UNIT - I : LAW OF CONTRACTS

CONTRACT

1Q. Define contract? Discuss the essential elements of a valid contract?

(Or)

What is the nature and the object of contract?

Ans: Meaning: " A contract is an agreement made between two (or) more parties which the law will enforce."

Definitions:

According to section 2(h) of the Indian contract act, 1872. "An agreement enforceable by law is a contract."

According to Sir Fredrick Pollock "Every agreement and promise enforceable at law is a contract"

According to SALMOND, a contract is "An agreement creating and defining obligations between the parties".

Nature /Essential elements of a valid contract:

According to section 10, "All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and not here by expressly declared to be void".

1) Offer and acceptance:

· To constitute a contract there must be an offer and an acceptance of that offer.

· The offer and acceptance should relate to same thing in the same sense.

· There must be two (or) more persons to an agreement because one person cannot enter into an agreement with himself.

2) Intention to create legal relationship:

· The parties must have intention to create legal relationship among them.

· Generally, the agreements of social, domestic and political nature are not a contract.

· If there is no such intention to create a legal relationship among the parties, there is no contract between them.

Example: BALFOUR (vs) BALFOUR (1919)

Facts: Mr. Balfour had promised to pay 30 pounds per month to his wife living in England when she could not accompany him to Ceylon where he was employed. Mr. Balfour failed to pay the promised amount. Mrs. Balfour filed a suit against her husband for breach of this agreement.

Judgment: it was held that Mrs. Balfour could not recover the amount as it was a social agreement and the parties never intended to create any legal relations.

3) Free and Genuine consent:

For a contract to be valid the consent of the parties to the agreement must be genuine and free from a)coercion, b)undue influence, c)fraud, d) Mis-representation, e)mistake.

4) Lawful Object:

· The object of the agreement must be lawful and must not be (a) Illegal, (b) immoral, (c) opposed to public policy.

If the object is unlawful for any of the reasons mentioned any sec 23, the agreement shall be void. Thus, the consideration as well as the agreement should be lawful.

5) Lawful Consideration:

· An agreement to be enforceable by law must be supported by consideration. Consideration means "something in return".

· The agreement is enforceable only when both the parties give something and get something in return. The consideration must be real and lawful.

6) Capacity of parties: (Competency)

· The parties to a contract should be capable of entering into a valid contract.
· Every person is competent to contract if
(a). He is the age of majority.
(b). He is of sound mind and
(c). He is not dis-qualified from contracting by any law.

7) Agreement not to be declared void:

· The agreements must not have been expressly declared to be void u/s 24 to 30 of the act.
Example: Agreements in restraint of trade, marriages, legal proceedings, etc..,

8) Certainty: Section 29 of the contract act provides that Agreemets, the meaning of which is not certain or capable of being made certain are void.
Thus, to make a valid contract it is absolutely essential that its terms must be clear and not vague (or) uncertain.
Example: 'A' agrees to sell 100 tons of oil to 'B'. here it is not clear what kind of oil 'A' intended to sell to 'B' . therefore, The agreement is void on the grounds of uncertainty.

9) Possibility of performance:

The terms of an agreement should be capable of performance. The agreement to do an act impossible to perform is void (section 56)and cannot be enforceable.
Example: 'A' agrees with 'B', to put life into B's dead wife, the agreement is void it is impossible of performance.

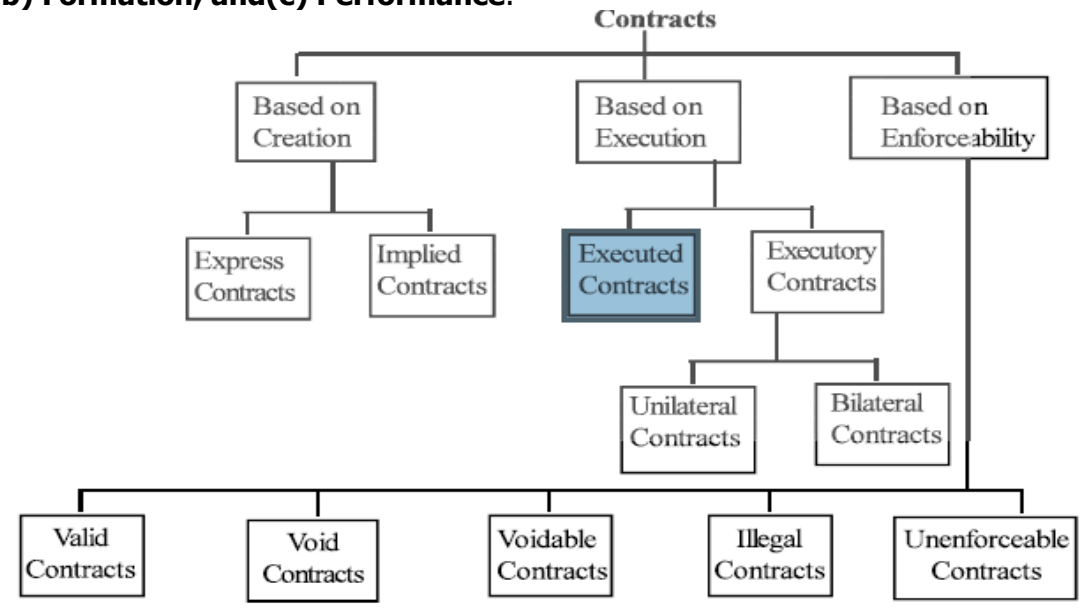
10) Necessary legal formalities:

According to Indian contract Act, both oral (or) written agreement are valid. There is no provision that the contract should be written, registered and stamped.
But if it is required by law, to fulfill with the legal formalities, then it should be complied with all legal (or) necessary formalities for its enforceability.

2Q. Define contract? Explain different kinds of contracts?

Ans: Meaning: "A contract is an agreement made between two (or) more parties which the law will enforce."
Definition: According to section 2(h) of the Indian contract act, 1872. "An agreement enforceable by law is a contract.
According to SALMOND, a contract is "An agreement creating and defining obligations between the parties"

Kinds of contracts: - Contracts may be classified according to their (a) validity, (b) Formation, and(c) Performance.



(a) Classification according to their formation:-

1. Express contract: An express contract is one, the terms of which are stated in words, spoken (or) written at the time of the formation of the contract.

2. Implied contract: An implied contract is one in which the evidence of the agreement is shown by acts and conduct of the parties, but not by words, written (or) spoken. In other words where the offer (or) acceptance of any promise made otherwise then in words, the promise is said to be implied promise (or) implied contract.

(b) Classification according to their performance:

1. Executed contract: "Executed" means that which is done. An executed contract is one in which both the parties have performed their respective obligation.

2. Executory contract: An executory contract is one in which the parties have yet to perform their obligations. Executory contract is of two types: a). Unilateral and b). Bilateral contract

a. Unilateral (or) one-sided contract: in this type of contract, one party to a contract has performed his part at the time of its formation and an obligation is outstanding only against the parties.

b. Bilateral contract (or) Two-sided contract: It is a contract in which both the parties have not performed their obligationsto the contract at the time of the formation of the contract.

(c)Classification according to validity:-

1. A valid contract: A valid contract is an agreement which is binding and enforceable. An agreement becomes a valid contract when all the essential elements of a contract (i.e.., offer and acceptance, intention to create legal relationship etc..,) are present.

2. A voidable contract: An agreement which is enforceable by law at the option of one (or) more parties thereto, but not at the option of the other (or) others, is a voidable contract. This happens when the essentials elements of a free consent is missing. When the consent of a party to a contract is said to be not free, if it is caused by Coercion, Undue influence, Misrepresentation (or) fraud, etc..,

3. A void contract: A void contract is really not a contract at all. The term "void" means "an agreement not enforceable by law".

4. Illegal contracts: Some agreements like contracts of immoral nature, opposed to public policy etc.. are illegal in itself. Thus, All illegal contracts are void but all void contracts are not illegal (ex:- A wagering agreement, though void is not illegal).

5. An unenforceable contract: An unenforceable contract is one which cannot be enforced in a court of law because of some technical defect such as absence of writing (or) where the remedy has been barred by lapses of time.

3Q. what are the differences between void and voidable agreement?

Void Agreement	Voidable Agreement
It is void from the very beginning	It remains valid till it is repudiated by the aggrieved party
A contract is void if any essential elements of the contract is missing	A contract is voidable if the consent of a party is not free.
Third party does not acquire any rights	An innocent party in good faith and for consideration acquires good title before the contract is avoided.
It cannot be enforced by any party	If the aggrieved party so decides, the contract may continue to be valid and enforceable.
Lapse of time will not make it valid. It always	If it is not avoided within a specified time

remains void	then it will become valid
Damages cannot be claimed	The aggrieved party can claim damages

4Q."All contracts are agreements but all agreements are not contracts" - explain.
Ans: "All contracts are agreements but all agreements are not contracts"- the statement has two parts.
(a) All contracts are agreement: As per section 2(h) of Indian contract Act, "A contract is an agreement enforceable by law". Obviously an agreement is a pre requisite (i.e.., essential elements) for formation of contract. An agreement combined with enforceability by law and several other features (i.e.., free consent, consideration, etc..,) will create a valid contract. Therefore, all contracts will be agreements.
(b) All agreements are not contracts: As per section 2(e) of Indian contract act, "An agreement is a promise and every set of promises, forming consideration for each other". Thus, a lawful offer and a lawful acceptance create an agreement only. Therefore all agreements are not contracts.
Conclusion:
Contract = Agreement + Enforceability by law.
Agreement = Offer + Acceptance.
Thus, all agreements are contracts but all agreements are not necessarily contracts.

5Q. Differences between an agreement and a contract?

Agreement	Contract
Offer and its acceptance constitute an agreement	Agreement and its enforceability constitute a contract
An agreement may not create a legal obligation	A contract necessarily creates a legal obligation
Every Agreement may not be a contract	All contracts are agreements
Agreement is not a concluded or a binding contract	Contract is concluded and binding on the concerned parties

6Q. Differences between void agreement and Illegal agreement:

Void Agreement	Illegal Agreement
All void agreements are not necessarily illegal	All illegal agreements are void
Colleteral transactions to a void agreement are not affected i.e., they do not become void	Collateral transactions to an illegal agreements are also affected i.e., they also become void
If a contract becomes void subsequently, the benefit received has to be resorted to the other party	The money advanced or thing given cannot be claimed back.

OFFER

1Q. Define offer (OR) proposal? Explain the legal rules as to a valid offer also discuss the law relating to communication of offer and revocation of offer?
Ans: Definition:

section 2(a) of Indian contract act, 1872, defines offer 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 thereto, such act (or) abstinence, he is said to make a proposal".

Legal rules (OR) Essential elements of a valid offer / proposal:-

1) Offer must be capable of creating legal relations: an offer must be created with the intention to create legal relationship between to parties to the contract. A social invitation, even if it is accepted does not create legal relationship because it is not so intended to create legal relationship.

2) Offer must be certain, definite and not vague: If the terms of the offer are vague, indefinite, and uncertain, it does not amount to a lawful offer and its acceptance cannot create any contractual relationship.

3) Offer must be communicated: An offer is effective only when it is communicated to the person whom it is made unless an offer is communicated, there is no acceptance and no contract. An acceptance of an offer, in ignorance of the offer can never treated as acceptance and does not create any right on the acceptor.

Example: LALMAN SHUKLA (VS) GAURI DATT. (1913)

Facts: 'S' sent his servant, 'L' to trace his missing nephew. He then announced that anybody would be entitled to a certain reward. 'L' traced the boy in ignorance of his announcement. Subsequently, when he came to know of his reward, he claimed it.

Judgment: He was not entitled for the reward.

4) Offer must be distinguished from an invitation to offer: A proposer/offer must be distinguished from an invitation to offer. In the case of invitation to offer, the person sending out the invitation does not make any offer, but only invites the party to make an offer. Such invitations for offers are not offers in the eyes of law and do not become agreement by the acceptance of such offers.

Example: Pharmaceutical society of Great Britain (vs) Boots cash chemists (1953).

Facts: Goods are sold in a shop under the 'self service' system. Customers select goods in the shop and take them to the cashier for payment of price.

Judgment: The contract, in this case, is made, not when a customer selects the goods, but when the cashier accepts the offer to buy and receives the price.

5) Offer may be expressed (or) implied: An offer may be made either by words (or) by conduct. An offer which is expressed by words (i.e.., spoken or written) is called an 'express offer' and offer which is inferred from the conduct of a person (or) the circumstances of the case is called an 'implied offer'.

6) Offer must be made between the two parties: There must be two (or) more parties to create a valid offer. One is the offeror and the other is the offeree.

7) Offer may be specific (or) general:

a. Specific offer: An offer is said to be specific when it is made to a definite person, such an offer is accepted only by the person to whom it is made.

b).General offer: general offer is one which is made to a public at large and maybe accepted by anyone who fulfills the requisite conditions.

Example: Carilill (vs) Carbolic Ball company (1893).

Facts: A company advertised in several newspapers is that a reward of L 100 (pounds) would be given to any person contracted influenza after using the smoke ball according to the printed directions. Once Mr.Carilill used the smoke balls according to the directions of the company but contracted influenza.

Judgment: she could recover the amount as by using the smoke balls she accepted the offer.

8) Offer must be made with a view to obtaining the assent: A offer to do (or) not to do something must be made with a view to obtaining the assent of the other party

addressed and it should not made merely with a view to disclosing the intention of making an offer.

9) Offer must not be statement of price: A mere statement of price is not treated as an offer to sell. Therefore, an offer must not be a statement of price.

Example: HARVEY (VS) FACEY (1893):

Facts: Three telegrams were exchanged between Harvey and Facey.

(a) "Will you sell us your Bumper hall pen? Telegram lowest cash price- answer paid". [Harvey to Facey].

(b) "Lowest price from bumper hall pen L 900 (pounds)". [Facey to Harvey]

(c) "We agree to buy Bumper hall pen for the sum of L 900 (pounds) asked by you". [Facey to Harvey]

Judgment: There was no concluded contract between Harvey and Facey. Because, a mere statement of price is not considered as an offer to sell.

10) Offer should not contain a term "the non-compliance" of which may be assumed to amount to acceptance.

What are the different types of offers?

1. Express Offer: An express offer is one which is made by words spoken or written. Example I: X says to Y, "Will you purchase my car for Rs 1,00,000?" Example II: X writes to Y in a letter, "I want to sell my house for Rs 2,00,000" Example III: X advertises in a newspaper that I will pay Rs 1,000 to anyone who traces my missing nephew.

2. Implied Offer: An implied offer is one which is made otherwise than in words. In other words, it is inferred from the conduct of the person or the circumstances of the particular case. Example I: A transport company runs buses on different routes to carry passengers. It is an implied offer by the transport company to carry passengers for a certain fare. Example II: A bid at an auction is an implied offer to buy.

3. Specific Offer: A specific offer is one which is made to a definite person or particular group of persons. A specific offer can be accepted only by that definite person or that particular group of persons to whom it has been made. Example: X offers to buy car from Y for Rs 1.0 lakh. This offer is a specific offer which has been made to a definite person Y. No person other than Y can accept this offer.

4. General Offer: A general offer is one which is not made to a definite person, but to the world at large or public in general. A general offer can be accepted by any person by fulfilling the terms of the offer. In case of general offer, the contract is made with person who having the knowledge of the offer comes forward and acts according to the conditions of the offer.

Example: Carbolic Smoke Ball Co. advertised in the newspaper that it would pay to anyone pounds who contracts influenza after using the smoke ball of the company according the printed instructions. Mrs. Carlil uses the smoke ball according to the printed directions but subsequently contracted influenza. On a suit for the reward she was held entitled to recover the same because she had accepted the offer by fulfilling the terms of the offer. [Carlil vs. Carbolic Smoke Ball Co.]

ACCEPTANCE

1Q. "An acceptance to be effective must be communicated to the offeror". Are there any exceptions to this rule?

(OR)

Define acceptance? Explain the rules regarding a valid acceptance?

Meaning of acceptance: Acceptance means giving consent to the offer. It is an expression by the offeree of his willingness to be bound by the terms of the offer.
Definition: section 2(b) of the Indian contract Act, 1872, defines an acceptance is "when the person to whom the proposal is made signifies is assent thereto, the proposal is said to be accepted becomes a promise".
In other words, an acceptance is the consent given to offer.On the acceptance of the proposal, the proposer is called the promisor/offeror and the acceptor is called the promisee/offeree.

Legal rules as to acceptance:

1) Acceptance must be absolute and unqualified: An acceptance to be valid it must be absolute and unqualified and in accordance with the exact terms of the offer. · An acceptance with a variation, slight, is no acceptance, and may amount to a mere counter offer which puts an end to the original offer and it cannot be revived by subsequent acceptance.
X offered to sell his car for Rs 1,00,000 to Y. B agreed to buy it for Rs 90,000. V's act is a counter offer and not an acceptance of X's offer. Now, if Y accepts the original offer to buy the car for Rs 1,00,000, X will not be bound to sell the car because V's counter offer has put an end to the original offer. [Nihal Chand vs. Amar Nath]

2) Acceptance must be according to the mode prescribed (or) usual and reasonable manner:

I. If the offeror prescribed a mode of acceptance, acceptance must be given according to the mode prescribed.
II. If the offeror prescribed no mode of acceptance, acceptance must be given according to some usual and reasonable mode.
III. If an offer is not accepted according to the prescribed (or) usual mode. The proposer may within a reasonable time give notice to the offeree that the acceptance is not according to the mode prescribed.
IV. If the offeror keeps quite he is deemed to have accepted the acceptance.

3) Acceptance must be communicated to the offeror:

i. For a valid acceptance, acceptance must not only be made by the offeree but it must also be communicated by the offeree to the offeror.
ii. Communication of the acceptance must be expressed or implied.

4) Acceptance must be given within a reasonable time:

i. If any time limit is specified, the acceptance must be given with in that time.
ii. If no time limit is specified, the acceptance must be given within a reasonable time.

Example: Ramsgatevictoria Hotel Company (vs) Monteflore (1886)
Facts: On June 8th 'M' offered to take shares in 'R' Company. He received a letter of acceptance on November 23rd. he refused to take shares.
Judgment: 'M' was entitled to refuse his offer has lapsed as the reasonable period which it could be accepted and elapsed.

5) It cannot precede an offer:

i. If the acceptance precedes an offer, it is not a valid acceptance and does not result in a contract.
ii. In other words "acceptance subject to contract" is no acceptance.

6) Acceptance must be given by the parties (or) party to whom it is made:

i. An offer can be accepted only by the person (or) persons to whom it is made.
ii. It cannot be accepted by another person without the consent of the offeror.

Example: Boulton (vs) Jones (1857).
Facts: Boulton bought a hose-pipe business from Brocklehurst. Jones, to whom Brocklehurst owed a debt, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not addressed to him. Jones refused to pay

Boulton for the goods because he, by entering into a contract with Brocklehurst, intended to set off his debt against Brocklehurst.
Judgment: The offer was made to the Brocklehurst and it was not in the power of Boulton to step in and accept. Therefore there was no contract.

7) It cannot be implied from silence:

i. Silence does not amount to acceptance.
ii. If the offeree does not respond to offer (or) keeps quite, the offer will lapse after reasonable time.
iii. The offeror cannot compel the offeree to respond offer (or) to suggest that silence will be equivalent to acceptance.

8) Acceptance must be expressed (or) implied:

i. An acceptance may be given either by words (or) by conduct.
ii. An acceptance which is expressed by words (i.e.., spoken or written) is called 'expressed acceptance'.
iii. An acceptance which is inferred by conduct of the person (or) by circumstances of the case is called an 'implied or tacit acceptance'.

Example: Carilill (vs) Carbolic Ball company (1893).
Facts: A company advertised in several newspapers is that a reward of L 100 (ponds) would be given to any person contracted influenza after using the smoke ball according to the printed directions. Once Mr.Carilill used the smoke balls according to the directions of the company but contracted influenza.
Judgment: she could recover the amount as by using the smoke balls she accepted the offer.

9) Acceptance may be given by performing some condition (or) by accepting some consideration.

10) Acceptance must be made before the offer lapses (or) before the offer is withdrawn.

COMMUNICATION OF OFFER AND ACCEPTANCE

1Q. Communication of offer, acceptance and revocation.
(Or)
When is communication complete?
Ans: An offer, its acceptance and their revocation (withdrawal) to be complete when it is communicated to the other party.
When the contracting parties are face to face and negotiate in person, a contract comes into existence the movement the offeree gives his absolute and unqualified acceptance to the proposal made by the offeror.

Rules regarding Communication of offer:

1) The communication of an offer is complete when it comes to the knowledge of the person to whom it is made.
2) An offer may be communicated either by words spoken (or) written (or) it may be inferred from the conduct of the parties.
3) When an offer/proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.
Example: 'A' makes proposal to 'B' to sell his house at a certain price. The letter is posted on 10th July. It reaches 'B' on 12th July. The communication of offer is complete when 'B' receives the letter (i.e.., on 12th July).

Rules regarding Communication of acceptance:-

1) Communication of an acceptance is complete when:-
a) As against the proposer/offeror when it is put into the certain course of transmission to him, so as to be out of the power of the acceptor.
b) As against the acceptor, when it comes to the knowledge of the proposer.

2) When a proposal is accepted by a letter sent by the post the communication of acceptance will be complete:-

The communication of acceptance is complete ...	When does the communication of acceptance complete...
As against the proposer	• For the propser, the communication of the acceptance is complete in the course of action. After this the proposer can't revoke the acceptance. • In case of acceptance made by post, the proposer becomes bound by the acceptance as soon as the properly addressed and stamped letter of acceptance is duly posted even if such letter of acceptance is lost or delayed in post.
As against the acceptor	• When it comes to the knowledge of the proposer. • In case of acceptance made by post, the acceptor becomes bound by the acceptance only when the letter of acceptance is actually received by proposer.

Rules regarding Communication of revocation:

1) As against the person who makes it, when it put into a course of transmission.
2) As against the person to whom it is made, when its comes to his knowledge.

Example: 'A' proposes by a letter, to sell a house to 'B' at a certain price. The letter is posted on 15th may. It reaches 'B' on 19th may. 'A' revokes his offer by telegram on 18th may. The telegram reaches 'B' on 20th may. The revocation is complete against 'A' when the telegram is dispatched (i.e.., in 18th may). It is complete as against the 'B' when he receives it (i.e.., on 20th may).

REVOCATION OF OFFER AND ACCEPTANCE

Q. write a short note on revocation of offer and acceptance?

Meaning of Revocation:

The term 'revocation' means 'taking back' or 'withdrawal'.

Section 5 of the Indian Contract Act, a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

Example: X of Agra offers by a letter dated 1st January sent by post to sell his car to Y of Delhi for Rs. 1,00,000. Y accepts the offer on 7th January at 1 p.m. by letter sent by post. Here, X may revoke his offer at any time before 1 p.m. on 7th Jan. but not afterwards.

Rule for revocation of offer:

i. Revocation must always be expressed.
ii. Revocation must move from the offerer himself or a duly authorised agent.
iii. Notice of revocation of a general offer must be given through the same channel by which the original offer was made.
iv. Offer cannot be revoked even if the letter of acceptance is lost or delayed in transit.

Time Limit within which Acceptance can be Revoked [Section 5]:

According to Section 5 of the Indian Contract Act, "An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards."

In case acceptance is is conveyed by post then that communication of acceptance is complete as against the acceptor when the letter of acceptance is actually received by the

proposer. Hence, an acceptance can be revoked at any time before the letter of acceptance is actually received by the proposer. Thus an acceptor may revoke his acceptance by a speedier mode of communication which will reach before the letter of acceptance is received by the proposer.

Example: X of Agra offers by a letter dated 1st January sent by post to sell his car to Y of Delhi for Rs 1,00,000. Y accepts the offer on 7th Jan. at 1 p.m. by a letter sent by post. X receives the letter of acceptance on 15th Jan. at 3 p.m. Here, Y may revoke his acceptance at any time before 3 p.m. on 15th Jan. but not afterwards.

Communication of Revocation [Section 4]:

The communication of revocation is complete at different times for person who makes it and the person to whom it is made.

The following are the rules regarding communication of revocation:

1) As against the person who makes it, when it put into a course of transmission.
2) As against the person to whom it is made, when its comes to his knowledge.

CONSIDERATION

1Q. Define consideration? What are the rules as to consideration?
Or
Define consideration and what are the essential of a valid consideration?

Ans: Meaning:- Consideration is a technical term used in the sense of quid-pro-quo (i.e.., some thing in return). When a party to an agreement promises to do something, he must get something in return. This "something" is defined as consideration.

Definition:- According to section 2(d) of the Indian contract Act, 1872, defines consideration as "when at the desire of the promisor, the promise (or) any other person has done (or) abstained from doing, (or) does (or) abstains from doing, (or) promises to do (or) to abstain from doing, something, such act (or) abstinence (or) promise is called a consideration for the promise".

Example: Abdul Aziz (vs) Masum Ali (1914)
Facts: The secretary of a mosque committee filed a suit to enforce a promise which the promisor had made to subscribe Rs.500/- for rebuilding a mosque.
Judgment: 'The promise was not enforceable because there was no consideration in the sense of benefit', as 'the person who promised gained nothing in return for the promise made', and the secretary of the committee to whom the promise was made, suffered no detriment (liability) as nothing had been done to carry out the repairs. Hence the suit was dismissed.

Essentials of a valid consideration

1. It may be past, present (or) future:

· The words "has done (or) abstained from doing refer to past consideration.
· The word "does (or) abstains from doing" refer to present consideration.
· Similarly the word "promises to do (or) to abstain from doing" refers to the future consideration. Thus, the consideration may be past, present (or) future.

2. It must move at the desire of the promisor:

· In order to constitute a legal consideration, the act (or) abstinence forming the consideration for the promise must move at the desire (or) request of the promisor.
· If it is done at the instance of a third party (or) without the desire of the promisor, it will not be a valid contract.

Example: Durga Prasad (vs) Baldeo (1880);

Facts: 'B' spent some money on the improvement of a market at the desire of the collector of the district. In consideration of this 'D' who was using the market promised to pay some money to 'B'.
Judgment: The agreement was void being without consideration.

3. It must not be illegal, immoral (or) not opposed to public policy:

· The consideration given for an agreement must not be unlawful, illegal, immoral and not opposed to public policy.
· Where it is unlawful, the court will not allow an action on the agreement.

4. It need not be adequate:

· Consideration need not be any particular value
· It need not be approximately equal value with the promise for which it is exchanged.

In other words consideration means "something in return". This means something in return need not be necessarily be an equal in value to "something given".

5. It must be real and not illusory:

· Consideration must not be illegal, impossible (or) illusory but it must be real and of some value in the eyes of law.
· The following are not real consideration:
(a)Physical impossibility, (b)legal impossibility, (c)uncertain consideration, (d) illusory consideration.

6. It must move from the promise (or) any other person:

· Under English law consideration must move from the promisee itself. But, under Indian law, consideration move from the promisee (or) any other person (i.e.., even a stranger).
· This means as long as there is a consideration for a promise, it is immaterial who has furnished it. But the stranger to a consideration will be sue only if he is a party to the contact.

Example: Chinnaya (vs) Ramayya (1882).

Facts: An old lady, by a dead of gift, made over certain property to her daughter 'D', under the directions that she should pay her aunt, 'P' (sister of old lady), a certain sum of money annually. The same day 'D' entered into an agreement with 'P' to pay her the agreed amount later 'D' refused to pay the amount on the plea that no consideration had moved from 'P' to 'D'.
Judgment: 'P' was entitled to maintain suit as consideration had moved from the old lady, sister of 'P', to the daughter, 'D'.

7. It must be something the promisor is not already bound to do:

A promise to do what one is already bound to do, either by general law (or) under an existing contract, is not a good consideration for a new promise, since it adds nothing to the pre-existing legal or contractual obligation.

8. It may be an act, abstinence (or) forbearance (or) a return promise:

consideration may be an act, abstinence (or) forbearance (or) a return promise. Thus it may be noted that the following are good considerations for a contract.
· Forbearance to sue.
· Compromise of a disputed claim.
· Composition with creditors.
EXAMPLE:- A promise to perform a public duty by a public servant is not a consideration.

2Q.Define consideration? "A contract not supported by consideration is unenforceable" discuss what are it exceptions".
(Or)
"A contract without consideration is void"- Discuss its exceptions?
(Or)

"Insufficiency of consideration immaterial; but an agreement without consideration is void".Comment.
(Or)
Explain the term consideration and state the exceptions to the rule "No consideration, no contract"
Ans: Meaning:-
Consideration is a technical term used in the sense of quid-pro-quo (i.e.., some thing in return). When a party to an agreement promises to do something, he must get something in return. This "something" is defined as consideration.

According to Winfield and Salmond "A promise without consideration is a gift, one made for consideration is the bargain".
Section 25 of the Contract Act deals with the contract without consideration and tells about the exceptions.
1. Natural love and affection: An agreement made without consideration is valid if it is made out of love, nature and affection such agreements are enforceable if
· The agreement is made in writing and registered.
· The agreement must be made between the parties standing in near relations to each other and
· There must be nature, love and affection between the parties.

Example: Venkatswamy (vs) Rangaswamy (1903):
Facts: By a registered agreement, 'V', on account of nature, love and affection for his brother, 'R', promises to discharge debt to 'B'. If 'V' does not discharge the debt.
Judgment: 'R' may discharge it and then sue 'V' to recover the amount. Therefore it is a valid agreement.
2. Compensation for past voluntary services: A promise made without consideration is valid if, it is a person who has already done voluntarily done something for the promisor, is enforceable, even though without consideration. In simple words, a promise to pay for a past voluntary service is binding.
3. Promise to pay Time-Bared debt: An agreement to pay a time-bared debt is enforceable if the following conditions are satisfied.
· The debt is a time bared debt
· The debtor promises to pay the time barred debt.
· The promise is made in writing.
· The promise is signed by the debtor.
4. Completed gifts: The rule "No consideration – No contract" does not apply to completed gifts.
5. Agency: According to section 185, no consideration is necessary to create an agency.
6. Charitable subscription: Where the promisee on the strength of promise makes commitments (i.e.., changes his position to his liability/detriment).
Example: Kedernath (vs) Ghouri Mohammed (1886).
Facts: 'G' had agreed to subscribe Rs.100/- towards the construction of a town hall at Howrah. The secretary, 'K', on the faith of the promise, called for plans and entrusted the work to contractors and undertook the liability to pay them.
Judgment: The amount could be recovered, as the promise resulted in a sufficient detriment to the secretary. However, be enforceable only to the extent of the liability incurred by the secretary. In this case, the promise, even though it was gratuitous, became, enforceable because on the faith of promise the secretary had incurred a detriment.

3Q."A stranger to a consideration can sue" – Are there any exceptions to this rule?

Or

Doctrine of Privity of contract.

Introduction: There is a general rule of law is that only the parties to a contract can sue. In other words, if a person not a party to a contract, he cannot sue. This rule is known as the **"Doctrine of privity of contract".**

There are two consequences of doctrine of privity of contract they are follows:

1) A person who is not a party to a contract cannot sue even if the contract is for his benefit and he provided consideration.

2) A contract cannot provide rights (or) impose obligations arising under it on any person other than the parties to it.

Example: Dunlop Pneumatic TyreCo.Ltd (vs) Selfridge &Co.Ltd (1915).

Facts: 'S' bought tyres from the Dunlop Rubber company and sold them to 'D', a sub-dealer, who agreed with 'S' not to sell below Dunlop's list price and to pay the Dunlop company L 5 (pounds) as damages on every tyre 'D' undersold. 'D' sold two tyres at less than the list price and there upon, the Dunlop Company sued him for the breach.

Judgment: The Dunlop Company could not maintain the suit as it was a stranger to the contract.

Exceptions to the rule that a stranger to a contract can not sue:

1. A trust: In trust deed beneficiaries is allowed to sue the trustee for enforcement of trustee's duties even though they are not contracting party. However, the name of the beneficiary must be clearly mentioned in the contract.

Example: Gandy (vs) Gandy (1884):

Facts: A husband who was separated from his wife executed a separation deed by which he promised to pay to the trustees all expenses for the maintenance of his wife.

Judgment: This sort of agreement creates a trust in favor of the wife and can be enforced.

2. Marriage settlements, partition (or) other family arrangements: When an agreement is made in connection of marriage settlements, partitions (or) other family arrangements and a provision is made for the benefit of a person, he may sue although he is not a party to the agreement.

Example: Daropti (vs) JaspatRai (1905):

Facts: 'J's wife deserted him because of his ill treatment. 'J' entered into an agreement with his father-in-law to treat her properly (or) else pay her monthly maintenance. Subsequently, she was again ill-treated and also driven out.

Judgment: she was entitled to enforce the promise made by 'J' to her father.

3. Acknowledgement (or) Estoppel: The person, who becomes an agent of a third party by acknowledgement (or) Estoppel, can be sued by such third party.

4. Assignment of contract: Assignment means voluntary transfer of the rights by a person to another. In such a case an assignee becomes entitled to sue and enforce the rights which are assigned to him.

5. Contracts entered into through an agent: The principal enforce the contract entered into by his agent provided the agent act within the scope of his authority and in the name of the principal.

6. Covenants running with the land: In case of transfer of immovable property, the purchaser of land (or) the owner of the land is bound by certain conditions (or) covenants created by an agreement affecting the land.

PERFORMANCE OF CONTRACT

Q. What are the essentials or requisites of a valid tender?

Performance of contract implies fulfilment of the terms of the contract by the respective parties to the contract.

Section 37 of the Indian Contract Act lays down the obligation of the parties regarding performance. According to this section, "The parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law."

Performance is of two types:

i. Actual performance and
ii. Offer to perform or attempted performance.

i. <u>Actual Performance</u>

A party to a contract is said to have actually performed his promise when he has done what he had undertaken to do. In other words, he must have fulfilled all his obligations under the contract

ii. <u>Attempted Performance or Offer to Perform</u>

An *offer to perform* one's obligations under a contract is called *tender.* It is also called attempted performance because though the promisor has offered to fulfil his obligation under the contract, the performance is not complete unless the offer of performance is accepted by the promisee. The nature of the contract determines whether it requires *actual* or *attempted* performance.

The essentials or requisites of a valid tender:

1. **It must be unconditional**. It becomes conditional when it is not in accordance with the terms of the contract.

Ex: 'D' a debtor offers to pay to 'C', his creditor, the amount due to him on the condition that 'C' sells to him certain shares at cost. This is not a valid tender.

2**. It must be the whole quality contracted for or of the whole obligation.** A tender of an installment when the contract stipulated payment in full is not a valid tender.

3. It must be by a person who is in a position, and is willing to perform the promise.

4. It must be made at the proper time and place. A tender of goods after the business hours or of goods or money before the due date is not a valid-tender.

Ex: "D" owes "C" Rs.100/- payable on 1st of August with interest. He offers to pay on the 1st of July the amount with interest up to the 1st of July. It is not a valid tender as it not made at the appointed time.

5. It must be made to the proper person and also in proper form.

6. It may be made to one of the several joint promises. In such a case it has the same effect as a tender to all of them.

7. In case of tender of goods, it must give a reasonable opportunity to the promise for inspection of the goods. A tender of goods at such time when the other party cannot inspect the goods is not a valid tender. But in the following case, tender was held to be valid.

Ex: Startup vs. MacDonald (1843):

Facts: The plaintiffs agreed to sell 10 tons of linseed oil to the defendant to the delivered "within the last fourteen days of March". Delivery as tendered at 8.30pm on March 31, a Saturday. The defendant refused to accept the goods owing to lateness of the hour.

Judgment: Though the hour was unreasonable, the defendant could still take delivery before midnight.

8. In case of tender of money, the debtor must make a valid tender in legal tender money. Ex: In India in rupees, us-dollars etc..,

Q. write a note on Performance of a contract

The persons who can demand performance are:

1. Promisee:

Promisee can only demand the performance of the promise under a contract. For example, X promises Y to pay Rs 1,000 to Z. It is only Y who can demand performance and not Z.

2. Legal Representative:

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

3. Third Party:

A third party can also demand the performance of the contract in some exceptional cases like beneficiary in case of trust, the person for whose benefit the provision is made in family arrangements.

4. Joint Promisees:

In case of several promisees, unless a contrary intention appears, the performance can be demanded by all the promisees' jointly or any of the designated person on behalf of all the promisees.

PERSONS WHO MUST PERFORM

1. Promisor:

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor.

Example I: X promises to marry Y. X must perform this promise personally.

Example II: X promises to paint a picture for Y. X must perform the promise personally.

2. Promisor's Agent:

If it was not the intention of the parties that the promise be performed by the promisor himself, such contracts can be performed by the promisor himself or any competent person employed by him.

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

3. Legal Representatives:

In case of death of promisor, his legal representative can perform the contract unless a contrary intention appears or the contract is of personal nature .

Example: X promises to marry Y. X dies. X's legal representative cannot perform this promise.

4. Third Party [Section 41]:

A contract can be performed by a third party if the promisee accepts the arrangement. According to Section 41, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

5. Joint Promisors [Section 42]:

In case of several promisors, all the promisors are responsible to perform or any designated person must perform the promise.

Q. Define "Doctrine of supervening impossibility." Explain the effects on the performance of the contract.

Ans: Impossibility of performance: Section 56, of the contract act, deals with the impossibility of performance. "An agreement to do an act impossible in itself is void." It is of two types:

1. Impossibility existing at the time of contract: Impossibility which arises subsequent to the formation of contract {i.e., a contract to do an act, which after the contract is made} is called post contractual or supervening impossibility. In such a case the contract becomes void.

2. subsequent of supervening impossibility: Discharge by supervening Impossibility (or) cases where the "Doctrine of supervening impossibility applies:"

A contract will be discharged on the ground of supervening impossibility in the following cases:-

1. Destruction of subject matter of contract: When the subject matter of a contract, subsequent to its formation, is destroyed without any fault of parties to the contract, then the contract is discharged.

Example: Taylor Vs Caldwell (1863):

Facts: C agreed to let out a music hall to T on a certain dates. But before those days the hall was accidentally destroyed by fire.

Judgment: the owner was absolved from liability to let the music hall as promised. Thus the contract was void.

2. Non-existence or non occurrence of a particular state of things: Some times, a contract is entered into between two parties on the basis of a continued existence or occurrence of a particular state of things. If there is any change in the state of things which formed as the basis of contract, the contract is discharged.

Example: Krell Vs Henry (1903):

Facts: H hired a flat from K for June 26 and 27, 1902 for witnessing a coronation procession of King Edward VII. K knew of H's purpose though the contract contained no reference to this. The coronation procession was cancelled due to the illness of the king.

Judgment: H was excused from paying the rent for the flat on the ground that existence of the procession was the basis to the contract. Its cancellation discharged the contract.

3. Death or personal incapacity of the parties: Where the performance of a contract involves personal skill or qualification or the existence of a given person, the contract is discharged on the illness, incapacity, or death of that person.

EX: "A" contracts to act at a theatre for 6 months in consideration of a sum paid in advance by "B". On several occasions, A is too ill to act. The contracts to act on those occasions become void.

4. Change of law: When a sub sequent change of law takes place or the government takes some power under some special power, so that the performance of a contract becomes impossible, the contract is discharges.

EX: There was a contract of a sale of trees of a forest, subsequently by an act of legislature; the forest was acquired by the state government. The contract was discharged by impossibility created by subsequent change in law.

5. Out-break of war: All contracts entered into with an alien enemy during war is un-lawful and therefore impossible of performance. Contracts entered into before the out-break of war are suspended during the war and may be received after the war is over.

Effects of supervening impossibility:

I. When the performance of a contract becomes impossible or unlawful to its formation, the contract becomes void.

II. Where one person has promised to do something which he knew, or with reasonable diligence, might have known, and which the promisee did not know to be impossible or un-

lawful, the promisor must make compensation to the promisee for any loss which the promisee incurred through the non-performance of a contract.
III. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage. Under such agreement or contract is bound to restore (return) it, or to make compensation to it, to the person from whom who received it.
EX: A pays B Rs. 1000 in consideration of B's promise to marry C, A's daughter. C is dead at the time of promise. The agreement is void, but B must repay A Rs.1000.

Q. Impossibility of performance is as a rule, not an excuse for non-performance of a contract.
Or
Exceptions to Doctrine of supervening impossibility
Section 56, of the contract Act; deals with the impossibility of performance. "An agreement to do an act impossible in itself is void"
Impossibility of performance is, as a rule not an excuse for non-performance of a contract.

1. Difficulty of performance: A contract is not discharged merely because that it has become more difficult of performance due to some uncontemplated events or delays.
Example: Tsakiroglou and Co.ltd. (Vs) NobleeThrol G.M.B.H...(1962):
Facts: A agreed to sell to B 300 tons of Sudan groundnuts c.i.f Hamburg. The usual and normal route at the date of the contract was via Suez Canal. Shipment was to be in November/December, 1956, but on November 2, 1956 the canal was closed to traffic and it was not reopened until the following April. A refused to ship the goods via the cape of good hope on the plea that the contract had been frustrated by reason of the closing of the Suez route.
Judgment: The contract was not frustrated as A could have transported the goods via the Cape of Good Hope.
2. Commercial impossibility: A contract is not discharged merely because expectation of higher profits is not realized, or the necessary raw material is available at a higher price because of the outbreak of war, or there is a sudden depreciation of currency. Thus, performance cannot be excused on the ground of commercial impossibility.
3. Default of third person: when a contract could not be performed because of the default of a third person on whole work the promisor relied in such a case impossibility of performance cannot be excused. Thus it is not discharged.
Example: Ganga Saran Vs Ram Charan (1952):
Facts: A agreed to sell to B a specified quantity of cotton goods to be manufactured by a particular mill. B agreed to deliver as and when goods might be received from the mill. A time was named for the completion for the delivery. A could not fulfill the agreement as the mill failed to produce the goods.
Judgment: B was entitled to recover damages from A.
4. Strikes, lock outs, and civil disturbances: A contract is not discharged by reason of strike by the workers, or outbreak of some civil disturbances interrupting the performance of promise. However, the parties to a contract may agree to the contrary by making an express provision in this regard.
5. Failure of one of the object: if a contract is made for fulfillment of several objects, the failure of one or more of them does not discharge the contract.
Example: Herne bay steam Boat Company (Vs) Hutton (1903):
Facts: "HB" agreed to let out a boat to "H".
a) for viewing a naval review on the occasion of the coronation of Edward VII,
b) To sail round the fleet.
Owing to the king's illness the naval review was abandoned but the fleet was assembled. The boat, therefore, could be used to sail round the fleet.

Judgment: The contract was not discharged, because failure of one of the object does not discharge the contract.

6. Self-induced impossibility: if impossibility arises due to a party's own conduct or act {i.e., a deliberate act or a negligent act}, it cannot be called as supervening impossibility, and therefore the party is not received from his obligation to perform.

DISCHARGE OF A CONTRACT

Q. Explain the various modes of discharge of a contract?

Discharge of a contract means termination of the contractual relations between the parties to a contract. A contract is said to be discharged when the rights and obligations of the arties under the contract come to an end.

MODES OF DISCHARGE OF CONTRACT

A contract may be discharged in various modes.

I. Discharge by Performance:

A contract can be discharged by performance in any of the following ways:

1. Actual Performance:

A contract is said to be discharged by actual performance when the parties to the contract perform their promises in accordance with the terms of the contract.

2. Attempted Performance or Tender:

So far as the tenderer of performance is concerned, a contract is said to be discharged by attempted performance when the promisor has made an offer of performance to the promisee but it has not been accepted by the promisee.

II. Discharge by Mutual Agreement

Since a contract is created by mutual agreement, it can also be discharged by mutual agreement. A contract can be discharged by mutual agreement in any of the following ways:

1. Novation [Section 62]:

Novation means the substitution of a new contract for the actual contract. Such a new contract may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the original contract.

Example: A owes money to B under a contract. It is agreed between A, B and C that B shall henceforth accept C as his debtor, instead of A. The old debt of A to B no longer exists a new debt from C to B has been contracted.

2. Rescission [Section 62]:

Rescission means cancellation of the contract by any or all the parties to a contract.

Example: X promises Y to sell and deliver 100 Bales of cotton on 1st Oct. at his godown and Y promises to pay for goods on 1st Nov. X does not supply the goods. Y may rescind the contract.

3. Alteration [Section 62]:

Alteration means a change in the terms of a contract with mutual consent of the parties. Alteration discharges the original contract and creates a new contract. However, parties to the new contract must not change.

Example: X promises to sell and deliver 100 bales of cotton on 1st Qct. and Y promises to pay for goods on 1st Nov. Afterwards, X and Y mutually decide that the goods shall be delivered in five equal instalments at Z's godown. Here, original contract has been discharged and a new contract has come into effect.

4. Remission [Section 63]:

Remission means acceptance by the promisee of a lesser fulfilment of the promise made. According to Section 63, "Every promisee may dispense with or remit, wholly or in part, the

performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit."

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

Example II: A owes B Rs 5,000. A pays to B, and B accepts, in satisfaction of the whole debt Rs 2,000 paid at the time and place at which Rs 5,000 were payable. The whole debt is discharged.

Waiver means intentional relinquishment of a right under the contract. Thus, it amounts to releasing a person of certain legal obligation under a contract. e.g., A promises to supply goods to Y. Subsequently, Y exempts X from carrying out the promise. This amounts to waiving the right of performance on the part of Y.

III. Discharge by Operation of Law

A contract may be discharged by operation of law in the following cases:

1. By Death of the Promisor: A contract involving the personal skill or ability of the promisor is discharged on the death of the promisor.

2. By Insolvency: When a person is declared insolvent, he is discharged from his liability up to the date of his insolvency.

3. ByUnauthorised Material Alteration:

If any party makes any material alteration in the terms of the contract without the approval of the other party, contract comes to an end.

4. By the Identity of Promisor and Promisee:

When the promisor becomes the promisee, the other parties are discharged. Example: X draws a bill receivable on Y who accepts the same. X endorses the bill in avour of Z who in turn endorses in favour of Y. Here, Y is both promisor and promisee and hence the other parties are discharged.

IV. Discharge by impossibility of Performance.

The effects of impossibility of the performance of a contract may be discussed under the following two heads:

1. Effects of Initial Impossibility [Section 56 Para 1 and 3]:

Initial impossibility means the impossibility existing at the time of making the contract.

2. Effects of Supervening Impossibility [Section 56 Para 2]:

Supervening impossibility means impossibility which does not exist at the time of making the contract but which arises subsequently after the formation of the contract.

Cases when a Contract is discharged on the Ground of Supervening Impossibility:

a. Destruction of Subject Matter:

The contract is discharged if the subject matter the contract is destroyed after the formation of the contract without any fault of party.

Example: X agreed to sell his crop of wheat. The entire crop was destroyed by fire though fault of the party. The contract was discharged.

b. Death or Personal Incapacity:

The contract is discharged on the death or incapacity or illness of a person if the performance of a contract depends on his personal skill or ability.

Example: X agreed to sing on a specified day. X fell seriously ill and could not perform on that day. The contract was discharged.

c. Declaration of war:

The pending contracts at the time of declaration of warvare either suspended or declared as void.

Example: X contracts to take in cargo for Y at a foreign port. X's government afterwards declares war against the country in which the port is situated. The contract becomes when void when the war is declared.

d. Change of Law

The contract is discharged if the performance of the con becomes impossible or unlawful due to change in law after the formation of contract. Example: X agreed to sell his land to Y. After the formation of the contract, the Government issued a notification and acquired the land. The contract was discharged. [Shyam Sunder vs. Durga]

e. Non-existence or Non-occurrence of a Particular State of Things necessary for performance:

The contract is discharged if that particular state of thing which forms the basis of a contract ceases to exist or occur.

Example: X and Y contract to marry each other. Before the time fixed for the marriage, X goes mad. The contract becomes void.

Cases when the Contract is not discharged on the Ground of Supervening Impossibility:

Impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible.

A contract is discharged by the supervening impossibility in the following cases:

a. Difficulty of Performance:

A contract is not discharged simply on the ground that its performance has become more difficult, more expensive or less profitable than that agreed at the time of its formation.

Example: X agreed to supply coal within a specified time. He failed to supply in because of government's restriction on the transport of coal from collieries. Here X will be discharged because the coal was available in the open market from where X could have obtained it.

b. Commercial Impossibility:

A contract is not discharged simply on the ground of commercial impossibility, i.e. when the contract becomes commercially unviable or unprofitable.

Example : X, a furniture manufacturer agreed to supply certain furniture to Y at an agreed rate. Afterwards, there was a sharp increase in the rates of the timber and rates of wages. Since it was no longer profitable to supply at the agreed rate, X did not supply. X will not be discharged on the ground of commercial impossibility.

c. Default of a Third Party:

A contract is not discharged if it could not be performed because of the default of a third party on whose work the promisor relied.

Example: X entered into a contract with Y for the sale of goods to be manufactured by Z, a manufacturer of those goods. Z did not manufacture those goods. X will not be discharged be and will liable to Y for damages.

d. Strikes, Lockouts and Civil Disturbances:

A contract is not discharged on the grounds of strikes, lockouts and civil disturbances unless otherwise agreed by the parties to the contract.

Example: X agreed to supply to Y certain goods to be imported from Algeria. The goods could not be imported due to riots in that country. It was held that this was no excuse for non-performance of the contract. [Jacobs vs. Credit Lyonnais]

e. Partial Impossibility:

A contract is not discharged simply on the ground of impossibility of some of the objects of the contract.

V. Discharge by lapse of time

A contract is discharged if it is not performed or enforced within a specified period, called period of limitation. The Limitation Act, 1963 has prescribed the different periods for different contracts, e.g. period of limitation for exercising right to recover a debt is 3 years, and to recover an immovable property is 12 years. The contractual parties cannot exercise their rights after the expiry of period of limitation.

VI. Discharge by breach of contract

A contract is said to be discharged by breach of contract if any party to the contract refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. A breach of contract may occur in the following two ways:

I. Anticipatory Breach of Contract:

Anticipatory breach of contract occurs when the party declares his intention of not performing the contract before the performance is due.

II. Actual Breach of Contract:

Actual breach of contract may take place in any of the following two ways:

1. On due Date of Performance:

If any party to contract refuses or fails to perform his part of the contract at the time fixed for performance, it is called an actual breach of contract on due date of performance.

Example: X agreed to sell to Y 10 tons of wheat @ Rs 8,000 per ton to be delivered in two instalments on 20th October and on 21st October. On 20th October, X refused to deliver the goods. It is an actual breach of contract on due date of performance.

2. During the Course of Performance:

If any party has performed a part of the contract and then refuses or fails to perform the remaining part of the contract, it is an actual breach of contract during the course of performance.

Example: X agreed to sell to Y 10 tons of wheat@ Rs 8,000 per ton to be delivered in two instalments on 20th October and 21st October. On 20th October, X delivered 5 tons and refused to deliver remaining 5 tons. It is an actual breach of contract during the course of performance.

BREACH OF CONTRACT

Q. explain breach of contract ? what are the consequences of breach of contract and explain remedies for breach of contract?

A breach of contract occurs if any party refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. In case of breach, the aggrieved party (i.e. the party not at fault) is relieved from performing his obligation and gets a right to proceed against the party at fault. A breach of contract may arise in two ways,

I. Anticipatory Breach of Contract:

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Consequences of Breach of Contract
The aggrieved party (i.e. the party not at fault) is discharged from his obligation and gets rights to proceed against the party at fault.
Options Available to Aggrieved Party [Section 39]:
In case of anticipatory breach, the aggrieved party has the following two options:
1. He can rescind the contract and claim damages for breach of contract without waiting until the due date for performance, or
2. He may treat the contract as operative and wait till the due date for performance and claim damages if the promise still remains unperformed.
Consequences of Treating Contract as Operative:
In case of anticipatory breach, if the aggrieved party treats the contract as operative and waits till the due date for performance, the consequences will be as follows:
1. The promisor may perform his promise on or before the due date of performance and the promisee will be bound to accept the performance.
2. The promisor may take advantage of the discharge by supervening impossibility arising between the date of breach and the due date of the performance and in such a case, the promisee shall lose his right to sue for damages.

REMEDIES FOR BREACH OF CONTRACT

Meaning of Remedy: A remedy is the course of action available to an aggrieved party (i.e. the party at default) for the enforcement of a right under a contract.
I. Rescission of contract [Section 39]:
Rescission means a right not to perform obligation. In case of breach of a contract, the promisee may put an end to the contract. In case, the aggrieved party is discharged from all the obligations under the contract and is entitled to claim compensation for the damage which he has sustained because of the non-performance of the contract.
II. Suit for Damages:
Damages are monetary compensation allowed for loss suffered by the aggrieved party due to breach of a contract. The object of awarding damages is not to punish the party at fault but to make good the financial loss suffered by the aggrieved party due to the breach of contract.
Compensation for Loss or Damage Caused by Breach of Contract [Section 73]:
Section 73, of the Indian Contract Act which deals with compensation for damage caused by breach of contract is based on the judgement in the previous cases of such nature. It states that the aggrieved party may claim the damages as follows:
i. Ordinary Damages:
Ordinary damages are those which naturally arise in the usual course of things from such breach. These damages can be recovered if the following two conditions are fulfilled:
a. The aggrieved party must suffer by breach of contract, and
b. The damages must be proximate (i.e. direct) consequence of the breach of contract and not the indirect consequence.

Measure of Ordinary Damages: In a contract for the sale of goods, the measure of ordinary damages is the difference between the contract price and the market price of such goods on the date of breach.

ii. Special Damages:

Special damages are those which may reasonably be supposed to have been in the contemplation of both parties as the probable result of the breach of a contract. These damages can be recovered if the special circumstances which would result in a special loss in case of breach of a contract are communicated to the promisor, e.g. loss of profits on account of default by the other party to the contract can be claimed only when an advance notice of such damages has been given before.

iii. Exemplary or Punitive or Vindictive Damages;

Exemplary damages are those which are in the nature of punishment. The court may award these damages in case of a. a breach of promise to marry, where damages shall be calculated on the basis of mental injury sustained by the aggrieved party,

b. wrongful dishonour of a cheque by a banker: In case of wrongful dishonour of a cheque, the rule is smaller the amount of the cheque, larger will be the amount of damages awarded. A trader may recover such damages as wrongful dishonour of cheque shall adversely affect his goodwill but a non-trader whose cheque is wrongfully dishonoured will have to prove the loss of goodwill before claiming such damages.

iv. Nominal Damages:

Nominal damages are those which are awarded where there is only a technical violation of a legal right but the aggrieved party has not in fact suffered any loss because of breach of contract. These damages are called nominal because they are very small, say, one rupee. The court may or may not award these nominal damages.

v. Damages for inconvenience and discomfort:

If a party has suffered physical inconvenience and discomfort due to breach of contract, that party can recover the damages for such inconvenience and discomfort.

vi. Liquidated damages and penalty:

When the parties to a contract at the time of formation of contract, specify a sum which will become payable by the party responsible for breach, such specified sum is called:

a. *Liquidated Damages* if the specified sum represents a fair and genuine pre-estimate of the damages likely to result due to breach;

b. *Penalty* if the specified sum is disproportionate to the damages likely to result due tobreach.

vii. Stipulation of Interest: The stipulation of interest may or may not be in the nature of penalty. If the stipulation for interest is in the nature of penalty, the court may award reasonable compensation only.

viii. Forfeiture of Security Deposit (or Earnest Money):

A clause in a contract which provides for forfeiture of security deposit in the event of failure to perform is in the nature of a penalty. In such cases, the court may award reasonable compensation only.

III. Suit for Specific Performance:

Suit for specific performance means demanding the court's direction to the defaulting party to carry out the promise according to the terms of the contract.

Example: X agreed to sell an old painting to Y for Rs 50,000. Subsequently, X refused to sell the painting. Here, Y may file a suit against X for the specific performance of the contract.

Cases where suit for specific performance is not maintainable.

a. Where the damages are considered as an adequate remedy.

b. Where the contract is of personal nature, e.g. contract to marry.

c. Where the contract is made by a company beyond its powers as laid down in its Memorandum of Association.

d. Where the court cannot supervise the performance of the contract.

e. Where one of the parties is a minor.
f. Where the contract is inequitable to either party.

IV. Suit for Injunction:

Suit for injunction means demanding court's stay order. Injunction means an order of the court which prohibits a person to do a particular act. Where a party to a contract does something which he promised not to do, the court may issue an order prohibiting him from doing so.

V. Suit for Quantum Meruit: Quantum Meruit means as much as is earned. Right to Quantum Meruit means a right to claim the compensation for the work already done.

Example: C an owner of a magazine engaged P to write a book to be published by instalments in his magazine. After a few instalments were published, the publication of the magazine was stopped. It was held that P could claim payment for the part already published [Planche vs. Calburn].

Information Technology Act, 2000

Q. explain the objectives and scope of IT Act?

In 1996, the United Nations Commission on International Trade Law (UNCITRAL) adopted the model law on electronic commerce (E-commerce) to bring uniformity in the law in different countries. Further, the General Assembly of the United Nations recommended that all countries must consider this model law before making changes to their own laws. India became the 12th country to enable cyber law after it passed the Information Technology Act, 2000.The Information Technology Act, 2000 provides legal recognition to the transaction done via electronic exchange of data and other electronic means of communication or electronic commerce transactions.

This also involves the use of alternatives to a paper-based method of communication and information storage to facilitate the electronic filing of documents with the Government agencies.

Objectives of the Act

The objectives of the Act are as follows:

1. Grant legal recognition to all transactions done via electronic exchange of data or other electronic means of communication or e-commerce, in place of the earlier paper-based method of communication.

2. Give legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication

3. Facilitate the electronic filing of documents with Government agencies and also departments

4. Facilitate the electronic storage of data

5. Give legal sanction and also facilitate the electronic transfer of funds between banks and financial institutions

6. Grant legal recognition to bankers under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934, for keeping the books of accounts in electronic form.

Non-Applicability

According to Section 1 (4) of the Information Technology Act, 2000, the Act is not applicable to the following documents:

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

Scope or Extent of the ACT
It extends to the whole of India
It also applies to any offence or contravention committed outside India by any person irrespective of his nationality, provided such offence or contravention involves a computer, computer system or network located in India.

Q. Write a note on Digital Signature & Electronic Signature
Section 3 deals with the mode of verifying the electronic records through digital signature. The relevant provisions are summarised below:
(1) Any subscriber may authenticate an electronic record by affixing his digital signature.
(2) The authentication ofthe electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

- ★ Hash function is an algorithm mapping that translates a sequence of bits into smaller sequence of bits called 'Hash Result'. Algorithm mapping whenever executed with the same electronic record produces the same hash result. Whenever the above algorithm is executed with the same electronic record as its input, it becomes infeasible :

(3)that two electronic records can produce the same hash result.

(4) to get back the original electronic record from the hash result obtained from algorithm.

(3) Any person by the use of a public key ofthe subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Electronic signature
Section 3A deals with the authentication of electronic signature as under:

(1) Notwithstanding anything contained in Section 3, but subject to the provisions of sub-section

(2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which:

- is considered reliable; and
- May be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if:
(a) The signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or, as case may be, the authenticator and to no other person;
(b) The signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;
(c) Any alteration to the electronic signature made after affixing such signature is detectable,
(d) Any alternation to the information made after its authentication by electronic signature is detectable; and
(e) It fulfils such other conditions which may be prescribed.

Q. Write a note on Electronic Governance

Sections 4 to 10 deal with provisions relating to electronic governance as summarised as:

1. Legal recognition of electronic records (Sec. 4): Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is—
(a) rendered or made available in an electronic form; and
(b) accessible so as to be usable for a subsequent reference.

2. Legal recognition of electronic signatures (Sec. 5): Where any law provides that information or

- any other matter shall be authenticated by affixing the signature or any document shall be signed or
- bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of electronic signature affixed in such manner as may be prescribed by the Central Government.

  Explanation: For the purposes of this section, 'signed', with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression 'signature' shall be construed accordingly.

3. Use of electronic records and electronic signatures in Government etc. (Sec. 6):

(1) Where any law provides for—
(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;
(B) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;
(c) the receipt or payment of money in a particular manner then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes ofsub-section (1), by rules, prescribe—
(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue an;,electronic record under clause (a).
The appropriate Government may, for the purposes of this Chapter and for efficient delivery of services to the public through electronic means authorise, by order, any service provider to set up. maintain and upgrade the computerised facilities and perform such other services as it may specify

3. notification in the Official Gazette. (Sec. 6A)

4. Retention of electronic records (Sec. 7): Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied ifsuch documents, records or information are retained in the electronic form, if—
(a) the information contained therein remains accessible so as to be usable for a subsequent reference;
(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
(c) the details which will facilitate the identification of the origin, destination, date and time of despatch or receipt ofsuch electronic record are available in the electronic record:

- Provided that this clause does not apply to any information which is automatically generated
- solely for the purpose of enabling an electronic record to be despatched or received.

5. Audit of Documents (Sec. 7A): Where in any law for the time being in force, there is a provision for audit of documents, records or information, that provision shall also be applicable for audit of documents, records or information processed and maintained in the electronic form."

6. Publication of rule, regulation, etc., in Electronic Gazette (Sec. 8): Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied ifsuch rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette:

Provided that where any rule, regulation, order, by-law, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date ofthe Gazette which was first published in any form.

7. Acceptance of electronic documents cannot be insisted (Sec. 9): Nothing contained in sections 6, 7 and 8 shall confer a right upon any person to insist that any Ministry or Department ofthe Central Government or the State Government or any authority or body established by or under any law or controlled or funded by the Central or State Government should accept, issue, create, retain and
preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

8. Power of Central Government to make rules (Sec. 10f. The Central Government may, for the purposes of this Act, by rules, prescribe—
(a) the type of electronic signature;
(b) the manner and format in which the electronic signature shall be affixed;
(c) the manner or procedure which facilitates identification ofthe person affixing the electronic signature;
(d) control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payment; and
(e) any other matter which is necessary to give legal effect to electronic signatures.

9. Validity and Contracts (Sec. 10Af. Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

Q. Write a note on Attribution, Acknowledgment and Despatch of Electronic Records

Sections 11 to 13 provide for attribution, acknowledgment and despatch of electronic records.
These provisions are enumerated below:
1. Attribution of electronic records {Sec. 77): An electronic record shall be attributed to the originator
(a) ifit was sent by the originator himself;
(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or
(c) by an information system programmed by or on behalf of the originator to operate automatically.
2. Acknowledgment of receipt {Sec. 12):
(1) Where the originator has not stipulated that the acknowledgment ofreceipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by—
{a) any communication by the addressee, automated or otherwise; or
{b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.
(2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then, unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator.
(3) Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then, the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by
him and if no acknowledgement is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

3. Time and place of despatch and receipt of electronic record {Sec. 13):
(1) Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control ofthe originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records:
i. receipt occurs at the time when the electronic record enters the designated computer resource; or
ii. if the electronic record is sent to a computer resource of the addressee that is not the

designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;
(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.
(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.
(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).
(5) For the purposes of this section—
(a) if the originator or the addressee has more than one place business, the principal place of business, shall be the place of business;
(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;
(c) 'usual place of residence', in relation to a body corporate, means the place where it is registered.

Q. Write a note on how to Secure Electronic Records and Secure Electronic Signatures

Sections 14 to 16 of the Act provide the circumstances under which electronic records and electronic signatures can be considered as secure. There provisions are under:
1. Secure electronic record (Sec. 14): Where any security procedure has been applied to an electronic record at specific point oftime, then such record shall be deemed to be a secure electronic record from such point oftime to the time of verification.
2. Specific electronic signature (Sec. 15): In electronic signature shall be deemed to be a secure electronic signature if.

(i) the signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and
(ii) the signature creation data was stored and affixed in such exclusive manner as may be prescribed.
Explanation—In case of digital signature, the "signature creation data" means the private key of the subscriber.

3. Security procedures and practices (Sec. 16): The Central Government may, for the purposes of sections 14 and 15, prescribe the security procedures and practices:
Provided that in prescribing such security procedures and practices, the Central Government shall have regard to the commercial circumstances, nature of transactions and such other related factors as it may consider appropriate.'

Q. Write a note on Regulation of Certifying Authorities

Following are the various authorities created under the Act for enforcement of different requirements under the Act.
1. Appointment of Controller and Other Officers {Sec. 17): (1) The Central government may, by notification in the Official Gazette, appoint a Controller of Certifying

Authorities for the purposes of this Act and may also by the same or subsequent notification, appoint such number of Deputy Controllers and Assistant Controllers other officers and employees as it deems fit.
(2) The Controller shall discharge his functions under this Act subject to the general control and directions ofthe Central Government.
(3) The Deputy Controllers and Assistant Controllers shall perform the functions assigned to them by the Controller under the general superintendence and Control ofthe Controller.

2. Functions of Controller {Sec. 18): The Controller may perform all or any of the following functions:
(a) exercising supervision over the activities of the Certifying Authorities;
(b) certifying public keys of the Certifying Authorities;
(c) laying down the standards to be maintained by the Certifying Authorities;

(d) Specifying the qualifications and experience which employees of the Certifying Authority should possess;
(e) Specifying the conditions subject to which the Certifying Authorities shall conduct their business;
(f) specifying the contents of written, printed or visual materials and advertisements that maybe distributed or used in respect of a Digital Signature Certificate and the public key;
(g) Specifying the form and content of a Digital Signature Certificate and the key;
(h) Specifying the form and manner in which accounts shall be maintained by the Certifying Authorities;
(i) specifying the terms and conditions subject to which auditors may be appointed and the remuneration to be paid to them;
(j) Facilitating the establishment of any electronic system by a Certifying Authority either solely or jointly with other Certifying Authorities and regulation of such systems;
(k) Specifying the manner in which the Certifying Authorities shall conduct their dealings with the subscribers;
(l) Resolving any conflict of interests between the Certifying Authorities and the subscribers;
(m) Laying down the duties of the Certifying Authorities;
(n) Maintaining a database containing the disclosure record of every Certifying Authority containing such particulars as may be specified by regulations, which shall be accessible to public.
3. Recognition of Foreign Certifying Authorities {Sec. 19): (1) Subject to such conditions and restrictions as may be specified, by regulations, the Controller may, with the previous approval of the Central Government, and by notification in the Official Gazette, recognise any foreign Certifying Authority as a Certifying Authority for the purposes ofthis Act.
(2) The Controller may, if he is satisfied that any Certifying Authority has contravened any of the conditions and restrictions subject to which it was granted recognition under sub-section (1) he may, for reasons to be recorded in writing, by notification in the Official Gazette, revoke such recognition,.
4. Power to Delegate (Sec. 27): The Controller may, in writing, authorise the Deputy Controller, Assistant Controller or any officer to exercise any the powers of the Controller under this Chapter.
5. Power to Investigate Contraventions (Sec. 28):
(1) The Controller or any officer authorized by him in this behalf shall take up for investigation any contravention of the provisions of this Act, rules or regulations made thereunder.
(2) The Controller or any officer authorised by him in this behalf shall exercise the like powers which are conferred on income tax authorities under Chapter XIII of the Income Tax

Act, 1961, and shall exercise such powers, subject to such limitations laid down under that Act.

Granting of Licence

Sections 21 to 26 empower, the Controller to issue license to persons authorising them to issue Digital Signature Certificates. The various provision are explained below:

1. Licence to issue Digital Signature Certificates (Sec. 21):

I. Subject to the provisions of subsection (2), any person may make an application to the Controller for a license to issue Digital Signature Certificates.

II. No licence shall be issued under sub-section (1), unless the applicant fulfils such requirements with respect to qualification, expertise, manpower, financial resources and other infrastructure facilities, which are necessary to issue Digital Signature Certificates as may be prescribed by the Central Government.

III. A licence granted under this section shall—

(a) be valid for such period as may be prescribed by the Central Government;
(b) not be transferable or heritable;
(c) be subject to such terms and conditions as may be specified by the regulations.

2. Application for licence (Sec. 22):

I. Every application for issue of a licence shall be in such form as may be prescribed by the Central Government.

II. Every application for issue of a licence shall be accompanied by—

(a) a certification practice statement;
(b) a statement including the procedures with respect to identification ofthe applicant;
(c) payment of such fees, not exceeding twenty-five thousand rupees as may be prescribed by the Central Government;
(d) such other documents, as may be prescribed by the Central Government.

3. Renewal of licence (Sec. 23): An application for renewal of a licence shall be—

(a) in such form;
(b) accompanied by such fees, not exceeding five thousand rupees, as may be prescribed by the Central Government and
(c) shall be made not less than forty-five days before the date of expiry of the period of validity ofthelicence.

4. Procedure for grant or rejection of licence {Sec. 24): The Controller may, on receipt of an application under sub-section (1) of Section 21, after considering the documents accompanying the application and such other factors, as he deems fit, grant the licence or reject the application:

Provided that no application shall be rejected under this section unless the applicant has been given a reasonable opportunity ofpresenting his case.

5. Suspension of licence {Sec. 25):

(i) The Controller may revoke the licence if he is satisfied
after making such inquiry, as he may think fit, that a Certifying Authority has—
{a) made a statement in, or in relation to, the application for the issue or renewal of the licence, which is incorrect or false in material particulars;
{b) failed to comply with the terms and conditions subject to which the licence was granted;
(c) failed to maintain the standards specified under clause (Z>) ofsub-section (2) of Section 20;
{d) Contravened any provisions of this Act, rule, regulation or order made thereunder;
Provided that no licence shall be revoked unless the Certifying Authority has been given a reasonable opportunity of showing cause against the proposed revocation.

(ii) The Controller may, if he has reasonable cause to believe that there is any ground for revoking a licence under sub-section (1), by order, suspend such licence pending the completion ofthe enquiry ordered by him.

Provided that no licence shall be suspended for a period exceeding ten days unless the Certifying Authority has been given a reasonable opportunity ofshowing cause against the proposed suspension.
(3) No Certifying Authority whose licence has been suspended shall issue any Digital Signature Certificate during such suspension.
6. Notice of suspension or revocation of licence {Sec. 26): (1) Where the licence of the Certifying Authority is suspended or revoked, the Controller shall publish notice of such suspension or revocation, as the case may be, in the data base maintained by him.
(2) Where one or more repositories are specified, the Controller shall publish notices of such suspension or revocation, as the case may be, in all such repositories:
Provided that the data base containing the notice of such suspension or revocation, as the case may be, shall be made available through a web site which shall be accessible round the clock.
Provided further that the Controller may, if he considers necessary, publicise the contents of data base in such electronic or other media, as he may consider appropriate.
7. Certifying Authority to follow certain procedures {Sec. 30): Every certifying Authority shall—
{a) make use of hardware, software, and procedures that are secure from intrusion and misuse;
{b) provide a reasonable level of reliability in its services which are reasonably suited to the performance of intended functions;
(c) Adhere to security procedures to ensure that the secrecy and privacy of the digital signatures are assured;
"(ca) be the repository of all Electronic Signature Certificates issued under this Act;
(cb) publish information regarding its practices, Electronic Signature Certificates and current status of such certificates; and"
(d) Observe such other standards as may be specified by regulation.
8. Certifying Authority to ensure compliance of the Act, etc. (Sec. 31): Every Certifying Authority shall ensure that every person employed or otherwise engaged by it complies, in the course of his employment or engagement, with the provisions of this Act, rules, regulations or orders made thereunder.

9. Display of license (Sec. 32): Every Certifying Authority shall display its license at a conspicuous place ofthe premises in which it carries on its business.
10. Surrender of licence (Sec. 33): (1) Every Certifying Authority whose licence is suspended or revoked shall immediately after such suspension or revocation, surrender the licence to the Controller.
(2) Where any Certifying Authority fails to surrender a licence under sub-section (1), the person in whose favour a licence is issued, shall be guilty of an offence and shall be punished with imprisonment which may extend up to six months or a fine which may extend up to ten thousand rupees or with both.
11. Disclosure (Sec. 34): Every Certifying Authority shall disclose in the manner specified by regulations— (a) its electrions Signature Certificates
(b) any certification practice statement relevant thereto;
(c) notice of the revocation or suspension of its Certifying Authority certificate, if any; and
(d) any other fact that materially and adversely affects either the reliability of Electronic Signature Certificate, which that Authority has issued, or the Authority's ability to perform its services.
Q. Write a note on Electronic Signature Certificates

Sections 35 to 38 provide for the issue and suspension of electronic certificate. The provisions are explained below :

1. Certifying authority to issue Electronic Signature Certificate (Sec. 35):

a. Any person may make an application to the Certifying Authority for the issue of a Electronic Signature Certificate in such form as may be prescribed by the Central Government.
b. Every such application shall be accompanied by such fee not exceeding twenty-five thousand rupees as may be prescribed by the Central Government, to be paid to the Certifying Authority:
   Provided that while prescribing fees under sub-sectionAct 2), different fees may be prescribed for different classes of applicants.
c. Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulation,
d. On receipt of an application under sub-section (1), the Certifying Authority may, after consideration of the certification practice statement or the other statement under sub-section (3) and after making such enquiries as it may deem fit, grant the Digital Signature Certificate or for reasons to be recorded in writing, reject the application:
e. Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity ofshowing cause against the proposed rejectio

2. **Representations upon issuance of Digital Signature Certificate (Sec. 36**): A Certifying Authority while issuing a Digital Signature Certificate shall certify that—
(a) it has complied with the provisions of this Act and the rules and regulations made thereunder;
(b) It has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it;
(c) The subscriber holds the private key corresponding to the public key listed in the Electronic Signature Certificate;

- the subscriber holds a private key which is capable of creating a digital signature;
- The public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the subscriber,"

(d) the subscriber public key and private key constitute a functioning key pair;
(e) the information contained in the Digital Signature Certificate is accurate; and
(f) it has no knowledge of any material fact, which if it had been included in the Digital Signature Certificate would adversely affect the reliability of the representations in clauses (a) to (d).

3. Suspension of Digital Signature Certificate (Sec. 37):
(1) Subject to the provisions of subsection (2), the Certify Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate—
(**a) on receipt of a request to that effect from—**
(I) the subscriber listed in the Digital Signature Certificate; or
(ii) Any person duly authorised to act on behalf of that subscriber;
(b) if it is of opinion that the Digital Signature Certificate should be suspended in public interest.
(2) A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.
(3) On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

4. Revocation of Electronic Signature Certificate (Sec. 38): (1) A Certifying Authority may revoke a Digital Signature Certificate issued by it—
(a) where the subscriber or any other person authorised by him makes a request to that effect; or
(b) upon the death of the subscriber, or
(c) upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.
(2) A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.
(3) On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.
5. Notice of suspension or revocation (Sec. 39): Where a Digital Signature Certificate is suspended or revoked under Section 37 or Section 38, the Certifying Authority shall publish a notice of such suspension or revocation, as the case may be, in the repository specified in the Digital Signature Certificate for publication of such notice.

Q. Explain the duties of Subscribers
Sections 40 to 42 ofthe Act have given the following duties of the subscribers—
1. Generating Key pair (Sec. 40): Where any Digital Signature Certificate the public key of which corresponds to the private key of that subscriber which is to be listed in the Digital Signature Certificate has been accepted by a subscriber, then, the subscriber shall generate the key pair by applying the security procedure.
In respect of Electronic signature certificate the subscriber shall perform such duties as may be prescribed (Sec 40A)
2. Acceptance of Digital Signature Certificate (Sec. 41): (1) A subscriber shall be deemed to have accepted a Digital Signature Certificate if he publishes or authorises the publication of a Digital Signature Certificate—
(a) to one or more persons;
(b) in a repository; or
(c) otherwise demonstrates his approval of the Digital Signature Certificate in any manner.
By accepting a Digital Signature Certificate the subscriber certifies to all who reasonably rely on the information contained in the Digital Signature Certificate that—
(a) the subscriber holds the private key corresponding to the public key listed in the Digital Signature Certificate and is entitled to hold the same;
(b) all representations made by the subscriber to the Certifying Authority and all material relevant to the information contained in the Digital Signature Certificate are true;
(c) all information in the Digital Signature Certificate that is within the knowledge of the subscriber is true.
3. Control of private key (Sec. 42):
(1) Every subscriber shall exercise reasonable care to retain control ofthe private key corresponding to the public key listed in his Digital Signature Certificate and take all steps to prevent its disclosure to a person not authorised to affix the digital signature of the subscriber.
(2) If the private key corresponding to the public key listed in the Digital Signature Certificate has been compromised, then, the subscriber shall communicate the same without any delay to the Certifying Authority in such manner as may be specified by the regulations.

Penalties , Compensation and Adjudication

Q. Expllain penalties, compensation and adjudication in case of offences committed under this act?

Sections 43 to 47 provide for Penalties Compensation and Adjudication incase of contravention of various offences committed under the Act. The provisions are explained below:

1. **Penalty and compensation for damage to computer, computer system, etc. (Sec. 43):** If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network, commits any of the following acts he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.

(a) Accesses or secures access to such computer, computer system or computer resource;

(b) Downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) Introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) Damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

(e) Disrupts or causes disruption of any computer, computer system or computer network;

(f) Denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

(g) Provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made there under;

I. Charges the services availed of by a person to the account of another person by tempering with or manipulating any computer, computer system, or computer network.

II. destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, steal, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage

(I)Hacking: Broadly hacking means intentionally accessing a computer system without authorisation or exceeding authorised access. All the above activities therefore, come within then meaning ofhacking.

2. Penalty for failure to furnish information, return, etc. (Sec. 44): If any person who is required under this Act or any rules or regulations made thereunder to—

(a) furnish any document, return or report to the Controller or the Certifying Authority, fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;

(b) file any return or furnish any information, books or other documents within the time. specified therefor in the regulations, fails to file return or furnish the same within the time exceeding therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues;

(c) maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

3. Residuary penalty (Sec. 45): Whoever contravenes any rules or regulations made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention Or a penalty not exceeding twenty-five thousand rupees.

4. Power to adjudicate (Sec. 46):
(1) For the purpose of adjudging under the Act, whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder which renders him liable to pay penalty or compensation the Central Government shall, subject to the provisions of sub-section(3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.
The adjudicating officer appointed as above shall exercise jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees five crore: provided that the jurisdiction in respect of the claim for injury or damage exceeding rupees five crore shall vest with the competent court."
(2) The adjudicating officer shall, after giving the person referred to in sub-section (l), a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty or award such
Compensation as he thinks fit in accordance with the provisions ofthat section.
(3) No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and legal or judicial experience as may be prescribed by the Central Government.
(4) Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.
5. Factors to be taken into account by the adjudicating officer—While adjudging the quantum of compensation under the Act, the adjudicating officer shall have due regard to the following factors, namely:-
(a) The amount of gain of unfair advantage, wherever quantifiable made as a result of the default;
(b) The amount of loss caused to any person as a result of the default;
(c) the repetitive nature of the default.

The Cyber Appellate Tribunal

Q. Explain the establishment and functioning of the cyber Appellate Tribunal?

Sections 48 to 64 of the Act provides for establishment and functioning of Cyber Appellate Tribunal, to whom appeal can be made by any person aggrieved by the decision of the Controller. The relevant provision are summarised below:

1. **Establishment of Cyber Appellate Tribunal (Sec. 48)**

The Central Government shall, by notification, establish one or more appellate tribunals to be known as the Cyber Regulations Appellate Tribunal.

2. Composition of Cyber Appellate Tribunal (Sec. 49)

The Cyber Appellate Tribunal shall consist of a Chairperson and such number of other Members, as the Central Government may, by notification in the official Gazette, appoint;

3. Qualifications for Appointment as Presiding Officer of the Cyber Appellate Tribunal (Sec. 50)

a. A person shall not be qualified for appointment as Chairperson of the Cyber Appellate Tribunal unless he is, or has been, or has been, or is qualified to be, a Judge of a High Court.
b. The Members of the Cyber Appellate Tribunal, except the Judicial Member to be appointed under sub-section (3), shall be appointed by the Central Government from amongst persons, having special knowledge of, and professional experience in, information technology, telecommunication, industry, management of consumer

affairs:

c. The Judicial Members of the Cyber Appellate Tribunal shall be appointed by the Central. Government from amongst persons who is or has been a member of the Indian Legal Service and has held the post of Additional Secretary for a period of not less than one year or Grade I post of that Service for a period ofnot less than five years.

4. Term of Office (Sec. 51)

The Chairperson or Member of the of a Cyber Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty five years, whichever is earlier.

5. Filling up of Vacancies (Sec. 53)

If, for reason other than temporary absence, any vacancy occurs in Tribunal the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Cyber Appellate Tribunal from the stage at which the vacancy is filled.

6. Resignation and Removal (Sec. 54)

1. The Chairperson or the Member of a Cyber Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign from his office.

2. The Chairperson or the Member of a Cyber Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or in capacity after an inquiry made by a Judge ofthe Supreme Court in which the Presiding Officer concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect ofthese charges.

7. Orders Constituting Appellate Tribunal to be Final and not to Invalidate its Proceedings (Sec. 55)

No order of the Central Government appointing any person as the Chairperson or Member of a Cyber Appellate Tribunal shall be called in question in any manner and no act or proceeding before a Cyber Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Cyber Appellate Tribunal.

8. Appeal to Cyber Regulations Appellate Tribunal (Sec. 57)

1. Save as provided in sub-section (2), any person aggrieved by an order made by Controller or an adjudicating officer under this Act may prefer an appeal to a Cyber Appellate Tribunal having jurisdiction in the matter.

2. No appeal shall lie to the Cyber Appellate Tribunal from an order made by an adjudicating officer with the consent ofthe parties.

3. Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Controller or the Adjudicating Officer is received by the person aggrieved and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Cyber Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

4. On receipt of an appeal under sub-section (1), the Cyber Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

5. The Cyber Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Controller or Adjudicating Officer.

6. The appeal filed before the Cyber Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose off the appeal finally within six months from the date ofreceipt ofthe appeal.

9. Procedure and Powers of the Cyber Appellate Tribunal (Sec. 58)

1. The Cyber Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions ofthis Act and of any rules, the Cyber Appellate Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.

2. The Cyber Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect ofthe following matters, namely:

(a) Summoning and enforcing the attendance of any person and examining him on oath;
(b) Requiring the discovery and production of documents or other electronic records;
(c) Receiving evidence on affidavits;
(d) Issuing commissions for the examination of witnesses or documents;
(e) Reviewing its decisions;
(f) Dismissing an application for default or deciding it exparte-,
(g) Any other matter which may be prescribed.

10. Civil Court not to have Jurisdiction (Sec. 6f)

No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Cyber Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

11. Appeal to High Court (Sec. 62}

Any person aggrieved by any decision or order of the Cyber Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication ofthe decision or order of the CyberAppellate Tribunal to him on any question offactorlawarising out ofsuch order.

Offences

Q. Explain the penalties for various offences commited under the IT Act?

Sections 65 to 78 provide the following penalties for various offences committed under the Act:

1. Tampering with Computer Source Documents (Sec. 65)

Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

2. Computer related Offences (Sec. 66)

If any person, dishonestly or fraudulently, does any act referred to in Section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

(a) theword"dishonestly" shall have the meaning assigned to it in Section 24 ofthe Indian Penal Code;

(б) the word "fraudulently" shall have the meaning assigned to it in Section 25 of the Indian Penal Code.

3. Punishment for Sending Offensive Messages through Communication Service, etc. (Sec. 66A)

Any person who sends, by means of a computer resource or a communication device:

(a) any information that is grossly offensive or has menacing character, or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use ofsuch computer resource or a communication device; or
(c) any electronic mail or electronic mall message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin ofsuch messages,

4. Publishing of Information which is Absence in Electronic Form (Sec. 67)

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or ifits effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh.
rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

5. Protected System (Sec. 70)

1. The appropriate Government may, by notification in the Official Gazette, declare that any computer resource which directly or indirectly affects the facility of critical information infrastructure to be a protected system.
2. The appropriate Government may, by order in writing, authorise the persons who are authorised to access protected systems notified under sub-section (1).
3. Any person who secures access or attempts to secure access to a protected system in contravention ofthe provisions ofthis section shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.
4. "The Central Government shall prescribe the information security practices and procedures for such protected system."

6. Indian Computer Emergency Response Team to {Sec. 7OB')

(i) The Central Government shall, by notification in the Official Gazette, appoint an agency of the Government to be called the Indian Computer Emergency Response Team.
{ii) The Central Government shall provide the agency referred to in sub-section (7) with a Director-General and such other officers and employees an may be prescribed.
{iii) The salary and allowances and terms and conditional of the Director-General and other officers and employees shall be such as may be prescribed.
{iv) The Indian Computer Emergency Response Term shall serve as the national agency for performing the following functions in the area of cyber security:
{a) collection, analysis and dissemination ofinformation on cyber incidents;
{b) forecast and alerts of cyber security incidents;
(c) emergency measures for handling cyber security incidents:
{d) coordination of cyber incidents response activities;
(e) issue guidelines, advisories, vulnerability notes and whitepapers relating to information security practices, procedures, preventation, response and reporting of cyber incidents;
(f) such other functions relating to cyber security as may be prescribed.
(g) The manner of performing functions and duties of the agency referred to in sub-section (7) shall be such as may be prescribed.

7. Penalty for Misrepresentation (Sec. 71)

Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any licence or Digital Signature Certificate, as the case may be, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

8. Breach of Confidentiality and Privacy (Sec. 72)

Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any ofthe powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

9. Penalty for Publishing Digital Signature Certificate false in Certain Particulars (Sec. 73)

1. No person shall publish a Digital Signature Certificate or otherwise make it available to any other person with the knowledge that:
(a) the Certifying Authority listed in the certificate has not issued it; or
(b) the subscriber listed in the certificate has not accepted it; or
(c) the certificate has been revoked or suspended, unless such publication is for the purpose of verifying in digital signature created prior to such suspension or revocation.
2. Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

10. Publication for Fraudulent Purpose (Sec. 74)

Whoever knowingly creates, publishes or otherwise makes available a Digital Signature Certificate for any fraudulent or unlawful purpose shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

11. Confiscation (Sec. 76)

Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of this Act, rules, orders or regulations made thereunder has been or is being contravened, shall be liable to confiscation.

12. Compensation, Penalties or Confiscation not to Interfere with Other Punishment. (Sec. 77)

No compensation awarded, penalty imposed or confiscation made under this Act shall prevent the award of compensation or imposition of any other penalty or punishment under any other law for the time being in force.

13. Compounding of Offences (Sec. 77A)

A court of competent jurisdiction may compound offences other than offences for whichpunishment for life or imprisonment for a term exceeding three years has been provided, under this act.

UNIT 2

UNIT 2

SALE OF GOODS ACT-1930

1Q.Explain the nature of a contract of sale of goods and bring out clearly the distinction between sale and an agreement to sell?

ANS: Contract of sale of Goods: It is a contract where by the seller transfers (OR) agrees to transfer the property in goods to the buyer for a price.

Essentials of a contract of sale/ nature of contract:

1) There must be at least two parties: there must be two distinct parties (i.e.., seller and Buyer) to effect a contract of sale and they must be competent to contract. Section 2(1) defines 'A person who buys (or) agrees to buy goods is called a Buyer' and Section 2(13) defines 'A person who sells (or) agrees to sell is called seller'.

2) Subject matter must be 'Goods': There must be some goods, the property in which is (or) is to be transferred from the seller to the buyer. The goods which form the subject matter must be movable.

3) Consideration is price: The consideration for the contract of sale, called price, it must be money. Where there is no consideration, it would be a gift, there is no contract of sale. Similarly, where goods are sold for a price, which is to be paid partly in cash and partly in goods then it is considered as contract of sale.

4) Transfer of general property: There must be a transfer of general property from the buyer to the seller.

5) Absolute (OR) Qualified: A contract of sale may be absolute or conditional.

6) Essential elements of a valid contract: All the essentials of a valid contract must be present in the contract of sale.

Q. What are the differences between Sale and Agreement to sell?

Sale: In sale of goods, the property in the goods is transferred from the seller to the buyer immediately then the contract is called sale

Agreement to sell: When the transfer of property in the goods passes only after the seller has fulfilled certain conditions subsequently is called an agreement to sell.

DIFFERENCE SALE AGREEMENT TO SELL

Difference	Sale	Agreement to sell
1.Transfer of property	The transfer of ownership passes from seller to buyer immediately	The transfer of ownership passes from seller to buyer subsequent to the formation of agreement to sell.
2.Nature of contract	It is an executed contract	It is an executor contract.
3. Type of goods	Sale can be only in specific or existing goods	An agreement to sell is mostly in case of future or contingent goods
4. Risk of loss	If the goods are destroyed, the loss falls on the buyer even though the goods are in the procession of seller.	If the goods are destroyed, the loss falls on the seller even though the goods are in procession of buyer
5.Remedies for breach by seller	In case of breach by seller, the buyer has the legal right to obtain the possession of the goods	In case of breach by seller, the buyer's remedy is to claim damages for nonperformance of the contract.
6. Remedies for breach by buyer	In case of breach by buyer, the seller has the legal right	In case of breach by buyer, the seller cannot sue the

	to sue the buyer for recovery of price of goods	buyer for recovery of price of goods. His right is limited to claim damages
7.Right of resale	In case of sell, the seller has no right to resell the goods	In case of agreement to sell, the seller can resell the goods to any other person.
8. Insolvency of buyer	If the buyer becomes insolvent, the official assignee/ official receiver shall have a right over the goods	If the buyer becomes insolvent, the official assignee/official receiver shall have no right over the goods.
9. Insolvency of seller	If the seller becomes insolvent, the official assignee/official receiver shall have no right over the goods	If the seller becomes insolvent, the official assignee/ official receiver shall have a right over the goods
10. General & particular property	A sale is a contract plus conveyance, and creates jus in rem i.e., gives a right to the buyer to enjoy the goods	An agreement to sell is merely a contract, pure and simple, and creates jus in person-am i.e., gives a right as against the world at large including the seller to the buyer against to sue for damages

2Q. Explain the conditions and warranties of the sale of goods act, 1930?

Ans: According to section 12(1) of sales of goods act, 1930. 'A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition (or) a warranty.

Condition: According to section 12(2) a 'Condition' is a stipulation essential to the main purpose of the contract, the breach of which gives raise to a right to treat the contract as repudiated.

Expressed Condition: The dictionary meaning of the term is defined as a statement in a legal agreement that says something must be done or exist in the contract. The conditions which are imperative to the functioning of the contract and are inserted into the contract at the will of both the parties are said to be expressed conditions.

Implied Conditions: The Act prescribes some of the implied conditions in a contract. Buyer can repudiate contract for breach of any of these conditions:-

1. Condition as to tittle: Section 14(a) In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller, that,

a) In case of a sale, he has the right to sell the goods and

b) In case of an agreement to sell: he will have a right to sell the goods at the time when the property is to pass.

Thus, if seller sells stolen goods, the buyer can repudiate the contract and claim damages also, as the seller had no right to sale the goods.

2. Sale by description: (section 15) where there is a contract for the sale of goods by description, there is an implied condition that that the goods shall correspond with the description. 'Sale of goods by description' includes the following:

a) Where the buyer has not seen the goods and relies on their description given by the seller.

b) Where the buyer has seen the goods but he relies not on what he has seen but what was stated to him and deviation of the goods from the description is not apparent.

c) Packing of goods may sometimes be a part of description.

3. Condition as to quantity (or) fitness: (section 16(1)) where the buyer, expressly (or) by implication, makes known to the seller abou the particular purpose of buying goods, and to show the buyer completely relies on the seller's skill (or) judgment, then there is an implied condition that the goods shall be reasonable fit for the purpose. This will not apply where specific goods are sold under their patient (or) trademark. Thus, the four conditions must be fulfilled:

a) The purpose must have been disclosed (expressed or implied) by the buyer.

b) The buyer must have relied on the seller's skill (or) judgment.

c) The seller's business must be to sell those goods.

d) The goods should not have been sold under a patient (or) trademark.

4. Conditions as to merchantability: (Section 16(2)) where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quantity; provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

5. Condition implied by custom: (section 16(3)) An implied condition as to quantity (or) fitness for a particular purpose may be annexed by the usage of trade. The purpose for which the goods are required may be ascertained from the acts and conducts of the parties and from the nature of the description of the article purchased.

Example: Priest (vs) last (1903):

Facts: 'P' asked for a hot water bottle of 'L', a retail chemist. He was supplied one which burst after a few days use and injured 'P's wife.

Judgment: 'L' was liable for breach of implied condition because 'P' had sufficiently made known the use for which he required the bottle.

6. Sale by sample: (Section 17) In a sale by sample the following are the implied conditions

a) The bulk shall correspond with the sample in quantity.

b) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

c) That the goods shall be free from any defects rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

Example: Frost (vs) Aylesbury Dairy Co.Ltd (1905):

Facts: 'F' brought milk from 'A'. the milk contained germs of typhoid fever. 'F's wife took the milk and got infection as a result of which she died.

Judgment: 'F' could recover damages.

7. Condition as to wholesomeness: In the case of eatables and provisions, in addition to the implied condition as to merchantability there is another implied condition that the goods shall be wholesome.

WARRANTY

Warranty: According to the section 12(3) a 'Warranty' is stipulation collateral to the main purpose of the contract, the breach of which gives raise to a claim for damages but not to the right to reject the goods and treat the contract as repudiated.

There are two types of warranties. They are: 1. Expressed warranty and 2. Implies warranty

I. Expressed Warranty

The warranties which are generally agreed by both the parties and are inserted in the contract, it is said to be expressed warranties.

II. Implied Warranties: The implied conditions in a contract of sale are as follows:-

1. Warranty of quiet possession: (section 14(b)) In a contract of sale, unless contrary intention appears, it is implied that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way disturbed in the enjoyment of the goods in consequence of the seller's defective tittle to sell, then the buyer is entitled to sue the select for damages.

2. Warranty of freedom from encumbrances: (section 14 (C)) means that the goods are free from any charge (or) encumbrances in favour of any third party, not declared to (or) known to the buyer. In such a case he shall have a right to claim damages for breach of this warranty.

3. Warranty as to quantity (or) fitness by usage of trade: (Section 16(4)) An implied warranty as to quantity (or) fitness for a particular purpose may be annexed by the usage of trade.

4. Warranty as to disclose dangerous nature of goods: Where a person sells goods knowing that the goods are inherently dangerous (or) they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger. In such a case the seller warn the buyer otherwise he would be held liable.

Q. What are the differences between condition and warranty?

Condition: According to section 12(2) a 'Condition' is a stipulation essential to the main purpose of the contract, the breach of which gives raise to a right to treat the contract as repudiated

Warranty: According to the section 12(3) a 'Warranty' is stipulation collateral to the main purpose of the contract, the breach of which gives raise to a claim for damages but not to the right to reject the goods and treat the contract as repudiated.

Difference between Condition and Warranty

BASIS FOR COMPARISON	CONDITION	WARRANTY
Meaning	It is a stipulation which forms the very basis of the contract.	It is additional stipulation complementary to the main purpose of the contract.

Provision	Section 12(2) of the Sale of Goods Act, 1930 defines Condition.	Section 12(3) of the Sale of Goods Act, 1930 defines Warranty.
Purpose	Condition is basic for the formulation of the contract.	It is a written guarantee for assuring the party.
Result of Breach of Contract	The whole contract may be treated as repudiated.	Only damages can be claimed in case of a breach.
Remedies available to the aggrieved party	Repudiation, as well as damages, can be claimed.	Only damages can be claimed.

3Q. State the doctrine of 'Caveat Emptor' and state the exceptions to it.

Ans: Meaning: Caveat Emptor is a fundamental principal governing the law of sale of goods; it means "Let the buyer beware". In other words, it is no part of the seller's duty in a contract of sale of goods to give the buyer an article suitable for some particular purpose, (or) of particular quantity, unless the quantity (or) fitness is made an express terms of the contract. The person who buys goods must keep his eye open, his mind active and should be conscious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgment in the absence of any misrepresentation (or) guarantee by the seller.

Exceptions to principal of Caveat Emptor: The doctrine of Caveat Emptor has certain important exceptions they are follows:-

1. Fitness for buyer's purpose: Where the buyer expressly (or) by implication, makes known to the seller the particular purpose for which he needs the goods and depends on the skill and judgment of the seller whose business is to supply goods of that description, in such a case there is an implied condition that the seller must supply the goods shall be reasonably fit for that purpose.

2. Sale under a patent (or) trade name: If the buyer purchases an Article under its patent (or) other trade name and relies on seller skills and judgment which he make known to him, in such a case there is no implied condition that the goods shall be reasonably fit for any particular purpose.

3. Merchantable Quality: Where the goods are brought from a seller who deals in goods of that description weather he is the manufacturer (or) producer (or) not, there is an implied condition that the goods are of merchantable quantity.

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

5. Consent by fraud: Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud (or) where the seller knowingly conceals a defect which could not be discovered on a reasonable examination. In such a case the doctrine of caveat emptor does not apply.

6. In case of eatables and provisions in addition to the implied condition of merchantability, there is an implied condition that the goods shall be wholesome.

4Q. State briefly the rules as to the passing of property from the seller to the buyer in a contract, for the sale of goods.

(OR)

What is meant by transfer of property in goods and when does property pass from the seller to the buyer?

Ans: Meaning of property in goods: It means ownership of the goods. It is different from possession of the goods. Possession refers to custody of the goods. There may be situations where a person may be the owner of certain goods but not in possession of the same (or) vice-versa.

Transfer of property (or) passing of property: where the intention of the parties as to the time when the property in goods passes to the buyer cannot be ascertained from the contract, the rules contained in section 20 to 24 apply. These rules are as follows:-

(A) Specific (or) ascertained goods:(section 20 to 22)

(i). Passing of property at the time of contract: where there is an unconditional contract of sale of specific goods in a deliverable state, the property in the goods passes to the buyer when contract is made. The fact is that the postponement of time of payment (or) delivery (or) both, will not affect the passing of property. Thus, goods are said to be in deliverable state when they are in such a state that the buyer would under the contract be bound to take delivery of them.

(ii). Passing of property delayed beyond the date of the contract:

(a) Specific Goods not in a deliverable state: In case of specific goods to which something has to be done by the seller to put them in to a deliverable state, but the fact is that the property passes only when such thing is done and the buyer has notice thereof.

(b) When the price of the goods is to be ascertained by weighting, etc: where there is a contract of sale of specific goods in the deliverable state, but the seller is bound to weight, measure, test (or) do some other thing with respect to them, for ascertaining the price, but the fact is that the property does bot pass until such act is done and the buyer has notice of it.

(B) Unascertained (or) future goods:

In case of unascertained goods, the property in the goods is not transferred to the buyer unless and until the goods are (i) Ascertained and (ii) unconditional appropriated.

(i) Ascertained goods: Ascertainment is the process by which the goods qualifying to the description (or) quality stated in the contract, identified and set a part. Ascertained can be a unilateral act of the seller i.e., he alone may set apart the goods.

Example: Rhode (vs) Thwaites (1827):

Facts: In a sale of 20 hog heads of sugar out of larger quantity, 4 were filled and taken away by the buyer. The remaining 16 hog heads were subsequently filled and the buyer was informed of the same. The buyer promised to take them away, but before he could do so, the goods were lost.

Judgment: The property had passed to the buyer at the time of loss.

(ii) Unconditional appropriation: It is unconditional when the seller does not reserve to himself the right of disposal of the goods. The appropriation may be done either by the seller with the assent of the buyer (or) by the buyer with the assent of the seller. Such assent may be expressed (or) implied, and may be given either before (or) after the appropriation is made. If the contract is silent as to the party who is to appropriate the goods, the party who under the contract is first to act is the one who appropriates.

Example: 'A' sells by description 10 sheep to 'B'. if 'A' is to send sheep to 'B', it is 'A' who appropriate the sheep, it is 'B' who appropriate the sheep, if the buyer tells the seller to send the goods by rail (or) some other mode of carriage, he is deemed to have given his assent in advance to the subsequent appropriation by the seller of the goods.

(C) Goods sent on approval (or) on sale (or) return basis:

When goods are delivered to the buyer on approval (or) on sale (or) return in such a case the ownership pass to the buyer as follows:

(i) Acceptance of goods: When he signifies his approval (or) acceptance to the seller.

(ii) Adoption of the transaction: When he does any other act adopting the transaction.

(iii) Failure to return the goods: The ownership shall pass to the buyer, if the buyer fails to return the goods to the seller:-

a) With in specified time- if certain time is fixed for return of goods.

b) Within a reasonable time- if no time has been fixed for return of goods.

5Q Differences between Right of Lien and Right of stoppage in transit.

Right of Lien: (Section 46(1)(a) and 47 to 49) The word 'Lien' means a right to retain possession.

Right of stoppage in transit: (section 46(1)(b) and 50 to 52) The unpaid seller has the right of stopping the goods in transit after he has parted with their possession to a carrier, in case of insolvency of the buyer.

Differences between Right of lien and **Right of stoppage in transit**

Right of lien	**Right of stoppage in transit**
The essence of right of lien is to retain possession.	The essence of right of stoppage in transit is right to regain possession.
Seller should be in possession of goods under lien	in case of stoppage in transit;- (a) Seller should have parted with the possession (b) possession should be with a carrier and (c) buyer was not acquired the possession.
It can be exercised even when the buyer is not insolvent.	cannot be exercised even when the buyer is not insolvent.
Right of stoppage in transit begins when the right of lien ends	The end of the right of lien is the starting point of stoppage in transit

6Q. State the exceptions to the rule 'Nemodat qui non habet'.

(Or)

Sale by non-owners. (Or) Transfer of tittle other than the owner.

Ans: The general is that only the owner of the goods can transfer a goods title. No one can give a better title than what he himself has. This is expressed in Latin word 'Nemodat qui non habet'.

Subject to provisions of this act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority (or) with the consent of the owner, the buyer acquires no better title to the goods than the seller had.

Some exceptions are provided, as discussed below.

1. Sale by a person not the owner (or) tittle by estoppel: (section 27) where the true owner by his conduct, act (or) omission leads the buyer to believe that the seller has the authority to sell and induces the buyer to buy the goods, he shall be estopped from denying the fact of want of authority of the seller. The buyer in such a case get better tittle than that of the seller.

2. Sale by mercantile agent: (section 27) A sale by mercantile agent shall pass a valid title to the buyer even though such sale is not made as per the directions of the seller, if the following conditions are satisfied.

a) The sale is made by a mercantile agent in the capacity of mercantile agent.
b) The goods came into his possession with the consent of the seller.
c) The sale is made by the mercantile agent acting in the ordinary course of business
d) The buyer buys the goods in goods faith and for consideration.

3. Sale by one of several joint owners: (Section 28) A sale by one of the joint owners shall pass a valid title to the buyer even though such sale is not made with the consent of the other joint owners, if the following conditions are satisfied:-

a) The goods are in the sole possession of the joint owner.
b) The goods came into his possession with the consent other joint owners.
c) The buyer buys the goods in good faith and for consideration.

4. Sale by a person in possession under a voidable contract: (section 29) A re-sale of goods by a buyer shall pass a valid title to the new buyer, if the following conditions are satisfied:-

a) A person buys the goods under a voidable contract.
b) Such buyer resells the goods to a new buyer.
c) At the time of re-sale, the voidable contract has not been rescinded by the original seller.
d) The new buyer buys the goods in good faith of want of authority of the seller. The buyer in such a case shall get better title than that of the seller.

5. Sale by a seller in possession of goods after the sale: (section 30(1)) A seller, who has the possession of the goods already sold by him, may re-sell such goods to the new buyer, and the new buyer shall have a valid title to such goods, if the following conditions are satisfied:-

a) The ownership of goods has been passed to the buyer.
b) The seller continues to be in possession of goods, even after their sale.
c) The seller re-sells the goods to the new buyer.
d) The new buyer buys the goods in good faith (i.e.., the new buyer had no knowledge of the fact that the goods being sold by the seller have already been sold to some other buyer) and consideration.

6. Sale by the buyer in possession of goods: (section 30(2)) Where a person having bought (or) agreed to buy goods, obtains, with the consent of the seller, possession of the goods (or) document of title to the goods, the delivery (or) transfer by such person (or) a mercantile agent acting for such person, of the goods (or) documents, will be valid and effective, provided the person receiving the same, acted bonafide and without notice of the seller's lien, if any.

7. Sale by an unpaid seller: (Section 54 (3) where an unpaid seller who ha exercised his right of lien (or) stoppage in transit re-sells the goods, the buyer acquires a good title to the goods as against the original buyer.

8. Exceptions under other Acts:-

a) Sale by a finder of lost goods.
b) Sale by a Pawnee (or) pledge.
c) Sale by an official receiver (or) assignee (or) liquidator of companies.

d) Sale by Bank/ FI under Securitization Act, 2002.
e) Holder in due course under Negotiable instruments Act, 1887.

7Q. Who is "Unpaid Seller"? Explain the rights of an unpaid seller?

Ans: Meaning: According to section 45(a) The seller of goods is deemed to be an unpaid seller if:-

1) The whole of the price has not been paid (or) tendered and the seller had an immediate right of action for the price.

2) When a bill of exchange (or) other negotiable instrument was given as payment, but the same has been dishonored, unless and until this payment was an absolute, and not a conditional payment.

Any person who is in a position of a seller, is also a seller, and may exercise the rights conferred upon an 'Unpaid seller' in the above said circumstances.

Rights of an unpaid seller: An unpaid seller has been expressly given the right against the goods as well as the buyer personally which as been discussed below:-

Rights of unpaid seller may broadly classified under two heads:

(1) rights against the goods.

(2) Right against the buyer personally.

(1) Rights against the goods: Again it was classified in to two types:-

I.Where the property in the goods has passed:

II. Where the property in the goods has not passed

I. Where the property in the goods has passed:

it is classified in to three types (a) Right of Lien. (b) Right of stoppage in transit and (C) Right of re-sale.

(a) Right of Lien: (Section 46(1)(a) and 47 to 49) The word 'Lien' means a right to retain possession. An unpaid seller, who is in possession of the goods, is entitled to remain them until payment (or) tender of the price in the following cases:-

(i)Where the goods have been sold without any stipulation as to credit

(ii) Where the goods have been sold on credit but the terms of credit has expired

(iii) Where the buyer becomes insolvent.

(b) Right of stoppage in transit: (section 46(1)(b) and 50 to 52) The unpaid seller has the right of stopping the goods in transit after he has parted with their possession to a carrier, in case of insolvency of the buyer. The right is exercisable by the seller only if the following conditions are fulfilled:-

1. The seller must be unpaid.
2. He must have parted with the possession of goods.
3. The goods must be in transit.
4. The buyer must have become insolvent.
5. The right is subject to provisions of the act.

(C) Right of re-sale: (Section 46(1)(C) and 54) The unpaid seller can resell the goods if:-

(i) The seller has exercised the right of lien (or) stoppage of goods in transit.

(ii) Where the goods are of perishable nature

(iii) When the seller has given a notice to the buyer of his intention to resell the goods. However the notice by the seller is not required if the goods are perishable.

(iv) The buyer fails to pay the price within a reasonable time.

II Where the property in the goods has not passed: (section 46(2)) Where the property in goods has not passed to the buyer, an unpaid seller has, in addition to his other remedies, a

right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

2. Rights against the buyer personally:

An unpaid seller can enforce certain rights against the goods as well as the buyer personally. The rights which an unpaid seller may enforce against the buyer personally is called the rights in personam as against the right in rem (i.e.., rights against the goods), and are in addition to his rights against the goods. The rights in personam are as follows:-

(a) Suit for price: (Section 55)

(a) Where under a contract of sale the property in the goods has passed to the buyer, and the buyer wrongfully neglects (or) refuses to pay the price, the seller can sue the buyer for the price of the goods. (Section 55(1).

(b) Where property has not passed under the contract of sale and the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects (or) refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. (Section 55(2).

(b) Suit for damages for non-acceptance: (section 56) An unpaid seller has the right to sue the buyer for recovery of damages if the seller is ready and willing to deliver the goods to the buyer as per the terms of the contract; but the buyer wrongfully neglects (or) refuses to accept the goods. As regards measure of damages, section 73 of the Indian contract Act, 1872, applies.

(c) Suit for damages for repudiation of contract: (section 60) Where the buyer repudiates the Contract before the date of delivery, the seller may either:-

1) Treat the contract as subsisting and wait till the date of delivery.

2) He may treat the contract as rescinded and sue for damages for the breach. This rule is known as 'Rule of anticipatory breach of contract'. (d) suit for interest: (section 61(2)(a)) In case of breach of contract on the part of the buyer, while filing a suit for the price, the seller may sue the buyer for interest from the date of the tender of the goods (or) from the date on which the price was payable.

8Q. Right of re-sale.

Ans: Right of re-sale: (Section 46(1)(C) and 54) The unpaid seller can resell the goods if:-

1) The seller has exercised the right of lien (or) stoppage of goods in transit.

2) Where the goods are of perishable nature (or)

3) When the seller has given a notice to the buyer of his intention to resell the goods. However the notice by the seller is not required if the goods are perishable.

4) The buyer fails to pay the price within a reasonable time.

If on resale after proper notice, there is a loss to the seller (i.e.., difference between the contract price and the market price), he can claim it from the buyer. If there is any surplus on re-sale, the seller is not bound to hand it over to the buyer because the buyer cannot be allowed to take advantage of his own wrong. In case notice is not given, the unpaid seller:-

1. Is not entitled to recover any loss on the re-sale of the goods.

2. Is not bound to retain any surplus arising on the re-sale of the goods.

3.The buyer is entitled to claim such surplus, if any, accruing on re-sale.

4. Where the seller expressly reserves a right of re-sale in case the buyer could make default.

9Q Right of Lien

Ans: Right of Lien: (Section 46(1)(a) and 47 to 49) The word 'Lien' means a right to retain possession. An unpaid seller, who is in possession of the goods, is entitled to remain them until payment (or) tender of the price in the following cases:-

1. Where the goods have been sold without any stipulation as to credit (o
2. Where the goods have been sold on credit but the terms of credit has expired
3. Where the buyer becomes insolvent.

Rules regarding lien:

1. Lien can be exercised for the non-payment of the price, and not for the other charges due against the buyer.
2. The unpaid seller can exercise his lien notwithstanding that he is in possession of the goods (or) bailee for the buyer.
3. Where the part delivery has been made, he may still exercise his right of lien on the reminder of goods unless he has waived the lien.
4. It is a personal right, which can be exercised only by him and not by assignees (or) creditors.

Termination of lien: The unpaid seller of goods loses his lien on the goods when

1. When the seller delivers the goods to a carrier (or) other bailee for the purpose of transmission to the buyer, without reserving the right of disposal of the goods to himself.
2. By waiving his right of lien.
3. Where the buyer (or) his agent lawfully obtains possession of the goods.
4. Where he assents to a sub-sale by the buyer.
5. Where he takes a security from the buyer for the payment of the price in place of his lien.

10Q Right of stoppage in transit.

Ans: Right of stoppage in transit: (section 46(1)(b) and 50 to 52) The unpaid seller has the right of stopping the goods in transit after he has parted with their possession to a carrier, in case of insolvency of the buyer. The right is exercisable by the seller only if the following conditions are fulfilled:-

1. The seller must be unpaid.
2. He must have parted with the possession of goods.
3. The goods must be in transit.
4. The buyer must have become insolvent.
5. The right is subject to provisions of the act.

The above right prevents the goods from being delivered to the buyer, and reassuming (or) regaining possession while in transit, retaining them till the price is paid. This right is earned only when the right of lien is lost and is available only when the buyer has become insolvent.

The unpaid seller may exercise his right of stoppage in transit by either:-

(a) By taking actual possession of the goods, (or)

(b) By giving notice of his claim to the carrier (or) other bailee in whose possession the goods are.

Duration of transit:- Goods are deemed to be in transit from the time are delivered to the carrier for transmission to the buyer until the buyer takes delivery of them. The goods are still in transit if they are rejected by the buyer, the transit comes to an end in the following cases:-

1) If the buyer obtains delivery before the arrival of the goods at their destination.

2) If, after the arrival of the goods at their destination, the carrier (or) the other bailee acknowledges to the buyer (or) his agent that he holds on his behalf, even if a further destination of the goods is indicated by the buyer.
3) If the carrier wrongfully refuses to deliver the goods to the buyer.

11Q.What is meant by transfer of property in goods? Explain its significance?

Ans: Meaning of property in goods: It means ownership of the goods. It is different from possession of the goods. Possession refers to custody of the goods. There may be situations where a person may be the owner of certain goods but not in possession of the same (or) vice-versa.

Significance of passing of property: The time of transfer of ownership of goods decides various rights and liabilities of the seller and the buyer:-

a) It is the owner who has to bear the risk and not the person who merly has the possession.
b) It is the owner who can take action against the third party and not the person who merely has the possession.
c) The seller can sue for the price only if the ownership of goods has been transferred to the buyer.
d) In case of insolvency of the buyer, the official receiver (or) assignee can take the possession of goods from seller only if the owner ship of goods has been transferred to the buyer.
e) In case of insolvency of the seller, the official receiver (or) assignee can take the possession of goods from buyer only if the ownership of goods has not been transferred to the buyer.

CONSUMER PROTECTION ACT

Q. What is consumer protection Act and what are the Objectives and features of Consumer protection Act?

The Consumer Protection Act can be considered a significant achievement of the Consumer Movement in India. The Consumer Protection Act, 1986 (COPRA) It is an Act of the Parliament of India enacted in 1986 to protect the interests of consumers in India. It is replaced by The Consumer Protection Act 2019. It is made for the establishment of consumer councils and other authorities for the settlement of consumer's grievances and matters connected therewith it. The main objective of this Act is to provide for better protection of the consumers. The provisions of this Act are compensatory in nature. The Act intends to provide simple, speedy and inexpensive redressal of the consumer’s grievances.

OBJECTIVES:

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

Salient features of the Act are:

1) The Act aims to provide better and all-round protection to consumers.
2) In terms of geographical application, it applies to the whole of India except the State of Jammu and Kashmir.
3) It applies to all goods and services unless otherwise expressly notified by the Central Government.
4) It is indeed a very unique and highly progressive piece of social welfare legislation and is acclaimed as the magna carta of Indian consumers. The Act has made the consumer movement really going and more powerful, broad-based and effective and people oriented.
5) It provides effective safeguards to the consumers against different types of exploitation such as defective goods, unsatisfactory (or deficient) services and unfair trade practices.

Q. Explain the important definitions of Consumer Protection Act?

Definitions under the Act:

1. **Consumer**: Sec.2 (1) (d) defines the term consumer. It means mainly of the following persons:
   I. the goods or services must have been purchased or hired or availed of for consideration which has been paid in full or in part or under a system of deferred payment, i.e., in respect of hire-purchase transactions;
   II. goods purchased should not be meant for re-sale or for a commercial puypose.
   Thus, to be a 'consumer' under the Act -
   where a vehicle has been purchased for the purpose of running it as a taxi, the purpose being commercial the buyer shall not be a 'consumer' under the Act [Western India State Motors v. Subhag Mai Meena and Others (1989)l. However, if the taxi is used by the buyer to earn his livelihood, the buyer will be considered as a consumer.

   Any economic activity or transaction carried on with the motive of making profit would fall under the term commercial purpose, irrespective of the scale of operations In S. Pattahhiraman v. SP. ST. Palaniappan (Order dt. 3.5.1994), the National Commission ruled that a chartered accountant who is in practice and who purchased a computer for being installed in his office, cannot be regarded as a consumer under the Consumer Protection Act.
2. **Consumer Dispute:** According to Section 2(1) (c), Consumer Dispute means a dispute where person against whom a complaint has been made, denieg or disputes the allegations contained in the complaint.
3. **Defect :**According to Section 2(1) (c), Consumer Protection Act, 1986, as amended hy the Amendment Act, 1993, a 'defect' means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as js claimed by the trader in any manner whatsoever in relation to any goods.

   A ration shop supplied a ration card-holder rapeseed oil adulterated with known toxic adulterants. The complainant, and his family, as result of that rapeseed oil consumption suffered severely. He was attacked with paralysis of lower limbs and inspite of prolonged treatment he did not recover fully. His wife, inspite of medical treatment, was not able to carry on her ordinary avocation as housewife because of ailment. His two daughters and a son, all growing children were also affected and medical report was that they had severe attack. Their educational carrier was doomed. Considering all these facts, the Commission awarded a sum of Rs.

1,50,000/- to the complainant and Rs. 50,000/- for his wife and Rs. 25,000/- to each of the children resulting in awarding of toal of Rs. 2,75,000/- (Barsad Ali vs. Managing Director; West Bengal Essential Commodities Supplies Corp. 1993, CCJ 476).

4. **Deficiency:** "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

   Maina Devi Bairalia v. Life Insurance Corporatidn of Iadia (decided by the National Commisison on 11 S.1993).

   In this case, Maina Devi's husband took a life insurance policy for Rs. 50,000. Before the second premium fell due, he died due to sudden illness. The claim made by Smt. Maina Devi, the widow of the insured, was not entertained for as long as 14 years. It was only when she got her miseries published in newspapers and certain MPs took up the matter in Parliament that she was sent a cheque for Rs. 50,310. On a suit before National Commission, it was held that the Corporation had been highly negligent in the performance of its services. Smt. Maina Devi, the complainant, had suffered hardship and loss on account of deficiency in service. She was held entitled to interest a 12 p.a. from the date of expiry of 3 months from the date of death of assured till the amount was paid to her. The Commission also awarded her compensation Rs. 15,000 for mental torture and harassment.

5. **District Forum:** District forum means a consumer Disputes Redressal forum established under clause (a) of Section 9 (Sec. 2 (1) (h)).

   Section 9 (a) in this regard provides that there shall be a consumer Disputes Redressal Forum to be known as the District Forum established by the State Government in each district of the State by notification. The State Government may, if it requires, establish more than one District forum in a district.

6. **Goods:** Goods under this Act shall have the same meaning as assigned to them under the sale of goods Act, 1930 (Sec. 2(7) (i)). Accordingly, Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale (Sec. 2(7) of the Sale of Goods Act, 1930).

7. **Manufacturer**: Sec. 2 (1) (1) of the Act defines' the expression 'manufacturer' to mean any of the following persons:
   a. A person who makes or manufactures any goods or part thereof.
   b. A person who does not make or manufacture any goods but assembles parts thereof made - or
      manufactured by others and claims the end-product to be goods manufactured by himself.
   c. A penon who puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and goods and claims such goods to be goods made or manufactured by himself.

8. **National Commission**: 'National Commission' means the National Consumer Dispute Redressal Commission established under clause (c) of Section 9 [Sec. 2(1) (k)

   Section 9 (c) provides that there shall be established for the purpose of this Act a National Consumer Disptues Redressal Commission established by the Central Government by notification. The Government vide powers conferred upon it under the said clause established a National Commission in 1987.

9. **Person**

a. As per Sec. 2(1) (m), 'person' includes:
b. a firm, whether registered or not;
c. a Hindu undivided family;
d. a Cooperative Society;
e. every other association of persons whether registered under Societies Registration Act, or not.

10. **Restrictive Trade Practice** : 'Restrictive trade practice', as per Sec. 2(1) (nn) means any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedeat for buying, hiring or availing of other goods or services.
    Thus, compelling a consumer to buy insurance cover while purchasing a vehicle, or insisting on purchase of gas-stove as a pre-condition to release gas connection shall be a restrictive trade practice.
11. **Service:** Section 2 (1) (0) provides that Service means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.
12. **State Commission**: It means a Consumer Disputes Redressal Commission established in a State under clause (b) of Sec. 9 (Sec. 2(1) (p)), Clause (b) of Sec. 9 provides that there shall be established for the purpose of this Act a Consumer Disputes Redressal Commission to be knowh as the State Commission established by the State Government in the State by notification in the official Gazette.
13. **Trader:** "trader", in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof

Q. Explain the Rights granted to the consumers in the Consumer Protection Act?

The Consumer Protection Act enshrines six rights of the consumers. These are the Right to Safety, Information, Choice, Be Heard, Redressal and Consumer Education.

1. **Right to Safety:** The Right to Safety means the right to be protected against the marketing of goods and services which are hazardous to life, health and property. What is required here is that the purchased goods (or services) should meet the present as well as long term needs of safety.
   Sometimes the manufacturing defects in pressure cookers, gas cylinders and other electrical appliances may cause loss to life, health and property of customers. This right to safety protects the consumer from sale of such hazardous goods or services.
2. **Right to be Informed**:
   This Right means right to be informed about the quality, quantity, potency, performance, purity, ingredients, standard and price of goods or services, as the case may be, and the right to be given the facts needed to make an informed choice or decision, so as to protect the Consumer against unfair trade practices. In other words, the consumer can insist on getting all the information about the product or service before making a choice or a decision. The manufacturer or trader is duty bound to provide adequate, accurate and up-to-date information on such important characteristics of the product because full information helps consumers in making decisions and getting best return of their money. Now, the Supreme Court has designated this legal right as a fundamental right of the consumer within the purview of Article 21 of the Indian Constitution.
3. **Right to Choose**

This Right means the right to be assured, wherever possible, of access to a variety of goods at competitive prices. In other words, a buyer has a right to buy a product of his/ her choice and get satisfaction out of some products available regarding quality and price of goods. A shopkeeper cannot force or impress upon a customer to buy a particular brand or a type of product. It should be the keystone of dealer's policy

4. **Right to be Heard:**

   The consumer has a right to register dissatisfaction and to get his complaint heard and judged. If the consumers do not enjoy the right to be heard, their right to safety, to be informed and to choose will become meaningless.

   The right to be heard also known as the right to representation means that consumers' interests will receive due consideration at appropriate forums. It also includes Right to be represented in various forums formed to consider the consumer's welfare.

   The right to be heard implies the existence of a legal framework and government intervention to safeguard consumer interests. For the exercise of this right, both the State and the voluntary agencies are supposed to provide necessary forums.

   By enacting the Consumer ProtectionAct, the Government of India has created a 3-tier quasi-judicial structure (Consumer Forums at District, State and national levels) for the redressal of consumer grievances and complaints. Moreover, the consumers themselves have started forming non-political and non-commercial consumer organisations which can be given representation in various committees formed by the Government and other bodies in matters relating to consumers.

5. **Right to Seek Redressal**

   This Right provides for the Right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. It also includes Right to a fair settlement of the genuine grievances of a consumer. It also involves the right to receive compensation for faulty goods or services.

6. **Right to Consumer Education**

   The right to consumer education means the right to acquire the knowledge and skill, to be an informed consumer throughout life. This right ensures that consumers are informed about the practices prevalent in the market and the remedies available to them. The role of media and Non- Governmental Organisations may be significant in this direction.

   Consumer education covers a range of activities:

   a. To understand their rights and responsibilities.
   b. To think about the choices they face as consumers.
   c. To learn about consumer legislation and regulation.
   d. To become better buyers.
   e. To take appropriate action to protect their rights.

Q. Explain the duties and responsibilities of Consumers?

Consumer responsibilities

1. The Responsibility to be aware of the quality and safety of goods and services before purchasing.
2. The Responsibility to gather all the information and facts available about a product or service as well as to keep abreast of changes and innovations in the marketplace.
3. The Responsibility to Think Independently and make choices about well-considered needs and wants.
4. The Responsibility to Speak Out, to inform manufacturers and governments of needs and wants.
5. The Responsibility to Complain and inform business and other consumers of dissatisfaction with a product or service in a fair and honest manner.

6. The Responsibility to be an Ethical Consumer and to be fair by not engaging in dishonest practices which cost all consumers money.
7. The Responsibility to Respect the Environment and avoid waste, littering and contribution to pollution.

Duties of consumer

1. Duty of consumer to pay for the services or goods purchased or used.
2. Duty of consumer to check weights, balances, prices etc. and read the labels carefully.
3. To update oneself about the various schemes of consumer protection.
4. Duty not to fall in the trap of misleading information and advertisements.
5. Not to buy goods from black markets.
6. To be an ethical consumer and procure the bills, receipts etc. for the good and services purchased. If a consumer fails to take them then he/she might find it difficult to file a complaint and prove the defect in the good.
7. Duty to gain knowledge about consumer rights and duties and to spread awareness about the same.
8. Duty to file a complaint in case there is a defect in the good or service so purchased

CONSUMER PROTECTION COUNCILS

Q.What are the different types of consumer protection councils?

I.THE CENTRAL CONSUMER PROTECTION COUNCIL.

The Central Government may be notification, establish with effect from such date as it may specify in such notification a council to be known as the Central consumer protection Council (i.e the Central Council).

1. **Members of the Central Council**: The Central Council shall consist of the following members, namely-
    a) The Minister in–charge of Consumer affairs in the Central Government, who shall be its Chairman, and
    b) Such number of other official or non-official members representing such interest may be prescribed.
2. **PROCEDUER FOR MEETINGS OF CENTRAL COUNCIL**. –
    (1) The Central Council shall conduct at least one meeting every year and can also meet whenever necessary.
    (2) The Central Councils' Chairman will decide the time and place of the meeting and shall observe the procedure prescribed by the state government in regard to the transaction of its business.
3. **OBJECTIVES OF THE CENTRAL COUNCIL.**

(a) The right to be protected against marketing of goods and services which are hazardous to life and property;
(b) The right to be inform about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the Consumer against unfair trade practices;
(c) The right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
(d) The right to be heard and to be assured that Consumers' interest will receive due consideration at appropriate forums;
(e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of Consumer; and
(f) The right to Consumer education.

II. THE STATE CONSUMER PROTECTION COUNCILS.

(1) The State Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for…(i.e.the State Council).

2. Members of the State Council

a) The Minister in- charge of Consumer Affairs in the State Government will act as the Chairman;

b) Such number of other official or non –official members representing such interests as may be prescribed by the State Government.

3. Procedure for Conducting Meetings:

The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

the State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.]

4. OBJECTS OF THE STATE COUNCIL. - The objects of every State Council shall be to promote and protect within the State the rights of the Consumers laid down in Clause (a) to (f) of sec.6.

CONSUMER DISPUTES REDRESSAL AGENCIES

Q. Write a note on various consumer disputes redressal agencies?

The consumer protection Act under Chapter III explains about the consumer redressal agencies. Section 9 of the Act gives the provision for establishment of consumer redressal agencies and includes a provision to create "**Three tier remedial machinery"** was given. Section 9, provides that for the establishment of the following agencies: -

(a) A Consumer Disputes Redressal Forum to be known as the "**District Forum"** established by the State Government in each district of the State by notification. Provided that the State Government may if it deems fit, establish more than one District Forum in a district.

(b) A Consumer Disputes Redressal Commission to be known as the **"State Commission**" established by the State Government in the State by notification; and

(c) A National Consumer Disputes redressal Commission established by the Central Government by notification.

I. District Forum:

The state Government establishes "District Forum" in each district of the State by notification. The State Government may if it is required, , establish more than one District Forum in a district.

i. Composition of the District Forum:

1) Each District Forum shall consist of –

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

(b) 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.

ii. Appointment:

Every appointment under section 10 and sub-section (1) shall be made by the State Government on the recommendation of selection Committee consisting of the following namely:

- The President of the State Commission- Chairman,
- Secretary, Law Department of the State- Member,

- Secretary, incharge, of the Department dealing with Consumer affairs in the State- Member.

iii. Term of the Office: Every member of the District Forum shall hold office for a team of five years or up to the age of 65 years whichever is earlier, and shall not be eligible for re-appointment

iv. Resignation: Provided that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who has resigned.

v. Salary and Honorarium: The salary or honorarium and other allowances payable to, and the other terms and conditions of services of the members of the District Forum shall be such as may be prescribed by the State Government.

JURISDICTION OF THE DISTRICT FORUM. –

(1) Subject to other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the Compensation if any, claimed which does not exceed rupees five lakhs.

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction, -

(a) The opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office, or personally works for gain; or

(b) Any of the opposite parties where there are more then one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally works for gain, as the case may be, acquiesce in such institution; or

(c) The cause of action, wholly or in part arises.

II. STATE COMMISSION

COMPOSITION OF THE STATE COMMISSION. -

(1) Each State Commission shall consist of, -

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

(b) Two other member, who shall be person 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:

(i) President of the State Commission----Chairman,

(ii) Secretary of the Law Department of the State----Member,

(iii) Secretary, incharge of Department dealing with consumer affairs in the State-Member.

(2) Salary and Honorarium: The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the State Commission shall be such as may be prescribed by the State Government.

(3)Term: Every member of the State Commission shall hold office for a term of five years or up to age of sixty-seven years, whichever is earlier and shall not be eligible for re-appointment.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection

(Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.]

JURISDICTION OF THE STATE COMMISSION. - Subject to the other provisions of this Act, the State Commission shall have jurisdiction, -

(a) To entertain-

- Complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees five lakhs but does not exceed rupees twenty lakhs; and
- Appeals against the order of any District Forum within the State; and

(b) To call for the records and pass appropriate orders in any Consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

PROCEDURE APPLICABLE TO STATE COMMISSION. – According to Section 18, the provisions of Secs 12, 13 and 14 and the rules made there under for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

VACANCY IN THE OFFICE OF THE PRESIDENT. -When the office of the President of the District Forum or of the State Commission, as the case may be, is vacant or when any such President is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such person, who is qualified to be appointed as President of the District Forum or, as the case may be, of the State Commission, as the State Government may appoint for the purpose.

APPEALS. - Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of Cl. (a) of Sec. 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

III. NATIONAL COMMISSION

COMPOSITION OF THE NATIONAL COMMISSION. -

(1) The National Commission shall consist of, -

(a) 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;

(b) Four other members who shall be person 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 under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following namely: -

- 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.

(2) Salary and Honorarium: The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the National Commission shall be such as may be prescribed by the Central Government.

(3) Term: Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall not be eligible for re-appointment.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

JURISDICTION OF THE NATIONAL COMMISSION. – Subject to the other provisions of this Act, the National Commission shall have jurisdiction, -

(a) To entertain, -

(i) Complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs; and

(ii) Appeals against the orders of any State Commission; and

(b) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

POWER TO AND PROCEDURE APPLICABLE TO THE NATIONAL COMMISSION. - The National Commission shall, in the disposal of any complaints or any proceedings before it, have-

(a) The power of a Civil Court as specified in sub-sections (4), (5) and (6) of sec. 13;

(b) The power to issue an order to the opposite party directing him to do any one or more of the things referred to in Cl. (a) to (I), of sub- section (I) of sec. 14, and follow such procedure as may be prescribed by the Central Government.]

APPEAL. - Any person aggrieved by an order made by the National Commission in exercise of its power conferred by sub-Clause (I) of Cl. (a) of sec. 21 may prefer an appeal against such order to the Supreme Court within period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

FINALITY OF ORDERS. - Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

LIMITATION PERIOD. –

(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub- section (1) a complaint may be entered after the period specified in sub –section (1), if the complaint satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, State Commission or the District Forum, as the case may be, records its reasons for condoning such delay. .

ADMINISTRATIVE CONTROL. –

(1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely: -

a. Calling for periodical returns regarding the institution, disposal, pendency of cases;
b. Issuance of instructions regarding adoption of uniform procedure in the hearing of matters prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;
c. Generally overseeing the functioning of the State Commissions or the District Forum to ensure that the objects and purpose of Act are best served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative control over all the District Forum within its jurisdiction in all matters referred to in sub-section (1).]

Q. Explain the procedure of Enforcement of orders by the forum, the state commission or national commission?

Every order made by the District Forum, the State commission or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were a decree or order made by a Court in a suit pending therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the Court within the local limits of whose jurisdiction,-

(a) In the case of an order against a company, the registered office of the company is situated, or

(b) In the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated, and thereupon, the Court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.

DISMISSAL OF FRIVOLOUS OR VEXATIOUS COMPLAINTS. - Where a complaint instituted before the District Forum, the State Commission or as the case may be the National Commission is found to be frivolous or Vexatious, it shall for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.

PENALTIES. - Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both:

Provided that the District Forum, the State Commission or the National Commission, as the case may be, if it is satisfied that the circumstances of the case so require, impose a sentence of imprisonment or fine, or both for a term lesser than the minimum term and the amount lesser than the minimum amount, specified in this section.

Unit 3
Intellectual Property Rights

Q. Define intellectual properties and what are the objectives of intellectual property rights?

Meaning: Intellectual Property means "creations of mind", e.g., music, literature, artistic work, discoveries,innovations, etc. The term Intellectual Property Rights, therefore, refer to certain exclusive rights available to the owner of intellectual property as per Intellectual Property Law. Intellectual Property Rights are a type of intangible assets or property. They

include patents, copyrights, industrial design rights, trademarks, trade secrets, etc.

Objectives of Intellectual Property Law

The objectives ofIntellectual Property Law can be summarized as under:

1. **Protection to the Inventor**: Intellectual Property Law aims at giving the inventor the full social value of his invention or innovation by restraining others from using it for their own personal gains. This is done by reserving the exclusive right for disclosure or use of the invention or creative work with its inventor. The law, thus, creates an incentive for the inventor or author to create and disclose his work.

2. Financial Incentive: Intellectual Property Law permits its owners only to benefit from the property they have created. This financial incentive encourages them to incur costs involved in research and development of a new product or design.

★ **Economic Growth**: Protection of Intellectual Property Rights is essential for sustaining economic growth.The Anti-Counterfeiting Trade Agreement (ACTA) states that "effective enforcement of intellectual property right is critical to sustaining economic growth across all industries globally".

Article 27 of the Universal Declaration of Human Rights says, "Everyone has the right to the protection of the moral and material interests resulting from any scientific literary or artistic production of which he is the author".

Q. what are the various initiatives taken by the Government of India to protect Intellectual property rights?

The Government of India has taken several initiatives both at legislative and policy levels to create a conducive environment for protecting the intellectual property rights of the creators and innovators. These initiatives are being briefly described in the following pages:

At Legislative Level

The Indian Government has framed several legislations to protect and promote intellectual property rights. These include the following:

1. The Indian Copyright Act, 1957

This is a type of intellectual property which is related with written material. Protects creative works that are musical, literary, artistic works, lectures, plays, art reproductions, models, photographs, computer software, etc. The rights under this also have a specified duration at least 50 years of protection.

2. The Trade Marks Act, 1999

It is a distinguishable sign, design or expression which differentiates the products or services of a business undertaking from similar products or services of any other undertaking.

It may be a label ticket name, sign, word, letter, number, drawing, picture, emblem, colour or combination of colours, shape of goods, signature or a combination thereof.

3. The Patents Act 1970

A right giving the owner the right to exclude others from making, using, selling and importing an invention for a limited period oftime in exchange for all public disclosure of the invention. Such a right is granted in respect of a new product or invention that meets the conditions of novelty, non-obviousness and industrial use.

Patent protection exists for twenty years from the date of filing of an application for utility and patents and fourteen years from the date of grant for design patents. After this period of time, the invention fall into the public domain and may be used by any person without permission

At Policy Level

The Government of India is committed to establishment of a vibrant Intellectual Property regime in this country. The following are the major steps taken by the Government in this direction.

1. Spreading Awareness: The Government is conducting a wide range of awareness programmes concerning Intellectual Property Rights.

2. Strengthening IP Infrastructure: During the last few years, the Indian IP offices have undergone major improvement in terms of infrastructure. State-of-the-art and IT enabled office buildings have been created. Inducting additional manpower, computerization, free access to IP data through a dynamic web-note, simplified procedure for filing, e-filing facilities, speedy processing of IP applications, etc., have all resulted in providing efficient and transparent services to the stakeholders.

3. International Agreement: India is a member of several international organisations committed to protection of Intellectual Property Rights. Moreover, it has also signed several international treaties and conventions concerning Intellectual Property Rights. These organisations and treaties are as under:

(**a) International Organisations**

i. World Trade Organisation
ii. World Intellectual Property Organisation

(**b) International Treaties/Conventions**

i. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
ii. Paris Convention for the Protection of Intellectual Property
iii. Convention Establishing the World Intellectual Property Organisation
iv. Berne Convention for the Protection ofLiterary and Artistic Works
v. Patent Cooperation Treaty
vi. Protocol Relating to the Madrid Agreement Concerning the International Registration ofMarks - Madrid Protocol
vii. Washington Treaty on Intellectual Property in respect ofIntegrated Circuits
viii. Nairobi Treaty on the Protection ofthe Olympic Symbol
ix. Convention for the Protection of Producers of Phonograms against Unauthorised Duplication oftheir Phonograms.

1. The Indian Copyright Act, 1957

Q. Define copy rights and explain the registration procedure and terms of copy rights?

Meaning of Copyright: The term copyright means "the exclusive right to the publication , sale of the rights to a literary, dramatic, musical or artistic work; or to the use of it to commercial print or label granted by law for a specified period of time to an author, composer, artist, distributor, etc". In simple words, it is an exclusive right to a creator of a original work, usually for a limited time.

According to Section 13 of the Indian Copyright Act, copyright shall subsist throughout India in respect of the following classes ofworks:

(a) Original literary, dramatic, musical and artistic works;
(b) Cinematograph films; and
(c) Sound recording.

Copyright shall not subsist in respect ofthe following:

(a) In any cinematograph film if a substantial part of the film is an infringement of the copyright of any other work;
(b) In any sound recording made in respect of a literary, dramatic or musical work:making the sound recording, copyright in such work has been infringed.

Registration of Copyright (Secs. 44 to 47):

The Central Government has appointed a Registrar for Copyrights. There is Copyright Officer under his immediate control. The Central Government has also constituted a Copyright Board as per provisions of Section 11 ofthe Act.A Register ofCopyrights is maintained at the Copyright Office. The author or publisher of, or the owner or other person interested in the copyright in any work has to make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars ofthe work in the Register ofCopyrights.

Term of Copyrights (Secs. 22 to 29): The term of Copyrights is usually 60 years from the beginning ofthe calendar year next following the year in which the work is first published. However,in case of any literary, dramatic musical or artistic work, the copyright shall subsist within the lifetime of the author and until 62 years from the beginning of the calendar year next following the year in which the author dies.

Q. Explain copy right infringement and consequences of copyright infringement ?

Meaning of Copyright: The term copyright means "the exclusive right to the publication , sale of the rights to a literary, dramatic, musical or artistic work; or to the use of it to commercial print or label granted by law for a specified period of time to an author, composer, artist, distributor, etc". In simple words, it is an exclusive right to a creator of a original work, usually for a limited time.

According to Section 13 of the Indian Copyright Act, copyright shall subsist throughout India in respect of the following classes ofworks:

(a) Original literary, dramatic, musical and artistic works;

(b) Cinematograph films; and

(c) Sound recording.

Infringement of Copyright: Copyright infringement means reproducing, distributing, displaying or performing a work without the permission ofthe Copyright holder. It is often called piracy.In each ofthe following cases, Copyright shall be deemed to be infringed (Secs. 51 and 52):

(a) when any person, without a license granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority under this Act—

(i) Does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the communication ofthe work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright;

(b) When any person—

(i) makes for sale or hire, or sells or lets for hire, or by way oftrade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner ofthe copyright, or

(iii) by way oftrade exhibits in public, or

(iv) imports into India, any infringing copies of the work, provided that nothing in this clause shall apply to the import of one copy of any work for the private and domestic use ofthe importer. It may be noted that reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an infringement ofCopyright.

Consequences ofInfringement: Infringement leads to both Civil and Criminal liabilities.

(i) Civil Liability (Sec. 55): Where copyright in any work has been infringed, the owner of the copyright shall be entitled to all such remedies by way ofinjunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right.
(ii) Criminal Liability (Sec. 63): Any person who knowingly infringes or abets the infringement of:
(a) The copyright in a work, or
(b) Any other right conferred by this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

2. The Trade Marks Act, 1999

Q. Define trademarks and explain the procedure for registration of trademarks?
Meaning of Trade Mark: It is a distinguishable sign, design or expression which differentiates the products or services of a business undertaking from similar products or services of any other undertaking.
According to the (Sec. 2(l)(b)) of Trade Marks Act, trademarks means "a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours".
It may be a label ticket name, sign, word, letter, number, drawing, picture, emblem, colour or combination of colours, shape of goods, signature or a combination thereof.

Registration of Trade Mark (Secs. 53 to 26): The Central Government appoints by notification in the Official Gazette a person to be known as the Controller General of Patents, Designs and Trade Marks. He is the Registrar of Trade Marks for the purpose of this Act. His office is known as Trade Mark Registry Office. A record called the Register of Trade Marks is kept at this office where the details of all trademarks registered are entered.
Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of trade mark. The Registrar may cause the application to be advertised before its acceptance.
The Registrar may accept the application for registration of the trade mark in each of the following cases:
(i) The application has not been opposed and the time for notice of opposition has expired. Or
(ii) The application has been opposed and opposition has been decided in favour of the applicant.
On registration of Trade Mark, the Registrar shall issue a certificate in the prescribed form of the registration thereof, sealed with the Seal ofthe Trade Marks Registry.
Term of Trade Mark: The Registration of a trade mark shall be valid for a period of ten years It may further be renewed as per the provisions ofthe Act. The registration of a trade mark gives to the registered proprietor of the trade mark, the exclusive right to the use oftrade mark in respect of goods and services for which the trade mark is registered.

Q. Explain trademarks infringement and consequences of trademarks infringement?
Meaning of Trade Mark: It is a distinguishable sign, design or expression which differentiates the products or services of a business undertaking from similar products or services of any other undertaking.
According to the (Sec. 2(l)(b)) of Trade Marks Act, trademarks means "a mark capable of being represented graphically and which is capable of distinguishing the goods or services of

one person from those of others and may include shape of goods, their packaging and combination of colours".

It may be a label ticket name, sign, word, letter, number, drawing, picture, emblem, colour or combination of colours, shape of goods, signature or a combination thereof.

Infringement of Trade Mark: There is infringement of trade mark when a person uses a trademark that is identical or confusingly similar to a trade mark owned by another person in relation to products or services which are identical or confusingly similar to the product or services of another person. The affected party can have both civil and criminal remedies against the defaulter. Civilremedies include injunction, suit for damages, etc., while criminal remedies involves:

Penalties (Sec. 103)'. In case a registered trade mark is infringed, the person guilty, unless he proves that he acted without intent to defraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years with fine which shall not be less than Rs. 50,000 but may extend to Rs. 2,00,000.

3. The Patents Act, 1970

Q. Define patents and explain the procedure for registration of Patents?

Meaning of Patent: A right giving the owner the right to exclude others from making, using, selling and importing an invention for a limited period oftime in exchange for all public disclosure of the invention. Such a right is granted in respect of a new product or invention that meets the conditions of novelty, non-obviousness and industrial use.

Authority for Registration of Patents (Secs. 67 to 76): The Controller General of Patents, Designs and Trade Marks appointed as per the provisions ofthe Trade Marks Act is the Controller of Patents for the purposes ofthe Patents Act. There shall also be a Patent office at such place as may be notified by the Central Government by notification in the Official Gazette.

At the Patent office, a Register of Patents will be kept. The following details will be recorded in the Register:

(i) The names and addresses of grantee of patents.

(ii) Notifications, extensions and revocation ofPatents.

(iii) Particulars of such other matters affecting the validity or proprietorship of patents as may be prescribed.

Application for Registration of Patents (Sec. 6): An application for a patent for an invention may be made by any ofthe following persons:

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

i. Every application for patent shall be for one invention only. It shall be made in the prescribed form and manner to the Patent office. The Controller shall publish such application for information to the general public as per the prescribed procedure.

ii. If the Controller receives no objection to the registration of patents or the objection raised is not found against the applicant, the Controller shall grant as expeditiously as possible the patent to the applicant. On the grant of the patent, the Controller shall publish this fact and make the relevant documents available for public inspection. Every Patent shall be dated as of the date on which the application for patent was filed. The date of every patent shall be entered in the Register of Patents.Every patent shall be in the prescribed form and shall have effect throughout India.

Term of Patent (Sec. 53): The term of each patent shall be 20 years from the date of filing of the application for the patent.

Q. What are the rights pf patentee?

Rights of the Patentees (Sec. 48): A Patent granted under the Act confers the following rights to the Patentee:

(a) Where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;

(b) Where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India.

Q. what are the various types of patent infringement and explain consequences of patent infringement?

Patent infringement

Violation of a patentee's right with respect to some invention is known as patent infringement. When the rights of the patent holder or the claims in the patent are violated by a third party, without the consent or license of the patent holder, such third party is said to have infringed the patent rights of patent holder. While doing a patent infringement risk analysis, it is necessary to understand the types of patent infringements to ensure that the invention is not likely to infringe any of the existing patent rights.

Types of Patent Infringement

A. Direct infringement: Direct infringement is the most apparent and common type of infringement. This infringement includes marketing, sale or commercial use of a similar patented item or invention that performs substantially identical functions.

Direct infringement is of two types - literal and nonliteral.

- Literal infringement occurs when every component in the patent specification has been used in the alleged infringing product/ device or process.
- Non-literal infringement occurs when the infringing device or process may be similar or equivalent to the claimed invention (performs substantially the same function, in substantially the same way and to achieve substantially the same result.

B. Indirect infringement is when the infringement has happened, however the infringement is facilitated by someone else.

Indirect infringements are of two types:

- **Inducted infringement** – where one actively induces the other person to infringe a patent by encouraging, assisting, aiding, and inducing him/her to do so. Patent infringement by inducement typically means that the inducer willingly and knowingly aided in the infringement but may or may not have specifically intended to violate a patent infringement.;
- **Contributory infringement** – where there is an intentional participation/assistance by one party in an act of infringement to the other party making them vicariously liable for the acts of the infringer.

It is a type of indirect infringement, where a person or corporation is held liable for infringement even if they have not actively participated in infringing activities.

C. Wilful Infringement – Another type of infringement

This infringement involves someone showing a serious disregard for the existence of a patent. For example, if you sued Acme for infringing on your anvil patent and found during discovery that they had it in their possession and used it to make their anvils, you will likely prevail in showing that their violation was wilful. Those found guilty of wilful infringement pay higher penalties, attorney fees, and court costs.

Consequences for Infringement (Secs. 104 & 108):
A patent infringement is caused by using or selling a patented invention without the permission from the patent holder. In case of infringement of patents, the following remedies are available:
(a) Suit for Relief: A suit may be filed by the affected party against the defaulting party for reliefin a court not inferior to a District Court having jurisdiction to the suit. The court may grant the following reliefs:
(i) It may grant an injunction (subject to such terms, if any, as the court thinks fit and, at the option ofthe plaintiff, either damages or an account of profits.
(ii) It may also order that the goods which are found to be infringing and materials and implements, the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation.
(b) Penalty for Unauthorized Claim of Patent Rights (Sec. 120): If any person falsely represents that any article sold by him is patented in India or is the subject of an application for a patent in India, he shall be punishable with fine which may extend to one lakh rupees.
Q. write a note on trade secretes?
Trade Secrets: A trade secret consists of any valuable business information. The business secrets are not to be known by the competitor. There is no limit to the type of information that can be protected as trade secrets; **For Example:** *Recipes, Marketing plans, financial projections, and methods of conducting business can all constitute trade secrets.* There is no requirement that a trade secret be unique or complex; thus, even something as simple and nontechnical as a list of customers can qualify as a trade secret as long as it affords its owner a competitive advantage and is not common knowledge.

If trade secrets were not protectable, companies would no incentive to invest time, money and effort in research and development that ultimately benefits the public. Trade secret law thus promotes the development of new methods and processes for doing business in the marketplace.
Protection of Trade Secrets: Although trademarks, copyrights and patents are all subject to extensive statuory scheme for their protection, application and registration, there is no federal law relating to trade secrets and no formalities are required to obtain rights to trade secrets. Trade secrets are protectable under various state statutes and cases and by contractual agreements between parties.
Q. Write a note on Geographical Indications?
Geographical Indications Of Goods: Geographical Indications of Goods are defined as that aspect of industrial property which refers to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product.
What is a Geographical Indication?
➢ It is an indication

➢ It originates from a definite geographical territory.

➢ It is used to identify agricultural, natural or manufactured goods

➢The manufactured goods should be produced or processed or prepared in that territory.

➢ It should have a special quality or reputation or other characteristics

Examples of Indian Geographical Indications –

➢ Solapur Chaddar

➢ Solapur Terry Towel

➢ Basmati Rice

➢ Darjeeling Tea

➢ Kanchipuram Silk Saree

➢ Alphanso Mango

➢ Nagpur Orange

The Geographical Indications of Goods (Registration and Protection) Rules, 2002 deal with registration and better protection of geographical indications relating to goods. The primary purpose of this Act is to provide legal protection to Indian Geographical Indications which in turn boost exports. Registration of Geographical indication promotes economic prosperity of producers of goods produced in a geographical territory.

According to the Act, the term 'geographical indication' (in relation to goods) means "an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality,reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods, one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be".

Registration of Geographical Indication

The registration of a geographical indication is not compulsory; however, it offers better legal protection to facilitate an action for infringement. The registered proprietor and authorized users can initiate infringement actions. The authorized users can exercise the exclusive right to use the geographical indication.

The registration of a geographical indication is valid for a period of 10 years. It can be renewed from time to time for further period of 10 years each. If a registered geographical indication is not renewed it is liable to be removed from the register.

What are the differences between patents, copyrights, trademarks and trade secretes?

NOTE: WRITE THE MEANING AND DEFINITION OF COPYRIGHT, PATENTS, TRADE MARKSS, TRADE SECRETES.

	Copyright	Patents	Trademark	Trade Secret
What's Protected?	Original works of authorship, such as books, articles, songs, photographs, sculptures, choreography, sound recordings, motion pictures, and other	Inventions, such as processes, machines, manufactures, compositions of matter as well as improvements to these	Any word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others	A formula, practice, process, design, instrument, pattern, commercial method, or compilation of information that is not generally known

	Copyright	Patents	Trademark	Trade Secret
	works			
Requirements to be Protected	A work must be original, creative and fixed in a tangible medium	An invention must be new, useful and nonobvious	A mark must be distinctive (i.e., that is, it must be capable of identifying the source of a particular good)	A trade secret must not be generally known to the public, confers an economic benefit due to its secret nature, and there must be reasonable efforts to maintain its secrecy.
Term of Protection	Author's life plus 70 more years.	20 years	For as long as the mark used.	For as long as it remains secret
Rights Granted	Right to control the reproduction, making of derivative works, distribution and public performance and display of the copyrighted works	Right to prevent others from making, selling using or importing the patented invention	Right to use the mark and to prevent others from using similar marks in a way that would cause a likelihood-of-confusion about the origin of the goods or services.	Right to prevent others from misappropriating, using and disclosing the trade secret.

UNIT 4
MANAGEMENT OF COMPANY

1Q. Define director? Explain the Powers and duties of directors?

Ans: Introduction: A company being an artificial person cannot act by itself and must act through some persons known as directors. The directors are the persons elected by the shareholders to direct, manage (or) supervise the affairs of the company.

Definition: According to section 2(13) of the companies Act, 1956, defines 'Director' "as any person occupying the position of director, by whatever name called. If he performs the function of director, he would be termed a director in the eyes of law even though he may be named differently. A director may, therefore, be defined as a person having control over the direction, conduct, management (or)superintendence of the affairs of the company".

According to sec 2(34) of the companies Act 2013, the term " Director is defined as A person who is appointed to the board of a company.

The board of directors act according to the directions given by the Board of directors as per the provisions given in the companies Act. Only individuals can act as board of directors but no corporate body, associations, or firm can be appointed as board of directors.

Number of Directors:

In case of public company minimum number of directors is 3 and private companies it is 2 and one person company it is 1. The maximum number of directors as per Act is 15. However, a company may appoint more than 15 directors after passing a special resolution.

Powers of Board of Directors:

1**. General Powers: (Section 291)** The Board of directors of a company is entitled to exercise allpowers and to do all acts and things which the company is authorized to do. The powers may besubject to two conditions, they are:-

a) Firstly, the Board shall not do any act which is to be done by the company in general meeting.

b) Secondly, the Board shall exercise its powers subject to the provisions contained in that behalfin the companies Act, (or) in the memorandum (or) the Articles of the company (or) in anyregulations made by the company in general meeting.

2. Powers to be exercised only at meeting: (Section 292) The Board of directors of a company(public as well as private) must exercise the following powers on behalf of the company by means offer solutions passed at the meetings of the Board:-

a) Make calls on shares, b) Issue Debentures, c) Borrow moneys otherwise than on debentures(i.e.., public Deposits), d) Invest the funds of the company, and e) Make loans.

There are certain other powers which must be exercised only at the Board. Those powers are:-

1. To fulfill vacancies in the Board. (Section 262).
2. To sanction (or) give consent for certain contracts in which particular directors, their relativesand firms are interested. (Section 297).
3. To receive notice of disclosure of shareholders of directors. (Section 308).
4. To appoint as managing director (or) manager a person who is already managing director (or)manager of another company. (Section 316 & 386).
5. To make investments in companies in the same group. (Section 372).

Restrictions on powers: (section 293) The Board of Directors of a public (or) private company which is subsidiary of a public company, shall exercise following powers only with the consent of the shareholders in the general meetings:-

1. To sell (or) lease (or) otherwise dispose of the whole, (or) substantially the whole, of the undertaking of the company.
2. To remit (or) give time for repayment of nay debt due to the company by any director.
3. To invest the amount of compensation received by the company in respect of compulsory acquisition of any undertaking (or) property of the company.
4. To borrow moneys where the moneys to be borrowed, together with the moneys already borrowed by the company will exceed the aggregate of the paid-up capital of the company and its free reserves.
5. To contribute to charitable and other funds not directly relating to the business of the company

(or) welfare of its employees, amounts exceeding in any financial year Rs.50000 (or) 5% of the average net profits of the 3 proceeding financial years, whichever is greater.

Duties of Board of Directors: Directors occupy a key position in the management and administration of the company. Their duties are usually regulated by the Articles of the company. The general dutiesof the directors of the company may be classified as:-

1. Fiduciary Duties,
2. Duties of care, skill and diligence, and
3. other duties

1. **Fiduciary Duties**: The fiduciary duties of directors are basically identical with those to any person in a fiduciary position. They must exercise their powers;-

a) Honestly: and
b) In the interest of the company and share holders.
c) as a fiduciary, the board of directors should not do anything that will result in conflict between company and personal interests.

These fiduciary duties are owed to the company and not to the individual shareholders and they must not make a secrete profits out of their position.

2. Duties of care, skill and diligence: Directors should carry out their duties with such care, skill and diligence as is reasonably expected from persons of their knowledge and status. The standard of care, skill and diligence depending up on;-

a) The type and nature of work;
b) The division of power between directors and other officers;

c) The general usage and customs of that type of business' and
d) Whether directors work gratuitously (or) remuneratively.
Example: City Equitable Fire Insurance Company Limited. (1925):
Facts: The directors of an insurance company left the management of the company's affairs almost entirely in the hands of 'B', the managing director. Owing to 'B's fraud, a large amount of the company's assets disappeared. 'B' and the firm in which he was a partner had taken a huge loan from the company, and the cash at blank (or) in hand included L 7300 in the hands of the company's stockbrokers, in which 'B' was a partner. The directors never enquired as to how these items were made up.
Judgment: The directors were negligent. (However, the Articles protected the directors from liability as there was no willful neglect (or) default and consequently they were not held liable.
Other Duties: The other Duties of a director are:-
a) To attend Board meetings.
b) Not to delegate his functions except to the extent authorized by the Act (or) the constitution of the company; and
c) To disclose his interest.

APPOINTMENT OF DIRECTORS

2Q. Briefly state the provisions of the companies Act, 1956, regarding the mode Appointmentof Directors of a company?

Ans: Introduction: A company being an artificial person cannot act by itself. It has neither a mind nor a body of its own. It must act through some human agency. In other words, its business should be carried on by some persons on its behalf such person termed as directors. The directors are the persons elected by the shareholders to direct, manage (or) supervise the affairs of the company. In other words, 'The Board of directors are the brain and the only brain of the company which is the body, and the company can does act only through them'. It is only 'when the brain functions that the corporation is said to be function'.
Definition: According to section 2(13) of the companies Act, 1956, defines 'Director' "as any person occupying the position of director, by whatever name called. If he performs the function of director, he would be termed a director in the eyes of law even though he may be named differently. A director may, therefore, be defined as a person having control over the direction, conduct, management (or) superintendence of the affairs of the company".
Number of directors: According to the section 252(1) **every public company have at least 3** directors and according to section 252(2) **every other company (i.e.., a private company is deemed to be a public company) at least 2 directors**. According to section 258, the number so fixed may be increased(or) decreased within the limits prescribed by the Articles by an ordinary resolution of the company in general meeting. But According to section 259, where the increase in the number does not make the total number of directors more then 12, it cannot approved by the central government. It is the maximum limit permitted by the Articles for its approval by the Central government.
Appointment of Directors:
1. First Directors: (Section 254 of clause 64 of table 'A')
a) The articles of a company usually name the first directors by their respective names (or) prescribe the method of appointing them.
b) If the first directors are not named in the articles, the number of directors and the names of the directors shall be determined by in writing by the subscribers of the memorandum (or) a majority of them.

c) If the first directors are not appointed in the above manner, the subscribers of the memorandum who are individuals become directors of the company. They shall hold office until directors are duly appointed in the first annual general meeting.

2. Appointment of Directors by the company: (Section 255 to 257) According to the section 255except first director the subsequent directors are appointed by share holders in general meeting. Such directors are liable to retire by rotation. In the case of public (or) private company which is subsidiary of a public company, at least 2/3rd of the total number of directors shall be liable to retire by rotation. This means not more than 1/3rd of the total directors may be appointed on a permanent basis, of the directors liable to retire by rotation. Those who are retiring are however eligible for reappointment.

3. Appointment of Directors by Board: (Section 260, 262, & 313) The Board of Directors may appoint Directors under various sections in different cases:-

a) As Additional Directors: (Section 260) The Board of directors may appoint additional directors from time-to-time. If so, authorized by its articles without consulting the shareholders.

Additional Director holds office up to the next annual general meeting. The number of directors including the additional director should not exceed the maximum number of directors as determined by the articles of the company.

b) In a casual Vacancy: (Section 262) A casual Vacancy may arise by death, resignation, retirement, insolvency (or) disqualification of a director. The board of directors may fill this vacancy subject to regulations in the articles. The casual directors shall hold office only up to the date of original director's tenure.

c) As alternate director: (Section 313) The board may appoint alternative director in the place of original director if the articles authorizes. He his appointed to act as a director in place of the original director during the absent of original director remains for more then 3 months from the statein which the meetings of the Board are ordinarily held. Such alternative director shall hold office onlytill the original director returns.

4. Appointment of directors by third parties: (Section 255) The Articles may authorize third parties to appoint nominees to the board of the company. The number of such nominees should not exist 1/3rd of total number of directors, such directors are not liable to retire by rotation. The third party means it may be debenture holders, banking company (or) financial institution etc..,

5.Appointment by proportional representative: (Section 265) The Articles of a company mayprovide for the appointment of director by proportional representation. But it should not less then 2/3rdof the total number of directors of a public company (or) private company which is a subsidiary of apublic company according to the principle of proportional representation.

6.Appointment of director by the central government: (section 408) The central government has the power under section 408, to appoint directors as on order passed by the company law Board for to efficiency safeguard the interest of the company (or) its share holders (or) the public interest for to prevent mis-management. Such directors can hold office for a period of not exceeding 3 years on any one occasion. The power can be exercised by the company law board either on a reference made by the central government;-

a) Not less then 100 members of the company.

b) Members of the company not holding less than 1/10th of the voting powers.

A director appointed by the central government is not required to hold qualification shares are to retire by rotation.

Q3. Explain the position of a Director.

Ans. It is very difficult to define precisely the position of directors in a company. The Companies Act, 2013 is also silent on this issue. Directors have been described sometimes as trustees, sometimes as agents or sometimes as managing partners.
They have some attributes of all of them, but they are neither trustees nor managing partners in full sense of the term.
The legal position can be discussed as under-
1.Directors as agents
2.Directors as trustees
3.Directors as officers in the company
4.Directors as employees
5.Directors as managing partners

1.DIRECTORS AS AGENTS :
Directors are, in the eyes of law, agents of the company for which they act. The general principles of the law of agency apply to the company and its directors. Directors are merely agents of a company. The company itself cannot act in its own person for it has no person; it can only act through directors and the case is as regards those directors merely the ordinary case of principal and agent. Wherever an agent is liable those directors would be liable; where the liability would attach to the principal and principal only, the liability is the liability of the company. Where the directors make contracts on behalf of the company, they incur no personal liability provided they act within the scope of their authority. In such a case, the company alone would be liable.
Directors incur a personal liability in the following circumstances-
i)where they contract in their own names.
ii)where they use the company's name incorrectly ,e.g.by omitting the word'ltd'.
iii)where director's exceed their power e.g where they borrow in excess of the limits imposed upon them.
But the position of directors differ from that of the agents in the following respects:
i)Notice to an agent amounts to a notice to the principal.However a notice to a director does not amount to a notice to the company except where director is entrusted with a duty to receive the same.
ii)where as agents are appointed directors are elected.
iii)The agents work for commission but it is not so in case of directors.
iv)The ordinary agent acts according to the instructions of his principal but directors do not.
v)An agent may enter into a contract in his own name.A director cannot enter into a contract in his own name.If he does so,the company is not liable.
vi)An agent may not disclose the name of his principal.A director must disclose the name of his principal.
Hence the directors are not agents in the true sense.

2)DIRECTORS AS TRUSTEES :
The directors have also been described as trustees of the company.' A trustee is a person who is the owner of the property, deals with it as principal as owner and a master, subject to some person to whom he stands in relation of trustee.
i) Directors as trustees of the company's money or property-
As trustees of the company's money or property, directors are accountable for their proper use and are required to refund or restore the same if improperly used. Such property must be applied for the specified purposes of the company and a mis-application of it is a breach of trust. And ever since joint stock companies were invented, directors have been held liable to make good moneys which they have misapplied upon the same footing as if they were trustees. Thus, when directors pay dividends out of capital even though the company has not earned profits, 0they are liable for breach of trust.

ii) Directors as trustees of powers conferred uopn them-
The directors of a company are trustees for the company, and with reference to their, power of applying funds of the company and for misuse of the power they could be rendered liable; as trustees and on their death the cause of the action survives against their legal representatives.
Directors are the trustees of the powers conferred upon them and they must exercise those powers bonafide and for the benefit of the company as a whole. Buckley also supports the above view. He has observed-
"Directors are the trustees of the powers committed to them as for instance, of the power of approving transfer of shares; of the power of allotment of shares; of the power of employing the funds of the companies of the power of making calls; or receiving payment of calls in advance; of the power of forfeiting shares and as trustees they may be rendered liable for their misuse".
Directors are trustees of the company and not of individual shareholders. The principle has been firmly established in pervival v wright.
Directors bought shares from a shareholder, while they are negotiating the sale of the company at a very high price. The directors did not disclose the fact to the shareholder. It was held the purchase of the shares was good.
But it is not accurate to call them trustees in a strict legal sense:
i)A trustee can't be an employee of the trust but a director can be an employee of the company.
ii) A person can be a director in a maximum of 15 companies. A person can be a trustee in any number of trusts.
iii) The property of a trust is vested in the trustees merely manage the property of the company which isd not vested in them.
iv) A trustee is not remuneration but a director is entitled to remuneration|(including sitting fee for attending board meeting).
v) An artificial person can become a trustee but an artificial person cannot become a director.
Director may better be considered nto stand in a fiduciary position towards the company and be treated as a quasi trustee.
3) DIRECTORS AS OFFICERS-
Under section 2(59),"officer" includes any director, manager or key managerial personnel or any person in accordance with whose direction or instruction the Board of Directors or any one or more of direction is or are accustomed to act.
Under section 2(59)of the Companies Act, they are liable to certain penalties if the provisions of the Companies Act are not complied with.
Moreover whether or not na director is in the employment of the company, he shall always be treated as an officer of the company.
4)DIRECTORS AS EMPLOYEES-
Although directors are agents of the company, they are not employees or servants of the company. Hence they cannot claim their remuneration as a preferential creditor in the event of winding up of a company under section 327 of the Companies Act 2013.
But where any director, besides being a director, is also in the service or employment of the company such as secretary, manager, accountant or otherwise, he will be treated as an employee. As such he will be entitled to the remuneration and other benefits admissible to him as an employee in addition to his rights as a director to sitting fee etc.A managing director holds such a double role.
5)DIRECTORS AS MANAGING PARTNERS-
The Directors are also sometimes described as managing partners because like a partner of a firm, they manage the affairs of the company and they are also usually important

shareholders of the company. They do all proprietarily fun ctions like alloting shares, making calls, forfeiting shares etc.
However, all the partners of a firm act on the prinicpal of mutual agency. But it is not so in the case of directors. A director has no authority to bind the other directors and shareholders . Morepover, directors are subject to retirement by rotation whereas partners of a firm are not. Hence, the directors are not managing partners in the full sense.
Thus, directors are described as trustees, agents or managing partners. It does not matter much what you call them, so long as you understand what their true position is , which is that they are commercial men, managing a trading concern for the benefit of themselves and all other shareholders .
They Board of directors are the brain and the only brain of the company which is the body and the company can act only through them.

Q4. Explain the liablities of a Director.

Ans. The liabilities of directors may be discussed under the following four heads:
A. Liability to third parties :This may arise
1. Under the Act:Liability of directors to third parties may arise in connection with the issue of prospectus which does not contain the particulars required by the Companies Act, or which contains material misrepresentations.Directors may also incur personal liability:-
a. On their failure to repay application money if minimum subscription has not been subscribed (Sec.69)
b. On an irregular allotment of shares to an allottee (and likewise to the company) if loss or damage is sustained (Sec.71).
c. On their failure to repay application money if the application for the securities to be dealt in on a recognized stock exchange is not made or is refused(Sec.73).
d. On failure by the company to pay a bill of exchange, hundi, promissory note, cheque or order for money or goods wherein the name of the company is not mentioned in legible characters (Sec.147)
2. Independently of the Act. Directors, as agent of a company, are not personally liable on contracts entered into as agents on behalf of the company.But there are a number of exceptions to this rule. If a director fails to exclude personal liability, for instance, by signing on company's behalf, he is personally liable to the holder of such instrument. He is personally liable if acts if he acts in his own name.
B. Liability to the company.The liability of directors towards the company may arise from-
1. Ultra Vires acts. Directors are personally liable to the company in respect of ultra vires acts and it is not necessary to prove fraud in such cases, e.g., when they pay dividends out of capital or when they dissipate the funds of the company in ultra vires transactions. They are liable jointly and severally and, inter se, they have a right to rateable contribution.
2.Negligence.A director may incur liability for the negligence in the exercise of his duties. There is no statutory definition of negligence, and as such each case has to be decided after due consideration of the particulars facts thereof. The question to be answered in each case is:Has the question to be answered in each case is:"Has the director exercised the necessary care and shown the necessary diligence in the discharge of his duties?"if he has not,he is liable. If he has,there is no question of liability.It is essential in an action for negligence that the company suffers some damage,as negligence without damage or damage without negligence is not actionable.
3. Breach of trust:Directors of company,being in a fiduciary position,hold the position of trustees as regards its money and property which comes into their hands and of the powers entrusted to them by the articles. They must discharge their duties as such trustees in the best interest in the company. They are laiable to the company for any loss resulting from the breach of trust.Directors are also accountable to the company for any secret profits they might have made in transactions on behalf of the company.

4. Misfeasance:Directors are liable to the company for misfeasance which means 'willful misconduct' of directors which they may be sued in a law court. In case of misfeasance proceedings the directors may apply for relief under sec.633.
C. Liability for breach of statutory duties:There are numerous statutory duties of directors which they must carry out. Most of these duties relate to maintenance of proper accounts, filing of returns or observance of certain statutory formalities. If they fail to perform these duties, they render themselves liable to penalties.
D. Liability for acts of his co-directors:A director is not liable for the acts of his co-directors provide he has no knowledge and he is not a party. His co-directors are not his servants or agents who can by their acts impose liablilityon him.

Q5.Explain the provisions related with the appointment and duties of a Managing director.

Ans. The term Managing director includes a director occupying the position of a Managing director. A managing director means a director who is entrusted with substantial powers of management which would not otherwise be exercisable by him. These powers may be conferred upon him by virtue of an agreement with the company or a resolution passed by the company in general meeting or by its board of directors or by virtue of its Memorandum or Articles of Association. Managing Director shall exercise his powers subject to superintendence, control and direction of its Board of Directors. He is the whole time director and is the chief executive of the company.
1. Compulsory appointment of managing or whole time director(Sec269): Every public company or a private company which is a subsidiary of a public company having paid up share capital of Rs 5 crores or more shall have a managing or whole time director.
2. Prior approval of the central government unless appointment is in accordance with the conditions specified in Schedule XIII: No shall appointment shall be made except with the prior approval of the Central Government. However no such approval is required when the appointment is made in accordance with the conditions specified in schedule XIII, which prescribes the conditions to be fulfilled for the appointment of a managing director.
3. Provisions relating to appointment where it requires approval of the central Government:
a. Every application seeking approval to the appointment of a managing director shall be made to the Central Government within a period of 90 days from the date of such appointment.
b. The Central Government shall not accord its approval to the application if it is satisfied that –
i. the managing director is, in its opinion, not a fit and proper person to be appointment as such or such appointment is not in the public interest.
ii. the terms and conditions of the appointment of the managing director are not fair and reasonable.
c. The central government may accord approval for a period lesser than the period for which the appointment is proposed to be made.
d. if the appointment is not approved by the Central Government, the person appointed shall vacate his office on the date on which the decision of the central government is communicated to the company. If he fails to vacate his office, he shall be punishable with fine which may extend to Rs.500 for everyday during which he omits or fails to vacate such office.
4. Appointment in contravention of the requirements of Schedule XIII: An appointment without the approval of the Central Government may sometimes be made by a company, in contravention of the requirements of schedule XIII. In such a case if the Central Government suomotu or on any information received by it is prima facie of the opinion that such an invalid appointment has been made, the Central Government can refer the matter to the Tribunal.

Disqualification of managing director: Sec 237

Q Explain the disqualifications of managing directors?

a. is an undercharged insolvent, or has at any time been adjudged an insolvent.
b. suspends, or has at any time suspended, payment to his creditors, or makes, or has at any time made, composition with them.
c. is or has at any time been convicted by a Tribunal of an offence involving moral turpitude.

Number of managing directorships: Sec 316

It cannot exceed two. Any person may be appointed as a managing director in a public company or in a private company which is a subsidiary of a public company, provided he is not holding the office of the managing director or the manager in any other company. The Central Government may permit any person to be appointed as a managing director of more than two companies.

Term of the office: Sec 317

It cannot exceed 5 years at a time. There is nothing to prohibit reappointment, re-employment or the extension of a managing director. This does not apply to a private company which is not a subsidiary of a public company.

Q6. Write notes on Managerial Remuneration.

Ans. The total managerial remuneration of the directors and the manager in respect of an financial year shall not exceed 11 percent of the net profit of the company for that financial year computed in the manner laid down in secs.349,350 and 351.The percentage shall be exclusive of the fees payable to the directors for attending the meetings of the board of directors,or a committee thereof.

within the 11 percent limit of the maximum remuneration, a company may pay monthly remuneration to its--

(a) managing or whole time director in accordance with the provisions of sec.309(which deals with remuneration of directors),or

(b) manager in accordance with the provisions of sec.387(which deals with remuneration of manager).

Q7. Write short notes on Loans to Directors.

Ans. LOANS TO DIRECTORS(SEC 295) :

Without obtaining the previous approval of the central government,a company (referred to as the lending company) shall not,directly or indirectly,make any loan to--

(a)(i)any director of the lending company,or(ii)to the directors of its holding company,or(iii)to any partner or relative of any director;

(b)any firm in which any such director or relative is a partner;

(c) any private company of which any such director is a director or member;

(d)any body corporate whose board of directors or manager is accustomed to act in accordance with the directions of the board of directors,or of any director or directors,of the lending comapany.

sec 295 also prohibits a company from--

(i) giving of any guarantee for a loan taken by a director from any other person and providing of any security for any such loan,and

(ii) providing of any guarantee or security for a loan given by a director to any other person.

MEETINGS

Q1. Define meeting. Explain the essentials of a valid meeting.

Ans. The word Meeting implies the coming together of a certain number of members for transacting the business. A meeting can validly transact any business if the following requirements are satisfied:

1. Proper Authority: The Board of Directors of the company have the proper authority to convene the meeting. If the directors do not call the meeting then the members or the company law boards may call the meeting.

2. Notice of the Meeting: A proper notice of the meeting should be given to all the members who are entitled to attend the meeting. A general meeting may be called by giving not less than 21 days prior notice in writing to the members. A general meeting can be called by giving a shorter notice of less than 21 days if it is so agreed voluntarily by the members entitled to vote. Every member of the company shall be given a notice who is entitled to vote, auditor or auditors, the persons on whom the share of the insolvent or deceased may have been devolved. Every notice of the meeting shall specify the place, and time of the meeting and also the content of the business to be transacted in the meeting. Delibrate omission to give the notice even to the single member may invalidate the meeting. Accidental Omission does not invalidate the meeting.

3. Quorum: Quorum means the minimum number of members who must be present in order to constitute a valid meeting and transact business. The quorum is generally fixed by the Articles. If the Articles do not provide then the following rules apply:

a. 5 members personally present in the case of a public company and 2 members in the case of any other company if the number of members in the meeting is less than 1000 members.

b.15 members personally present in the case of a public company if the number of members is more than 1000 members

c.30 members personally present in the case of a public company if the number of members in the meeting is more than 5000 members

d. If within half an hour the quorum is not present, the meeting shall stand dissolved. It shall stand adjourned to the same day, place and time in the next week.

e. If at the adjourned meeting also the required quorum is not present within half an hour, the members present shall be the quorum.

4. Chairman of the meeting: A chairman is the presiding officer of the meeting. Unless the Articles of a company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the chairman of the meeting on a show of hands. If a poll is demanded on the election of the chairman, it shall be taken forthwith.

5. Minutes of the Meeting: Minutes are the records of what the company and the directors do in the meetings. Every company shall keep a record of all proceedings of every general meeting and of all proceedings of every meeting of its board of directors and of every committee of the board.This is done by making entries of the proceedings in the books kept for that purpose within 30 days of the conclusion of every such meeting . These records are known as minutes. The book in which the record of the proceedings of a meeting is kept is known as the minutes book. Each page should be numbered and signed by the chairman. The minutes of each meeting shall contain a fair and correct summary of the proceedings at the meeting so that the absentee shareholders may be in the position to form some reliable idea of what transpired at these meetings.

Q2. Explain the various types of meetings.

Ans. The meetings of a company may be classified as Statutory meeting, Annual meeting, Extra-ordinary meeting, Class meeting.

1. **Statutory Meeting:**

   Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month and not more than six months from the date of commencement of business should conduct a

meeting. . This is the first meeting of the shareholders of a public company and is held only once in the life time of a company.

I. At the commencement of the statutory meeting, the board shall produce a list showing the names, addresses and occupations of the members of the company and number of shares held by them respectively.

II. The members present at the meeting shall be at liberty to discuss any matter relating to the formation of the company.

III. The meeting may adjourn from time to time. At any adjourned meeting, any resolution, whether before or after the former meeting, may be passed. Adjourned meeting has the same powers as the original meeting.

IV. If default is made in complying with the provisions every director or any other officer of the company who is in default shall be publishable with fine which may extend to Rs. 5000.

V. The board of directors shall at least 21 days before the day on which the meeting is to be held, forward a report called the statutory report to every members of the company. The notice of the meeting shall mention that the meeting is the statutory meeting.

VI. The statutory report of a company contains details like:
   a. Total number of shares allotted
   b. Total amount of cash received by the company in respect of all the shares allotted
   c. An abstract of the receipts and of the payents made upto a date within 7 days of the report.
   d. Names, addresses, occupations of the directors, auditors and managers and secretary and the changes which have occurred in such names , addresses, occupations etc since the date of the incorporation.
   e. The particulars of the contracts which is to be submitted to the meeting for the approval or for modification.
   f. The arrears due on calls from every director and manager.
   g. Particulars of any commission or brokerage in connection with the issue of sale of shares and debentures to any director.

VII. The statutory report shall be certified as correct by not less than 2 directors of the company and the board shall submit a copy of the certified report to the registrar for registration.

2. **Annual General Meeting**: Every company shall in each year hold a general meeting as its Annual General Meeting and shall specify the as such in the notice calling it. There shall be an interval of more than 15 months between one annual general meeting and the other.

I. A company can hold its first annual general meeting within a period of 18 months form the date of its incorporation. The Regitrar can extend the time for holding any general meeting by a period of not exceeding 3 months.

II. Every annual general meeting shall be called by giving a notice not less than 21 days in writing. It may be called in shorter notice if it is agreed by all the members entitled to vote in the meeting.

III. Every Annual General Meeting shall be called during the business hours and not on any public holiday. It shall be held in the registered office or in the place where the registered office is located.

IV. If a company fails to hold an Annual General Meeting, any member can apply to the Company Law Board for calling the meeting. The company and every member who is in default shall be punishable with fine.

V. The company law board can call a meeting and may also give directions as it thinks fit.

VI. It is only at the Annual General Meeting of the company that the shareholders can exercise any control over the affairs of the company. They also get an opportunity to discuss the affairs of the company.

3. **Extra-Ordinary General Meeting**: Any meeting of a company other than the Annual General Meeting and Statutory Meeting is called as the Extra Ordinary Meeting. It is called for transacting some urgent or special business which cannot be postponed till the next annual general meeting. It may be convened by the Board of Directors or by the requisionists themselves on the failure of the Board of Directors.

I. The Board of Directors may call an extra ordinary general meeting on its own if the business to be transacted cannot be postponed till the next annual general meeting.

II. The requisite number of members of a company may also ask for an extra ordinary general meeting to be held. The requisition for such a meeting by the members shall be signed in the case of a company having a share capital, by holders of not less than $1/10^{th}$ of the paid up capital of the company having the right of voting in regard to the matter of requisition or in the case of a company not having a share capital, by members representing not less than $1/10^{th}$ of the total voting power in regard to the matter of requisition.

III. The Board shall proceed to call a meeting within 21 days from the date of the deposit of a valid requisition.The meeting shall be held within 45 days from the date of the deposit of the requisition.

IV. Every shareholder of a company has a right to requisition an extraordinary general meeting. If the Board of directors fails to call a meeting as required by the requisionist as represent either a majority in values of the paid up share capital held by all of them or not less than $1/10^{th}$ of the paid up share capital of the company not having the right of voting,which is less or in the case of a company not having a share capital, by the requisionists representing not less than $1/10^{th}$ of the total voting power of all the members of the company.

4. **Class Meetings**: Class meetings of shareholders of different classes of shares where a company has more than one class of shares – Equity shareholders meetings, Preference shareholders meetings, Debenture holders meetings etc.

Q3. **What are Meeting Minutes? Explain the Process and contents of minutes.**

Meeting minutes are notes that are recorded during a meeting. They highlight the key issues that are discussed, motions proposed or voted on, and activities to be undertaken. The minutes of a meeting are usually taken by a designated member of the group. Their task is to provide an accurate record of what transpired during the meeting.

Steps Involved in Recording Meeting Minutes

There are five main steps involved in recording the minutes of a meeting. They are:

1. **Pre-Planning:** If a meeting is well-planned in advance, taking minutes will be a lot easier. That said, the chairperson and the secretary or minutes-recorder should work together to determine the agenda of the meeting beforehand. For example, the person recording minutes could work with the chair to draft a document that will serve as an agenda and provide the format for the meeting.
2. **Meeting Agenda:**If it's not possible for the chair and secretary to meet and come up with a draft, then it's up to the secretary to get a copy of the agenda before the meeting starts. The meeting agenda will serve as a guide for how to take notes and prepare the minutes. In addition, the agenda also includes other details, which need to be incorporated in the minutes. They include:

3. **Names of all the members present** – includes guests and speakers
4. Documents that may be handed out as the meeting progresses, such as copies of a list of proposals to be voted on.
5. **Expectations:** When an individual is chosen as the minutes recorder, it's important for them to know what is expected of them. Therefore, the individual should approach the chair of the committee and ask what their role in the meeting will be. For example, if the meeting will involve proposing motions, the designated member should inquire as to whether he should include the names of those proposing motions and those seconding.

Contents of Meeting Minutes

Before recording any details, a designated minutes recorder should familiarize themselves with the type of information that they should record. A group may be using a specific format to record notes but, overall, the minutes of a meeting typically include the following details:

I. Date and time the meeting happened
II. Names of attendees, as well as absent participants
III. Acceptance of, or amendments made to, the previous meeting's minutes
IV. Decisions made regarding each item on the agenda, such as:
V. Activities undertaken or agreed upon
VI. Next steps
VII. Outcomes of elections
VIII. Motions accepted or rejected
IX. New business
X. Date and time of the next meeting

The Process of Writing Meeting Minutes

When the meeting ends, the individual tasked with writing minutes should get all the resources he needs to write up the minutes in a clear, presentable way.

Distributing the Meeting Minutes

Once the secretary completes writing the minutes, he's supposed to share them with the group members.

Agenda:

The term 'agenda' means things to be done. In the present context it is a statement of the business to be transacted at a meeting. It also sets out the order in which the business is to be dealt with. Though the Companies Act does not make it obligatory on the secretary to send an agenda or to incorporate the same in the notice of Board Meeting, yet by convention it necessarily accompanies the notice calling the meeting. When the agenda is enclosed with the notice each director gives due consideration to the proposed business and comes with necessary preparations for discussion in the meeting.

Q4. Define Resolution. Explain the different types of resolutions.

Ans.The questions which generally come for consideration at the general meeting of a company are presented in the form of proposals called motions. A motion may be proposed by the chairman of the meeting or by any other members of the company. A motion after the close of discussion is formally put to vote by the show of hands. It may either be carried or rejected. If a motion is carried, it becomes a Resolution.

There are three kinds of resolutions under the companies act.

1. Ordinary Resolution: An ordinary resolution is a resolution passed at a general meeting of a company by a simple majority of votes i.e., votes cast in favour of the resolution exceeds votes cast against it, including the casting vote of the chairman. The votes may be cast by members in person or by proxy. Ordinary Resolution is necessary for the following Purposes:

a. Ratification of name and adoption of new name
b. Issue of share capital
c. Alteration of share capital
d. Re-issue of redeemed capital
e. Adoption of statutory report
f. Passing of annual accounts and balance sheet
g. Appointment of auditors and fixing their remuneration
h. Appointment of managing/whole time director.
i. Appointment of first directors who are liable to retire by rotation.
j. Increase or reduction of the directors within the limit fixed by the Articles.
k. Removal of director and appointment of a director in his place.
l. Approval of appointment of sole selling agents.
m. Appointment and fixation of remuneration of liquidators ina members voluntary winding up.
n. Winding up a company voluntarily in certain events.
o. Nomination of a liquidator in a creditors voluntary winding up.

2. Special Resolution: A special resolution satisfies certain rules such as intention to propose the resolution as a special resolution, notice has been duly given of the general meeting, votes cast in favour of the resolution by members are not less than 3 times the number of votes cast against the resolution by members so entitled and voting, an explanatory statement setting out all material facts concerning the subject matter of the special resolution. A copy of the every special resolution together with the copy of the explanatory statement shall within 30 days of the passing of the resolution be filed with the registrar. Special Resolution is necessary for the following:

a. Alteration of Memorandum for changing the registered office and also for changing the Objects clause.
b. Change of name with the consent of the central government.
c. Alteration of articles
d. Reduction of share capital
e. Conversion of uncalled capital into reserve capital
f. Variation of shareholders right
g. Payment of interest out of capital
h. Fixing of remuneration of the directors
i. Applying to the court for winding up
j. Authorising the liquidator of a company to accept the shares as consideration.
k. Disposal of books and papers of a company in voluntary winding up when its affairs have been completely wound up.

3. Resolution requiring a special notice: A Resolution requiring a special notice is not an independent class of resolutions. It is only a different kind of an ordinary resolution of which notice of the intention to move a resolution has to be given to the compay by the proposer. The notice should be given 14 days before. A special notice is required for a resolution in the following cases:

a. Appointment of an auditor other than retiring one
b. Provision that a retiring auditor shall not be re-appointed.
c. Removal of a director before the expiry of his period.
d. Appointment of a director in place of one who is removed.

Q4. Write short notes on Proxies.

Ans. A person entitled to attend and vote at a meeting may vote either in person or by proxy. A proxy is an authority to represent and vote for another person at a meeting. It is also an instrument appointing a person as proxy. The instrument appointing a proxy shall be in writing snf signed by the appointer or his attorney duly authorised in writing. A proxy in order to be effective shall be deposited with the company 48 hours before the meeting.

There is nothing in law to exclude Sunday in the computation of the 48 hours before a meeting before which proxies have to be delivered. If the Articles do not otherwise provide –

a. A proxy can vote only on a poll.
b. A member of private company cannot appoint more than one proxy to attend on the same occasion.
c. A member of a company not having a share capital cannot appoint a proxy.

Q5. Write short notes on voting and poll.

Ans. The motions proposed in a general meeting of a company are decided on the votes of the members of the company. A shareholders vote is a right of property and prima facie may be exercised by him as he thinks fit in his own interest. The voting may be by a show of hands or voting by poll.

1. **Voting by show of hands**: In taking a vote by show of hands, the duty of the chairman is to count the hands raised and to declare the result accordingly. Proxies cannot be used on a show of hands. A declaration by the chairman as evidence by an entry in the minutes book shall be the conclusive evidence of the fact that the resolution has been carried out by sow of hands.
2. **Voting by poll**: In case of the public company having a share capital, a poll shall be taken on a demand by any member or members present in person or by proxy and holding shares in the company –

a. which confer a power to vote on the resolution not being less than $1/10^{th}$ of the total voting power in respect of the resolution.
b. on which an aggregate sum of not less than Rs.50000 has been paid up.
c. In the case of the private company having share capital, a poll shall be taken on demand by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such membes are personally present.
d. In case of any other company, a poll shall be taken on de,and by any member or members present in person or by proxy and having not less than $1/10^{th}$of the voting power in respect of the resolution.

Corporate Social Responsibility

Q. What is corporate social responsibility and Explain the features and need for CSR to Companies?

CSR in India is a result of the 2013, Companies Act. India is one of the few countries in the world to have a dedicated CSR act. In fact, it is the first to have brought about a legislation to implement CSR activities, followed by United Kingdom CSR refers to the idea that companies need to invest in socially and environmentally relevant causes in order to interact and operate with concerned parties having a stake in the company's work. CSR is termed as "Triple-Bottom-Line-Approach", which is meant to help the company promote its commercial interests along with the responsibilities it holds towards the society at large.

Features of Corporate Social Responsibility

The broad and important features of the CSR laws are as follows:

1. Quantum of money utilized for CSR purposes are to be compulsorily included in the annual profit-loss report released by the company
2. The CSR rules came into force on 1st April 2014 and will include subsidiary companies, holdings and other foreign corporate organizations which are involved in business activities in India.
3. CSR has been defined in a rather broad manner in Schedule VII of Companies Act, 2013. The definition is exhaustive as it includes those specific CSR activities listed in Schedule VII and other social programmes not listed in schedule VII, whose inclusion as a CSR activity is left to the company's discretion.

NEED OF CSR

CSR is responsible for generating a lot of goodwill to companies either directly or indirectly. These include-

1. Making employees more loyal and help companies retain them in the long run.
2. Make companies more legitimate and help them in accessing a greater market share.
3. Since companies act ethically, they face less legal hurdles.
4. Bolster the goodwill of companies amongst the general public and help in strengthening their "brand value".
5. Help in the stabilization of stock markets in both the short and long run
6. Help in limiting state's involvement in corporate affairs as companies self-regulate and act as most ethical.

CSR LAWS IN INDIA

Q. Discuss the criteria for implementing CSR activities in India as per the Companies Act 2013.

The Companies Act, 2013, a successor to The Companies Act, 1956, made CSR a compulsory act. Under the notification dated 27.2.2014, under Section 135 of the new act, CSR is compulsory for all companies- government or private or otherwise, provided they meet any one or more of the following fiscal criterions:

1. The net worth of the company should be Rupees 500 crores or more
2. The annual turnover of the company should be Rupees 1000 crores or more
3. Annual net profits of the company should be at least Rupees 5 crores. If the company meets any one of the three fiscal conditions as stated above, they are required to create a committee to enforce its CSR mandate, with at least 3 directors, one of whom should be an independent director[10].
4. The responsibilities of the above-mentioned committee will be[11]:
5. Creation of an elaborate policy to implement its legally mandated CSR activities. CSR acts should conform to Schedule VII of the Companies Act, 2013.
6. The committee will allocate and audit the money for different CSR purposes.
7. It will be responsible for overseeing the execution of different CSR activities.
8. The committee will issue an annual report on the various CSR activities undertaken.
9. CSR policies should be placed on the company's official website, in the form and format approved by the committee.
10. The board of directors is bound to accept and follow any CSR related suggestion put up by the aforementioned committee.
11. The aforementioned committee must regularly assess the net profits earned by the company and ensure that at least 2 percent of the same is spent on CSR related activities.
12. The committee must ensure that local issues and regions are looked into first as part of CSR activities.

Q3. What are the CSR activities Listed by Companies Act? Explain the guidelines to be followed for Organizing CSR activities?

CSR activities listed in schedule VII include:

eradicating hunger and poverty, promotion of education and employment, livelihood enhancement projects, promoting gender equality, women empowerment, hostels for women and orphans, old age homes, day care, environmental sustainability, protection of flora and fauna, contributions to PM relief fund, measures to benefit armed forces veterans, war widows and dependants, promotion of sports, and rural development projects".

Guidelines for CSR Activities as per Companies Act:

1. Net profits are calculated on the basis of Section 198 of Companies Act, 2013. However, only domestic branches are included and dividend-related payments are left out of the final calculation of total net profits.
2. Companies are allowed to implement CSR via any of the following means possible
3. Setting up a Trust or Society under Section 8 of the 2013 Companies act under its direct administrative control.
4. Corporates can outsource the CSR tasks to established social enterprises- institutions engaged in CSR activities for 3 years or more. These institutions are meant to engage in not for profit activities. The corporates though are supposed to monitor the social enterprises meant to enforce their CSR mandate.
5. Companies can collaborate with fellow companies and work out some arrangement based on the CSR rules.
6. Any familial activity or act of personal charity is not to be included as part of CSR activity.
7. Any sort of contribution-fiscal or otherwise by political organizations is outside the purview of CSR activities as indicated under Section 182 of the 2013 Companies Act.
8. All CSR activities are to be conducted in Indian territory to be considered valid. • Companies can utilize a maximum of 5 percent of their total expenditure to help in capacity building of their society, trust or outsourced social enterprise. • As stated before listed public companies are mandated to have up to 3 directors as part of their CSR committee- one of whom should always be independent. Unlisted and private companies are allowed to have at least 2 directors and no independent director.
9. CSR reports are to be compulsorily published on an annual basis. The reports have a fixed format as designed by the CSR rules, which must include details like official CSR policy, the number of funds dedicated to CSR and its detailed utilization as well as a detailed explanation for non-utilization of funds if any. The said format and its constituents must be displayed on the official website of the company
10. CSR activities initiated by a foreign company has to be via its Indian subsidiary to be considered legitimate under Section 135 of the companies act[21].
11. Trusts created by companies to carry out their mandated CSR tasks, are to be compulsorily registered in some states where it is mandatory under Income Tax, 1956Companies are allowed to co-operate with their independent counterparts, provided the latter has a proper tracking and reporting system for CSR activities that may be undertaken[23].
12. Companies are allowed to engage in capacity building by allotting up to 5 percent of all expenses to be incurred on CSR activities to be devoted to training and equipping of personnel to carry out CSR and related activities.
13. .Activities that cannot be considered as CSR include.
14. Operational and administrative activities of the business.
15. CSR activities that do not take place in Indian territory.
16. Employee and familial welfare activities are strictly outside the purview of CSR tasks as well.
17. Fiscal help rendered to political outfits is not considered as a CSR activity as well.
18. Events like the marathon, award functions, fiscal help rendered to charitable institutions, sponsoring TV shows etc that are strict "one-off"-i.e. meant to happen just once in a while are not considered CSR.
19. Companies cannot report lawful duties rendered under acts or regulation like Labour Act, Land act etc cannot be considered as CSR tasks.

Q. Why CSR in India is not successful and suggest measures to make CSR Law effective and efficient?

Eminent scholars have claimed that companies while having enormous fiscal resources lack adequate knowledge of existing public problems and policy measures. As a result, their CSR efforts are misguided and do not help the public in the long run with sustaining benefits.
As per section 135 of the Companies Act, 2013, CSR efforts will be equated with the money spent- which should be at least 2 percent of the net profit. However, companies are not very transparent in declaring their CSR income. Companies in the past have fudged figures to meet the mandatory CSR spending. Many companies have engaged in selective CSR tasks that ultimately benefit their brand value and help them prosper rather than activities that genuinely help the society at large. Furthermore, the government's action was unilateral and the corporates were not consulted before the government decided to implement this rule.

Suggestions to make CSR Laws successful

CSR in India suffers from some serious infirmities- policy and procedure-wise. As a result, it can be argued that some more measures are needed to help implement CSR activities better like

1. Specialization of companies should be utilized better. CSR should not be simply seen as the spending of fiscal resources, but the smart spending of CSR resources. For example- a multi-national company engaged in the production of packaged food should provide those below the poverty line with similar assets, telephone companies should set up telecom services in remote areas lacking such services. Section 135 of the Companies Act should be amended to include measures to allow companies to do CSR activities as per their strengths and specialties.
2. CSR activities should be based on expert data. Companies should not blindly spend fiscal resources but rely on data and suggestions of research institutes so that their efforts result in actual eradication of pre-existing social problems. Therefore companies should collaborate with social enterprises and research institutes.
3. Companies should collaborate with the people on the ground- those who are supposed to receive their CSR aid. This will help them realize what people actually need, what their actual problems are and accordingly they can humanize their CSR aid to help a number of people with greater efficiency.
4. Companies must also compulsorily collaborate with specialist non-government institutions, who have acted in a particular field with specialist experience for at least three years, This will help them utilize their fiscal resources better as dedicated NGOs will guide them in effectively implementing their aid programmes.

CORPORATE GOVERNANCE

Q. What is corporate governance? Explain objectives, aims and importance of Corporate Governance.

Governance, the root of the word Governance is from 'gubernate', which means to steer. Corporate governance would mean to steer an organization in the desired direction. The responsibility to steer lies with the board of directors/ governing board.
Corporate or a Corporation is derived from Latin term "corpus" which means a "body". Governance means administering the processes and systems placed for satisfying stakeholder expectation. Corporate Governance means a set of systems procedures, policies, and practices, standards put in place by a corporate to ensure that relationship with various stakeholders is maintained in transparent and honest manner. It is concerned with holding the balance between economic and social goals and between individual and communal goals.

Definitions of Corporate Governance

Noble laureate Milton Friedman defined Corporate Governance as "the conduct of business in accordance with shareholders' desires, which generally is to make as much money as possible, while conforming to the basic rules of the society embodied in law and local customs."

Tricker (who introduced the words corporate governance for the first time in his book in 1984) "Corporate Governance is about promoting corporate fairness, transparency and accountability".

Importance of Corporate Governance

1. It shapes the growth and future of capital markets of the economy
2. It helps in raising funds from capitals markets
3. It links company's management with its financial reporting system.
4. It improves efficiency and effectiveness of the enterprise and wealth of the economy
5. It improves international image of the corporate sector and enables home companies to raise global
6. It help management to take innovative decisions for effective functioning of the enterprise

Objectives of Corporate Governance

1. To align corporate goals of its stakeholders (society,shareholders,etc.) Corporate governance a way of Life rather than a Code
2. To strengthen corporate functioning and discourage mismanagement
3. To achieve corporate goals by making investment in profitable investment outlets.
4. To specify responsibility of the B.O.D and managers in order to ensure good corporate performance.

Aims of Corporate Governance:

Corporate Governance is a system of structuring, operating and controlling a company with the following specific aims:—

- Fulfilling long-term strategic goals of owners;
- Taking care of the interests of employees;
- A consideration for the environment and local community;
- Maintaining excellent relations with customers and suppliers;

Q. Define corporate governance and explain NEED for Corporate Governance?

Corporate Governance is needed to create a corporate culture of Transparency, accountability and disclosure. It refers to compliance with all the moral & ethical values, legal framework and voluntary adopted practices. This enhances customer satisfaction, shareholder value and wealth.

1. **Performance:** Improved governance structures and processes help ensure quality decision-making, encourage effective succession planning for senior management and enhance the long-term prosperity of companies, independent of the type of company and its sources of finance. This can be linked with improved corporate performance- either in terms of share price or profitability. Enhanced Investor
2. **Trust:** Investors consider corporate Governance as important as financial performance when evaluating companies for investment. Investors who are provided with high levels of disclosure & transparency are likely to invest openly in those companies. The consulting firm McKinsey surveyed and determined that global institutional investors are prepared to pay a premium of upto 40 percent for shares in companies with superior corporate governance practices.
3. **Better Access to Global Market:** Good corporate governance systems attracts investment from global investors, which subsequently leads to greater efficiencies in the financial sector.
4. **Combating Corruption:** Companies that are transparent, and have sound system that provide full disclosure of accounting and auditing procedures, allow transparency in all business transactions, provide environment where corruption will certainly fade out. Corporate Governance enables a corporation to compete more efficiently and prevent fraud and malpractices within the organization.

5. **Easy Finance from Institutions**: Several structural changes like increased role of financial intermediaries and institutional investors, size of the enterprises, investment choices available to investors, increased competition, and increased risk exposure have made monitoring the use of capital more complex thereby increasing the need of Good Corporate Governance. Evidence indicates that well-governed companies receive higher market valuations. The credit worthiness of a company can be trusted on the basis of corporate governance practiced in the company. Enhancing Enterprise Valuation: Improved management accountability and operational transparency fulfill investors' expectations and confidence on management and corporations, and return, increase the value of corporations.
6. **Reduced Risk of Corporate Crisis and Scandals**: Effective Corporate Governance ensures efficient risk mitigation system in place. The transparent and accountable system that Corporate Governance makes the Board of a company aware of all the risks involved in particular strategy, thereby, placing various control systems to monitor the related issues.
7. **Accountability:** Investor relations' is essential part of good corporate governance. Investors have directly/ indirectly entrusted management of the company for the creating enhanced value for their investment. The company is hence obliged to make timely disclosures on regular basis to all its shareholders in order to maintain good investor's relation. Good Corporate Governance practices create the environment where Boards cannot ignore their accountability to these stakeholders.ble legal and regulatory requirements

Code of best Corporate Practices

Q. Write a note on code of best cotporate practices?

The main objective of the Code of Best Corporate Governance Practices is to suggest courses of action to all types of companies – Whether listed or privately held corporations, limited liability companies or partnerships – With a view to: improving their performance facilitating access to capital.

The Code is made up of six parts:

- Owners – shareholders, stakeholders or partners
- Board of Directors – the body representing the owners
- Management – the chief executive officer and top managers
- Auditing – the independent auditors
- Surveillance – the fiscal council
- Ethics/Conflicts of interest

The Code may include issues already covered by legislation or subject to new laws or regulations, but their application should be voluntary.

Business owners willing to improve performance or gain access to capital are advised to follow the Code. Access to capital is not restricted to public offerings of shares, it also involves private equity operations and funds from a company's own cash flow generated through improved performance.

The pillars of this Code of Best Practice of Corporate Governance are

1. **Transparency:** The Code requires that the CEO and management meet different information and transparency needs of the owners, the board of directors, the independent auditors, the supervisory board, the stakeholders, and the public at large.
2. **Accountability**: The following agents of corporate governance Board of directors, CEO and management, Independent auditors Fiscal council should account for their results and activities to those bodies that elected them.

3. **Fairness**: Relations between all agents of corporate governance and the different types of owners must be based on fair treatment of all the parties involved.
4. **Ethics**: Good corporate governance is to comply with the law. In addition every company should have a statement of values and a code of ethics. The key issue of ethics is the avoidance of conflict of interests

UNIT V
WINDING UP

Q1. Define Winding up. List out different types of winding up of a company.

Ans. Winding up of a company is the last stage in the life of the company. It means a proceeding by which a company is dissolved. The assets of the company are disposed off, the debts are paid off out of the realised assets and the surplus is then distributed among the members in proportion of their holdings in the company.

According to Prof Gower, Winding up is a process whereby a company's life is ended and its property administered and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.

There are three types of winding up.

1. Winding up by the court.
2. Voluntary Winding up
3. Winding up subject to the supervision of court.

Q2. Under what circumstances the court orders for the compulsory winding up.

Ans. Winding of the company under the order of the court is also known as Compulsory Winding up (Section 433). A company may be wound up compulsorily by the court under the following circumstances.

1. Special Resolution of the company: Usually when the members of the company decide to wind up the company under the supervision of the court they pass a special resolution in the general meeting of the company. This method is not much common because members usually prefer to voluntarily wind up the company which is more cheaper and speedier.

2. Default in delivering the statutory report to the registrar or in holding the statutory meeting: A petition can be made either by the Registrar or the contributory.

3. Failure to commence, or suspension of the business: If the company has not begun its business within a year from its incorporation or suspends its business for the whole year, the court may order for winding up. But it is not wound up if there are reasonable prospects of the company starting the business or there are good reasons for the delay.

4. Reduction in the membership: If, at any time, the number of members of the company is reduced in the case of public company, below 7 and below 2 in case of private company, the court may order for winding up.

5. Inability to pay debts: A company may be wound up if it is unable to pay off its debts. The test is whether the company has become commercially insolvent i.e., the existing and probable assets would be insufficient to meet the liabilities of the company.

6. Just and equitable: The court may order for compulsory winding up if it satisfies the just and equitable clauses….

a. when the substratum of the company is gone i.e., the object for which it is incorporated has substantially failed.

b. when the company is carrying on the business at a loss and there is no reasonable hope that the object of trading can at a profit can be attained.

c. when the existing and probable assets of the company are insufficient to meet its existing liabilities.
d. when the management is carried on in such a way that the minority is disregarded or oppressed.
e. where there is a deadlock in the management
f. where public interest is prejudiced
g. where the company is formed to carry out fraudulent and illegal business.
h. where the company is mere bubble and does not carry out any business or hold any property.

Q3. Explain the voluntary winding up of the company.
Ans. Voluntary winding up means winding up by the creditors or the members of the company without the interference of the court. A company may be wound up voluntarily by passing either an ordinary resolution or a special resolution. Within 14 days of the passing of the resolution the company shall give notice of the resolution by advertisement in the official gazette and also in few newspapers circulted in the district where the registered office is situated.

Members Voluntary Winding Up:
In Members Voluntary Winding Up, a declaration of insolvency has to be made by a majority of the director at the Board Meeting, that the company has no debts or that it will be able to pay off its debts within 3 years in full from the commencement of the winding up. The declaration shall have its effect only when it is made within 5 weeks immediately before the date of the resolution and delivered to the Registrar for registration.

Provisions applicable to a Members Voluntary Winding Up: Sec 490 to 498
1. The company in general meeting shall appoint one or more liquidators for the purpose of winding up its affairs and distributing its assets.
2. On the appointment of the liquidator, all the powers of the Board Of Directors, whole time directors, Managing Director shall cease except when the company or the liquidators in the general meeting sanction them to continue.
3. If there is any vacancy in the office of the liquidator due to death, retirement, resignation etc.,the company may fill the vacancy.
4. The company shall give notice to the Registrar regarding the appointment of the liquidator or liquidators within 10 days of the event to which it relates.
5. The liquidator has the power to accept shares, etc., as the consideration for the sale of property during the winding up procedure.
6. If the liquidator is at time of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration, he shall summon a creditors meeting and lay down the statement of assets and liabilities before them.
7. In the event of the winding up continuing for more than one year, the liquidator shall call a general meeting of the company at the end of each year.
8. As soon as the affairs of the company are fully wound up, the liquidator shall make up an account and show how the winding up has taken place. He shall then call a final meeting of the members by advertisement specifying time, place, object of the meeting in the official gazette and in few newspapers circulated in the district where the registered office is situated. After the final scrutiny by the official liquidators the company shall be deemed to be dissolved.

Creditors Voluntary Winding Up: (Sections 500 to 509)
A voluntary winding up of the company in which a declaration of its solvency is not made is referred as a creditors voluntary winding up.

Provisions applicable to Creditors Voluntary Winding Up:

1. The company shall call a meeting of the creditors of the company on the day on which there is to be held the general meeting at which the resolution for voluntary winding up is to be proposed. The notice should be advertised once atleast in the official gazette and in 2 newspapers circulating in the district where the registered office is situated.
2. Notice of any resolution passed at a creditors meeting shall be givenby the company to the registrar within 10 days.
3. The creditors and the members at their respective meetings nominate a liquidator. If they nominate different members, the creditors nominee shall be the liquidator.
4. The creditors at their meeting may appoint a committee of inspection consisting of not more than 5 members. If such a committee is constituted, the company may also appoint not more than 5 members to the committee. If the creditors and members do not agree on a common list, the court may constitute a committee of inspection.
5. The liquidators remuneration is decided either by the committee or the creditors or the court.
6. On the appointment of the liquidator, the powers of the Board of Directors shall cease. But the committee or the creditors may sanction the continuance of the board.
7. In case of any vacancy due to death, resignation, etc., in the office of the liquidator, the creditors may fill the vacancy.
8. The liquidator has a power to accept shares as consideration for sale of property provided that the sanction is given by the court or the committee of inspection.
9. The liquidators shall call a general meeting of the company and a meeting of the creditors every year within 3 months from the close of every year.
10. As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up and call a general meeting in order to declare that the company is dissolved.

Q4. Write short notes on Petition.

Ans. An Application to the court for the winding up of a company is made by a petition. Petition can be presented by the following:
1. Sec 439(1)(a) - A company may itself present a petition to the court.
2. Sec 439(1)(b) - A Petition to the court may be filed by the creditor or creditors.
3. Sec 439(1)(c) – A contributory or contributories can file a petition for winding up if the statutory requirement of membership reduces, if he is an original allottee, if he has held his shares, if his shares have disvolved on him through the death of the previous holder.
4.Sec 439(1)(d) – A petition may be presented by all or any of the parties together or separately.
5. Sec 439(1)(e) – The registrar can file a petition for winding of the company
6. Sec 439(1)(f) – The central Government may present a petition of winding up to the court.

Q5. Define Official Liquidator. Explain the duties and powers of the liquidator.

Ans. <u>Official Liquidator – Section 448</u>

For the purpose of the winding up of the companies by the court –
a. there shall be attached to each High Court an official liquidator appointed by the Central Government. The Official Liquidator shall be whole time officer. If the Central Government considers that there will not be sufficient work for the whole time officer, it may appoint a part-time officer to act as Official Officer.
b. the Official Receiver attached to a District Court for insolvency purposes shall be the Official Liquidator attached to the District Courts.
c. The Central Government shall also appoint one or more Deputy or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions.

Liquidator: Section 449 : On the winding up order being made in respect of a company, the Official Liquidator shall by virtue of his office become the liquidator of the company.

Provisional Liquidator- Section 450 : At any time after the presentation of a winding up and before the making of a winding up order, the court may appoint the Official Liquidator to be the liquidator provisionally.

Duties Of A Liquidator:

1. The Liquidator shall conduct the proceedings in the winding up the company and perform duties imposed by the court.
2. The Official Liquidator shall as soon as practicable after the receipt of the statement of affairs of the company submit a preliminary report to the court containing the information regarding the capital issued, subscribed, paid-up and the estimated assets and liabilities, cause for the failure of the company, any information desirable as to the matter relating to the business, company.
3. The Official Liquidator may make further report stating the manner in which the company was promoted or formed. Any other matter which is desireable to be brought to the notice of the court. Any report which states that fraud is committed.
4. The liquidator or the provisional Liquidator shall take into his custody all the properties, actionable claims to which the company is entitled.
5. The Liquidator shall have regard to any directions which may be given by resolutions of the creditors or contributories at any general meeting or by the committee of inspection.
6. The Liquidator may summon general meetings of the creditors or contributories whenever he thinks fit for the purpose of ascertaining their wishes.
7. The Liquidator may apply to the court for directions in relation to any particular matter arising in winding up. He shall also use his own discretion in the matters of the assets of the company.
8. The Liquidator shall keep proper books for making entries or recording minutes of the proceeding at meetings and such other matters as may be prescribed.
9. The Liquidator shall present to the court an account of his receipts and payments as liquidator. The account should be in prescribed form and duly verified. The liquidator shall cause the audited account or its summary to be printed. He shall send a copy of the account to every creditor and every contributory.
10. The Liquidator shall, within 2 months of the expiry of each year from the commencement of winding up, file a statement duly audited by a qua;ified auditor of the company.

Powers Of the Liquidator:

1. Powers Exercisable with the sanction of the court:

a. To institute or defend suits and other legal proceedings, civil or criminal in the name of and on befalf of the company.
b. To carry on the business of the company so far as may be necessary for the beneficial winding up of the company.
c. To sell the movable and immovable properties and its actionable claims
d. To raise money on the scrutiny of the company's assets.
e. To do all such things as may be necessary for the winding of the company.

2. Powers exercisable without the sanction of the court:

a. To do all acts and to execute all documents and deeds on behalf of the company.
b. To inspect the records and returns of the company.
c. To prove, rank and claim in the insolvency of any contributory for any balance against his assets and to receive dividends.

d. To draw, make, endorse and accept any bills of exchsnge, hundi, promissory note on behalf of the company.
e. To take out letters of administration to any deceased contributory
f. To appoint an agent to do any business.

3. Powers exercisable in case of onerous contracts:

The term onerous means a right to property in which the obligation attacing to it exceeds the advantage to be derived from it. The liquidator may disclaim the onerous contracts and properties. This shall be done within 12 months of winding up.

Q6. Write short notes on Contributories.

Ans. The term Contributory means every person liable to contribute to the assets of the company in the event of its being wound up and includes the holder of any shares which are fully paid up. The List of Contributories shall be prepared in two parts – List A and List B.
List A includes the present members of the company whose names appear in the Company's register at the time of winding up of the company.
List B includes the past members of the company who ceased to be the members within one year preceeding the commencement of winding up of the company. In the event of winding up of the company, contributories shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, costs, charges and expences of the winding up and for the adjustment of the rights of the contributories among themselves.

Q7. Explain the consequences of the winding up.

Ans. The Consequences of winding up are as follows:

1. Consequences as to shareholders: In a company limited by shares, a shareholder is liable to the extent of the face value of the shares held by him. His liability continues even after the company goes into liquidation. In a company limited by guarantee the members are liable to contribute up to the amount guaranteed by them.

2. Consequences as to servants and officers: A winding up order shall be deemed to be a notice of discharge to the officers and employees of the company. Such a discharge shall relieve them from all obligations under their contract of service. A voluntary winding up shall also operate as a notice of discharge to the company's servants.

3. Consequences as to proceedings against the company: When a winding up order has been made and a Official Liquidator is appointed as provisional liquidator, no suit or other legal proceedings against the company shall be commenced except by the court. If a suit is pending agains the company at the date of the winding up, it shall not be proceeded with against the company except by the leave of the court.

4. Consequences as to costs: If assets are insufficient to satisfy the liabilities, the court may order for payment of the costs charges and expences of the winding up out of the assets of the company. The payment shall be made in such an order of the priority as the court thinks fit.

5. Consequences as to creditors:

a. Secured and Unsecured creditors: A secured creditor has 3 alternatives before him:
i. He may rely on his security and ignore the liquidation.
ii. He may value his security and prove for the deficit
iii. He may surrender his security and prove for the whole debt.

b. Preferential payments: In a winding up, some unsecured creditors are paid, subject to the provisions of sec 529-A in priority to the secured creditors. These payments are known as preferential payments.
i. All revenues, taxes, cesses, and rates due to the Central Government or the State Government.

ii. All wages and salary of any employee, in respect of services rendered to the company and due for a period not exceeding 4 months.
iii. All amounts due in respect of contributions under Employees State Insurance Act,1948.
iv. All amounts due in respect of any compensation or liability under the Workmens Compensation Act,1923.
v. All sums due to the employees under Provident Fund
vi. Expenses of any investigations held.
vii. Advances paid by the third parties to pay the salaries and wages.

*****END*****