

Syllabus: Indian Contract Act 1872 – Definition of Contract, Essentials of Valid Contract, Classification of Contract, Breach of Contract and Remedies to Breach of Contract.

Introduction to Indian Contract Act of 1872

The law relating to contracts in India is contained in **Indian Contract Act, 1872**. The Act was passed by British India and is based on the principles of English Common Law. It is applicable to all the States of India. It determines the circumstances in which promise made by the parties to a contract shall be legally binding on them.

All of us enter into a number of contracts everyday knowingly or unknowingly. Each contract creates some right and duties upon the contracting parties. Indian contract deals with the enforcement of these rights and duties upon the parties in India.

Indian Contract Act embodied the simple and elementary rules relating to Sale of goods and partnership. The developments of modern business world found the provisions contained in the Indian Contract Act inadequate to deal with the new regulations or give effect to the new principles.

Subsequently the provisions relating to the sale of goods and partnership contained in the Indian Contract Act were repealed respectively in the year 1930 and 1932 and new enactments namely Sale of Goods and Movables Act 1930 and Indian Partnership act 1932 were re-enacted.

- **What is contract?**

An agreement, signed by 2 or more people, both should have capacity also there has to be consent which is free and exchange consideration

- **Definition of contract – Section 2(h)**

According to Section 2(h) of Indian Contract Act of 1872, Contract is defined as “An agreement enforceable by law”.

2 elements or components of contract

- ✓ Agreement – 2 or more persons, legal binding, rights are acquired
- ✓ Enforceability – Accepted by law/ Permission from law

“All Contracts are Agreements, but all agreements are not Contract”



Two types of obligation

- Social obligation – Social relationship Ex: Father & Daughter, Mother & Son etc.
- Legal obligation – Legal relationship Ex: Doctor & Patient, Banker & Customer, Debtor & Creditor etc.

Definitions

- Section 2(a) – Offer/ Proposal
 - Section 2(b) – Acceptance/ Promise
 - Section 2 (c) - Promisor and Promisee
 - Section 2(d) – Consideration/ Quid – Pro – Quo
 - Section 2(e) – Agreement
 - Section 2(h) – Contract
- According to Section 2(a) of Indian Contract Act of 1872, **Offer** is defined as, “When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other person either to such act or abstinence, he is said to make a **proposal**”. [Offeror & Offeree]
 - According to Section 2(b) of Indian Contract Act of 1872, **Acceptance** is defined as, “When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a **promise**.”
 - According to Section 2(c) of Indian Contract Act of 1872, **Promisor and Promisee** is defined as, “When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.”
 - According to Section 2(d) of Indian Contract Act of 1872, **Consideration** is defined as, “When at the desire of the promisor, the promisee or any other person has done or abstained from doing something or does or abstains from doing something or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise. Price paid by the one party for the promise of the other technical word meaning QUID-PRO-QUO i.e., something in return.
 - According to Section 2(e) of Indian Contract Act of 1872, Agreement is defined as, "Every promise and every set of promises, forming the consideration for each other."

In short, { Agreement = offer + acceptance }.

- According to Section 2(h) of Indian Contract Act of 1872, Contract is defined as “An agreement enforceable by law”.

ESSENTIALS/FEATURES/COMPONENTS OF A VALID CONTRACT

- | | |
|-------------------------|---|
| 1) Offer and Acceptance | 6) Intention to create Legal relationship |
| 2) Lawful Consideration | 7) Certainty of meaning |
| 3) Capacity of Contract | 8) Possibility of performance |
| 4) Free consent | 9) Agreement not expressly declared to be void or illegal |
| 5) Lawful object | 10) Legal formalities |

1. Offer and Acceptance

- According to Section 2(a) of Indian Contract Act of 1872, **Offer** is defined as, “When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other person either to such act or abstinence, he is said to make a **proposal**”.

[Offeror & Offeree]

- According to Section 2(b) of Indian Contract Act of 1872, **Acceptance** is defined as, “When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a **promise**.”

- According to Section 2(c) of Indian Contract Act of 1872, **Promisor and Promisee** is defined as, “When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.”

Ex: Mr. A offered to Mr. B to sell his house for ₹. 50,000 & Mr. B accepted the same

2. Consideration

- According to Section 2(d) of Indian Contract Act of 1872, **Consideration** is defined as, “When at the desire of the promisor, the promisee or any other person has done or abstained from doing something or does or abstains from doing something or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise.

Price paid by the one party for the promise of the other. **QUID-PRO-QUO** i.e., something in return.

Ex: Mr. A agreed to sell his house for ₹. 50,000 to Mr. B. It can be said that house is a consideration for Mr. B and ₹. 50,000 is consideration for Mr. A

3. Capacity of Contract

The parties to an agreement must be competent to contract. If either of the parties does not have the capacity to contract, then it cannot be enforced by a court of law. The following persons are incompetent to contract

- Minors,
- Person of unsound mind,
- Persons disqualified by law

4. Free consent

- Free consent of all the parties to an agreement is another essential element of a valid contract. Consent means the parties must have agreed upon the **same thing in the same sense** [**Consensus – ad – idem**]
- Consent is said to be free when it is not caused by **Coercion, Fraud, undue influence, Misrepresentation and Mistake**. If the agreement is ineffective by any of the first four factors, the contract is **voidable** and cannot be enforced by law. If agreement is induced by mutual mistake which is material to the agreement, it would be void.

Ex: Mr. A who owns two cars, one Maruthi & other Santro, offers to sell Mr. B one car, Mr. A intending it to be the Maruthi. Mr. B accepts the offer thinking that it is the Santro, there is no consent & hence no contract.

5. Lawful object

- For the formation of valid contract, it is also necessary that the parties must agree for the lawful object. The object of the agreement must not be **forbidden by law, fraudulent, involves an injury to the person or property of any other, immoral or oppose to public policy**. If the object is unlawful for one of the above reasons, then the agreement is void.

Ex: Mr. A hired a house from Mr. B for use of his house for gambling purpose. The object is said to be unlawful and hence he cannot recover the rent through court of law.

6. Intention to create Legal relationship

- When the two parties enter into an agreement, their intention must be to create legal relationship between them. If there is no such intention on the part of the parties there is no contract between them. Thus, an agreement to buy and sell the goods intends to create legal obligation and hence it is a contract.

Ex: An agreement to have lunch at a friend's house is not an agreement intending to create legal relationship.

7. Certainty of meaning

- The terms of agreement must be certain and not vague or indefinite. It must be possible to ascertain the meaning of the agreement or otherwise it cannot be enforced.

Ex: Mr. A agrees to sell Mr. B 100 tons of oil. Here the terms are not clear in relation to what type of oil would be sold.

8. Possibility of performance

Another essential feature of valid contract is that it must be capable of performing. An agreement to do an act impossible is itself void. If the act is impossible in itself, physically or legally it cannot be enforced by law.

Ex: Mr. A agrees with Mr. B to discover treasure by magic. Such agreement is not enforceable.

9. Agreement not expressly declared to be void or illegal

The agreement must not have been expressly declared to be void under the act. Section 24 -30 specify certain types of agreements which have been expressly declared to be void. The agreement though satisfying all the conditions for a valid contract must not have been expressly declared void by any law in force in the country.

Ex: Mr. A agreed to pay Rs. 5,000, if Mr. B does not marry in his life and Mr. B agreed. The agreement is in restraint of marriage and hence void.

10. Legal formalities

A contract may be made by words spoken or written. In India, writing is required in cases of sale, lease, gift of immovable property etc. other formalities which may be required are stamping, registration etc.

CLASSIFICATION OF CONTRACT

BASED ON FORMATION	BASED ON VALIDITY	BASED ON PERFORMANCE
<ul style="list-style-type: none"> • Express contract • Implied contract • Quasi contract • Contingent contract 	<ul style="list-style-type: none"> • Valid contract • Void contract • Voidable contract • Illegal contract • Unenforceable contract 	<ul style="list-style-type: none"> • Executed contract • Executory contract • Unilateral contract • Bi – lateral contract

I. BASED ON FORMATION

(i) **Express contract:** If the terms are expressly agreed upon at the time of formation of the contract, the contract is said to be expressed contract. The terms of contract may be written or oral.

Ex: Mr. A says to Mr. B ‘will you purchase my bike for Rs.20,000?’ Mr. B says to Mr. A “Yes” (Expression is Oral)

Mr. A writes a letter/mail to Mr. B ‘will you purchase my bike for Rs. 20,000? Mr. B replies ‘Yes” to Mr. A by writing a return mail/ letter

(ii) Implied contract: It is one which is inferred from the acts or conduct of the parties or from the circumstances of the cases. Where a proposal or acceptance is made otherwise than in words, promise is said to be implied.

Ex: Mr. X stops a taxi by waving his hand and takes his seat. There is an implied contract that Mr. X will pay the prescribed fare

(iii) Quasi contract: A quasi contract is created by law. Thus, quasi contracts are strictly not contracting as there is no intention of parties to enter into a contract. It is legal obligation which is imposed on a party who is required to perform it. A quasi contract is based on the principle that a person shall not be allowed to enrich himself at the expense of another.

Ex: If Mr. A leaves his goods at Mr. B's shop by mistake, then it is the duty for Mr. B to return the goods or to compensate the price. In fact, these contracts depend on the principle that nobody will be allowed to become rich at the expenses of the other.

(iv) Contingent contract: These are those contracts where a **promise is conditional and based on some happening and non-happening of some uncertain future event**, the contract shall perform. The contracts of insurance, guarantee, and insurance are some examples of contingent contracts.

Ex: Raj contracts to pay Shyam Rs 50,000 if Shyam's shop is burnt. This is contingent.

II. BASED ON VALIDITY

- **Valid contract:** An agreement which satisfies all the requirements prescribed by law on the basis of creation (or) An agreement which has all the essential elements of a contract is called a valid contract. A valid contract can be enforced by law.
- **Void contract:** A void contract is a contract which ceases to be enforceable by law. The word 'void' means 'not binding in law'. A contract ceases to be enforceable by law becomes void. A contract when originally entered into may be valid and binding on the parties. It may subsequently become void.
Ex: Contract to import goods from a foreign country will become void, when war breaks out between the importing and exporting country.
- **Voidable contract:** An agreement which is enforceable by law at the option of one or more of the parties but not at the option of the other or others is a voidable contract. Result of coercion, undue influence, fraud and misrepresentation. When a contract is entered into without the free consent of the party, it is considered a voidable contract. A voidable contract may be considered valid if it is not cancelled by the aggrieved (injured/hurt) party within a reasonable time.

Ex: Minors who have signed a contract can walk away at any time because they did not have the legal ability to enter this agreement. If one party was tricked or forced into signing, the contract is voidable. It is also voidable if one or more parties was under the influence of drugs or alcohol when signing.

- **Illegal contract:** An illegal contract is an agreement that would require one person entering into it to break the law to perform their rights and responsibilities. A contract that opposes public policy can also be deemed an illegal contract. *Ex: An agreement to sell narcotics, which is illegal. If the contract were brought to court, the contract would be illegal and unenforceable.*
- **Unenforceable contract:** An unenforceable contract is a contract that is valid but is unable to be enforced in a court of law. This can be due to the lack of a vital legal requirement or evidence. *Ex: The Stamp Act requires that all insurance policy require a stamp and if not stamped the contract can still be valid but would be unable to be enforced.*

III. BASED ON PERFORMANCE

- **Executed contract:** A contract in which both the parties have fulfilled their obligations under the contract (or) an executed contract is one in which both the parties have performed their respective obligation. *Ex: A contracts to buy a car from B by paying cash, B instantly delivers his car.*
- **Executory contract:** A contract in which both the parties have still to fulfil their obligations. An executory contract is one where one or both the parties to the contract have still to perform their obligations in future. Thus, a contract which is partially performed or wholly unperformed is termed as executory contract. *Ex: D agrees to buy V's cycle by promising to pay cash on 15th July. V agrees to deliver the cycle on 20th July.*
- **Unilateral contract:** A unilateral contract is one in which only one party has to perform his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence. A unilateral contract is a one-sided contract in which only one party has to perform his promise or obligation to the forbear. *Ex: A wants to get his room painted. He offers Rs.500 to B for this purpose B says to A “ if I have spare time on next Sunday I will paint your room”. There is a promise by A to pay Rs 500 to B. If B is able to spare time to paint A's room. However, there is no promise by B to Paint the house. There is only one promise.*

- **Bi – lateral contract:** A bilateral contract is one in which the obligation on both the parties to the contract is outstanding at the time of the formation of the contract. Bilateral contracts are also known as contracts with executory consideration. A contract in which both the parties commit to perform their respective promises is called a bilateral contract.

Ex: A offers to sell his fiat car to B for Rs.1,00,000 on acceptance of A's offer by B, there is a promise by A to Sell the car and there is a promise by B to purchase the car there are two promise.

OFFER / PROPOSAL – SECTION 2(a)

According to Section 2(a) of Indian Contract Act of 1872, **Offer** is defined as, “When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other person either to such act or abstinence, he is said to make a **proposal**”.

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| 1) Express offer | 4) Specific offer | 7) Counter offer |
| 2) Implied offer | 5) Standing/ Open offer | |
| 3) General offer | 6) Cross offer | |

1) **Express offer:** When the offeror expressly communicates the offer, the offer is said to be an express offer the express communication of the offer may be made by,

- Spoken word
- Written word

2) **Implied offer:** When the offer is not communicated expressly. An offer may be implied from: -

- The conduct of the parties or
- The circumstances of the case

3) **General offer:** This is made to public in general. It means an offer which is made to the public in general. General offer can be accepted by anyone. If offeree fulfil the term and condition which is given in offer then offer is accepted. Communication of acceptance is not necessary in case of general offer. *Carlil Vs Carbolic Smokeball Company*

4) **Specific offer:** It means an offer made in

- (a) A particular person or
- (b) A group of persons: It can be accepted only by that person to whom it is made. Communication of acceptance is necessary in case of specific offer.

5) **Standing / Open and Continuous offer:** An offer is allowed to remain open for acceptance over a period of time is known as standing, open or continuous offer.

Ex: Tender for supply of goods is a kind of standing offer.

6) **Cross offer:** Where two parties make identical offers to each other, in ignorance of each other’s offer, the offers are known as cross-offers. Two cross offers do not conclude a contract.

Ex: Sai makes an offer to Chandu to sell him a pen at RS 200 and on the same time without knowing the offer, Chandu makes the offer on the same object to Sai. So here the parties are same, the object or the thing is also same and it was made by the Chandu to Sai without knowledge. Therefore, it is said to be cross offer.

7) Counter offer: When the offeree gives qualified acceptance of the offer subject to modified and variations in the terms of original offer. Counter offer amounts to rejection of the original offer.

Hyde Vs Wrench

Legal effect of counter offer: -

- (1) Rejection of original offer
- (2) The original offer is lapsed
- (3) A counter offer result is a new offer.

In other words, an offer made by the offeree in return of the original offer is called as a counter offer.

Ex: A offered to sell his pen to B for Rs.1,000. B replied, "I am ready to pay Rs.950." On A's refusal to sell at this price, B agreed to pay Rs.1,000. Held, there was not contract as the acceptance to buy it for Rs.950 was a counter offer, i.e., rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound to give his acceptance.

ESSENTIALS OF A VALID OFFER

1. Creating legal relationship / Social offer - Balfour Vs Balfour
 2. Terms must be definite
 3. Offer must be made to obtain the assent
 4. Offer must be communicated -
 - o Fitch Vs Snedkar
 - o Lalman Shukla Vs Gauridutt
 5. Offer with special conditions – (Thompson Vs L.M & S Railway company)
 6. Offer should not contain a term, the non-compliance of which may be assumed to, amount to acceptance
 7. A statement of price is not an offer. (Harvey Vs Facey)
- 1. Creating legal relationship / Social offer - Balfour Vs Balfour:** A valid offer creates a legal relationship which means there must be an intention of the offeror to work under legal obligation or to be legally bounded by law not under social obligation. The offer must lead to a contract that creates legal relations and legal consequences in case of non-performance. So, a social contract which does not create legal relations will not be a valid offer.
- Ex: A dinner invitation extended by A to B is not a valid offer.*
- 2. Terms must be definite:** The terms of the offer or proposal should be very clear and definite. The offer should not be **vague, ambiguous and indefinite**. If the terms are vague or unclear, it will not amount to a valid offer because there will be no acceptance from the offeree due to a lack of clarity.

Ex: A offers to sell B fruits worth Rs 5000/-. This is not a valid offer since what kinds of fruits or their specific quantities are not mentioned.

3. Offer must be made to obtain the assent: The offer can only be valid when the offeror has the intention to obtain the assent of the offeree. Mere telling any statement is not an offer.

Ex: Ram said I want to go on a bike trip to Leh Ladakh. This is not an offer as Ram is just telling his wish. This would become an offer when Ram says, "would you like to come with me on a bike trip to Leh Ladakh?"

4. Offer must be communicated: Communication of offer is the most primary thing which is to be done for a valid offer. The offeror must communicate offer to the offeree. The communication can be either in oral or written form. The offer can directly communicate to the person specific to whom it is offered or it can be in general in nature.

- Fitch Vs Snedkar
- Lalman Shukla Vs Gauridutt

5. Offer with special conditions - Thompson Vs L.M & S Railway company: The offeror can put any condition in the offer. This means an offer can be conditional also. The offeror can make the offer subject to any terms or conditions he deems necessary.

Ex: Ram made an offer to Shyam to buy his watch. He put a condition to pay the amount by electronic mode instead of cash.

6. Offer should not contain a term, the non-compliance of which may be assumed to, amount to acceptance: The non-compliance of any terms of the offer cannot lead to automatic acceptance of the offer. Hence it cannot say that if acceptance is not communicated by a certain time, it will be considered as accepted.

Ex: A offers to sell his cow to B for 5000/-. If the offer is not rejected by Monday, it will be considered as accepted. This is not a valid offer.

7. A statement of price is not an offer - Harvey Vs Facey: A mere statement of price is not an offer to sell.

What is the difference between an offer and Invitation for offer?

- The offer and invitation to an offer both are distinct words. An offer is a process to express the willingness on any act to obtain assent from another person on such act whereas
- in the invitation to the offer the person doesn't make an offer by himself but invites the other people to make an offer. This is the step precedent to the offer to induce an offer.
- For example: A suit was displayed with a price tag in a shop. This is not an offer it is invitation to offer.

ACCEPTANCE or PROMISE – Section 2 [b]

According to Section 2(b) of Indian Contract Act of 1872, **Acceptance** is defined as, “When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a **promise**”.

According to Section 2(c) of Indian Contract Act of 1872, **Promisor and Promisee** is defined as, “When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.”

ESSENTIALS OF VALID ACCEPTANCE

1. Must be absolute and unqualified
2. Communicated to Offeror – [**V Rao Vs A Rao**]
3. Made in prescribed manner or reasonable mode – [**Surendarnath Vs Kedarnath**]
4. Acceptance when offer is in force / Acceptance within reasonable time
5. Acceptance must be preceded by offer
6. Mere mental acceptance is no acceptance / Must indicate intention – **Harvey Vs Facie**
7. Acceptance by a definite person / Must be communicated by person to whom offer has been made
8. Acceptance of proposal / Must be given before time lapses or is withdrawn
9. Silence is not an acceptance / Cannot be implied by silence

1. Must be absolute and unqualified: The acceptance must confirm to all terms of the offer. In order to be binding, it must be absolute and unqualified in respect of all the terms of the offer. If the parties are not ad idem on all matters concerning the offer and acceptance, there is no contract.

- Material / Immaterial fact
- Major / Minor
- Conditions, Variations and Reservations

2. Communicated to Offeror – [V Rao Vs A Rao]: To conclude a contract between two parties, the acceptance must be communicated in some definite form. When there is no external expression of the intention to do so, it is not sufficient. Mental resolve is no acceptance.

3. Made in prescribed manner or reasonable mode – [Surendarnath Vs Kedarnath]: The acceptance must be according to the mode prescribed or usual and reasonable mode. If acceptance is not in prescribed or reasonable mode offeror must intimate acceptor insisting acceptance in prescribed mode, if acceptor is not informed, it is deemed acceptance.

4. Acceptance when offer is in force / Acceptance within reasonable time: If any time limit is prescribed the acceptance must be given during that time. If no time limit is given, then the acceptance must be within reasonable time.

5. Acceptance must be preceded by offer: Acceptance cannot precede offer. If it precedes the offer, it becomes an invalid acceptance.

6. Mere mental acceptance is no acceptance / Must indicate intention – Harvey Vs Facie: It must show an intention on the part of the acceptor to fulfill the terms of the promise. If not, such intention is present, the acceptance is not valid.

7. Acceptance by a definite person / Must be communicated by person to whom offer has been made: The acceptance must be given by the party or parties to whom the offer is made. Acceptance by another person or unauthorized person is invalid.

8. Acceptance of proposal / Must be given before time lapses or is withdrawn: It must be given before the offer lapses or before the offer is withdrawn.

9. Silence is not an acceptance / Cannot be implied by silence: The acceptance of an offer cannot be implied from silence of offeree or his failure to answer, unless the offeree has by his previous conduct indicated that his silence means that he accepts.

CONSIDERATION - QUID-PRO-QUO

According to Section 2(d) of Indian Contract Act of 1872, **Consideration** is defined as, “When at the desire of the promisor, the promisee or any other person has **done** or abstained from doing something or **does** or abstains from doing something or **promises to do** or abstain from doing something, such act or abstinence or promise is called a consideration for the promise.

Price paid by the one party for the promise of the other. **QUID-PRO-QUO** i.e., something in return.

LEGAL RULES/ ESSENTIALS OF A VALID CONSIDERATION

- 1) Consideration must move at the desire of the promisor
- 2) Consideration may move from promisee or any other person
- 3) Consideration may be past, present or future
- 4) Consideration need not be adequate
- 5) Consideration must be real and not illusory
- 6) Consideration maybe an act, abstinence or forbearance or a return promise
- 7) Performance of an existing obligation is no consideration
- 8) Consideration must not be illegal, immoral or opposed to public policy

1) Consideration must move at the desire of the promisor – [Durga prasad Vs Bal Deo]: If the consideration is paid at the instance of third party or without the desire of promisor it is not good consideration.

2) Consideration may move from promisee or any other person -

English law – Consideration only from promisee (not from a stranger)

Indian law – Promisee or any other person (stranger)

3) Consideration may be past, present or future – The words used in sec 2 (d) are.... Has done or abstained from doing (past), does or abstains from doing (present), promises to do or abstain from doing something (future)

- **Past consideration:** When consideration by a party for a present promise was given in past i.e., before the time of the promise, it is said to be the past consideration (Ex: action performed earlier before the consideration)
- **Present or Executed consideration:** When consideration is given simultaneously with the promise i.e., at the time of the promise, it is said to be the present consideration (Ex: COD)
- **Future or Executory consideration:** When the consideration from one party to the other is to pass subsequently to the making of the contract. (Ex: action and consideration exchanged on a future date)

4) Consideration need not be adequate- It is not the province of Court to see whether every person making a promise is deriving the maximum return or benefit for it.

5) Consideration must be real and not illusory -

- Physical impossibility
- Legal impossibility
- Uncertain considerations
- Illusory considerations

6) Consideration maybe an act, abstinence or forbearance or a return promise - The term forbearance to sue means that, the plaintiff has a right of action against the defendant or any other person, and on a promise by the defendant, he (plaintiff) refrains from bringing the legal action. The forbearance to sue is regarded as a valid consideration.

7) Performance of an existing obligation is no consideration – A promise to do what one is already bound to do, either by general law or under an existing contract, is not a consideration for a new promise, since it adds nothing to the preexisting legal or contractual obligation.

Ex: A promise to perform public duty by a public servant is not a consideration.

8) Consideration must not be illegal, immoral or opposed to public policy- Consideration given for an agreement must not be unlawful or illegal.

Doctrine of Privity of Contract

- The Indian Contract Act, 1872, allows the ‘Consideration’ for an agreement to proceed from a third-party. However, a stranger (third-party) to consideration is different from a stranger to a contract. The law does not allow a stranger to file a suit on the contract. This right is available only to a person who is a party to the contract and is called Doctrine of Privity of Contract.

Let’s understand this with the help of an example:

- Peter has borrowed some money from John.
- Peter owns a property and decides to sell it to Arjun.
- Arjun promises to pay John on behalf of Peter.

However, if Arjun fails to pay, then John cannot sue since Arjun is a stranger to the contract. It is important to note that the Doctrine of Privity has exceptions which allow a stranger to enforce a claim

EXCEPTIONS TO THE RULE ‘NO CONSIDERATION, NO CONTRACT’

- 1) Natural love and affection
- 2) Voluntary compensation
- 3) Promise to pay time barred debts
- 4) Completed gifts
- 5) Agency

CAPACITY OF CONTRACT

One of the essential conditions for the enforceability of an agreement is that the concerned parties must be competent to enter into an agreement.

Section 10 requires the parties to be competent to make a valid contract. The section states that, “All agreements are contracts, if they are made by free consent of parties competent to contract”. Thus, an agreement is valid and enforceable only if the parties are competent to enter a valid contract.

Competence to contract is defined in **Section 11**.

Section 11: Every person is competent to contract who –

- a) Is of the age of majority
- b) Is of sound mind
- c) Is not disqualified from contracting by any law

Persons not competent to contract –

As per the statement of section 11 of the Indian contract act, the following persons are not competent to contract i.e., they are incapable of entering into a valid contract

- a) Minors
- b) Persons of unsound mind
- c) Persons disqualified by any law to which they are subject



I. MINORS

Indian Majority Act, 1875 – Section 3 specifies that-

1. A minor is person who has not completed 18 years of age
2. In following cases, a person attains majority on completion of 21 years of age:
 - a) Where guardian appointed for person or property of minor under the Guardians and Wards Act, 1890
 - b) Where superintendence of minor's property is under Court of Wards.

LEGAL RULES RELATING TO MINOR'S AGREEMENT

All the rules related to minor's agreement are based on the fundamental that '**Law always protects the minors.**

1. Agreement with or by a minor is void (void ab initio)
2. Minor can be a promisee or a beneficiary
3. Minor's agreement cannot be ratified by him
4. No estoppel against a minor
5. No specific performance of a minor's agreements
6. No compensation by minors (Doctrine of restitution)

7. Minor's property liable for necessities
8. Minor as a partner
9. The Minor as an agent
10. Minor as an insolvent
11. The minor can execute a negotiable instrument
12. The liability of minor's parents or guardians

1. Agreement with or by a minor is void (void ab initio/ to be treated as invalid): In India an agreement with or by a minor is **void ab initio** and inoperative as a minor has no capacity to enter into a contract. A minor is neither liable to perform what he has promised to do under a contract nor is he liable to repay money which he might have received under a contract. These agreements are considered to be nullity and non-existent in the eyes of law. These cannot be enforced against a minor. [Mohori Bibee V. Dhurmodas Ghose]

2. Minor can be a promisee or a beneficiary: A minor cannot be bound by contract but he can be a lawful beneficiary. Thus, a promissory note executed in favor of a minor can be enforced. An agreement is void against a minor but a minor can derive benefit under a contract. This privilege of minority is available to minor only. Another person cannot avoid the contract because the promisee is a minor. Thus, the minor can enforce the agreement against the other party.

3. Minor's agreement cannot be ratified by him: An agreement by a minor cannot be ratified by him on attaining the age of majority. The term 'ratification' may be defined as the act of confirming or approving. The **doctrine of no ratification** implies that an agreement made by a minor (during the period of minority), cannot be confirmed by him on attaining majority. This is so because minor's agreement is voidable ab initio (i.e., void from the very beginning) and, therefore, cannot be made valid by ratification. However, if the minor wants to carry out the agreement, a fresh agreement should be made on attaining majority, it may be noted that a new agreement will also require fresh consideration. **(It is an act of confirming one's own action that i.e., agreeing to act according to earlier commitment. Any rectification of an act relating after attaining majority is void)**

4. No estoppel against a minor: The term 'estoppel' may be defined as prevention of a claim or assertion by law. In other words, when someone makes another person to believe that a particular thing or fact is true, then later on he cannot be allowed to deny the truth of that thing. **(He is not stopped from pleading his infancy in order to avoid a contract)** It will be interesting to know that there is no such estoppel against the minor. In other words, when a minor fraudulently enters into a contract, representing that he is a major, but in reality, he is not, then later on he can plead his minority as a defence and cannot be stopped (i.e., prevented) from doing so.

5. No specific performance of a minor's agreements: There can be no specific performance of the agreements, entered into by minors as they are void ab initio. A contract entered into on his behalf, by his parent /guardian or the manager of his estate, can be specifically enforced by or against minor provided that the contract is: -

- (a) Within the scope of the authority of the parent /guardian or manager, and
- (b) For the benefit of the minor.

6. Doctrine of restitution:

'Infants can have no privilege to cheat men'. It implies that when a person obtains property or goods by false representation, by cheating or by practicing fraud he can be compelled to restore it to the person from whom he has received it. This doctrine applies to minors also. But the minor can be compelled to restore the property or goods as long as the same is traceable in his possession. **(It is based on the principle that law gives protection to the minor, but it does not give liberty to cheat men. If a minor has acquired any property by misrepresenting his age, he can be compelled to give back/ or the owner can restore his ownership)**

7. Minor's property liable for necessities: Sometimes, a person supplies necessities to a minor. In such cases, the supplier of necessities can claim reimbursement from the property of minor. It is to be noted that only minor's property is liable, minor is not personally liable for necessities supplied to him.

8. Minor as a partner: The partnership of partners results from their agreement. A minor, being incompetent to enter into a contract, cannot be a partner in the firm. However, he may be admitted only to the benefits of the firm with the consent of all other partners [Sec 30(1) of the Indian Partnership Act, 1932].

9. The Minor as an agent: An agent is merely a connecting link, between his principal and third person. Therefore, a minor can be appointed as an agent. But he will not be personally liable for his acts as an agent [Sec. 184]. It may, however, be noted that the principal will be liable to the third persons for the acts of the minor agent which he does in the ordinary course of dealings.

10. Minor as an insolvent: A minor cannot be declared as an insolvent. This is so because all agreements with a minor are absolutely void. Moreover, the minor is not personally liable for any debt incurred during the period of his minority.

11. The minor can execute a negotiable instrument: According to Sec 13(1) of the Negotiable Instruments Act, 1881, the term 'negotiable instrument' means and includes a promissory note, a bill of exchange and a cheque. The minor is competent to draw, negotiate or endorse the negotiable instruments. It may, however, be noted that the minor will not incur any personal liability under such instruments. But, the negotiable instruments executed in favor of the minor can be enforced by him.

12. The liability of minor's parents or guardians: As a matter of fact, the minor's contracts do not impose any liability on his parents or guardians even if the contracts are for 'necessaries'. The parents or guardians of the minor may pay money borrowed by him just out of moral obligations. But there is no legal obligation to make such payments. It may, however, be noted that the parents or guardians can be held liable when the minor child is acting as an agent of his parents or guardians.

II. PERSONS OF UNSOUND MIND

As explained earlier, as per **Section 11** of contract Act, for a valid contract each party to the contract must have a sound mind. Contract made by person of unsound mind are void. The reason is that a contract requires assents of two minds but a person of unsound mind has nothing which the law recognize as a mind. **Section 12** deals with the question as to what is a sound mind for the purpose of entering into contract. It lays down that, "**A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effects upon his interest.**"

Unsoundness of mind may arise from:

- (a) Idiocy:** An Idiot is a person with no intervals of saneness. He is incapable. His mental powers of understanding even ordinary matters are absent because of lack of development of brain. The agreement with an idiot is void.
- (b) Lunacy or Insanity:** It is disease of brain. A lunatic loses the use of his reason due to some mental strain or disease. He may have Lucid Intervals of sanity. He can enter into contract during that period when he is of sound mind.
- (c) Drunkenness:** It produces temporary incapability till the man is under the effect of intoxication creating ineffectiveness of mind. He stands on the same footing as a lunatic.
- (d) Hypnotism:** It also produce temporary incapability till the person is under the impact of artificially induced sleep.
- (e) Mental decay:** It is on account of old age etc. So, an agreement with person of unsound mind is void. But under Section 68, the property of such person is always liable for necessaries supplied to him or to anyone whom he is legally bound to support.

III. PERSONS DISQUALIFIED/DEBARRED BY LAW

1. **Alien enemy:** A person who is not an Indian citizen is called an alien or non-citizen of the Republic of India. An alien enemy is a person whose country is at war with India. In India, a contract with an alien enemy is void but a contract with an alien friend is valid under the Indian Contract Act. No contract can be made with an alien enemy during the existence of war, except with the prior approval of the Indian Government.
2. **Convicts:** A convict is a person, who is sentenced by a competent court to the death sentence or imprisonment. A convicted person cannot enter into a contract while undergoing sentence. When the period of his sentence is over or he is pardoned, then his incompetency is also over.
“Ticket of Leave” - Parole is the release of a prisoner, either temporarily for a special purpose or completely before the expiry of a sentence, on the promise of good behavior
3. **Insolvent:** There is no prohibition against a contract by an insolvent after the insolvency proceedings have commenced but before adjudication. In simple words, the insolvent is disqualified from entering into a contract until he is discharged by the court of law.
4. **Foreign sovereigns/ambassadors and diplomats:** Foreign sovereigns have some special privileges. Generally, they cannot be sued unless they, themselves surrender under the jurisdiction of the Indian court of law. They cannot enter into a contract unless an Indian citizen obtained a prior sanction of the Government of India, in order to sue them in the Indian court of law.
5. **Corporations:** The power of a corporation to make a contract vary according to the character of the corporation. A company is an artificial person created by law and is competent to contract. But its power of contract is subject to the limitation which may be either necessary or express.
6. **Married Women:** A married woman does not have the capacity to enter into a contract relating to the property of her husband. But the wife can be an agent for her husband and bind his property if he fails to provide her with the necessaries.
7. **Pardanashin Women:** A person under the veil or parda and set out of the house, then she is under undue influence. She does not have an understanding of the implications of the contracts and so she does not have the capacity to contract.

FREE CONSENT

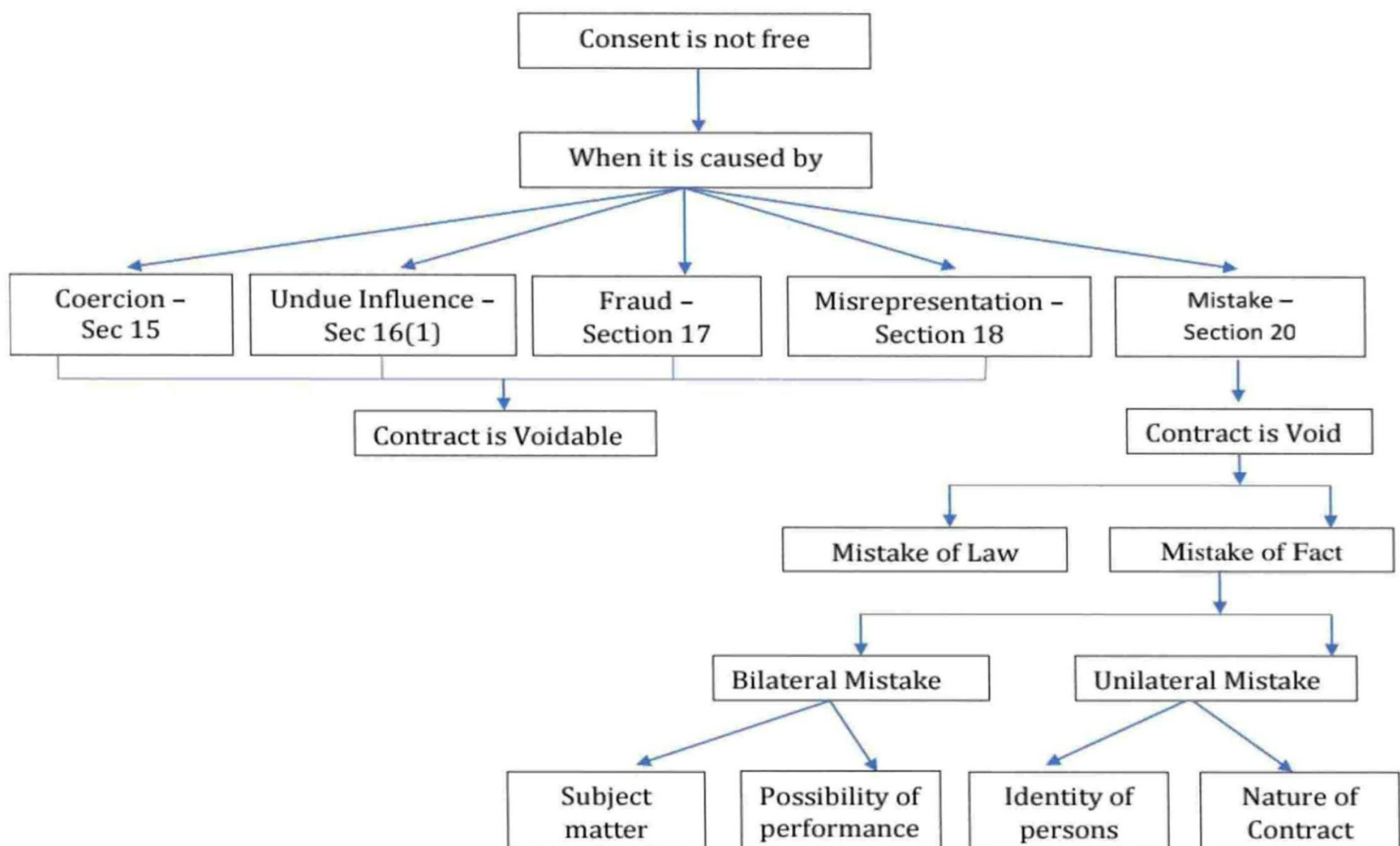
Consent – Section 13

[Consensus – ad – idem] – Accepting same thing in same time and in same sense/manner

Free Consent – Section 14

In the Indian Contract Act, the definition of consent is given in [Section 14](#), which states that “it is when two or more persons agree upon the same thing and in the same sense”.

According to Section 14, " two or more persons are said to be consented when they agree upon the same thing in the same sense (*Consensus-ad-idem*). A consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake.”



1. Coercion (Section 15)

[Section 15](#) of the Indian Contract Act, 1872 states that coercion is committing or threatening to commit, any act is 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.

Coercion means forcing an individual to enter into a contract. When intimidation or threats are used under pressure to gain the party's consent, i.e. it is not free consent. Coercion may involve the actual pain of physical and psychological harm in order to enhance the credibility of a threat. Then the threat of further harm can lead to the threatened person's cooperation or obedience.

Example: 'A' went out for a walk, 'B' approaches 'A' with a stranger, pulls out his gun and asks 'A' to give all his possessions. The consent of 'A' is obtained by coercion here.

Techniques for causing coercion

- Threatening to commit any act which is prohibited by the Indian penal Code.
- Detaining not as per law or even threatening to detain any property, with the sole intention of compelling a person to enter into a contract.

Acts forbidden by IPC - [Ranganayakamma Vs Alwar Shetty]

- The word act prohibited by the Indian penal code makes it necessary in a civil action for the court to decide whether the alleged act of coercion is amount to an offence. A threat of bringing a false charm with the object of making another do a thing amount to blackmail or coercion.

Unlawful Detention of property - [Muthia Vs Muthu Karuppa]

- Consent can be said to be caused by coercion if it is induced because of illegal confining of a property, or a danger to do as such.

2. Undue Influence (Section 16)

Sometimes a person is compelled to enter into an agreement against his will as a result of unfair persuasion by the other party. This happens when a special kind of relationship exists between the parties such that one party is in a position to exercise his or her undue influence over the other.

According to Section 16 of the Indian Contract Act, 1872 an influence will be considered as Undue Influence when:

- One party to the contract is in a position of trust and controls the other party wrongfully.
- Such a person uses his dominant position to gain an unfair advantage over the other.

There are two key elements of undue influence-

1. The relationship- trust, confidence, authority.
2. Unfair persuasion- careful examination of the terms of the contract.

Example: 'A' sold his gold ring to his teacher 'B' for Rs 200 after he had been offered good grades by his teacher. Here, A's permission is not given freely, he was influenced by his teacher

3. Fraud (Section 17)

It is a wilful representation made by a party to a contract with the intent to deceive the other party or to induce such party to enter into a contract. An untrue statement which is made knowingly or without belief in its truth or recklessly, careless whether it is true or false with the intent to deceive.

According to Section 17 of Indian Contract Act, Fraud includes any of the following acts committed by a contracting party or its agent in order to deceive or induce a party or its agent to enter into the contract:

- suggestion that a fact is true when it is not true;
- the effective concealment of a fact by one who is aware of the fact;
- a promise made without any intention to carry it out;
- any other act fitted to deceive;
- any such act or omission as the law considers to be fraudulent.

Example: 'A' sells his horse to 'B' by auction, which 'A' knows to be unsound, 'A' tells 'B' nothing about the unsoundness of the horse. This is a fraud on the part of 'A'.

4. Misrepresentation (Section – 18)

It means 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.

According to Section 18 –

- A person positively asserts the fact is true
- Breach of duty brings an advantage
- A party causes, however innocently the other party to sign the agreement

Example: 'A' told 'B' that his radio is in good condition, because of the confidence he had in 'A', 'B' bought the radio from him. The radio did not work properly after some time, 'B' thought he was misled by 'A', but 'A' believed his radio was in good condition and had no intention of deceiving him. So, here misrepresentation is in the part of 'A', because he did not know that the radio is not working properly.

5. Mistake (Section 20)

There are two forms of mistake under Indian Contract Law:

1) Mistake of law

The mistake may be related to the mistake of Indian laws, or it may be a mistake of foreign laws. If the mistake applies to Indian laws, the principle is that the law's ignorance is not a sufficiently good excuse. This means that either party cannot claim that it is not aware of the law. The Contract Act states that, on the grounds of ignorance of Indian law, no party can claim any relief. This will also include an incorrect

interpretation of any legal provisions. However, similar treatment is not given to ignorance of foreign law. Ignorance of foreign law provides some flexibility; the parties are not expected to know foreign law and its meaning. Therefore, under the Indian Contract Act, an error of foreign law is actually treated as a mistake of fact.

2) Mistake of Fact

A mistake of fact arises when one or both of the contracting parties have misunderstood a term that is essential to the meaning of the contract;

- Such a mistake may be done due to confusion, negligence or omission, etc.;
- A mistake is never intentional, it is an innocent overlooking.
- Such mistakes can be either unilateral or bilateral

Bilateral Mistake (Section 21): When both the parties to a contract are under a mistake of fact, essential to the agreement, such a mistake is known as a bilateral mistake. Bilateral mistakes are also sometimes referred to as mutual or common mistakes. All the parties do not agree to the same thing and in the same way, which is the concept of consent. Since there is no consent, the contract is null and void. **Example:** 'A', agrees to buy a cow from 'B', but it turns out that the cow was dead at the time of the deal, although the fact was not known to any party. The arrangement is considered invalid.

Unilateral Mistake (Section 22): A unilateral mistake occurs when only one party to the contract makes a mistake. The contract will not be void in such a case. It is specified in Section 22 of the Act that the contract will not be void just because one party made the mistake. So if only one party has made a mistake the contract remains a valid contract. **Example:** 'A' enters into an agreement with 'B' for the purchase of horse which he assumes to be a racing horse. 'A' do not confirm from 'B'. In actual a horse is not a racing horse. 'A' cannot rescind the contract

LAWFUL CONSIDERATION (or) LEGALITY OF OBJECT

According to Section 2(d), Consideration is defined as: "When at the desire of the promisor, the promisee has done or abstained from doing, or does or abstains from doing, or promises to do or abstain something, such an act or abstinence or promise is called consideration for the promise. "Consideration" means to do something.

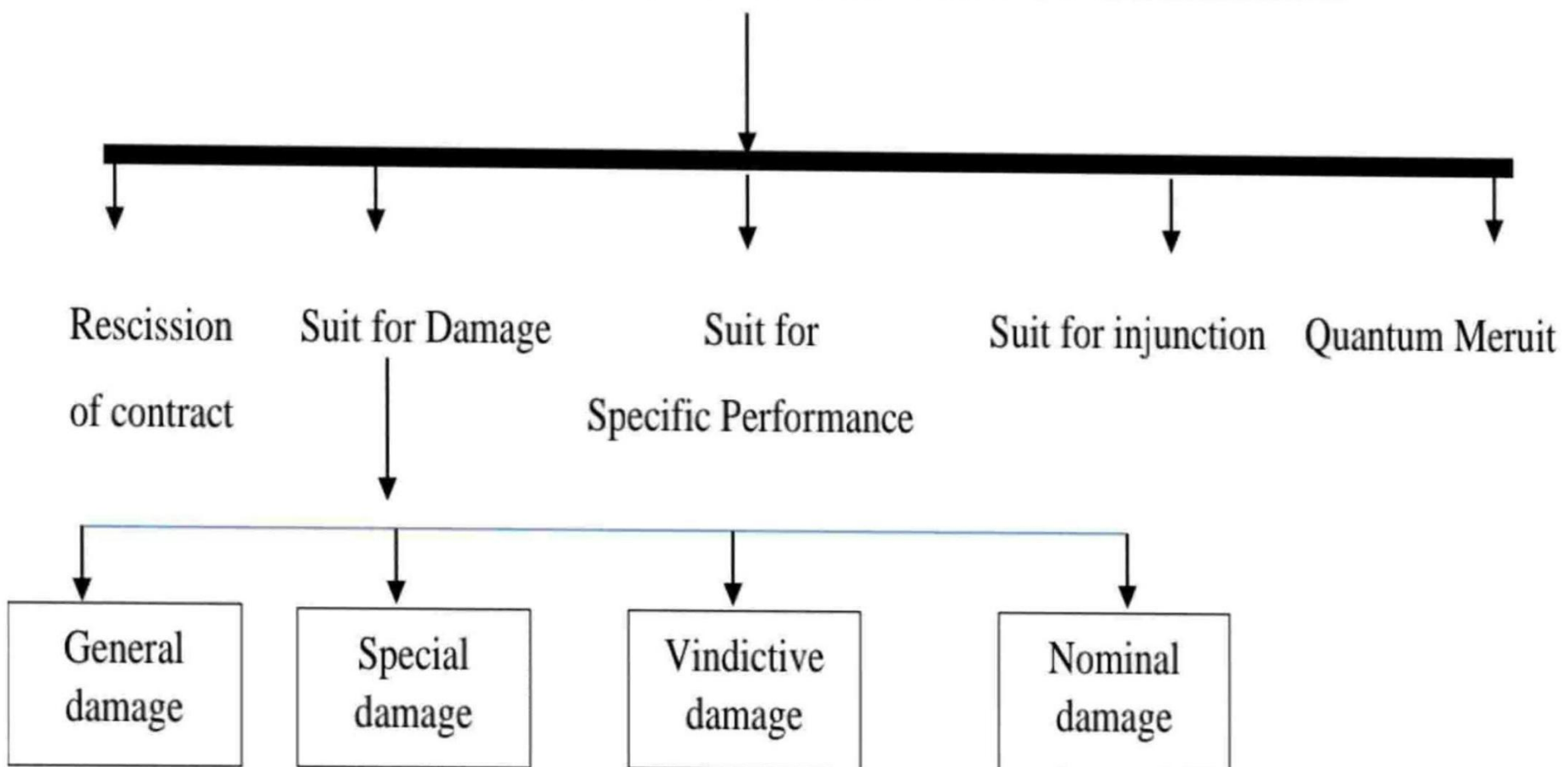
In short, Consideration means *quid pro quo* i.e., something in return. An agreement must be supported by a lawful consideration on both sides.

The consideration or object of an agreement is lawful, unless and until it is:

- 1) forbidden by law, or
- 2) is of such nature that, if permitted, it would defeat the provisions of any law, or

- 3) is fraudulent, or involves or implies injury to the person or property of another, or
 - 4) the court regards it as immoral, or opposed to public policy.
 - 5) consideration may take in any form-money, goods, services, a promise to marry, a promise to forbear etc.
 - 6) Involves injury to a person or property of another
- Parties to a lawful contract are expected to perform their respective obligations, but whenever there is a breach of contract, the injured or the aggrieved party can enforce his rights in the court of law. The process of enforcing the rights is known as remedies for breach of contract.

REMEDIES FOR THE BREACH OF CONTRACT



- **Suit for Rescission:** Where a party refuses to perform its obligation in the contract, the injured party becomes entitle to put an end to the contract. This is called as right of rescission. On the rescission of contract, **the aggrieved party is discharged from all the obligations** under the contract. Ex: ‘A’ promises to ‘B’ to supply 10 bags of cement on a certain day. ‘B’ agrees to pay the price after the receipt of the goods. ‘A’ does not supply the goods. ‘B’ is discharged from the liability to pay the price.
- **Specific Performance:** In certain cases of breach of contract, damages are not an adequate remedy. The court may in such cases **direct party in breach to carry out his promises according to the terms of the contract**. This is the direction of the court for specific performance of the contract at the suit of the party not in breach.

- **Suit for injunction**: It means an **order of the court restraining a person** from doing something which he promised not to do. Example: *Warner Bros Vs Nelson*: ‘N’, a film actress, agreed to act exclusively for ‘W’ for a year and for no one else. During the year she contracted to act for ‘Z’. Held, she could be restraining by injunction from doing so.
- **Quantum meruit**: The term, Quantum meruit means “as **much as earned**” in legal terms. It means payment in proportion of the work done. Under this type of remedy, a **person can recover compensation in proportion to work done or service rendered by him**. This doctrine is applied where there is no express promise to pay definite remuneration to a person. Ex: A contracts to make 10 chairs with B at the rate of Rs. 500 per chair. B made 4 chairs then refuses to make further. Here B is entitled for Rs. 2000 on the basis of quantum meruit.
- **Claim for damages**: Damages mean the **monetary compensation for the loss sustained** by the aggrieved party for the non-performance of the obligation by the defaulting party. Damages are to be awarded for losses, which arose from the breach

Types of damages:

- i. General damage,
 - ii. Special damage,
 - iii. Vindictive damage,
 - iv. Nominal damage
- ii. **Ordinary or General damages**: they are those which arise in the usual sense of things happen from breach of contract. In other words, the ordinary damages are due to natural and probable consequence of the breach of contract.
 - iii. **Special damages**: they are in the form of additional damages suffered by the aggrieved party due to breach of contract. These are resulting from a breach of contract under some special or unusual circumstances.
 - iv. **Exemplary/ Punitive/Vindictive damages**: they are recovered to the injured party not on the basis of actual loss caused to it but of the injury to the feeling or reputation or goodwill. It includes breach of contract to marry, dishonor of the cheque.
 - v. **Nominal damage**: where the damages recoverable are very small are known as nominal damages. In some cases, there may be a breach of contract but no material loss would have been caused thereby. Thus, nominal damages are awarded only for namesake.

Name of the Program: Bachelor of Commerce (B.Com.)

**NAME OF THE COURSE:
BUSINESS REGULATORY FRAMEWORK**

Module No. 2: The Sale of Goods Act, 1930

Introduction - Definition of Contract of Sale, Essentials of Contract of Sale, Conditions and Warranties, Transfer of ownership in goods including sale by a non- owner and exceptions Performance of contract of sale - Unpaid seller, rights of an unpaid seller against the goods and against the buyer

Contract of Sale of Goods:

A contract of sale is an agreement between a seller and a buyer. The seller agrees to deliver or sell something to a buyer for a set price that the buyer has agreed to pay. With these contracts, the transfer of ownership happens when the buyer pays and the seller delivers.

Essentials elements of a Contract of Sale:-

The following six features are essential elements of any contract of sale of goods.

1. Goods
2. Price
3. Two parties
4. Transfer of ownership
5. All Essentials of a Valid Contract of Sale
6. Includes both a 'sale' and 'an agreement to sell'

1. Two Parties: A contract of sale of goods is bilateral in nature wherein property in the goods has to pass from one party to another. One cannot buy one's own goods.

For example, A is the owner of a grocery shop. If he supplies the goods (from the stock meant for sale) to his family, it does not amount to a sale and there is no contract of sale. This is so because the seller and buyer must be two different parties, as one person cannot be both a seller as well as a buyer. However, there shall be a contract of sale between part owners.

2. Goods: The subject matter of a contract of sale must be goods. Every kind of movable property except actionable claims and money is regarded as 'goods'. Contracts relating to services are not considered as contract of sale. Immovable property is governed by a separate statute, 'Transfer of Property Act'.

3. Transfer of ownership: Transfer of property in goods is also integral to a contract of sale. The term 'property in goods' means the ownership of the goods. In every contract of sale, there should be an agreement between the buyer and the seller for transfer of ownership. Here property means the general property in goods, and not merely a special property.

4. Price: The buyer must pay some price for goods. The term 'price' is 'the money consideration for a sale of goods'. Accordingly, consideration in a contract of sale has necessarily to be in money. Where goods are

5. All essentials of a Valid contract: A contract of sale is a special type of contract, therefore, to be valid, it must have all the essential elements of a valid contract, viz., free consent, consideration, competency of contracting parties, lawful object, legal formalities to be completed, etc. A contract of sale will be invalid if important elements are missing. For instance, if A agreed to sell his car to B because B forced him to do so by means of undue influence, this contract of sale is not valid since there is no free consent on the part of the transferor.

6. Includes both a 'Sale' and 'An Agreement to Sell': The 'contract of sale' is a generic term and includes both sale and an agreement to sell. The sale is an executed or absolute contract whereas 'an agreement to sell' is an executory contract and implies a conditional sale.

Conditions and Warranties

Meaning of a Condition: – A requirement or event that should be performed before the completion of another action, is known as Condition. Certain terms, obligations, and provisions are imposed by the buyer and seller while entering into a contract of sale, which needs to be satisfied, which are commonly known as Conditions.

Types Of Conditions:

Expressed Condition

The term defines the statement as a condition which says that something should exist or should be there for the fulfillment of contract. These conditions are generally the functioning and are done only when both the parties are agree on the said or expressed condition.

Implied Condition

In this type of contract there are several conditions which are implied to the parties in different kind of contracts of sale. The conditions exist even if they have not been there in contracts.

Meaning of Warranty: – A warranty is a guarantee given by the seller to the buyer about the quality, fitness and performance of the product. It is an assurance provided by the manufacturer to the customer that the said facts about the goods are true and at its best. A warranty is an additional condition and a written guarantee that is collateral (security) for the main purpose of the contract. A warranty is a surety given by the seller regarding the state of the product.

Kind of Warranties

Expressed warranty:

In this the warranty generally both the parties are interested in contracts and warranty is accepted by both the parties expressly.

For example, if a consumer buys a business jacket online, but when it arrives the item is the wrong size, wrong color, or is missing buttons, an express warranty might entitle the consumer to a refund or replacement

Implied warranty:

In this type of warranty the parties generally assume that the warranties have been incorporated at the time of contract of sale. The warranties which are implied are not specifically mentioned in the contracts.

An example of an implied warranty is an assumption that the product that you buy will work. For example, if you purchase a washing machine, the assumption is that the washing machine will work and wash your clothes

Difference between Condition and Warranty

The following are the major differences between condition and warranty in contract law: –

BASIS FOR COMPARISON	CONDITION	WARRANTY
Meaning	A condition is an obligation which requires being fulfilled before another proposition takes place.	A warranty is a surety given by the seller regarding the state of the product.
Provision	Section 12(2) of the Sale of Goods Act, 1930 defines Condition.	Section 12(3) of the Sale of Goods Act, 1930 defines Condition.
Purpose	Condition is basic for the formulation of the contract.	It is a written guarantee for assuring the party.
What is it?	It is directly associated with the objective of the contract.	It is a subsidiary provision related to the object of the contract.
Result of Breach of Contract	Termination of contract.	Claim damages for the breach.
Remedies available to the aggrieved party	Repudiation, as well as damages, can be claimed.	Only damages can be claimed.

Seller: A person who sells his goods.

Buyer: A person to whom the goods are sold. (OR) A person who purchases the goods.

Rights and Duties of the Buyer:

1). Right to have delivery of goods: It is the basic right of the buyer to take the delivery of goods from the seller after payment.

2). Right to Reject: It is the right of the buyer to reject the goods if it is found that the seller has delivered him the goods of **other quantity or quality** or if the buyer notices any **defects in the** goods he may also refuse to take those defective goods.

3). Right to Cancel the Contract: It is another right of the buyer to cancel the contract if the seller does not perform his part in the stipulated time or otherwise, if the seller commits any negligence as to the performance of a contract in that situation it is the right of the buyer to cancel the contract.

4). Right to claim damages: If there is any defect in the Goods which may cause loss to the buyer or if due to the negligence of a seller. The buyer sustains a loss, in such circumstance, it is the right of the buyer to be compensated or the buyer may claim damages.

5). Right to Examine: It is the right of the buyer to examine the goods before their purchase and to duly satisfy himself as to be quality of goods.

6). Right to sue for performance: If the seller refuses to obey the terms and conditions of the contract which gives loss to the buyer, the buyer has the right to knock or approach the court of law to compel the seller for specific performance.

7). Right to take insurance: It is the duty of the seller to give notice to the buyer to be ensured the goods if the seller delivers in a good way whether by sea or by any other method/means due to which apprehension that the goods may be destroyed then it is the right of the buyer to ensure the goods before its delivery.

8). Right to sue for recovery of price: It is the right of the buyer to file a suit for recovery of the price which he has already paid to the seller but even then, the seller refuses to perform his part.

9). Right to claim interest: It is the right of the buyer to claim an interest in the situation if the delay is caused by the seller in the delivery of goods.

10). Duty to accept goods: After the execution of the agreement if the seller delivers the goods to the buyer to accept the goods without any delay. If the buyer refuses to take the goods from the seller and the goods sustain any damage, the seller cannot be held responsible for the same.

11). Duty to pay the consideration: It is the basic duty of the buyer to pay the agreed consideration to the seller on time.

12). Duty to pay damages: It is the duty of the buyer to pay damages to the seller if due to the refusal of buyer receives goods from the seller and the seller sustains any injury or for maintenance if the seller incurs any cost over the goods.

13). Duty to perform agreement: It is the duty of the buyer to perform his part/obligation in true spirit as agreed between buyer and seller and in case of his non-performance, the buyer can be held liable for any loss to the seller.

14). Duty to apply for goods: It is another duty of the buyer to apply for delivery of goods to the seller. If it was agreed that the seller would only deliver the goods if the buyer applies for its delivery.

Rights and Duties of Seller:

1). Right to have acceptance of Sale: It is the right of the seller that goods delivered by a seller under a contract of sale must be accepted by the buyer.

2). Right to claim loss: If the buyer unlawfully refuses to accept the delivery of goods, the seller has a right to claim from the buyer the loss caused to him due to non-acceptance of the goods and also reasonable charges for the care and custody of the goods.

3). Right to receive the price of goods: It is the right of the seller to receive the price of goods from the buyer as per the term of the contract.

4). Right to take legal action: It is the right of a seller to take legal action against the buyer if the price is not paid to him.

5). Right to interest: Seller is entitled to interest at a reasonable rate on the total unpaid price of goods sold, from the time it was due until it is actually paid to him.

6). Duty to Deliver goods: It is the duty of a seller to deliver the goods to the buyer according to the terms and conditions of the contract. If the seller refuses to deliver the goods to the buyer, he may sue the seller for damages for non-delivery.

7). Duty to refund the price: Where the seller fails to deliver the goods to the buyer, he must pay back the price of the goods to the buyer which he had received in advance.

8). Duty to pay interest: Where the seller has already received the price but fails to deliver the goods to the buyer, he must pay interest at a reasonable rate on the total received price, from the date of receiving such price until it is actually paid back to the buyer.

9. Duty to pay damages for breach of warranty: Where there is a breach of warranty on the part of a seller, the seller is bound to pay the damages to the buyer for the breach of warranty.

Rights of unpaid seller

Meaning:- Under the Sale of Goods Act, 1930, an unpaid seller is a seller who has not been paid full price of the goods sold or if he has received a bill of exchange or other negotiable instrument as conditional payment, the condition for the same has not been fulfilled.

Under the Sale of Goods Act, 1930, an unpaid seller is a seller who has not been paid full price of the goods sold or if he has received a bill of exchange or other negotiable instrument as conditional payment, the condition for the same has not been fulfilled.

Who is unpaid seller?

He is the seller to whom:- Whole of the price is not paid or it is an Conditional payment

Bill of exchange/ promissory note/ cheque has been received by seller but it

Features of an unpaid seller

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

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

Rights of Unpaid Seller

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

SLNO	Rights of unpaid seller against goods	Rights of unpaid seller against buyer
1.	Right of lien	Suit for price
2.	Right of stoppage of goods in transit	Suit for damages
3.	Right of resale	Suit for Interest
		Suit for breach of contract or Rejection of Contract

Rights of unpaid seller against goods

A. Rights of unpaid seller against goods

1.Right of lien:- If the buyer fails to pay the price within the decided time, then unpaid seller has the right to keep the goods in his Custody and he can refuse to deliver the goods until the due payment is paid.

When right of Custody can be exercised:-

- a. When goods are sold on cash basis, but payment is unpaid
- b. When goods have been sold on credit basis and the term of credit has expired
- c. When the buyer becomes insolvent even within the decided period for payment.

2.Right of stoppage of goods in transit: If a buyer fails to pay the price within the decided time, then unpaid seller has the right to stop (in journey) the goods in transit.

Conditions for stoppage of goods:-

- a. When seller is unpaid either wholly or partially
- b. When the buyer becomes insolvent

3.Right of resale:- The unpaid seller has the right to resell the goods.

Conditions for resale:

- a. When goods are of perishable nature- Then unpaid seller can resell them immediately without the notice to the buyer. But in case of non-perishable items unpaid seller needs to send notice to the buyer for reselling them.
- b. Where unpaid seller gives the notice to buyer and buyer still don’t pay for it

Rights of the Seller against the Buyer

1.Suit for Price: It is the first and foremost right of an unpaid seller against the buyer. It is used whenever the seller has delivered all his goods to the buyer, and the buyer refuses to pay the amount then he can make use of his right and file a case against the buyer by suing for price. The sales of goods act clearly to explain that the seller has to receive the payment from the buyer after delivering the goods.

2. Suit for Damages: This right is beneficial to the seller when the buyer refuses to take the goods, and it causes certain damage to the goods then the seller can file against the buyer for the damage of goods because of his non-acceptance. For instance, food products, dairy products will get damaged if the buyer refuses to take them, once the order has been placed.

3.Suit for Interest: Generally, the buyer and seller will make a contract or agreement to provide goods at one particular time, and the payment will be made after being sure. Of time with interest rate. This contract is made with the acceptance of both parties. But if the buyer refuses to pay interest or less rate of interest during the time of payment, then the seller has a right to sue for the interest for goods that he has delivered earlier.

4.Rejection of Contract:(Suit for breach of contract) If the buyer refuses to continue the contract or if he rejects the contract in the middle itself without any prior notice and genuine reason, the seller has the right to sue for the contradiction of the contract before the due date. It is also available in the Indian contract act due to the name of anticipatory breach of contract. Breach of contract means quitting either of the parties from the contract without any reason or any information.

Duties of an unpaid seller

1.Duty to deliver the goods as per the contract:- Is is the duty of an unpaid seller to deliver the goods as according to the condition mentioned in the contract. If the goods are not delivered as per the contract, he is not entitled to get full price of the goods.

2.Duty to wait for another instalment:- If there is a condition as per the contract to pay in instalments, the seller has a duty to wait till the expiry of the period of instalment. Without wait or before the expiry of the period of instalment he can not exercise the right to lien or re-sale the goods and he is not entitled to sue for price.

3.Duty to exercise the right to lien only when the goods are in his Custody:- An unpaid seller cannot exercise the right to lien over the goods which are not in his possession. And is entitled to pass the title of the goods to the buyer on the full payment.

4.Duty to inform the buyer on the dishonor of cheque or other negotiable instrument:- On the dishonor of the cheque or other negotiable instrument an unpaid seller has a duty to inform the buyer for the same within the reasonable time, so he can do arrangements for another cheque or negotiable instrument or arrange any other way of payment. The provision of the dishonor of the cheque is given under section 138 of the Negotiable Instruments Act.

5.Duty to give notice of his intention of re-sale to the buyer:- An unpaid seller has a duty to give notice of his intention to re-sale the goods before reselling the same. And he is entitled to re-sale the goods only when the buyer is unable to give full price of the goods.

6.Duty to give notice for stoppage of transit:- An unpaid seller has a duty to give notice to the carrier or the Bailee who is in the possession of the goods within a reasonable time. Here the term reasonable time means that there is sufficient time to communicate or understand the circumstances before the delivery of the goods. After the stoppage of the goods, the carrier or other Bailee re-delivers the goods to the seller as his directions. It is also the duty of an unpaid seller to bear the expenses of re-delivery of the goods.

MODULE NO IV: CONSUMER PROTECTION ACT 1986

Definitions of the terms – Consumer, Consumer Dispute, Defect, Deficiency, Unfair Trade Practices, and Services, Rights of Consumer under the Act, Consumer Redressal Agencies – District Forum, State Commission and National Commission.

Introduction

The Consumer Protection Act, implemented in 1986, gives easy and fast compensation to consumer grievances. It safeguards and encourages consumers to speak against insufficiency and flaws in goods and services. If traders and manufacturers practice any illegal trade, this act protects their rights as a consumer. The primary motivation of this forum is to bestow aid to both the parties and eliminate lengthy lawsuits.

This Protection Act covers all goods and services of all public, private, or cooperative sectors, except those exempted by the central government. The act provides a platform for a consumer where they can file their complaint, and the forum takes action against the concerned supplier and compensation is granted to the consumer for the hassle he/she has encountered.

Definitions

- 1. Consumer:** A consumer is an individual or entity that purchases goods or services for personal use or consumption, rather than for resale or production.
- 2. Consumer Dispute:** A consumer dispute arises when there is a disagreement or conflict between a consumer and a seller, service provider, or manufacturer regarding the quality, performance, or terms of a product or service.
- 3. Defect:** A defect refers to a flaw, imperfection, or problem in a product or service that renders it unfit for its intended use or significantly reduces its value or utility.
- 4. Deficiency:** Deficiency typically refers to a lack or insufficiency in the quality, quantity, or performance of a product or service, often resulting in dissatisfaction or failure to meet expectations.
- 5. Unfair Trade Practices:** Unfair trade practices are deceptive, fraudulent, or unethical business practices employed by sellers, manufacturers, or service providers to gain an unfair

advantage over consumers or competitors. These practices may include false advertising, price fixing, bait-and-switch tactics, or misleading representations.

6. Services: Services are intangible products provided by one party (the service provider) to another (the consumer) in exchange for payment or other consideration. Services can include a wide range of activities, such as professional advice, repairs, maintenance, transportation, entertainment, or healthcare, among others.

Consumer Rights and Responsibilities:

The Rights of the Consumer

- **Right to Safety-** Before buying, a consumer can insist on the quality and guarantee of the goods. They should ideally purchase a certified product like ISI or AGMARK.
- **Right to Choose-** Consumer should have the right to choose from a variety of goods and in a competitive price.
- **Right to be informed-** The buyers should be informed with all the necessary details of the product, make her/him act wise, and change the buying decision.
- **Right to Consumer Education-** Consumer should be aware of his/her rights and avoid exploitation. Ignorance can cost them more.
- **Right to be heard-** This means the consumer will get due attention to express their grievances at a suitable forum.
- **Right to seek compensation-** The defines that the consumer has the right to seek redress against unfair and inhumane practices or exploitation of the consumer.

The Responsibilities of the Consumer

- **Responsibility to be aware** – A consumer has to be mindful of the safety and quality of products and services before purchasing.
- **Responsibility to think independently**– Consumer should be well concerned about what they want and need and therefore make independent choices.
- **Responsibility to speak out-** Buyer should be fearless to speak out their grievances and tell traders what they exactly want

- **Responsibility to complain-** It is the consumer's responsibility to express and file a complaint about their dissatisfaction with goods or services in a sincere and fair manner.
- **Responsibility to be an Ethical Consumer-** They should be fair and not engage themselves with any deceptive practice.

How to File a Complaint?

- Within two years of purchasing the product or services, the complaint should be filled.
- In the complaint, the consumer should mention the details of the problem. This can be an exchange or replacement of the product, compensation for mental or physical torture. However, the declaration needs to be reasonable.
- All the relevant receipts, bills should be kept and attached to the complaint letter.
- A written complaint should be then sent to the consumer forum via email, registered post, fax or hand-delivered. Acknowledgement is important and should not be forgotten to receive.
- The complaint can be in any preferred language.
- The hiring of a lawyer not required.
- All the documents sent and received should be kept.

Consumer Forum

Consumer forums are voluntary organisations. Consumer forums will help consumers to file cases in consumer courts. Consumer forums are various organisations which were formed as a result of the consumer movement in India.

- To create awareness among consumers about consumer rights, Governments give financial assistance to consumer forums.
- Consumer forums also represent the individual consumers in the consumer courts.
- Consumer forums are also known as consumer protection councils.

Consumer Court India

The Consumer Protection Act, 1986 (COPRA) was passed by the Indian parliament and came into force on December 1986. The Act was passed to protect the consumers' interest as well as to establish state bodies to deal with consumer problems and anything that arises thereof.

Introduction

Consumer courts were established as Consumer Dispute Resolution Agencies and they deal with consumer disputes, conflicts and grievances. It is a forum where a consumer may file a case against a seller in the case where the consumer feels that he has been cheated or exploited by the seller. The point of having a separate forum for consumer disputes is to ensure that such disputes are speedily resolved and make is less expensive.

Types of Consumer Courts

COPRA provides for the formation of consumer courts, under the Act there are three tiers of Consumer Courts they are as follows:

District Consumer Dispute Redressal Forum (DCDRF): The DCDRF operates at a district level and takes on any consumer dispute where the appellants claim for compensation does not exceed 20 lakh rupees.

State Consumer Dispute Redressal Commission (SCDRC): The SCDRC operates at a state level and takes on any consumer dispute where the appellants claim for compensation exceeds the amount of 20 lakhs but does not exceed 1 crore rupees.

National Consumer Dispute Redressal Commission (NCDRC): The NCDRC is the apex court and takes on any consumer dispute where the appellants claim for compensation exceeds the amount of 1 crore rupees.

Jurisdiction

The jurisdictions of the courts are based on the hierarchy of the courts;

1. Pecuniary Jurisdiction: The District Consumer Dispute Redressal Forum has the pecuniary jurisdiction of up to an amount that does not exceed 20 lakhs.

The State Consumer Dispute Redressal Commission has the pecuniary jurisdiction where the claim exceeds 20 lakhs but does not exceed 1 crore rupees.

The Nation Consumer Dispute Redressal Commission has the pecuniary jurisdiction where the claim exceeds the amount of 1 crore rupees.

2. Territorial Jurisdiction: Territorial jurisdiction is to be taken into consideration after establishing pecuniary jurisdiction. A complaint may be filed in the court that is within those local limits where;

When the opposite party voluntarily resides in or works in those local limits.

Where the cause of action arises from.

To determine where the cause of action arises you can apply the same laws applicable to contract law.

Territorial jurisdiction when a transaction was done online.

Transactions done online effectively negates territorial jurisdiction. In this case, territorial jurisdiction is in any of the multiple places the cause of action arises, which also includes where the appellant resides.

3. Appellate Jurisdiction: If a consumer is not satisfied by the decision made by the district forum they may make an appeal to the state commission. If the consumer is aggrieved by the decision made by the state commission they may appeal to the national commission. If a consumer is not satisfied by the decision made by the national commission they may approach the Supreme Court for an appeal.

Composition

The Consumer Protection Act, 1986 provides for the composition of each of the courts.

1. District Consumer Dispute Redressal Forum:

Each district forum is to consist of:

a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

two other members, who shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

2. State Consumer Dispute Redressal Forum:

Each State Commission shall consist of –

a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President :

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;

two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman :

Provided that every appointment made under this clause shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:- (i) President of the State Commission – Chairman, (ii) Secretary of the Law Department of the State – Member, (iii) Secretary, in-charge of Department dealing with consumer affairs in the State – Member.

3. National Consumer Dispute Redressal Forum:

The National Commission shall consist of –

a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President :

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;

four other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman :

Provided that every appointment made under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely:-

A person who is a Judge of the Supreme Court to be nominated by the Chief Justice of India – Chairman,

The Secretary in the Department of Legal Affairs in the Government of India – Member,

Secretary of the Department dealing with consumer affairs in the Government of India – Member.

Powers and Functions

The powers and functions of the commission are enumerated in section 4 of the act. Section 4(1) states the functions as follows.

1. Functions :

Advisory role to ministers of general consumer issues.

Formulation and implementation of consumer protection policies

Carry out investigation upon the complaint of an aggrieved consumer into the selling of goods or provision of service so as to determine whether the complaining consumer was genuinely aggrieved.

Carry out an investigation of its own initiative.

Promote the development of organizations formed for the protection of consumers

Collect, analyse and publish information on any trade or business.

Educate consumers on their rights

Resolve disputes between consumers and providers

Carry such functions as the minister may direct from time to time.

2. Powers:

The consumer commission has the power to do anything that it deems to be necessary for it to meet and perform its functions. It may take any action that it may so deem advantageous or convenient for or in connection with carrying out its functions or to be incidental to their proper discharge and may carry on any activities in that behalf either alone or in association with any other person or body.

Consumer Redressal Agencies in India are judicial bodies established to address consumer grievances and disputes. These agencies are organized hierarchically at the district, state, and national levels.

1. District Consumer Disputes Redressal Forum (DCDRF):

- These forums are at the district level and handle cases where the value of goods or services and compensation claimed doesn't exceed ₹20 lakh.
- They are presided over by a President, who is a qualified judge, and are assisted by two members, usually drawn from the fields of law, commerce, industry, or consumer affairs.

2. State Consumer Disputes Redressal Commission (SCDRC):

- These commissions are at the state level and handle cases where the value of goods or services and compensation claimed is between ₹20 lakh and ₹1 crore.
- They are presided over by a President, who is a qualified judge, and are assisted by two members, usually drawn from the fields of law, commerce, industry, or consumer affairs.

3. National Consumer Disputes Redressal Commission (NCDRC):

- This is the highest consumer dispute redressal agency in India, located at the national level.
- It handles cases where the value of goods or services and compensation claimed exceeds ₹1 crore.
- It is presided over by a sitting or retired judge of the Supreme Court of India and is assisted by four members, usually drawn from the fields of law, commerce, industry, or consumer affairs.

Consumer Dispute

Consumer disputes in India are regulated primarily by the Consumer Protection Act, 2019, which aims to provide protection to consumers against unfair trade practices and defective goods or services.

1. Defective Goods: This includes disputes arising from the sale of goods that are defective, damaged, or not as described.

- 2. Deficient Services:** Disputes related to services that are not rendered as promised or are of substandard quality fall under this category. For example, disputes with service providers such as telecom companies, utility providers, or healthcare providers.
- 3. Unfair Trade Practices:** These disputes involve deceptive or unfair practices by sellers or service providers, such as misleading advertisements, false promises, or hidden charges.
- 4. Overcharging:** Disputes related to overcharging or charging unfair prices for goods or services compared to their actual value.
- 5. Product Liability:** Consumers can file disputes against manufacturers, distributors, or sellers for injuries, damages, or losses caused by defective products.
- 6. Misrepresentation:** When sellers provide false information or misrepresent the quality, features, or characteristics of a product or service, consumers may file disputes based on such misrepresentation.
- 7. Delayed Delivery:** Disputes arising from delayed delivery of goods or services beyond the agreed-upon timeline.
- 8. Non-Compliance with Warranty or Guarantee:** Consumers may file disputes if sellers or manufacturers fail to honor warranties or guarantees provided for products or services.
- 9. Billing Errors:** Disputes related to incorrect billing, unauthorized charges, or discrepancies in invoices issued by sellers or service providers.
- 10. Unsatisfactory Resolution of Complaints:** If consumers are not satisfied with the resolution provided by sellers or service providers for their complaints, they may escalate the issue as a consumer dispute.

Syllabus: Introduction - Objectives of the Act, Definitions of Important Terms – Environment, Environment Pollutant, Environment Pollution, Hazardous Substance and Occupier, Types of Pollution, Powers of Central Government to protect Environment in India.

The Environment Protection Act of 1986

Introduction

It is the most comprehensive Act on the Indian Statute book in relation to environment protection. It is the general legislation for the protection of environment.

The government of India enacted the Environment (Protection) Act in the year 1986 in the wake of Bhopal tragedy (*On the night of December 2, 1984, chemical, methyl isocyanate (MIC) spilt out from Union Carbide India Ltd.'s (UCIL's) pesticide factory turned the city of Bhopal into a colossal gas chamber. It was India's first major industrial disaster. At least 30 tonnes of methyl isocyanate gas killed more than 15,000 people and affected over 600,000 workers. Bhopal gas tragedy is known as world's worst industrial disaster*) The purpose of this environment is to implement the decisions of United Nations Conference on Human Environment of 1972. The enactment is designed to provide a frame work for Central Government to coordinate the activities of State and Central authorities established under previous laws.

Scope and Commencement of the Act

1. This Act may be called the Environment (Protection) Act, 1986. It came into force on 19th November 1986.
2. It extends to the whole of India.
3. The Act consists of 26 sections, divided into 4 chapters, 7 schedules dealing with emissions standards of air, noise, effluents etc.

Environmental Law

The Environmental Law refers to that set of enforceable rules and principles regulating the activities of persons, natural or legal which have impact on environment.

Definition of Environment

The Environmental Protection Act, 1986 defines “environment includes water, air, land and inter-relationship which exists among and between water, air, land and human beings, other living creatures, plants, micro-organism and property.”

Environment

It is everything that surrounds you, including the air, the land, the oceans and living things.

The Natural Environment can be classified into two divisions

- ★ **The Physical Environment:** which includes non-living things, such as land air and water
- ★ **The Biological Environment:** which includes all forms including plants, animals and other living organisms

List of Important Legislation on Environment

1. National Forest Policy (1952)
2. The Wildlife (Protection) Act 1972
3. The Water (Prevention and Control of Pollution) Act, 1974
4. The Water (Prevention and Control of Pollution) Cess Act, 1977
5. The Forest (Conservation) Act, 1980
6. The Air (Prevention and Control of Pollution) Act, 1981
7. The Environment (Protection) Act 1986
8. National Water Policy
9. The Biological Diversity Act, 2002
10. The National Environment Policy 2004

Aims and Objectives of the Act

The Act aims at protecting and improving the environment and prevention of hazards to human beings, other living creatures, plants, property. The main provisions in the Act envisage:

- i. Laying down standards for the quality of environment in its various aspects
- ii. Laying down standards for emission or discharge of environmental pollutants from various sources
- iii. Restriction of areas in which any industry shall not be carried out or shall be carried out subject to certain safeguards.
- iv. Laying down the procedure and safeguards for handling of hazardous substances and
- v. Establishing or recognising environmental laboratories.

Section 2 of the Environment (Protection) Act, 1986 deals with the following definitions

1. **Environment:** It includes water, air, land and inter-relationship which exist among and between water, air, land and human beings, other living creatures, plants, micro-organism and property.”
 2. **Environmental Pollutant:** Section 2(a) defines Environmental Pollutant as ‘any solid, liquid or gaseous substance present in such concentration as may be or tend to be, injurious to environment.’
-

3. **Environmental Pollution:** Section 2(c) defines Environmental pollution as ‘the presence in the environment of any environmental pollutants.’
4. **Handling:** Section 2(d) defines, ‘Handling’ as ‘in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substances’.
5. **Hazardous Substance:** Section 2(e) ‘Hazardous Substance’ as “any substances or preparation which by reason of its chemical or physic-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment.”
6. **Occupier:** Section 2(f) defines ‘Occupier’ as “in relation to any factory or premises means a person who has control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substances.”

General Powers of the Central Government

The powers conferred under sec 3 of the Act are as follows

1. To co-ordinate actions taken by the State Governments, Officers and other authorities under EP Act or Environment Protection Rules.
2. To plan and execute a nation-wide program for the prevention, control and abatement of environmental pollution.
3. To lay down standards for the quality of environment.
4. To lay down standards for emission or discharge of environmental pollutants from various sources.
5. To restrict areas in which any industries or operations or processes shall be carried out.
6. To lay down procedures and safeguards for the prevention of accidents, which may cause environmental pollution.
7. To lay down procedures and safeguards for handling hazardous substances.
8. To examine manufacturing process, materials and substances which are likely to cause environmental pollution.
9. To carry out and sponsor investigation and research relating to problems of environmental pollution.
10. To inspect premises, plants, equipment’s or other processes and to give direction to take steps for the prevention, control and abatement of environmental pollution.
11. To establish or recognise environmental laboratory and institutes to carry out the function entrusted to such environmental laboratories and industries under Environmental Protection (EP) Act.
12. To collect and disseminate information relating to environmental pollution.

13. To prepare manuals, codes or guides relating to the prevention, control and abatement of environmental pollution.
14. To do such other matters as the Central Government may deem necessary for the purpose of securing the effective implementation of the EP Act.

Other Powers

I. Powers to appoint officers

Sec 4 has conferred on the Central Government the power to appoint officers for the purpose of entrusting on them such powers and functions prescribed under EP Act.

II. Power to give directions

Sec 5 of the Act empowers the Central Government to issue directions to any person or officer or authority under sec 4 of the EP Act.

1. Such directions shall be in writing.
2. Such person or officer or authority shall be bound to comply with the directions.
3. Such directions shall include the power to issue directions regarding.
 - ★ The closure, prohibition or regulation of any industry, operation or process.
 - ★ Stoppage or regulation of the supply of electricity or water or any other service.

III. Power to make rules to regulate environmental pollution

Sec 6 has empowered the Central Government to make rules to regulate environmental pollution:

1. The standards of quality of a water or soil for various areas and purposes.
2. The procedures and safeguards for the handling of hazardous substances.
3. The prohibition and restriction on the handling of hazardous substances in different areas.
4. The procedures and safeguards for the prevention of accidents which may cause environmental pollution.

B.COM. 4.3. BUSINESS REGULATORY FRAMEWORK

SKILL DEVELOPMENT ACTIVITIES

1. Discuss the case of “Carlill vs Carbolic Smoke Ball Company”.

Answer:

Carlill v Carbolic Smoke Ball Company (1892)

This landmark English contract law case dealt with a rather unusual product: a carbolic smoke ball, advertised as a cure for influenza. Here's a breakdown of the key points:

Facts:

- The Carbolic Smoke Ball Company placed a newspaper advertisement claiming their product would prevent influenza. They offered £100 to anyone who contracted the illness after using the smoke ball as directed.
- Mrs. Carlill, relying on the ad, purchased a smoke ball and used it properly, but still contracted influenza.
- She sued the company to claim the reward.

Issue:

- Was the advertisement a binding offer that could be accepted by anyone who used the product (unilateral contract), or was it just an invitation to treat (meaning further negotiation was needed)?

Ruling:

- The Court of Appeal found in favor of Mrs. Carlill.
- The judges considered the advertisement a unilateral offer to the world at large. Anyone who used the smoke ball according to the instructions (performance of the condition) would be considered to have accepted the offer.
- The court also established that Mrs. Carlill's use of the smoke ball constituted sufficient consideration (the legal value given in exchange for a promise) to form a binding contract.

Significance:

- This case clarified the distinction between an offer and an invitation to treat. It showed that advertisements with specific terms can be binding contracts.
- It established that consideration in unilateral contracts can be formed through performance of the act requested in the offer.
- Carlill v Carbolic Smoke Ball Company is a cornerstone case in contract law, especially regarding unilateral offers and the concept of consideration.

Additional points:

- The case is also interesting for its historical context, highlighting the prevalence of unregulated medical claims in advertising at the time.
- Despite the ruling, the Carbolic Smoke Ball Company likely did not go bankrupt from the single £100 reward.

2. Discuss the case of “Mohori Bibee v/s Dharmodas Ghose”.

Answer:

“Mohori Bibee v/s Dharmodas Ghose”

Facts:

In 1903, a minor named Dharmodas Ghose borrowed money from his uncle, Brahma Dutt, and mortgaged his property as security. When he became an adult, he refused to repay the loan. Brahma Dutt sold the mortgage to Mohori Bibee.

Mohori Bibee sued Dharmodas to enforce the mortgage, but Dharmodas argued that the contract was void because he was a minor when he entered into it.

Issue:

Can a minor enter into a valid contract?

Whether a contract entered into by a minor is void or voidable?

Ruling:

The Judicial Committee of the Privy Council held that the contract was void and unenforceable.

The court held that a minor is not competent to enter into a contract and that any contract entered into by a minor is void ab initio (from the beginning).

This means that the contract is treated as if it never existed and cannot be ratified by the minor once they reach majority.

Significance:

This case is a leading authority on the capacity of minors to contract in India.

It has been followed by subsequent courts in India and has been incorporated into the Indian Contract Act, 1872.

The decision in Mohori Bibee v/s Dharmodas Ghose has been criticized by some legal scholars who argue that it unfairly disadvantages minors.

Additional points:

The case highlights the importance of ensuring that minors are protected from entering into contracts that could be detrimental to their interests.

It also serves as a reminder that it is important to carefully check the capacity of parties to a contract before entering into it.

3. Briefly narrate any one case law relating to minor.

Answer:

Raghava Chariar v. Srinivara (1916)

The case of Raghava Chariar v. Srinivasa (1916) dealt with a minor's ability to benefit from a contract, even if they couldn't be held liable for it. Here's a breakdown of the key points:

Facts:

A minor (Srinivasa) loaned money to an adult (Raghava Chariar) and received a mortgage on property as security for the loan.

Issue:

Could the minor enforce the mortgage agreement (get the property if the loan wasn't repaid)?

Ruling:

The court ruled in favor of the minor. Even though the minor couldn't be bound by the loan contract due to their age (following the principle established in Mohori Bibee v/s Dharmodas Ghose), the court recognized that the minor had indeed parted with their money in good faith.

Reasoning:

The law protecting minors from binding contracts shouldn't prevent them from receiving benefits arising from those contracts. If a minor uses their own money for a transaction, they shouldn't be penalized simply because they are a minor.

Significance:

This case established that while a minor cannot be held liable for a contract, they can still benefit from it if they have demonstrably used their own money for the transaction. It creates a sense of fairness within the legal framework regarding minors' financial dealings.

Additional Points:

It's important to note that Raghava Chariar v. Srinivasa applies specifically to situations where the minor uses their own funds.

This case doesn't contradict the principle from Mohori Bibee v/s Dharmodas Ghose. Instead, it clarifies that minors can be protected from liabilities while still enjoying the benefits of their financial actions, as long as their own funds are demonstrably involved.

4. List at least 5 items which can be categorized as 'hazardous substance' according to Environment Protection Act.

Answer:

5 examples of items likely categorized as hazardous substances under the EPA based on their properties:

1. **Industrial Chemicals:** Many chemicals used in various industries can be hazardous. This includes substances like strong acids, bases, solvents, and certain organic compounds. These can cause serious health problems like burns, respiratory issues, or even be carcinogenic.
2. **Biomedical Waste:** Waste generated from hospitals, clinics, and laboratories can be infectious and pose a significant health risk. This includes syringes, blood samples, tissues, and discarded medicines.
3. **Electronic Waste (e-Waste):** E-waste contains hazardous materials like lead, mercury, and flame retardants. Improper disposal of e-waste can contaminate soil and water, posing health risks and environmental damage.
4. **Pesticides:** As mentioned previously, many pesticides are toxic and can harm humans, wildlife, and contaminate the environment. The EPA regulates the use, storage, and disposal of pesticides to minimize their impact.
5. **Heavy Metals:** Metals like lead, mercury, arsenic, and chromium are highly toxic and can accumulate in the environment. These can enter the food chain and cause various health problems.

5. List out any six cybercrimes

Answer:

The Information Technology Act, 2000 (IT Act) of India lays the foundation for cybercrime definitions and penalties. Here are six cybercrimes directly addressed by the IT Act:

1. **Tampering with Computer Source Code:** Section 65 of the IT Act prohibits altering, destroying, or deleting computer source code (the underlying instructions behind a program) without the owner's permission. This protects the integrity of software and data.
2. **Hacking and Data Breach:** Section 66 of the IT Act deals with hacking and data breach. It criminalizes unauthorized access to a computer system or network, as well as damaging, deleting, or altering data with malicious intent.
3. **Identity Theft and Impersonation:** Section 66C of the IT Act tackles identity theft and impersonation. It penalizes those who fraudulently use another person's electronic identity to cause harm or gain an illegal advantage.
4. **Fraud by Personation using Computer Resource:** Section 66D of the IT Act addresses online fraud. It criminalizes using a computer to impersonate someone else and cause financial or other losses to the victim.
5. **Publishing or Transmitting Obscene Material in Electronic Form:** Section 67 of the IT Act prohibits publishing or transmitting obscene content in electronic format. This includes offensive content that violates societal norms.
6. **Violation of Privacy:** Section 66E of the IT Act, introduced through an amendment in 2008, deals with privacy violations. It penalizes those who publish or distribute a person's private data without their consent.

BUSINESS REGULATORY FRAMEWORK
Important Questions in view of Examination

SECTION-A (2 Marks Questions)

1. Define term Contract ?
2. What do you mean by Agreement ?
3. What do you mean by Offer and Acceptance ?
4. Who is Minor ?
5. What do you mean by Consideration ?
6. Define the Term Contractual Capacity ?
7. What do you mean by Free Consent ?
8. What do you mean by Undue Influence ?
9. What do you mean by Fraud ?
10. What do you mean by Breach of Contract ?
11. What do you mean by Damages ?
12. What do you mean by Sale of Goods Act ?
13. Who is Buyer and Seller ?
14. Define the Term Goods ?
15. State the types of Warranties ?
16. What do you mean by Unpaid Seller ?
17. What do you mean by Negotiable Instrument ?
18. Define a) Promissory Note, b) Bill of Exchange, c) Cheque.
19. Who are the Parties of promissory note ?
20. Give The Meaning holder with an Example ?
21. What is Self Cheque ?
22. What is Stale Cheque ?
23. What do mean by Consumer ?
24. What do you mean by Consumer Dispute ?
25. What is Consumer Protection Act ?
26. Define Deficiency ?
27. Define Defect ?
28. Give the meaning of Unfair trade Practices with example ?
29. Give the meaning of Environment ?
30. Define Environmental Pollutants ?
31. State the types of Environmental Pollution ?
32. What do you mean by Dishonour of Negotiable Instrument ?
33. What is price as per sale of Goods Act ?
34. Give the meaning of term Warranty?
35. What is hazards Substances ?
36. What is Cartel ?
37. Who is an Occupier ?
38. What is Sale under sale of goods act ?
39. Give the Meaning of Business Law ?
40. Expand COPRA ACT ?
41. Who can file the Complain under Consumer Protection Act 1986 ?
42. What is Global Warming ?
43. What is an Implied Contract ?
44. What is Warranty ?
45. Define the Term Penalty ?

SECTION-B (05 Marks Questions)

1. Explain the Essentials of Valid offer ?
2. Explain the Essentials of Valid Acceptance ?
3. Difference between Coercion and Undue Influence ?
4. Briefly explain Method of Discharge of Contract ?
5. Explain the Essentials of contract of Sale ?
6. Difference between Sale and Agreement to Sale ?
7. Differences between Conditions and Warranties ?
8. State the Rights of Buyer and Seller ?
9. Explain the Duties of Buyer and Seller ?
10. Explain the Essentials Features of Sale of Goods Act ?
11. State the Features of Negotiable Instrument ?
12. Briefly explain the Types of Negotiable Instrument ?
13. Difference between Bills of Exchange & Promissory note ?
14. State the objectives of Consumer Protection Act 1986 ?
15. State the Rights and Responsibilities of Consumers ?
16. Briefly Explain Consumer Redressal Agencies ?
17. Explain the Procedures to Fill a Consumer Complaint ?
18. State the Objective of Environment Act 1986 ?
19. What do you Mean by Crossing Cheque? Explain different types of Cheques with Example ?
20. Explain the Provisions for Revocation on of an Offer ?
21. Give the Meaning of Offer ? Briefly Explain types of Offer ?

SECTION-C (12 Marks Questions)

1. Briefly explain Essentials of Contract ?
2. Explain the Classifications of Contract ?
3. Briefly Explain Remedies for Breach of Contract ?
4. Explain the Rights of Unpaid Seller ?
5. Briefly Explain the types of Cheques ?
6. What do you mean by Dishonour of Negotiable Instrument ? Explain the Grounds and Types of Ground ?
7. Briefly Explain the types of Environmental Pollutions?
8. Briefly Explain the Scope and Objectives of Environmental Protection Act ?
9. Explain in detail the powers of Central Government in Protecting the Environment Pollution ?
10. Explain the Rights and Duties of Buyer and Seller?
11. Explain in detail Consumer Redressal Agencies ?
(or) Explain composition and Jurisdiction of District, State and National Commissions of Consumer Courts ?
12. Define the terms Consumer, Consumer Dispute, Defect, Deficiency, Unfair Trade Practices Under COPRA Act?

Skill Development Activities: SECTION-D (05 Marks Questions)

1. Discuss the case of “Carlill vs Carbolic Smoke Ball Company” case
2. Discuss the case of “Mohori Bibee v/s Dharmodas Ghose”.
3. Briefly narrate any one case law relating to minor.
4. List at least 5 items which can be categorized as ‘hazardous substance’ according to Environment Protection Act.
5. List out any six cybercrimes.