

सफलता की कुंजी

CA-Foundation

*Containing Judicial cases,
Important Section's List*



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“JUDICIAL CASES FOR CA-FOUNDATION”**INDIAN CONTRACT ACT, 1872**

TOPIC	CASE
1. Legal Relationship	Balfour vs Balfour
2. General Offer	Carlill vs Carbolic Smoke Ball Company
3. Offer must be communicated to the offeree	Lalman Shukla vs Gouri Dutt
4. Display of Goods is an Invitation to Offer	Pharmaceutical Society of Great Britain vs Boots Cash Chemist Ltd
5. Advertisement for Auction is an Invitation to Offer	Harris vs Nickerson
6. Only Authorised person can accept offer	Powell vs Lee
7. The Acceptance must be communicated	Brodgen vs Metropolitan Railway Company
8. Consideration can be from the promisee or any other person	Chinnaya vs Rammaya
9. Third party cannot file a suit	Dunlop Tyre Company vs Selfridge
10. There must be natural love and affection to form contract without consideration	Rajlukhy Devi vs Bhoothnath
11. Agreement with a Minor is void	Mohiri Bibee vs Dharmodas Ghose
12. Consideration must be at the desire of the promisor	Durga Prasad vs Baldeo
13. Silence will amount to fraud (fiduciary relationship)	
14. punitive damages (wrongful dishonour of cheque)	Gibbons vs West Minister Bank
15. damages for physical discomfort	Hobbs vs London & SW Rail co
16. Athletic agreements are not wagering Agreements	Babasaheb v Rajaram
17. Special Damages	Simpson v London & New rail Co
18. Suit for Injunction	Warner Brothers v Nelson

SALE OF GOODS ACT, 1930

TOPIC	CASE
19. Sale by description as well as sample (Foreign refined oil)	Nicholas v Godts
20. Conditions as to quality and fitness for buyer's purpose (Buyer has not disclosed the purpose)	Andrew Yule & Co
21. Conditions as to quality and fitness for buyer's purpose (Buyer has not disclosed the abnormal conditions)	Griffith v Peter Conway Limited
22. Conditions as to wholesomeness (Stone in Bun)	Chaproniere v Mason
23. Implied Acceptance in case of Sale on Approval Basis	Kirkham v Attenborough
24. Sale by Non-owner (Sale by person in	Philips v Brooks

possession under voidable contract)	
25. ROSIT will come to an end if buyer takes the Possession	GIP Railway Co. v Hanumandas

COMPANIES ACT, 2013

TOPIC	CASE
26. Company is a separate legal entity	Salomon v Salomon & Co. Ltd
LIFTING OF CORPORATE VEIL	
27. Protection of Revenue	Sir Dinshaw Maneckjee Petitt
28. Fraud or improper conduct	Gilford Motor Co. Ltd V Horne
29. to determine character of the company	Daimler Co. Ltd. V Continental Tyre & Rubber Co. Ltd.
30. To avoid welfare of employees	Workmen Employed in Associated Rubber Industries Ltd. V Associated Rubber Industries Limited
31. Forming Subsidiary to act as Agent	Merchandise Transport Co vs British Transport Commission

Important Cases that must be remembered

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CHAPTER 1:-THE INDIAN CONTRACT ACT, 1872

BASICS

1. The Indian Contract Act, 1872, came into force on **1st September, 1872.**
2. The general principles of Law of Contract are contained in Sections 1 to 75 of the Indian Contract Act, 1872.
3. A 'contract' is defined in Section 2(h) in the words reading as "**an agreement enforceable by law is a contract.**"
4. A 'promise' is defined in Section 2(b) in the words reading as "**a proposal when accepted** becomes a promise."
5. An agreement which gives rise to moral or **social obligations only is not a contract.**
6. A valid contract is that which **is enforceable by law.**
7. A 'voidable contract' is defined in Section 2(j) in the words reading as "a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable."
8. An **implied contract is that which is not made in words**, but comes into existence on account of act or conduct of the parties.
9. The consent of the party **is not said to be free** when it is caused by coercion, undue influence, fraud, misrepresentation of facts and mutual mistake of fact.
10. An agreement with a party who **is not competent to contract is void.**
11. An agreement the **meaning of which is uncertain** is void.
12. An agreement to do an **act impossible in itself** is void.

OFFER & ACCEPTANCE

1. An 'offer' or 'proposal' is legally defined in Section 2(a) in the words reading as "**When one person signifies to another his willingness to do or abstain** from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."
2. The offer is completed only when it **has been communicated to the offeree**, and until the offer is communicated, it cannot be accepted.
3. The offer need not be made to a specific person. An **offer made to the world at large is also valid.**
4. The principle of an offer made to the public at large was recognised by the courts in the leading case of **Carlill v. Carbolic Smoke Ball Co.**
5. The **offeror may revoke his offer** by a speedier mode of communication which reaches the acceptor **before he posts his acceptance.**
6. Where the time is fixed for acceptance, the offer lapses (i.e., comes to an end) **if not accepted within the fixed time.**
7. Where no time is fixed for acceptance, the offer lapses (i.e., comes to an end) **if not accepted within a reasonable time.**
8. Counter offer **amounts to rejection of original offer.**

CONSIDERATION

1. The consideration is legally defined in Section 2(d) in the words reading as "When at the desire of the promisor, the promisee or any other person has done or abstained from doing something, such act or abstinence or promise is called a consideration for the promise."
2. As a general rule, an **agreement made without consideration is void** except in case of natural love and affection
3. The consideration **must move at the desire of the promisor.**
4. The consideration **need not be adequate**, but it must be of some value in the eyes of law.
5. The consideration may be **past, present or future**
6. Under the **English Law**, past consideration is not regarded as good consideration
7. A promise to pay for **past voluntary services is valid** even if there is no consideration.

8. Consideration is **not required for creation of agency.**
9. As per the rule of privity of contract, **a stranger to a contract cannot sue.**
- 10. A stranger to consideration can sue.**
11. There are certain **recognised exceptions** to the rule that a stranger to a contract cannot sue like family settlements, assignment, Contract of trust

CAPACITY TO CONTRACT

1. The capacity to contract **means competence of the parties** to enter into a valid contract.
2. Minors, persons of unsound mind and persons disqualified by law are **not competent** to contract.
3. An agreement, by or with a party not competent to contract, **is void.**
4. An agreement with a minor is a **void ab initio** i.e., void from the very beginning.
5. An agreement, entered into by a person during his minority, **cannot be ratified by him** on attaining the age of majority.
6. A contract which is **beneficial to minor can be enforced** by him.
7. A minor cannot become a partner in a partnership firm, but can **be admitted to the benefits** of an existing firm.
8. A minor is not personally liable for the necessities supplied to him. The supplier of necessities can **claim reimbursement from minor's property**, but not personally from the minor.
9. A person who is usually of unsound mind, but **occasionally of sound mind may make a contract** when he is of sound mind.
10. An agreement with a person of unsound mind is void.
11. An **idiot cannot enter into a valid contract** as his incapacity is permanent.
12. **Alien enemies, insolvents and convicts are disqualified by law** from entering into a valid contract.

FREE CONSENT

1. The consent is legally defined in Section 13 in the words reading as “two or more persons are said to consent when they agree upon the **same thing in the same sense.**”
2. For the creation of a valid contract, there must be **consensus ad idem** i.e., meeting of the minds.
3. The ‘free consent’ is defined in Section 14, and the **consent is not free** when it is caused by coercion, undue influence, fraud, misrepresentation and mistake.
4. In cases where consent is obtained by coercion, undue influence, fraud and misrepresentation, the **contract is voidable.**
5. The consent obtained by any **act forbidden by the Indian Penal Code (IPC)** amounts to consent by coercion whether or not IPC is in force in the place where the act amounting to coercion is committed.
6. The threatening act amounting to coercion **may be initiated by any person or even a stranger.**
7. The contract influenced by coercion is **voidable** at the option of the party whose consent is obtained by coercion.
8. Undue influence means the **unfair use of one's superior position** in order to obtain the consent of a person who is in a weaker position.
9. A contract with a **person in mental distress** raises the presumption of domination of will.
10. A contract with a **pardanashin woman raises** the presumption of undue influence.
11. The most important requirement of fraud is that the misstatement of facts must be made by one party with the **intention to deceive the other party.**
12. As a general rule, **mere silence not fraud.**
13. Silence amounts to fraud in three cases, (a) where the party is under the **duty to speak**, (b) where silence is **equivalent to speech**, (c) marriage (d) Insurance (e) Share Allotment (f) fiduciary relation
14. The **misrepresentation is the innocent** i.e., unintentional misstatement of facts.
- 15. The intention of making a false statement is the important point that distinguishes between fraud and misrepresentation. In case of fraud, false statement is intentional, whereas in case of misrepresentation, it is unintentional.**

16. A bilateral mistake of **fact renders the agreement void.**
17. A **unilateral mistake of fact does not affect** the validity of the agreement.

LAWFUL OBJECT & CONSIDERATION

1. An agreement with **unlawful object or consideration is void.**
2. Where both the consideration and object of an agreement is partially unlawful and it can not be severed from the agreement **whole agreement is void.**
3. If unlawful part can be severed from the other lawful part of an agreement, **Lawful part is valid.**
4. Any agreement which is against the interest of the public or harmful to the society **is an agreement against public policy.**

VOID AGREEMENT

1. An agreement not enforceable by law is void. In the public interest, some of the agreements have been expressly declared to be void under the Act.
2. Any agreement in **restraint of marriage of a person**, other than minor is void.
3. Every agreement by which any person is **restrained from exercising a lawful profession**, trade or business of any kind is void.
4. **Wagering agreements have been declared to be void.** However, an agreement to subscribe towards and plate, prize or a sum of money of ` 500 /more to be awarded to the winner of any horse race, is not unlawful. Contract of insurance, Chit fund, Athletic Competitions, Share Purchase is not a wager

PERFORMANCE OF CONTRACT

1. Performance of contract:-It is the performing of all the promises and **fulfilling all the obligations** by all the parties as per the term of the contract.
2. Actual performance:-when **both the parties to a contract perform their promises** and nothing remains to be done in future by them.
3. Attempted performance:-**when tender or offer of performance of goods/ services is not accepted** or rejected by the promisee, In such situation the promisor is discharged from his obligation.
4. Contract can be performed by the **parties personally, through agent, representative or third party.**
5. In case of joint promise:-**promisee may compel any of the joint promisors** to perform unless otherwise agreed by the parties. If any of the joint promisor has paid more than his share, he can recover the excess from other joint promisor or his estate (in case of insolvency/death)
6. Where no time for performance of contract:-The contract must be performed **within a reasonable time.**
7. Where time is essence:-Failure to perform the contract at an agreed time will amount to a breach of condition of the contract and **will be voidable.**
8. Reciprocal promises- Where **one promise form the consideration/** part of consideration for each other.
9. Any agreement which is discovered to be void or a contract which becomes void, there **any person who received an advantage must restore it** or pay compensation for damages in order to put the position prior to contract.

DISCHARGE OF CONTRACT

1. Performance of contract leads to discharge of contract.
2. There are other alternative methods of discharge where a contract would not require performance These circumstances are (i) **novation**, (ii) **rescission**, (iii) **alteration** and (iv) **remission. A contract may also be discharged by agreement of the parties or by lapse of time** for performance or by operation of law, or **impossibility of performance** or by breach of contract.

3. A contract is discharged by impossibility of its performance.
4. Impossibility may be of two types
 - (i) **Initial Impossibility**-existed at the time of making the agreement.
 - (ii) **Subsequent or supervening impossibility**-arises after formation of contract.
5. The contract becomes void when the performance of the **contract becomes impossible**.
6. Doctrine of frustration applies in the case of **supervening impossibility**, where the performance of contract has become impossible, and where the object of the contract has failed.
7. This doctrine does not apply where the performance simply **becomes difficult/commercially impossible/failure by third party/failure of one of the object/Strike, lock-outs**

BREACH OF CONTRACT

1. The 'breach of contract' means the **failure of a party to perform his obligations** under the contract, and it is of two kinds, namely (a) actual breach, and (b) anticipatory breach.
2. Actual breach of contract occurs when, **on the due date of performance** or during the performance, a party fails to perform his obligations.
3. Anticipatory breach of contract occurs when **prior to the due date of performance**, the promisor absolutely refuses or disables himself from performing his obligations.
4. In case of anticipatory breach of contract, the aggrieved party **may either treat the contract as discharged or may bring an immediate action for damages**, or may treat the contract as operative and wait till the time of performance of contract.
5. The special damages are recoverable only if the **special circumstances were in the knowledge** of the parties at the time of making of the contract.
6. Punitive damages are allowed in case of **loss of reputation** (wrongful dishonour of cheque) or **Mental Agony** (Breach of promise to marry)
7. There is **no financial loss** in Punitive damages or Nominal damages.
8. The **remote or indirect damages are not recoverable**.
9. In both the cases of 'liquidated damages' and 'penalty', compensation is decided at the **time of formation of contract**
10. An amount of compensation fixed for breach, which is **disproportionate to the damages** which may result on breach, is known as penalty.

QUASI & CONTINGENT CONTRACT

1. "A contingent contract is a contract to do or not to do something **if some event, collateral to such contract, does or does not happen.**"
2. A contingent contract is **a valid contract**.
3. In simple words, a contingent is a contract which is dependent on the happening or non-happening of **future uncertain event**.
4. A contingent contract, dependent upon the **happening of impossible event, is void**.
5. A contract of **life insurance is a contingent contract**.
6. The quasi contractual obligations are based on the equitable principle of nemo debet locupletari ex aliena jactura i.e., **no person shall enrich himself at the expense of another**.
7. Quasi contracts are legal obligations **enforceable in the court of law like valid contracts**.
8. A person **supplying the necessities to an incompetent person is entitled to be reimbursed** from the property of such person on the basis of quasi contractual obligations under Section 68.
9. A person who **makes payment, which is the legal duty of another person, is entitled to be reimbursed** on the basis of quasi contractual obligations under Section 69.
10. The finder of goods has the **same responsibilities as that of a bailee**.
11. Where a true owner cannot be found/if goods are of perishable nature/the **finder of goods can sell the goods** found.

CHAPTER 2:-THE SALE OF GOODS ACT, 1930

BASICS

1. Initially the Sale of Goods Act, 1930 was a part of the **Indian Contract Act, 1872**.
2. This Act is applicable to whole of India **including the State of Jammu and Kashmir**.
3. Sale of Goods Act is **applicable to movable goods** other than actionable claims and money.
4. Contract of Sale of Goods is a contract whereby the **seller transfers or agrees to transfer the property** in goods to the buyer for a price.
5. Goods means **every kind of movable property** other than actionable claims and money.
6. **Old coins** which are not current money can be treated as goods.
7. In a contract of **sale of property in goods passes immediately** whereas in the case of agreement to sell the property in goods passes sometime in future.
8. Property means **general property in goods** and not merely special property in goods.
9. Goods identified and agreed upon at the time of making contract of sale are called **specific goods**.
10. Goods not identified and agreed upon at the time of making contract of sale are called **unascertained goods**.
11. Goods which are to be manufactured/produced or acquired by the seller after making the contract of sale are called **future goods**.
12. In case of **contingent goods**, their acquisition is contingent upon a contingency which may or may not happen.
13. In a contract of sale **parties are free to fix the price** in any manner they feel like. It can be provided in the contract itself or manner provided in the contract or determined by the course of dealing between the parties or by third party.
14. **Third party can also fix the price**. If failed, contract will become void and buyer shall pay reasonable price.
15. In case of destruction after agreement to sell but before sale, then **seller shall bear the loss** as he is the owner

CONDITION & WARRANTY

16. **Condition** refers to those Stipulations which are essential to the very nature of the contract.
17. **Breach of condition** give the aggrieved party right to repudiate the contract and can claim the price and damages.
18. **Warranty** is a stipulation collateral to the main purpose of the contract, the breach of which gives right to claim damages but **not to repudiate the contract**.
19. Conditions and warranties can be **implied or expressed**.
20. Condition as to title, condition as to description, condition in a sale by sample, condition as to wholesomeness, conditions as to quality and fitness for buyer's purpose and condition as to merchantability etc are **implied conditions**.
21. Condition as to title says seller must have valid ownership of goods. In sample, the quality in bulk must correspond to sample. In description, Goods must correspond with the description given by seller and wholesomeness applies in case of food items.
22. Condition as to quality and fitness as per the buyer's purpose states that **seller will not be liable** if
(a) if buyer has not stated his purpose (b) buyer has purchased goods on brand name (c) if buyer has not disclosed abnormality
23. Quiet possession, freedom from encumbrance, disclosing dangerous nature of goods etc are **implied warranties**.
24. Caveat emptor means **buyer be aware**.

- 25. Under the Caveat Emptor **buyer is expected to take utmost care** and diligence while purchasing the goods and the seller is not bound to disclose defects in the goods.
- 26. In case of breach of any condition, Doctrine of caveat Emptor will not apply and seller will be liable.

TRANSFER OF OWNERSHIP

- 27. **Risk is associated with ownership** of goods.
- 28. **Seller can sue for price only** when property in goods has passed on to the buyer.
- 29. In case of Unascertained Goods, Ownership will be transferred **if goods are ascertained and unconditionally appropriated to the buyer.**
- 30. Unconditional appropriation means the Seller has not reserved the right of disposal with himself.
- 31. **Generally, the owner alone can transfer the property** in goods.
- 32. **Nemo dat quod non habet** means that no one can give what he himself does not have.
- 33. The doctrine of Nemo dat quod habet seeks to protect the interest of real owner.
- 34. **A non owner can make valid transfer of property** in goods in the case of sale by a mercantile agent, sale by joint owner, sale by seller in possession of goods after sale, sale by a person in possession of goods under a voidable contract, sale by unpaid seller and sale by finder of lost goods etc.
- 35. **A mercantile agent** is one who has in the customary course of his business as such agent, authority to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of the goods.

DELIVERY OF GOODS

- 36. **Voluntary transfer of possession** of goods from one person to another is called delivery of goods.
- 37. Delivery of goods can be **actual, symbolic and constructive.**
- 38. When goods **are physically handed** over by the seller to the buyer it is called actual delivery.
- 39. Symbolic delivery occurs by doing some act, which has the effect of putting the goods in the possession of the buyer. **Delivery of the keys to a godown** or warehouse is symbolic delivery.
- 40. Change in possession of goods **without any change in their actual and visible custody**, which has the effect of delivery, is called Constructive delivery.
- 41. All expenses incidental to delivery are **born by the seller.**
- 42. All expenses incidental to taking delivery are **born by the buyer.**

UNPAID SELLER

- 43. A person to whom the whole of the price has not been paid or when a bill of exchange or other instrument has been received but which has been dishonored is **called an unpaid seller.**
- 44. **Unpaid seller** has right of lien, stoppage of goods in transit, resale, sue for price, sue for specific damages, sue for interest etc.
- 45. **Right of Lien** can be exercised if seller is unpaid and possession is with the Unpaid Seller
- 46. **Right of stoppage of goods in transit** can be exercised if seller is unpaid, buyer became insolvent and possession is with the Independent Carrier.
- 47. **Unpaid Seller can resell the goods** only after providing notice of resale to the original buyer in case of perishable goods and can only recover loss if notice is provided
- 48. If a finder of lost goods could not trace the owner or the owner refuses to pay the lawful charges of the finder, the finder can resell the goods when the thing is perishable or when his lawful charges for finding the owner amount to 2/3rd of value of goods.
- 49. A pawnee may under certain circumstances sell the goods pledged to him on giving the pawnor reasonable notice of the sale

AUCTION SALE

- 50. **Auction sale is a public sale** where advertisement is an invitation to offer, bid amounts to offer and fall of hammer is acceptance
- 51. A minimum price is fixed is called **reserve price**. A bid lower than that will be invalid.
- 52. **Auctioneer is the agent of seller** who can also accept lower bid if he wishes. Bidder can always withdraw the bid before fall of hammer



CHAPTER 3:-THE INDIAN PARTNERSHIP ACT, 1932

INTRODUCTION

1. The legal provisions relating to partnerships are contained in the Indian Partnership Act, 1932 which extends to the **whole India including Jammu & Kashmir**.
2. The term 'partnership' is legally defined as: "Partnership is the relation between persons who have agreed to share the profits of a **business carried by all or any of them acting for all.**"
3. The minimum number of persons required to form a partnership is **two**.
4. The maximum number of partners **should not exceed 50**.
5. If the number of partners exceeds the prescribed limit then, **it becomes an illegal association**.
6. The partnership **comes to existence only by an agreement** and not by status or operation of law.
7. A **company can become a partner** in a firm as it is regarded as a person in the eyes of law.
8. The **true test of the existence of partnership is mutual agency**.
9. A partnership firm is a collection of partners, it has **no separate legal entity** apart from its partners.
10. A partnership **cannot be formed** between two partnership firms.
11. A partnership where the duration of the firm is not fixed or in which no provision is made about dissolution, is known as **a 'partnership at will'**.
12. Section 30 of the Indian Partnership Act, 1932, deals with the position of a minor partner in the firm, and as per this section a **minor maybe admitted only to the benefits** of an existing firm.
13. A **minor cannot become a partner in a new firm**, he can only be admitted to the benefits of an existing firm.

REGISTRATION OF PARTNERSHIP FIRMS

1. The **registration of the firms is not compulsory** under the Indian Partnership Act, 1932. However, it is advisable to get the firm registered as an unregistered firm faces certain disabilities.
2. A partnership firm maybe registered at the time of **its formation or at any time after** the formation by filling up an application for the registration with the Registrar of Firms.
3. An **application for registration must be signed by all the partners** or by their agents specially authorised in his behalf.
4. The registration is complete and effective from the date when the Registrar files statements and **makes entry in the Register of Firms**.
5. The effects or disabilities of non-registered firms are:
 - a) The **partners cannot file a suit** against the firm or other partner.
 - b) The **firm cannot file suits** against third parties.
 - c) The partners of the firm **cannot claim a set-off** in a suit filed against them if the claim of set-off exceeds the value of `100.
 - d) The **third party can file a suit** against the firm even if it is not registered.

RELATION OF PARTNERS

1. Every partner of the firm has **the right to take part** in the management of the business of the firm.
2. Every partner of the firm has **the right to be consulted** on all matters affecting the business of the firm.
3. Every partner of the firm **has the right to examine all the records, books and accounts** of the firm, and also to have copies of such accounts.
4. In the absence of any agreement, the partners are **entitled to share the profits equally**.
5. In the absence of any agreement, the partners are **not entitled to receive any interest on capital** contributed by them. And if such interests are to be paid, they shall be paid only out of the profits.
6. In absence of an agreement, a partner is entitled **to interest @ 6% per annum on the loan** advanced to the firm such interest is payable even if the firm suffers losses.
7. Every partner of the firm **should act in good faith**, and this duty of good faith cannot be excluded by an agreement to the contrary.

8. In the absence of any specific agreement, a **partner is not entitled to receive any remuneration** from the firm for taking part in the affairs of the firm.
9. If some loss is caused to the firm due to fraud of a particular partner, then it is the **duty of the guilty partner to indemnify the firm**. It is the absolute duty and cannot be excluded by an agreement to the contrary.

RECONSTITUTION & DISSOLUTION OF FIRMS

1. A **partner can be admitted** in an existing firm only **with the consent of all partners**.
2. On the solvency of a partner, **the insolvent ceases to be a partner** of the firm whether the firm is dissolved or not.
3. A partner may retire from an existing firm in three ways, namely, (a) **with the consent of all** the partners, (b) in accordance with an **express agreement** (c) by giving a **written notice** of retirement to all partners, where partnership is at will.
4. A partner may be expelled from the firm only if, (a) the power is given to partners by **express agreement** (b) the power is exercised in **good faith** by the majority of partners. (good faith means consent of majority of partners, in interest of firm and a notice shall be provided to the expelled partner)
5. There is **no need to provide public notice** in case of death or insolvency of partner.
6. On death of Partner, **his estate shall be liable for the acts done before his death**.
7. The 'dissolution of partnership' may or may not result in the dissolution of firm, **but dissolution of firm necessarily means the dissolution of partnership**.
8. The firm is compulsorily dissolved in two cases, namely (a) where all the partners of the firm have **become insolvent** (b) where the business of the firm has **become unlawful**.
9. A firm can be dissolved by a notice of dissolution by a member only where the partnership firm is '**at will**'.
10. The **grounds for filing a petition** for dissolution in the court, as provided in Section 44, are (a) insanity of a partner, (b) permanent incapacity of a partner (c) misconduct of a partner (d) persistent breach of agreement, (e) transfer of interest, (f) perpetual losses in business, (g) other just and equitable grounds.
11. If public notice of dissolution of the firm is not given, the **partners shall be liable to third parties** for acts of the firm done even after the dissolution of the firm.
12. A retiring sleeping partner, an insolvent partner and representative of a deceased partner **are not liable for the acts of the firm done after dissolution** even if the public notice of dissolution is not given.
13. The assets sold will be utilised in **repayment of debt of third parties**, then towards **repayment of loan** of partners, then **repayment of capital** and then the **surplus will be distributed** among partners in PSR

CHAPTER 4:-LLP ACT, 2008

BASICS

1. LLP is a **“body corporate”** formed and incorporated under LLP Act;
2. LLP is **legal entity separate** from its partners and has perpetual succession. The LLP, unlike a partnership firm, has contractual capacity and can enter into contracts, hold property in its name and can sue and be sued in its name.
3. **Two or more partners are required** to form an LLP. Any individual or a body corporate can be a partner in an LLP.
4. In case if individual is a partner, he should not be –
 - a) found to be of **unsound mind**; or
 - b) an **undischarged insolvent**; or
 - c) a person **who has applied to be adjudicated as insolvent** and the application is pending
5. If the number of partners of a LLP falls below two and the LLP carries on business **for more than six months**, the only partner in such case shall be liable personally for the obligations of LLP incurred during that period.

DESIGNATED PARTNERS

1. LLP shall have **at least two “designated partners” [DP]** who are individuals and at least **one of them shall be “resident in India”**.
2. In case one or more of the partners of an LLP are bodies corporate **at least two individuals who are partners** of such LLP or nominees of such bodies corporate shall act as “designated partners”.
3. “Resident in India” means a person who has stayed in India for **minimum 120 days** during the immediately preceding 1 year.
4. Designated partner **is responsible for compliance** with the provisions of LLP Act.
5. Designated Partner is required to **obtain Designated partner Identification Number [DPIN]** from the Central Government.
6. An LLP may **appoint a DP within 30 days of a vacancy** arising for any reason and if no DP is appointed, or if at any time there is only 1 DP, each partner shall be deemed to be a DP.

INCORPORATION

1. Applicants are first required to file the application for reservation of name with the Registrar of Companies [ROC]. Once the name applied is approved by the ROC, it will be **reserved for 3 months**.
2. An application along with Incorporation document and Certificate shall be provided to ROC which will **issue a certificate of incorporation in next 14 days**.

REGISTERED OFFICE

1. LLP shall have **a registered office**.
2. In case of change of registered office, LLP shall **file the notice of change** with the Registrar.
3. In case of change outside State, **Public Notice and consent of secured creditor** must be required

NAME

1. Name of every LLP shall end with the words **“Limited Liability Partnership” or “LLP”**.
2. Name which is **undesirable or identical or too nearly resembles** to that of any other LLP or company or registered trade mark of any other person under the Trade Marks Act, 1999 (47 of 1999) **is not allowed**
3. No person shall carry on business under any name/title which contains the words “Limited Liability Partnership” or “LLP” **without duly incorporating** it as LLP under the LLP Act.
4. LLP is required **to file with the ROC, the LLP agreement** ratified by all the partners within 30 days of incorporation of LLP.

5. If name of LLP is identical to trademark, then on an application of such LLP, company or proprietor, the CG may direct such LLP to change its name **within 3 months** from the date of order.
6. An application of the proprietor of the registered trade mark shall be maintainable **within a period of 3 years** from the date of incorporation or registration or change of name of the LLP
7. When LLP changes its name or obtains a new name, **it shall within 15 days from the date of change give notice to Registrar** along with the order of the Central Government. LLP shall change its name in the LLP agreement within 30 days of change in the certificate of incorporation
8. Every LLP shall ensure that **its invoices, official correspondence and publications** bear name, registered office address, registration number and a statement that it is registered with limited liability.

PARTNERS AND THEIR RELATIONS AND EXTENT OF LIABILITY

1. Every partner shall inform the LLP of any change in his name or address within a period of 15 days
2. The LLP must file a notice with Registrar within 30 days from the date of such change or admission or cessation of partner.
3. Mutual rights and duties of partners and LLP and its partners shall be governed **by an agreement** and in absence of agreement, the mutual rights and duties shall be governed **by the LLP Act**.
4. Every partner of an LLP is, for the purpose of the business of LLP, **the agent of LLP**, but not of other partners.
5. LLP, being a separate legal entity, shall be liable to the full extent of its assets whereas the **liability of the partners of LLP shall be limited** to their agreed contribution in the LLP.
6. **LLP is not bound** by anything done by a partner in dealing with a person if –
 - a) the partner in fact has no authority to act for the LLP in doing a particular act; and
 - b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP
7. **LLP is liable** if the partner of an LLP is liable to any person for wrongful act/omission on his part in the course of business of LLP/**with its authority**.
8. Obligation of LLP whether arising in contract or otherwise, shall solely be the obligation of LLP. Liabilities of LLP **shall be met out of properties of LLP**.
9. **Partner is not personally liable** for the obligations of LLP solely by reason of being a partner of LLP.
10. **No partner is liable for the wrongful act or omission of any other partner** of LLP, but the partner will be personally liable for his own wrongful act or omission.
11. In case of **fraud**,
 - a) The liability of the LLP and partners **shall be unlimited** for all or any of the debts or other liabilities of the LLP.
 - b) Similarly, if the partners/designated partner/employees of LLP who conduct the affairs of LLP in a fraudulent manner, shall be **liable to compensate** loss or damage by reason of such conduct.
 - c) Every person who is guilty shall be punishable with imprisonment for a **maximum term of 5 years** and with fine which shall not be less than **Rs.50,000 and may extend to Rs.5 Lacs**.
12. Cessation of a partner on grounds like resignation, death, dissolution of LLP, declaration that a person is of **unsound mind, declared/applied to be adjudged as insolvent**, etc.
13. On cessation, Partner can demand his share of profit and property but **cannot interfere** in the conduct of business.

AUDIT/FINANCIAL DISCLOSURES

1. LLP shall maintain the prescribed books of account relating to its affairs on **cash or accrual basis** and according to the **double entry system** of accounting and **prepare Statement of Account** and Solvency within 6 months from the end of the financial year
2. The accounts of every LLP are required to be audited, except in following situations:
 - a) Turnover does not exceed **Rs. 40,00,000** in any financial year; or
 - b) Contribution does not exceed **Rs. 25,00,000**
3. LLP are required to file following documents with the ROC

- a) **Statement of Account and Solvency (e-Form 8)**, within **30 days** from the end of 6 months of the financial year;
- b) **Annual Return (e-Form 11)** within **60 days** from the end of the financial year

WINDING UP

- ✚ The **limited liability partnership decides** that LLP be wound up by the Tribunal;
- ✚ If partners are **less than two** for a period of more than six month
- ✚ if the limited liability partnership is **unable to pay its debts**;
- ✚ if the limited liability partnership has **acted against the interests of the sovereignty and integrity of India**, the security of the State or public order;
- ✚ if the LLP has **not filed Form 8/Form 11 for 5 consecutive financial years**; or
- ✚ if the Tribunal is of the opinion that it is **just and equitable** that the LLP be wound up.

DEFINITIONS

1. SMALL LLP:-It means a limited liability partnership

(i) the contribution of which, does not exceed **twenty-five lakh rupees**

(ii) the turnover for the immediately preceding financial year, does not exceed **forty lakh rupees**

2. "FINANCIAL YEAR":-Period from the **1st day of April of a year to the 31st day of March** of the following year:

*In the case of a limited liability partnership incorporated after the 30th day of September of a year, the financial year may end on the **31st day of March of the year next following that year.***

3. "FOREIGN LIMITED LIABILITY PARTNERSHIP":-means a limited liability partnership formed, **incorporated or registered outside India which establishes a place of business within India.**

CHAPTER 5:-COMPANIES ACT, 2013

APPLICABILITY

This Act shall apply to Company Incorporated under this Act/Previous Company Law, Banking Company, Insurance Company, Electricity Companies, Company Registered under any Special Act and Body Corporate notified by the Central Government

CORPORATE VEIL

- Meaning of Corporate Veil:-**The concept of separate legal entity lays that there is a veil between the company and its members which **means that the company is a legal entity distinct from its members**. Veil means a concealing curtain i.e., a cloak which hides the members. Through veils, members cannot be seen.
- Meaning of lifting of Corporate Veil:-**Lifting of Corporate Veil means ignoring the separate identity of a company, It means **disregarding the corporate responsibility** and looking behind the real persons who are in the control of the company.
- Corporate Veil has been lifted by the Court on the following grounds
 - To protect Revenue/Tax:-**SIR DINSHAW MANECKJEE PETIT**
 - To determine Character of the Company:-**DAIMLER COMPANY LTD. VS CONTINENTAL RUBBER & RUBBER COMPANY**
 - Misconduct/Breach of Contract:-**GILFORD MOTOR CO. VS HORNE**
 - Check Avoidance of Welfare Legislation:-**WORKMEN EMPLOYED IN ASSOCIATED RUBBER INDUSTRIES LTD. VS ASSOCIATED RUBBER INDUSTRIES LIMITED**
 - Floating subsidiaries to act as Agents:-**STATE OF UP VS RENU SAGAR POWER CO. LTD.**

DEFINITIONS

PRIVATE COMPANY	PUBLIC COMPANY
1. Share Capital:-No Limit 2. The Articles shall provide the following conditions: - Transfer of Shares is Restricted - Public Offer is Prohibited - Maximum Members can be 200. <i>While counting the number of 200, the present & past employees who are members shall be excluded and Joint shareholders will be counted as one member</i>	1. Share Capital:-No Limit 2. Which is not a private company i.e. - Transfer of Shares is freely permissible - Public Offer is Permitted - There is no limit on number of Members <i>Subsidiary Company of Public Company will always be considered as Public Company</i>
OTHER SIGNIFICANT POINTS - Minimum directors in a private company are 2 - Private Company shall add the words "Private Limited" at the end of its name - If Private Company is a subsidiary of Public Company, then it shall be deemed as Public Company	OTHER SIGNIFICANT POINTS - Minimum directors in a public company are 3 - Public Company shall add the words "Limited" at the end of its name - If Private Company is a subsidiary of Public Company, then it shall be deemed as Public Company
HOLDING COMPANY [SEC 2(46)]	LISTED COMPANY
Any Company of whose other Companies are the Subsidiary or Associate Companies	Listed company means a company which has any of its securities listed on any recognised stock exchange.
SUBSIDIARY COMPANY [SEC 2(87)]	ASSOCIATE COMPANY [SEC 2(6)]
A Body Corporate in which Holding Company:- - Exercises or controls more than half of the total voting power; or - Controls the composition of Board of Directors	- It means a company in which any Company is having "Significant Influence" - It includes a Joint Venture Company
Notes:- The Composition of Board shall be deemed to be controlled if any company can appoint or remove all or majority of the	Notes:- - Significant Influence means Control of at-least 20% of Total Voting Power or business decisions. - Joint Venture means an arrangement where both the

directors. 2. If a company is subsidiary company of any company and that company is also a subsidiary of any other Company, then the first mentioned company shall be deemed to be subsidiary of last mentioned company.	parties have right over the net assets of the Company.
GOVERNMENT COMPANY [SEC 2(45)] ✚ It means any company in which not less than fifty one per cent of the paid-up share capital is held by CG/SG/CG+SG ✚ It also includes a company which is a subsidiary company of such a Government company.	FOREIGN COMPANY [SEC 2(42)] It means any company or body corporate incorporated outside India which:- - has a place of business in India whether by itself or through an agent (physically or e-mode); and - conducts any business activity in India
SMALL COMPANY [SEC 2(85)] A Private Company or OPC whose a) Max. Paid-up Capital is 4 crores ; and b) Max. Turnover is 40 Crores Small Company shall not include any Subsidiary /Holding/Non Profit Co./Co. formed under Special Act	COMPANY LIMITED BY GUARANTEE [SEC 2(21)] It means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.
COMPANY LIMITED BY SHARES [SEC 2(22)] It means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.	UNLIMITED COMPANY [SEC 2(92)] It means a company not having any limit on the liability of its members.
NIDHI COMPANY (SEC 406) “Nidhi” means a company which has been incorporated as a Nidhi by the Central Government for regulation of such class of companies.	PUBLIC FINANCIAL INSTITUTION [SEC 2(72)] LIC, IDFC LTD., Specified Company as per UTI Act, 2002 and Institution notified by CG CG can notify if Instit. established under Central/State Act or whose 51% capital is held by CG/SG/CG+SG.
DORMANT COMPANY (SEC 455) 1. Where a company is formed for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or 2. An inactive company may make an application to the Registrar for obtaining the status of a dormant company	
A COMPANY WITH CHARITABLE OBJECT (SEC 8) 1. Three basic conditions must be satisfied - The object of the company is to promote art, science, commerce, sports, research, charity, religion or protection of environment or such other similar businesses. - Profit or other income of the company shall be utilized in promotion of their objects Dividend to members is prohibited. 2. CG can revoke the license if Company violates object, provisions, acted against object, done fraud or acted against public interest. 3. After revocation, CG can order conversion, Amalgamation or Winding up of Company.	
ONE PERSON COMPANY - A person can become Member and Nominee if he is a Natural Person, a major, should be a Resident & citizen of India - Any Person should have stayed in India for at least 120 days in the preceding Financial Year - Nominee can withdraw his consent by giving notice to member and OPC. - The name of nominee must be stated in MOA - In that case, new nominee shall be appointed within 15 days.	

INCORPORATION OF COMPANY

- To incorporate a company, Subscribers must file documents with the ROC and ROC will issue a certificate of Incorporation and will issue a Corporate Identity Number

2. In case of false disclosure, person shall be liable u/s 447 and NCLT can direct change in MOA/AOA, Can declare Member's liability Unlimited, Can ask ROC to remove name of the Company, Can Pass Winding-up order

MOA & AOA

1. MOA shall contain Name of Company, the State in which the registered office of the company is to be situated, objects, Liability of Members, the amount of share capital with which the company is to be registered and the number of shares which the subscribers to the memorandum agree to subscribe & In the case of One Person Company, the name of the person who in the event of death of the subscriber shall become the member of the company.

2. AOA is a document which **contains Rules and regulations** of Company

3. DOCTRINE OF ULTRA VIRES:-Ultra means **beyond or in excess of and vires means powers**. Thus ultra vires means an act or transaction beyond or in excess of the powers of the company. An act which is ultra vires the company is void and of no legal effect. Neither the company nor the other contracting party derives any right under an ultra vires contract. **(Ashbury railway carriage & Iron Company Ltd v Richie)**

4. DOCTRINE OF CONSTRUCTIVE NOTICE:-Once registered the memorandum and articles become public documents. Therefore, **every person dealing with the company is presumed to have read the memorandum and articles**. Further, it is presumed that he has understood the provisions of memorandum and articles correctly i.e. the right sense.

5. DOCTRINE OF INDOOR MANAGEMENT:-As per this doctrine, **outsiders dealing with the company are not required to enquire into internal management** of the company. **(Royal British Bank v Turquand)**.

The Benefit of this doctrine will be available only if

- ✓ Outsider have read the Memorandum and Articles
- ✓ Outsider have acted in good faith
- ✓ Outsider have made reasonable inquiry in case of doubt over management of company
- ✓ The transaction is intra vires 'the company'

SHARE CAPITAL

1. Share means a **share in the share capital** of a company and includes stock.

2. The Shares or Debentures or other interest of any member in a company **shall be movable property**

3. Every share in a company having a share capital shall be distinguished by **its distinctive number:**

4. Share are Equity (with equal rights or with differential rights) or Preference

5. Authorised capital or Nominal capital means such capital as is authorised by the memorandum of a company to be the **maximum amount of share capital** of the company.

6. Issued capital means such capital as the **company issues** from time to time for subscription.

7. Subscribed capital means such part of the capital which is for the time **being subscribed** by the members of a company.

8. Called up capital means such part of the capital, **which has been called** for payment.

9. Paid up share capital or share capital paid-up means such **aggregate amount of money credited** as paid-up as is equivalent to the amount received as paid up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company.

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