three years from the date of execution or from the date of acknowledgement.

**Bill of Exchange:****Section 5 of the Negotiable Instruments act, 1881 defines “Bill of Exchange”:**

“A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument”.

**Parties:**

There are three parties to bill of exchange:

1. The drawer.
2. The drawee.
3. The payee.

**1. The drawer:**

The person who gives the order to pay or who makes the bill is called the drawer.

**2. The drawee:**

The person who is directed to pay is called the drawee. When the drawee accepts the bill, he is called the acceptor.

**3. The Payee:**

The person to whom the payment is to be made is called the payee.

**Requisites of a Bill of Exchange:**

1. A bill of Exchange must be drawn unconditionally, though the acceptor, or the indorser may make his liability conditional, direction of payment by the drawer must not be made to depend upon a contingency. Therefore, it is the essence of a bill of exchange that it should be payable at all events and it must appear so on its face.
2. The consideration of a bill of exchange should be paid only by way of money only.
3. The amount to be paid should be certain.
4. The time of payment must be indicated in the bill with certainty.
5. Order to pay. Order in this section does not mean a command, but a request or a direction.
6. It is essential that a bill of exchange should point out with certainty the party who enters into the contract imported by its terms. Thus, the signature of the drawer is necessary and there cannot be a bill, even if the instrument is accepted without the signature of the drawer.
7. It must indicate a drawee who should be called on to accept or pay it. The drawee must be named or otherwise indicated in the bill with reasonable certainty.
8. It should specifically mention the date and place of the payment or the place where it is drawn.
9. Every Bill of Exchange must be stamped according to the provisions of The Indian Stamp Act, 1899.

**Cheque:****Section 6 of the Negotiable Instruments Act, 1881 defines “Cheque”:**

“A cheque is a bill of exchange drawn upon a specified banker and payable on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.”

A cheque in the electronic form means “cheque which contains the exact mirror image of a proper cheque, and

is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature and asymmetric crypto system.”

A truncated cheque means a cheque which is truncated 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.

‘Clearing House’ means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India [Sec. 6 as substituted by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002].

A cheque is a species of a bill of exchange; but it has the following two additional qualifications:

- a. It is always drawn on a specified banker, and
- b. It is always payable on demand.

**Parties:**

There are three parties to bill of exchange:

1. The drawer.
2. The drawee.
3. The payee.

**1. The drawer:**

The customer who signs the cheque is called “drawer”.

**2. The drawee:**

The bank on whom the cheque is drawn is called “drawee”.

**3. The Payee:**

The person to whom the payment is to be made is called the payee.

**Requisites of a Cheque:**

- (i) A cheque must be an order in writing.
- (ii) It must contain an unconditional order.
- (iii) A cheque must be signed by the maker.
- (iv) The amount must be specifically mentioned in figures and words.
- (v) A cheque may be drawn payable to order or bearer. There are two kinds of cheques prevailing now a days. They are:
  - a. it may be a bearer or order cheque; and
  - b. it may be a self cheque.
- (vi) The cheque must contain the date.
- (vii) Payee to be certain.

**“Who can cross a cheque”?**

As we have discussed above, by crossing the cheque the drawer instructs the banker to not to pay it over the counter but only credit to the account of the person named therein. It adds to the security and thus ensures payment to the payee or to his order. A cheque may be crossed by any of the following persons;

- (a) The drawer of a cheque.
- (b) The holder of a cheque. Where a cheque is issued uncrossed it may be crossed by the holder generally or specially.
- (c) The banker in whose favour the cheque has been crossed specially may again cross it specially in favour of another banker. The later bank in such a case acts as the agent of the former.

### **Due Date of a Bill or Note**

Every instrument payable, otherwise, than on demand is entitled to three days of grace. Instruments not entitled to 'period of grace' are:

- (a) a cheque
- (b) a bill or note payable on demand,
- (c) a bill or note in which no time is mentioned.

Instruments entitled to 'period of grace' are:

- (i) a bill or note payable on a specified day,
- (ii) a bill or note payable 'after sight',
- (iii) a bill or note payable at a certain period on happening of a certain event.

So in case of time bill or note, it becomes due on the last day of grace period. Where an instrument is payable by installments, each installment is due three days after the date fixed for payment of the installment. If the due date falls on a public holiday, the bill becomes due on immediate preceding business day. If the month in which the period is to terminate has no corresponding day, the period will terminate on the last day of the month.

### **Payment in Due course**

Payment in due course means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof. The payment to the person in possession of the instrument must be under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount mentioned in the instrument.

Payment in due course results in discharge of the instrument. A payment is said to be 'payment in due course' if it satisfies the following conditions:

- (i) It is in accordance with apparent tenor of the instrument. A payment before the maturity date is not a payment according to the apparent tenor of the instrument.
- (ii) It is made on behalf of drawee or acceptor. It must be made in money term only which includes cheque and currency notes. The holder of a negotiable instrument cannot be forced to accept payment in any other mode except with his consent.
- (iii) It is made to the person in possession of the instrument and also entitled to payment.
- (iv) It is made in good faith, without negligence and under bona fide circumstances. If a cheque bears forged signature of the drawer, the payment will not be payment in due course if the banker fails to exercise the necessary care.
- (v) There is no ground for believing that possessor is not entitled to receive payment.

# Difference between Promissory Note, Bill of Exchange and Cheque

## 4.3

### Difference between Promissory Note, Bill of Exchange and Cheque

| Point of Difference                               | Promissory Note   | Bill of Exchange   | Cheque   |
|---|---|--|--|
| <b>Parties</b>                                    | 2 Parties - maker & payee   | 3 parties – drawer, drawee and Payee   | 3 parties - drawer, banker and payee                                       |
| <b>Nature</b>                                     | Contains an unconditional promise by maker to pay the payee   | Contains an unconditional order to the drawee to pay the payee                   | Drawn on specified banker to pay on demand.                                |
| <b>Acceptance</b>                                 | Not necessary   | Necessary if the bill is payable after sight.                                    | Not necessary.   |
| <b>Liability</b>                                  | Liability of maker is primary and absolute.   | Liability of drawer is conditional and secondary upon nonpayment by drawee.      | Liability of drawer is conditional and secondary upon nonpayment by banker |
| <b>Notice of dishonor</b>                         | Not necessary   | Necessary  | Not necessary  |
| <b>Payable</b>                                    | On demand or after a specified time. Cannot be made payable to bearer on demand or even after certain period. | On demand or after a specified time. Cannot be made payable to bearer on demand. | On demand even to bearer if so made.                                       |
| <b>Crossing</b>                                   | Not possible  | Not possible   | Can be crossed.  |
| <b>Noting and protesting in case of dishonour</b> | Not required  | Required to establish the fact of dishonour.                                     | Not required   |
| <b>Grace period</b>                               | Available if payable after specified time   | Available if payable after specified time (usance bill)                          | Not available.   |
| <b>Other features</b>                             | Number, date, place not essential. Must be stamped.   | Number, date, place not essential. Must be stamped.                              | Number, date, place, essential. Need not be stamped.                       |

# Crossing – Meaning, Definition and Types of Crossing

## 4.4

**S**ection 123 to 131-A of the Negotiable Instruments act, 1881 explain about “Crossing”. A cheque may be an ‘open cheque’ or a ‘crossed cheque’. The former may be presented across, the counter for payment; the later will have to be presented through another banker. While, in the case of an open cheque, payment may be obtained in cash, in the case of a crossed cheque, the amount will be credited to the account of the customer of a bank.

### Meaning of Crossing:

The act of drawing two diagonal or transverse parallel lines on the face of a cheque is called “crossing of the cheque”. In other words, a crossed cheque is one which has two transverse parallel lines. Crossing is a direction to the banker not to pay the money across the counter. It means the banker should pay the money only through banker.

### Object of Crossing:

The main object of crossing is to give protection and safeguard to the owner of the cheque. The crossed cheque cannot be paid across the counter but it should be paid only through an account with a bank, who may be either the drawee banker or a different one. If it is mis utilised, it can be traced very easily and the fraudulent person can easily be detected.

### Kinds of Crossing:

There are different kinds of crossing:

General crossing.

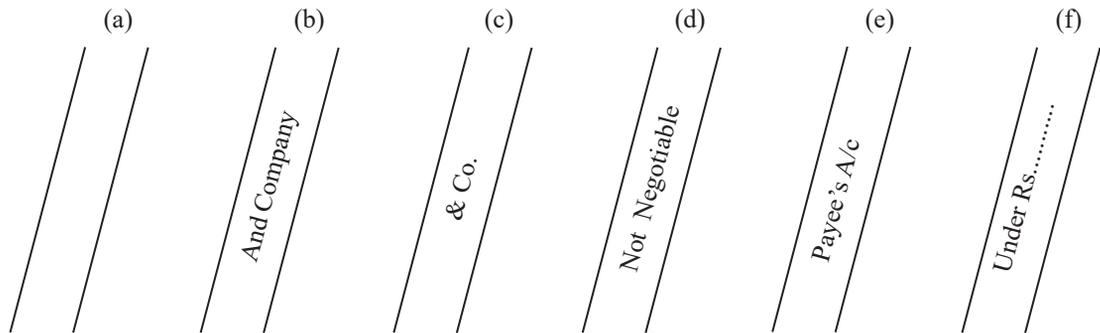
Special crossing.

#### 1. General Crossing: [Sec. 123]

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**.

- (a) Two transverse lines are the essentials of general crossing.
- (b) The lines should not occupy printed letters or numbers or any such written matters.
- (c) The lines are generally drawn on the left hand side.
- (d) The words ‘**and company**’ / ‘**& co.**’ may be written between transverse lines. But these words are not compulsory. The crossing itself is sufficient. However, it is the practice of the people to write those words.
- (e) The words ‘**Not negotiable**’ may be added to a crossing. But they themselves do not constitute crossing.

**Forms of General Crossing**

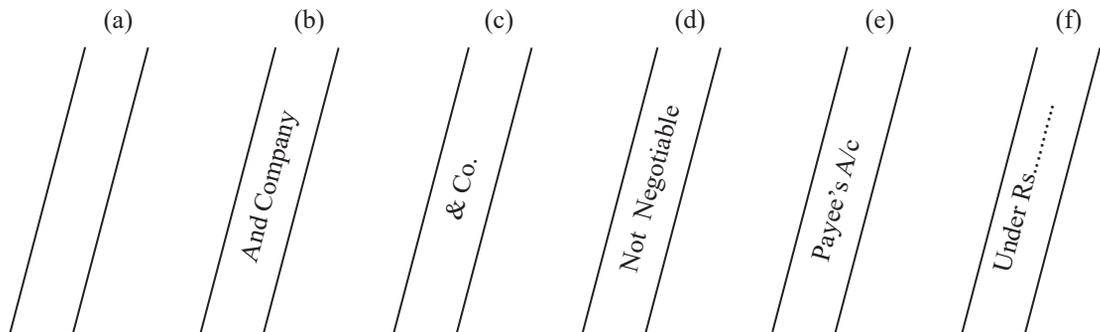


**Effect of General Crossing:**

1. It gives a direction to the paying banker.
2. Sec. 126 of the NI Act, 1881 lays down that when a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Therefore, this type of cheque cannot be paid at counter. The payment should be made through an account only. Thus the General crossing gives protection and avoids fraudulent withdrawals.
3. It is the liability of the paying banker to verify proper payment in proper account. The payment does not constitute "Payment in due course". The banker is answerable to his customer, if he pays the money to a third person without the direction of his customer. He should not make any contract with third party concerning the cheque generally crossed.

**2. Special Crossing: [Sec. 124]**

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.



- (a) Two parallel transverse lines are not essential.
- (b) The name of the bank should be mentioned with or without crossing. The name of the bank itself constitutes special crossing.
- (c) The name of the bank should be written on the left side of cheque.
- (d) The name of the bank and the words "Not Negotiable" or "A/c Payee" or "Not Negotiable" or "A/c Payee Only", may also be mentioned.

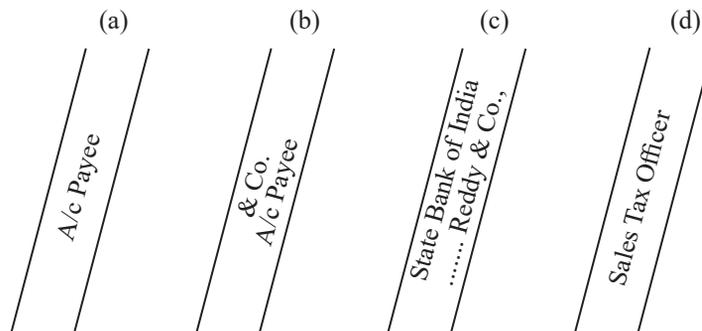
**Effect of Special Crossing:**

- 1) It prevents the fraudulent transactions and misappropriation.
- 2) It is direction to the paying banker to pay the amount to the account holder of that bank, but not to others.
- 3) If a cheque is specially crossed on a particular bank, and if such cheque is presented in another bank, the paying bank should refuse the payment.
- 4) Special crossing gives more protection than general crossing. In the case of special crossing, the banker's name and payee's name are mentioned, and the banker is well acquainted with the payee's name and signature. If there is any forgery he can easily detect it.

Another type of crossing which is not defined in the Act but presents in usage is Restrictive Crossing or Account Payee Crossing.

**Account Payee Crossing:**

In the present day transactions, we find the terms "A/c Payee", "Account Payee", "Account Payee Only", on the cheques. It has developed in the trade and in common to use these terms on the left side of the cheque between the two transverse lines. But there is no law mentioned about this type of crossing either in "The Bills of Exchange Act" of Great Britain or in "The Negotiable Instruments Act, 1881" of India. The terms mean that the amount should not be paid at counter, but should be credited into the account of the payee only. However, the meaning of other crossings is also the same. This type of crossing only gives **additional protection** to the cheque.

**Effect:**

- 1) It is merely in the form of direction to the receiving bank that the drawer desires to pay the particular cheque into bank which keeps the account of the payee.
- 2) A/c Payee crossing cheque can also be transferable like other cheques.
- 3) It gives further protection to the payee. The collecting banker should credit the cheque only to the mentioned account of the payee.
- 4) If the banker credits the cheque to another's account and not to the account of the payee, the banker shall be held responsible for his negligence, and shall be held liable to pay the compensation.
- 5) The safest method is to cross the cheque with the terms of 'Not Negotiable' and 'A/c Payee only'.

**Not Negotiable Crossing: [Sec. 130]**

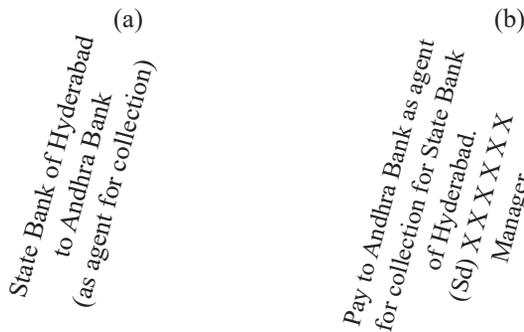
**Sections 123 and 124** of the Act permit the use of the words "Not Negotiable" in the crossing. Section 130 of the Act clarifies the position.

**Section 130:** 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.

The words “**Not Negotiable**” do not mean “**not transferable**”. If it is so, the very meaning and purpose of the cheque and its character of “**Bill of Exchange**” will die. “**Transferability**” is a narrower term than the word ‘**negotiability**’. The cheque “**not transferable**” crossed can also be transferred like any other cheque. But it gives more protection than General Crossing and Special Crossing. It is a **warning** to the paying and collecting bankers. Both of them should be very careful in the transaction of this type of cheques.

**Object:**

The true owner is protected by this type of crossing more perfectly. If it is stolen, the finder cannot cash it so easily. The good title cannot be passed to him. He will be compelled to return it to the true owner. The owner’s right is preserved safely against any subsequent holder.



**Effects:**

- 1) It gives more protection and safe to the holder of the cheque.
- 2) A third person cannot cash it so easily.
- 3) It can be transferred like any other cheque.
- 4) If the banker is negligent and transfers the amount of that cheque to another account, he will be held responsible and he will be liable to make the compensation to the sufferer.

**Double Crossing/Second Special Crossing: [Sec. 125]**

“Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent for collection” is called Double Crossing.

There a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker his agent, for collection.

This is the only case where a second special crossing is allowed by the Act, and that can be done only for the purpose of collection and that too by a banker. Therefore, it is called “Double Crossing” or “Second Special Crossing”. The private parties are not allowed to utilize double crossing.

**Effect:**

- 1) Double crossing is not permitted to general public. It is practiced only in case of transactions between the bankers. Others are not allowed to use double crossing.

- 2) It is in practice to cross on the face of the cheque at left side. But in case of Double crossing it is the regular practice to cross at the back side of the cheque, where sufficient space is available.
- 3) Sec. 127 lays down that where a cheque is crossed specially to more than one banker except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.
- 4) According to Sec. 127, it means that it is necessary, in all cases, to specify in the second special crossing that the banker in whose favour it is made is an agent of the first banker for collection.

**Who can cross a Cheque:**

Generally the maker of the cheque makes the crossing. If he does not cross, the holder of the cheque can cross it, or in certain occasions the banker may also cross it. Sec. 125 states about crossing after issue.

According to Sec. 125 where a cheque is uncrossed, the holder may cross it generally or specially.

- 1) Where a cheque is crossed generally, the holder may cross it specially.
- 2) Where a cheque is crossed generally or specially, the holder may add the words “not negotiable”.
- 3) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

# Dishonour of Cheques (Section 138)

4.5

A cheque is said to be honoured if the banks give the amount to the payee. While, if the bank refuses to pay the amount to the payee, the cheque is said to be dishonoured. In other words, dishonour of cheque is a condition in which the bank refuses to pay the amount of the cheque to the payee.

Whenever the cheque is dishonoured, the drawee bank instantly issues a 'Cheque Return Memo' to the payee banker specifying the reasons for dishonour. The payee banker provides the memo and the dishonoured cheque to the payee.

## Five ingredients of the offence under Sec. 138 of the Negotiable Instruments Act, 1881

The offence under Sec. 138 of the Act can be attracted, given sufficient components of the said offence;

1. Drawing of the cheque,
2. Presentation of the cheque to the bank,
3. Returning the cheque unpaid by the drawee bank,
4. Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount.
5. Failure of the drawer to make payment within 15 days of the receipt of the notice.

Upon such dishonour of an issued cheque, the payee can initiate legal proceedings under Section 138 of Negotiable Instruments Act, 1881.

**Section 138 of Negotiable Instruments Act, 1881** - Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

- (a) the cheque has been presented to the bank within a period of six months (reduced to three months after RBI circular dated 04.11.2011, effective from 01/04/2012) from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

**Explanation**— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]

In short, upon dishonour of cheque a payee can, in exercise of his dues, initiate a legal notice for demand of the same within 30 days of receipt of the cheque dishonor memo. The said drawer of the cheque is bound to pay within fifteen days of the receipt of the said notice, or the right to sue, for the payee arises from the same.

With regard to the same, it however becomes pertinent to mention the recent amendments to the Negotiable Instruments Act, 1881, published on 2nd August, 2018 and enforced from 1st September, 2018.

“Section 143A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant— (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

In *Rakesh Nemkumar Porwal vs. Narayan Dhondu Joglekar* - Citation-(1993), the Honourable Bombay High Court held that “Any reason for dishonour is an offence.”

In *J. Veeraghavan v. Lalith Kumar* (1995), the Honourable Madras High Court held that “Any reason for dishonour is an offence. Section 138 of the NI Act Marginal Note stating “Dishonour of cheque for insufficiency etc. of funds in accounts” addition of word “etc.” cannot be considered to be an accident.”

## Exercise

### Multiple Choice Questions (MCQ)

1. The undertaking contained in a promissory note, to pay a certain sum of money is
  - (a) Conditional
  - (b) Unconditional
  - (c) may be conditional or unconditional depending upon the circumstances
  - (d) none of the above
2. A bill of exchange contains a/an
  - (a) unconditional undertaking
  - (b) unconditional order
  - (c) conditional undertaking
  - (d) conditional order
3. Cheque is a
  - (a) promissory note
  - (b) bill of exchange
  - (c) both (a) and (b) above
  - (d) None of the above
4. The term 'Negotiable instrument' is defined in the Negotiable Instruments Act, 1881, under section
  - (a) 12
  - (b) 13
  - (c) 13A
  - (d) 2(d)
5. The term 'negotiation' in section 14 of the Negotiable Instruments Act, 1881 refers to
  - (a) the transfer of a bill of exchange, promissory note or cheque to any person, so as to constitute the person the holder thereof
  - (b) the payment by a bank on a negotiable instrument after due verification of the instrument
  - (c) the bargaining between the parties to a negotiable instrument
  - (d) all of the above
6. If an instrument may be construed either as a promissory note or bill of exchange, it is
  - (a) a valid instrument
  - (b) an ambiguous instrument
  - (c) a returnable instrument
  - (d) none of the above

7. If a minor draws, endorses, delivers or negotiates an instrument, such instrument binds
  - (a) all parties to the instrument including the minor
  - (b) only the minor and not other parties to the instrument
  - (c) all parties to the instrument except the minor
  - (d) none of the above
8. In a promissory note, the amount of money payable
  - (a) must be certain
  - (b) may be certain or uncertain
  - (c) is usually uncertain
  - (d) none of the above
9. A cheque is crossed ..... when it bears across its face an addition of the name of a banker, either with or without the words “not negotiable”.
  - (a) Specially
  - (b) General
  - (c) Restrictive
  - (d) None of the above
10. Under section 118 of the Negotiable Instruments Act, 1881, it is presumed, until the contrary is proved, that every transfer of a negotiable instrument was made
  - (a) after its maturity
  - (b) before its maturity
  - (c) at its maturity
  - (d) none of the above
11. Who among the following cannot cross a cheque?
  - (a) Drawer
  - (b) Holder
  - (c) Banker
  - (d) Foreigner
12. The presumption as to the date of a negotiable instrument under section 118 is that, every negotiable instrument bearing a date was made or drawn
  - (a) prior to that date
  - (b) on such date
  - (c) may be on or prior to that date
  - (d) none of the above

13. Where a cheque is crossed generally the banker on whom it is drawn
- (a) shall not pay it otherwise than to a banker
  - (b) shall not pay it otherwise than to the holder
  - (c) shall not pay it to a banker
  - (d) none of the above
14. The Negotiable Instrument Act is applicable to—
- (a) Whole of India
  - (b) Whole of India except JK state
  - (c) Whole of India except J & Kashmir city
  - (d) None of the above
15. The Negotiable Instruments Act, 1881 came into force on
- (a) 9th December, 1881
  - (b) 19th December, 1881
  - (c) 1st March, 1882
  - (d) None of the above.
16. The term Negotiable instrument is defined in section \_\_\_\_ of the Negotiable Instrument Act, 1881
- (a) 2
  - (b) 13
  - (c) 12
  - (d) 10
17. The undertaking contained in a promissory note, to pay a certain sum of money is----
- (a) Conditional
  - (b) Unconditional
  - (c) May be conditional or unconditional depending upon the circumstances
  - (d) None of the above.
18. Which of these is not a negotiable Instrument as per the Negotiable Instrument Act, 1881
- (a) Bill of exchange
  - (b) Delivery note
  - (c) Bearer Cheque
  - (d) Share certificate
19. \_\_\_\_\_ is not a negotiable instrument as per customs and usage
- (a) Delivery note
  - (b) Railway Receipt

- (c) Cheque
  - (d) Government promissory note
20. An instrument incomplete in one way or other is called
- (a) Inchoate Instrument
  - (b) Ambiguous instrument
  - (c) Foreign Instrument
  - (d) Dishonored Instrument
21. A bill of exchange contains a/an \_\_\_\_\_
- (a) unconditional undertaking
  - (b) unconditional order
  - (c) conditional undertaking
  - (d) conditional order.
22. Cheque is a \_\_\_\_\_
- (a) promissory note
  - (b) bill of exchange
  - (c) both (a) and (b) above
  - (d) None of the above.
23. A Corporation can be party to a Negotiable Instrument if \_\_\_\_
- (a) authorized by its article of association
  - (b) if special permission of Board of Directors taken
  - (c) if special resolution by Share holders is passed
  - (d) absolutely without any restrictions
24. The grace period for payment of a negotiable instrument other than payable on demand is----- days/months
- (a) 7days
  - (b) 3 days
  - (c) 1 month
  - (d) 15 days
25. The term “a cheque in the electronic form” is defined in the Negotiable Instruments Act, 1881 - under
- (a) Section 6(a)
  - (b) Section 6(1)(a)
  - (c) Explanation 1(a) of Section 6
  - (d) Section 6A.

26. If a minor draws, indorses, deliver or negotiates an instrument, such instrument binds-
- (a) All parties to the instrument including the minor
  - (b) Only the minor and not other parties to the instrument
  - (c) All parties to the instrument except the minor
  - (d) None of the above.
27. How many parties are involved in a Bill of Exchange
- (a) 2
  - (b) 3
  - (c) 4
  - (d) 1
28. A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in, India is treated as a/an –
- (a) Inland instrument
  - (b) Local instrument
  - (c) Foreign instrument
  - (d) Indigenous instrument
29. If an instrument may be construed either as a promissory note or bill of exchange, it is---
- (a) a valid instrument
  - (b) unambiguous instrument
  - (c) a returnable instrument
  - (d) none of the above.
30. If the words “not negotiable” are used with special crossing in a cheque, the cheque is---
- (a) not transferable
  - (b) transferable
  - (c) negotiable under certain circumstances
  - (d) none of the above.

**State True or False:**

1. Negotiable Instruments can be transferred ad infinitum.
2. A Negotiable Instrument may be transferred by delivery.
3. The Holder in due course of a Negotiable Instrument can sue on the instrument in his own name.
4. A Negotiable Instrument is subject to certain presumptions listed u/s 119 and 120 as to consideration, date, time

of acceptance and transfer, endorsements, etc.

5. Share Certificates with Blank Transfer Deeds, Deposit Receipts and Mate's Receipts are Negotiable Instrument's.
6. A bill which is not an inland bill is deemed to be a foreign bill.
7. When a bill is drawn, accepted, or endorsed for consideration it is a fictitious bill.
8. An instrument incomplete in some respect is known as inchoate instrument.
9. A cheque is a bill of exchange drawn on a specified banker payable on demand.
10. Negotiable instrument we mean a written document by which a right is given to a person and which is transferable in accordance with provisions of Negotiable Instrument Act, 1881.

### Fill in the Blanks:

1. The Negotiable Instrument Act is applicable to \_\_\_\_\_.
2. The Negotiable Instruments Act, 1881 came into force on \_\_\_\_\_.
3. The term Negotiable instrument is defined in section \_\_\_\_\_ of the Negotiable Instrument Act, 1881.
4. The undertaking contained in a promissory note, to pay a certain sum of money is \_\_\_\_\_.
5. An instrument incomplete in one way or other is called \_\_\_\_\_.
6. A bill of exchange contains a/an \_\_\_\_\_ order.
7. The grace period for payment of a negotiable instrument other than payable on demand is \_\_\_\_\_ days/months.
8. The term "a cheque in the electronic form" is defined in the Negotiable Instruments Act, 1881 under section \_\_\_\_\_.
9. A bearer instrument is negotiated by \_\_\_\_\_.
10. \_\_\_\_\_ parties are involved in a Bill of exchange.
11. \_\_\_\_\_ parties are involved in a Promissory note.
12. \_\_\_\_\_ parties are involved in a Cheque.
13. When a cheque is payable across the counter of a bank it is called \_\_\_\_\_.
14. \_\_\_\_\_ days grace period is allowed for payment of a cheque.
15. A cheque is always payable on \_\_\_\_\_.

### Short Essay Type Questions (Give the answers in one (or) two sentences)

#### 1. Negotiable Instrument

Ans: Sec. 13 of the Negotiable Instruments Act defines a negotiable instrument as 'a promissory note, bill of exchange or cheque payable either to order or to bearer.'

**2. Cheque**

Ans: “A cheque is a bill of exchange drawn upon a specified banker and payable on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form”.

**3. Promissory Note**

Ans: “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”.

**4. Bill of Exchange**

Ans: “A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument”.

**5. Holder**

Ans: Any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the instrument is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

**Answer**

**Multiple Option Questions (MOQ):**

|    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| b  | b  | b  | b  | a  | b  | c  | a  | a  | b  | d  | b  | a  | a  | c  | b  | b  | d  | c  | a  |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |    |    |    |    |    |    |    |    |    |    |
| b  | b  | a  | b  | c  | c  | b  | a  | b  | a  |    |    |    |    |    |    |    |    |    |    |

**State True or False**

|   |   |   |   |   |   |   |   |   |    |
|---|---|---|---|---|---|---|---|---|----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| T | F | T | F | F | T | F | T | T | T  |

**Fill in the blanks:**

|    |                        |    |                 |
|----|------------------------|----|-----------------|
| 1  | Whole of India         | 2  | 1st March, 1882 |
| 3  | Sec. 13 1(a) of Sec. 6 | 4  | Unconditional   |
| 5  | Inchoate Instrument    | 6  | Unconditional   |
| 7  | 3 days                 | 8  | Explanation     |
| 9  | Endorsement            | 10 | Three           |
| 11 | Two                    | 12 | Three           |
| 13 | Open Cheque            | 14 | Zero            |
| 15 | Demand                 |    |                 |

**SECTION - B**

**BUSINESS COMMUNICATION**



**This Module includes:**

- 5.1. Introduction to Business Communication**
- 5.2. Features of Effective Business Communication**
- 5.3. Process of Communication**
- 5.4. Types of Business Communication**
- 5.5. Internet Based Business Communication**
- 5.6. Do's and Don'ts of Communication through Social Media**
- 5.7. Writing and Drafting for Business Audiences**
- 5.8. Intercultural and International Business Communication**
- 5.9. Barriers to Business Communication**
- 5.10. Legal Aspects of Business Communication**
- 5.11. Use of Graphics and References for Business Communication**

# BUSINESS COMMUNICATION

## **Module Learning Objectives:**

After studying this module, the students will be able to -

- To gain a strong knowledge base to develop an information reach communication process
- To understand the types and modes of communication
- To get well-versed with the needs of the business and all its stakeholders
- To recognise the barriers to business communication and the ways to overcome the barriers
- To acquire knowledge on the legal aspects of business communication

Communication is an integral activity of human beings. Communication in its simplest form means transferring of information from one person to the other. The word communication has been derived from the Latin word ‘communicare’ which means ‘to share’.

Hence, it can be defined as the process of transferring, sharing, exchanging or transmitting, ideas, facts, feelings, data, information and experience from one entity to other through a medium.

The basic aim of communication is to share, listen and understand the message being exchanged by the parties involved.

### Introduction to Business Communication

Business communication is the process of sharing/exchanging information between people within and outside the organisation in order to accomplish organizational goals and have mutual understanding of the commercial benefit of the organization. For example- inter and intra departmental communication within organization, stakeholders, etc.

No entity can function solely in absence of communication. The exchange of ideas, information and instructions internally and externally is a fundamental feature of an entity is necessary for its working. The purpose of business communication is to clearly understand the business processes effectively.

### Significance of Business Communication

The significance of business communication can be summarised in the following points:

- **Managerial efficiency:** Communication helps in the smooth operation of management. An organisation must communicate its goals in a way so that all parties involved are on the same page and can carry out the tasks required to achieve those goals.
- **Building a dedicated and loyal employee base:** Effective communication emphasizes the employee’s participation in management. It creates a positive environment where an employee can flourish. It helps to build the employees morale and cordial industrial relations between management and employees.
- **Effective leadership:** Effective leadership depends on effective communication. A leader must communicate and listen to views and share feedback to his/her subordinates for smooth functioning of tasks.
- **Mutual trust and confidence:** Mutual trust and confidence between workers and management is essential for the effective functioning of the organization because it helps to reduce misunderstandings and resolve conflicts.
- **Better decision making with informed judgement:** If the data, information and goals are not effectively communicated, it hampers the decision-making process and could even have adverse impacts on the organization’s profitability. So, effective communication is needed in making proper and prompt business decisions.
- **Human resources management:** Effective communication helps in the proper human resource management

of the company in form of selection, placement, socialization, promotion, and transfer. Communication also plays a major role in teaching and training employees.

- **Managerial functions:** All managerial functions such as planning, organizing, directing, controlling, etc cannot be conducted without communication.
- **Improving customer service:** Effective communication with customers by answering questions and providing solutions helps to improve the business' reputation and enhance customers' satisfaction.

### Uses of Business Communication

The significance of business communication is not only restricted to business organizations. These days we all rely upon business communication either directly or indirectly. Some of these cases include:

1. **Group Discussion (GD)** – GD is a technique where individuals are put into groups and given a particular topic, question or problem statement. Once the topic is introduced to the members of the group they are given some time to discuss, share ideas or come up with a solution to the given problem or statement. The concept of GD is becoming increasingly popular these days in the interview process. It helps to develop and evaluate the skills in leadership, communication, listening, awareness, social skills, initiative taking ability, etc.

#### Rules to be followed for an effective Group Discussion

- ✦ Be clear, confident and to the point about your content
  - ✦ Prepare the topic for the discussion well
  - ✦ Introduce yourself before you present your content / views / opinion
  - ✦ Display a positive body language and attitude
  - ✦ Avoid making vague or false statements
  - ✦ Do not put on a casual attitude
  - ✦ Do not argue with someone you disagree with
  - ✦ Follow your domain
  - ✦ Try to take a leadership initiative within the group
2. **Speeches and Debates** – While the two terms are used inter-changeably there exists a thin line of difference between the two. A speech is more performative in nature as compared to a debate. Speeches include public addressing, radio broadcasting, drama, poetry, extemporary speeches, oratory etc. Contrary, a debate is based usually on current affairs or situations where the speaker researches in depth about the topic and either speaks for or against the notion. Business Communication is an essential requirement or skill that one must possess to present or deliver an effective speech or debate.
  3. **Presentations** – Presentation is the process of conveying information to an audience. Presentations are used to introduce, pursue, inspire or convey details. Presentations are widely being used by businesses and educational institutes. It saves time and provides a bird's view on a given matter or report. While presentations and PowerPoint presentations are used as synonyms one must note that all forms of presentations do not essentially require a PowerPoint or any form of graphical aid.

#### Illustration:

Michael Hill International Limited is a speciality retail jeweller is headquartered in Australia and operates in North America, New Zealand and Canada. It has more than 300 retail stores and over 2000 employees and millions of customers globally.

However, the head office lately has been facing multiple challenges in such as misunderstandings, lack of trust among employees and management, improper customer feedback mechanisms.

**Q.** The owner of Michael Hill International Limited approaches you and wants to know why is it so difficult to handle the branches, when he sees other competitors with more branches functioning smoothly.

### 5.1.1 Role of Business Communication in Functional Areas of an Organisation

In an organization, there are diverse roles that are played by each and every department. In order to perform these diverse roles effectively the concept of communication plays an essential role. Let us take a look at the essence of business communication in some of the functional areas of an organization.

#### Business Communication and Marketing

Marketing is a process of creating, communicating, delivering, and exchanging products and services to the customers, clients and society at large.

The terms marketing and communication are inter-related. Communication is the core element in marketing. Communication is the key through which marketers can spread the word about the products of their businesses to customers.

**The benefits of communication in marketing include:**

#### 1. Building and maintaining relationships

In order to have effective and efficient long-term relationships with its stakeholders, a good marketer must possess good interpersonal skills. It is essential to create an emotional and emphatical connection with their clients.

#### 2. Facilitates innovation when marketing

Innovation is another key component in the marketing process. In order to market the goods and services better than competitors businesses needs to be creative. In order to be creative effective communication skills are required, so that one can convey their ideas well in front of others.

#### 3. Enhancing transparency

Marketers are the brand ambassadors of the business. They are the ones who convince the customers across the globe to trust the brand they work for. In order to gain this trust from the public and clients transparency is essential. Moreover, effective communication makes employees and customers sure that their needs are considered and understood.

#### 4. Overcoming marketing obstacles

In a dynamic VUCAFU (V– Volatility, U- Uncertainty, C- Complexity, A- Ambiguity, F- Fear of unknown, U- Unprecedentedness) world, businesses face multiple hurdles in their day-to-day functioning. These hurdles appear in the form of cultural barriers, linguistic barriers, legal barriers etc. These barriers hinder the process of marketing. Hence, in order to make marketing effective one needs an effective communication system. If a marketer possesses the right communication skills and approaches the specific target groups, then it becomes easier to understand the consumer needs and establish connections with the consumers and potential consumers.

#### 5. Establishing professionalism while marketing

A professional relationship exists between the business and its customers and clients. It is essential to use a professional language while dealing with customers. A marketer, must possess good interpersonal skills to connect with prospective clients.

### Major modes of Communication in marketing

- ◉ **Advertising** – Advertising is an impersonal form of communication which is persuasive in nature. The main aim of advertising is to target the mass audience. It is viewed as the cheapest way of reaching out to the customer. Communication in advertisement plays four objectives i.e. to inform, persuade, differentiate and remind.
- ◉ **Direct marketing** – Direct marketing involves communicating directly with the target customers using telephone, mail or any other electronic means. Direct marketing allows a company to focus precisely on a segment of customers and prospects with a sales message tailored to their specific needs and characteristics.
- ◉ **Sales promotion** - Sales promotion is done in order to accelerate the product's movement from the producer to the consumer. Consumer promotions includes techniques of non-verbal communication such as coupons, samples, premiums, and negotiating discounts.
- ◉ **Personal selling** - Personal selling basically means face to face interaction with the customer with the purpose of introducing a product and persuading the customer or potential customer about the product and closing the sale. Being an interpersonal form of verbal communication, and it is also the most effective tool of communication as it provides immediate feedback.

In marketing, communication is an important player. Consumers rely on the information available from marketing communication to make purchase decisions. Businesses, ranging from global MNC's to small retailers, all rely upon marketing communication to sell their goods and services. Communication helps to move products, services, and ideas from manufacturers to end users and builds and maintains relationships with customers, and other important stakeholders in the company. Communication is vital to marketing because it brings everyone on the same page.

### Requisite skills for an effective Communication

Effective communication is said to have taken place when the sender and receiver of the message assign similar interpretations to the message, when the receiver listens closely to what has been said and makes the sender feel heard and understood. In order to make a communication effective both the parties must possess the following skills:

- i) Inform the listener about the topic prior to the conversation or at the beginning of the conversation thus giving the listener time to form an opinion or get an idea on the topic.
- ii) The speaker must deliver the message in a concrete and clear manner to avoid miscommunications.
- iii) Both the parties must be empathic towards each other.
- iv) The message should be complete.
- v) The speaker must try and use non-verbal forms of communication as well while delivering the message
- vi) The listener must be attentive and alert.
- vii) Both the listener and speaker must have an open mind towards each other's opinions.
- viii) It is the responsibility of the listener to provide feedback to the speaker and also the responsibility of the speaker to seek a response from the listener.

Active listening is paying attention to a speaker, comprehending what they're saying, responding and reflecting on what they're saying, and storing the information for later use. This retains both the listener and the speaker in the

discourse. People often overlook the importance of listening. People frequently hear what is being said, although hearing differs significantly from listening. To listen, we must make a conscious effort to not just hear but also absorb, digest, and comprehend what others are saying. Listening is important because:

- a) It helps improve problem-solving abilities
- b) It helps improve social skills
- c) It helps to empathise with others
- d) It helps to absorb information better
- e) It helps to learn and grasp things better in a social and professional setting
- f) It helps to build stronger relationships and by making people feel appreciated.

Communication is vital in businesses. Communication helps in establishing relationships, negotiating deals, selling, delivering presentations, problem solving, decision making and many other aspects of an employee, manager and executives' role. Whilst effective practical training is an invaluable aid in improving business communication skills, the best communicators on their part must exhibit certain characteristics which enable them to maximise their abilities. Some of them include:

1. **Good listening skills** – In order for a communication to be effective it is essential to develop a good listening skill rather than speaking skills. It is important to hear the other person in order to avoid premature evaluation and verbal conflicts.
2. **Open Minded** – While communicating people must keep an open mind and accept that they too could be wrong. Hence it is essential to keep an open mind and learn from others.
3. **Being attentive** – During communication it is essential to be attentive and listen to the communicator patiently without fidgeting or being distracted
4. **Participating** – Just like being a good listener is essential it is also necessary to participate and show interest in the discussion.

### Eight Cs of Effective Communication

Effective communication is the key to successful working of an organization. Poor communication in the organization leads to less employee engagement, decreased productivity and high employee turnover. In order to convey intended message to the parties concerned, business communication relies on 8Cs of communication.

- **Clarity:** Clarity in the communication ensures that the message is understood accurately by the receiver. There is no scope for assumptions by the receiver. Example;  
**Incorrect** - “The company has received a new manufacturing order of tyres from a new client.”  
**Correct** – “The company has received a manufacturing order of 150 units of tyres from JVC Ltd.”
- **Conciseness:** All message short, direct and to the point. Unnecessary complex words and beating around the bush should be avoided. Example;  
**Incorrect** – “We are attempting to create a meticulous proposal of expanding our business operations and customer reach by open a new branch in the City of Joy, Kolkata.”  
**Correct** – “We’re planning to open a new branch in Kolkata.”
- **Courteous:** Courtesy is important in a corporate communication to maintain a healthy working relationship. Harsh, aggressive, disrespectful and humiliating tones and gestures should be avoided. Example;  
**Incorrect** – “I don’t appreciate how your team ignores our requests for collaboration with my team. The work

we do is more vital as compared to yours. Talk to your team and ensure that they promptly collaborate with my team from now on.”

**Correct** – “I understand that your team is busy and receives many requests to collaborate on other important matters. However, my team is working on a high priority and urgent project. I would greatly appreciate if you could ask your team to collaborate more readily with mine to move this project forward faster. Please let me know in case you need anything.”

- **Correctness:** Proper grammar and syntax increase the effectiveness and credibility of the message. Mistakes and typos affect clarity, create ambiguity, and raise doubts. Example;

**Incorrect** – “This weak expenses have increased by 6.5%.”

**Correct** – “This week’s expenses have increased by 6.5%.”

- **Completeness:** The message should have all information on the basis of which the receiver can respond and take action. Incomplete messages waste lot of time and efforts. Example;

**Incorrect** – “There is marketing department meeting tomorrow at 7 for discussing marketing strategies.”

**Correct** – “There is a marketing department meeting tomorrow at 7:00 pm in conference room no. 5 for discussion of marketing strategies for our newly launched soap product.”

- **Concreteness:** Concrete communication is specific, clear, and meaningful. It avoids vagueness and adds authenticity.

**Incorrect** – “Manufacturing costs have increased. They need to be reduced.”

**Correct** – “Manufacturing costs have increased by 30 %. They need to be reduced at least by 15 %.”

- **Consideration:** Before communicating, the sender should put itself in the place of receiver and try to understand the potential effects of the message transmitted. Hence, words should used after a lot of consideration. Example;

**Incorrect** – “The presentation made by you looks awful. Why can’t you improve?”

**Correct** – “I noticed some mistakes in the presentation made by you. Let us have a meeting to help you work on this.”

- **Coherence:** Communication should be relevant, logical and make sense. It will help in comprehending the information. Example;

**Incorrect** – “The due date for the project has been extended to next month. Arex Ltd. wants to discuss some new issues with the product. They requested a meeting for this Saturday.”

**Correct** – “Arex Ltd. wants to discuss some new issues with their product this Saturday. So, the due date for project completion has been extended to next month to assess the new issues.

Every business revolves around successful and effective communication, be it non-verbal, verbal, written, analogue or digital. Managers, leaders and salespeople all need to be skilled communicators in order to perform their roles effectively. Effective business communication is a valuable asset that every leader, manager or salesperson should aspire to obtain.

# Process of Communication

## 5.3

**A**s a concept, communication might sound simple. However, there are a lot of hidden elements and an entire chain of events or stages that are going on while we communicate even though we are unaware of it.

The communication process is a dynamic framework that explains the transmission of message between a sender and receiver using various communication channels.

### Key elements of communication:

- **Sender:** The person who first has the idea/ message and sends it to the recipient.
- **Encoding:** The way the information is described or translated into a message and put in verbal or non-verbal medium.
- **Message:** The information that the sender wants to send. Messages can be in speech and writing, signs, pictures or symbols depending upon the situation and the nature and importance of information desired to be sent.
- **Communication channel:** The method of delivering the message. The message may be oral or written. Written messages can be transmitted through computer, telephone, cell phone, apps or televisions.
- **Receiver:** An individual or a group of individuals for whom the information was intended to reach. The receiver is at the other end of the communication process.
- **Decoding:** It refers to interpretation and conversion of information communicated into intelligible form so that the recipient can fully understand the true meaning of the information.
- **Feedback:** It is the final step of the process. It refers to the response or action a receiver takes after decoding a message.

### Process of Communication

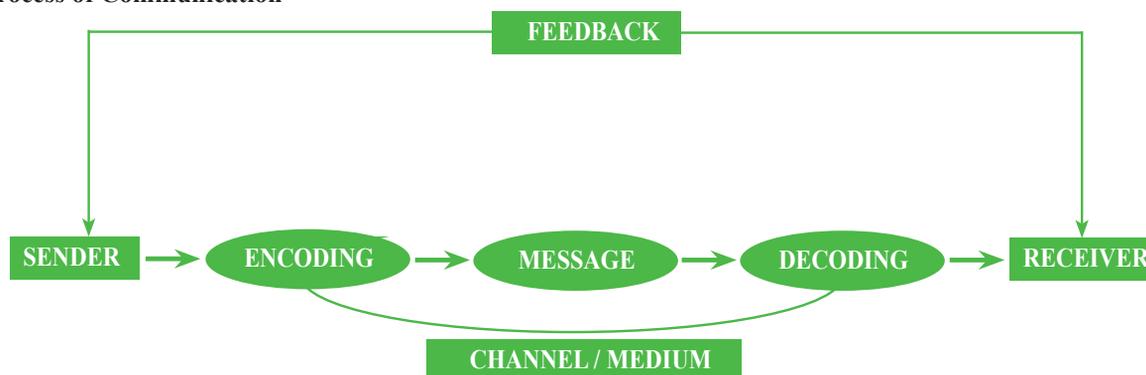


Fig. 5.1 : Process of Communication

1. **Development of an idea:** The first step is identifying the information the sender wants to communicate to the receiver.
2. **Encoding of message:** Once the sender develops the idea to be transmitted, the message needs to be presented in a proper and coherent manner using suitable words, phrases and symbols.
3. **Transmission of the message:** The sender determines the method/channel/medium of transmission of message. Communication channels can be verbal, non-verbal, written and visual.
4. **Receipt of message:** Receiver receives the message. The receiver will process the message according the channel of communication. If written message is sent, then the receiver will read that message and if the message is verbal, then receiver will listen to the message.
5. **Decoding of message:** This is one of the most crucial stages in the communication process. The receiver will convert the message in the form which is understandable to him/her. Communication process will be successful if receiver can get and understand the context of message sent correctly.
6. **Feedback of message:** It is the receiver's response to the message. The sender gets to know whether the recipient got the message and interpreted it accurately or not.

### Essence of Feedback

After the communicator is done with his role of communicating the message via the appropriate medium, he must ensure that the recipient has understood the message in the way he was supposed to. Hence, the communicator must take feedback from the recipient. According to Kevin Eujeberry, the feedback that the communicator receives is broadly classified into four categories:

1. **Positive Feedforward** – It basically means affirming comments with regard to future behaviour.
2. **Negative Feedforward** – It is the opposite of a positive feedforward it includes corrective comments with regard to future behaviour.
3. **Positive Feedback** – Positive feedback means affirming comments with regard to past behaviour.
4. **Negative Feedback** – Negative feedback is the opposite of a positive feedback it includes corrective comments with regard to past behaviour.

### Models in the Communication Process

1. **One-way process** – A one way communication process is a simple communication process wherein the communication is one sided. It begins when the sender selects a message to deliver to the receiver, followed by the encoding stage. The message is transmitted to the receiver via a medium, followed by which the receiver decodes the message.
2. **Two-way process** – The two-way communication process is an improved version of the one-way process. It is more contemporary in nature. In the one-way communication model, the sender continues to remain in a dilemma if the receiver has correctly interpreted the message. However, in the two-way process follows the same steps only here the receiver gives the sender feedback and can also clarify his / her doubts or even share his / her perspective on the proposed topic of discussion.

The differences between a one-way and two-way communication process include the following:

| Basis             | One-way Communication Process  | Two-way Communication Process  |
|-------------------|--|--|
| <b>Model Type</b> | One-way communication is a linear  | Two-way communication is a cyclic model.   |
| <b>Perceiving</b> | The sender is unaware if the receiver has correctly perceived and interpreted the message. | The sender is aware if the receiver has correctly perceived and interpreted the message. |
| <b>Feedback</b>   | One-way communication eliminates the concept and significance of feedback.                 | Two-way communication includes the concept and significance of feedback.                 |
| <b>Nature</b>     | One-way communication is a monologue   | Two-way communication is a dialogue by nature.   |
| <b>Examples</b>   | Watching a video, listening to music   | Communicating with a friend, interviews  |

# Types of Business Communication

## 5.4

**B**usiness Communication can be classified into different categories depending upon the nature of communication, origin of the communication and the relationship between the parties involved in the communication process. Communication can be broadly classified under the following heads on the basis of:

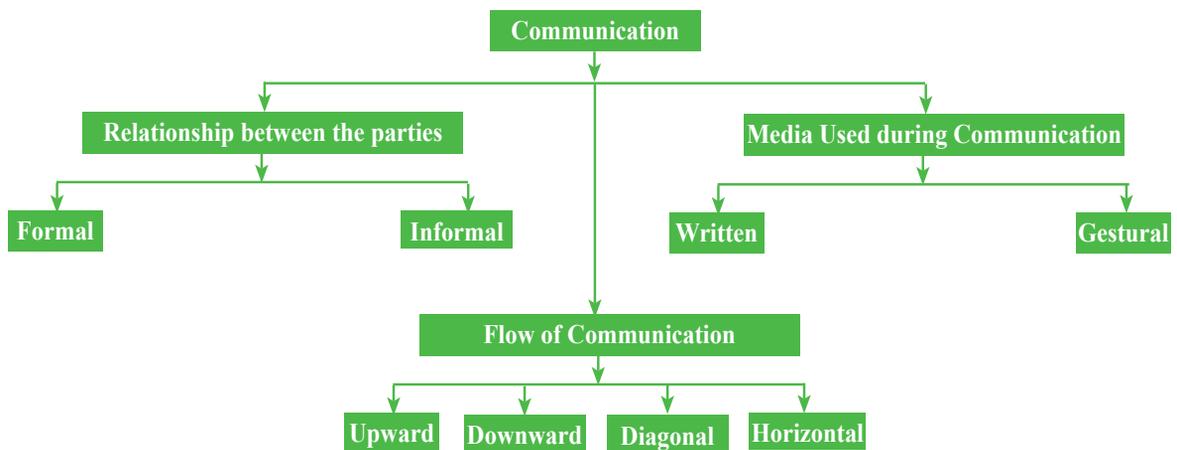


Fig. 5.2 : Types of Business Communication

### 5.4.1 Formal and Informal Communication

#### Formal Communication

Formal communication also known as official communication is designed by organizations to ensure the flow of official information through proper, predefined channels and routes. Employees are bound to follow formal communication channels while performing their duties. The flow of information is controlled. It also ensures that deliberate effort to be properly communicated.

Advantages of Formal Communication include:

1. It is considered effective as it is a timely and systematic flow of communication.
2. It is more reliable than informal communication.
3. Documentary evidence is present.
4. Full secrecy is maintained.
5. It follows a hierarchical structure and chain of command.

Disadvantages of Formal Communication include:

1. The structure is typically top down.

2. It is slower than informal communication because it is time consuming to follow communication through a long chain of command.
3. It also tends to cause a lot of distortions.

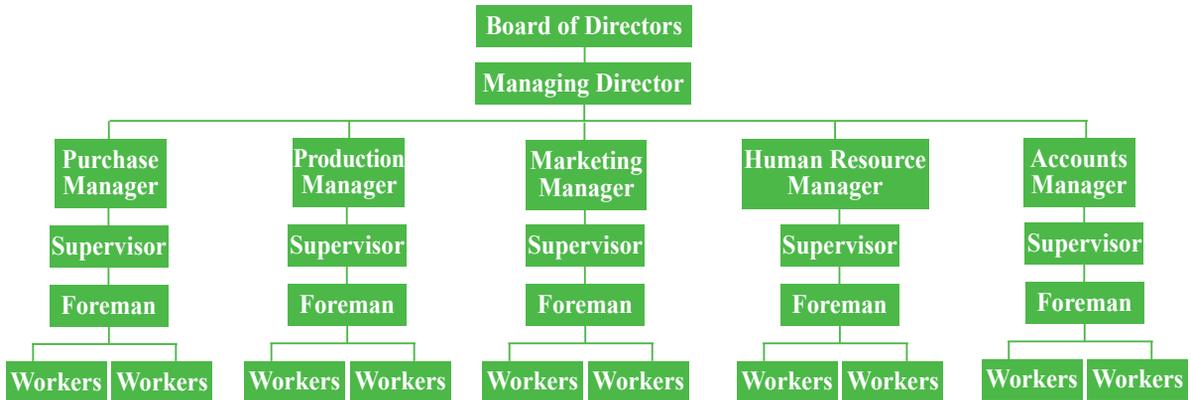


Fig. 5.3 : Structure of formal communication

### Informal Communication

In this kind of communication, the communication is multidimensional. It moves freely within the organization. It is not bound by pre-defined channels and communication routes and is particularly quick. Neither does it have a paper trail. It is also known as grapevine communication and generally begins with employees through social relations.

Informal communications can turn to formal communication if they are added into the formal communication information flow of a company. Informal communication is considered effective as employees can discuss work-related issues which saves the organization time and money. It also helps to build more productive and healthy relationships in the workforce.

Advantages of Informal Communication includes:

1. It is faster than formal communication.
2. It is rapid and quick.
3. It boosts employee morale.
4. It increases trust and develops a better employee relations and coordination.

Disadvantages of Informal communication includes:

1. Informal communication is less reliable than formal communication.
2. It propagates the spread of rumours.
3. It is difficult to maintain secrecy.

The following are the different types of communication structures in informal communication:

1. **Single Strand Chain:** The communication in which one person tells something to another, who again says something to some other person and the process goes on.



Fig. 5.4 : Single Strand Chain

2. **Cluster Chain:** The communication in which one person tells something to some of its most trusted people, and then they tell them to their trustworthy friends and the communication continues.

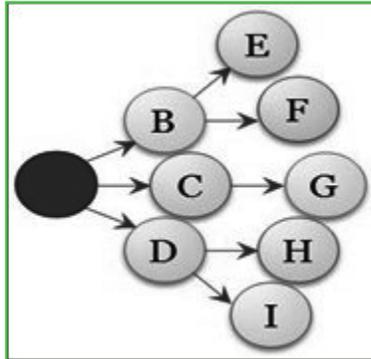


Fig. 5.5 : Cluster Chain

3. **Probability Chain:** The communication happens when a person randomly chooses some persons to pass on the information which is of little interest but not important.

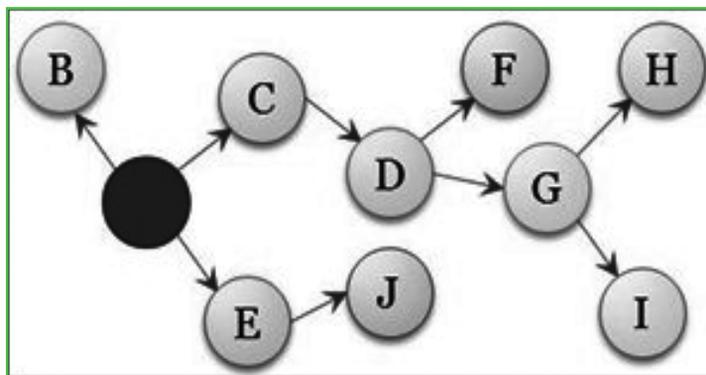


Fig. 5.6 : Probability Chain

4. **Gossip Chain:** The communication starts when a person tells something to a group of people, and then they pass on the information to some more people and in this way the information is passed on to everyone.

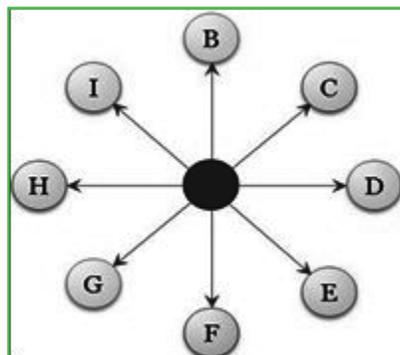


Fig. 5.7 : Gossip Chain

## 5.4.2 Verbal, Non-verbal and Written Communication

### Verbal Communication

It uses spoken words to communicate a message. It is the most effective form of communication. It leads to the rapid interchange of information and feedback. There are fewer chances of misunderstanding as the communication between parties is clear. But in this communication, listening is crucial.

### Non-Verbal Communication

It is based on the understanding of the parties. It uses signs. Communication succeeds only when the receiver understands the message completely and proper feedback is given afterwards. It complements the verbal communication.

The types of Non-verbal communication are as under:

- **Chronemics:** The use of time in communication is chronemics, which speaks about the personality of the sender/ receiver like punctuality, the speed of speech, etc.
- **Vocalics or Paralanguage:** The volume, tone of voice and pitch used by the sender in communication.
- **Haptics:** The use of touch in communication.
- **Kinesics:** It studies the body language of a person.
- **Proxemics:** The distance maintained by a person while communicating with others.
- **Artifacts:** The study of the appearance of a person.
- **Sign Language**

“Action speaks louder than words”, non-verbal communication often depends on the uses of gestures and signs to express oneself. Language in itself is a combination of a set of sophisticated signs and symbols. For example, two friends making gestures towards each other to communicate in front of strangers or when they are uncomfortable to speak in front of a third party. These signs are usually of two kinds visual signs and audio or sound signs.

1. **Visual Signs** – These are commonly seen and used in and around us. We come across multiple visual signs in our daily life. For example:
  - ▲ The traffic signs that we see on the road are an essential form of visual signs for drivers which help prevent accidents and mishaps on the road.
  - ▲ The use of posters in advertising to communicate messages to potential buyers or buyers to keep them informed about products or details.
  - ▲ The shade-card we receive from painters or interior decorators when we are renovating or painting.
  - ▲ Maps and e-maps that help us to navigate to and across places.
2. **Audio Signs** - Audio signs are another common form of non-verbal communication. Some examples of audio signs we come across in our daily life include:
  - ▲ Sirens on the ambulance which act as audio signs telling the driver in front to let the ambulance pass.
  - ▲ Car horns are ways drivers communicate to each other while driving.
  - ▲ Parade drums which alarm the passing of a parade.
  - ▲ Warning signals and alarms telling people to vacate in case of a building fire.

Advantages of sign language includes:

- a) Posters and paintings have an educational value.
- b) People perceive and remember the visual signs that are attractive.
- c) It is an effective means of communication if properly used.
- d) Pictures and drawings can also lead to mental motivation for many people.
- e) It promotes creativity and uniqueness.

Disadvantages of sign language includes:

- a) Sometimes sign language might not be effective enough to convey a message.
- b) If the receiver does not understand sign language communication might become difficult.
- c) It is not used properly sign languages can create huge misunderstandings between the parties.

### Modern methods of Non Verbal Communication

- a) **Jingle** - A jingle is a short piece of music with one or more hooks and meanings that promote a product or service being sold, usually through the use of one or more advertising slogans. Jingles are utilised by ad buyers in radio and television ads, but they can also be employed to develop or maintain a brand image in non-advertising circumstances. Many jingles are made from snatches of popular songs, with the lyrics changed to better sell the product or service. For eg: McDonald's jingles is "I'm Lovin' It".
- b) **Music** - Music is an excellent and powerful medium for conveying information. It allows people to exchange feelings, intents, and meanings even if their spoken languages are incomprehensible to each other. It can also be a lifeline for those with special needs who find it challenging to communicate through other means. Music has the ability to have significant bodily impacts, to elicit deep and profound emotions in us, and to be exploited by great composers and performers to achieve infinitely tiny variations of expressiveness.
- c) **Cartoon** - A cartoon can express a lot of information with very few or no words. The cartoons' philosophy, logic, and objectives are genuine, and they educate the general audience. It makes severe depictions on occasion, but always with a sense of humour, and shines a light on the dark parts of society or political goals. Social media has reshaped and improved communication using cartoons, particularly during times of crisis. Cartoons are an excellent way to reach a large audience.

### Written Communication

Written communication refers to sending of messages, orders or instructions in writing through letters, circulars, manuals, reports, telegrams, office memos, bulletins, etc. It is a formal method of communication. It is less flexible. It can also be used as legal evidence. It is time-consuming, costly and unsuitable for confidential and emergent communication. In order to be effective communication should be clear, complete, concise, correct, and courteous. This kind of communication is suitable for long distance communication and repetitive standing orders.

The advantages of written communication include:

1. It creates permanent record of evidence.
2. It can be used for future reference.
3. It gives the receiver sufficient time to think, act and react.
4. It can be sent to multiple persons at a time.
5. It is suitable for sending statistical data, charts, diagrams, pictures, etc.
6. Good written communication can create goodwill and promote business.

The disadvantages of written Communication include:

1. Feedback process also is not instant.

2. It is expensive.
3. There is no scope for immediate clarification.
4. It is less flexible.
5. It is not effective in case of emergency.

**Steps in Written Communication**

In order for a written business communication to be effective the communicator must follow the following steps:

**Step 1 – Preparing the message** – The communicator at this stage should focus more on the what he wants to communicate that is the idea.

**Step 2 – First Draft** – After the message is prepared it should be expressed properly. He must draft it properly on paper. After drafting the message, he should check properly for any errors or mistakes. He can avoid spelling and grammar checks at this stage.

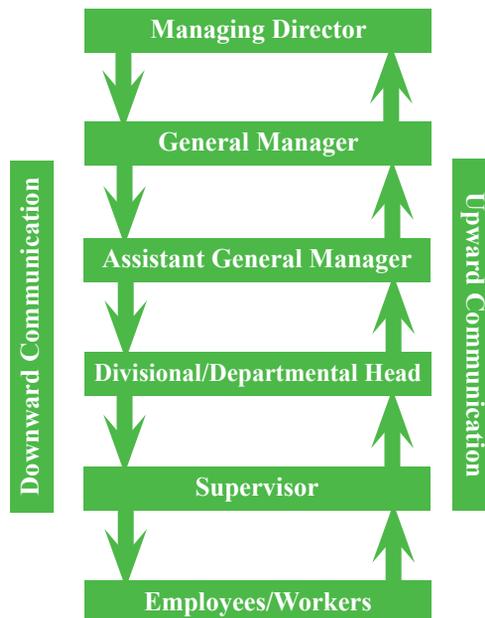
**Step 3 – Revising and editing** – At this stage, the communicator focuses on correcting the grammar, spellings and punctuations. While editing he must ensure the message is brief and to the point and that there is no unnecessary information.

**Step 4 – Proof Reading** – During proof reading, the communicator must check the context, accuracy, form and appearance of the message before he sends it out to people.

**5.4.3 Vertical, Horizontal and Diagonal Communication**

**Vertical Communication**

Vertical communication takes place among seniors and subordinates or between two people at different levels of the organizational hierarchy. It is generally used when a senior has to assign tasks or delegate authority among subordinates. It is also used when the subordinate is responsible and accountable for a certain task for which he must report to his senior. The flow of communication is either upward, when the communication is from a subordinate to his senior or downward when the senior communicates to the subordinate.



**Fig. 5.8 : The Flow of Vertical Communication**

### Horizontal Communication

Horizontal Communication is the communication that takes place among employees on the same organizational level. It is also known as lateral communication. This form of communication is more timely, direct, and efficient than up or down communication. It produces a higher quality of information exchange since it occurs directly between people working in the same environment. Horizontal communication generally occurs formally in meetings, presentations, and formal electronic communication, and informally in other, more casual exchanges within the office. However, there are a few barriers to horizontal communication such as differences in style, personality, or roles amongst co-workers. Problems can occur because of territoriality, rivalry, specialization, and simple lack of motivation.

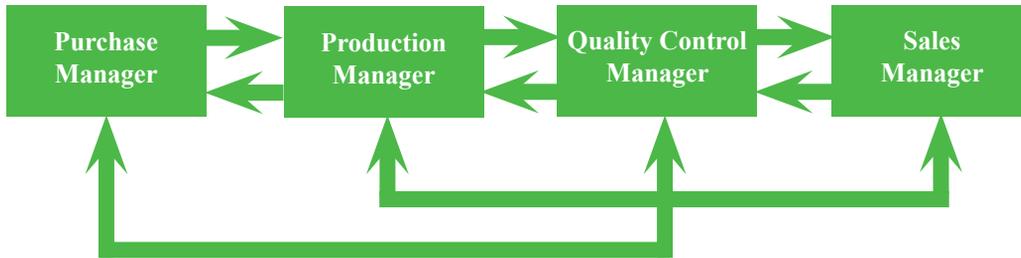


Fig. 5.9 : Horizontal Communication Chart

### Diagonal Communication

Diagonal communication is said to take place when people working at the same level interact with those working at a higher or lower-level of organizational hierarchy and across the boundaries of their reporting relationship. It is also known as crosswise communication. It promotes inter departmental coordination and is more practical. Diagonal communication also plays a vital role to boost workers' morale. It makes the superior feel like he has been by passed in the communication process. However, superiors may refuse to implement the suggestion as he has not been consulted. As a result, it may lead to internal anarchy and external animosity.

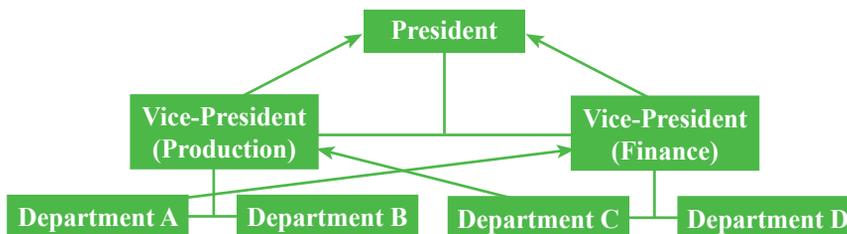


Fig. 5.10 : Diagonal Communication Chart

## 5.4.4 Upward and Downward Communication

### Downward Communication

In downward or downstream communication people working at higher levels have the authority to communicate to the people working at lower levels. It strengthens the authoritarian structure of the organization. However, it is time-consuming and, in the process, managers may withhold some valuable information from the employees.

### Upward Communication

Upward or upstream communication is useful in sending information, suggestions, complaints and grievances of the lower-level workers to the managers above. It is more participative in nature. Modern managers encourage upward communication. It is the direct result of increasing democratization. Here, psychological problem may come up as managers do not like being told by their subordinates.

One of the major problems that most modern businesses face is the communication gap that exists between the top management and the lower-level employees. This communication gap often leads to increase in conflicts, misunderstandings and misinterpretation of company policies, in order to eliminate these conflicts arising out of the communication gap many organizations are adapting to the concept of an ombudsperson. An ombudsperson is a person hired by the organization who acts as a liaison between the top management and the employees. The ombudsperson promotes upward communication by discussing the employees concerns and grievances with the top management.

### 5.4.5 Lateral Communication

Lateral communication refers to interactions between individuals and groups on the same organisational level. In contrast to other, less formal situations, lateral communication in the workplace suggests a more defined goal.

The following are some of the benefits of lateral communication:

1. It saves time.
2. It makes task co-ordination easier.
3. It makes it easier for team members to work together.
4. It offers emotional and social support to the members of the organisation.
5. It aids in the resolution of a variety of organisational issues.
6. It is a method of exchanging information.
7. It can also be utilised to resolve departmental disagreements with other departments as well as internal departmental conflicts.

However, there are some drawbacks to lateral communication. As lateral communication grows, management may have a harder time maintaining control. This is partly because controlling the flow of information allows management to exert a great deal of control and authority. Lateral communication can also lead to conflict among employees who are exposed to each other as a result of the procedure. Through lateral communication or to ratify decisions taken during horizontal communication. Finally, if stringent communication procedural standards are not enforced and followed, it may result in a lack of discipline.

Over the years, the concept of e-communication has gained significant importance in the business world. While the internet makes doing business online easier, communication can prove tricky.

However, online communication, can create hindrances for businesses if it is not done properly. Hence, businesses must conduct proper research and consider the different areas of internet communication that would suit the business and also provide their clients with the best service available. The way personal communication has changed in the era of the internet is truly commendable. It affects everything beginning from purchasing groceries to holding conferences and meetings with overseas stakeholders. The internet has truly helped businesses grow and become more productive by helping them seek multiple new opportunities.

The ways to make internet based business communication more effective are as follows:

### • **Customer Interaction**

Online businesses do not have in-person communication like telephone services either. To make interaction easier, they should provide a more personal touch and make business between a customer and the company easier. Businesses should have instant messaging services for customers and online forums as well to discuss the product and offer tips and reviews.

### • **Support Options**

Customer support is a crucial part of doing business online. It indicates that the company is making efforts to show customers that it takes their concerns seriously and are willing to resolve it as soon as possible. Posting and following turnaround policies for answering customer questions makes the customer feel valued. Also, providing customers with a Frequently Asked Questions (FAQs) section on the main page of the website helps a lot. Questions can be answered and the customers' time is saved.

### • **The Personal Touch**

Since online business communications are mostly faceless, it helps to make the customers feel like they are talking to people rather than computers. Moreover, sending personal messages in response to emails can make the customer feel like the company cares about them and their views. Entities can delegate this task or create separate department.

### • **Professional Presentation**

While it is important for business to make customers feel like they are talking to real people, it is also necessary to maintain a professional presentation. By projecting themselves as professional, companies ensure about its reliability to customers. Companies can use a certain professional email template or include a letterhead along with some professional information to make the customer feel secure about the business.

## 5.5.1 Types of Internet Based Business Communication

### Email

Every good business has an email id to make communication easier. Sometimes they have different email ids for different departments so that the customer can send an email directly to the concerned department. Businesses should invest in an email provider that prevents spamming and offers filters.

### Cloud Computing

A cloud is an on-demand availability of computer resources with direct active management by the users. This helps business save space and hence time and money by storing all information. Before cloud, businesses had physical infrastructure for all communications systems located on-premises, which was expensive due to hardware and maintenance costs. It also increases a company's flexibility and collaboration since information can be accessed by the authorized personnel from anywhere in the world. By using the cloud for mobile communications, businesses can access all in-office telephone features and critical cloud-based applications from anywhere.

### E-Commerce

Internet has made business more accessible by removing the geographical barrier. Activities like sending catalogues and salespeople to customers is time-consuming and expensive. Only large companies are benefited since they had enough funds. Medium and small business can become profitable too through e-commerce. Now people from all over the world can view and purchase their product at no extra cost to the business. This helps the customers as they are no longer limited to buying products in their cities or towns. E-commerce is reducing the gap between businesses and customers. It is making companies reassess their sales and marketing strategies. It has made retail a much more competitive business in terms of both price and quality.

### Voice over Internet Protocol (VoIP) and Video Conferencing

Before the internet, calling customers on phones or travelling to them was very expensive and time-consuming. Now, with the internet, business can place calls over the internet using VoIP at low costs. Sales representatives can also save time and energy by conducting face-to-face interactions via video conferencing. Hence the company can hire employees from all across the country and get them to work remotely so they can get the best quality of workers to work at untapped places.

### Illustration:

ABC Ltd. had commenced operations in 1994. After a couple of years, the business began to grow in size and diversify and open overseas branches. By 2012, the company had 23 branches in different countries and a staff strength of 10,900 workers in all the branches combined. Communication was becoming huge problem among the staff and management, within the same branch as well as across various branches especially when it came to holding joint meetings of the branches there were numerous barriers. Due to this communication gap, employee and customer grievances began to increase. Customers complained that their problems were not being resolved and as a result they had to shift to substitute companies. Employees too complained that there were no proper communication from the management and decision making was getting delayed. As a result the company faced a tremendous loss in 2014 followed by large amounts of staff turnovers.

The CEO of the company approaches you and explains the problem. You tell him about digital communication and how this has solved similar problems in other companies. He is impressed and asks you to think for the various internet-based business communication channels that would recommend and how these would solve his problem and avoid such situations in the coming year.

## 5.5.2 Business and Social Etiquette

Etiquette is a set of guidelines and rules for manners and behaviour that is acceptable in a professional conduct. In a corporate world, good business etiquette means a person acts professionally and behaves properly with socially acceptable manners when interacting with others in his/her profession. Good business etiquette is a valuable skill-set that can make a person stand out from others, enhance the person's individual success rate in the organisation.

A basic example of business etiquette is using simple greetings while acknowledging someone. Instead of saying "Hey, how can I help you?", say "Good morning, Mr. Alok, tell me how can I help you?". The second sentence looks more engaging. The person addressed feels respected and as a result trust is built.

### Importance of business and social etiquette

- **Building positive relationships:** Establishing good rapport with colleagues and seniors helps in progressing a person's career in the organisation. This can be done by exercising good etiquette and exhibiting great communication skills.
- **Makes a workplace productive:** Business etiquette is essential because it creates a professional and respectful environment. It improves communication among the members which ultimately makes the workplace a productive place. People feel satisfied about their jobs when they feel respected, and that helps in translating into better customer relationships as well.
- **Rewarding in nature:** Those who exercise good business etiquette show that they value their job, respect colleagues, understand customers and take their performance seriously. These people get rewarded for their professional and polite skills in the form of promotions to advance in their career.

### Professional conduct in a business setting

Professional behaviour in the workplace is a set of guidelines that demands professionally acceptable attitude, appearance and manners. It involves the way a person speaks, looks, behaves and make decisions. The main features of professional behaviour are as follows:

- Respecting managers, colleagues and clients.
- Behaving in a positive manner.
- Being calm and polite in stressful situations.
- Making good and ethical decisions.
- Dressing appropriately.

Here are some of the ways an employee can exhibit business etiquette in workplace.

- **Honesty:** An employee should always act openly and be honest with his/her job. He/she must not in any case share confidential and privileged information of client unless necessary
- **Respect:** An employee works in a socially active workplace. Maintaining a respectful attitude to every member of the organisation is must. He/ she is expected to not lose his/her temper during stressful times. An employee should refrain from using inappropriate languages and apologise for misunderstandings or mistakes done because of his/her negligence.
- **Meetings:** A person should always arrive on time. He/she should make contributions to discussions whenever required and never interrupt anyone unless necessary.

- **Communication:** An employee should speak clearly and act courteously with others. He/she should always use good manners when interacting with co-workers and clients. Also, he/she should be careful of language and tone in communications.
- **Integrity:** A person should always try to act ethically and make ethical decisions. He/she should remain impartial keeping aside any personal bias in work.
- **Corporate Goals:** An employee should have an understanding of the company's missions, goals and objectives and the responsibility and role that he/she is expected to perform in achieving those aims.
- **Dress:** An employee should follow the company's dress code of conduct or guidelines. If there aren't any such rules, he/she avoid wearing offensive , provocative and revealing clothing.
- **Accountability:** An employee should always be accountable and responsible for his/her work. He/she should be honest if things go wrong and always try to improve and learn.
- **Teamwork:** an employee works in social setting. So it is important for a person to work with people by setting aside the differences to work well for the benefit of the organisation.
- **Commitment:** An employee should work with dedication and a positive mindset. He/she should remain fully committed to his / her responsibility.

### Workplace Hierarchy

In a business organization, a chain of command refers to levels of authority starting from top level like CEO to bottom level like supervisors. Companies institute a chain of command to provide all the members at all levels with a supervisor to whom they may ask their queries or report grievances.

The chain of command involves moving to the next level of authority. For instance, a plant worker will report issues to his immediate supervisor and the supervisor will report them to a manager.

It is the duty of business leaders to educate their employees about the chain of command. It is usually desirable that a problem stays at the lowest possible chain in the hierarchy unless it is necessary to move up to the higher level of organization. Employees should study the organization's chain of command and respect it as much as possible.

In some cases, in order to voice his opinion immediately, an employee can break the chain of command. Instead of reporting to the immediate supervisor, he may approach the manager directly.

### Business Meeting etiquette

A business meeting is generally of two types internal and external meeting. An internal meeting is one wherein the members and hosts are from within the organisation and no external member is allowed to participate in the meeting without the permission of the host. On the contrary, an external meeting is one wherein the attendees of the meeting are the external stakeholders of the company such as the general public, government, media houses, etc.

- Invite only people who are essential to the meeting or have a role to play in the meeting.
- Choose the right time and proper place to conduct the meeting.
- Every meeting should have a proper and well-defined agenda that the attendees must be aware of.
- All the attendees and host of the meeting should be well prepared with the documents or presentations that might be required for the meeting to avoid delay and disturbances during the meeting.
- The host and attendees must be on time for the meeting to avoid delay.
- A note taker should be assigned for a meeting to keep track of the minutes of the meeting.

### Telephone etiquette

There are some certain basic manners and rules that everyone in the business should follow while representing the organisation while communicating.

Some common telephone etiquettes are:

- ⦿ Person communicating should keep maintaining a calm tone while communicating.
- ⦿ Warm wishes like good morning, thank you, have a nice day etc should be used.
- ⦿ It's important to know who you are speaking to set the tone and use relatable language with them.
- ⦿ A person should never call any client at odd hours because it will be considered rude to disturb them while the client is busy.
- ⦿ Make sure that the content is short and concise before calling any client.
- ⦿ It is always appreciated to be a good listener and ask for feedback.
- ⦿ It is important to never put another party on hold for too long.
- ⦿ It is one of the important telephone etiquettes is to not take too long to pick up a call.
- ⦿ In case of network issues between a call, it is advisable to deal with patience and wisely.
- ⦿ At the end of the conversation, the final etiquette is to ensure that everyone is on the same page.

### Meal etiquette

The way a person behaves in a business meal reflects his/her personality and the level of professionalism. A person needs to demonstrate social skills by following some etiquette rules.

- ⦿ A person should dress appropriately as per the occasion.
- ⦿ Arrive few minutes earlier because showing up earlier is respectful to the host and guests.
- ⦿ It is desirable to make light and mindful conversations with others.
- ⦿ Direct the conversation slightly towards the agenda of the invitation.
- ⦿ Make an effort to maintain good posture on the chair throughout the meal.
- ⦿ It is polite to wait until everyone at the table has received their meal.
- ⦿ Remember to be kind and gentle toward the server.
- ⦿ Always follow the host's lead in these get together meals.
- ⦿ Exhibit politeness in actions like offering others to fill up their glass and so on.
- ⦿ At the end of the meal, express gratitude to the host for inviting.

### E-mail and blog etiquette

People are more likely to respond positively to emails and blogs if an organisation has a good email and blog etiquette. It demonstrates that the organisation is professional, and it reduces the likelihood of misunderstandings.

- ⦿ Ensure that every e-mail has a proper and relevant subject. Avoid sending e-mails without a subject
- ⦿ Proof read mails before sending it.
- ⦿ Follow a proper e-mail format.

- Avoid using short-forms and acronyms.
- Keep an e-mail short and to the point.
- A blogger must ensure originality in work and avoid plagiarism.
- Use images and graphics that are relevant. Ensure they are not disturbing graphics in the blog.
- Avoid making blogs very lengthy unless required.

### Business attire

Business attire refers to clothing worn in a professional setting. Business attire varies from business casual to business formal.

- **Business Casual for men:** It typically involves wearing a pair of dress slacks along with a button-down shirt or sweater. Khakis can also be worn. A sport coat or blazer is also common. Neckties are completely optional.
- **Business Formal for men:** Business formal dress is highly professional, and consists of a suit-pant in preferred colours like black, navy blue, grey, or brown. This suit is worn with a traditional dress shirt, along with dress socks and shoes. Neckties are a must, and should contain only a minimal pattern design. Shirts should always be tucked and neatly-ironed.
- **Business Casual for women:** Women may choose patterned outfits with features such as ruffles or lace, provided they are not excessive. A good rule of thumb is that clothing should not be too tight or revealing. Knee-high and ankle boots, along with flats, sandals, and higher-heeled shoes are also acceptable.
- **Business Formal for women:** Women should wear tidy dresses, skirts or slacks. Tops should include neat button-down shirts or blouses with a blazer. Business professional shoes include classic medium sized heels, loafers or tidy flats. Women can accessorize with minimal jewellery and belts.

### Proper way to make introductions:

A proper introduction makes a person look poised, polished and professional. Some guidelines are:

- Introduce people in business based on rank, not gender or age.  
Example: “Mr. Suresh, I would like to introduce Jyoti Kumari, assistant manager from Human Resources.”
- In business, the client, guest or visitor is more important than the boss or co-worker and should be introduced first.
- Always smile and maintain eye contact.
- Extend a good and firm (not painful) handshake to exhibit respect, trust, and acceptance. It is desirable to say something nice to other person while introducing like “It’s a pleasure to meet you”.
- Keep the forms of address equal to all the members avoid differential treatment.
- Use a person’s surname at first introduction.
- Avoid using an honorific such as Ms. or Mr.to introduce oneself.
- Demonstrate professionalism and credibility by clearly stating full name.
- Always be respectful to everyone.
- Always stand up for introductions.
- Ensure that people’s names are pronounced correctly when making introductions.

### Courtesy at workplace

Courtesy is one of the C's of communication. It helps in gaining trust and building strong and positive relationships.

Some guidelines for showing courtesy are

- Greet people properly. Acknowledge them with a smile and calm tone.
- Introduce yourself and/or other people to the rest of the members.
- It is desirable to address your colleagues by their names to make them feel comfortable.
- It is rude to interrupt people when they are speaking.
- Reply to all conversations or invitations kindly.
- Avoid discussing sensitive or controversial matters in public.
- Try to arrive on time or early for meetings and appointments.
- Dress appropriately as per the company's guidelines.
- Exhibit positive and kind actions like holding the door and the elevator for people.
- Respect people's property.
- Avoid humiliating others for fun.
- Respect people's privacy. Do not ask personal or offensive questions.

### Business Communication and Public Relations

In today's information driven world, it is a well-established fact that the communication is as crucial as other basic necessities of life. Business communication is an important tool for all organisations. It involves managing and orchestrating all internal and external communications which are beneficial for the organisation.

Public plays a significant role in carrying out the success for any organisation. In this cut-throat competition, where every organization strives hard to work toward its brand image, public relations has become the need of the hour. It is essential for every organization to communicate well with its target audience. The perception of the public, competitors, employees and other stakeholders define the organisation's reputation, respect and success.

#### Concept of Public Relations

Public relations can be defined as maintaining and sustaining a healthy relationship between the organization and public/employees/stakeholders/investors. Public relation includes activities to ensure the correct flow of information between the organization and its target audience. It helps in maintaining the brand image of an organization in the eyes of its audience impactfully for a long period of time.

Target audience refers to the parties to whom the organisation wants to deliver its information to create and maintain relationship.

**Example-** For hospitals, the target audience would be patients and their families/guardians and for retailers, the target audience would be customers.

In the above examples, Public Relations ensures a smooth two-way communication between the hospital management and its target audiences (patients and their families). Retailers must respond to their customers well for a positive word of mouth and a strong brand positioning.

### Functions of Public Relations

The main aim of PR is to create a positive and favourable public relations. Some basic functions of Public Relations are:

- **Public Relations Policy:** Develop and recommend corporate public relations policy and share it with top management and all departments.
- **Statements and Press Releases:** Preparation of corporate statements, speeches for executives and press releases are to be prepared by the PR personnel to articulate and project positive image of the company or product or policies.
- **Publicity:** Making announcements of company activities and products to media to reach to the general public and other stakeholders. It includes planning promotional campaigns for the business and answering inquiries from press and people at large.
- **Maintaining Relations:** The PR is intended to maintain good and cordial relations with Government units at local, national and international levels as well as with the community. This includes compliance with environmental protection standards, giving employment opportunities to locals, and cooperating and participating in locality development programmes.
- **Publications:** Preparing and publishing in-house magazines is also the function of PR.

Major areas of public relations activity are as follows:

- Press conferences
- Advertisements
- Publications
- Media interactions
- Relations with constituents like local community, banks and financial institutions, investors, shareholders, customers and employees

### Principles of public relations

Arthur W Page has established 7 principles of public relations management. They are:

- Tell the accurate picture of the organisation to the public.
- Focus on actions instead of words to appeal to the public.
- Understand the wants and respond clearly to the public.
- Anticipate public relations and eliminate practices that may hinder the goodwill.
- Adopt the corporate strategy keeping in mind the interests of the public.
- Realise that the success of the organisation lies in the hands of the public.
- Remain calm, composed, dignified and peaceful.

### Negative public relations

It refers to the situations in which a bad image of the company is created. Negative PR also includes using dirty tricks through extensive research and information gathering. In cases of negative PR, public relations experts/ agencies should concentrate on reducing the tarnishing reputation of the organization.

## Effective Public Relations

Public Relations is said to be effective under all the below circumstances:

- **Awareness:** To create a positive image of an organization, the message must reach the public. Information must reach in its desired form for effective public relations.
- **Acceptance:** The audience must understand what the message intends to communicate. They ought to agree with the message.
- **Action:** The audience ought to give feedback to the organization accordingly.

To conclude, public relations is simply an effort to present one's organization in the best possible positive light.

### Examples:

#### 1. Uber – Thank You for not riding

At the beginning of worldwide lockdowns, Uber decided to join many companies urging people to stay home. In their 'Thank You for not riding' campaign, Uber thanked their customers for not using their services unnecessarily at the moment with a simple message: "Stay home for everyone who can't."

Along with the campaign, Uber committed to providing 10 million free rides and food deliveries to healthcare workers, senior citizens, and all those in need in difficult times.

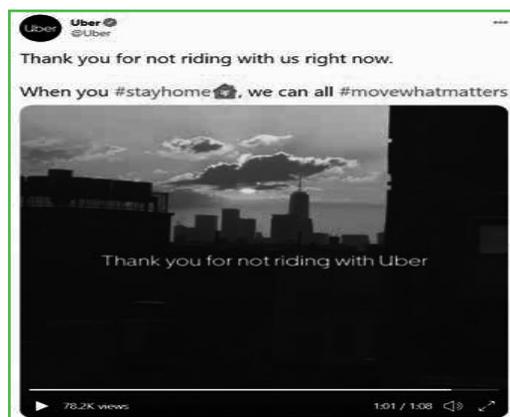


Fig. 5.11: Uber Campaign

#### 2. Vicks – Touch of Care

Vicks uploaded a video where it shows the story of a transgender woman, Gauri, who cares for and raises an orphan child, Gayatri, despite all the odds faced due to non-conformity with the societal norms. The Vicks campaign hoped to redefine the meaning of family.

The goal was to show that it is cares only that makes people come together and become a family. In just 48 hours, with no paid media support, or promoted views, PR alone generated over 4 million views” of the video and earned great appreciation from worldwide.



**Fig. 5.12 : Vicks Campaign**

### Advertisement and Business Communication

Right from buying groceries to all kind of dresses, finding a resort for vacation to watching a movie, selecting restaurant for dinner to booking a banquet hall for special events, and searching schools and colleges to finding jobs, almost every activity is guided by advertisements.

Advertising is derived from a Latin word ‘Advertere’ which means ‘turn the minds of someone towards something. It can be defined as non-personal presentation and promotion of ideas, goods and services paid by an identified sponsor. It is a paid non- personal mass communication wherein business information is made available to an audience.

The aim of advertisement is to promote the business. The objectives of the advertisement are as follows:

- To promote newly launched products among the potential customers.
- To promote unique selling point of an organisation.
- To create awareness among the general public.
- To tap into untapped market segment.
- To enhance the goodwill and build credibility.

### Importance of advertising

- **Introducing new product:** A business organisation introduces its new product by giving out all information to the general public about the product.
- **Amplifying sales:** Advertising helps in reaching to a larger audience and make new customers for the business.
- **Steady demand:** Advertising helps in creating and maintaining the consistent demand of the product by constantly reaching out to the public.
- **Stay in competition:** If products are not continuously advertised, then the potential customers can be snatched by other competitors through their rigorous advertising.
- **Public awareness:** customers get awareness about a product and its usage through advertising.

### Mediums of advertising:

- **Print media advertising:** It is done in the form of newspaper, magazines, newspaper advertisements and brochures.
- **Broadcast advertising:** It includes television and radio advertising.
- **Outdoor advertising:** It includes banners and billboards, advertising on trains, subways, taxis, and bus stops.
- **Digital advertising:** It is done in the form of internet, social media, videos, media devices and podcasts.

### Relationship between Advertisement and Communication

There is a relationship between advertising and communication because companies cannot advertise without communicating. The relationships between the two are on the basis of audience, message creation, methods of communication and customer service.

- **Target Audience:** Audience is the receiver of the message. Companies formulate marketing plans and strategies in order to find suitable customers who will be interested in their products and services. Advertising facilitates this function of the companies because it has a soft and subtle way of persuading people.
- **Message creation:** Every firm must have a marketing objective and it must deliver that message to the target audience. Advertisements in business helps to increase the customer base, improving the customer attitudes for the brand, generating clients and revenue. It is possible only through communication.
- **Methods of communication:** Advertising is done through print media like newspapers and magazines, digitally like social media, blogs, videos, broadcasting through televisions and radios and also through banners and billboards.
- **Customer service:** Follow up communication is essential in businesses that are sourcing and retaining clients through advertisement. This helps to build a good understanding between customers and the company and as a result customer loyalty is built. Communication helps the company to know on what areas it needs to improve so that it comes with better quality products and services.

### Examples:

#### 1. Maggi from Nestle

Till 1980s, the concept of noodles was alien in Indian market. The marketing team of Nestle studied the diverse food habits of an average Indian. The team found out that there was a huge demand of quick freshly made snack item in an Indian family diet consumption. Nestle took this opportunity and revolutionised the snacking in two minutes by introducing 'Maggi'. Till now, Maggi has been dominating snacking segment of Indian market. Although, it had few ups and downs in its journey to become successful. This success has been possible with the help of Nestle's heartfelt and relatable ad campaigns.



Fig. 5.13



Fig. 5.14

## 2. Amul

More than its dairy products, Amul is known for its topical, contemporary and subtle print ads. This brand doesn't only run with the time but also makes sure to include their star mascot 'the butter girl' in every possible way. That Amul butter girl's wit and satire managed to capture the imagination of every Indian, irrespective of time, region, language, gender and age. Today, Amul is not just a brand. It is an open display of public emotions.



Fig. 5.15



Fig. 5.16

# Do's and Don'ts of Communication through Social Media

## 5.6

The evolution of social networking sites and platforms has a tremendous impact on the everyday life of people. Over the last couple of years, social media has changed the ways we conduct business. The traditional business was governed by 3B's the building, the boss and the boundaries. Social media has eliminated the dependency of businesses on these 3B's. Today we can start our own businesses whilst sitting at a sofa in our home and pressing a few buttons. However, even though we use informal channels to conduct our business knowing the art of business communication while communicating over social media is essential. It is important to be able to communicate effectively through social media because it is omnipresent and can prove to be highly productive. From advertising to lead generation to conversions, businesses can easily multifold their returns via Social Channels, and in the same very manner, candidates can impress hiring managers, and get the best-suited jobs.

Paying proper heed upon the Social Media Do's and Don'ts is very important to productively use these highly fruitful platforms.

### Do's of Communication through Social Media

#### 1. Do have Complete and Active Social Profiles:

Complete profiles are credible in nature. It ensures engagement and forming connections becomes easy.

#### 2. Be Consistent with Business Profiles:

It is good to be consistent with the type of content you share for others to see. But it is essential to post content that is significant to the business.

#### 3. Be Unique and Engaging with Sharing:

Social media communication must ensure that business is represented properly. Grounds should be created for healthy discussion on social media about the business. But a business should avoid spamming as much as possible.

#### 4. Do Make Relationships:

Before building new relationships, it is important to nurture existing relationships. Business gets to know how often it should engage with its clients or target audience. Also, firms utilize connections to organize face-to-face interactions. However, there is clear separation business and personal relationships.

#### 5. Do Prioritize Networks:

Organizations use networks that best fit their business and target audience. LinkedIn for B2B businesses and Facebook, Twitter, and Instagram for B2C and B2B marketing is considered best. It is vital to use the right content on the right network since audiences vary across networks, have a clear vision of the brand and translate the same across all networks.

#### 6. Regularly Interact with Audience:

Firms can send friendly replies to queries, ask the connections and friends for recommendations. It must be kept in mind that firms do not need to be offensive or aggressive and must handle criticism gracefully.

#### 7. Do Entertain and Inform Audience:

Businesses should not constantly focus on selling their product or service. Informative and entertaining posts attract more attention as they have more visually appealing power. Businesses should try new ideas, have fun and be selective and spread positivity and inspire people to grow traffic organically.

### Don'ts of Communication through Social Media

#### 1. Don't Project as Needy:

A business should not do the followings:

- Ask its followers to retweet or like its post.
- Worry about the number of followers rather focus on quality and not on quantity.
- Fake and pretentious.
- Dedicate the whole time on social media rather than develop productive relationships.

#### 2. Don't Over-share the Content:

A business should not:

- Spam with the same promotional messages.
- Join groups, spam, and then leave.
- Overshare as it can lead to losing the followers.
- Automate the same message across different networks

#### 3. Don't use Poor Grammar and Spelling:

A business should not:

- Use grammatical mistakes as they reduce credibility.
- Write posts in all caps as it seems offensive.
- Use hashtags unnecessarily.

#### 4. Don't excessively depend upon Automated DMs:

A business should change the voice of the message to match the network and always try to write an original message for each social media network based on its intended purpose and audience.

#### 5. Don't believe Everything you Read:

A business must always cross check for authenticity of things it sees and considers.

#### 6. Don't Project as a know-it-all

A business is not required to project itself as know it all because it creates a negative image and comes off as arrogant.

#### 7. Don't Complain:

Business should avoid complaining as it can make it seem unprofessional.

# Writing and Drafting for Business Audiences

## 5.7

Every business has audiences. These audiences are none other than the customers or clients of the businesses. It is the duty of every business to satisfy their audience at the end of the day. The audience on the other hand want the business to maintain a personal touch with them, keep them updated about new products, discounts and benefits. In order to communicate these details, the business relies upon various forms of communication techniques such as sending letters, emails and sometimes using social media promotions to maintain a personal touch with their audiences.

There are mainly 4 types of business audiences:

1. **Friendly Audience** – They are easy to deal with and the duty of the business is to reinforce their beliefs.
2. **Uninformed Audience** – They are unaware about the business or details of the business. Hence, the primary duty of the business is to educate them.
3. **Apathetic Audience** – They are uninterested from the start and it is hard to deal with them. The business must first have to prove and justify their point of view.
4. **Hostile Audience** – They began to disagree with the communicator from the start and they are the hardest to deal with. They listen with a closed mind.

Reasons for writing and drafting for business audiences:

Some of the reasons businesses write and draft for their audiences are:

- **Inform** – It is the duty of every business to inform its audiences and stakeholders about relevant information about corporate policies, decisions, upcoming offers and discounts. Laws have also been created under the constitution such as the Right to Information so as to protect the rights of the business audiences.
- **Persuade** – These days PR and marketing have become one of the top priorities of businesses. While PRs try to pursue and develop the company name and reputation through communications with potential audiences, the marketing department tries to pursue potential consumers about the company, brand name and the product and services offered by the business. Apart from these, there are several other stakeholders that a business needs to pursue to help build trust of the stakeholders and company reputation.
- **Create Goodwill** – Goodwill is an immeasurable and intangible asset however it is the aim of every business to create as much as goodwill as they can. In order to create and maintain the goodwill, business communication plays a significant role.

## 5.7.1 Letters and Memorandum

### Letters

Business letters illustrate commitment to the objective at hand. A letter must be in the desired format, expressing ideas, dedication to the requirements, and an understanding that words and letters can make a difference in the lives of others. Business letters can be informational, persuasive, motivational, or promotional by nature. It can be for various purposes such as sending order, sending offer details, communicating to vendors, etc.

#### Types of business letters:

1. **Enquiry Letter** - Buyers usually want to know the details of the goods which they are willing to buy, like quality, quantity, price, mode of delivery and payment, etc. They may also ask for a sample prior to making an order.
2. **Quotation Letter** - After receiving an enquiry letter from a prospective buyer. The seller supplies the relevant information by writing a letter that is called quotation letter.
3. **Order Letter** - The prospective buyer after receiving a reply to the earlier enquiry letter may decide to place an order with the best business firm which offers goods at minimum price and favourable terms and conditions.
4. **Complaint Letter** - When the purchaser does not find the goods up to his satisfaction, he files a complaint letter. It is normally written by the purchaser when he receives improper, incorrect, insufficient, or damaged goods.
5. **Recovery Letter** - A letter written by the seller for collecting of money for the goods supplied by him to the buyer is called recovery letter.

**Formal Letter Format:**

Sender's Name

Sender's Address

Recipients Designation and Name,

Recipient's Address

Date

Subject of the Letter

Salutation,

Introduction Paragraph (1 para) - Set the context of the discussion

Body of the Letter (1 -2 Paras)

Conclusion (1 para) - Expected Action by the addressee

Yours Sincerely,

Signature of the Sender

Full name of Sender

### Sample Formal Letter

Write a letter to the supplier of raw materials for receiving lesser quantity of goods than ordered.

Mr. ABC

XYZ Limited

Los Angeles, California – 90011

4th August, 2021

Mr. PQR

RST Limited,

Gotham City – 53540

**Subject: Receiving lesser quantity of goods than ordered**

Respected Mr. PQR,

With respect to order no. 54321 dated 20th September 2021, this is to inform you that I have received lesser quantity of microchips of type X than ordered. Also, some of the pieces received were damaged and needs to be replaced.

I am writing to request you to please replace the defective microchips and makeup for the shortage in quantity that has been supplied. According to the order details, I have ordered for 15,000 pieces however only 9000 pieces were delivered. I am including a copy of the order receipt and Invoice received during delivery for your reference.

I have purchased other products manufactured by your company in the past as well, and have always been impressed with the quality of the products made available to customers. I sincerely hope this is a one-time incident, and that any future purchases I make will live up to the standard my family has come to expect from your company.

Yours Sincerely

Signature

Mr. ABC

## Memorandum

A memorandum is a one to all note normally used for communicating policies, procedures, or related official business within an organization. It is often written for broadcasting a message to an audience, rather than a one-on-one, interpersonal communication. It may also be used to update a team on activities for a given project, or to inform a group within a company of an event, action, or observance. A short message or record used for internal communication in a business.

### Memorandum Format:

To:

From:

Date:

RE:

Body of the memorandum

### Sample Memorandum

To: Mr. ABC, Sales Manager

From: Mr. XYZ, M.D.

Date: 14th December, 2017

RE: Behavioural Issues

A number of clients lately have been complaining about the behaviour of the sales team members. Our clients have complained regarding the use of inappropriate language and rude behaviour from the sales staff. These complaints could have an adverse effect on the company image and brand name.

I think it is essential that you need to coordinate with your team members and sort out this issue. If complaints like this continue in future the management will be forced to take serious steps against some of the sales staff. You are requested to get this matter sorted out with your sales team.

If necessary, I can arrange for the HR personnel to assist you in the process and send us a detailed report along with statements from your team members.

## 5.7.2 Report – Formal and Informal

A report is written to pass on specific information with a clear purpose to a particular audience. The information is clearly structured making use of sections and headings so that the information is easy to locate and follow. A report can outline the purpose, audience and problem or issue, together with any specific requirements for format.

### Types of Reports

1. **Information Reports** – Information reports present facts about a certain given activity in detail without any note or suggestions.
2. **Analytical Reports** – Analytical reports contain facts and analytical explanations offered by the reporter himself or may be asked for by the one who seeks the report.
3. **Research Reports** – Research reports are usually based on research work conducted by an individual or by a group of individuals on a given problem statement.
4. **Statutory and Non** – Statutory Reports – Statutory reports are made to be presented according to the legal requirements of a rule or a custom now has become a rule. Non-statutory reports are not legal requirements or rules wants.
5. **Routine Reports** – Routine reports are required to be prepared and submitted periodically on matters required by the organization.
6. **Special Reports** – Special report is specially required to be prepared to be submitted on matters of special nature.

### Formal Report

Reports that are prepared in prescribed forms, according to some established procedures to proper authorities are said to be formal reports.

**Form of the report** - Formal report is highly structured and is prepared in a prescribed format.

**Purpose**- Formal report is written to help management in making long term and strategic decision making.

**Objective** - Formal report are used to assist decision making by providing an effective recommendation.

**Length** - It is long in size. Size of a formal report is large.

**Distribution** - Formal reports are circulated to top-level executives and outside parties.

**Nature of problem**- Formal report deals with complex and non-recurring problems. It is analytical and systematic in nature.

**Frequency of writing**- Formal report is written infrequently.

**Writing responsibility**- This type of report is usually written by internal or external experts.

**Use of visual aids**- This type of report makes extensive use of visual aids to present the facts.

**Writing Style**- This report follows an indirect and impersonal writing style.

**Recommendation**- Recommendation is an essential part of a formal report.

### Informal Report

Informal reports are prepared with no proper prescribed forms or according to established procedures and neither for proper authorities are said to be formal reports. It is the opposite of a formal report.

**Form of the report** - Informal reports are less structured and it is less important to follow the prescribed format.

**Purpose** - The main purpose of an informal report is to present the facts to assist managers in making daily business decisions.

**Objective** - Conveying routine messages and to help routine functions is the basic objective of an informal report.

**Length** - It is short in size. An informal report is short in size.

**Distribution** - Short reports are usually circulated within an organization.

**Nature of problem** - Informal reports deal with less complex and recurring problems.

**Frequency of writing** - It is written frequently almost on a daily basis.

**Writing responsibility** - These reports are usually written by a subordinate.

**Use of visual aids** - This type of report seldom uses visual aids.

**Writing Style** - This report follows direct and personal writing style.

**Recommendations** - Recommendations are not required in informal reports.

### Sample Report of an Event

On the eve of 24th September as South Africa celebrates its Heritage Day recognising and celebrating the diversity of culture, beliefs and traditions of the nation. India shares a deep cultural relation with South Africa that dates back several centuries. Indian diaspora holds a significant place in the cultural milieu of South African nation.

Acknowledging this deep bilateral cultural relationship between both nations and commemorating the South African Heritage Day, Swami Vivekananda Cultural Center at the Consulate General of India, along with Institute of Social and Cultural Studies India, African Heritage Collective and KZN Department of Arts and Culture organised a three day long web based heritage festival titled Virasat Parva/ Umcimbi Wamagugu from 24th to 26th September, 2021, highlighting the cultural diversity and cultural interconnectedness' between both India and South Africa.

The first day of this web-based heritage festival commenced with a meaningful disquisition on Heritage of love and compassion by distinguished speakers like Ms. Fezeka Shandu, Dr. Sujit Kumar Pruseth and Ms. Nithabiseng Mohanelai. In the following day the discourse of the online heritage festival focused on the issue of Heritage of

Dialogue and Cooperation where eminent speakers like Mr. Thokazani OkaMbalane, Dr. Ishani Naskar, Mr. Samu Pacho and Dr. Janardan Ghose shared their valuable thoughts over this issue. The concluding day of the web-based symposium saw distinguished speakers like Ms. Zee Imbongi, Dr. Phirmi Bodo, Mr. Khulekani Mkhize and Mr. Syon Niyogi deliberating on the topic of Heritage of Hard work and Experimentation. Beside the academic deliberation this web-based symposium also displayed delectable cultural performances of accomplished artists that exhibited the cultural heritage of both India and South Africa.

### Business Report Writing

A formal business document is an official document that provides statistics, research, information, and other pertinent elements to assist decision-makers in developing strategies and objectives to benefit the organisation. A formal business report could be several pages lengthy and feature a lot of data and information, depending on the topic.

### Elements of a business reports

- i) **Cover Page** - The first and the most crucial element of a business report is its cover page which tells the readers what the report is about and who wrote the report.
- ii) **Contents** – A business report must have an index page which tells the readers about the titles of topics covered in the report. It provides a quick glance and opinion of the nature and contents of the report.
- iii) **Executive Summary** - An executive summary provides a concise description of the report’s purpose as well as the report’s main findings, recommendations, and conclusions. The summary is usually a half-page or less in length and does not include any supporting documentation.
- iv) **Sections** - To make your report easier to grasp and flow from one issue to the next, divide it into chunks of related content in the form of sections.
- v) **Supporting Information** - If the report contains a lot of research, data, financial records, charts, reviews, graphs, and drawings, put them in an appendix. If they are only supporting documents that readers might desire after they have read the report to verify your claims. Include them on the pages where you are making your remarks if they are important to demonstrate a point.

### Sample Format

#### 1. Cover Page

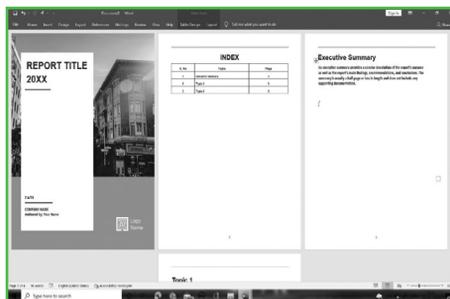


Fig. 5.17 : Cover Page

#### 2. Contents

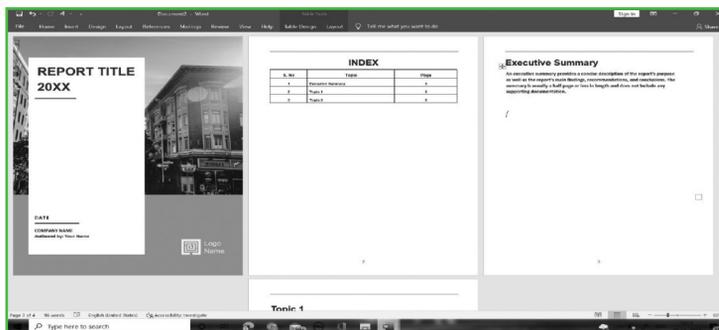


Fig. 5.18 : Contents

### 3. Executive Summary

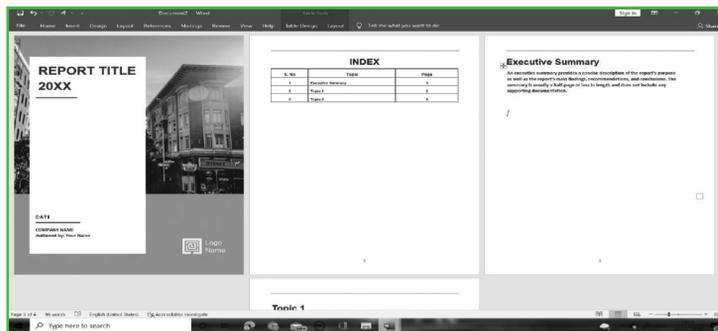


Fig. 5.19 : Executive Summary

### 4. Topics / Sections

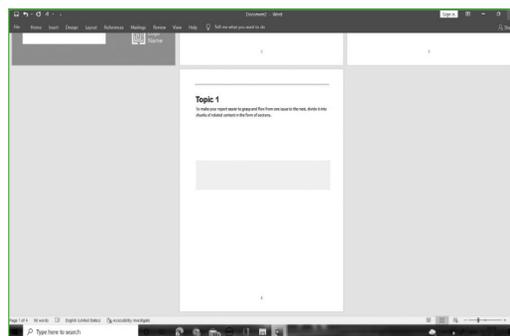


Fig. 5.20 : Topics / Sections

### 5. Supporting Information

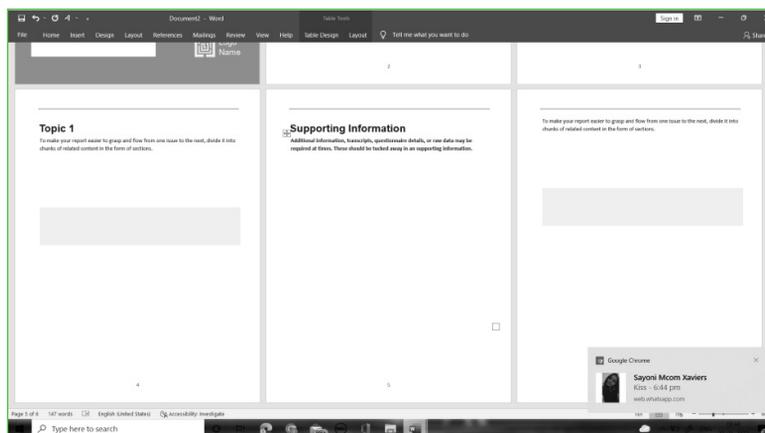


Fig. 5.21 : Supporting Information

### 5.7.3 Business Proposal

A business proposal is a written document sent to prospective clients to obtain a specific job. A business proposal is a written proposal presented from a business that intends to elicit business from a prospective buyer. It is unique because it contains a lot of figures and statistics represented by pie charts and graphs.

#### Characteristics of a Business Proposal

1. **Solutions** - After writing a lead paragraph on the company's problems, follow up with a solid presentation of how your business can provide solutions.
2. **Benefits** - Business proposals, clearly outline for the company the benefits to be gained from doing business with a firm.
3. **Credibility** - This is often the overlooked portion of a business proposal but all proposals glow with credibility.
4. **Samples** - Business proposals with samples and evidence of one's ability to deliver is vital to gaining the winning bid.
5. **Targeted** - Business proposal is all about communication. Speak in a language spoken by the intended audience.

#### Sample Business Proposal:

To: ABC, Human Resources

From: Mr. PQR, Accounts Department

Subject: Proposal to create a Fund Raiser Program

Date: 19th April, 2005

There are a lot of old equipment and used office items lying in the store which are still in usable condition. We can have an auction which will not only help get rid of the goods but also create space in the store. We can use the collected funds to renovate the defective office equipment and machines. And the surplus thereafter can be used in the annual CSR program conducted by the company.

#### Benefits of the program include

- Generating funds
- Preventing the equipment in the store from damage
- Gathering funds for CSR activities
- Cleaning up office space
- Getting new machines and equipment for the office

#### Obstacles of holding the program

While trying to conduct the program there could be certain hindrances such as:

- Certain Employees might disagree to the plan
- Funds accumulated might not be as high as expected

### 5.7.4 Enhancement of Writing Skills

Apart from oral communication, written communication is an essential part of the daily communication in this world in forms like text messages, mails, business letters, press releases and social media posts.

Writing is not just a job-related skill. It is more than that. It is an art of expressing one's ideas, opinions, learnings, experiences, views and values. In short, it is basically a life skill.

Writing is personal in nature and it represents one's true characteristics. As a result, it helps a person to connect with others.

However, many people underestimate the scope and value of having writing skills. People usually tend to think that only a certain group of people like journalists, editors and writers have good writing skills. But with the rise in importance of communication, having good writing skills has become a necessity for every person with different social and industrial background. It can be learned by anyone at any time.

#### Significance of writing skills:

Before focusing on improvement of writing skills, it is critical to clearly understand the benefits of having good writing skills.

- **Improving communication skills** - Strong writing skills help a person to communicate and connect with others. It makes the message transmitted clear, concise and concrete. Readers can easily understand the essence of idea being presented.
- **Fostering creativity, imagination and knowledge** - Writing enables a person to pour down his idea, thought, imagination in a paper. The frequently a person writes, the more his brain is enhanced to generate new ideas. Reflecting on these ideas helps in exploring productive ways of solving an issue, leading to fostering creativity. Moreover, writing involves reading and researching. As a result, knowledge base of a person is widened.
- **Enhancing problem solving skills** - Writing involves several complex cognitive activities, such as listening, reading, and then processing the concept in your mind, and finally put it down in a paper. It leads to a clarity of thought and thereby improving problem solving skills.
- **Targeting a large audience** - Writing enables a person to make its idea reach to a large number of people. If judiciously planned, designed and written the information, the intended readers get the idea directed to them in complete manner.
- **Demanding skill in today's world** - Having good writing skills is one of the top attributes an employer looks for in a job in today's evolving period. So, this might act as an income generator for a person.

#### Enhancement of writing skills:

Following points should be kept in mind to improve writing skills:

- **Organising the thought**  
It is foremost a person to organise the concepts on which he/she is planning to write to have a clear purpose.
- **Outlining before writing**  
Outlining the idea and making key points helps the writing process smoother and leads to early and better finishing of the project.
- **Wide reading**  
Reading a variety of material helps in increasing knowledge base and growing a lot of vocabulary. Also, a

person gets introduced to different styles of writing.

- **Use simple words and phrases**

Writing too many jargons and complex words do not make a writing smart and impressive. It is advisable to use simple and effective words to convey the message to the intended readers.

- **Practice**

Frequent writing will make writing easier, more efficient and more effective. A person can develop his/her own personal writing style through regular practice.

- **Awareness about audience**

It is necessary for a person to understand the kind of readers who will be reading. Careful choice of appropriate words and selection of the right length of communication will help to streamline the writing.

- **Read before sending**

A person should always read what he/she has written before sending it to others. While doing so, shortcomings of the writing become evident and can be corrected timely.

- **Feedback on writing**

Getting responses is extremely helpful in providing valuable lessons and improving writing skills in future.

# Intercultural and International Business Communication

## 5.8

Since the onset of globalization and the industrial revolution businesses have sought to expand their activities across various cities and countries around the globe. However, before commencing operations in a new region it is essential for the business to understand the culture, language and lifestyle of the people living that region in order for it to be a successful venture.

These days it has become important to understand the diverse cultures. Cultures vary from place to place and it is essential for businesses to be sensitive to the diverse cultures as they expand. When a business expands to a new city or country it depends upon that place for its suppliers, employees, customers and other forms of stakeholders. During international or intercultural communications an organization must keep the following points in mind:

1. Display respect, patience and empathy towards the others culture.
2. Sometimes in order to adapt to a particular culture a business firm might have to tweak its rules and regulations, habits and business methodology. Hence it is essential to remain open minded during an intercultural or international communication.
3. Search for similarities instead of differences in culture. This will help both the parties connect and communicate more smoothly and effectively.
4. Use gestural communication as much as possible. When people belonging to different cultures or languages communicate, they tend to follow each other's gestures and reactions.
5. Be attentive and avoid any form of distractions.

### Stages of Intercultural Sensitivity

Cultural sensitivity is defined as recognizing the different types of cultures, the similarities and differences between them, without being judgemental or prejudicial and thereby accepting the culture. Sir Milton Bennett had described six stages intercultural sensitivities. It is discuss as follows:

**Stage 1 : Denial** – The denial stage is the first stage in intercultural sensitivity. At this stage, the members are completely unaware about the cultural differences that exist among their respective cultures, It, is essential that the members recognize and understand the differences among the cultures to avoid any form of intercultural disputes.

**Stage 2 : Defence** – In the second stage, once the members have spotted the differences in their cultures and they look upon these differences as negatives. They uphold the values of their own culture as “rightness” and criticize the beliefs and practices of other culture. At this stage each member of one culture must be taught to be tolerant towards the other culture(s).

**Stage 3 : Minimization** – In this stage, the members recognize and even appreciate the differences in the cultures. The members focus their attention on studying more about their own culture and avoid projecting their cultural values upon others.

**Stage 4 : Acceptance** – This stage, is a reasonable goal that every organization must seek to achieve while expanding across cultures and countries. At this stage the members learn to accept each other’s culture however they still remain devoted to their own respective cultures.

**Stage 5 : Adaptation** – In the fifth stage, of the intercultural sensitivity the members function in a bi-cultural capacity is that they learn more about the other culture(s) and mentally shift, adapt, adjust and operate within the other culture after understanding both the cultures.

**Stage 6 : Integration** – In the final stage, the members have complete in depth knowledge and adapt to the different cultures and the ability shift easily among cultures. At this stage the members integrate both the cultures and cultural flexibility emerges as a result of the integration.

### **Ethnocentrism**

When a person(s) believes that his or her culture is superior compared to the culture of other people, this belief is called ethnocentrism. It is a type of psychological barrier that obstructs communication among people belonging to different cultures. The three ways to avoid ethnocentrism are as follows:

- a) Avoid assuming details. One must not assume that the other will possess the same ideas, notions as himself.
- b) Avoid premature evaluations. Avoid judging and evaluating people without completely understanding or gaining proper knowledge about the other person’s culture.
- c) Recognize the differences in culture. One must keep an open mind in order to understand and accept the differences among the cultures.

There is an old saying that “Good fences make good neighbors” that express the need to have clear boundaries or barriers to prevent misunderstandings and divisions among the people. While communication is an effective tool in expressing oneself, an improper communication can lead to the creation of barriers and obstructions, that might disrupt smooth functioning. There are multiple kinds of barriers that effect a smooth flow of communication. These barriers are often caused by misinterpretations of various kinds and lead to misunderstandings between the parties.

The barriers in communication simply refer to the obstructions that affect the smooth transmission of messages and can be of various forms for example noise, improper medium, languages community, region and many others.

One of the best ways to understand the barriers that exist in communication is through the popular childhood game of Chinese Whisper. The players stand in a straight line or in a circle and the first person comes up with a sentence. He then whispers this sentence into the second player’s ears, and the second player whispers it on to the third, and so on until the last player in the line or circle has received the message. He then says the sentence out aloud and the first person checks to see if he calls out the exact same message that he had circulated at the start. In majority cases the final player either partially or totally deviates from the original message.

### Types of Communication Barriers:

- **Physical Barriers**– Physical barriers are created mainly due to disturbances in the surroundings or environment of either party or both parties involved in the communication process. A physical barrier can be natural or artificial and can easily be spotted.

Physical barriers can be of many types. Firstly, disturbances in the background in the form of noise. Secondly, inappropriate communication medium. Thirdly, when either party (listener or speaker) is disturbed or inattentive or suffers some physiological defect like shortness of hearing or stammering. Lastly, disturbances in the environment or surroundings.

### Causes of Physical Barriers

- Distance:** Geographical distance is a big cause of physical barriers. It prevents personal communication. Communication is done through video conferencing, phone calls, mails and memos. Obstacles can be in forms of poor reception and slow network which later cause delay in communication process.
- Environment:** Environmental conditions can badly affect the flow of communication. For example, if a person is standing in adverse weather conditions, the conversation would be hampered because that person would not be able to pay full attention to what the other person is saying and the flow of information will not be smooth.
- Technical Disturbances:** Technology is very helpful in an organization. But technical disturbances can happen unexpectedly. For example – a broken fax machine, crashed system and a faulty printer, etc. All these can cause delay in the flow of information and data can be deleted if not saved before.

(d) **Time:** Organizations or people located in areas with different time zones face this issue. The sender should ensure that the message is concise, relevant and short so that crucial information can be communicated to the receiver to prevent further delays.

- ◉ **Semantic Barriers** – Semantic barriers or language barriers arise when both the parties speak two different languages and most of the essence of the message is lost in the translation process. Even when both the parties speak the same language the essence could be lost when either of them uses jargons, dual meaning words.

Here are some of the common language features and phrases that can cause communication problems arising out of semantic barriers:

- ▲ **Misunderstood words:** Some words have different meanings or usage in different context. They sound exactly the same. As a result, confusion in the mind of listener is created. Example- Right and Write, Fair and Fare, Sale and sell.
- ▲ **Missed humor:** many times, people don't get the jokes or humor. They find it offensive and inappropriate. Humor is only applicable and effective when there is a cordial, comfortable and harmonious relationship among the members of the organization.
- ▲ **Usage of idioms:** Idioms are the phrases which have a figurative meaning which is totally different from literal meaning. They are usually used in daily normal interactions. In a business communication, it can be ambiguous and illogical. Example - The marketing manager felt like he was 'sitting on pins and needles'. 'Sitting on pins and needles' means to be anxious or nervous. For a person who is not familiar with the idiom, finds it difficult to understand the meaning of the sentence.

Some of the ways to overcome semantic barriers are:

- ▲ A speaker should express himself/ herself to the listener clearly.
- ▲ Appropriate body languages like facial expressions and gestures while communicating should be used.
- ▲ Any party should never assume anything while communicating. If in any doubt, the person should immediately clarify.
- ▲ A speaker should always listen actively to the listener so that any confusion is not built.
- ◉ **Psychological Barriers** – Communication is a form of expressing one's thoughts using a verbal or non-verbal medium. The origin of communication is in one's mind and hence involves the concept of psychology. However, the mind too can create barriers in communication that prevents a person from properly expressing himself or understanding the other person. Psychological barriers are of various types some of the most popular types include:
  - ▲ **Emotions** – Emotions play a major role in making rational decisions. Sometimes, communication also involves making decisions and these are affected by the persons mood and emotions.
  - ▲ **Halo Effect** – When a particular trait of a person outweighs the other traits it is said to be a halo effect. For example, judging people by their appearances or intelligence.
  - ▲ **Information Overload** – Burdening the listener with too much of information at a time gives rise to fatigue and the listener is unable to retain all the points during the conversation which might have severe impacts on the effectiveness of the communication.
- ◉ **Organizational Barriers** – Sometimes communication barriers could be created within an organization due to inter and intra departmental conflicts or complexities within the organizational structure, organization policies and politics can all be different kinds of obstructions that prevent proper communication among the individuals in the organization.

- ⦿ **Others** – Other forms of psychological barriers include closed mindedness of either parties. Impatience of either parties is also another form of psychological barrier. Suppose a speaker is in a hurry and talks at a fast pace while the listener misses out on essential details.

#### Major organizational barriers are listed below:

- ⦿ **Rules and policies:** Usually an organization has some rule regulations and policies regarding type of message, channel of communication and people to be contacted. If rules are stringent and rigid, employees will be hesitant to communicate freely. Further, the transmission of information can get delayed.
- ⦿ **Hierarchical positions:** An organization is divided into three levels of management- lower, middle and top. Sometimes, a superior may possess an arrogant and power conscious attitude which makes lower-level employee feel inferior and unworthy. They become reluctant to send information in the fear of sending faulty message or getting rejected/ humiliated.
- ⦿ **Organization structure:** Free interdepartmental communications become difficult especially in the organization which is divided into different departments on the basis of roles, responsibilities and authority.

#### Overcoming the Communication Barriers

It is essential to overcome the various barriers in communication to ensure that there is no misunderstanding or conflict arising among the parties due to a communication gap. Some of the ways to overcome these barriers include:

1. **Choose a proper medium of communication** – The communicator must ensure that a proper medium or channel is selected for the communication. While choosing the correct medium the communicator must consider the length, importance, time and environment.
2. **Proper focused communication** – The sender must make sure to keep his / her point precise and to the point and avoid unnecessarily beating around the bush. Meaningless small talk must be avoided while passing on an important message.
3. **Avoiding the use of jargons and dual meaning words and using translators** – In order to avoid semantic barriers, the communicator must avoid using jargons or dual meaning words which the listener or perceiver might be unfamiliar with. Also, in case both the parties do not speak each other's language a translator should be arranged for.
4. **Open Mindedness and attentiveness** – Both the parties must try to keep an open mind and be attentive during communication to prevent any sort of psychological barriers such as halo effect or allowing emotions to affect the communication process.
5. **Feedback and Follow-ups** – In businesses it is essential to ensure that the listener has understood the message in the exact same way as the communicator wanted him to understand it hence it is always essential to ask for feedbacks and opinions in this matter. Also, organizations have to talk to multiple stakeholders and there could be instances of forgetting or missing out on details hence taking regular and timely follow-ups are essential.
6. **Fostering Strong Relationships** – In order to avoid or reduce organizational conflicts arising due to communication gaps an organization must try and foster a strong relationship between the business and its various stakeholders and employees.
7. **Organizational Policies** – While formulating policies an organization must be considerate and flexible. The goals of the organization must be clear and every employee irrespective of his / her position in the organizational hierarchy should be proper opportunities in the organizational communication process. The policies should be framed in a way that eliminates organizational communication barriers to the least.
8. **Division of labor** – There must be a proper division of labor intra and inter departmentally to reduce information overload and prevent delays in organizational communication.

**I**t is essential for entrepreneurs, businessmen, managers, executives and other front-line employees to understand the legal aspects of business communication. Business communication in certain cases could be regulated by the law or could even lead to serious civil litigations.

In this case a legal aspect refers to selection of words used during a business communication to ensure that it is in conformity with the laws and regulations that govern a country's business or corporate law and failure to abide by it could lead to serious legal actions against the individual(s) or the organization as a whole.

There are various cases where business communication is essential, and its non-compliance could have serious legal impacts such as:

1. **Product Disclaimer** – Product disclaimers are a form of written or oral communications wherein the seller warns the buyers in case of any harmful side effect or dangers in using or consuming a certain product. If the seller fails to inform the buyer or hides details from the buyer, the buyer possesses the right to sue the seller for damages. Eg: Warnings on cigarette packets.
2. **Legal Disclosures** – Disclosures are similar to disclaimers but are less specific in nature. For eg: When an organization wants to protect its property or intellectual rights and prevent employees from disclosing such facts to outsiders a non-disclosure agreement is signed which is legally enforceable in a court of law in case of a breach of the terms and conditions.
3. **Financial Reporting** – This is the most essential form of written communication which presents the actual financial status of the company. Every organization must mandatorily maintain books of accounts which it presents to its stakeholders and any window dressing or fraudulent accounting can be legally enforceable in a court of law.
4. **Contracts and Internal Communications** – Businesses enter into new contracts and hold meetings every second day with its stakeholders and it is essential for businesses to maintain a record of the minutes of the meetings, reports and contracts entered into not only for recording purposes but also to meet legal compliances.
5. **Marketing Communications** – The techniques of sales, promotion and marketing involves a lot of communications of various types - written, oral, gestural, direct and indirect. However, the salesman or person marketing the product on behalf of the business must be clever in his word usage, presentation. He must be tactful in describing the commodity such that he does not violate the laws of business communication in the process.

### How do we prevent the threats of legal aspects of Business Communication?

Law suits against an organization can sometimes be a huge threat to the reputation, brand name, profitability and trustworthiness. In order to avoid these, an organization must follow the following points:

1. It must maintain proper records, documentation, letters, contracts, books of accounts and vouchers audited or unaudited as the case may be.

2. Avoid copying copyrighted documents and documents prohibited from photocopying or copying in any form without proper consent of the involved parties.
3. Use a proper tone and avoid inappropriate language or behaviour while dealing with employees and other stakeholders.
4. Avoid window dressing of balance sheet and other financial documents.
5. Ensure that all license and legal documents are always updated and all changes are made note of.
6. Keep confidential documents at a safe place where it can only be accessed by authorized personnel to avoid fraudulent behaviour and misplacing documents.
7. Seal confidential documents and mark them as confidential so that others are aware.
8. Sales promoters and company representatives must be well trained and groomed about business communication, its types, significance and legal aspects.

**Activity:**

Union Allied Ltd. is a construction company. Over the years there were several changes in the office location, company management and contracts with different vendors. But over the years some of the documents and vouchers were misplaced by the company.

In 2017, the company was sued by one of its vendors. When the lawyer of the company asked to furnish a copy of the original contract the management had found the document to be missing. When the court had examined all the company documents it was noticed that there were several unaccounted transactions, incomplete reports and missing files. The company was charged huge penalty and some of the management members were arrested for fraud and misconduct. The court ordered a committee to be formed to closely monitor the company, its dealings and other relevant details.

1. What do you think should have been the approach of Union Allied Ltd. to avoid such a mishap?
2. What changes should be brought about in the way the company is functioning?

# Use of Graphics and References for Business Communication

## 5.11

### Graphic Elements

Suppose you are the director of an MNC having branches in different cities and have to go through sales data, financial data, HR records and other documents on a regular basis. Now, if the data is given in text and paragraphs, it would take forever to go through all this data. On the contrary, if these were presented in the form of charts, graphs and presentations it would be much easier and faster to review all these documents.

Using graphic elements provides a bird's view over documents and reports thereby allowing us to scan through and get an overall summary of the entire data. There are various types of graphical elements that are used in business communication. Some of them include:

1. **Flowcharts** – A flowchart is a step-by-step breakdown of a long cumbersome process which also shows us what could happen if we are made to choose between different alternatives. It speeds up the explanation process, easy to understand and interpret however sometimes lengthy flowcharts tend to become complicating.

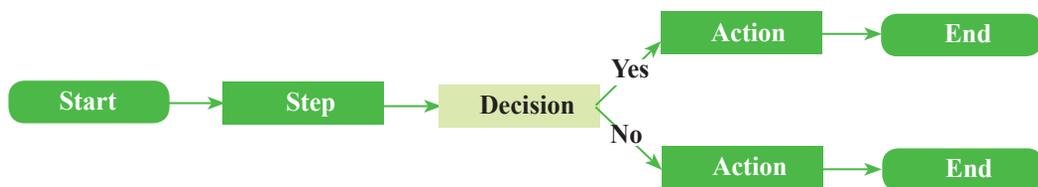


Fig. 5.22 : Flow Chart

2. **Presentations** – Over the years with the evolution of Microsoft Power Point the concept of using presentations have gained importance. It is used by almost all the departments across all the organizations in the globe. Moreover, delivering presentations is actually considered a skill.

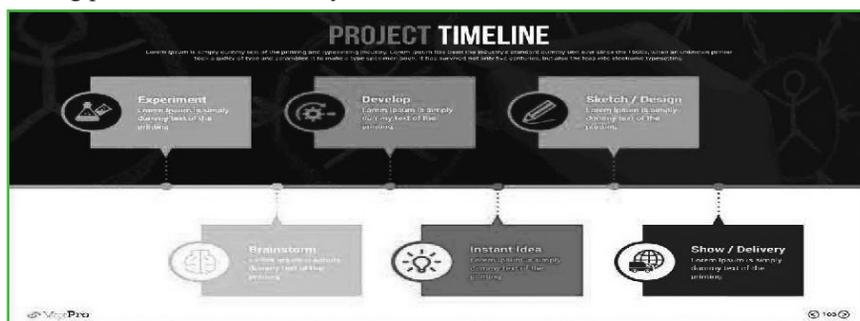
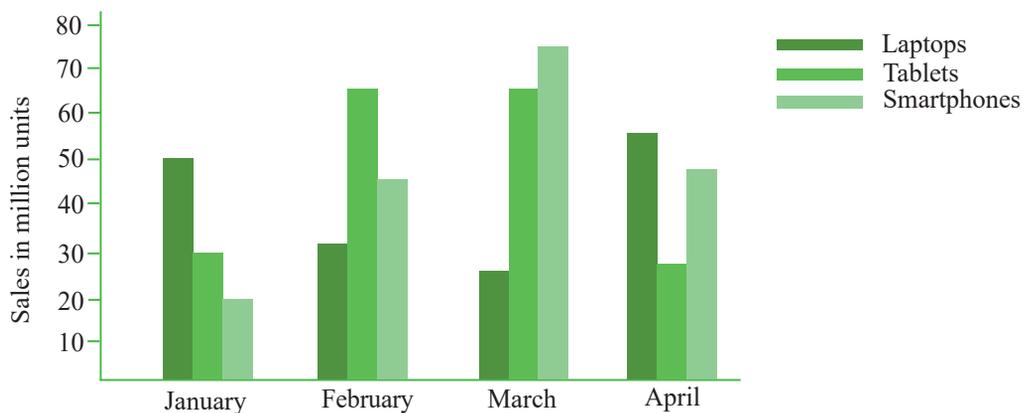


Fig. 5.23 : A sample presentation template

- Colour Coding** – Colour coding is commonly generally used to highlight certain important documents or matters of significance in a document. This is done by assigning colours. For example: Highlighted in red could mean matters requiring urgent attention and needs to be checked. Blue could mean matters of considerably lower significance and green means a desirable situation.
- Tables and Graphs** – Graphs and tables are used to summarize huge volumes of sales, financial and HR reports. Tables make it easy to understand the break up and summarize the contents of a long cumbersome reports, tables in MS excel or spreadsheets also make it easy to run calculations and create reports. Graphs are imagery representations of a table or a huge bulk of data. Using graphs makes it easier to understand and interpret data which could otherwise be hectic and time consuming.

#### Tabular representation of departmental expenses of Plant 1 & Plant 2:

| Department | Expenses (Lakhs) |         |
|------------|------------------|---------|
|            | Plant 1          | Plant 2 |
| Finance    | 55               | 48      |
| Production | 42               | 38      |
| Marketing  | 32               | 59      |



**Fig. 5.24 : The Online Sales of Smartphones, Laptops and Tablets in the First Quarter of 2019**

- Motion Graphics** – These days organizations also rely upon short videos which are usually in an animated or documentary form to explain, train and summarize the content of what is to be communicated. These are commonly used in training processes, product launch, introducing a new plan of action or process or a new machinery and in meetings to get the attention of everyone in the room.

#### Advantages of using graphic elements

- Using spreadsheet tools to design tables not only summarize the data but also allows the user to perform mathematical calculations and draw reports.
- Charts and tables are easy to explain, understand and interpret.
- Graphic elements help save time.
- Using animated videos and graphics help to draw the attention of listeners.
- It makes reports and data more presentable and colourful.

### **Disadvantages of using graphic elements**

- Not everyone can easily understand and interpret a flowchart.
- People who are not tech-savvy may find it difficult and overwhelming.
- Designing videos is a very time-consuming process.
- Theoretical data cannot be easily graphically represented.
- Video designing and editing tools are expensive.
- Specialized knowledge is required to create motion graphics and videos and it cannot be done by everyone.

### **Referencing**

As businesses diversify and expand operations it becomes essential for businesses to provide continuous reports to their stakeholders. These reports could be in the form of journals, press release statements, bi-monthly or quarterly magazines. Hence, it is essential to ensure that the reports presented to the stakeholders of the organization are true and are not plagiarised or window dressed. As a result, the concept of referencing becomes essential. Referencing will help provide a trail to the original source document and act as supporting evidence to the report.

### **Features of Referencing**

- Referencing helps to avoid plagiarism by making it clear which ideas are original and which belong to someone else.
- Proper referencing shows your understanding of the topic
- Referencing provides supporting evidence for ideas, arguments and opinions
- Allows third parties to identify the sources that were have used while drafting the document.

### **Advantages of Referencing**

The advantages of referencing include the following:

- Using good references improves the quality of work. Often editors and publishers determine the quality of write-ups and research papers depending upon the references used and the quality of the bibliography.
- Writers often can get new ideas and learn about the short-comings that they might encounter while proceeding with their topics or ideas and hence it is a time saving process.
- It is the basis of research using secondary data.
- It acts as a protection of the authors right of copywriting and protection against plagiarism.

### **Disadvantages of Referencing**

- References sometimes leads to misleading or inadequate information
- Sometimes the referencing styles and techniques might be complicated to understand and interpret.
- Too much referencing can lead to lack of originality.
- It brings about rigidity in research and is time consuming process.

## Exercise

### Multiple Choice Questions (MCQs)

1. Communication that originates at a lower level and flows to a higher level is called -
  - a) Upward Communication
  - b) Diagonal Communication
  - c) Downward Communication
  - d) None of the above
2. Communication among employees at the same level in the organizational structure is called -
  - a) Grapevine Communication
  - b) Diagonal Communication
  - c) Lateral Communication
  - d) None of the above
3. Which of the following should be avoided in the Group discussion?
  - a) Positive body language
  - b) Leadership initiative
  - c) False statements
  - d) Confidence
4. Which business communication usage provides a bird's eye view on a matter?
  - a) Speech
  - b) Group Discussion
  - c) Debate
  - d) Presentation
5. How many types of communication takes place in an organisation?
  - a) 5
  - b) 1
  - c) 3
  - d) 4
6. In which business communication, a speaker has to clearly speak for or against a topic?
  - a) Presentation
  - b) Debate
  - c) Speech
  - d) Group discussion
7. Includes face to face interaction with customers for closing the sale?
  - a) Sales promotion

- b) Advertising
  - c) Direct marketing
  - d) Personal Selling
8. Use of coupons and samples come under which mode of marketing communication?
- a) Sales promotion
  - b) Advertising
  - c) Personal selling
  - d) Direct marketing
9. What is the situation called when a bad image of the company is created?
- a) Positive PR
  - b) Negative PR
  - c) Customer service
  - d) Promotion
10. Business communications help in establishing \_\_\_\_\_ when marketing?
- a) Professionalism
  - b) Rudeness
  - c) Negativity
  - d) Casualness
11. Participants involved in the process of communication must be \_\_\_\_\_.
- a) Judgemental
  - b) Open-minded
  - c) Both a and b
  - d) None of the above
12. Which of the following is not one of the 8C's of communication?
- a) Curiousness
  - b) Conciseness
  - c) Considerate
  - d) Concreteness
13. Need of proper grammar and syntax comes under which C of communication?
- a) Completeness
  - b) Coherence
  - c) Courteous
  - d) Correctness

14. If a message is short and to the point, the message is said to be \_\_\_\_\_?
- Correct
  - Concise
  - Coherent
  - Complete
15. The way the information is described or translated into a message and put in verbal or non-verbal medium is called \_\_\_\_\_.
- Feedback
  - Decoding
  - Encoding
  - None of the above
16. Affirming comments with regard to future behaviour is called \_\_\_\_\_.
- Positive Feedback
  - Negative Feedforward
  - Positive Feedforward
  - Decoding
17. Corrective comments with regard to past behaviour -
- Encoding
  - Positive Feedback
  - Negative Feedforward
  - Negative Feedback
18. Interpretation and conversion of information communicated into the intelligible form so that the recipient can fully understand the true meaning of the information is called \_\_\_\_\_.
- Decoding
  - Encoding
  - Feedback
  - None of the above
19. What is the first step of communication process?
- Encoding
  - Transmitting
  - Decoding
  - Developing an idea
20. Method of delivering the message is known as \_\_\_\_\_?
- Receiver
  - Channel

- c) Sender
  - d) Feedback
21. Feedback is needed in which way communication?
- a) One-way
  - b) Two-way
  - c) Both a and b
  - d) None of the above
22. Communication happens when a person randomly chooses some persons to pass on the information which is of little interest but not important.
- a) Gossip Chain
  - b) Cluster Chain
  - c) Probability Chain
  - d) None of the above
23. The communication starts when a person tells something to a group of people, and then they pass on the information to some more people and in this way the information is passed on to everyone.
- a) Gossip Chain
  - b) Probability Chain
  - c) Either (a) or (b)
  - d) None of the above
24. Which of the following is not an advantage of formal communication?
- a) Reliable
  - b) Fast
  - c) Secrecy
  - d) None of the above
25. At which stage the communicator focuses on correcting the grammar, spellings and punctuations?
- a) Proof Reading
  - b) Revising and editing
  - c) Either (a) or (b)
  - d) None of the above
26. Study of body language of a person is called \_\_\_\_\_.
- a) Kinesics
  - b) Chronemics
  - c) Paralanguage
  - d) None of the above

27. A cloud computing is availability of computer resources?
- a) Off demand
  - b) From demand
  - c) On demand
  - d) None of the above
28. The cost incurred in interacting with customers via video call has been \_\_\_\_\_?
- a) Constant
  - b) Reduced
  - c) Increased
  - d) None of the above
29. Providing Frequently Asked Questions (FAQs) to customers result in which of the following benefits of internet communication?
- a) Support care
  - b) Professional presentation
  - c) Personal touch
  - d) None of the above
30. Professional behaviour includes behave in a \_\_\_\_\_ manner in the workplace?
- a) Neutral
  - b) Positive
  - c) Negative
  - d) None of the above
31. Business attire refers to \_\_\_\_\_ in a professional conduct?
- a) Manners
  - b) Qualities
  - c) Clothing
  - d) None of the above
32. It is to interrupt people while they are speaking?
- a) Polite
  - b) Desirable
  - c) Rude
  - d) None of the above
33. At the end of the day, who needs to be satisfied?
- a) Company
  - b) Customers

- c) Suppliers
  - d) None of the above
34. Writing is \_\_\_\_\_ in nature?
- a) Personal
  - b) Impersonal
  - c) Neutral
  - d) None of the above
35. Which of the following skills is the most important for professionals like editors?
- a) Oral skills
  - b) Writing Skills
  - c) Presenting skills
  - d) None of the above
36. In which type of letter, buyers want to know the price and quality of the goods they are willing to buy?
- a) Quotation
  - b) Enquiry
  - c) Complaint
  - d) Order
37. How many reports are there on the basis of legality?
- a) 2
  - b) 3
  - c) 1
  - d) None of the above
38. A stage wherein member have spotted the differences in their cultures and they look upon these differences as negatives is called \_\_\_\_\_.
- a) Minimization
  - b) Integration
  - c) Denial
  - d) None of the above
39. Mr. A and Mr. B belong to two distinct cultural backgrounds. Mr. B believes that his culture is superior compared to the culture of Mr. A. This phenomenon is known as \_\_\_\_\_.
- a) Defence
  - b) Ethnocentrism
  - c) Denial
  - d) None of the above

40. \_\_\_\_\_ stage at which members learn to accept each other's culture however they still remain devoted to their own respective cultures
- Adoption
  - Integration
  - Denial
  - Minimization
41. Recognizing the different types of cultures, the similarities and differences between them without being judgemental is called \_\_\_\_\_.
- Acceptance
  - Cultural Sensitivity
  - Adoption
  - Integration
42. Which of the following is not an example of a physical communication barrier?
- Telephonic Disturbances
  - Distance
  - Background noises
  - Language
43. Excessive usage of technical jargons and double meaning words are what type of barrier?
- Semantic Barriers
  - Psychological Barriers
  - Physical Barriers
  - None of the above
44. Information Overload is when \_\_\_\_\_.
- Listener gets inadequate information
  - Listener gets too much information
  - Listener gets adequate information
  - Listener is inattentive

### State True or False

- The word 'communicare' means share.
- Communication that arises out of social relationships is called Vertical Communication.
- Television and radio advertising are examples of Broadcast advertising.
- Advertising is derived from latin word "Venalicium".
- Employee disengagement is a result of Poor communication.
- On way communication process is a Circular model.
- The use of touch in communication is called Haptics.
- Chain of command means Levels of authority.

9. Social media post is a written type of communication.
10. Statutory reports are required to be prepared and submitted periodically on matters required by the organization.

**Fill in the blanks:**

1. Reaching before or on time at meeting reflects \_\_\_\_\_.
2. Audience which are easy to deal are known as \_\_\_\_\_.
3. When a particular trait of a person outweighs the other traits, it is said to be \_\_\_\_\_.
4. \_\_\_\_\_ are a form of written or oral communications wherein the seller warns the buyers.
5. \_\_\_\_\_ and \_\_\_\_\_ are similar to one another.
6. A \_\_\_\_\_ is a step-by-step breakdown of a long cumbersome process.
7. The process of using colours to highlight certain important documents or matters of significance in a document is called \_\_\_\_\_.
8. \_\_\_\_\_ are imagery representations of a huge bulk of data.
9. \_\_\_\_\_ helps to provide a trail to the original source document and act as supporting evidence to a given document.
10. An animated video used to summarize the content of what is to be communicated is called \_\_\_\_\_.

**Answers**

**Multiple Choice Questions (MCQ):**

|    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| a  | c  | c  | d  | a  | b  | d  | a  | b  | a  | b  | a  | d  | b  | c  | c  | c  | a  | d  | b  |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 |
| b  | c  | a  | c  | b  | a  | c  | c  | a  | b  | c  | c  | c  | a  | b  | b  | a  | d  | b  | a  |
| 41 | 42 | 43 | 44 |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| b  | d  | a  | b  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |

**State True or False**

|   |   |   |   |   |   |   |   |   |    |
|---|---|---|---|---|---|---|---|---|----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| T | F | T | F | T | F | T | T | T | T  |

**Fill in the blanks:**

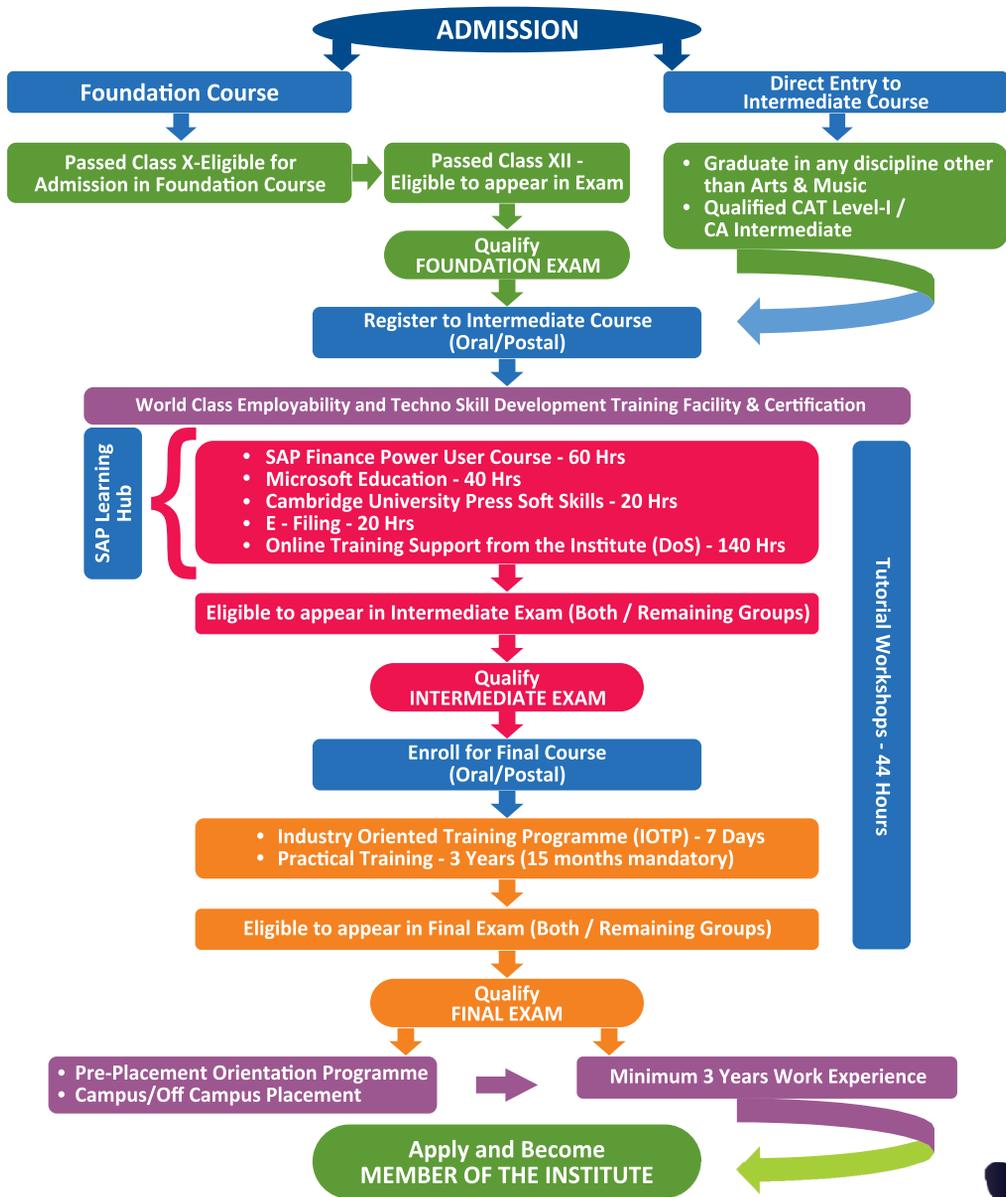
|   |   |    |                    |
|---|---|----|--------------------|
| 1 | Courtesy                                | 2  | Apathetic          |
| 3 | Halo Effect                             | 4  | Product Disclaimer |
| 5 | Legal Disclosure and Product Disclaimer | 6  | Flowchart          |
| 7 | Colour Coding                           | 8  | Graphs             |
| 9 | Reference                               | 10 | Motion Graphics    |





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