

## COMMERCIAL LAWS

### I. PARTNERSHIP LAW

#### The Indian Partnership Act, 1932

- a. Nature of Partnership Firm**
- b. Rights /Duties of Partners inter se**
- c. Incoming and Outgoing Partners, Position of Minor**
- d. Dissolution and Consequences**

#### **a. Nature of Partnership Firm**

Partnership is a type of business organization, where at least two people combine for mutually carrying on some business. It is an improvement over the 'Sole – trade business', where one single individual with his very own assets, expertise and exertion carries without anyone else business. Because of the limitation of assets of just a solitary individual being engaged with the sole-trade business, a larger business requiring a larger number of investments and assets than available to a sole-trader, cannot be thought of in such a type of business organization. In partnership, then again, a number of people could pool their assets and endeavors and could start a lot larger business, than could be afforded by any of these partners individually. In case of misfortune the burden gets separated amongst various partners in a Partnership.

#### **Definition of Partnership:**

*Section 4 of the Indian Partnership Act ,1932 defines 'Partnership' as under:*

‘Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all’

#### **Essentials of Partnership**

According to Section 4, the following essentials are necessary to constitute a ‘Partnership’.

1. There should be an agreement between the persons who wants to be partners.
2. The purpose of creating partnership should be carrying on of business
3. The motive for the creation partnership should be earning and sharing profits.
4. The business of the firm should be carried on by all of them or any of them acting for all, i.e., in mutual agency

When all the above elements are present in certain relationship that is known as ‘partnership’.

Persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm' and the name under which their business is carried on is called the 'firm name'.

### **PARTNERSHIP NOT CREATED BY STATUS**

The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

The Section 5 of the Partnership Act, give that, "the relation of partnership arise from contract and not from status". In this way, partnership can just arise because of a contract between the parties and not from status. In this way, when an individual agrees with another to share the benefits of a business, to be carried on by them together, the partnership arising from such agreement is said to be result of contract. Joint or co-ownership does not itself create partnership whether the proprietor does or not share any benefits made by the utilization of the thing possessed. Partnership is necessarily the aftereffect of agreement. Co-ownership isn't the consequence of contract.

EXAMPLE: Husband and spouse are co-owners of the house but they are not partners. Although the lease will be shared equally between them, it is just matrimonial right given by law. If they made an agreement to do business of hotels and inns from their home and to share the benefits equally from such business their husband and spouse are partners of such business. In particular Myanmar Buddhist husband and spouse carrying on business are not partners. Similarly, the members of a Hindu undivided family carrying on business are not partners.

### **DETERMINING EXISTENCE OF PARTNERSHIP**

In deciding if a gathering of people is or is anything but a firm, or whether an individual is or isn't a partner in a firm, regard shall be had to the real relation between the parties, as appeared all relevant facts taken together.

The sharing of benefits or of gross returns arising from property by people holding a joint or normal enthusiasm for that property does not of itself make such individual, partners.

The receipt by an individual of a share of the benefits of a business, or of a payment dependent upon the earning of benefits or varying with the benefits earned by a business, does not itself

make him a partner with the people carrying on the business; and, in particular, the receipt of such share or payment:

- By a loan specialist of cash to people engaged or about to engage in any business (b) by a servant or agent as remuneration
- By the widow or offspring of a deceased partner, as annuity
- By a past proprietor or part-proprietor of the business, as consideration for the sale of the goodwill or share thereof, does not of itself make the recipient a partner with the people carrying on the business.

### **Criteria of Partnership**

Any two or beyond what two people can combine for creating Partnership. Section 11 of the Companies Act, 1956 forces limit as to maximum number of people in a partnership to carry:

- Banking Business: There can be maximum of 10 people
- Any other Business Purpose: There can be maximum of 20 people.

If the number of members in any association surpasses the limit stated above, that must be enlisted as a company under Companies Act, 1956 generally that will be viewed as an illegal association.

As against partnership, where the maximum number of partners can be 10 or 20, relying upon the nature of partnership business, there could be possibly a lot larger number of members in a company:

- Private Company: There can be maximum of 50 members
- Public Company: There is no such cutoff to the maximum number.

In this way, if a lot larger business than could be afforded by just 10 or 20 people, is tried to be carried on, a company works-out to be better type of business organization than partnership. For instance, there could be a public company having 1,00,000 members, each one of them having contributed just Rs.10, and in this way having a capital of Rupees 10,00,000 for its business. A Company, as a type of business organization may be better than a partnership in another way also. It is an artificial individual, unmistakable from its members, and has any longer life than that of a partnership, whereas the partnership being only an aggregate of all the partners, partnership has a lot smaller span of life than a company. On account of a Company, the liability of a member/shareholder is restricted to the degree of the number of shares purchased by him, whereas in case of Partnership, the liability of each partner is boundless,

and this factor is of great advantage in case of a Company, from the perspective of danger of speculators in the business.

### **Advantage of Partnership over A Company**

- For the creation of partnership only an agreement between various people is all what you require. In case of a company a great deal of procedural formalities which have to be experienced before a company is created.
- The partners are their very own masters for regulating their affair. A company is subject to a great deal of statutory control.
- For disintegration of partnership, a minor agreement between the partner is sufficient but that isn't the case of a company which can be ended up by simply after certain arrangement of methodology is pursued.
- Since all the benefits are to be took by the partners in a partnership firm, there is a great motivating force for the partners to make business effective but that isn't in case of a company.
- In a Partnership, the people who have gone into are individually called partners and all things considered a firm. A partnership firm does not have a separate legal personality. A company is a legal entity not quite the same as its members.
- A partnership firm means all the partners set up together, if all the partners cease to be partners, e.g., all of them bite the dust or become insolvent, the partnership firm gets broke up. A company being an individual not quite the same as the members, the members may travel every which way but the company's life isn't affected thereby.
- The shareholder of a company can transfer his share to anybody he enjoys but a partner cannot substitute another individual in his place except if all different partners agree to the same. Similarly, on the death of a member of a company his legal representatives will venture into his shoes with the end goal of the rights in the company, but on the death of a partner his legal representatives don't get substituted in his place of partnership.
- The base number of members in partnership in two and maximum in case of partnership carrying on banking business is 10 and in case of any different business is 20. In the case of a private company the base number is 2 and the maximum is 50 whereas on account of a public company the base number ought to be 7 but there is no restriction to the maximum number and along these lines, any number of people can hold shares in a public company.

- The liability of the members of a company is restricted but the liability of the partners is boundless.

## **PARNETSHIP AGREEMENT**

### **Importance of a Partnership Agreement**

A Partnership Agreement is a voluntary contract between at least two people to go into a business relationship between or among each other with the goal of carrying out the said business and sharing its benefits/misfortunes among themselves as agreed to in the archive.

The parties to the agreement are alluded to as Partners. The Partners agree to put all their capital, labor and skills towards achieving maximum gains from the endeavor. A Partnership Agreement will also explain the manner in which it may be disintegrated and should be marked and pursued by each of the Partners.

A Partnership Agreement is characterized as being an arrangement that is agreed to by all parties to the transaction and is an effectual technique for pushing each of the partners to:

- Agree to share a dream to collaborate together
- Set up mutually acceptable goals
- Specify the basis on which to begin cooperating
- Make beyond any doubt that each of the partners are clear about what should be achieved
- Assess the viability of the agreement
- Bring out issues related to accountability and responsibility
- Lay a solid foundation that can sail through troubles and testing times ahead

A partnership should begin small and gradually expand. It ought to be developing from year to year with annual audits along the way to consistently improve it. There is no hard and fast way of working out a Partnership Agreement but face to face exchanges among partners, indicating special issues and setting these down recorded as a hard copy before actually drafting them into the archive are some advantageous preliminary advances worth after. The record, and any changes thereto, ought to be formally approved and marked by all the partners and dated.

The Partnership Agreement should begin with the name of the business as well as the nature of the business. The rule place of business ought to be to the address of the place of business. The date when the arrangement was made between the Partners and the term of its operation should be expressly laid down in the agreement.

The amount of capital that the Partners will put resources into the business will be held in a separate capital account and neither of the Partners will be able to withdraw any cash from it. And, finally each individual capital account will be maintained as per the benefit sharing capabilities of the Partners as put forward in the agreement.

The income statement of the partnership shall be made individually in the names of each Partner and the benefits/misfortunes will be shared as per the terms agreed to by each individual. Partnership benefits or misfortunes will be charged to the individual income accounts of the Partners. Partners are not qualified for draw any salary, but may draw upon their income accounts for any monies required as characterized in the partnership agreement.

### **Elements of a Partnership Agreement**

- There must be an agreement gone into by all the people concerned
- The agreement must be to share the benefits of business
- The business must be carried on by all or any of the people concerned, acting for all.

Examples:

- A and B buy 100 bales of cotton, which they agree to sell for their shared service. A and B are partners in regard of such cotton
- A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners
- A agrees with B, a goldsmith, to buy and outfit gold to B, to be taken a shot at by him and sold, and that they shall share in the subsequent benefit or misfortune. An and B are partners.

### **Partnership Agreement: Oral, Written or By Conduct**

The Supreme Court has, understanding the arrangements of section 4, observed that a partnership agreement is the wellspring of a partnership, and it also offers expression to different fixings characterizing the partnership, determining the business agreed to be carried on ,the people who will actually carry on the business , the shares in which the benefits will be partitioned , and several different considerations which comprise such an organic relationship. A partnership agreement in this way, recognizes the firm and each partnership agreement may establish a particular and separate partnership. That isn't to say that a firm is corporate entity or appreciates a juristic personality in that sense. Be that as it may, each partnership is an unmistakable relationship. The partners may be unique and yet the nature of the business may

be the same, the business may be extraordinary and yet the partners may be the same. The goal may be to comprise two separate partnerships and thusly, two unmistakable firms, or to expand only a partnership, originally established to carry on one business, to the carrying on of another business. The expectation of the partners should be chosen with reference to the terms of the agreement and all the encompassing circumstances, including proof as to the interlacing or interlocking of management, finance and, different occurrences of the particular business.

Agreement of partnership need not to be expressed, but can be gathered from the course of conduct of the parties to the agreement. The firm guideline is that once the parties going into the partnership are clearly described in the instrument, there is no degree for further request to discover by some procedure or casuistry, if any of the parties has got obligation to others to induct those others to whom any of the parties may be accountable in law, into the arena of partnership and for treating them as partners under the law. In the event that, the parties to an agreement have not agreed on the date of initiation of the partnership, it cannot be said that they have become partners.

*Precedent:*

The Supreme Court, in ***Tarsem Singh v. Sukhminder Singh***<sup>1</sup>, has held that it is not necessary under the law that every contract must be in writing. There can be an equally binding contract between the parties on the basis of oral agreement, unless there is a law which requires the agreement to be in writing.

The relations, among the promoters of a company, are not the same as the relations between partners. Persons entering into contract are not, on the authority of ***Keith Spicer Ltd v. Mansell***<sup>2</sup>, necessarily to be viewed as partners. However, if they perform a large number of acts as part of the promotion, the court might come to a different conclusion.

### **Construction of Partnership Agreement**

It is settled canon of construction that a contract of partnership must be read all in all and the expectation of the parties must be gathered from the language utilized in the contract by adopting harmonious construction of all the clauses contained in that. The cardinal rule is to

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<sup>1</sup> AIR 1998 SC 1400.

<sup>2</sup> 1970 1 All ER 462.

ascertain the expectation of the parties to the contract through the words they have utilized, which are critical to open the psyche of the makers. It is only from time to time that any technical pedantic principle of construction can be brought to bear on their construction. The directing standard really is to ascertain the natural and ordinary sensible meaning to the language through which the parties have expressed themselves, except if the meaning leads to absurdity. A partnership deed must be built reasonably.

### **b. Rights /Duties of Partners inter se**

The mutual relations between the partners of a firm appears through an agreement between the said partners. This offers ascend to mutual right and obligations to each partner engaged with the firm's business. Area 9 to 17 of the Indian Partnership Act of 1932 lays down the arrangements administering the mutual relations of all the partners. These relations are administered by a current contract among them which may be implied or expressed by the course of dealing. The agreement may vary contingent upon the assent of all the partners. In this article, we take a gander at the various rights and obligations for partners in a partnership firm in detail.

### **Rights of a Partner**

Given below are the rights of a partner in a partnership firm:

**Right to take part in the conduct of the Business - Section 12(a)**

All the partners of a partnership firm have the right to take part in the business directed by the firm as a partnership business is a business of the partners, and their management powers are generally coextensive. On the off chance that the management intensity of a particular partner is meddled with and the individual has been improperly blocked from participating, the Court of Law can mediate under such circumstances. The Court can, and will, restrain the other partner from doing as such by directive. Different cures are a suit for disintegration, a suit for accounts without looking for disintegration and so on for a partner who has been improperly denied of the right to participate in the management.

### **Right to be consulted - Section 12(c)**

At the point when a distinction of any sorts arises between the partners of a firm concerning the business of the firm, it shall be chosen by the perspectives on the majority among the

partners. Each partner in the firm shall have the right to express his sentiment before the choice is made. Be that as it may, there can be no changes like the business of the firm without the assent of all the partners included. As a standard matter, the conclusion of the majority of the partners will prevail. Although, the majority standard would not apply when there is a change like the firm itself. In such situations, the unanimous assent of the partners is required.

#### *o Right of access to books - Section 12(d)*

Each partner of the firm, regardless of being an active or a dozing partner, is qualified for have access to any of the books of the partnership firm. The partner has the right to investigate and

take a duplicate of the same whenever required. In any case, this right should be practiced bonafide.

### **Right to remuneration - Section 13(a)**

No partner of the firm is qualified for get any remuneration along with his share in the profits of the business by the firm because of taking part in the business of the firm. Although, this standard may always vary by an express agreement, or by a course of dealings, in which case the partner will be qualified for remuneration. In this way, a partner may claim remuneration even in the absence of a contract, when such remuneration is payable under the proceeded with usage of the firm. In more straightforward words, where it is customary to pay remuneration to a partner for directing the business of the partnership firm, the partner may claim it even in the absence of a contract for the payment of the same.

### **Right to share profits - Section 13(b)**

Partners are qualified for share all the profits earned in the business equally. Similarly, the misfortunes sustained by the partnership firm is also equally contributed. The amount of a partner's share must be ascertained by inquisitive whether there is an agreement in that behalf among the partners. In the event that there is no agreement, at that point it tends to be assumed that the share of benefit is equal and the burden of demonstrating that the shares are unequal, will lie on the party alleging the same. There is no relation between the extent in which the partners shall share the profits and the percentage in which they have contributed to the capital of the partnership firm.

### **Interest on capital - Section 13(c)**

In the event that a partner subscribes interest on capital is payable to the partner under the partnership deed, at that point the interest will be payable out of the profits just in such a case. In a general standard, the interest on a capital subscribes by partners isn't allowed except if there is an agreement or a usage with that impact. The basic rule in this arrangement of law is that with worry to the capital brought by a partner in the business, the partner isn't a creditor of the firm but an adventurer.

The accompanying components must be guaranteed before a partner can be qualified for interest on the capital brought by the partner in the business:

- An express agreement to the same impact or the practice of a particular partnership.
- Any trade custom with that impact; or
- A statutory arrangement which qualifies him for such interest on the capital.

#### *o Interest on advances - Section 13(d)*

On the off chance that a partner makes an advance to the partnership firm in addition to the amount of capital to be contributed by him, the partner is qualified for claim interest

subsequently at 6 percent for every annum. While the interest on capital account ceases to keep running on disintegration, the interest on advances continues pursuing even disintegration and up to the date of payment. It very well may be noticed that the Partnership Act makes a refinement between the capital contribution of a partner and the advance made by him to the firm. The advance by the partner is regarded as loans which should bear interest while the capital interest takes interest just when there is an agreement with this impact.

- *Right to be indemnified - Section 13(e)*

All the partners of the firm have the right to be repaid by the firm in regard of the payments made and the liabilities caused by him in the ordinary and legitimate lead of the business of the firm. This also incorporates the performance of an act in a crisis for shielding the firm from a misfortune, if the payments, liability and action are, for example, a reasonable man would make, bring about or perform in his case, under similar circumstances.

- *Right to stop the admission of another partner - Section 31*

All the partners of a partnership firm have the right to keep the presentation of another partner in the firm without the assent of all the current partners.

- *Right to retire - Section 32(1)*

Each partner of a partnership firm has the right to withdraw from the business with the assent of all different partners. On account of a partnership shaped voluntarily, this may be finished by giving a notice with that impact to all different partners.

#### Right not to be expelled - Section 33

Each partner of a partnership firm has the right to proceed in the business. A partner cannot be expelled from the firm by any majority of the partners except if presented by a partnership agreement and practiced in accordance with some basic honesty and for the advantage of the partnership firm.

- *Right of outgoing partner to carry on a competing business - Section 36(1)*

A partner outgoing from the partnership firm may carry on a business contending with that of the firm. The partner may even advertise such activity but has to do as such without utilizing the firm's name or speaking to himself as carrying on the business of the firm or requesting

the customers who were dealing with the firm before the partner ceased to be a part of the partnership firm.

○ *Right of outgoing partner to share subsequent profits - Section 37*

On the off chance that a partner has passed away or ceased to be a partner and the current partners carry on the business of the firm with the property of the firm with no final settlement of accounts as between them and the outgoing partner or his estate, the outgoing partner or his estate has, at his or his representative's alternative, the right to such share of benefit made since he ceased to be a partner as may be attributable to the utilization of his share of the property of the firm or interest at 6% PA on the amount of the partner's share in the property of the firm.

○ *Right to dissolve the firm - Section 40*

A partner of a partnership firm has the right to dissolve the partnership with the assent of all different partners. Nonetheless, where the partnership is freely, the firm may be dissolved by any partner by pulling out recorded as a hard copy to all different partners of his expectation to dissolve the firm.

### **Duties of a Partner**

The following are the duties of a partner in a partnership firm.

General duties of a partner - Section 9

Partners are legally bound to carry on the business of the partnership firm. The general responsibilities of a partner are recorded below:

- A partner is required to carry on the business to the most astounding normal advantage.
- A partner is required to be simply and faithful to each other
- A partner has to render to any other partner or his legal representative about the genuine account and all the information of all the things affecting the partnership firm.

To reimburse for fraud - Section 10

According to Section 10, a partner of the partnership firm is liable to compensate the firm for any damages caused to its business or the firm because of a partner's fraud in the direct of the business of the firm.

- *To reimburse for willful neglect - Section 13(f)*

According to the Section, a partner of a partnership firm should compensate the firm for any damages or misfortune caused to it by resolved neglect in the lead of the business of the firm.

To attend duties persistently without remuneration - Section 12(b) and Section 13(a)

According to Section 12(b) of the Indian Partnership Act, each partner is legally bound to attend to his duties persistently to his duties relating to the direct of the firm's business. In addition, Section 13(a) enumerates that a partner isn't, in any case, generally qualified for remuneration for participating in the direct of the business. A partner is also bound to give his partners a chance to have the advantage of his insight and expertise.

- *To share losses - Section 13(b)*

All the partners of a partnership firm are liable to contribute equally to the damage sustained by the firm.

- *To account for any benefit - Section 16(a)*

In the event that a partner of a partnership firm infers any benefit for himself for any transaction of the firm or from the utilization of the property or business association of the firm or firm's name, at that point the partner is bound to account for that benefit and refund it to the firm.

- *To account and pay for profits of competing for business - Section 16(b)*

In the event that a partner carries on a company of the same nature as the firm and contends with that of the firm, the partner must be accountable for and pay to the firm all the profits made in the business by the partner. The partnership firm won't be held liable for any losses caused in the business.

### **c. Incoming and Outgoing Partners, Position of Minor**

## **INCOMING AND OUTGOING PARTNERS – Section 31**

### **INTRODUCTION OF A PARTNER**

- Subject to contract between the partners and to the arrangements of area 30, no individual shall be brought as a partner into a firm without the assent of all the current partners.

- Subject to the arrangements of area 80, an individual who is brought as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner. Section 32

### **RETIREMENT OF A PARTNER**

- A partner may retire:

- I. with the assent of all the other partners
- II. in accordance with an express agreement by the partners
- III. where the partnership is freely, by pulling out recorded as a hard copy to all different partners of his aim to retire

- A resigning partner may be discharged from any liability to any outsider for acts of the firm done before his retirement by an agreement made by him with such outsider and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such outsider and the reconstituted firm after he had information of the retirement. -

Notwithstanding the retirement of a partner from a firm, he and the partners keep on being liable as partners to outsiders for any act done by any of them which would have been an act of the firm whenever done before the retirement, until public notice is given of the retirement. Provided that a retired partner isn't liable to any outsider who deals with the firm without realizing that he was a party.

- Notices under sub-area 3 may be given by the retired partner or by any partner of the reconstituted firm

### **EXPULSION OF A PARTNER**

- A partner may not be expelled from a firm by any majority of the partners, save in the activity in accordance with some basic honesty or forces presented by contract between the partners

- The arrangements of sub-segments 2, 3 and 4 of segment 32 shall apply to an expelled partner as on the off chance that he was a retired partner.

### **INSOLVENCY OF A PARTNER**

- Where a partner in a firm is adjudicated a ruined, he ceases to be a partner on the date on which the request of adjudication is made, regardless of whether the firm is thereby dissolved

- Where under a contract between the partners, the firm isn't dissolved by the adjudication of a partner as a ruined, the estate of a partner so adjudicated isn't liable for any act of the firm

and the firm isn't liable for any act of the wiped out, done after the date on which the request of adjudication is made.

### **LIABILITY OF ESTATE OF DECEASED PARTNER**

Where under a contract between the partners, the firm isn't dissolved by the death of a partner, the estate of a deceased partner isn't liable for any act of the firm done after his death.

### **RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS**

An outgoing partner may carry on a business contending with that of the firm and he may advertise such business, but subject, to contract to the contrary, he may not:

- use the firm-name
- represent himself as carrying on the business of the firm
- solicit the custom of people who were dealing with the firm before he ceased to be a partner

### **AGREEMENT IN RESTRAINT OF TRADE**

A partner may make an agreement with his partners that on ceasing to be a partner he won't carry on any business similar to that of the firm inside a predefined period or inside determined local points of confinement; and, notwithstanding anything contained in segment 27 of the Indian Contract Act, 1872, such agreement shall be valid if the limitations forced are reasonable.

### **Rights of a Minor Partner**

When the minor is given the benefits in a partnership there are certain rights that he appreciates. Below are the rights of a minor partner.

- A minor partner will obviously have the right to his share of the profits of the firm. But the minor partner isn't liable for any losses beyond his interests in the firm. So a minor partner's personal assets cannot be liquidated to pay the firms liabilities.
- He can also like any other partner investigate the books of accounts of the firm. He can demand a duplicate of the books as well.
- If necessary he can sue any or all of different partners for his share of the profits or benefits.

- A minor partner on attaining majority has the right to become a partner of the firm. He has a half year from attaining majority to choose on the off chance that he will execute this right. Regardless of whether he chooses to become a partner or not he should give public notice about the same.

### **Retirement of a partner**

Sections 32 to 37 give the manner in which individual ceases to be a partner and his rights and liabilities which stream from this.

A partner ceases to be a partner:

- With the assent of all different partners
- By exercise of the ability to resign presented upon him under an express agreement
- By giving a written notice of retirement in case of partnership voluntarily
- By a choice of ejection by majority of the partners in the activity in compliance with common decency of forces gave upon them by contract.

An active partner is able for the past acts of the firm, except if there is a contract to the contrary between him, the remaining partners and the outsider. Public notice must be given of the retirement, generally the active partner and the firm keep on being liable as before.

### **d. Dissolution of A Partnership Firm**

Sections 39 to 44 of the Partnership Act deal with the ways in which a firm may be broken down. The dissolution of a partnership between all the partners of a firm is called the dissolution of the firm. Necessary dissolution Under section 41, a firm is obligatorily broken down when all the partners or all but one are adjudicated insolvent or when the business of the firm becomes illegal. Where a firm carries on at least two businesses, separate and unmistakable from each other, the firm is broken down just in regard of the unlawful business. Unforeseen dissolution Under section 42, the dissolution of the firm relies on the happening of certain possibilities, except if there is a contract to the contrary. Accordingly, a firm comprised for a fixed term is disintegrated by the expiry of that term. A firm is also broken down by the death of a partner or his adjudication as an insolvent. Partnership freely Under section 43, a partnership voluntarily is broken down when a partner pulls out recorded as a hard copy to different partners with this impact. The firm is broken down as from the date referenced in the notice or in its absence from the date of its communication.

Dissolution by court Under section 44, the court may, at the suit of a partner break down the firm on the accompanying grounds:

- That a partner has become of unsound personality, in which case the suit may be brought as well by the following companion of the partner who has become of unsound personality as by any other partner
- That a partner, other than the partner suing, has become in any capacity permanently incapable of playing out his obligations as partner
- That a partner, other than the partner suing, is liable of conduct which is probably going to affect prejudicially the carrying on of the business, regard being had to the nature of the business
- That a partner, other than the partner suing, unshakably or constantly submits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or generally so conducts himself in matters relating to the business that it isn't reasonably practicable for different partners to carry on the business in partnership with him
- That a partner, other than the partner suing, has in any capacity transferred the entire of his enthusiasm for the firm to an outsider, or has allowed his share to be charged under the arrangements of section 49 of section 21 of the principal calendar to the Code of Civil Procedure, 1908 or has allowed it to be sold in the recuperation of arrears of land income or of any contribution recoverable as arrears of land income due by the partner
- That the business of the firm cannot be carried on save at a loss
- Any other ground which renders it just and equitable that the firm ought to be broken up

Sections 45 to 55 deal with post-dissolution problems, that is, liability for acts of partners done after dissolution, right of partners to have business ended up after dissolution, proceeding with authority of partners for motivations behind wrapping up, settlement of accounts, personal benefits earned after dissolution, return of premium, utilization of firm name and sale of goodwill on premature dissolution.

## II. LAW OF SALE OF GOODS

### The Sale of Goods Act, 1940

- a. Definitions, Distinction between Sale and Agreement to Sale
- b. Conditions and Warranties
- c. Passing of Property
- d. Rights of Unpaid Seller and Remedies for Breach of Contract

### **a. Definitions, Distinction between Sale and Agreement to Sale**

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer at a cost. Contract of sale is made when there is an offer to buy or sell goods at a cost and the acceptance of such offer is also there. It tends to be made recorded as a hard copy or by overhearing people's conversations, or partly recorded as a hard copy and partly by mouth. The term contract of sale is a conventional term, which incorporates:

- (a) Sale and (b) Agreement to sell

### **SALE AND AGREEMENT TO SELL**

#### ***Sale***

- Where under a contract of sale, the property (ownership) in the goods is transferred from the seller to the buyer, it is called a sale
- Thus, sale takes place when there is a transfer of ownership in goods from the seller to the buyer
- A sale is an executed contract

#### ***Agreement to sell***

- Agreement to sell means a contract of sale under which the transfer of property in goods is to take place at a future date or subject to certain conditions thereafter to be satisfied

### **Distinction Between Sale and Agreement to Sell**

<b><i>Sale</i></b>	<b><i>Agreement to Sell</i></b>
<ul style="list-style-type: none"> <li>- A sale is an executed contract</li> <li>- Since the ownership has passed to the buyer, the seller can sue the buyer at the cost</li> </ul>	<ul style="list-style-type: none"> <li>- It is an executory contract</li> </ul>

<p>of the goods, if the latter makes a default in payment</p> <ul style="list-style-type: none"> <li>- In case of loss of goods, the loss will fall on the buyer, despite the fact that the goods are in the ownership of the seller. It is because the hazard is associated with ownership</li> <li>- In case the buyer pays the cost and the seller thereafter becomes insolvent, the buyer can claim the goods from the official beneficiary or assignee as the case may be</li> </ul>	<ul style="list-style-type: none"> <li>- In case of breach, the seller can sue for damages, except if the cost was payable at a stated date</li> <li>- The loss in this case shall be borne by the seller, despite the fact that the goods are in the ownership of the buyer</li> <li>- In this case, the buyer cannot claim the goods, but just a rate-able dividend for the cash paid</li> </ul>
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## Formation of the Contract

### *Contract of Sale*

A 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 cash consideration, called the cost. There may be a contract of sale between one-part proprietor and another. A contract of sale may be absolute or conditional. Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to-be satisfied the contract is called an agreement to sell. An agreement to sell becomes a sale when the time elapses or the conditions are satisfied subject to which the property in the goods is to be transferred. Capacity to buy and sell is regulated by the general to buy and sell. law concerning capacity to contract, and to transfer and acquire property: Provided that where necessities are sold and conveyed to an infant, or minor, or to an individual who by reason of mental incapacity or tipsiness is inept to contract he should pay a reasonable cost therefor. Necessities in this section mean goods suitable to the condition in life of such infant or minor or other individual, and to his actual prerequisites at the time of the sale and conveyance.

### **Subject Matter of Contract**

- The goods which structure the subject matter of sale may be either existing goods, claimed or controlled by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called "future goods"

- There may be a contract for the sale of goods, the acquisition of which by the seller, relies on a possibility which may or may not happen
- Where by a contract of sale the seller purports to affect a present sale of future goods, the contract operates as an agreement to sell the goods. The goods which structure the subject of a contract
- Where there is a contract for the sale of specific goods, and the goods without the learning of the seller have died at the time when the contract is made, the contract is void
- Where there is an agreement to sell specific goods and subsequently the goods, with no fault on the part before sale, buyer, the agreement is thereby avoided.

### **ESSENTIAL ELEMENTS OF A CONTRACT OF SALE**

- *Two parties*: there must be 2 unmistakable parties for example a buyer and a seller, to affect a contract of sale and they should be able to contract. 'Buyer' means an individual who buys or agrees to buy goods Section 2(1). 'Seller' means an individual who sells or agrees to sell goods Section (13).
- *Goods*: there must be a few goods the property in which is or is to be transferred from the seller to the buyer. The goods which structure the subject-matter of the contract of sale must be movable. Transfer of immovable property isn't regulated by the Sale of Goods Act.
- *Value*: Price is an essential element for all transactions of sale and in the absence of the cost or the consideration, the transfer isn't regarded as a sale. The transfer by way of sale must be in exchange at a cost. It has been held that cost normally means cash. The cost can be paid completely in cash or it very well may be partly paid and partly promised to be paid in future. The cost can be fixed by the agreement between the parties before the conveyance of the property.
- *Transfer of general property*: There must be a transfer of general property as recognizes from special property in goods from the seller to the buyer. Example: if A claims certain goods he has general property in the goods. In the event that he promises them with B, B has special property in the goods.

- *Essential elements of a valid contract:* All essential elements of a valid contract must be available in the contract of sale.

### **Suit for price**

- Where under a contract of sale the property in the goods has passed to the buyer and the buyer unfairly ignores or will not pay for the goods according to the terms of the contract, the seller may sue him at the cost of the goods.
- Where under a contract of sale the cost is payable on a day certain regardless of delivery and the buyer improperly dismisses or will not pay such value, the seller may sue him at the cost although the property in the goods has not passed and the goods have not been appropriated to the contract.

### **Obligations of the buyer**

- Duty to accept the goods and pay for them in exchange of ownership
- Duty to apply for conveyance of goods
- Duty to demand conveyance at a reasonable hour
- Duty to accept installment conveyance and pay for it
- Duty to take danger of deterioration in the course of transit
- Duty to intimate the seller where he rejects the goods
- Duty to take conveyance
- Duty to pay the cost
- Duty to pay damages for renunciation

### **Unpaid Seller**

The seller of goods is regarded to be an "unpaid" seller:

- When the entire of the cost has not been paid, or offered
- When a bill of exchange or other negotiable instruments has been gotten as conditional payment
- The conditions have not been satisfied by reason of the dishonor of the instrument or something else

### **Rights of Unpaid Seller**

Notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller, has, by implication of law:

- A lien on the goods for cost while he is in control of the debt
- In case of bankruptcy of the buyer a right of ceasing the goods in transit
- A right of resale

## **EFFECT OF DESTRUCTION OF GOODS**

Goods perishing before making of contract (Section 7): A contract for the sale of specific goods is void if at the time when the contract was made, the goods have, without the learning of the seller, died. The same would be where the goods become so damaged as never again to answer to their portrayal in the contract.

Goods perishing after the agreement to sell but before the sale is affected (Section 8): An agreement to sell specific goods becomes void if subsequently the goods, with no fault with respect to the seller or the buyer, die or become so damaged as never again to answer to their depiction in the agreement before the hazard passes to the buyer, 'Fault' means unjust act or default

### **b. Conditions and Warranties**

#### **"Condition" Under Sale of Goods Act**

A Condition shapes the center of the contract for example considered as an essential to the main motivation behind the contract. In this way, the repercussion would be repudiation of the contract or claim for damages or both relying on the breach and case. Breach of a Condition makes a contract voidable with respect to non-defaulting party to the contract. Notwithstanding, a Warranty is treated as a collateral to the main reason for a contract and thusly, the repercussions of breach of warranty by one of the parties would be just a claim for damages by the non-defaulting party.

A breach of Warranty by one of the parties does not make the contract a contract voidable and does not give any right to the non-defaulting party to repudiate the contract. The same position is further, clarified by section 59 of Sale of Goods Act, which gives that when there is a breach of warranty by the seller, this breach does not give the buyer the right to breach the contract, he may just sue the seller for breach of Warranty in decrease or eradication of the cost. Regardless of whether a particular stipulation in the contract is a Condition or a Warranty, relies upon the case to case.

A breach of warranty by one party cannot be treated as one of breach of condition, nonetheless, a breach of a Condition by one of the parties to the contract can be treated as a breach of Warranty. The Sale of Goods Act accommodates the situations when a breach of a Condition by one of the parties can be treated as breach of warranty under a contract of sale of goods. Those situations being:

- When the buyer himself waives the Condition, which offers right to the buyer to repudiate the contract on breach of that particular stipulation
- When the buyer treats the Condition as a Warranty and does not repudiate the contract on the basis of such breach
- Where the contract is non-severable and the buyer has accepted either the entire goods or any part under the contract
- Where the law itself pardons the satisfaction of a Condition

### **EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES**

Terms of a contract of sale of goods can be both express or implied. At the point when a stipulation (Condition or Warranty) is expressly given in the contract of sale of goods, it is considered as express stipulation. Then again, when the contract does not expressly accommodate an express Condition or Warranty, be that as it may, due to the nature of the contract or aim of the party there is presence of a Condition or Warranty in the nature, it is known as implied Condition or Warranty. The Sale of Goods Act gives arrangements to express and implied Conditions and Warranties.

### **IMPLIED CONDITIONS**

Section 14 of the Sale of Goods Act states that, “*an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass*”, which means that it is an implied condition that the seller of a good has the right to sell it or has the right to transfer the title of the property.

Terms of a contract of sale of goods can be both express or implied. At the point when a stipulation (Condition or Warranty) is expressly given in the contract of sale of goods, it is considered as express stipulation. Then again, when the seller's title to the property ends up being defective or the seller does not have the right to transfer the property to the buyer, it gives the right to the buyer to repudiate the contract of sale of goods and to claim the cash from the seller in addition to damages, assuming any. A seller can possibly sell or transfer the

mistreatment of the property when he is the genuine proprietor of the property or has the right to transfer the property.

The Sale of Goods Act also accommodates situations when goods are sold by portrayal for example there is a contract of sell the goods by portrayal given. In such situations, it is an implied condition that the goods sold to the buyer should match the portrayal given about the goods. In the event that the goods don't match with the depiction given, in such cases the buyer can repudiate the contract making the contract voidable at the alternative of buyer. The buyer cannot be constrained to accept the goods when the goods sold are not in accordance to the portrayal gave.

Where goods are to be sold to the buyer according to the sample as well as the depiction given. Be that as it may, if the goods sold to the buyer matches or are in accordance to the sample but are not as per the portrayal given, the buyer can repudiate the contract on the breach of such stipulation. In such situations, the need of goods sold to the buyer to be as per the sample as well as portrayal is treated as an implied condition and breach of the same gives the right to the buyer to repudiate the contract of sale of goods.

At the point when goods are sold under the contract of sale of goods, the Sale of Goods Act enumerates certain implied conditions, breach of any would give the right to repudiate the contract.

Following are the conditions: –

- The bulk shall correspond with the sample in quality
- The buyer shall have a reasonable opportunity of comparing the bulk with the sample
- The goods shall be free from any defect rendering the un-merchantable, which would not be apparent on reasonable examination of the sample. It tends to be inferred that this condition is applicable where the defects are latent as the section states that which (defects) couldn't be discoverable by an ordinary examination of the goods. The buyer can repudiate the contract if the defects are found after sometime due to potential presence of the defect but not by and by clear.

Also, section 16 of the act makes reference to that there is no implied condition as to the quality or wellness of the goods for any particular reason. In any case, section 16 also clarifies that the condition as to the reasonable wellness of goods for a particular reason may be implied if the

buyer had made known to the seller to choose the best goods and the seller has ordinarily been dealing in those goods. This implied condition will also not apply if the goods have been sold under a trademark or a patent name. An implied condition as to quality or qualification for a particular reason may be annexed by the usage of trade. In case of eatables, there an implied condition that the eatables shall be healthy.

The contract does not expressly accommodate an express Condition or Warranty, be that as it may, due to the nature of the nature of the contract or aim of the party there is presence of a Condition or Warranty in the nature, it is known as implied Condition or Warranty. The Sale of Goods Act gives arrangements to express and implied Conditions and Warranties.

### **IMPLIED WARRANTIES**

The Sale of Goods Act enumerates an implied Warranty that the buyer shall have total ownership of the goods sold to him and shall appreciate very ownership of the such goods. In case of any sort of disturbance, the buyer can sue the seller for the breach of Warranty and can claim damages arising out of such breach.

Section 14 of the Sale of Goods Act also accommodates implied warranties. section 14 also accommodates an implied warranty that the goods shall be free from any charge or encumbrance in favor of any outsider, not declared or known to the buyer before or at the time the contract is gone into.

The Sale of Goods Act also makes arrangements for an implied warranty as to quality or readiness for a particular may be annexed or attached by the usage of trade. In the event that goods sold are of dangerous nature and according to the usage of trade the seller has to unveil the dangerous nature of goods and if the seller does not reveal, the buyer can sue the seller for breach of implied warranty.

### **THE RULE OF CAVEAT EMPTOR**

Section 16 of the Sale of Goods Act states that, “*subject to the provisions of this Act or any other law for the time being in force, there is not implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale*”, brings the common-law rule of Caveat Emptor, which means ‘let the buyer beware’.

The Sale of Goods Act enumerates an implied Warranty that the buyer shall have total ownership of the goods sold to him and shall appreciate very ownership of the such goods. In case of any sort of disturbance, the buyer can sue the seller for the breach.

At the point when the sellers display their goods in the open market, it is for the buyer to make an appropriate choice or decision of the goods. The buyer alone shall be responsible for checking the quality and suitability of goods before a purchase is made. The said guideline owes its starting point to the fact that in the early times the greater part of the sales used to occurred in the market.

*Caveat emptor* has certain exemptions to it.

- When a buyer brings the motivation behind buying goods to the learning of the seller, depends on seller's expertise and goods are of a depiction which is in the course of seller's business, it becomes the obligation of the seller to convey reasonably fit goods to the buyer
- Where the goods are sold by sample and the goods don't match with the sample
- Where the goods have been sold by both sample and depiction and the goods match with sample but don't match with the sample
- When the goods have been sold by making some fraud or misrepresentation

A contract of sale is finished not by insignificant conveyance of goods but rather by acceptance of goods by buyer. Acceptance does not mean insignificant receipt of goods. It means checking the goods to ascertain whether they are according to contract. Where goods are conveyed to the buyer which he has not recently examined, he isn't considered to have accepted them except if and until he has had a reasonable opportunity of examining them to ascertain whether they are in congruity with the contract.

The Act casts various obligations and grants certain rights on both buyer and seller. After the goods are sold and the property is transferred to the buyer, the main cure with seller is to approach Court, if the buyer does not pay. The seller has no right to take forceful ownership of goods from buyer, when property in goods is transferred to him. Be that as it may, the Act gives a few rights to seller if his dues are not paid.

### **Suits for Breach of Contract**

An unpaid seller can practice his rights to the degree explained above. In addition, a seller can practice following rights in case of breach of contract. The buyer also has rights in case of breach of contract.

## **Measure for compensation and damages**

The Sale of Goods Act does not determine how to measure damages. Be that as it may, since the Act is complimentary to the Contract Act, measure of compensation and damages will be as given in sections 73 and 74 of Contract Act.

Section 14 of the Sale of Goods Act also accommodates implied warranties. section 14 also accommodates an implied warranty that the goods shall be free from any charge or encumbrance in favor of any outsider, not declared or known to the buyer before or at the time the contract is gone into.

The Sale of Goods Act also decides for an implied warranty as to quality or fitness for a particular may be annexed or attached by the usage of trade. In the event that goods sold are of dangerous nature and according to the usage of trade the seller has to unveil the dangerous nature of goods and if the seller does not reveal, the buyer can sue the seller for breach of implied warranty.

### **c. Passing of Property**

A sale of goods or property suggests a transfer or passing of proprietorship to the buyer. The passing of property is an important aspect to help decide the liabilities and rights of both the buyer and the seller. When a property is passed to the buyer, at that point the hazard in the goods sold is that of the buyer and not the seller. This is genuine regardless of whether the goods are in the ownership of the seller. Give us a chance to learn increasingly about the passing of property in the Sale of Goods Act.

### **Passing of Property**

Pointers in passing of property:

Specific or Ascertained Goods

Passing of Unascertained Goods

Goods sent on approval or "on sale or return"

Transfer of property in case of reservation of the right to disposal

In this article, we will be taking a gander at the initial two standards.

Passing of Ascertained Goods

Section 19

This is the main standard of the passing of property. It deals with the passing of specified goods and states that – Specific or ascertained goods pass when expected to pass. Segment 19 of The Sale of Goods Act, 1930, has three sub-areas as pursues:

- Sub-section (1): Imagine a contract for the sale of specific or ascertained goods with a clear notice of when the parties to the contract mean to transfer the property. In such cases, the property is transferred at the time referenced in the contract.
- Sub-section (2): To understand the goal of the parties, the terms of the contract, the lead of the parties, and the circumstances of the case are considered.
- Sub-section (3): Sections 20 to 24 of The Sale of Goods Act, 1930, contain standards to ascertain the goal of the parties. This aim is about the time at which the property in the goods will pass to the buyer. How about we take a gander at these segments

#### Section 20

Section 20 relates to Specific goods in a deliverable state. It states that if the contract is unconditional for the sale of specific goods in a deliverable state, at that point the property in the goods passes to the buyer the minute the contract is made. This standard remains constant regardless of whether the season of payment of cost or conveyance of the goods or both is deferred.

#### Section 21

Specific goods to be put into a deliverable state – Imagine a contract for the sale of goods where the seller has to accomplish something before the goods are ready for conveyance. In such cases, the passing of property happens simply after the seller does the things and advises the buyer.

#### Section 22

Specific goods are in a deliverable state but the seller has to accomplish something to ascertain the cost – Imagine a contract of sale of goods which are in a deliverable state but the seller has to accomplish something like weight, measure, test, or play out any other act on the goods to ascertain the cost. In such cases, the property does not pass until the seller does the act and illuminates the seller.

Passing of Unascertained Goods

In the event that there is a contract for the sale of unascertained goods, at that point the passing of the property of the goods to the buyer cannot happen except if the goods are ascertained. This is determined under Section 18 of The Sale of Goods Act, 1930.

### Section 23

Further Section 23 records two important standards for the passing of property of unascertained goods:

**Sale of unascertained goods by depiction:** Imagine a contract for the sale of unascertained or future goods by portrayal. On the off chance that any goods of that depiction are appropriated to the contract either by the buyer or the seller with the assent of the other party, at that point the property of the goods passes to the buyer. The assent can be express or implied and given before or after the appropriation is made.

**Delivery to the carrier:** If the seller conveys the goods to the buyer or a carrier or a bailee, regardless of whether named by the buyer or not with the end goal of transmission to the buyer, but does not save the right of disposal, at that point he is considered to have unconditionally appropriated the goods to the contract.

### **A few Points to Remember about the Appropriation of Goods:**

In the event that goods are chosen with the expectation of utilizing them in playing out the contract, with the mutual assent of the buyer and the seller, at that point it is called appropriation of goods. Here are a few essentials:

A contract for the sale of unascertained or future goods exists

The goods comply with the quality and depiction stated in the contract

They are in a deliverable state

The goods are unconditionally appropriated to the contract either by conveyance to the buyer of his agent or the carrier

The appropriation is made by the buyer with the assent of the seller or the seller with the assent of the buyer

The assent can be express or implied

The assent can be given before or after the appropriation

### **d. Rights of Unpaid Seller and Remedies for Breach of Contract**

In a contract, there is always a reciprocal promise. Indeed, even in a contract of sale, both the buyer and the seller must play out their duties. And if the buyer does not pay the seller his due, the seller becomes an unpaid seller. This means such unpaid seller has a few rights against the buyer. Give us a chance to see.

### **Rights of Unpaid Seller Against Buyer**

At the point when the buyer of goods does not pay his duty to the seller, the seller becomes an unpaid seller. And now the seller has certain rights against the buyer. Such rights are the seller cures against the breach of contract by the buyer. Such rights of the unpaid seller are additional to the rights against the goods he sold.

#### *Suit for Price*

Under the contract of sale if the property of the goods is already passed but he won't pay for the goods the seller becomes an unpaid seller. In such a case, the seller can sue the buyer for illegitimately declining to pay him his due. If the sales contract says that the price will be paid at a later date independent of the conveyance of goods, and on such a day the if the buyer won't pay, the unpaid seller may sue at the cost of these goods. The actual conveyance of the goods isn't of importance according to the law.

#### *Suit for Damages for Non-Acceptance*

In the event that the buyer improperly won't or neglects to accept and pay the unpaid seller, the seller can sue the buyer for damages caused because of his disapproval of goods. Since the buyer would not buy the goods with no worthy motivation, the seller may face certain damages.

#### *Repudiation of Contract before Due Date*

On the off chance that the buyer repudiates the contract before the conveyance date of the goods the seller can even now sue for damages. Such a contract is considered as a cancelled contract, and so the seller can sue for breach of contract. This is shrouded in the Indian Contract Act and is known as Anticipatory Breach of Contract

#### *Suit for Interest*

On the off chance that there is a specific agreement between the parties the seller can sue for the interest amount because of him from the buyer. This is when both parties have specifically agreed on the interest rate to be paid to seller from the date on which the payment becomes due. If the parties don't have such specific terms, still the court may award the seller with the interest amount because of him at a rate which it sees fit.

### **Cures of Buyer Against the Seller**

Similarly, as the seller can cancel the contract, at that point so can the seller. At the point when the seller breaches the contract the buyer also has certain cures against the seller. Give us a chance to take a gander at certain cures that the Sales Act prescribes for the buyer.

#### *Damages of Non-Delivery*

In the event that the seller unjustly or neglectfully will not convey the goods to the buyer, at that point the buyer can sue for non-conveyance of the goods. According to Section 57 of the Sale of Goods Act, if the buyer faces losses because of the unjust actions of the seller (non-conveyance) he can sue for damages caused because of this.

#### *Suit for Specific Performance*

On the off chance that the seller submits a breach of contract, the buyer can approach the court to ask the seller for specific performance. The court after deliberation can command the seller for specific performance. One important point to remember is that this cure is just available if the goods are ascertained or specific.

#### *Suit for Breach of Warranty*

At the point when the seller breaches the warranty of the goods, the buyer cannot just reject the goods on such basis. The buyer has two alternatives in such a case:  
set facing the buyer the said breach of warranty in the eradication of the price, or  
sue the seller for breach of warranty

#### *Repudiation of Contract*

On the off chance that the seller repudiates the contract, the buyer does not have to wait until the date of the contract. He can treat the contract as repealed and sue for damages immediately. This will be an anticipatory breach of contract.

### *Sue for Interest*

The Act specifically states that nothing in the act will affect the right of the seller or the buyer to recoup interest or special damages because of him by the contract. And if there is no specific clause in the contract, the court can act the hero of the affected party.

## **III. LAW OF NEGOTIABLE INSTRUMENTS**

### **The Negotiable Instrument Act, 1881**

- a. Definition and Kinds of Negotiable Instruments**
- b. Holder and Holder-in-Due Course**
- c. Material Alterations and Crossing of Cheque, etc.**
- d. Dishonour of Negotiable Instruments- Section 138**

#### **a. Definition and Kinds of Negotiable Instruments**

##### MEANING OF NEGOTIABLE INSTRUMENTS

According to Section 13 (a) of the Act, “Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer, whether the word “order” or “bearer” appear on the instrument or not.” In the words of Justice, Willis, “A negotiable instrument is one, the property in which is acquired by anyone who takes it bona-fide and for value notwithstanding any defects of the title in the person from whom he took it”. Thus, the term, negotiable instrument means a written document which creates a right in favor of some person and which is freely transferable.

Although the Act mentions only these three instruments (such as a promissory note, a bill of exchange and cheque), it does not exclude the possibility of adding any other instrument which satisfies the following two conditions of negotiability: 1. the instrument should be freely transferable (by delivery or by endorsement. and delivery) by the custom of the trade; and 2. the person who obtains it in good faith and for value should get it free from all defects, and be entitled to recover the money of the instrument in his own name. As such, documents like share warrants payable to bearer, debentures payable to bearer and dividend warrants are negotiable instruments. But the money orders and postal orders, deposit receipts, share certificates, bill of lading, dock warrant, etc. are not negotiable instruments. Although they are transferable by

delivery and endorsements, yet they are not able to give better title to the bona-fide transferee for value than what the transferor has.

### **Classification of Negotiable Instruments/ Kinds**

We can contemplate negotiable instruments under the accompanying broad classifications. These classifications rely upon various features like transferability, negotiability, rights of holders, and so on.

- Bearer Instruments: There are two important conditions for negotiable instruments to become payable to bearers. Right off the bat, parties to the transactions should express it to be so payable. Furthermore, the main underwriting for it ought to be a support in blank. These two necessities basically suggest that any holder of such instruments can obtain payment for them. For example, a bill of exchange is payable to any individual who holds it. These bearer instruments incorporate cheques, bills of exchange and promissory notes.
- Order Instruments: Negotiable instruments can frequently be payable to order in certain cases. They are payable when the instruments expressly state them to be so. Moreover, they may be payable to order just to a specific individual. The main necessity is that there ought to be no prohibition on their transferability.
- Inland Instruments: Section 11 of the NI Act deals with inland instruments. This arrangement basically regulates instruments that are drawn and made payable in India. Alternatively, they may be payable outside India but just in the event that they are drawn upon by an Indian occupant.
- Foreign Instruments: Each instrument that isn't inland automatically becomes a foreign instrument. These instruments are drawn in a foreign nation but may be payable inside or outside India. They may even originate in India but just for payment to an individual who dwells abroad.
- Demand Instruments: Sometimes, an instrument may not determine a time period amid which it remains payable. Such instruments are generally payable at whatever point the bearer demands. Examples of such instruments incorporate promissory notes and bills of exchange.
- Time Instruments: A lot at all like demand instruments, time instruments carry a fixed future date for payment. For example, a promissory note may carry a maturity date arising after two years of its issue. Such instruments may even become payable upon the happening of a specific future occasion.

- **Ambiguous Instruments:** An ambiguous instrument is basically One that may be either a bill or a note for its holder. Such situations arise in peculiar circumstances as it were. For example, sometimes the drawee may be an imaginary individual or he may be awkward to contract. Under such circumstances, the holder of such instruments may treat them either as bills of exchange or as promissory notes. Section 17 of the Negotiable Instruments Act deals with such situations.
- **Incomplete instruments:** Incomplete instruments lack certain essential prerequisites of typical negotiable instruments. In such cases, the holder of the instrument has authority to finish it up to the amount referenced in that. This, thus, results in the creation of legally binding negotiable instrument payable by law. The primary holder as well as any subsequent holder who secures such instruments can total them.

### **Characteristics Features of Negotiable Instruments**

- **Transferability:** A negotiable instrument is unreservedly transferable; that is, it is transferable any number of times till its maturity. If the instrument is 'payable to bearer', minor conveyance is sufficient. Nonetheless, on the off chance that it is 'payable to order', it passes by underwriting and conveyance. The transferee of a negotiable instrument becomes not just qualified for cash but also has the right to additionally transfer the instrument.
- **Free Title:** The general guideline as regards the transfer of property, that is, no one can give a better title than he himself has, isn't applicable in case of negotiable instruments. On the off chance that the transferor had obtained a negotiable instrument by working out fraud, but the transferee obtains that negotiable instrument in accordance with some basic honesty (bona-fide) for value, at that point the transferee shall appreciate a decent title as regards that negotiable instrument. In this manner, the title of the transferee as regards a negotiable instrument is autonomous of the title of the transferor. Besides, the tenet of *nemo dat quod non habet*, that is, nobody can give a better title than he himself has, isn't applicable to cases relating to negotiable instruments.
- **Certainty:** A negotiable instrument is a carrier without luggage. It is an essential imperative of a negotiable instrument that, it be framed in the least words possible, and in those words which would make the contract certain and exact. A negotiable instrument must be free from those conditions that which would materially obstruct its

circulation. Also, a negotiable instrument must include payment of a certain (that is, fixed or definite) whole of cash.

- **Right to Sue:** Transferee/payee of a negotiable instrument isn't required to give notice of the transfer of the negotiable instrument to the party/drawer which is liable to make/respect the payment under the negotiable instrument. The transferee can sue upon a negotiable instrument in its very own name in case of disrespect without giving notice of transfer to the original debtor, that is, without advising the original debtor of the fact that the transferee has become the holder of the negotiable instrument. Presumptions: Certain presumptions, for example, those contained in Section 118 and Section 119 of the Negotiable Instruments Act, 1881, apply to all negotiable instruments.

### **PRESUMPTIONS AS TO NEGOTIABLE INSTRUMENT**

Sections 118 and 119 of the Negotiable Instrument Act lay down certain presumptions which the court presumes in regard to negotiable instruments. As such, these presumptions need not be demonstrated as they are attempted to exist in each negotiable instrument. Until the contrary is demonstrated the accompanying presumptions shall be made in case of all negotiable instruments:

- **Consideration:** It shall be assumed that each negotiable instrument was made drawn, accepted or embraced for consideration. It is assumed that, consideration is available in each negotiable instrument until the contrary is assumed. The assumption of consideration, anyway may be rebutted by proof that the instrument had been obtained from, its lawful proprietor by means of fraud or undue impact.
- **Date:** Where a negotiable instrument is dated, the assumption is that it has been made or drawn on such date, except if the contrary is demonstrated.
- **Time of acceptance:** Unless the contrary is demonstrated, each accepted bill of exchange is attempted to have been accepted inside a reasonable time after its issue and before its maturity. This assumption possibly applies when the acceptance isn't dated; if the acceptance bears a date, it will prima facie be taken as proof of the date on which it was made.

- Time of transfer: Unless the contrary is assumed it shall be assumed that each transfer of a negotiable instrument was made before its maturity.
- Order of underwriting: Until the contrary is demonstrated it shall be assumed that the supports appearing upon a negotiable instrument were made in the order in which they appear consequently.
- Stamp: Unless the contrary is demonstrated, it shall be assumed that a lost promissory note, bill of exchange or cheque was appropriately stamped.
- Holder in due course: Until the contrary is demonstrated, it shall be assumed that the holder of a negotiable instrument is the holder in due course. Each holder of a negotiable instrument is dared to have paid consideration for it and to have taken it in accordance with some basic honesty. But in the event, that the instrument was obtained from its lawful proprietor by means of an offense or fraud, the holder has to demonstrate that he is a holder in due course.
- Proof of protest: Section 119 lays down that in a suit upon an instrument which has been disrespected, the court shall on proof of the protest, assume the fact of shame, except if and until such fact is invalidated.

### **NEGOTIABLE INSTRUMENT TYPES**

Section 13 of the Negotiable Instruments Act states that a negotiable instrument is a promissory note, bill of exchange or a cheque payable either to order or to bearer.

Negotiable instruments recognized by statute are:

- Promissory notes
- Bills of exchange
- Cheques

Negotiable instruments recognized by usage or custom are:

- Hundis
- Share warrants
- Dividend warrants
- Bankers draft
- Circular notes
- Bearer debentures

- Debentures of Bombay Port Trust
- Railway receipts
- Delivery orders.

With the development of trade, new sorts of securities may claim recognition as negotiable instruments. The courts in India usually pursue the practice of English courts in according the character of negotiability to different instruments.

### **Promissory Notes**

Promissory Notes Section 4 of the Act characterizes, "A promissory note is an instrument recorded as a hard copy (note being a bank-note or a cash note) containing an unconditional undertaking, marked by the maker, to pay a certain total of cash to or to the order of a certain individual, or to the bearer of the instruments."

Essential components

An instrument to be a promissory note must have the accompanying components:

- It must be recorded as a hard copy: A minor verbal promise to pay is anything but a promissory note. The technique for composing (either in ink or pencil or printing, and so on.) is unimportant, but it must be in any structure that cannot be altered easily.
- It should certainly an express promise or clear understanding to pay: There must be an express undertaking to pay. An insignificant acknowledgment isn't sufficient. Coming up next are not promissory notes as there is no promise to pay.

### **Bill of Exchange**

Section 5 of the Act characterizes, "*A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument*". A bill of exchange, subsequently, is a written acknowledgment of the debt, written by the loan boss and accepted by the debtor. There are usually three parties to a bill of exchange drawer, acceptor or drawee and payee. Drawer himself may be the payee.

Essential conditions of a bill of exchange

- It must be recorded as a hard copy
- It must be marked by the drawer
- The drawer, drawee and payee must be certain
- The whole payable sum should also be certain

- It ought to be legitimately stamped
- It must contain an express order to pay cash and cash alone.

For example, In the accompanying cases, there is no order to pay, but just a solicitation to pay. Accordingly, none can be considered as a bill of exchange:

"I shall be profoundly obliged on the off chance that you make it convenient to pay Rs. 1000 to Ravi"

"Mr. Sunil, please let the bearer have one thousand rupees, and place it to my account and oblige"

However, there is an order to pay, however it is pleasantly made, in the accompanying examples:

"Please pay Rs. 500 to the order of 'A'

"Mr. A will oblige Mr. C, by paying to the order of 'P'".

- The order must be unconditional.

### **Distinction Between Bill of Exchange and Promissory Note**

- Number of parties: In a promissory note, there are just two parties – the maker (debtor) and the payee (bank). In a bill of exchange, there are three parties; drawer, drawee and payee; although any two out of the three may be filled by one and the same individual
- Payment to the maker: A promissory note cannot be made payable the maker himself, while in a bill of exchange to the drawer and payee or drawee and payee may be same individual.
- Unconditional promise: A promissory note contains an unconditional promise by the maker to pay to the payee or his order, whereas in a bill of exchange, there is an unconditional order to the drawee to pay according to the heading of the drawer.
- Prior acceptance: A note is exhibited for payment with no prior acceptance by the maker. A bill of exchange is payable after sight must be accepted by the drawee or another person on his behalf, before it tends to be introduced for payment.
- Primary or absolute liability: The liability of the maker of a promissory note is primary and absolute, but the liability of the drawer of a bill of exchange is secondary and conditional.
- Relation: The maker of the promissory note stands in immediate relation with the payee, while the maker or drawer of an accepted bill stands in immediate relations with the acceptor and not the payee.

- Protest for shame: Foreign bill of exchange must be protested for dishonor when such protest is required to be made by the law of the nation where they are drawn, but no such protest is required on account of a promissory note.
- Notice of Dishonor: When a bill is shamed, due notice of disrespect is to be given by the holder to the drawer and the intermediate endorsers, but no such notice need be given on account of a note.

## **Cheques**

Cheque is a typical type of negotiable instrument. On the off chance that you have a savings bank account or current account in a bank, you can issue a cheque in your own name or in favor of others, thereby guiding the bank to pay the predetermined amount to the individual named in the cheque.

Along these lines, a cheque may be regarded as a bill of exchange; the main distinction is that the bank is always the drawee in case of a cheque. The Negotiable Instruments Act, 1881 characterizes a cheque as a bill of exchange drawn on a predetermined banker and not expressed to be payable generally than on demand. Actually, a cheque is an order by the account holder of the bank guiding his banker to pay on demand, the predetermined amount, to or to the order of the individual named in that or to the bearer.

## **Features of a cheque**

Some important features of a cheque:

- A cheque must be recorded as a hard copy and appropriately marked by the drawer
- It contains an unconditional order
- It is issued on a predefined banker as it were
- The amount indicated is always certain and must be clearly referenced both in figures and words
- The payee is always certain
- It is always payable on demand
- The cheque must bear a date else it is invalid and shall not be regarded by the bank

## **Types of Cheque**

Broadly speaking, cheques are of four kinds:

- Open cheque

- Crossed cheque
- Bearer cheque
- Order cheque

## **Hundis**

A "Hundi" is a negotiable instrument written in an oriental language. The term hundi incorporates all indigenous negotiable instrument whether they be as notes or bills. The word 'hundi' is said to be gotten from the Sanskrit word 'hundi', which means "to gather". They are very popular among the Indian merchants from past times. They are utilized to finance trade and business and give a fascile and sound vehicle of cash and credit. Hundis are administered by the custom and usage of the locality in which they are proposed to be utilized and not by the arrangement of the Negotiable Instruments Act. In case there is no customary standard known as to a certain point, the court may apply the arrangements of the Negotiable Instruments Act. It is also open to the parties to expressly reject the applicability of any custom relating to hundis by agreement (*Indur Chandra v. Lachhmi Bibi, 7 B.I.R. 682*).

## **b. Holder and Holder-in-Due Course**

### **Meaning of Holder**

According to Negotiable Instrument Act, 1881, a holder is a party who is entitled in his own name and has legally obtained the ownership of the negotiable instrument, for example bill, note or check, from a party who transferred it, by conveyance or underwriting, to recoup the amount from the parties liable to meet it.

The party transferring the negotiable instrument ought to be legally capable. It does exclude the somebody who finds the lost instrument payable to bearer and the person who is in unfair ownership of the negotiable instrument.

### **Meaning of Holder in Due Course - HDC**

Holder in Due Course is characterized as a holder who acquires the negotiable instrument in accordance with some basic honesty for consideration before it becomes due for payment and with no idea of an inadequate title of the party who transfers the instrument to him.

Subsequently, a holder in due course.

At the point when the instrument is payable to bearer, HDC alludes to any individual who becomes its owner for value, before the amount becomes overdue. Then again, when the instrument is payable to arrange, HDC may mean any individual who became endorsee or

payee of the negotiable instrument, before it matures. Further, in both the cases, the holder in both the cases he should acquire the instrument, with no notice to believe that there is a deformity in the title of the individual who negotiated it.

### Key Differences Between Holder and Holder in Due Course

The significant contrasts between holder and holder in due course are examined in the accompanying focuses:

An individual who legally obtains the negotiable instrument, with his name entitled on it, to get the payment from the parties liable, is called the holder of a negotiable instrument. An individual who acquires the negotiable instrument bonafide for some consideration, whose payment is still due, is called holder in due course.

A holder can have negotiable instrument, even without consideration. Instead of a holder in due course, have the negotiable instrument for consideration.

A holder cannot sue all the earlier parties whereas a holder in due course, has the right to sue all the earlier parties for payment.

A holder may or may not have obtained the instrument in accordance with some basic honesty. Then again, the holder in due course should be a bonafide owner of the negotiable instrument.

A holder in due course as against a holder appreciates more benefits as a rule like on account of inchoate instruments, imaginary bills and so on.

A individual can become a holder, before or after the maturity of the negotiable instrument. On the contrary, an individual can become a holder in due course, just before the maturity of the negotiable instrument.

### **c. Material Alterations and Crossing of Cheque, etc.**

Section 87 of the Negotiable Instrument Act clearly states that: "any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the season of making such alteration and does not assent thereto, except if it was made so as to carry out the basic goal of the original parties."

### **Impacts of Material Alteration**

The main impact of a material alteration is that it makes the instrument void, i.e., it discharges the instrument itself as against any individual who was a party to such instrument at the season of material alteration and did not give his approval to it.

All the earlier parties to a negotiable instrument, which was altered subsequently without their assent thereto, shall not be liable even to holder-in-due-course, having no notice or learning of the material alteration.

It makes no discrimination whether the alteration was for the benefit or detrimental to any party to the instrument. Besides, it is also immaterial whether the holder himself altered the instrument or any stranger altered it while the instrument was in the guardianship of the holder because a party, who is in authority of an instrument, is bound to safeguard it in its original state.

It is, nonetheless, significant that a materially altered instrument isn't absolutely void, which means it is not unenforceable against all the parties there to.

It is void just against the individuals who did not give their approval to the alteration, and can be enforced against the individuals who agreed to the alteration or affected the alteration. Such an instrument is also operative against the individuals who become parties to the instrument subsequent to the alteration. There is, nonetheless, an exemption to this standard. An acceptor or endorser of a negotiable instrument is bound by his acceptance or support notwithstanding any past alterations of the instrument.

Then again, Section 89 of the Negotiable Instrument Act gives insurance to a party who pays a materially altered bill of exchange or promissory note or cheque gave that the alteration does not appear on the face of the instrument being referred to and pays so in compliance with common decency and without carelessness on its part.

Such a part shall stand discharged on the off chance that it makes payment to an individual in the ownership of the instrument considering the present situation, which don't afford a reasonable ground for believing that it is dis qualified for such payment. Besides, the payer under the above circumstances is also qualified for debit the party on whose account the payment was made with the amount paid.

### *Example of Material Alteration*

For instance, Satish drew a cheque of Rupees 5000 in favor of Ramesh, who altered the consider 5000 along with 5,0000 without taking the assent of the maker. The instrument appeared to be drawn for Rupees 5,0000 on its face. The drawee banker paid Rupees 5,0000 to Ramesh on the presentment of cheque for payment. The banker did as such according to the apparent tenor of the instrument and in compliance with common decency. In this case, since the banker acted bona fide and without carelessness, it is qualified for debit Satish with Rupees 5,0000.

### **d. Dishonour of Negotiable Instruments (Section 138)**

#### Discredit of a Negotiable Tool

At the point when the negotiable device is violated; the holder must give an indication of dishonor to all the earlier parties to make them accountable. A negotiable instrument can be violated any by non-acceptance or by non-payment. A cheque and a promissory note can just be violated by non-payment but a bill of exchange can be violated any by disapproval or by non-payment.

#### *Dishonor by renunciation - Section 91*

A little sort of negotiable devices, such as, bill of exchange, promissory note, or cheque may be desecrated by non-payment by the acceptor thereof. But a bill may also be plundered by disapproval because bill of disagreement is the main negotiable instrument which supplies its presentment for acceptance and renunciation thereof, can total to disgrace.

Dishonor means failure to respect a negotiable instrument. This may be by renunciation, when a bill of argument is accessible for receipt and this is declined or cannot be obtained or by non-payment, when the bill is introduced for payment and payment is can't or cannot be obtained. A negotiable tool is made-up to be violated any by renunciation or non-payment.

#### *Dishonor by non-payment - section 92*

An instrument is dishonored by non-payment when the party mainly answerable e.g., the acceptor of a bill, the maker of a not or the drawee of a check, make default in whole. A device is also violated for non-payment when a formal presentation of information to a court for payment diminished and the instrument, when overdue, remains unpaid, under section 76 of the Act.

Qualification between dishonor by renunciation and by non-payment. On the off chance that a bill is dishonored by rejection, there is no right of action against the drawee as he isn't a party to the bill. The holder of the bill can continue just against the drawer or endorser, assuming any, on Dishonor by non-payment the drawee can be sued.

### **LEGAL ACTION IF CHEQUE DISHONORED**

A cheque is a negotiable instrument. Crossed and account payee cheques are not accessible by any individual other than the beneficiary. The cheques have to be placed into the beneficiary's bank account.

Lawfully, the author of the cheque is called 'drawer', the individual in whose administration, the cheque is drawn is called 'payee', and the bank who is engaged to compensation the amount is perceived as 'drawee'.

Be that as it may, cases of cheque return are basic these occasions. Rarely cheques bearing big amounts proceed with unpaid and are repaid by the bank on which they are drawn.

As by and by as a cheque is violated, the drawee bank straight inquiries a 'Cheque Return Memo' to the banker of the payee maintaining the reason for non-payment. The payee's banker at that point gives the violated cheque and the notice to the payee. The holder or payee can resubmit the cheque in three months of the date on it, on the off chance that he faiths it will be charmed the second time. However, in the event that the cheque issuer failures to make an amount, at that point the payee has the exact to arraign the drawer lawfully.

The payee may legally litigate the nonpayer/drawer for discredit of cheque just if the aggregate indicated in the cheque is towards release of an obligation or any other responsibility of the nonpayer towards beneficiary.

If that the cheque was conveyed as an expertise, towards advancing a loan or for illegal drives, at that point the drawer cannot be impeached in such cases.

*Lawful Act*

According to Section 138 of the Act, the dishonor of cheque is an illegal wrongdoing and is disciplinary by guardianship as long as two years or with financial forfeit or with both.

If payee proceeds lawfully, at that point the drawer ought to be given a chance of rewarding the cheque whole legitimately. Such a chance must be given just as notice recorded as a hard copy.

The beneficiary must give the hint to the drawer with 30 days from the date of in receipt of "Cheque Return Memo" from the bank. The notice must be situating that the cheque should be remunerated to the beneficiary inside 15 days from the date of getting of the notice by the drawer. On the off chance that the cheque issuer discontents to make another whole inside 30 days of getting the sign, the payee has the exact to document a banned grievance under Section 138 of the Negotiable Instruments Act.

However, the grievance ought to be recorded in a judge's court inside a month of the termination of the notice time frame. It is vital in this case to allude a supporter who is all around experienced and accomplished in this area of practice to continue additional in the stuff. It's important to pursue the standards and regulations according to the act. The cheque ought to have been reimbursed or raided because of inadequate assets in the drawer's account.

After in receipt of the notice, if the drawer doesn't make the total inside 15 days from the day of in receipt of the notice, at that point he obligates a bad behavior disciplinary under Section 138 of the Negotiable Instruments Act.

#### *Penalty and Forfeit*

On getting the complaint, along with an affirmation and relevant paper track, the court will matter request and get the substance. Whenever found humiliated, the debtor can be trained with financial result which may be double the quantity of the cheque or care for a term which may be long to two years or both. The bank also has the right to stop the cheque book ability and close the explanation for replication violations of bounced cheques.

On the off chance that the drawer makes entirety of the cheque quantity in 15 days from the date of getting of the sign, at that point drawer does not obligate any wrongdoing. At that

point, the payee may keep on documenting a grievance in the court of the jurisdictional judge inside one month from the date of completion of 15 days agreed in the sign.

A negotiable instrument should be dishonored when the drawee declined to get it or to make aggregate upon it. In both cases the holder is qualified for sue in contradiction of the drawer and endorser. Notice of dishonor is given to all parties with the exception of maker of note, acceptor of bill or drawee of check. Notice of dishonor designates that the instrument has been dishonored and that the individual presented with the notice will be held liable. Notice of dishonor isn't necessary to give where it is distributed with by the party qualified for it, or where the party charged couldn't languish damage over want of notice.



#### IV. CONSUMER LAW

##### **The Consumer Protection Act, 1986**

- a. Introduction & Definitions of Consumer, Goods and Services**
- b. Rights and Duties of Consumer**
- c. Authorities for Consumer Protection**
- d. Remedies**

##### **a. Introduction & Definitions of Consumer, Goods & Services**

Consumer Protection plays a vital role in the highly commercial social setup of today. There is a growth in the demand of quality of goods and better services from consumers, clients and customers from across the world and each party is always demanding a better service and value for money. It is a well acknowledged fact that modern technology has made great impact on

the availability, quality and safety of goods and services. Amidst this whole scenario, the fact still exists that the consumers are still victims of various acts of debauchery and fraudulent business activities in terms of the quality of products which are sold to them. There are many cases of dubious hire-purchase plans, spurious drugs, adulterated food, poor quality products, high prices and deceptive advertisements that are witnessed by customers from across the world.

Newer challenges that have surfaced in the recent times due to the development in the cyber space and information technology. These challenges are referred to as cyber fraud, cyber-crime and plastic money. These threats impact the consumers in a big way and pose a threat to the financial security and privacy of the consumer. There has been a steep dip in the business ethics that are possessed by the businesses and the concepts such as ‘customer is the king’ and ‘Consumer is Sovereign’ are no more than mere myths, particularly in the more developing segments of the society. However, it is well been recognized by governments and various administrative bodies that Consumer Protection is a socio-economic programme for the overall welfare of the business economy and satisfaction of various commercial organizations. Consumer Protection is considered as a function which is for the welfare of both go as well as business organizations. In light of this The Consumer Protection Act, 1986 was enacted to redress consumer grievances in a legal manner. This act was enacted to avoid various malpractices that exist in the marketplace such as, uneven weighing of products by the shopkeepers, companies making fake claims in terms of the quality of the products, adulteration and sale of sub-standard material etc. It is a very common sight that when a particular customer complains about the poor quality of the product with the shopkeeper, he gets a very rude response from the trader or shopkeeper.

#### Conceptual Consideration of Consumerism

According to McMillan Dictionary (1985) “Consumerism is concerned with protecting consumers from all organizations with which there is exchanged relationship. It encompasses the set of activities of government, business, independent organizations and concerned consumers that are designed to protect the rights of consumers”. He said: “A Consumer is the most important visitor on our premises. He is not dependent on us we are on him. He is not an interruption to our work; he is the purpose of it.”

#### The Objectives of Consumer Protection Act, 1986 in India are:

- In order to prevent the practices prevalent in the market that have an adverse impact on the consumers, directly or indirectly

- In order to promote the sense of healthy competition within the market
  - In order to protect and sustain the interests of the final consumer
  - In order to ensure freedom of trade which is carried on by various participants in the market
- in India

*The Areas of focus of the Consumer Protection Act are:*

- To prohibit the agreements that have anti-competitive nature
- To prohibit the abuse of dominant position
- To regulate the various market combinations
- To advocate the competition policy

*The Act is applicable to all Goods and Services produces, until and unless it is specifically exempted by the Government of India*

- All sectors; public, private and cooperative are covered under the Act
- The Act and its provisions are compensatory in nature
- The Act extends adjudicatory authorities, which are in nature; speedy, simple and lesser expensive
- Consumer Protection Councils are provided at National, State and District Levels

**Definition of Consumer, Goods and Services in Accordance with the Consumer Protection Act, 1986**

Consumer is considered as one of the most powerful as well as motivating force in the market and it is the purpose for which the whole market function is designed. It is also denoted that consumer is the most vulnerable element in the market structure. There have been several attempts that have been made to safeguard and protect the interests of consumer in the market. The Consumer Protection Act was enacted in 1986 by the Government of India, which had the primary aim of safeguarding the interests of the consumers in the market. The Consumer Protection Act is aimed at and is applicable to all goods and services which are prevalent in the market at any given time. The resale of goods and services for commercial purpose and the rendering of goods and services free of cost are excluded from the cover of the Act. The services rendered by covering under a contract for personal service are excluded from the Consumer Protection Act. The Act was developed to be compensatory in nature and it covers all sectors; public, private, cooperative and joint.

There are various rights which are enshrined by the act and these cover the right to safety, right to be heard, right to be informed, right to choose, right to consumer education and right to seek redressal.

The Act covers all the consumers of goods and services in India. However, the definition of the word consumer is different for both goods as well as services in the Act.

**Consumer is defined for the purpose of “goods” with the following categories given below:**

- I) Consumer is the person who agrees to buy goods or services and agrees to the payment consideration, whether it is fully paid or partly paid and partly promised under any deferred system of payment.
- II) The user of goods included in the definition, excluding the one who actually buys goods and such use is made by the purchaser’s approval

*Exception in Definition:*

Any person who purchase goods for further commercial or resale purpose is not considered as “consumer” as defined by the Act. There are some further clarifications for the use of the term “commercial” and it does not mean that the person is restricted from independent use of the product or using the product to earn livelihood out of it.

Definition of Consumer in Conjunction with the “services” is given below:

- I) When a service is availed by a person in exchange of the consideration and the exchange is made immediately or is promised to be made in future
- II) Consumer is the beneficiary of the service and is not the one who hires or avails the service for consideration

Types of services which are considered in the act are: transport, banking, insurance, processing, supply of electrical energy, housing construction, boarding or lodging, entertainment etcetera.

### **b. Rights & Duties of Consumer**

#### **Right to Information**

An extension of the Consumer Protection Act is the ‘Right to Information’, which is roughly defined as the right which is extended upon the consumers, to be informed about the quantity, quality, potency, standard, purity and price of the goods that are being purchased or the services that are being availed. The objective is to protect the consumer against any unfair trade practices in the market as he has the right to be aware. Normally, the consumers gain information about the product and services from two major sources; advertising and word of mouth. ‘Word of Mouth’ is considered as an unreliable source of information and still it is widely prevalent in the market in India. Because of the prevailing function of ‘Word of Mouth’, the consumers do not get access to the complete and precise information about the products.

They are unable to assess the safety, true value, suitability and reliability of any product. There are common incidences of hidden cost in the products, there is lack of suitability, problems with quality, safety hazards and these aspects are known only after the purchase of the product has been made.

The Right to Information requires the sellers to outline and display the quantity, cost and the ingredients of the product on the product along with the clear instructions about how to use the product safely. The price of the product has to be clearly defined in conjunction with the standard units of measure such as kilogram or liter. In the items of high price volume, where a loan is required to purchase the product, the consumer is required to be informed about the amount of cost involved in acquiring the loan. The advertisement of the product is also covered under this provision and the sellers are often held accountable for misleading information. Right to Information also covers the pharmaceutical companies, who are required to disclose the potential side effects pertaining to intake of the drug and medicinal product. RTI enables the consumer to have an easy access to information which is critical and is required by the consumer.

#### Duties of Consumer

In conjunction with the rights extended to the consumers, there are certain duties of the consumer which are covered by the Consumer Protection Act, 1986, which are as follows:

- Duty to duly pay the agreed monetary amount in exchange with the goods or services availed.
- Duty to be diligent while checking the balances, weights, prices etcetera while making the purchase and read the labels very carefully
- To be aware and keep oneself updated about the various prevalent schemes of consumer protection
- Duty to be cautious as to not to fall in trap of mischievous and misleading information as well as advertisements
- Duty to not to buy goods from the black market
- Duty to maintain the ethics of commercial exchange and to procure the bills and receipts etcetera for the purchases made, whether of goods or services. The procurement of bills and invoices is crucial as when it is required to file a complaint for the defected goods or services and if the consumer fails to furnish a bill, he would not be able to file the complaint.
- It is the duty of every consumer to gain knowledge about the rights of the consumer and also to spread awareness about the rights to fellow citizens
-

- It is also the duty of the consumer to file a complaint against defected goods and services purchased

#### Consumer Complaints and Redressal Authorities

The Act provides for a detailed procedure for redressal of consumer grievances from unsatisfied goods and services. Following people can file a complaint in consumer forums:

- The foremost right to file a complaint rests with the consumer who has purchased the defected goods or the one who has availed the deficient services. The complaint can be made in the Consumer Redressal Commissions (National commission, state commission, district commission, consumer forums) based on the pecuniary jurisdiction.
- In case there is an activity which involves sale of hazardous goods in the market, any consumer or group of consumers can file a complaint on behalf of the general public, and the wider community can be the user of the said hazardous product. Such a complaint can also be termed as the Public Interest Litigation (PIL)
- A Consumer Protection Association can also file the complaint

#### **c. Authorities for Consumer Protection**

##### **Various Complaint Redressal Authorities**

##### **National Consumer Dispute Redressal Commission**

According to the Section 21 of the Consumer Protection Act, there is a provision of the establishment and promotion of the National Consumer Disputes Redressal Commission that has the extent of dealing with cases, action of which lies anywhere throughout the territory of the country. It is also provided that the parties involved in the dispute can be residing anywhere across the territory of the country and the business can be executed anywhere in India. The product value involved in dispute should be more than Rs. 1 crore in order to approach the National Commission. Appeal against the order of National Commission lies with the Supreme Court which has to be filed within 30 days of the date of decision. NCDRC has the power to hear appeals from State Consumer Disputes Redressal Commission as well as District Consumer Redressal Commission.

##### **State Consumer Dispute Redressal Commission**

Each state in India is required to form a forum which can redress the grievances of the consumers in order to provide support to NCDRC in sharing the burden in terms of number of complaints. The cases that are covered by the state forum cover the territory of the whole state

and the case could have happened anywhere across the state territory and business should be conducted anywhere within the state territorial boundary. The pecuniary jurisdiction of the State Commission is between Rs. 20 lakhs and 1 crore. Appeal against the order of State Commission lies with the National Commission which has to be filed within 30 days of the date of decision.

### **District Consumer Dispute Redressal Commission**

The district administration within every state is required to form a district level Consumer Dispute Redressal Commission. The aim of the forum is to share burden of NCDRD and SCDRC. The district forum can redress the cases which occur within the geographical territory of the district and the business operations also lies within the district. The limit of pecuniary jurisdiction is up to Rs 20 lakh with the district forum and the unsatisfied party can challenge the judgment within 30 days with the SCDRC.

#### **d. Remedies**

##### **Remedies available to the Consumer**

Various remedies that are available to the consumer under the Consumer Protection Act are as follows:

- I) ***Removal of Defects:*** The authorities can pass an order to remove defects of the product, if it is established that the product is defected, after proper testing
- II) ***Replacement of Goods:*** The authorities can also order to replace the product which is 'defective' in nature with the 'non-defective' product
- III) ***Refund of Price:*** The price paid by the consumer can be refunded back to him by passing an order
- IV) ***Award of Compensation:*** If the consumer suffers a physical loss, compensation can be ordered by the authorities to be paid to the consumer
- V) ***Removal of Deficiency in Service:*** If there is any deficiency in services, for instance delay in payment of insurance money, then the authorities can demand the removal of deficiency in services and quick payment of funds in the above example
- VI) ***Discontinuance of Unfair/Restrictive Trade Practice:*** If it is established through the application that the concerned activities are unfair or restrictive in nature, then the authorities can pass order to ban the practice with immediate effect
- VII) ***Stopping the Sale of Hazardous Goods:*** The authorities can pass order to completely stop the sale of goods which are established to be hazardous for life or health

- VIII) ***Withdrawal of Hazardous Goods from Market:*** When it is established through the application of the consumer that the concerned goods are hazardous for life and health of the wider community, the said products can be completely removed from the market altogether
- IX) ***Order for Corrective Advertisement:*** If any consumer is misled by false advertisement, the authority can order for correction of advertisement by the concerned business holding or commercial organization
- X) ***To Provide Adequate Costs to Parties:*** The order to provide adequate cost to the parties can also be passed by the authorities

- ***Surbhi Aggarwal***  
***(Founder & CEO, School of Legal Education)***  
***Thankyou***

