

# Business Laws

## Chapter - 1

### Indian Contract Act, 1872

- ✓ **Offer** = Party expresses the willingness to do or not to do something & to obtain the assent of other parties.  
'Mere expression of willingness does not constitute an offer.'
- ✓ **Types of Offer:**
  - General Offer – Offer made to the public at large, and anyone can accept it.
  - Specific Offer – Offer made to a specific person and only be accepted by the identified person.
  - Cross Offer – Two parties exchange identical offers ignoring each other's offers.
  - Counter Offer – Offer made in place of original offer with different terms & conditions.
  - Standing or Continuing or Open Offer – Offer open for acceptance over a period of time.
- ✓ **Rules of Offer:**
  - Capable of creating legal relations.
  - Certain + definite.
  - Communicated adequately to the offeree.
  - Assent of another party is required.
  - Maybe conditional.
  - Acceptance not communicated should not be assumed as acceptance to offer.
  - Offer may be specific or general.
  - Offer is different from an invitation to offer.
  - Offer may be express or implied.
  - A statement of the price is not an offer.
- ✓ **Acceptance** = When the person to whom the offer is made signifies his assent, the offer is said to be accepted.
- ✓ **Rules of Acceptance:**
  - Acceptance can only be given by the person to whom the offer is made.
  - Absolute + unqualified + expressed in a reasonable or proposed manner.
  - Acceptance must be communicated reasonably or possibly.
  - If the mode of acceptance specified must be accepted in the mode specified.
  - Acceptance must be given in a specified or reasonable time.
  - Silence will not amount to acceptance.
  - Some conditions of the offer are performed for acceptance to offer.
  - Offer can be accepted by the person who has the authority to accept.
- ✓ **Communication of Offer & Acceptance:**
  - Communication of Offer is completed when it comes to the knowledge of the person to whom it is made.
  - Communication of acceptance: -
    - Against Offeror: In the course of transmission so that it is out of control of the acceptor.
    - Against Acceptor: Letter of acceptance is received by the person to whom it is made.
- ✓ **Revocation of Offer & Acceptance:**
  - Offer can be revoked at any time before the communication of acceptance is completed against the offeror.
  - Revocation of acceptance can be made at any time before the communication of acceptance completed against the acceptor.

- ✓ **Communication of revocation of Offer & Acceptance:**
  - **Communication of revocation of Offer: -**
    - Against Offeror: When Offeror posts the letter.
    - Against Offeree: When Offeree receives the letter.
  - **Communication of revocation of Acceptance: -**
    - Against Acceptor: When the letter is posted.
    - Against Offeror: When the letter is received.
- ✓ **Lapse of Offer:**
  - Notice of revocation.
  - Expiry of time fixed for acceptance.
  - Failure by acceptor to fulfil the condition for acceptance to offer.
  - Death of offeror before acceptance.
  - By a counteroffer.
  - Acceptance is not in a prescribed manner; the offer gets lapsed.
  - Due to any change in the law.
- ✓ **Consideration =** Consideration is doing something or abstain from doing something + at the desire of promisor + move to the promisee or any other person + may be past, present or future.
- ✓ **Legal rules of Consideration:**
  - Consideration may move to the promisee or any other person who is stranger to consideration.
  - Performance of act is executed and performance of a promise is executory.
  - Consideration can be for services performed in the past.
  - Consideration need not be adequate.
  - Performing an act to which a person is legally bounded is no consideration.
  - Consideration must be real and of some value.
  - Consideration must not be unlawful, immoral or against public policies.
- ✓ **The doctrine of Privity of Contract =** A stranger to a contract cannot sue the parties to the contract.
- ✓ **Exceptions to 'Privity of Contract':**
  - A person in whose favour a charge or interest in the property has been created.
  - An agreement of marriage, partition or other family arrangements made for the benefit of a person.
  - A female member can enforce a provision made for marriage & other expenses.
  - Any condition or duty running with land purchased.
  - In case of a person acknowledging someone else's liabilities.
- ✓ **The validity of an agreement without consideration:**
  - An agreement made out of natural love & affection + parties stand in near relation + in writing + registered under the law.
  - Compensation for past voluntary services.
  - Promise to pay time-barred debts.
  - No consideration is necessary to create an agency.
  - Completed gifts are not considered as consideration.
  - Contract of bailment does not require consideration.
  - No consideration required for charity.

- ✓ **Competency to contract:**
  - Attained age of majority (any person of 18 years or above).
  - Sound mind = Parties able to make rational judgements related to the contract they entered.
  - A person is not disqualified by law.
  - Person disqualified by law = Alien enemy + convicts + foreign diplomats + company working beyond object clause.
  
- ✓ **Position of Minor's agreement:**
  - An agreement with a minor is void-ab-initio.
  - Minor can only accept benefits through a contract.
  - Minor can always plead his minority in defense.
  - A minor's agreement cannot be validated even after the attainment of his majority.
  - A minor's guardian can enter into a valid contract on the minor's behalf.
  - A contract with a minor for necessities is valid, and the minor's property is liable, not minor personally.
  
- ✓ **Free consent** = When two or more persons agree upon the same thing in the same sense.
- ✓ **Elements disqualifying Free Consent** = Coercion + Undue influence + Fraud + Misrepresentation + Mistake.
- ✓ **Coercion** = Committing or threatening to commit any act forbidden by the Indian Penal Code + unlawful detaining or threatening to detain any property + to cause any person to enter into an agreement.
  - A contract induced by coercion is voidable.
  - Any person receiving benefit by coercion restore such benefit.
- ✓ **Undue Influence** = One of the parties in a position to dominate the will of the other party + obtain an unfair advantage over the other party.
  - One of the parties holds real or apparent authority, or
  - stands in a fiduciary relationship, or
  - contract with a person having low mental capacity, physically challenged or old illiterate person.
- ✓ **Fraud** = An untrue fact which someone who doesn't believe to be true + deliberately hiding any fact + promise made without the intention of performing it + any deceiving act + any act declared fraud by law.
  - Contract induce by fraud is voidable – Party can rescind the contract or sue for damages.
  - 'Mere silence is not a fraud' = No duty to disclose facts that are within the knowledge of both parties.
  - When silence is a fraud: -
    - Duty of person to speak when – Parties have fiduciary relationship + insurance + marriage + family settlements + share allotment.
    - Silence is equivalent to speech.
- ✓ **Misrepresentation** = Any untrue fact believed to be true by all the parties to contract.
  - Misrepresentation is made with no intention to deceive.
  - Any person who misleads can avoid the contract.
- ✓ **Mistake** = An innocent or incorrect belief which misleads both parties to understand each other.
  - Unilateral mistake = When one party to contract is under a mistake.
  - Bilateral mistake = When both the parties to contract are under a mistake.
  - Ignorance of Indian Law is no excuse.
  - Ignorance for Foreign Law can be treated as a mistake of fact.

- ✓ **Unlawful object & consideration:**
  - Consideration is punishable under any law.
  - Consideration defeats the provision of any law.
  - In case of fraud.
  - Consideration defeats any rule for the time being in force in India.
  - Consideration involves any injury to any person or property of another person.
  - Consideration is immoral or opposing the moral values of society.
  - Consideration is against public policies or the interest of the public: -
    - Trading with a person of an enemy country without the Government's permission.
    - Obstruction of justice or tampering of legal proceedings.
    - Sharing of financial proceeds from the success of a lawsuit.
    - Purchasing of public office or any public awards like Bharat Ratna, Padma Shri, etc.
    - Agreements creating monopolies in the market.
    - Agreements involving the procurement of a person for marriage.
    - Agreements related to restricting any person from doing business or trade.
    - Agreements restricting parental rights or individual's rights.
- ✓ **Exceptions to agreements in Restraint of Trade:**
  - Sale of Goodwill.
  - Exceptions under Indian Partnership Act, 1932.
  - Agreement between employer & employee.
- ✓ **Wagering agreements = Agreement to pay money upon determination of an uncertain event.**
  - Agreements by way of wager are void.
  - Characteristics of wagering agreements = promise to pay money or money's worth + promise must be unconditional + uncertainty of event + two parties having an equal chance of a win or lose + no party have interest in the event.
- ✓ **Transactions similar to wagering agreements:**
  - Void transactions: -
    - Lottery transactions – Illegal under the Indian Penal Code.
    - Competitions' prize – Not illegal until the prize money exceeds ₹1,000.
    - Speculative transactions – Gambling is illegal.
    - Horse race transactions – Cash prize of ₹500 or less is void.
  - Valid transactions: -
    - Chit fund.
    - Commercial or share market transactions – Delivery of goods or shares is taken or given.
    - Contract of insurance.
- ✓ **Contingent agreements = Contract depending upon happening or non-happening of an uncertain event.**
- ✓ **Enforcement of Contingent contract:**
  - Enforcement on the happening of an event.
  - Enforcement on non-happening of an event – Enforced when the event becomes impossible.
  - Happening of an event within fixed time – Enforced if the event happens within a fixed time.
  - Non-happening of an event within fixed time – Enforced if the event becomes impossible within a fixed time.
  - The contract is deemed impossible due to the future actions of a living person – The contract not enforceable.
  - Contingent contract on impossible events – Always be void.

✓ **Performance of the contract:**

- By promisor himself.
  - If any skills required to perform a contract, the promisor has to perform the contract himself.
- In case of the death of the promisor, his representative may perform the contract.
- If the promisee accepts performance from a third person, not enforceable to perform by the promisor.
- Joint promisors: -
  - All such persons must jointly fulfil the promise.
  - If anyone dies, his legal representative, along with surviving promisors.
  - If all joint promisors die, their legal representative must jointly fulfil the promise.

✓ **Joint Promisors:**

- Joint promisors are jointly & severally liable.
- A creditor can claim the amount from any of the joint promisors.
- Any joint promisor paying the whole amount can claim from other joint promisors.
- Release of any one joint promisor from his liability does not discharge the other joint promisors.

✓ **Effect of refusal to accept the offer of performance:**

- The promisor is not responsible for the non-performance of the promise.
- Such an offer must fulfil certain conditions = unconditional + made at proper time & place + promisee have a reasonable opportunity of seeing the thing which is offered in the promise.

✓ **Effect of refusal of the party to perform promise:**

- Promisee may put an end to the contract, or
- may decide to continue the contract.

✓ **Time & place for the performance of promise:**

- No time fixed - reasonable time decided by circumstances or norms of trade.
- No place is fixed - Duty of promisor to ask the place of delivery or to fix a reasonable place.
- The time fixed & performance to be made by promisee - duty of promisee to inform usual hours & place to perform.
- The time fixed & performance not to be made by promisee - Promisor can perform his obligations during usual business hours.
- Promisee specified time, place & hours - Promisor must perform as per the instructions of the promisee.

✓ **Performance of reciprocal promises:**

- A reciprocal promise can be performed simultaneously by both parties.
- If an order of performance is fixed, reciprocal promise to be performed in that order.
- If one party prevents another to perform the promise, another party may end the contract.
- If a promise contains legal & illegal part, the legal part is valid & illegal part is void.

✓ **Contracts that need not be performed:**

- Novation - Parties substitute a new contract in place of an old, then old contract is not performed.
- Rescission - When a contract is cancelled by parties to the contract, the contract is not performed.
- Alteration - When a contract is altered, the original contract is discharged & is not performed.
- Remission - Promisee can remit or dispense contract wholly or partly.

- ✓ **Effect of failure to perform the contract on time:**
  - Time is an essential factor - To accept the performance & no compensation shall be claimed or to cancel the contract.
  - Time is not an essential factor - Contract cannot be cancelled & at maximum, compensation can be claimed.
  
- ✓ **Discharge of contract:**
  - Discharge by the performance - Parties fulfil their obligations within time & in a specified manner.
  - Discharge by mutual agreement - Novation, rescission, alteration or remission.
  - Discharge by the impossibility of performance.
  - Discharge by lapse of time - When a contract is not performed within a specified time.
  - Discharge by operation of law - Due to death or insolvency of promisor or promisee.
  - Discharge by breach of contract - When any one party defaults in performing the contract.
  
- ✓ **Impossibility of performance:**
  - Impossibility existing at the time of contract.
  - Destruction of subject matter after the formation of the contract.
  - Non-occurrence of things necessary to contract after the formation of the contract.
  - Any party to the contract becomes incapable of performing the contract.
  - Impossible to perform the contract due to any change in the law by the Government.
  - The contract shall be dissolved when intervened by Government legislative or administrative.
  - Performance of the contract becomes impossible due to any economic changes.
  
- ✓ **Exceptions to the impossibility of performance:**
  - Difficulty in performance - Contract is not discharged by the fact that the contract has become impossible to perform.
  - Impossibility due to failure of third-person - When promisor relies on the third person's work for the contract & the third person is failed, the contract is not discharged.
  
- ✓ **Breach of contract:**
  - Anticipatory breach of contract - Occurring before the time fixed for performance.
    - Expressed by words spoken or written.
    - By the conduct of one of the parties to contract.
  - Actual breach of contract - When one of the parties refuses to perform the contract on the due date.
    - Breach at the time of performance due.
    - Breach during the performance of the contract.
  
- ✓ **Types of damages:**
  - Ordinary damages = Naturally arise in the normal course of things.
  - Special damages = Some special circumstances affecting the contract + not recoverable unless circumstances not brought to the knowledge of the defendant.
  - Inductive or exemplary damages = breach of promise to marry + wrongful dishonour of customer's cheque by the banker.
  - Nominal damages = When a party suffered has proved a breach of contract + suffered no real damages.
  - Damages for deterioration caused by delay = Deterioration caused to goods by delay recovered from the carrier.

✓ **Penalty & Liquidated damages:**

- Liquidated damages = Sum fixed in the contract represent a genuine estimated loss to the party by future breach of contract.
- Penalty = Sum fixed in the contract does not represent any genuine loss but force the other party to complete the contract in a fixed time.

✓ **Remedies for breach of contract:**

- Suit for damages – Suffered party can claim damages for breach of contract.
- Rescission of contract – Contract broken by one party; another party may rescind the contract & is entitled to compensation for any damages.
- Suit upon 'Quantum Meruit' – According to the quantity of work done.
- Suit for specific performance – The party suffered may ask for the completion of the contract.
- Suit for injunction – Party does something which he has promised not to do. The court may issue an order of injunction and restrains that party from doing what he promised not to do.

✓ **Quantum Meruit:**

- When a person has begun the work, and before he could complete it, the other party terminates the contract. The party can claim the amount for work done.
- When the work is done and accepted but subsequently turns out to be void. The person who performed the work is entitled to the amount for work done.
- A person does some act or delivers something intending to receive payment for it.
- When a contract is divisible, and the party not in default has enjoyed the benefit of part performance.
- When a person performs a complete contract, but in a bad way, the suffered party is entitled to claim damages.

✓ **Quasi-contracts = Contracts intend to prevent the benefit of one person at the cost of another.**

✓ **Types of quasi-contracts:**

- Claim for necessaries supplied to persons incapable of contracting – Person must be minor or lunatic + necessaries were suitable to him at the time of sale.
- Payment by an interested person – Person must be interested in making payment + defendant under a legal obligation to pay + payment by the one who is interested.
- Liability to pay for non-gratuitous acts – A person lawfully does an act or delivers something + not intending to give gift + person who enjoys benefit bound to make compensation.
- Responsibility of finder of lost goods – to take proper care of the property as a man of ordinary prudence + no right to appropriate the goods + restore the goods if the owner is found.
- Money paid by mistake or under coercion must be paid back.

✓ **Appropriation of payments:**

- It is done in the following order: -
  - Appropriation by the debtor to discharge some particular debt.
  - Appropriation by the creditor to discharge any debt at his discretion.
  - When neither party makes any appropriation, debts shall be discharged in the order of time.

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## Chapter – 2

### Sale of Goods Act, 1930

- ✓ **Buyer** = A person who buys or agrees to buy goods.
- ✓ **Seller** = A person who sells or agrees to sell goods.
- ✓ **Goods** = Movable property excluding actionable claims + stock & shares + growing crops + grass + things attached to or forming part of the land + severed before sale or under the contract of sale.
- ✓ **Contract of sale:**
  - Sale – Property to be transferred immediately.
  - Agreement of sale – Property to be transferred on a future date.
- ✓ **Types of Goods** = Existing Goods + Future Goods + Contingent Goods.
- ✓ **Existing goods** = Goods exist at the time of contract of sale.
  - Specific goods = Goods identified at the time of contract of sale.
  - Unascertained goods = Goods not identified at the time of contract of sale.
  - Ascertained goods = Goods identified after the contract of sale is made.
- ✓ **Future goods** = Goods manufactured/produced/acquired after the contract of sale is entered into.
  - Future goods are always an agreement of sale.
  - Such goods do not exist with the seller at the time of the contract of sale.
- ✓ **Contingent goods** = Acquisition of goods by seller depending upon an uncertain event.
- ✓ **Delivery** = Voluntary transfer of possession of goods from one person to another.
- ✓ **Forms of delivery:**
  - Actual delivery = Physical delivery of goods to the buyer.
  - Constructive delivery = Delivery of goods without a change in possession or custody of goods.
  - Symbolic delivery = Where the buyer has a specific means of obtaining possession of goods.
- ✓ **Document of title to goods:**
  - Documents used in the ordinary course of business as proof of the possession of goods.
  - Example: bill of lading, dock warrant, railway receipt, multimodal transport document, etc.
- ✓ **Mercantile agent** = An agent, has authority in the usual course of business to sell or consign goods.
- ✓ **Property:**
  - Property means ownership or general property.
  - Property in the goods means ownership rights of goods.
- ✓ **Insolvent** = When a person is unable to pay his debts in the ordinary course of business.
- ✓ **Price** = Money consideration for the sale of goods.
- ✓ **Quality of goods** = State or condition of goods.
- ✓ **Contract for work & labour** = Contract of doing or rendering of some work of labour.
- ✓ **Making of the contract of sale:**
  - Contract of sale made by an offer to buy or sell of goods for a price and acceptance of such offer; or
  - Immediate delivery of goods; or
  - Immediate payment of price but the delivery of goods on a future date; or
  - Immediate delivery of goods & payment of the price; or
  - Delivery or payment or both to be made in instalments; or
  - Delivery or payment or both to be made at a future date; or



- ✓ **The subject matter of the contract of sale:**
  - Contract of sale is void if goods perish before the making of the contract.
  - Goods are perishing before the sale, but after the making of the agreement, the contract of sale is void.
- ✓ **Ascertainment of price:**
  - Price may be fixed by the contract; or
  - Price fixed in a manner provided by the contract; or
  - Price determined by the course of dealings between the parties.
- ✓ **Conditions & Warranties:**
  - Conditions = Essential to the main purpose of the contract + contract is rejected if the condition is breached.
  - Warranties = Collateral to the main purpose of the contract + claim for damages if the warranty is breached.
- ✓ **Implied conditions:**
  - Condition as to title = Implied condition that the seller has the right to sell goods at any time.
  - Sale by description = Goods shall correspond with the description.
  - Sale by sample = Bulk shall correspond with the sample + reasonable opportunity to the buyer for comparing the bulk with sample.
  - Sale by sample & description = Bulk shall correspond with the sample & description.
  - Condition as to quality or fitness = Seller sold goods for a specific purpose + buyer relied on seller's skills & judgements + seller deals in specific goods.
  - Condition as to merchantability = Goods sold by the seller for a specific purpose + seller deals in specific goods + goods sold shall be of usable quality.
  - Condition as to wholesomeness = Seller sold food & eatables + food & eatables must be wholesome.
- ✓ **Implied warranties:**
  - Warranty as to undisturbed possession = Possession of the buyer is disturbed + buyer can sue the seller for damages.
  - Warranty as to non-existence of encumbrances = Goods shall be free from any charge or encumbrance + in favour of any third party + not disclosed by the seller at the time of contract.
  - Warranty as to quality or fitness by the usage of trade = Implied warranty for quality or fitness for a particular purpose attached by the usage of trade.
  - Disclosure of the dangerous nature of goods = Goods are dangerous in nature + buyer is unaware about the danger + seller must inform the buyer of probable danger.
- ✓ **Caveat Emptor:**
  - 'Let the buyer beware'.
  - Buyer to properly check the goods before buying from the seller.
  - If goods turned out to be defective, the buyer cannot hold the seller liable.
- ✓ **Exceptions to the Caveat Emptor:**
  - Buyer specifies the purpose of purchase + buyer relied on seller's skills & judgement + seller deal in those specific goods.
  - Goods purchased under a brand name or patent.
  - Goods sold by description shall correspond with the description.
  - Goods sold by description shall be of merchantable quality.
  - Goods sold by sample & description.
  - Implied warranty for quality or fitness for a particular purpose + attached by the usage of trade.
  - Seller actively conceals a defect or is guilty of fraud.

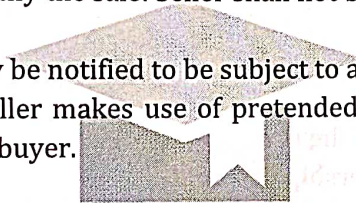
- ✓ **When condition to be treated as warranty:**
  - When the buyer waives the performance of a condition, the other party may waive a stipulation.
  - When the buyer treats the breach of condition as a breach of warranty by the buyer, the buyer can claim damages only.
  - Where a contract is non-severable & buyer has accepted either whole goods or any part thereof.
  - Where fulfilment of any condition or warranty is excused by impossibility or law.
- ✓ **Passing of property in case of ascertained or specific goods:**
  - Goods are in a deliverable state pass to the buyer at the time of contract of sale.
  - Property of the goods do not pass to the buyer unless the seller put the goods in a deliverable state.
  - Until the seller ascertain the price of the goods of deliverable state, goods do not pass to the buyer.
- ✓ **Passing of property in case of unascertained goods:**
  - No property of the goods is transferred to the buyer unless the goods are ascertained.
  - When the unascertained goods by description are put in a deliverable state & appropriated to contract by buyer or seller, such goods become ascertained.
  - When the seller delivers goods to the buyer or a carrier or bailee for transmission, the seller is not liable for any loss.
- ✓ **Goods sent on approval or "on sale or return":**

Goods delivered to the buyer on approval or "on sale or return", the property passes to the buyer if:-

  - Buyer signifies his approval or acceptance to the seller; or
  - Buyer retains the goods without giving any approval or acceptance; or
  - The buyer does any act equivalent to accepting the goods.
- ✓ **Reservation of right of disposal** = In a contract of sale of specific goods, the seller may reserve the right of disposal by the terms of contract or appropriation until certain conditions have been fulfilled.
  - Certain circumstances under which right to disposal may be reserved: -
    - If goods are delivered to a railway administration for carriage & goods are deliverable to the order of the or his agent.
    - The buyer must return the bill of lading in non-acceptance of the bill drawn to him by the seller.
- ✓ **Risk prima facie passes with the property:**
  - The goods remain at the seller's risk until the property in goods is transferred to the buyer.
  - The owner of goods must bear the loss or damage of goods.
- ✓ **Transfer of title:**
  - When goods are sold by a person who is not the owner of goods, the buyer gets no good title to the goods.
  - "Nemo dat quod non habet" = No one can give what he has not got.
- ✓ **Exceptions to "Transfer of title":**
  - Sale by a mercantile agent: Consent of the owner + sale in the ordinary course of business + buyer had acted in good faith.
  - Sale by one of the joint owners by the permission of other co-owners.
  - The buyer shall get the good title to the goods possessed by the seller under a voidable contract.
  - If the seller sold the goods already sold but continues in possession & the third person buys those goods in good faith, the third person gets the good title.
  - Sale by buyer obtaining possession of goods before the property in goods has been transferred.

- The buyer shall get the good title to goods if bought from a person who represented himself as a seller in front of the true owner & true owner did not deny his authority to sell.
- Sale by an unpaid seller.
- Sale under other Acts: Sale by an Official receiver or liquidator of the company + purchase of goods from a finder of goods + sale by pawnee.
- ✓ **Unpaid Seller** = The buyer has not paid the whole of the price against the goods.
- ✓ **Rights of unpaid seller against goods:**
  - Right of lien.
  - Right of stoppage in transit.
  - Right of re-sale.
- ✓ **Right of Lien:**
  - Right of lien = To retain possession of goods.
  - Retain of possession of goods in the following cases: -
    - Cash sales & price has not been paid.
    - Goods sold on credit terms & credit terms had expired.
    - The buyer becomes insolvent.
  - The unpaid seller can exercise a lien if he is in possession of goods (whether as bailee or agent).
  - Termination of lien: -
    - Goods are delivered for transmission without reserving the right of disposal.
    - The buyer obtains lawful possession of the goods.
    - The seller waived the right of lien.
    - By estoppel: An act which specifies that the seller has no lien on goods.
- ✓ **Right of Stoppage in Transit:**
  - Conditions: Unpaid seller + buyer becomes insolvent + goods are in transit + seller not in possession of goods.
  - The right of disposal is not necessary to be reserved by the seller.
- ✓ **Effect of sub-sale or pledge by the buyer:**
  - Right of stoppage + right of lien is not affected by selling or pledging of goods by the buyer.
  - In the case of pledge, the seller may get the right of lien & stoppage in transit on goods left after satisfying the claim of the pledgee.
  - The right of lien & right of stoppage cannot be adopted if:-
    - The seller has given his assent; or
    - Document of the title has been transferred to the buyer who transfers it to the third party for consideration & in good faith.
- ✓ **Effect of stoppage:** Contract is not rescinded + buyer can ask for delivery of goods on payment to the unpaid seller.
- ✓ **Right of Re-sale:**
  - Perishable goods: No notice is required to be given to the buyer.
  - Non-perishable goods: Give notice of intention to resale + wait for a reasonable time.
    - If the amount not received then the seller can resell the goods
    - If resale value < contract value, the seller can claim damages.
    - If resale value > contract value, the seller can keep the surplus profits.
  - New buyer's title: Remains valid even if the seller does not provide notice of resale to the previous buyer.

- Right to resale is reserved: No requirement to give notice to the buyer.
- Withholding the delivery of goods: Right of lien can be exercised. Also called quasi-lien.
- ✓ **Breach of contract by the seller:**
  - Seller fails to deliver the goods in time or manner prescribed.
  - Seller repudiates the contract.
  - Seller delivers non-conforming goods and buyer rejects & revokes acceptance.
- ✓ **Rights of buyer against the seller:**
  - Claim for damages for non-delivery of goods.
  - Claim for specific performance when the goods are ascertained or specific.
  - Claim for damages in case of breach of warranty.
  - Buyer can sue the seller if the seller cancels the contract before the due date.
  - Buyer can sue the seller for damages along with interest specified in the contract or by the court.
- ✓ **Auction sale** = Selling property by inviting bids publicly + property is sold to the highest bidder.
- ✓ **Rules of auction sale:**
  - Where goods are sold in lots: Each lot is deemed to be subject of a separate contract of sale.
  - Completion of the contract of sale: The auctioneer announces completion of the sale by fall of the hammer.
  - Right to bid may be reserved: Right to bid may be reserved expressly or on behalf of the seller.
  - Where the seller does not notify the sale: Seller shall not bid himself or to employ a person to bid on his behalf.
  - Reserved price: The sale may be notified to be subject to a reserved price.
  - Pretended bidding: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.



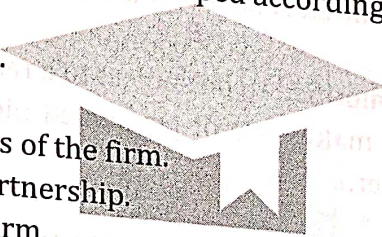
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### **Chapter - 3**

## **The Indian Partnership Act, 1932**

- ✓ **Partnership** = Relation between partners + agreed to share profits + carried on by all or any of them, acting for all.
- ✓ **True test of partnership (Mutual Agency):**
  - It is the Cardinal principle of Partnership law.
  - Each partner doing business is an agent + principal of other partners.
  - He is an agent and binds other partners by his acts.
  - He is a principal and bound by the actions of other partners.
  - It is the conclusive evidence of a partnership.
- ✓ **Sharing of profits:**
  - Mere sharing of profits is not the true test of partnership.
  - It is prima facie evidence of a partnership.
- ✓ **Nature of partnership agreement:**
  - Voluntary: - free consent.
  - Contractual: -
    - Express – Oral or written.
    - Implied – Consistent course of action is followed.
- ✓ **Maximum number of partners** = 50 (otherwise illegal association as per Companies Act, 2013).

- ✓ **Kind of partnership:**
  - With regard to duration = Partnership at will + Partnership for a fixed period.
  - With regard to the extent of business = Particular Partnership + General Partnership.
- ✓ **Partnership at will:**
  - No fixed duration.
  - Any partner can dissolve the partnership by giving notice in writing to all other partners.
- ✓ **Partnership for a fixed period:**
  - Such partnership comes to an end after the expiry of a fixed period.
  - If continued after the expiry of the fixed period – to be treated as a partnership at will.
- ✓ **Particular partnership:**
  - The partnership exists for a specific task.
  - The liability of partners is limited to that task only.
- ✓ **General partnership:**
  - Partnership for the continuous state of affairs; or
  - Partnership for business in general.
- ✓ **Partnership Deed:**
  - Always in written form. An oral partnership agreement is not a partnership deed.
  - Contains various terms & conditions as to the relationship of the partners to each other.
  - The partnership comprises of immovable property – Writing, stamped & registered under Registration Act.
  - No immovable property – Writing and Stamped according to the provisions of Stamp Act, 1899.
- ✓ **Content of partnership deed:**
  - Name of the partnership firm.
  - Name of all the partners.
  - Nature & place of the business of the firm.
  - Date of commencement of partnership.
  - Duration of the partnership firm.
  - Capital contribution of each partner.
  - Profit-sharing ratio of the partners.
  - Admission & retirement of a partner.
  - Provisions for rates of interest on capital, drawings & loans.
  - Provisions for settlement of accounts in case of dissolution of the firm.
  - Provisions for salaries or commissions payable to the partners.
  - Provisions for the expulsion of a partner in case of breach of duty or fraud.
- ✓ **Types of partners:**
  - Active or ostensible partner.
  - Sleeping or dormant partner.
  - Nominal partner.
  - Partner in profits only.
  - Partner by holding out.
  - Incoming partner.
  - Outgoing partner.
  - Sub-partner.
- ✓ **Active or ostensible partner:**
  - Become a partner by agreement.
  - Actively participates in business operations.
  - On retirement, required to give public notice to avoid future liabilities.



- ✓ **Sleeping or dormant partner:**
  - Becomes partner by agreement.
  - Doesn't actively participates in business operations.
  - Share profits & losses.
  - Public notice not required on retirement.
- ✓ **Nominal partner:**
  - Provide his/her name to the firm.
  - No real interest in the firm.
  - Doesn't share profits & losses.
  - Doesn't participate in business operations.
  - Liable to third parties for all acts of firm.
- ✓ **Partner in profits only:**
  - Share profits but do not bear losses.
  - Liable to third parties for all acts of the firm.
- ✓ **Partner by holding out:**
  - Also called partner by estoppel.
  - A third party misunderstood a particular person as a partner.
  - Such a partner is not entitled to share profits & losses of the firm.
  - Liable to third parties with which contract is entered into because of such representation.
- ✓ **Incoming partner** = New partner admitted to a firm.
- ✓ **Outgoing partner:**
  - A partner who leaves the firm or takes retirement from the firm.
  - Remains liable to third parties for all acts until the public notice of retirement is given.
  - Publish of notice in a government recognised newspaper & at least in one vernacular newspaper or an official gazette.
- ✓ **Sub-partner:**
  - When a partner agrees to share profits with a third person. That third person is sub-partner.
  - Sub-partner is not liable towards the third party.
- ✓ **Rights of a partner:**
  - Right to take part in the conduct & management of the business.
  - Right to free access of all records, books & accounts of the business.
  - Right to get interest on advances at a rate agreed otherwise at 6% per annum.
  - Right to share profits equally unless specific ratio agreed upon.
  - Right to get compensated by the firm for all: -
    - expenses incurred in the course of business,
    - payments made by him in respect of partnership's debts, and
    - funds provided in an emergency for protecting the firm.
  - Right in partnership property & applied exclusively for the partnership.
  - Power to act in an emergency for protecting the firm from loss.
  - Right to stop the admission of the new partner without his consent.
  - Right to retire by giving notice.
  - Right to continue in the partnership, not to be expelled from it.
  - Every outgoing partner has the right to carry on competitive business under certain conditions.
- ✓ **Duties of partners:**
  - Bound to carry on the business of the firm to the greatest common advantage.
  - Bound to maintain true & fair accounts of the partnership firm.
  - Bound to be just & faithful to other partners.

- The firm can claim any unauthorized profits earned by a partner.
  - Partners must not make secret profits.
  - Every partner is bound to act within the scope of his actual authority.
- ✓ **Authority of a partner** = Capacity of a partner to bind the firm by his acts.
- Express authority.
  - Implied/Ostensible/Apparent authority.
- ✓ **Express authority** = Given by words + spoken or written.
- ✓ **Implied/Ostensible/Apparent authority** = provided by the act
- Implies authority shall be subject to the following conditions: -
    - Partner's act shall relate to the normal business of the firm.
    - Act shall be done in the usual way.
    - Act shall be done in the name of the firm: Selling firm's goods + purchasing goods for the firm + accepting any payment of debts due to firm + engaging & discharging employees.
  - Authority of partners in a trading firm: - partners have the following additional powers
    - Borrow money on the firm's credit + pledge firm's goods for that purpose.
    - To accept, make & issue the negotiable instrument in the firm's name.
    - To employ a solicitor or attorney on behalf of the firm.
- ✓ **Cases having no implied authority of partner:**
- Submit a dispute related to the business of the firm in arbitration.
  - Opening of the bank account on behalf of the firm in his name.
  - Compromise or relinquish any claim or portion of a claim by the firm.
  - Acquire immovable property in the name of the firm.
  - Transfer of immovable property belonging to the firm.
  - Enter into partnership on behalf of the firm.
  - Withdraw of a suit filed by the firm.
  - Admit any liability in a suit against the firm.
- ✓ **Liabilities of an Incoming Partner:**
- An incoming partner shall be liable for debts from the date of admission.
  - An incoming partner is not liable for debts incurred before he joined the firm.
  - Incoming partner may assume liabilities for past debts by agreement between creditors & existing partners of the firm.
- ✓ **Liabilities of an Outgoing Partner:**
- An outgoing partner is liable for debts contracted while he was a partner.
  - Outgoing partner may discharge himself from any debts by agreement between creditors & existing partners of the firm.
- ✓ **Registration of a Partnership Firm:**
- Registration is optional.
  - A firm can be registered during continuation also.
  - For the firm's registration, apply to Registrar with prescribed fees & documents, stating: -
    - Firm's name.
    - Place of business of the firm.
    - Name of other places where the firm carries on business.
    - Date when each partner joined the firm.
    - Full & permanent address of partners.
    - Duration of the firm.

- The firm's name shall not contain words like Crown, emperor, empress, empire, imperial, king, royal, etc.
- Registration is effective from the date when all prescribed documents and prescribed fees are delivered to the Registrar.
- There is no penalty for the non-registration of a firm in India.
  
- ✓ **Consequences of Non-registration of a firm:**
  - No suit in a civil court by the firm or other co-partners against the third party.
  - An aggrieved partner cannot bring legal action against other partners or the firm.
  - If a suit is filed against the firm and the claim value is more than ₹100, the firm or partners cannot set off.
  
- ✓ **Exceptions to the consequences of Non-registration of the firm:**
  - Right of third parties to sue the firm or any other party.
  - Right of partners to sue: -
    - For the dissolution of the firm, or
    - For the settlement of accounts of the dissolved firm, or
    - For the realisation of the property of the dissolved firm.
  - Power of an official assignee or receiver of the court to release property of the insolvent partner & to bring an action.
  - Right to set-off claim of value less than ₹100.
  
- ✓ **Dissolution of the firm** = Dissolution of the firm between all partners of a firm.
  
- ✓ **Modes of dissolution of the firm:**
  - Dissolution of a firm not by order of the court.
  - Dissolution of a firm by order of the court.
  
- ✓ **Dissolution of a firm not by order of the court:**
  - By mutual agreement = With the consent of all partners.
  - Business becoming illegal due to any change in the law.
  - Insolvency of partner = By adjudication of a partner as an insolvent.
  - Notice of dissolution = In a partnership at will, by giving notice in writing with an intention to dissolve the firm.
  
- ✓ **Dissolution of the firm by order of the court:**
  - When the partner becomes of unsound mind.
  - Permanent incapacity of the partner to perform his duties.
  - Any misconduct of partner affecting the business of the firm.
  - Impossible to carry on the business due to frequent breaches of the partnership agreement.
  - Impossible to carry on the business due to loss.
  - If a partner has transferred his whole interest in the firm without the consent of other partners.
  - Any other just & equitable ground which the court may deem to fit for dissolution.
  
- ✓ **Consequences of dissolution:**
  - Partners shall be liable for acts of the firm till the notice of dissolution.
  - Surplus from the settlement of the firm's liabilities to be distributed among the partners.
  - Partnership assets realised shall be used for: -
    - Payment of expenses related to dissolution.
    - External liabilities (excluding partner's loan).
    - Partner's loan.



- Balance in the partner's capital.
  - Surplus to be distributed among the partners.
  - If the amount is insufficient to discharge external liabilities, then solvent partners shall bring the amount to discharge the firm's liabilities.
  - Any personal profits earned after the dissolution but before the partnership completely wound up shall be accounted as the firm's profits.
  - If goodwill of the firm is sold after dissolution, existing partners cannot continue business unless:-
    - Agreement of sale of goodwill provides for something else, or
    - Any of the existing partners have purchased the goodwill.
  - Partners can carry on business if goodwill is not sold.
  - Deficiencies of capital to be adjusted as per the provisions of partnership deed or, the rule of Garner vs Murray shall apply for final settlement among the partners.
- ✓ **Section 37:**
- In the case of death of a partner, until the deceased partner's capital account is settled, the executor of the deceased partner is entitled to: -
    - Interest at 6% p.a, or
    - Profits in the capital ratio of partners, whichever is higher.
- ✓ **Effect of notice to acting partner:**
- Notice to the partner of the firm, who usually acts in the business of the firm for any matters related to affairs of the firm, operates as the notice to the firm, except in the case of fraud.
- ✓ **Minors admitted to the benefits of the partnership firm:**
- Rights of a minor:**
- Right to his agreed share of profits + of the firm.
  - Entitled to inspect the accounts of the partnership firm + can get a copy of those accounts.
  - Can sue the partners for accounts or for the payment of his share.
  - On attaining the majority: He may elect to become or not to become a partner in the firm within six months of attaining the majority.
    - If elect to become the partner = Entitled to the share as he was when he was a minor.
    - he does not elect to become the partner = Not liable for the acts of the firm after the date on which the public notice has been issued.
- ✓ **Liabilities of a minor:**
- Liability of a minor = Restricted to the extent of his share in the profits + property of the firm.
  - Not personally liable for debts incurred during his minority.
  - He cannot be declared insolvent.
    - If the firm is declared insolvent = Minor's share in the firm secured by the Official Receiver or the Assignee.
  - After attaining the majority: He elects to become the partner, liable to the third parties for acts of the firm done since his admission in the partnership.
    - If he does not elect to become the partner; Not liable to the third parties after the date of the issue of the public notice.
  - Entitled to sue partners of the firm for his share in profits & property of the firm.
  - Notice to the Registrar by minor of becoming or not becoming the partner.
  - If no issue of the public notice + notice to the Registrar by the minor = Minor is deemed as the partner in the firm.

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## Chapter - 4

### Limited Liability Partnership (LLP) Act, 2008

#### ✓ **LLP:**

- A hybrid between a company & a partnership.
- LLP has elements of corporate structure + partnership firm.
- An alternative corporate business vehicle has the benefits of limited liability of a company + flexibility of a partnership firm.

#### ✓ **Features of LLP:**

- Body corporate: Separate legal entity + assets & liabilities belong to LLP.
- Perpetual succession: Created & destroyed by law + death or insanity of partners doesn't affect its continuity.
- Mutual agency: Partners of LLP are agents of LLP only.
- Formation of agreement: Agreement decides mutual rights & duties of partners.
- Common seal: Common seal not mandatory + custody under responsible official + affixed in the presence of at least two designated partners of LLP.
- Limited liability: Liability of partners limited to their agreed contribution.
- Management of business: Partners shall manage business + designated partners liable for legal compliances.
- The number of partners: Minimum 2 designated partners (one shall be the resident of India) & maximum = no limit.

#### ✓ **Special points:**

- LLP cannot be formed for charitable or non-economic purposes.
- Central Government has the power to order an investigation by the appointment of a competent authority.
- Merger, amalgamation & conversion of LLP shall be as per the provisions of the LLP Act, 2008.
- Foreign LLP is incorporated outside India, which established a place of business in India.
- Foreign LLP can become a partner in an Indian LLP.
- Document filing by LLP: Computer-readable electronic form + on website [www.mca.gov.in](http://www.mca.gov.in) + authenticated by a partner or designated partner of LLP by use of the digital signature.

#### ✓ **Advantages of LLP:**

- Easy to form – Less legal compliances as against the formation of a company.
- Limited liability.
- Agreement among partners.
- Easy to dissolve – few legal compliances as against the liquidation process of a company.

#### ✓ **Incorporation of LLP:**

- Appointment of designated partners.
- Name availability.
- Drafting of LLP agreement.
- Filing of E-Form – 2 & E-Form – 3.
- Registrar of LLP Issue the Certificate of Incorporation:

#### ✓ **Appointment of Designated Partners:**

- Minimum two designated partners (one shall be the resident of India).
- The person appointed as a designated partner shall hold a DPIN (Designated Partner Identification Number) & DSC (Digital Signature Certificate).

- ✓ **Name Availability:**
  - Checking of available names (up to six choices can be indicated).
  - An applicant has to be filed E-Form - 1 for ascertaining availability & reservation of name of LLP business with prescribed fees.
- ✓ **Drafting of LLP Agreement:** Agreement shall specify: -
  - Name of LLP.
  - Name & address of partners & designated partners.
  - Form of contribution & interest on contribution.
  - The profit-sharing ratio of partners.
  - Remuneration of partners.
  - Rights & duties of partners.
  - Proposed business.
  - Rules for governing LLP.
  - Details of registered office in India to which all communications shall be made & received.
- ✓ **Filing of E-Form - 2 & E-Form - 3:**
  - Details of E-Form - 2 = LLP to be incorporated + Partners'/Designated Partners' details + Consent letter of partners/designated partners to act as partner/designated partner.
  - E-Form - 3 containing details of LLP agreement shall be filed within 30 days of incorporation.
- ✓ **Registrar of LLP Issue the Certificate of Incorporation:**  
Registrar of LLP will issue a certificate of incorporation along with LLPIN (Limited Liability Partnership Identification Number) after completion & verification of all legal formalities.
- ✓ **Eligibility to be a partner in LLP:**  
Persons whose names are subscribed on the incorporation document shall be the partners of the LLP.
- ✓ **Relationship of partners:**
  - The rights & duties of partners of LLP shall be governed by the LLP agreement.
  - Any change in LLP agreement shall be filed with the Registrar in a prescribed manner.
  - In the absence of LLP agreement, rights & duties of partners and LLP shall be determined by the provisions contained in First Schedule.
- ✓ **Cessation of partnership interest:**
  - A partner may cease to be a partner in LLP as per the agreement or by giving a notice of not less than 30 days.
  - A person shall cease to be a partner of LLP:-
    - On his death or dissolution of LLP; or
    - If he is declared of unsound mind by the competent court; or
    - If he is adjudicated or declared as insolvent.
  - When a person ceases to be a partner in LLP, he is regarded as a partner unless:-
    - the person has noticed that the former partner has ceased to be a partner; or
    - the notice of cessation of partner has been delivered to the Registrar.
  - On cessation, the former partner is not discharged from liabilities which he incurred while being a partner.
  - The former partner or a person entitled to his share in the case of death or insolvency is entitled to:-
    - an amount equal to the capital contribution of the former partner made to LLP, and
    - his right to share in the accumulated profits of the LLP, after deduction of accumulated losses.
  - After cessation, the former partner has no right to interfere in the management of LLP

- ✓ **Registration of changes in partners:**
  - Any change in name or address of partner shall be informed to LLP within 15 days of such change.
  - Penalty on the partner for not informing any such change: Minimum ₹ 2,000 & Maximum ₹ 25,000.
  - The LLP shall file a notice of cessation or become a partner with the Registrar within 30 days of such change.
  - In the case of any change in the name or address of the partner, the LLP shall file a notice within 30 days of such change.
  - Penalty on LLP & designated partners for default in filing the notice of cessation of the partner or change in name or address of partner: Minimum ₹ 2,000 & Maximum ₹ 25,000.
- ✓ **Holding out:** Any person who represents himself as the partner of LLP.
  - Such a person is liable to the party who gives credit to LLP on the faith of such representation.
  - If the name of the deceased partner continued to be part of LLP's name, then such partner's legal representatives or his estate shall not be liable to any acts of LLP done after his death.
- ✓ **Liability in case of fraud:**
  - Partners or LLP does any act to defraud creditors, the liability of partners shall be unlimited.
  - LLP shall not be liable for fraud if it proves that the acts done by partners were without the knowledge or authority of LLP.
  - Penalty on every person and LLP involved in fraud = Imprisonment up to 2 years & fine from ₹ 50,000 to ₹ 5,00,000 + compensation to any person who had suffered loss or damage due to fraud.
- ✓ **Whistleblowing:**
  - The Court or Tribunal may reduce or waive any penalty of partner or employee of LLP if:-
    - such partner or employee has provided useful information during the investigation of LLP, or
    - any information given by such partner or employee leads to a true culprit of such LLP.
- ✓ **Financial disclosures:**
  - ✓ Books of accounts.
  - ✓ Statement of Account & Insolvency.
  - ✓ Audit of accounts.
  - ✓ Annual Return.
- ✓ **Books of accounts:**
  - Maintained on a cash or accrual basis.
  - Prepared according to double-entry bookkeeping.
  - Kept at the registered office for a prescribed period.
- ✓ **Statement of Account & Insolvency:**
  - Prepared for a financial year within six months from the end of such financial year.
  - Signed by designated partners of LLP.
  - Submitted to Registrar in a prescribed manner with prescribed fees.
- ✓ **Audit of accounts:**
  - Prepared as per rules prescribed.
  - Central Government may exempt any class of LLP by giving notification in Official Gazette.
- ✓ **Annual Return:** Filed within 60 days of closure of the financial year with prescribed form & fees.
- ✓ **Conversion into LLP:**
  - Conversion of Partnership Firm into LLP given in the Second Schedule.
  - Conversion of Private Company into LLP given in the Third Schedule.
  - Conversion of Unlisted Public Company into LLP given in the Fourth Schedule.

- ✓ **Registration & effect of conversion:**
  - Registrar, on being satisfied with the conversion, shall issue the certificate of registration.
  - LLP shall inform the concerned Registrar of the conversion within 15 days of registration.
  - Upon conversion, LLP & partners of newly converted LLP shall be governed by the provisions of various schedules.
  - Central Government has the power to make rules with the establishment of Foreign LLP.
- ✓ **Winding up & Dissolution of LLP:**
  - Winding up of LLP may be voluntary or by the Tribunal.
  - The Central Government may make the rules for winding up & dissolution of LLP.
- ✓ **Circumstances in which LLP is wound up by the Tribunal:**
  - If LLP decides that the LLP be wound up by the Tribunal.
  - If LLP is operating with less than two partners for more than six months.
  - LLP is unable to pay its debts.
  - LLP has acted against the sovereignty & integrity of India, the security of the state or public order.
  - LLP has defaulted in the filing of the statement of account & insolvency or annual return for five consecutive financial years.
  - Tribunal believes that it is just & equitable to wound up the LLP.

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## Chapter - 5 Companies Act, 2013

- ✓ **Applicability:**
  - Companies incorporated under this Act or any previous company law.
  - Insurance companies (exception - Insurance Act, 1938 & IRDA Act, 1999).
  - Banking companies (exception - Banking Regulations Act, 1949).
  - Companies engaged in the supply & generation of electricity (exception - Electricity Act, 2003).
  - Such a body corporate governed by any special act.
- ✓ **Company** = A company incorporated under this Act or any previous company law.
- ✓ **Features of a company** = Separate Legal Entity + Perpetual Succession + Limited Liability + Artificial Legal Person + Common Seal.
- ✓ **Separate Legal Entity:**
  - The existence of the company is distinct from that of its members.
  - A company can own property, bank account, raise loans, incur liabilities & enter into contracts.
  - Members contracting with the company shall be treated as outsiders.
  - A member does not have an insurable interest in the company [Leading case law: **Macaura vs Northern Assurance Co. Limited (1925)**] (Refer to videos & notes).
- ✓ **Perpetual Succession:**
  - A company's continuity or existence is not affected by the death or insolvency of members.
  - Since a company is created by law, the law can only end the life of a company.
- ✓ **Limited Liability:**
  - The debts of the company do not become the debts of the shareholders.
  - The liability of members is limited to the extent of the nominal value of shares held by them.
  - Limited by Guarantee = Members liable for the amount guaranteed by them.

✓ **Artificial Legal Person:**

- A company is created by the process of law, not by natural birth.
- Legal + Judicial.
- A company acts through a human agency via directors.
- The directors cannot control the affairs of the company.
- Directors are the company's agents but not the agent of the members of the company.
- Directors can use the common seal of the company to authenticate the company's formal acts.

✓ **Common Seal:**

- Official signature of company + symbol of incorporation.
- Having a common seal is optional as per the Companies (Amendment) Act, 2015.
- If no common seal – Authorization by two directors or a director & a company secretary, if any.

✓ **Corporate Veil:**

- A company is identified separately from its members.
- If the company incurs any debts or broke any law, members shall not be held liable.
- The members are protected from the acts of the company.
- Leading case law: **Salomon vs Salomon Co. Ltd.**

✓ **Lifting of Corporate Veil:**

- Looking behind the company as a legal person.
- The courts ignore the company and direct their concern towards the members or managers of the company.
- The company's identity is disregarded & considering acts of the company as acts of members of the company.
- Leading case laws where company law disregards the corporate veil (For judgement refer to videos & notes): -
  - Daimler Co. Ltd. vs Continental Tyre & Rubber Co.
  - Dinshaw Maneckjee Petit.
  - The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs The Associated Rubber Industries Ltd., Bhavnagar and another.
  - Merchandise Transport Limited vs British Transport Commission (1982).
  - Gilford Motor Co. vs Horne.

✓ **Company limited by shares:**

- The liability of members is limited to the amount unpaid on the shares held by them.
- If shares are fully paid up, the member has to pay nothing more.

✓ **Company limited by guarantee:**

- The liability of members is limited to the amount undertaken by them, according to the memorandum.
- The guaranteed amount is paid when the company goes into liquidation.

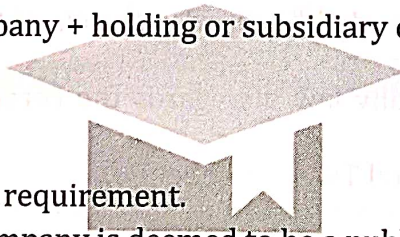
✓ **Unlimited company:**

- No limit on the liability of members of the company.
- Members are not directly liable to the creditors.

✓ **One Person Company (OPC):**

- Only one person as a member.
- No minimum paid-up capital requirement.
- Name of the nominee in MOA.
- Prior written consent of the nominee.

- Eligibility of member or nominee: Natural person + citizen of India + Stayed in India for  $\geq 120$  days during the immediate previous financial year.
- A person cannot be a member or nominee in more than one OPC.
- No minor be a member or nominee.
- Cannot carry out non-banking activities.
- It can be converted into any type of company except Section 8.
- Contravention:
  - An OPC or any officer of the company: Fine of a maximum of ₹10,000 + Further fine of a maximum of ₹1,000/day after the first (For continuing default).
- ✓ **Private Company:**
  - No minimum paid-up capital requirement.
  - Minimum members = 2.
  - Maximum members = 200 (excluding employees & former employees holding shares).
  - Right to transfer of shares restricted.
  - Invitation to the public for securities of the company not allowed.
  - A small company is also a private company.
  - OPC can only be formed as a private company.
- ✓ **Small Company:**
  - Paid-up share capital = Maximum ₹2 crores.
  - Turnover = Maximum ₹20 Crores.
  - Should not be Section 8 company + holding or subsidiary company.
- ✓ **Public Company:**
  - Not a private company.
  - No minimum paid-up capital requirement.
  - The subsidiary of a public company is deemed to be a public company.
  - Shares are freely transferable.
  - Minimum members = 7.
  - Maximum members = No limit.
- ✓ **Holding & Subsidiary Company:**
  - A subsidiary company is a company in which a holding company: -
    - controls the composition of Board of Directors; or
    - controls more than 50% of the total voting power, either on its own or together with one or more of its subsidiaries.
- ✓ **Associate Company:**
  - Control of at least 20% of the total voting power in another company, or
  - Control or participation in business decisions under an agreement.
- ✓ **Listed Company** = Company's securities are listed on a recognised stock exchange.
- ✓ **Unlisted Company** = A company other than a listed company.
- ✓ **Government Company:**
  - A company in which not less than 51% of the paid-up share capital is held by: -
    - the Central Government; or
    - the State Government or Governments; or
    - partly by the Central Government & State Government or State Governments.



✓ **Foreign Company:**

- Any company or body corporate incorporated outside India.
- Has a place of business in India in any manner.
- Conducts any business activity in India in any manner.

✓ **Section 8 Company:**

- Not-for-profit company.
- Objects to promote: Commerce, science, art, education, religion, sports, charity, environment protection, etc.
- Profits: Promotion of objects only + no dividend distribution.
- Power of Central Government to issue the license.
- Central Government may revoke the license on contravention of any provision.
- Privileges of a limited company.
- Need not use the word Pvt. Ltd./Ltd. in its name.
- A partnership firm can be a member.
- The minimum number of directors does not apply.
- Notice of general meeting of 14 clear days.
- Amalgamation only with the company having similar objects.
- Nomination & remuneration committee and shareholders relationship committee not required.

✓ **Dormant Company:**

- Formed for a future project/to hold an asset or intellectual property.
- Has no significant accounting transactions.
- May make an application to the Registrar for obtaining the status of a dormant company.
- **Inactive company** = No business operations + no significant accounting transactions + no filing of financial statements & annual returns + during the last two financial years.
- **Transactions not specified as significant accounting transactions** = Payment of fees to the Registrar + payment to fulfil the requirements of this Act or another law + allotment of shares + payment for maintenance of office & its records.

✓ **Nidhi Company:**

- A company which notified in the Official Gazette by the Central Government.
- Work for the mutual benefit of society.

✓ **Public Financial Institutions (PFI):**

- Life Insurance Corporation of India established under Life Insurance Corporation Act, 1956.
- The Infrastructure Development Finance Company Limited.
- Companies referred in Unit Trust of India (Transfer of Undertaking & Repeal) Act, 2002.
- Such other institutions notified by the Central Government in consultation with the RBI.
- Conditions for an institution to be notified as a PFI: -
  - Established or constituted by or under any Central or State Acts; or
  - at least 51% of the paid-up share capital is held by the Central Government or the State Government/s or partly by the Central Government & State Government/s.

✓ **Promoter:**

- A person named in the prospectus or identified by the company in the annual return; or
- Have control over the affairs of the company directly or indirectly as a shareholder or director; or
- On whose advice the Board of Directors of the company are accustomed to act.



- ✓ **Incorporation of the company:**
  - Filing of documents & information with the Registrar.
  - Issue of certificate of incorporation on registration.
  
- ✓ **Filing of documents & information with the Registrar:**
  - MOA & AOA – Signed by all subscribers.
  - Declaration: -
    - The person involved in formation – CA/CS/CMA/Advocate.
    - The person named in the articles – Director, manager or secretary.
  - An affidavit from subscribers & directors: -
    - Not convicted in the Companies Act, 2013.
    - No fraud under the Companies Act, 2013 in the last five years.
    - Information filed are accurate and best to the knowledge.
  - Address for communication until the registered office is established.
  - Personal details of subscribers: Name, Address, Nationality & Proof of Identity.
  - First directors' interest in other firms and consent letter from interested firms.
  
- ✓ **Issue of Certificate of Incorporation:** Issuance of certificate of incorporation by the Registrar after verifying & registering all the documents & information provided by the persons involved in incorporation.
  
- ✓ **Allotment of Corporate Identity Number (CIN):** From the date of receiving the certificate of incorporation, the Registrar shall provide the company with a corporate identity number, a distinct identity for the company.
  
- ✓ **Maintenance of copies of all documents & information:** The company shall maintain & preserve copies of all documents & information at its registered office until its dissolution.
  
- ✓ **Special points:**
  - If any person knowingly furnishes any false information or suppresses any material facts at the time of incorporation from the Registrar, such person shall be liable under Section 447.
  - If a company gets incorporated by furnishing any false information or suppressing any material fact, the promoters, the first directors & the persons making the declaration shall be liable under Section 447.
  
- ✓ **Order of the Tribunal:**

If a company gets incorporated by furnishing any false information or suppressing any material fact, the Tribunal may order for: -

  - Name removal; or
  - Winding-up; or
  - Unlimited liability; or
  - Change of MOA/AOA; or
  - Other orders.
  
- ✓ **National Company Law Tribunal (NCLT):**
  - A quasi-judicial body in India that adjudicates issues relating to companies in India.
  - Established under the Companies Act, 2013 and constituted on 1<sup>st</sup> June 2016.



- ✓ **Simplified Proforma for Incorporating Company Electronically (SPICE):** Process of filing of forms through electronic mode.
- ✓ **Effect of registration:** The company shall have all the features of a company incorporated under this Act.
- ✓ **Effect of Memorandum & Articles:**
  - ✓ Bind the company and its members.
  - ✓ Monies payable to members shall be a debt due to the company.
- ✓ **Types of capital:**
  - Authorised capital = Maximum capital of the company mentioned in the memorandum.
  - Issued capital = Capital issued by the company for the subscription.
  - Subscribed capital = Capital subscribed by the public + members of the company.
  - Paid-up capital = Total amount paid on shares issued.
- ✓ **Shares =** Share in the share capital of the company + stock + movable property + distinctive number.
- ✓ **Types of share capital:**
  - Equity Share Capital.
  - Preference Share Capital.
- ✓ **Equity Share Capital:**
  - All share capital, except preference share capital.
  - With voting rights.
  - With differential rights as to dividend & voting.
- ✓ **Preference Share Capital:**  
Carry preferential rights concerning: Payment of dividend + repayment of capital in case of winding-up + preferential right in surplus left after repayment of the entire capital.
- ✓ **Memorandum of Association (MOA):**
  - Base document for the formation of company + public document.
  - Constitution + Charter of the company.
  - Memorandum is drawn up according to Tables A, B, C, D & E in Schedule I of this Act.
  - Signed by at least seven persons (2 in private company & 1 in OPC) in the presence of at least one witness.
  - Details of signatories & witness – Name, Address, Occupation, etc.
  - A minor cannot be a signatory.
  - A guardian subscribing on behalf of a minor is deemed to have subscribed in a personal capacity.
  - The clauses of the memorandum are compulsory.
  - Clauses in Memorandum: Name Clause + Registered Office Clause + Object Clause + Liability Clause + Capital Clause + Association Clause.
- ✓ **Name Clause:**
  - Name of the company with the word "Limited" or "Private Limited".
  - Section 8 company includes words forum, foundation, association, trust, chambers, etc.
  - Name of the Government Companies – "Limited" & for One Person Company – "OPC" below its name.
- ✓ **Registered Office Clause:** The State in which the registered office of the company is situated.
- ✓ **Object Clause:**
  - The objects for which the company gets incorporated & other necessary matters.
  - If the company changes its activities, the name shall be changed within six months of the change in activities.

- ✓ **Liability Clause:** The liability of members, limited by shares or guarantee or unlimited liability.
- ✓ **Capital Clause:** The amount of authorized capital and number of shares with the subscribers.
- ✓ **Association Clause:** The name of the subscribers holding shares of the company.
- ✓ **Doctrine of Ultra Vires:**
  - Ultra Vires = Beyond powers.
  - Acts done by the company beyond its object clause are ultra vires.
  - Neither the company nor the person dealing with the company can sue each other on an ultra vires transaction.
  - Memorandum is a public document & it is deemed that the person knows about the powers of the company.
  - An ultra vires act cannot be ratified by the shareholders.
  - Leading case law: **Ashbury Railway Carriage and Iron Company Limited Vs. Riche (1875).**
- ✓ **Articles of Association:**
  - Rules & regulations for managing the internal affairs of the company.
  - Bye-laws of the company.
  - An auditor must study the articles while doing the auditing of a company.
  - Contains a provision for entrenchment (to protect something).
  - Articles are drawn up according to Tables F, G, H, I & J in Schedule I of this Act.
- ✓ **Provision for entrenchment in Articles of Association:**
  - Entrenchment shall be made either on the formation of the company; or
  - by an amendment in articles agreed by all the members of a private company or special resolution in a public company.
  - Registrar shall be informed through a notice by the company of provision for entrenchment.
- ✓ **Doctrine of Constructive Notice:**
  - Since a memorandum is a public document, it is implied that the person knows about the powers of the company.
  - A person is presumed to have knowledge of the memorandum & articles of the company.
  - A person has no right under a contract against the company on an ultra vires transaction.
- ✓ **Doctrine of Indoor Management:**
  - An exception to the doctrine of constructive notice.
  - Internal problems of the company are the company's problems.
  - The outsider is deemed to know that all the detailed formalities for authorising the transaction have been done by the company.
  - Leading case law: **The Royal British Bank Vs. Turquand.**
  - It is also called the Turquand rule.
- ✓ **Exceptions to the doctrine of indoor management:**
  - Actual or constructive knowledge of irregularity: The dealing with the company while having knowledge of the irregularity within the company.
  - Suspicion of irregularity: Duty of the outsider to make the necessary inquiry about the transaction.
  - Forgery: Forgery is regarded as a nullity & completely illegal.

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