SYLLABUS

Class – B.Com. I Sem.

Subject – Business Law

UNIT – I	Indian Contract Act 1872- Definitions, Nature of Contract, Offer & Acceptance, Capacity of Parties to Contract, Free Consent and Consideration, Expressly declared void agreement, Performance of contracts.
UNIT – II	Breach of Contract, Remedies for breach of Contract, Indemnity and Guarantee Contracts. Special Contracts- Bailment, Pledge and Agency.
UNIT – III	Limited Liabilities Partnership Act, 2008, Negotiable Instrument Act, 1881- Definition, Features, Promissory note, Bill of Exchange and Cheques, Holder and Holder in Due Course. Crossing of Cheque, Types of Crossing, Dishonor and Discharge of Negotiable Instruments.

Unit-I
Subject: Indian Contract Act

The Indian Contract Act 1872
The law of contract in India contained in Indian Contract Act 1872, which is based on English common Law. It extends to whole of India except the state of Jammu and Kashmir. It came into force on the first Sep. 1872. The Act lays down general principles governing all contracts, but not the rights and duties of the parties. The rights and duties are decided by the parties themselves.

Scheme of the Act: - The scheme can be divided into two main groups:
1. General principles of the law of contract.
2. Specific kinds of contracts viz:
   a. Indemnity and Guarantee
   b. Contracts of Bailment and Pledge
   c. Contract of Agency.

Meaning and Definition of an Agreement:
An Agreement consists of an offer by one party and its acceptance by other. In other words, an agreement comes into existence only when one party makes a proposal to the other party and that other party gives acceptance.

Agreement = Proposal + Acceptance of proposal

According to Section 2(e) of Indian Contract Act 1872 "Every promise and every set of promises, forming the consideration for each other is an obligation."

Meaning and Definition of a Contract:
A contract is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognize as duty. In other words, a contract is an agreement the object of which is to create a legal obligation. The contract consists of two elements:
1. An agreement and
2. Legal Obligation i.e. enforceability by law.

Contract = an Agreement + enforceability by law.

According to Section 2(h) of the Indian Contract Act 1872 "An agreement enforceable by law is a contract."

Essential Elements of a valid Contract:
1. **Offer and Acceptance:** There must be a "lawful offer" and a "lawful acceptance" of the offer, thus resulting in an agreement.
2. **Intention to create legal relation:** There must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. Social agreements do not contemplate legal relations, and so they do not give rise to a contract.
3. **Lawful Considerations:** An agreement is legally enforceable only when each of the parties to it, give something and get something. This something is the price for the promise and is called "Consideration". Only those considerations are valid which 'Lawful'
4. **Capacity of parties:** The parties to an agreement must be competent to contract, otherwise it cannot be enforced by a court. To be competent, the parties must be on majority age and of sound mind and must not be disqualified from contracting by any law to which they are subject.
5. **Free Consent: "Consent "**means that the parties must have agreed upon the same thing in the same sense. Consent is not enough for making a contract. That to must be free. It is said to be free when it is not caused by-
   1. Coercion, or (i) undue influence, or (iii) fraud, or (IV) misrepresentation, or (v) mistake.

6. **Lawful object:** For the formation of a valid contract, it is also necessary that the parties to an agreement must agree for a lawful object. The object must not be fraud or illegal or immoral or must not imply injury to the person or property of other.
7. **Writing and Registration:** Generally the contracts may be oral or written. But in special cases, it lays down that the agreement must be in writing or registered to be valid.
8. **Certainty:** Any agreement can be enforced if its meaning is certain or capable of being made certain agreements the meaning of which is not certain, are void.
9. **Possibility of performance:** The terms of the agreement must also be capable of performance physically as well as legally.
10. **Not expressly declared void:** The agreement must not have been expressly declared void under the act. There are some types of agreements which have been expressly declared to be void.

Kinds or classification of Contracts

A. On the basis of Enforceability

1. **Valid Contract:** A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law when all the essential elements of a valid contract (as per section 10 of the act) are present.
2. **Voidable Contract:** "An agreement which is enforceable by law at the option of one or more of the parties, but not at the option of one or more of the other, is a voidable contract."
3. **Void Contract:** Void means not binding in law. It is valid at the time of making it but becomes void subsequently due to change in circumstances.
   Void Agreement:" An agreement not enforceable by law is said to be void" Thus a void agreement does not give rise to any legal consequences and is void ab initio.
4. **Unenforceable contract:** It is one which is valid in it, but is not capable of being enforced in a court of law because of some technical defect such as absence of writing, registration requisite stamp.
5. **Illegal or unlawful contract:** An agreement which is expressly or impliedly prohibited or forbidden by law. It is *void ab initio*.

B. On the basis of Creation:

1. **Express Contract:** It is one in which parties make oral written declaration of the terms and conditions of the contract.
2. **Implied Contract:** It is one in which evidence of contract is gathered from acts and conduct of the parties and not from written or spoken words of parties.
3. **Constructive or Quasi Contract:** It is not a contract made intentionally by the parties by exchange of promises. It is a contract imposed by the law. The basis of this contract is that no one can be allowed to enrich himself at the cost of the other.

On the basis of Execution

1. **Executed Contract:** When both the parties to a contract have completely performed their share of obligations and nothing remains to be done by either party under the contract.
2. **Executory Contract:** When either parties have still to perform their share of obligation in to or there remains something to be done under the contract on both sides.

Capacities of Parties

Meaning of Capacity to Contract

Capacity or competence to contract means legal capacity of parties to enter into a contract. In other words, it is the capacity of parties to enter into a legally binding contract.

Who are Competent to Contract?

Every person is legally competent to contract if he fulfills the following three condition :

i. He has attained the age of majority;
ii. He is of sound mind; and.
iii. He is not disqualified from contracting by any other law to which he is subject.

1) MINORS

Any person, who has not attained the age of majority prescribed by law, is known as minor.

Section 3 of the Indian Majority Act prescribes the age limit for majority and says a minor is a person who has not completed eighteen years of age. But the same Act also mentions that in the following two cases a person attains majority only after he completes his age of twenty one years :

(i) Where a Court has appointed guardian of a minor's person or property or both (under the Guardians and Wards Act, 1890); or
(ii) Where the minor's property has been placed under the superintendence of a Court of wards.

2) PERSONS OF UNSOUND MIND

A person is said to be of sound mind for the purpose of making a contract (a) if he is capable of understanding the contract at the time of making it, and (b) if he is capable of making a rational judgment as to the effect upon his interests.

Types of Persons of Unsound Mind and their Contracts:

1. Idiot
2. Lunatic
3. Delirious persons
4. Drunken or intoxicated persons
5. Hypnotized persons
6. Mental decay

3) PERSONS DISQUALIFIED BY OTHER LAWS

There are certain persons who are disqualified from contracting by the other laws of our country. They are as under:

1. Alien enemy
2. Foreign sovereigns, diplomatic staff etc.
3. Corporations and companies
4. Insolvents
5. Convicts

Rules /effects as to or Nature of Minor's Agreements:

1. **Void ab-initio: -** Minor's agreement is absolutely void from very beginning, i.e. void ab- initio. It is nullity in the eye of law. An agreement with minor, therefore, can never be enforced by law.
2. **Minor can be a promise or beneficiary: -** A minor can enforce such agreements in which he is a beneficiary or promise and does not create any obligation on his part.
3. **No ratification:-** A minor cannot be ratify even after attaining the age majority because void agreement cannot be ratified.
4. **Restitution/ Compensation possible: -** If a minor has received benefits under an agreement from the other party, the Court may require the minor to restore the benefit (so far as may be), to the other party at the time of rescission of the agreement. The minor may be asked to restore the benefit to the extent he or his estate has been benefited.
5. **Contract by parent/ guardian/ manager: -** A minor's parent/ guardian/ manager can enter into contract on behalf of the minor provided:
   i. The parent/ guardian/ manager acts within the scope of his authority; and
   ii. The contract is for the benefit of the minor.

6. **No liability of parents: -** The parents (guardian) of a minor are not liable for agreements made by their minor ward. However, they can be held liable if the minor makes agreement as their authorized.
7. **Minor as an agent: -** A minor is not entitled to employ an agent; he can be an agent himself for someone else. As an agent he ca represent the principal, and bind him for his acts done in the course of agency. But the minor is not responsible to the principal for his acts.
8. **Minor and insolvency: -** A minor cannot be declared insolvent because he is not competent to contract.
9. **Minor as joint Promisor: -** A minor can be a joint promisor with a major, but the minor cannot be held liable under the promise to the promises as well as to his co-promisor. But the major promise cannot escape liability. The major joint promisor can be forced to perform the promise.
10. **Minor shareholder: -** A minor can become a shareholder or member of a company if (a) the shares are fully paid up and (b) the articles of association do not prohibit so.
11. **Liability for necessaries of life: -** A minor is incompetent to contract. A minor, therefore, is not personally liable for the payment of price of necessaries of life supplied to him or to his legal dependents. However, the person who has furnished such supplies is entitled to be reimbursed from the property of the minor.
12. **Minor Partner:** - According to the Partnership Act, 1932, a minor cannot make a contract of partnership though he may be admitted to its benefits with the consent of all the partners. A minor partner cannot be made personally liable for any obligation of the firm, but his share in the firm's property can be made liable.
13. **No estoppels against minor:** - The term 'estoppels' means prevention of a claim. When a minor enter into contract, representing that he is a major, but in reality he is not, then later on he can plead his minority as a defence and cannot be estopped (prevent) from doing so.

Definition of Consideration

Consideration is one of the essential elements of a valid contract. The term "Consideration" means something in return i.e. quid –pro-quo. Consideration must result in a benefit to the promiser, & a detriment or loss to the promisee or a detriment to both. Without consideration a contract is void or nude i.e. nudum pactum

Section 2(d) of the Indian Contract act, 1872 defines Consideration as follows:

" When, at the desire of the promiser ,the promisee or any other person has done or abstained from doing, or does or abstains from doing ,or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise."

ESSENTIAL ELEMENTS OF A VALID CONSIDERATION

- **It must move at the desire of the promisor:** Consideration must have been done at the desire or request of the promisor & not at the desire of a third party or without the desire of the promisor.

- **It may move from the promise or any other person:** An act constituting consideration may be done by the promise himself or any other person. Thus, it is immaterial who furnishes the consideration & therefore may move from the promisee or any other person. This means that **even a stranger to the consideration can sue on a contract, provided he is a party to the contract (Case Chinayya V/s Ramayya)**
- **It may be Past , Present or Future:**
  - Past Consideration: The consideration which has already move before the formation of agreement.
  - Present consideration: The consideration which moves simultaneously with the promise.
  - Future Consideration: The consideration which is to be moved after the formation of agreement.

- **It must be of some value:** The consideration need not be adequate to the promise but it must be of some value in the eye of the law.
- **It must be real & not illusory:** Ex. A promise to put life into the B's dead wife & B promises to pay Rs 10,000. This agreement is void because consideration is physically impossible to perform.
- **Must be Something other than the promisor's Existing obligation:** Consideration must be something which the promisor is not already bound to do because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.
- **It must not be illegal, immoral or opposed to public policy.**

A CONTRACT WITHOUT CONSIDERATION IS VOID

The general rule is **"An Agreement made without consideration is void".** Sec 25 & 185 deals with the **Exceptions** to this rule. These cases are:

1) Love & Affection: A written & registered agreement based on natural love & affection between near relatives is enforceable even if it is without consideration.

Ex: X, for natural love & affection, promises to give his son, Y, Rs 1000. X puts his promise to Y in writing & registers it. This is a contract.

2) Compensation for voluntary services: A promise to compensate wholly or partly, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.

Ex: A finds B's purse & gives it to him. B promises to give Rs 50 to A. This is a contract.

3) Promise to pay a Time barred debt: A promise by a Debtor to pay a time-barred debt if it is made in writing & is signed by the debtor or by his agent is enforceable.

4) Completed gifts: There need not be consideration in case of completed gifts.

5) Agency: No consideration is necessary to create an Agency.

6) Contribution to Charity

STRANGER TO A CONTRACT

Though a stranger to consideration can use because the consideration can be furnished or supplied by any person whether he is the promises or not, but a stranger to a contract cannot sue because of the absence of privity of contract (i.e. relationship subsisting between the parties to a contract.

Topic : Free Consent

MEANING OF CONSENT

Two or more persons are said to consent when they agree upon the same ting in the same sense at the same time.

MEANING OF FREE CONSENT

Sec. 14 describes the cases when the consent is not free. It lays down that consent is not free if it is caused by coercion, undue influence, fraud, misrepresentation, etc. if the consent is not free, the agreement is avoidable at the option of the party whose consent was not free.

1) **COERCION**

Coercion simply means forcing a person to enter in to a contract. Sec. 15 defines coercion as, "Committing or threatening to commit, any act forbidden by the Indian Penal Code, or unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever with the intention of causing any person to enter into an agreement".

The essential elements of coercion are

(1) Committing or threatening to commit any act forbidden by Indian Penal Code.
(2) Unlawful detaining or threatening to detain any property.
(3) The act of coercion may be directed at any person and not necessarily at the other party to the agreement.
(4) The act of coercion must be done with the object of inducing or compelling any person to enter into an agreement.

2) **UNDUE INFLUENCE** : It is kind of moral coercion.

Sec. 16(1) defines undue influence as, "A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of other and uses that position to obtain an unfair advantage over the other".

(a) Where he holds a real or apparent authority over the other e.g., in the relationship between master and servant.

(b) Where he stands in fiduciary relation to the other. It implies a relationship of mutual trust and confidence.

(c) Where a contract is made with a person whose mental capacity is affected by reason of age, illness, or mental or bodily distress.

Any innocent or unintentional false statement or assertion of fact made by one party to the other during the course of negotiation of a contract is called a misrepresentation.

3) **MISREPRESENTATION**

As per Sec. 18, misrepresentation is a wrong statement of fact made innocently, i.e., without any intention to deceive the other party. It may be caused.

(1) By positive statement.
(2) By breach of duty.
(3) By mistake regarding the subject matter of the agreement.

Essential of misrepresentation

(1) There must be a representation or omission of a material fact.
(2) The representation or omission of duty must be made with a view to inducing the other party to enter into contract.
(3) The representation or omission of duty must have induced the party to enter into contract.
(4) The representation must be wrong but the party making the representation should not know that it is wrong.

4) **FRAUD**

Fraud is the international misrepresentation or concealment of material facts of an agreement by a party to or by his agent with an intention to deceive and induce the other party to enter into an agreement.

Sec. 17 defines fraud as, any of the following acts committed by a party to a contract (or with his convenience or by his agent) with intention to deceive another party thereto (or his agent) or to induce him to enter into the contract.

(1) The suggestion that a fact is true when it is not true by a person who does not believe it be true.
(2) The active concealment of the fact by a person having knowledge or belief of the fact.
(3) A promise made with out any intention to perform it.
(4) Any other act fitted to deceive.
(5) Any such act or omission as the law specifically declares to be fraudulent.

5) **MISTAKE**

Acc. To Sec. 20 mistake means erroneous belief concerning some fact. The parties are said to consent when they agree upon the same thing in the same sense. If they do not agree upon the agreement in the same sense, there will be no contract.

When the consent of one or both the parties to a contract is caused by misconception or erroneous belief, the contract is said to be induced by mistake.

Mistake may be of following types:

(1) Mistake of law,
  (a) Mistake of law of the country.
  (b) Mistake of foreign law.
  (c) Mistake of private rights of the parties

(2) **Mistake of fact**,
- (A) Bilateral Mistake :
- (1) Mistake as to subject mater :
- (a) Mistake regarding existence
- (b) Mistake regarding identity
- (c) Mistake regarding title.
- (d) Mistake regarding price
- (e) Mistake regarding quality
- (f) Mistake regarding quantity
- (2) Mistake as to the possibility of performance
- (a) Physical impossibility
- (b) Legal impossibility
- (B) **Unilateral Mistake** :
- (1) Mistake as to identify of the person contracted with.
- (2) Mistake as to the nature of contract.

Distinction between an Agreement and a Contract

Basis of distinction	Agreement	Contract
1. Definition	Every promise and every set of promises forming consideration for each other is an agreement	An agreement enforceable by law is a contract.
2. Creation	An agreement is created by acceptance of an offer.	Agreement and its enforceability together create a contract.
3. legal rights and obligations	An agreement may not create legal rights and obligations of the parties	A contract creates legal rights and obligation between the parities.
4. Necessity	No contract is required to make an agreement.	Valid agreement is necessary for making a contract.
5. Legally binding	An agreement is not a concluding or legally binding contact.	A contract is a concluding or legally binding on the parties.
6. Concept	Agreement is a wider concept and includes contacts.	Contract is a narrow concept and it is only a specific of agreement.

DISTINCTION BETWEEN VOID AGREEMENT AND VOID CONTRACT

Basis of distinction	Void Agreement	Void Contract
1. Definition	An agreement not enforceable by law is said to be void. [Sec. 2(g)]	A contract which cases to be enforceable by law becomes void when it ceases to be enforceable [Sec. 2(j)]
2. Time when becomes void	It is void from very beginning.	It becomes void subsequently due to change in law or change in circumstances.
3. Restitution	Generally no restitution is granted, however, the Court may on equitable grounds grant restitution in case of fraud or misrepresentation by minors.	Restitution may be granted when the contract is discovered to be void or becomes void.
4. Description in the Act	Such agreement have been mentioned as void in the Act. Agreements without consideration, agreements with lawful object or consideration	There is no mention of cases of void contracts in the Act. They are created by circumstances and law Courts decide whether they have become void or not.

	and some other agreements have expressly been declared to be void.	

DISTINCTION BETWEEN VOID AGREEMENT AND VOIDABLE CONTRACT

Basis of distinction	Void Agreement	Voidable Contract
1. Definition	An agreement not enforceable by law is said to be void.	A contract enforceable by law at the option of the aggrieved party, is a voidable contract.
2. Period of validity	It is void from the beginning i.e. void ab initio	It is valid till it is avoided by the aggrieved party to the contract.
3. Legal existence	It is nullity, hence, does not exist in the eye of law.	It has its existence in the eye of law till it is repudiated.
4. Change in status	Status of void agreement does not change with the change in circumstances.	Status of such contract change when the aggrieved party elects to avoid it within a reasonable time. It becomes void when the aggrieved party elects to rescind it.
5. Causes	Any agreement is void when it is made with incompetent parties or for unlawful objects and consideration, or without consideration, or without consideration or it is expressly declared to be void under the law.	A contract is voidable when the consent of the party is caused by coercion or undue influence or fraud or misrepresentation.
6. Transfer of title	The party obtaining goods under void agreement cannot transfer a good title to the third party.	The party obtaining goods under voidable agreement can transfer a good title to the third party if the third party obtains it in good faith and for consideration and the aggrieved party has not avoided the contract before such transfer.
7. Restitution	Parties do not have right to restore the benefits passed on to the other unless the parties were unaware of the impossibility of performance at the time of agreement or the party to the agreement was minior.	Generally, right restitution is available if the party elects to avoid the contract.
8. Damages	No party as a right to get compensation for damages because such agreement has no legal effect.	If a party rightfully recinds (i.e. puts and end) the contract, he can claim compensation, he can claim compensation of damages sustained by him due to non-fulfilment of the promise.

DISTINCTION BETWEEN VOID AND VOIDABLE CONTRACT

Basis of distinction	Void Contract	Voidable Contract
1. Definition	A contract which ceases to be enforceable by law become void, when it ceases to be enforceable.	A contract which is enforceable by law at the option of the aggrieved party is a voidable contract.
2. Period of validity	It remains valid till it does not cease to be enforceable.	It remains valid if the aggrieved party does not elect to avoid it within a reasonable time.
3. Will of the party	Its validity is not affected by the will of any party. It is	Its validity is affected by the will of the aggrieved party. Aggrieved party has option to treat it either

	decided by the Law Court.	binding or repudiate it.
4. Causes	Contracts become void due to change in circumstances or in the law of land.	Contract is voidable when the consent of the party is caused by coercion, undue influence, fraud or misrepresentation. Sometimes, it may be voidable under the provisions of the Secs. 39, 53 and 55.

DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENT

Basis of distinction	**Void Agreement**	**Illegal Agreement**
1. Definition	An agreement not enforceable by law is void.	An agreement which is expressly or impliedly prohibited by law, is illegal.
2. Effect on collateral agreement	The agreement collateral to the void agreement is not necessarily void.	The agreement collateral to an illegal agreement is always void.
3. Scope	All void agreements need not necessarily be illegal agreements. Hence, the scope is wider than that of the illegal agreements.	All ill agreements are void.
4. Restitution	The Court may grant restitution of money advanced if is minor or if the parties were unaware of the impossibility of performance of the agreement.	Restitution of money is not granted in case of an illegal agreement.

DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE

Basis of distinction	**Coercion**	**Undue influence**
1. Definition	Coercions the committing or threatening to commit, any act forbidden by the I.P.C. or unlawful detaining or threatening to detain any property with the intention of causing any person to enter into an agreement.	Undue influence is an influence which arises where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
2. Relations	In case of coercion, relation between the parities is immaterial.	In case of undue influence, in the relation between the parties the parties must be such that one of them is in a position to dominate the will of other.
3. Intention	Coercion is applied with the intention of causing any person to enter into an agreement.	It is exerted with the intention to obtain an unfair advantage over the other party.
4. Nature of force	It involves physical force.	It involves moral force.
5. Kind of act	It involves criminal act.	It does not involve criminal act.
6. Direction	The coercion may be directed against any person including a stranger.	Under influence is used against the weaker party only.
7. Who exercise	It can be exercised by any person. Even a stranger to contract can exercise it.	It is employed by the person who is in a position to dominate the will of the other.
8. Remedies	A contract caused by coercion, may be avoided by the aggrieved party's contract. [Sec. 19]	In case of undue influence, the aggrieved party may avoided the contract or the Court, may set aside the contract absolutely or

conditionally. [Sec. 19 A]

DISTINCTION BETWEEN FRAUD AND MISREPRESENTATION

Basis of distinction	**Fraud**	**Misrepresentation**
1. Meaning	A fraud is an international misrepresentation or concealment of material fact to include the other party to enter into a contract.	An innocent or unintentional misrepresentation of material facts by one party fact by one party include the other party to enter into a contract.
2. Intention	Fraud is committed with an intention to deceive	There is no such intention.
3. Belief in the facts	The person committing of a fraudulent act does not believe it to be true.	The person making misrepresentation believes in its facts to be true.
4. Suit for damage	The aggrieved party has right to sue the other party for damages.	The aggrieved party cannot sue for damages.
5. Defence	A party cannot set up a defence that the aggrieved party had means of discovering the truth except in case of fraud by concealment or by silence.	In case of misrepresentation the other party always set up a defence that the aggrieved party that the aggrieved party had means of discovering the truth.

DISTINCTION BETWEEN COTANGENT TRACT AND WAGERING AGREEMENT

Basis of distinction	**Contingent contract**	**Wagering agreement**
1. Meaning	A contingent contract is contract in which the promisor undertakes to perform the contract upon the happening or non-happening of an event, which is collateral to the contract.	A wagering agreement is one in which one person agrees to pay certain amount of money to the other on happening or non-happening of a specific event.
2. Nature of event	The event is collateral to the contract, i.e. not a part of promise or consideration of the contract.	Even is the sole determining factor.
3. Reciprocal promise	There is no reciprocal promise is a contingent contract.	The wagering agreement consist of reciprocal promise.
4. Interest in the subject matter	The parties are interested in the subject-matter of such contracts. Therefore, the happening or non-happening of the event is material for them.	The parties to wagering agreement have no other interest in the subject matter of the agreement except the winning or losing the money at stake.
5. Validity	A contingent contract is valid contract.	A wagering agreement void agreement. In the State of Maharastra and Gujarat it is illegal.
6. Nature of contract	All contingent contracts are not wagering agreements because all contingent contracts are not void.	All wagering agreements are contingent agreements because their performance is dependent upon uncertain future events.

UNIT-II
DISCHARGE OF CONTRACT

When the rights and obligations arising out of a contract are extinguished, the contract is said to be discharged or terminated. A contract may be discharged by any of the following ways:

1. By performance – Actual or Attempted.
2. By mutual consent or agreement.
3. By subsequent or supervening impossibility or illegality.
4. By lapse of time.
5. By operation of law.
6. By breach of contract.

Discharge by Performance-

Performance of a contract is the most popular manner of discharge of a contract. The performance may be either Actual performance or Attempted performance.

A**. Actual performance:-**When each party fulfils his obligations arising out of the contract within the time and in a manner prescribed , it is called the actual performance and the contract comes to an end.

B. **Attempted performance or Tender:-**When the promisor offers to perform his obligation, but is unable to do so because the promise does not accept the performance, it is called " **Attempted Performance**" or "**tender**". Thus tender is not actual performance but is only an offer to perform the obligation under the contract. **A valid tender of performance is equivalent to performance.**

Essentials of a valid tender:-if it fulfils the following conditions:-

1. It must be unconditional. If A who is a debtor of company B, offers to pay if shares are allotted to him at par. IT is not a tender.
2. It must be made at proper time and place:- A is tenant of B. H offers him rent at a marriage party. B is not bound to accept as tender is not made at a proper place.
3. It must be of the whole obligation contracted for and not only of the part:- e.g. deciding of his own to pay in the installments and offering the first installment was held invalid tender as it was not of the whole amount due .
4. If the tender related to the delivery of goods, it must give a reasonable opportunity to the promise for inspection of goods so that he may be sure that the goods tendered are of contract description.
5. It must be made by a person who is in a position and is willing to perform the promise.
6. It must be made to the proper person i.e. the promisee or his authorized person.
7. If there are several joint promisees, an offer to any one of them is a valid tender (but the actual payment must be made to all joint promisees, and not to any one of them.)
8. In case of tender of money, exact amount should be tendered in the legal tender money.

Effect of refusal to accept a valid tender: The effect of refusal to accept a properly made "**offer of performance**" is that the contract is deemed to have been performed by the promisor. And the promise can be sued for breach of contract. Thus we can say that "**a valid tender discharges the contract."**

2. Discharge by Mutual Consent or Agreement: A contract is created by means of an agreement, it may also be discharged by another agreement between the same parties.

A. Novation: "Novation occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract." If the parties are same, then small changes in the in the terms of contract is called "alteration" and not "Novation". For being "Novation", the changes must be of significant nature.

Novation cannot be compulsory, it can only be with the mutual consent of all the parties.

B. Alteration:-It means that change of one or more of the material terms of a contract. A material alteration is one which alters the legal effect of the contract. e.g. change in the amount of money, change in the rate of interest etc.

Note that a material alteration made in a contract by one party without the consent of the other will make the whole contract void and no person can maintain an action upon it.

C. Rescission. A contract may be discharged before the date of performance, by agreement between the parties to the effect that it shall no longer bind them. Such an agreement amounts to "**Rescission**" or cancellation of the contract, the consideration being the abandonment by the respective parties of their rights under the contract. Example A promises to deliver some goods to B on say 14th Nov. 2006. But before the date of performance i.e. 14th Nov. 2006, A and B mutually agree that the contract will not be performed. The contract stand discharged by rescission.

If there is non performance of a contract by both the parties for a long time without complaint, it amounts to an implied rescission.

Note: In rescission, the existing contract is cancelled by mutual consent without substituting a new contract in its place.

D. Remission. It is defined as "Acceptance of lesser amount than what was contracted for or a lesser fulfillment of the promise made"

E. Waiver. It means deliberate giving up of a right which a party is entitled to under a contract whereupon the other party to the contract is released form his obligation. Example A promises to stitch a Shirt for B if B sings a song in A's party and accepting it B sings a song in A's party. Then later on B says there is no need to stitch shirt for me, to which A gives his consent. Thus the contract is terminated.

3. Discharge by Subsequent or Supervening Impossibility or Illegality.

Impossibility at the time of contract. If you contract for something impossible, the agreement is void *ab initio* the promisor knows about the impossibility after using reasonable efforts, the promisor is bound to compensate the promisee for any loss he may suffer because of non performance of the promise, even if the agreement being void *ab initio*

Subsequent impossibility. Impossibility is found out after the contract is made, " A contract to do an act which, after making the contract, becomes impossible or unlawful, becomes void when the act becomes impossible or unlawful."

Conditions for It…

(i) the act should have become impossible.
(ii) The impossibility should be by reason of some event which the promisor could not prevent.
(iii) the impossibility should not be self induced by the promisor or due to negligence.

To be impossible, it is sufficient that it becomes impracticable or extremely hazardous or useless from the point of view of the object and purpose which the parties had in view,

If the performance of a contract becomes impossible by reason of supervening impossibility or illegality of the act, it s logical to absolve the parties from further performance of it as they never did promise to perform an impossibility.

4. DISCHARGE BY LAPSE OF TIME. In some circumstances, the laps of time may also discharge a contacts, e.g. the period of limitation for simple contracts is three years the under limitation Act and therefore on default by a debtor, if the creditor does not file a suit of recovery against him within three years of default, the debt becomes time barred and the creditor will not get the help of the law. This in effect discharges the contract. 'Where times is of essence`, if the contract is not performed on time, the contract comes to an end, and the party not at fault need not perform his obligation and may sue the other party for damages.

5. DISCHARGE BY OPERATION OF LAW: - A contract is discharged by operation of law in the following cases:-

(A) Death: Sometimes a contract is of a person nature and involves personal skills, of promiser, of promisor, In such cases the contract is discharged on the death of the promisor. In such cases the contract is discharged on the death of the promisor.

(B) Insolvency: When a person is adjudged in solvent the he is released from his all liabilities in current order of adjudication. His rights (Assets) and liabilities are transferred to the official assignee or official receiver, on the case may be.

(C) Merger of rights: Sometimes, inferior right of a person under the some or other contract, in such a case the inferior, right is vanished and is not required to be enforced, Foe example an ordinary debt can be merged. In to rights, of ownership in such case the inferior right need not to be enforced because this right have merge in to a superior right of mortgage or ownership.

(D) Loss of evidence of contract:-

There the evidence of the existence of the contract is lost or vanished. The contract is discharged for example document of contract is lost or destroyed and not other evidence is available the contract is discharged.

6.DISCHARGE BY BREACH OF CONTRACT:- A contract is sometimes discharged, by its breach generally, Breach of contract means refused. Or future of any one party to perform his contractual obligation under the contract specifically a breach of contract occurs when a party to a contract does any of the other following things.

(1) Fails or refuses to perform his obligation under the contract.
(2) Disable himself from performing his past of the contract.
(3) Maker the performance of contract impossible by his own acts.

INDEMNITY AND GUARANTEE CONTROL

The contract of indemnity and guarantee are special kinds of contracts. These contract are therefore also required to fulfill all the essential of a valid contract.

Indemnity Contract: Indemnity contract is a type of contingent contract. The term 'Indemnity`
Simply means 'Making Somebody Safe` or 'Paying Somebody back`.

Section 124 of contract Act defines that ''A contract by which one party. Promises to save the other from loss caused to him by the conduct of the promise himself by the conduct of any other person, is called a conduct of indemnity".

The party who gives indemnity or who promises to compensate for or to make good the loss, is called. Indemnifier and the party for whose protection or safety the indemnity is given or the party whose loss is made good is called 'Indemnified' or 'indemnity holder'.

Important features of an indemnity contract –

1. Two party.
2. Promises for pay compensation of loss/damage.
3. Loss/damage may be the own or other person.
4. Creation of liabilities.
5. It must be faith.
6. All essential features of valid contract.
7. Compensation for actual loss/damage.
8. It may be express or implied.

Loss/damage may be caused by some event, or accident, or some natural phenomenon or disaster.

Rights of Indemnified (Indemnity-Holder) –

1. Rights to claim for all damages/losses.
2. Rights to claim for all costs which is related to contract.
3. Rights to claim for all sums which his may have paid for contract.

Liabilities/Duties of Indemnified –

1. Liabilities to pay all damages/losses.
2. Liabilities to pay all costs related to contract.
3. Liabilities to pay all sum which is received by sell for contract from indemnified.

Guarantee Contract

The object of the contract of guarantee is to enable. A person to obtain an employment, or a loan, or some goods or service on credit,

According to section 126 of the contract Act ''A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default."

The person who gives the guarantee is called the '**Surety' or 'guarantor'** & the person in respect of whose default the guarantee is given is called the **principal debtor** or he is the party on whose behalf. Guarantee is given and the person to whom the guarantee is given is called the **'Creditor'.**

Essential features of a Guarantee Contract –

1. Three parties
2. Three agreement
3. Concurrence of the three parties
4. Control may be experts or implies
5. It may be oral or written
6. Liability of surety is secondary is dependent on principal debtor's default.
7. Guarantee must be in the knowledge of debtor.
8. All essential of a valid contract.
9. Guarantee must not be obtained by means of misrepresentation.
10. Existence of a primary liability.

DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND GUARANTEE

S.No.	Different Basis	Indemnity Contract	Guarantee Contract
1.	Nature of Contract	Promises to save the other from loss.	One party promises to discharge the liability of the third party in case of his default.
2.	No. of Parties	Only to parties are there	There are three parties.
3.	No. of contracts	There is only one contract	There are three contract between debtors, creditors and surety.
4.	Nature of Liability	The liability of the indemnifier is primary and independent.	The liability of the surely is secondary and dependent.
5.	Arising of Liability	Indemnifier's liability arises only on the happening of a contingency.	Arises only after the default of debtor in payment.
6.	Existence of debt or duty	There is no existence debt or duty in this contract.	There is always some existing debt or duty in this contract.
7.	Request by the debtor	It is not necessary for the indemnifier to act at the request indemnified.	The surely generally gives guarantee to the request of the debtor.
8.	Right to sue	The indemnifier cannot sue the third party for loss in his own name.	It surely has discharged. The debt after the default of the principal debtor, he becomes entitled to sue the debtor in his own name.

Kinds of Guarantee –

1. **Specific or Simple Guarantee:** When a guarantee is given in respect to a single debt or specific transaction is to come to an end when the guarantee debt is paid or the promise is duly performed. It is called a specific or simple guarantee.
2. **Continuing guarantee:** Section 129, of the contract Act defines a guarantee which towards to a series of transaction, is called a continuing guarantee, thus, a continuing guarantee is not confined to a single transaction but keeps on moving to several transaction continuously.

Revocation of Guarantee – Revocation of guarantee means cancellation of guarantee already accrued, it may be noted that the specific guarantee cannot be revoked if the liability has already secured. However a continuing guarantee can be revoked and on the revocation of such a guarantee. The liability of the surely or guarantor comes to an end for the future transaction. The surety continues to be liable for the transactions which have taken place up to the time of revocation. A continuing guarantee may be revoked in any of the following ways-A Guarantee may be revoked in any of the following ways-

1. By notice of revocation.
2. By death of surely.
3. By discharge of surely in various circumstances

A. By novation (Sec.62)
B. By variance in terms (Sec. 133)
C. By release/discharge of principal Debtor (Sec.-134)
D. When the creditor events in to an agreement with the principal debtors (Sec.13..)
E. By creditor act or omission impairing surety's eventual remedy (Sec. 139)
F. By loss of security "(Sec. 141)
G. By invalidation of contract (Sec.142,143,144)

Nature and Extent of Surety's Liability –

1. The liability of surety is co- extensive.
2. The liability of surety arises the same moment when default is made by the principal debtor.
3. The surety is free to restrict limit his liability.
4. Sometimes the surely is liable though the principal debtors is not liable.
5. If there is a condition precedent for the surety's liability; the surety will be liable, only when that condition is fulfilled first.
6. In a continuing guarantee liability of surety extends to a series of transaction over a period of time.
7. The surely will not be liable if the creditor has obtained guarantee either by misrepresenting a material fact regarding the transaction or by keeping silence to material circumstances.
8. A discharge of principal debtor by operation of law does not discharge the surely from liability.

Discharge of surety from liability –

The following are the modes or circumstances under which a surety is discharge from his liability –

1. By revocation
   a) Notice by surety
   b) Death of surety
   c) Notation.
2. By conduct of the creditor
   a) Variance (change) in terms of the contract
   b) Release or discharge or the principal debtor.
   c) Certain arrangements made by the creditors with the principal debtors without the consent of surety,
   d) Creditors act or omission impairing surety's eventual (ultimate) remedy.
   e) Loss of security.

3. By invalidation of conduct of guarantee
   a) Guarantee obtained by misrepresentations
   b) Guarantee obtained by concealment
   c) Failure of co-surety to join a surety

RIGHT THE SURETY

I.Right against the Principal debtor

1. Right of subrogation
2. Right of indemnity

II. Right against the Creditor

1.Right to security
2. Right to claim set off

III. Right against the Co-Sureties

1. Equal contribution
2. Liability of co-securities bond in different sums
3. Right to share benefits of securities.

Bailment and pledge

Bailment

the world 'bailment' is derived from the French world the French world 'baillier' which means 'to deliver Etymologically, it means any kind of handling over'. In legal sense, it involves change of possession of goods from one person to another for some specific purpose.

Definition of Bailment

Sec. 184 defines Bailment as the delivery of goods by one person to another for some purpose, upon a contract, that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor' and the person the person to whom they are delivered is called the 'bailee'.

Examples

(a) A delivers a piece of cloth to B, a bailor, to be stitched into a suit. There is a contract or bailment between A and B.
(b) A sells certain goods to B who leaves them in the possession of A . The relationship between B and A is that of bailor and bailee.

Consideration in a contract of bailment

In a contract of bailment, the consideration is generally in the form money payment either by the bailor or the bailee, as for example, when A gives his bicycle to B for repair, or when A gives his car to B on hire. Such consideration in money form, however, is not necessary to support the promise on the part of the bailee to return to goods. The detrainment suffered by the bailor, in parting with possession of the goods, is a sufficient consideration to support the contract of bailment.

Distinction between Bailment and Contract of sale

A contract of bailment differs from a contract of sale in the following respects:

S. No.	Basics of distinction	Bailment	Contract of sale
1	Transfers of ownership/possession	There is only a transfer of possession of goods from the bailor to the bailee.	There is a transfer of ownership of goods from the seller to the buyer.
2	Consideration not to be passed	The consideration need not be passed between bailor and bailee.	The consideration in terms of price must be passed between seller and buyer.
3	Return of goods	The bailee must return the goods to the bailor on the fulfillment of the purpose for which the bailment is made.	There is no question of such return of goods in contract of sale.

Kids/types of Bailment

DUTIES OF A BAILOR

- Duty to disclose defects [Section 151]
- Duty to bear expenses [Section 158]
- Duty to indemnity the bailee in case of premature termination of gratuitous bailment [Section 159]
- Duty to indemnity the bailee against the defective title of bailor [Section 164]
- Duty to receive back the goods [Section 164
- Duty to bear the risk of loss [Section 152]

- Duty to take care of the goods bailed [Section 151&152]
- Duty not to make any anauthrosed use of goods [Section 154]
- Duty not to mix bailor‘s goods with his own goods [Section 155 to 157]
- Duty to return the goods [Section 160 & 161]
- Duty to return accretion to the goods [Section 163]

Rights of a Bailor

- Right to claim damage in case of negligence [Section152]
- Right to terminate the contract in case of unauthorized use [Section 153]
- Right to claim compensation in case of unauthorized use [Section 154]

- Right to claim the separation of goods in case of unauthorized mixture of goods which cannot be separated [Section 157]
- Right to demand return of goods [Section 160]
- Right to claim compensation in case of unauthorized retention of goods [Section 161]
- Right to demand accretions to goods[Section 163]

RIGHTS OF A BAILEE

- Right to claim damage [Section 150]
- Right to claim reimbursement of expenses [Section 158]
- Right to be indemnified in case of premature termination of gratuitous bailment [Section 159]
- Right to recover loss in case of bailor's defective title [Section 164]
- Right to recover loss in case of bailor's refusal to take the goods back [Section 164]
- Right to deliver goods to any one of the joint bailors [Section 165]
- Right to deliver goods to bailor in case of bailor's defective title [Section 166]
- Right to particulars lien [Section 170]

RIGHTS OF BAILOR AND BAILEE AGAINST WRONGDOERS

Rights of Bailor and Bailee against Wrongdoer [Section 180] If a third party wrongfully deprives a bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the baiolee may bring a suit against a third person for such deprivation or injury.

Apportionment of Relief or Compensation Obtained by Such Suits [Section 181] Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

Example X delivered a TV to Y for repairs. Z forcefully takes possession of TV from Y's shop. In this case, either X or Y may sue Z. If Y files the suit, he shall hand over the amount received after deducting his repairs charges to X.

TERMINATION OF BAILMENT

I. Termination of every Contract of Bailment (whether Gratuitous or not)

Every contract of bailment comes to end under the following circumstances:

(a) On the Expiry of Fixed Period
(b) On fulfillment of the Purpose
(c) Inconsistent Use of Goods
(d) Destruction of the subject Matter of Bailment

II. Termination of Gratuitous Bailment

A contract of gratuitous bailment is terminated in the following circumstances also.

(a) Before the Expiry of fixed Period
(b) On Death of Bailor/Bailee

Meaning of Lien

Lien means the right of a person having possession of goods belonging to another to retain those goods until the satisfaction of sum claimed by the person in possession of the goods. If may be noted thet the possession of goods must be lawful and continuous. For example, X took Y's godown on rent of Rs.5,000 p.m on an agreement that X cat at any time deposit or take out his goods from the godown. After six months, X stopped paying the rent. Y auctioned X's goods and claimed lien. Y cannot claim lien because it was agreed that X can take out his goods whenever he wanted.

Type of Lien

(a) Particular Lien [Section 170] A particular lien is right to retain only those goods in respect of which some charges are due.

Example:- X gives a piece of cloth to Y, a tailor, to make a coat. Y promises X to deliver the coat as soon as it is finished. Y is entitled to retain the coat till he is paid for (if he has not allowed any credit period) but is not entitled to retain the coat (if he has allow one month's credit for the payment.)

(b) General Lien [Section 171] A general lien is a right to retain all the goods as a security for the general balance of account until the full satisfaction of the claims due whether in respect of those goods or other goods. The general lien is available to other person only when there is an express contract to that effect.

Example: - X deposited US 64 units and shares of Reliance Industries Ltd. as security with Citi Bank and took a loan against the shares of Reliance Industries Ltd. Citi Bank may retain both the securities until its claim are fully satisfied.

S. No.	Basic of distinction	Particular lien	General lien
1	Goods 9in respect of which lien available	It is available against those goods in respect of which some charges are due.	It is available against all goods whether in respect of which claims are due or not.
2	Purpose	It is available only for non-payment of remuneration for the service.	It is available for a general balance of account.
3	To whom available in the absence of contract to contrary	It is available to every bailee to whom the goods have been bailed.	It is available only to specific bailees like bankers, factors, Wharfingers, attorneys of High Court policy brokers.
4	Rendering of service	It is available only when some service involving the exercise of labour of skill has been rendered.	It is available even when no such service has been rendered.
5	Purpose of delivery of goods	The purpose of delivery of goods is to confer an additional value as the goods bailed.	The purpose of delivery of goods is to deposit the goods as security.

FINDER OF GOODS

Finder of goods is the person whom finds some goods which do not belong to him.

Example if X finds a purse or a diamond ring or a watch, which does not belong to him, he will be called as a finder of goods.

Rights of a Finder of Goods

- Right to lien [Section 168]
- Right to sue for reward [Section 168]
- Right to sell [Section 169]

Finder of goods is subject to the same responsibility as a bailee. The duties of a finder of goods are as follows:-

- Duty to take reasonable care
- Duty not use for personal purpose
- Duty not to mix with his own goods
- Duty to find the owner

PLEDGE

Meaning of pledge (or pawn) [Section 172]

The bailment of goods as security for payment of a debt or performance of a premise is called pledge (or pawn).

Example X borrows of Rs. 1,00,000 from Citi Bank and keeps his shares as security for payment of a debt. It is a contract of pledge.

Meaning of A pawner (or pledgor) [Section 172)

The person who delivers the goods as security for payment of a debt or performance of promise is called the pawnor or pledgor. In aforesaid example X is pawnor

Meaning of Pawnee (or pledge) [Section 172)

The person to whom the goods are delivered as security for payment of a debt or performance of promise is called the Pawnee or Pledgee. In the aforesaid example. Citi Bank is the Pawnee.

Rights of Pawnee

- **Right** of retainer [Section 173]
- **Right** to claim reimbursement of extraordinary expenses [Section 173]
- **Right** to sue pawnor [Section 176]
- **Right** to sell [Section 176]
- **Right** against true owner [Section

- **Duty** to take reasonable care of the goods pledged
- **Duty** not to make unauthorized use of goods
- **Duty** not to mix pawnor's goods with his own goods
- **Duty** to return goods
- **Duty** to return accretion to the goods

- Right to get pawnee's duties duly enforced
- Right to redeem [Section 177]

- Duty to comply with the terms of pledge
- Duty to compensate the Pawnee for extraordinary expenses [Section 185]

Distinction between Pledge and Bailment

Basic of distinction	**Pledge**	**Bailment**
1. Purpose	Pledge is bailment of goods for a specific purpose i.e. repayment of a debt or performance of a duty.	Bailment is for a purpose of any kind
2. Right to use	Pawnee cannot use the goods pledged	Bailee can use the goods as per terms of bailment
3. Right to sell	Pawnee can sell the goods pledge after giving notice to the pawnor in case of default by the pawnor.	Bailment can either retain the goods or sue the bailor for his dues.

Distinction between pledges and Hypothecation

Hypothecation is also one of the modes of providing security. However, it is different from pledge in the following respects:

Basic of distinction	**Pledge**	**Hypothecation**
1. possession of goods	Borrower transfer the possession of goods.	Borrower is not transfer the possession of goods.
2. Right to deal with the goods.	Borrower has no right to deal with the goods pledged.	Borrower has a right to deal with the hypothecated.

AGENCY

Meaning of Agency: Agency is relation between an agent his principal created by an agreement.

Section 182 of the Contract Act defines an Agent as ‘‘A person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or whom is so represented is called the principal”.

Essential Features of Agency

1. The principal
2. The agent
3. An agreement
4. Consideration not necessary
5. Representative capacity
6. Good faith
7. The competence of the principal

Modes or Methods or Creation of Agency

1. **Agency by express agreement:** A contract of agency may be made by express words, whether written or oral.
2. **Agency by implied agreement:** ‘‘An authority is said to be implied when it is to be inferred from the circumstances of the case.
   (a) **Agency by estoppels** : When a principal by his conduct or act cause a third person to believe that a certain person is his authorized agent the agency is aid to be an agency by estoppels.
   (b) **Agency by necessity** : It mean the agency which comes into existence when certain circumstances compel a person to act as an agent for an other without his express authority.
   (c) **Agency by holding out** : When a principal by his active conduct or act and without any objection permits another to act as his agent, the agency is the result of principal’s conduct as to the agent.
3. **Agency by ratification** : Ratification means confirmation of an act which has already been done. Sometimes, an act is done by a person on behalf of another person but without another person’s knowledge and authority. If he accepts and confirm the act, he is said to have ratified it.
4. **Agency by operation of law** : In certain circumstances the law treats a person as an agent of another person. For example, (a) when a partnership is formed, every partner automatically becomes agent o another partner. (b) when a company is formed its promoters are treated as its agents by operation of law.

RIGHTS AND DUTIES OF AGENT

Rights of an Agent

1. Right to retain money received on principal’s account.
2. Right to receive remuneration.
3. Right of lien on principal’s property.
4. Right to be indemnified.
5. Right to compensation for injury caused by principal’s neglet.

Duties of an Agent

1. To follow the direction of the principal.
2. To conduct the business of agency with reasonable skill and diligence.
3. To render accounts on demand
4. To communicate with the principal.
5. Not to deal on his own account
6. To pay the amounts received for the principal
7. Not to delegate his authority

8. Not to act in excess of authority
9. Duty on termination of agency by principal's death or insanity.
10.

TERMINATION OF AGENCY

Termination of agency means revocation (cancellation) of authority of the agent the modes of termination of agency may be classified are as :

(**a)** Termination of Agency by the act of the Parties.

1. By revocation o authority by the principal
2. By renunciation (giving up) of business of agency by the agency
3. By mutual agreement

(**b**) **Termination of agency by Operation of Law**

1. Completion of business of agency
2. Death or insanity of principal or agent
3. Insolvency of the principal
4. Destruction of subject matcer
5. Expiry of time
6. Agency subsequently becoming unlawful.
7. Termination of sub agent's authority

revocable agency

when the authority of agent cannot be revoked by the principal it is said to be an irrevocable agency. An agency is irrevocable in the following cases :

1. If the agency is coupled with interest : when an agent himself has a special interest in the property which forms the subject matter of the agency, such agency is said to be coupled with interest.
2. Where the agent has partly exercised his authority
3. When the agent has incurred a personal liability.

DISTINCTION BETWEEN SUB-AGENT AND SUBSTITUTED AGENT

Basic of distinction	Sub-agent	Substituted Agent
1. Appointment	A sub-agent is appointed by the agent, i.e. original agent.	A substituted agent is named by the agent and appointed by the principal.
2. Delegation of Authority	Original agent delegates some of his authority to the sub-agent	Original agent does not delegate his authority to the substituted agent.
3. Control	A sub-agent acts under the control o the agent.	A substituted agent acts under the direction and control of the principal.
4. Privity of contract with principal	There is no privity of contract between sub-agent and the principal. Therefore, both of them cannot directly sue on each other.	There is a privity of contract between substituted agent and the principal. Therefore, both of them can sue each other directly.
5. Liability of the agent	`agent is liable to the principal for the acts of the sub-agent.	Agent is not responsible to the principal for the acts of the substituted agent.
6. Accountability	The sub-agent may be held accountable to the principal only for his wrongful acts or fraud.	A substituted agent is a accountable to the principal for each and every act.
7. Claim for remuneration	A sub-agent has no right to claim remuneration from the principal.	A substituted agent can claim remuneration from the principal.
8. Improper appointment	A sub-agent may be improperly appointed.	A substituted can never be improperly appointed.

UNIT-III
Limited Liability Partnership Act, 2008
(LLP Act)

Introduction

With the growth of Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. In this background, a need was felt for a new corporate form that would provide an alternative to the traditional partnership which exposes its partners to unlimited personal liability and a statute based governance structure of limited liability companies.

Need –

At present, under partnership law, the maximum numbers of partners a partnership firm can have is twenty also the partners are liable jointly and severally and most importantly their liability is unlimited which means that the personal property of the partners can also be attached for the satisfaction of the debts, in addition to the capital contributed by the partners in the firm.

This is the principal reason why partnerships firms of professionals have not grown in size to meet the challenges posed today. Not only are the firm's assets completely liquidated under the standard principles of the partnership law, but the partners are also jointly and severally liable for the entire liabilities of the partnership. Thus, the present system acts as a deterrent for the growth and expansion of service based organizations.

Object of Limited Liability Partnership Act, 2008 [LLP] –

Limited Liability Partnership [LLP] is viewed as an alternative corporate business vehicle that provides the benefits of the limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. LLP form is expected to enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements.

With this background, Limited Liability Partnership Act, 2008 [LLP Act] was enacted on January 7, 2009. Subsequently, Government of India [GOI] notified various provisions of LLP Act on 31st March 2009. GOI has, on April 1, 2009, also notified the Limited Liability Partnership Rules, 2009 [LLP Rules] in respect of registration and operational aspects under the LLP Act.

The salient features of the Limited Liability Partnership Act, 2008,are as follows:-

(i) the LLP shall be a body corporate and a legal entity separate from its partners;

(ii) the mutual rights and duties of the partners of the LLP inter se and those of the LLP and its partners shall be governed by an agreement between the partners inter se or between the LLP and the partners subject to the provisions of the Act. The Act provides flexibility to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the Act;

(iii) the LLP will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP. No partner would be liable on account of the independent or unauthorised actions of other partners or their misconduct. The liabilities of the LLP and its partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP;

(iv) every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India.

(v) the LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government;

(vi) the Central Government shall have powers to investigate the affairs of a LLP, if required, by appointment of competent inspector, for the purpose;

(vii) the compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the act;
(viii) a firm, private company or an unlisted public company would be allowed to be converted into a LLP in accordance with the provisions of the act.
(ix) the winding up of the LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 1956. Till the Tribunal is established, the power in this regard has been given to the High Court;
(x) the act confers powers on the Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such changes or modifications as deemed necessary. However, such notifications shall be laid in draft before each House of Parliament for a total period of 30 days and shall be subject to any modification as may be approved by both Houses;
(xi) the Indian Partnership Act, 1932 shall not be applicable to LLPs.

KEY DEFINITIONS:-
"**Body Corporate** " is defined to mean a company as defined under the Companies Act, 1956 and includes LLP, LLP incorporated outside India, a foreign company but does not include a corporation sole, a registered co-operative society and any other body corporate notified by the Central Government (not being a company defined under the Companies Act, 1956 or LLP defined under LLP Act). **[Section 2(1)(d)]**
"**Business**" includes every trade, profession, service and occupation. **[Section 2(1)(e)]**
"**Financial Year**", in relation to LLP, means the period from 1st April of a year to the 31st March of the following year. However, in case of LLP incorporated after 30th September, financial year may end on 31st March of the year next following that year. **[Section 2(1)(l)]**
"**Foreign Limited Liability Partnership**" means a LLP formed, incorporated or registered outside India which establishes a place of business within India. **[Section 2(1)(m)]**
"**Limited Liability Partnership**" means a partnership formed and registered under LLP Act. [**Section 2(1)(n)**]
"**Limited liability partnership**" agreement" means any written agreement between the partners of LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP. **[Section 2(1)(o)]**
"**Partner**" in relation to LLP means a person who becomes a partner in a LLP in accordance with the LLP agreement. **[Section 2(1)(q)]**

NATURE OF LLP:-
• LLP is a –
— "body corporate" formed and incorporated under LLP Act;
— Legal entity separate from its partners and has perpetual succession.[Sec. 3(1)]
• Two or more partners are required to form an LLP. Any individual or a body corporate can be a partner in a LLP.
In case if individual is a partner, he should not be –
— found to be of unsound mind; or
— an undischarged insolvent; or
— a person who has applied to be adjudicated as insolvent and the application is pending [Sections 5 and 6]

DESIGNATED PARTNERS [SECTION 7]
LLP shall have at least two "designated partners" who are individuals and at least one of them shall be "resident in India". In case one or more of the partners of a LLP are bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as "designated partners"
— "Resident in India" means a person who has stayed in India for minimum 182 days during the immediately preceding 1 year.

Designated partner is responsible for compliance with the provisions of LLP Act.
Designated Partner is required to obtain Designated Partner Identification Number [DPIN] from the Central Government.
Application for allotment of DPIN needs to be submitted online on the LLP website along with the necessary proof duly attested and certified as prescribed.

INCORPORATION OF LLP [SECTIONS 11 TO 21]

Procedure for incorporation of LLP is similar to the procedure for incorporation of a company under the Companies Act, 1956. Applicants are first required to file the application for reservation of name with the Registrar of Companies [ROC]. Once the name applied is approved by the ROC, the documents for incorporation of LLP need to be filed.
Name of every LLP shall end with the words "Limited Liability Partnership" or "LLP".
Name which is undesirable or nearly resembles to that of any other partnership firm or LLP or anybody corporate or trade mark, is not allowed.
Any entity (body corporate/registered partnership firm) which has a name similar to the name of LLP which has been incorporated subsequently may seek change of name of such LLP through ROC within 24 months from date of registration of such LLP.
No person shall carry on business under any name/title which contains the words "Limited Liability Partnership" or "LLP" without duly incorporating it as LLP under the LLP Act.
LLP is required to file with the ROC, the LLP agreement ratified by all the partners within 30 days of incorporation of LLP.

PARTNERS AND THEIR RELATIONS AND EXTENT OF LIABILITY [SEC 22 TO 31]

Mutual rights and duties of partners of a LLP inter se and those of the LLP and its partners shall be governed by an agreement between the partners, or agreement between the LLP and its partners. In absence of any such agreements, the mutual rights and duties shall be governed by the LLP Act.
Every partner of a LLP is, for the purpose of the business of LLP, the agent of LLP, but not of other partners.
LLP, being a separate legal entity, shall be liable to the full extent of its assets whereas the liability of the partners of LLP shall be limited to their agreed contribution in the LLP. LLP is not bound by anything done by a partner in dealing with a person if –
— the partner in fact has no authority to act for the LLP in doing a particular act; and
— the person knows that he has no authority or does not know or believe him to be a partner of the LLP
LLP is liable if the partner of a LLP is liable to any person for wrongful act/omission on his part in the course of business of LLP/with its authority
Obligation of LLP whether arising in contract or otherwise, shall solely be the obligation of LLP.
Liabilities of LLP shall be met out of properties of LLP.
Partner is not personally liable for the obligations of LLP solely by reason of being a partner of LLP.
No partner is liable for the wrongful act or omission of any other partner of LLP, but the partner will be personally liable for his own wrongful act or omission.
The liability of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.
Cessation of a partner on grounds like resignation, death, dissolution of LLP, declaration that a person is of unsound mind, declared/applied to be adjudged as insolvent etc. will not be effective unless —
— The person has notice that the partner has ceased to be so; or
— Notice of cessation has been delivered to ROC.
The notice of cessation may be filed by the outgoing partner if he has reasonable cause to believe that LLP has not filed the said notice.

CONTRIBUTION BY PARTNER [SECTIONS 32 AND 33]

A contribution of a partner to the capital of LLP may consist of any of the –
— tangible, movable or immovable property
— intangible property
— Other benefit to the LLP including money, promissory notes, contracts for services performed or to be performed.
The obligation of a partner for the contribution shall be as per the LLP agreement.
Creditor, which extends credit or acts in reliance on an obligation described in the LLP agreement, without the notice of any compromise made between the partners, may enforce the original obligation against such partner.

AUDIT/FINANCIAL DISCLOSURES [SECTIONS 34 AND 35]

LLP shall maintain the prescribed books of accounts relating to its affairs on cash or accrual basis and according to the double entry system of accounting.
The accounts of every LLP are required to be audited, except in following situations:
— When turnover does not exceed Rs. 40,00,000/- in any financial year; or
— Where contribution does not exceed Rs. 25,00,000/-
Central Government has powers to exempt certain class of LLP from requirement of compulsory audit. LLP are required to file following documents with the ROC –
— Statement of Account and Solvency, within 30 days from the end of 6 months of the financial year;
— Annual return within 60 days from the end of the financial year.

ASSIGNMENT & TRANSFER OF PARTNERSHIP RIGHTS [SEC.42]

The rights of a partner to a share of the profits and losses of the LLP and to receive distribution in accordance with the LLP agreement are transferable, either wholly or in part. However, such transfer of rights does not cause either disassociation of the partner or a dissolution and winding up of the LLP.
Such transfer of right, shall not, by itself entitle, the assignee or the transferee to participate in the management or conduct of the activities of the LLP or access information concerning the transactions of the LLP.

FOREIGN LLP [SECTION 59 AND RULE 34]

On establishment of a place of business in India, foreign LLP are required to file prescribed documents for registration with ROC within 30 days of the establishment in India.
Any alteration in the constitution documents, overseas principle office address and partner of foreign LLP are required to be filed with the ROC in the prescribed form within 60 days of the close of the financial year.
Any alteration in the certificate of registration of foreign LLP, authorized representative in India and principle place of business in India are required to be filed with the ROC in the prescribed form within 30 days of alteration.
Foreign LLP ceasing to have a place of business in India, are required to give notice to ROC in the prescribed form within 30 days of its intention to close the place of business and from the date of such notice, the obligation of Foreign LLP to file any document with the ROC shall cease, provided it has no other place of business in India and it has filed all the documents due for filing as on the date of the notice.

CONVERSION OF PARTNERSHIP FIRM/PRIVATE COMPANY/UNLISTED PUBLIC COMPANY INTO LLP [SECTIONS 55 TO 58, SECOND, THIRD AND FOURTH SCHEDULES]

GOI has, on May 22, 2009, notified provisions relating to conversion of –
• a partnership firm as defined under the Indian Partnership Act,1932 into LLP;
• a private limited company into LLP;
• an unlisted public company into LLP.

Second, Third and Fourth Schedules to the LLP Act contain provisions relating to conversion of a partnership firm into LLP, a private limited company into LLP and unlisted public company into LLP, respectively.

Eligibility for conversion:

— Firm into LLP : Firm can be converted into LLP if all the partners of firm become the partners of LLP and no one else.

— Company into LLP : Private limited company/unlisted public company can be converted if and only if -

(a) there is no security interest in its assets subsisting or in force at the time of application for conversion; and

(b) all the shareholders of the company become partners of LLP and no one else.

• For conversion of firm/private limited company/unlisted public company into LLP, the partners of the firm/shareholders of company are required to file a statement and incorporation documents in the prescribed form with the ROC.

• On receiving the documents for conversion, ROC shall register the documents and issue certificate of registration specifying the date of registration as LLP. Upon registration by ROC, LLP shall intimate Registrar of Firm [ROF]/ROC, as the case may be, about conversion within 15 days of registration.

• On and from the date specified in the certificate of registration issued by ROC -

— all tangible (movable/immovable) & intangible property, liabilities, interest, obligation etc. relating to the firm/private limited company/unlisted public company and the whole of the undertaking of the firm/private limited company/unlisted public company, shall be transferred to and shall vest in the LLP without further assurance, act or deed.

— firm/private limited company/unlisted public company shall be deemed to be dissolved and removed from the records of ROF/ROC, as the case may be.

• If any property/rights, etc. of the partnership firm/private limited company/unlisted public company is registered with any authority, LLP shall take steps to notify the authority of the conversion.

• Upon conversion, following things/events in favour of or against the firm/private limited company/unlisted public company on the date of registration may be continued, completed and enforced by or against the LLP:

— all proceedings, conviction, ruling, order or judgment of any Court, Tribunal or other authority pending in any Court or Tribunal or before any authority on the date of registration

— every agreement irrespective of whether or not the rights and liabilities there under could be assigned,

— deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements

— every contract of employment

— appointment in any role or capacity

— any approval, permit or license issued under any other Act, etc.

• In case of a firm, every partner of a firm which is converted into a LLP shall continue to be personally liable (jointly and severally with LLP) for the liabilities and obligations of the firm incurred prior to the conversion or which arose from any contract entered into prior to the conversion. In case any such partner discharges any such liability or obligation he shall be entitled (subject to any agreement with the LLP to the contrary) to be fully indemnified by LLP in respect of such liability or obligation.

• For a period of 12 months commencing on or before 14 days from the date of registration, LLP shall ensure that every official correspondence of LLP bears the following:

— a statement that it was, as from the date of registration, converted from a firm/private limited company/unlisted public company into a LLP; and

— the name and registration number, if applicable, of the firm/a private limited company/an unlisted public company from which it was converted.

GENERAL PARTNERSHIP	LLP
Liability of partners unlimited.	Liability of partners limited to contribution.
Partners jointly and severally liable.	Partners not liable for act of other partners.
Partnership firms are neither body corporate nor do they have perpetual succession and legal entity.	LLP is a body corporate having perpetual succession and legal entity.
Registration of partnership is not mandatory.	Incorporation of LLP is mandatory.
Partnership cannot have more than 20 partners.	LLP can have more than 20 partners.
COMPANY	LLP
Incorporation procedure comparatively complex than LLP.	Incorporation procedure relatively simple and expeditious.
Management structure usually complex – shareholders do not ordinarily participate in day to day management.	Flexible management structure – Partners are entitled to participate in management.
Capital structure relatively less flexible than LLP.	Flexible capital structure.
Elaborate provision relating to redressal in case of oppression and mismanagement.	No provision relating to redressal in case of oppression and mismanagement.
Complex statutory compliance requirements.	Limited statutory compliances as compared to Companies.

COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LLPS [SECTION 60]

Provisions have been made in the LLP Act for allowing a compromise and arrangement including mergers and amalgamations.

Compromise and arrangement can be between LLP and its creditors or between LLP and its partners. If majority representing 3/4th in value of creditors or partners, at the meeting, agree to compromise or arrangement shall, if sanctioned by National Company Law Tribunal [NCLT] be binding on all the creditors, all the partners and LLP. NCLT to pass order subject to disclosure of all material facts/latest financial position and pendency of investigation proceedings.

NCLT order shall be filed with the ROC within 30 days, in order to be effective.

In case of scheme of the amalgamation, NCLT shall pass order only on receipt of report from the ROC that the affairs of the LLP (transferor LLP) have not been conducted in the manner prejudicial to the interest of the partner/public.

WINDING-UP OF LLP [SECTIONS 63 AND 64]

LLPs may be wound-up either voluntarily or by NCLT. LLP may be wound up by NCLT if –

- LLP decides to wound up by NCLT;
- Number of partners is reduced below 2 for a period of more than 6 months;
- LLP is unable to pay its debts;
- LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- LLP has defaulted in filing Statement of Account and Solvency or annual return with the ROC for 5 consecutive financial years; or
- NCLT is of the opinion that it is just and equitable that the LLP be wound up.

In January 2010, MCA had notified that certain provisions relating to winding-up of a company under the Companies Act, 1956 will also be applicable to a LLP. The notification also provides details of modification in the provisions of the Companies Act relating to winding up for its applicability to winding up of LLP under the LLP Act. Subsequently, on 30 March 2010, issued Limited Liability Partnership (Winding up and Dissolution) Rules, 2010.

MISCELLANEOUS PROVISIONS

The Central government has been empowered to apply any of the provisions of the Companies Act, 1956 to LLPs with suitable changes or modification. [Section 67]

ROC may strike off the name of LLP from the register of LLP if LLP is not carrying on business or its operation, in accordance with the provisions of LLP Act in the manner prescribed. [Section 75]

Forms/documents required to be filed under the LLP shall be filed in electronic form online on the LLP portal duly authenticated by the partner/designated partner with a digital signature and further attested by the practicing chartered accountant/company secretary/cost accountant whenever required. [Section 68]

Presently all the provisions of the LLP Act, other than those relating to winding-up and dissolution of LLP and appellate provisions to be exercised by NCLT and National Company Law Appellate Tribunal [NCLAT], have been brought into force.

Till the constitution of NCLT and NCLAT under the Companies Act, 1956, the powers of NCLT and NCLAT will be exercised by the Company Law Board or High Court as is specified in the LLP Act. [Section 81]

Unless specifically provided, the provisions of the Indian Partnership Act, 1932 are not applicable to LLPs. [Section 4]

Merits of LLP

1) Renowned and accepted form of business worldwide in comparison to Company.
2) Easy to form or easy to establish and low cost of formation.
3) Body Corporate (Separate Legal Entity)
4) Limited Liability
5) Perpetual Succession
6) Flexible to manage i.e. easy to manage and run.
7) Easy transferable ownership
8) Capacity to sue
9) Lesser compliances
10) No requirement of any minimum capital contribution.
11) No restrictions as to maximum number of partners.
12) LLP & its partners are distinct from each other.
13) Partners are not liable for Act of partners.
14) Less Compliance level.
15) No exposure to personal assets of the partners except in case of fraud.
16) Less requirement as to maintenance of statutory records.
17) Less Government Intervention.
18) Easy to dissolve or wind-up.
19) Professionals can form Multi-disciplinary Professional LLP, which was not allowed earlier.
20) Audit requirement only in case of contributions exceeding Rs. 25 lakh or turnover exceeding Rs. 40 lakh.

Demerits of LLP

1) Any act of the partner without the other partner, may bind the LLP
2) Under some cases, liability may extend to personal assets of partners.
3) Cannot raise money from Public.

Conclusion

The LLP will act as an engine of growth for economic development of the country and would lead to the growth of professional services in the country. With the liberalisation and globalisation of Indian economy, the LLP, as an alternate mode of carrying business, will encourage joint ventures and would make Indian service sectors globally competitive. LLP structure will enable Small & Medium

Enterprises and family partnerships to expand as they will be able to admit outsiders with capital or skill as partners. The hybrid structure of LLP will facilitate entrepreneurs, service providers and professionals to organize and operate in an innovative and efficient manner for effectively competing in the global market.

Negotiable Instruments Act, 1881

The Negotiable Instruments Act was enacted, in India, in 1881 and it came into force on 1st March, 1881. Prior to its enactment, the provision of the English Negotiable Instrument Act were applicable in India, and the present Act is also based on the English Act with certain modifications. It extends to the whole of India except the State of Jammu and Kashmir. The Act operates subject to the provisions of Sections 31 and 32 of the Reserve Bank of India Act, 1934

Definition

A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation (i) - A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii) - A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an indorsement in blank.

Explanation (iii) - Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. The word negotiable means 'transferable by delivery,' and the word instrument means 'a written document by which a right is created in favour of some person.' Thus, the term "negotiable instrument" literally means 'a written document which creates a right in favour of somebody and is freely transferable by delivery.'

A negotiable instrument is a piece of paper which entitles a person to a certain sum of money and which is transferable from one to another person by a delivery or by endorsement and delivery.

"According to **Blackburn J**, a negotiable instrument has two characteristics namely

1. It is transferable, like cash, by delivery (which assumes it is in a deliverable state) so that the transferee can enforce the rights embodied in it in his own name.
2. The transferee being a bonafide holder for value can acquire a better title to it than that of his transferor."

Negotiable Instrument is moreover a document of title which clearly explains the rights towards the payment of money or a security for money which is transferable by delivery either by custom or by legislation. The use of negotiable Instrument is mainly to facilitate payment for exports and imports of trade. The rapid growth of technology has revolutionized the world with computer, which is used in every field of profession. This has reduced the use of negotiable instrument and in future it may decline more. Even though the electronic revolution has got more advantages it may be considered as the next step because the world needs time to get used to it. But, the negotiable instrument are still in use.

Characteristics of Negotiable Instruments

1. Free transferability or easy negotiability

Negotiable instrument is freely transferable from one person to another without any formality. The property (right of ownership) in these instruments passes by either endorsement and delivery (in case it is payable to order) or by delivery merely (in case it is payable to bearer) and no further evidence of transfer is needed.

2. Title of holder is free from all defects

A person who takes negotiable instrument bona-fide and for value gets the instrument free from all defects in the title. The holder in due course is not affected by defective title of the transferor or of any other party.

3. Transferee can sue in his own name without giving notice to the debtor:

A bill, promissory note or a cheque represents a debt, i.e., an "actionable claim" and implies the right of the creditor to recover something from the debtor.

The creditor can either recover this amount himself or can transfer his right to another person.

In case he transfers his right, the transferee of a negotiable instrument is entitled to sue on the instrument in his own name in case of dishonour, without giving notice to the debtor of the fact that he has become holder.

In case of transfer or assignment of an ordinary "actionable claim" i.e., a book debt evidenced by an entry by the creditor in his account book, under the transfer of property act, notice to the debtor is necessary in order to make the transferee entitled to sue in his own name.

4. Presumptions:

Certain presumptions apply to negotiable instruments. Section 118, 119 and 139 lay down the following presumptions:

(a) For consideration : that every negotiable instrument, was made, drawn, accepted, endorsed or transferred for consideration.

(b) As to date : that every negotiable instrument bearing a date was made or drawn on such date.

(c) As to time of acceptance : that every bill of exchange was accepted within a reasonable time after its date and before its maturity.

(d) As to transfer: that every transfer of a negotiable instrument was made before its maturity

(e) As to time of endorsements : that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.

(f) As to stamps : that a lost promissory-note, bill of exchange or cheque was duly stamped.

(g) As to a holder in due course: that every holder of a negotiable instrument is holder in due course (this presumption would not arise where it is proved that the holder has obtained the instrument from its lawful owner, or from any person in lawful custody thereof, by means of an offence, fraud or for unlawful consideration and in such a case the holder has to prove that he is a holder in due course

(h) As to dishonour: that the instrument was dishonoured, in case a suit upon a dishonoured instrument is filed with the court and the fact of protest is proved.

Section 139 - Presumption in favour of holde:

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability. "The effect of these presumptions is to place the evidential burden on the accused of proving that the cheque was not received by the complainant towards the discharge of any liability. Because both sections 138 and 139 require that the court shall presume the liability of the drawer of the cheques for the amounts for which the cheques are drawn…it is obligatory on the courts to raise this presumption in every case where the factual basis for the raising of this presumption had been established. It introduced an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused."

Types of Negotiable

Instruments There are two types of Negotiable instruments:-

Negotiable Instruments recognized by statutes: The Negotiable Instruments Act mentions only three kinds of negotiable instruments **(Section 13)**.

These are: **1. Promissory Notes**

2. Bills of Exchange, and

3. Cheques

Negotiable instruments recognized by usage or customs of trade: There are certain other instruments which have acquired the characteristic of negotiability by the usage or custom of trade.
For example: Exchequer bills, Bank notes, Share warrants, Circular notes, Bearer debentures, Dividend warrants, Share certificates with blank transfer deeds, etc.

Promissory Note

Definition: According to **Section 4 of Negotiable Instruments Act**, "A promissory note is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

Parties to a Promissory Note
There are primarily two parties involved in a promissory note. They are:
(i) The Maker or Drawer: The person who makes the note and promises to pay the amount stated therein.
(ii) The Payee – The person to whom the amount is payable i.e. to whom the payment is to be made is called a payee.

In course of transfer of a promissory note by payee and others, the parties involved may be –
(a) The Endorser – the person who endorses the note in favour of another person.
(b) The Endorsee – the person in whose favour the note is negotiated by endorsement.

Characteristics of Promissory Note
1. It must be in writing:
A promissory note has to be in writing
An oral promise to pay does not become a promissory
note The writing may be on any paper or book
Illustrations: A signs the instruments in the following terms:
"I promise to pay B or order Rs.500/-"
"I acknowledge myself to be indebted to B in Rs.1,000/- to be paid on demand, for value received"
Both the above instruments are valid promissory notes.

2. It must contain a promise or undertaking to pay: There must be a promise or an undertaking to
pay
The undertaking to pay may be gathered either from express words or by necessary implication.
A mere acknowledgement of indebtedness is not a promissory note, although it is valid as an agreement and may be sued upon as such
Illustrations: A signs the instruments in the following terms:
"Mr. B I owe you Rs.1,000"
"I am liable to pay to B Rs.500"
The above instruments are not promissory notes as there is no undertaking or promise to pay. There is only an acknowledgement of indebtedness.
Where A signs the instrument in the following terms:
"I acknowledge myself to be indebted to B in Rs.1,000, to be paid on demand, for value received," there is a valid promissory note

3. The promise to pay must be unconditional:
A promissory note must contain an unconditional promise to pay
The promise to pay must not depend upon the happening of some uncertain event, i.e., a contingency or the fulfillment of a condition
Illustrations: A signs the instruments in the following terms:

"I promise to pay B Rs. 500 seven days after my marriage with C"
"I promise to pay B Rs. 500 as soon as I can"
The above instruments are not valid promissory notes as the payment is made depending upon the happening of an uncertain event which may never happen and as a result the sum may never become payable

4. It must be signed by the maker: It is imperative that the promissory note should be duly authenticated by the 'signature' of the maker
'Signature' means the writing or otherwise affixing a person's name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document.
5. The maker must be a certain person:
The instrument must itself indicate with certainty who is the person or are the persons engaging himself or themselves to pay
Alternative promisors are not permitted in law because of the general rule that "where liability lies no ambiguity must lie"

6. The payee must be certain:
Like the maker the payee of a pronote must also be certain on the face of the instrument
A note in favour of fictitious person is illegal and void
A pronote made payable to the maker himself is a nullity, the reason being the same person is both the promisor and the promisee

7. The undertaking must be to pay a certain and definite sum of money only.
For a valid pronote it is also essential that the sum of money promised to be payable must be certain and definite
The amount payable must not be capable of contingent additions or subtractions
Illustrations: A signs the instruments in the following terms:
"I promise to pay B Rs.500 and all other sums which shall be due to him"
"I promise to pay B Rs.500, first deducting thereout any money which he may owe me"
The above instruments are invalid as promissory notes because the exact amount to be paid by A is not certain

8. The amount payable must be in legal tender money of India:
A document containing a promise to pay a certain amount of foreign money or to deliver a certain quantity of goods is not a pronote. The payment must be in a legal money of the country.
9. Revenue stamps or requisite value under the stamp Act of the country should be affixed.
10. Other matters of form like number, date, place etc, are usually found given in notes, but they are not essentials in law.
11. A bank note or a currency note is not a promissory note within the meaning of this section.
12. A promissory note cannot be made payable to bearer on demand.

Bill of Exchange

Definition: Section 5 of the Negotiable Instruments Act defines a Bill of Exchange as follows:
"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." It is also called a Draft.
Illustration:
Mr. X purchases goods from Mr. Y for
Rs.1000/-Mr. Y buys goods from Mr. S for Rs.1000/-
Then Mr. Y may order Mr. X to pay Rs.1000/- Mr. S which will be nothing but a bill of exchange.

Parties to a Bill of Exchange

There are three parties involved in a bill of exchange

(i) The Drawer – The person who makes the order for making payment.

(ii) The Drawee – The person to whom the order to pay is made. He is generally a debtor of the drawer. The person directed to pay the money by the drawer is called the drawee.

(iii) The Payee – The person to whom the payment is to be made. The person named in the instrument, to whom or to whose order the money are directed to be paid by the instruments are called the payee.

The drawer can also draw a bill in his own name thereby he himself becomes the payee. Here the words in the bill would be Pay to us or order.

In a bill where a time period is mentioned, is called a Time Bill.

But a bill may be made payable on demand also. This is called a Demand Bill.

Essentials of a Bill of Exchange

1. **It must be in writing**
2. **It must contain an order to pay. A mere request to pay on account, will not amount to an order**
3. **The order to pay must be unconditional**
4. **It must be signed by the drawer**

   The drawer, drawee and payee must be certain. A bill cannot be drawn on two or more drawees but may be made payable in the alternative to one of two or more payees
5. **The sum payable must be certain**
6. **The bill must contain an order to pay money only**
7. **It must comply with the formalities as regards date, consideration, stamps, etc**

Cheque

Definition: A cheque is bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. (Sec. 6, NIA)

Explanation I - For the purposes of this section, the expressions-

(a) a cheque in the electronic form means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;

(b) a truncated cheque means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II - For the purposes of this section, the expression clearing house means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.

A cheque is a kind of bill of exchange but it has additional qualification namely-

1. **It is always drawn on a specified banker and**
2. **It is always payable on demand without any days of grace.**

Parties to a cheque

Drawer: Drawer is the person who draws or makes the cheque.

Drawee: Drawee is the drawer's banker on whom the cheque has been drawn.

Payee: Payee is the person who is entitled to receive the payment of a cheque.

Crossing of Cheques

A Crossed Cheque is one which bears across its face two parallel transverse lines with or without certain words. Such lines are usually drawn on the left side top corner of the face of the Cheque. However, such lines can be drawn anywhere on the face of the Cheque.

Crossing of Cheque is a direction to the drawee bank to pay the amount of the Cheque to a bank or to a particular bank. Therefore, a crossed Cheque is not payable to the payee or holder at the counter of the bank. In order to get the payment of the Cheque, it is required to be deposited in an account with a bank. The bank, in turn, presents the Cheque to the drawee bank and gets payment on behalf of the payee or indorsee of the Cheque.

The objects of crossing of a Cheque are as follows:

To direct the drawee bank to pay the amount of the Cheque only to a bank or a particular bank;

To prevent the payment of the Cheque to an unauthorized or wrong person.

KINDS OF CROSSING

Crossing of Cheque is basically of two kinds:-

1. **General crossing, and**
2. **Special crossing.**

These basic kinds of crossing may take several forms. Some of them are:

3. **Restrictive crossing.**
4. **Not negotiable crossing.**

1. General crossing: A Cheque is deemed to be generally crossed in any of the following cases:

a. When it bears across its face two parallel transverse lines without any words.
b. When it bears across its face an addition of the words "and company" or any abbreviation thereof between two parallel transverse lines. It may also be with or without the words 'Not negotiable'.

Effects of general crossing

The Cheque is not payable at the counter of the bank.

The drawee bank shall pay the amount of the Cheque only to a banker. Therefore, the holder will have to deposit the Cheque in an account with any banker. [Sec. 126 Para 1]

2. Special crossing: A Cheque is said to be specially crossed when the name of a banker is added across the face of the Cheque, either with or without words, not negotiable. Usually, two parallel transverse lines are used in special crossing but they are required not by law.

Effects of special crossing:

In the case of a Cheque especially crossed, the payment can be obtained only through the particular banker whose name appears across the face of the Cheque or his agent for collection.[Sec. 126, para2]

3. Restrictive crossing: Restrictive crossing has not been described anywhere in the Negotiable Instrument Act. It is a type of crossing which has evolved out of business and banking usage and now recognized by the law. Every Cheque crossed wither generally or specially may be crossed restrictively credit the proceeds of the Cheque only to the account of the payee.

4. Not negotiable crossing: Sometimes, a Cheque crossed generally or specially contains the words 'not negotiable' A crossing with such words is said to be 'not negotiable' crossing.

The words 'not negotiable' on a crossed Cheque destroy the negotiable character of the Cheque but not the transferability of the Cheque. Therefore, any person taking a crossed Cheque bearing the words 'not negotiable' shall not have and shall not be capable of giving a better title to the Cheque than the title of the person from whom he took it. [Sec. 130]

Parties to a Negotiable Instrument:

Holder and Holder in due course

Holder (Sec. 8, NIA)

Holder means any person entitled in his own name to the possession a promissory note bill of exchange or cheque and to recover or receive the amount due thereon from the parties thereon. A holder must therefore have the possession of the instrument and also the right to recover the money in his own name.

Therefore**, holder of a negotiable instrument is the person:**

1. **Who is entitled in his own name to the possession of the instrument, and**
2. **Who has the right to receive or recover the amount due thereon from the parties thereto.**

Characteristics:

a) **Entitled to possession of an instrument**
b) **Entitled to receive or recover the amount**
c) **Holder of lost or destroyed instrument**

Who can be a Holder?

i. **Payee**
ii. **Indoresee**
iii. **Bearer**
iv. **Legal representative or heir**

Who is Not a Holder?

i. **Agent**
ii. **Servant**
iii. **Beneficial**
iv. **Thief or finder**
v. **Forged indorsee**

Powers of Holder

I. **He is entitled in his own name to the possession of the instrument.**
II. **He can receive or recover the amount due on the instrument.**
III. **If necessary, he can sue the parties in order to recover the money due on the instrument.**
IV. **He can validly discharge the instrument on payment of the instrument.**
V. **He may indorse the instrument to any other person**

"Holder in due course" (Sec. 9, NIA)

Holder in due course means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque, if payable to the bearer or the payee or indrosee thereof, if payable to the order before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from who he derived his title'

Thus, a person is a holder in due course if he satisfies the following conditions:

a) **He must be a holder (possessor) of a negotiable instrument.**
b) **He must have become holder (possessor) of the instrument for consideration.**
c) **He must have become holder before maturity of the instrument.**
d) **He must have obtained the instrument in good faith.**
e) **He must have received the instrument complete and regular on the face of it.**

RIGHTS AND PRIVILEGES OF HOLDER IN DUE COURSE

A holder in due course enjoys certain rights and privileges. They are available in the following particular cases:

In case of an inchoate instrument: Sometimes a person signs a stamped but otherwise incomplete (inchoate) instrument and delivers it to another person. In such a case, it implies that the holder may fill in any amount for which authority has been given by the maker.

In case of a fictitious bill: Sometimes the name of the drawer or the payee or both is fictitious in a bill. Such a bill is called a fictitious bill. The acceptor of such a fictitious bill is not liable to the holder of the bill. But if the same bill is passed on to a holder in due course, he will have a privilege to claim money on it from the acceptor. [Sec.42]

In case of the liability of prior parties: A holder in due course has a privilege to hold every prior party to a negotiable instrument liable on it until the instrument is duly satisfied. [Sec.36]

In case of instrument without consideration: Sometimes an instrument is made, drawn, accepted, indorsed or transferred without consideration. But, if the same instrument comes into the hands of a holder in due course, he has a privilege to recover the amount from any party thereto [Sec.43]

In case of transfer of title to a subsequent holder: A holder in due course has a privilege to transfer the title to an instrument free from all defects to subsequent holder. Therefore, any holder of a negotiable instrument who derives title to a negotiable instrument from a holder in due course enjoys all the rights and privileges of that holder in due course.

In case of an instrument obtained by unlawful means or for unlawful consideration: Sometimes, a person gets a lost instrument or obtains an instrument by means of an offence (i.e. by stealing or defrauding). In such a case, the holder cannot claim any right against the party liable on it. But if the same instrument is negotiated to a holder in due course, he will get good title to it.

DISTINCTION BETWEEN HOLDER AND HOLDER IN DUE COURSE

Basis of Distinction	Holder	Holder in Due Course
1. Definition	Holder is a person who is entitled in his own name to the possession of the instrument and to receive the amount due on it.	Holder in due course is a person who becomes the possessor of the instrument for consideration before its maturity and in good faith. [Sec. 9]
2. Consideration	A holder need not necessarily acquire the instrument for consideration. For instance, a holder may get the instrument by way of gift.	A holder in due course can acquire the instrument for consideration only.
3. Before maturity	A holder may obtain possession before or after the maturity of the instrument.	A holder in due course must obtain the possession before maturity of the instrument.
4. Good faith	A holder need not necessarily acquire possession of the instrument in good faith.	A holder in due course must always acquire possession of the instrument in good faith.
5. Inchoate instrument	A holder can claim only the amount which signer of the inchoate instrument intended to pay.	A holder in due course can claim any amount filled in the inchoate instrument provided it is covered by the stamp affixed on it. [Sec. 20]
6. Right against prior parties	A holder does not have rights against all the prior parties. He has rights against the original parties and his immediate indorser.	A holder in due course has rights against every prior party to the instrument. He can hold them liable jointly and severally.[Sec. 36]
7. Title better than the transferor	A holder can never get a better title than that of the transferor.	A holder in due course can acquire a better title than that of the transferor. In other words he gets the instrument cleansed of all prior defects.

Negotiation

One of the essential features of a negotiable instrument is its transferability. A negotiable instrument may be transferred from one person to another in either of the followings way-

1. **By negotiation**
2. **By assignment**

1) By negotiation - The transfer of an instrument by one party to another so as to constitute the transferee a holder is called Negotiation. Negotiation means as the process by which a third party is constituted the holder of the instrument so as to entitle him to the possession of the same and to receive the amount due thereon in his own name.

According to section 14 of the Act, "when a promissory note, bill of exchange or cheque is transferred to any person so as to constitute that person the holder thereof, the instrument is said to be negotiated." The main purpose and essence of negotiation is to make the transferee of a promissory note, a bill of exchange or a cheque the holder there of.

Modes of negotiation (Sec. 47 and 48, NIA)

1. Negotiation by delivery (Sec. 47): Where a promissory note or a bill of exchange or a cheque is payable to a bearer, it may be negotiated by delivery thereof.

Example: A the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep it for B. The instrument has been negotiated.

2. Negotiation by delivery (Sec. 48):

A promissory note, a cheque or a bill of exchange payable to order can be negotiated only be endorsement and delivery. Unless the holder signs his endorsement on the instrument and delivers it, the transferee does not become a holder. If there are more payees than one, all must endorse it.

2) By Assignment –

When a holder of a bill, promissory note or cheque transfers the same to another, he in fact gives his right to receive the payment of the instrument to the transferee.

Difference between Assignment & Negotiation:-

1) Mode of transfer- The transfer by negotiation requires only delivery with or without endorsement of a bearer or order instrument. Whereas the transfer by assignment requires a separate written document such as transfer deed signed by the transferor.
2) Notice of transfer-Not require in negotiation
3) Consideration-consideration must be proved in assignee.
4) Title
5) Right to sue

Endorsement

The word "endorsement" in its literal sense means, writing on the back of an instrument. But under the Negotiable Instruments Act, it means, the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein. Thus, endorsement is signing a negotiable instrument for the purpose of negotiation. The person who effects an endorsement is called an "endorser", and the person to whom negotiable instrument is transferred by endorsement is called the "endorsee". Who may Endorse / Negotiate [Section 51]: Every Sole maker, drawer, payee or endorsee, or all of several joint makers, drawers, payees or endorsees of a negotiable instrument may endorse and negotiate the same if the negotiability of such instrument has not been restricted or excluded as mentioned in Section 50.

When the maker or holder of a negotiable instrument signs the instrument (otherwise than as maker) for the purpose of its negotiation, it is said to be the Endorsement of the instrument. **[Section 15]**

Essentials of a Valid Endorsement: Following are the essentials of a valid endorsement:

1. Indorsers must be holder: For a valid Endorsement, the indorser must be holder of the instrument. In other words, indorser must be entitled in his own name to the possession of the instrument and recover or receive the amount due thereon. Therefore, a person who steals or finds a lost instrument cannot indorse the instrument because he is not a holder.

2. On the instrument: Endorsement must be on the face or back of the instrument or on a piece of paper annexed to the instrument.

3. Signature: Endorsement must be signed by the indorser for the purpose of negotiation of the instrument. It may be signed by the maker or holder of the instrument but the maker must not sign the Endorsement in the capacity of the maker.

4. Additional words and form of words: Indorser may sign the Endorsement with a without additional words or statement.

5. Endorsement by joint holders: An Endorsement is valid only when all joint holders (i.e. all makers, drawers, indorsees or payees) join in Endorsement unless any one of them has the authority to indorse for the others.

6. Endorsement of entire instrument: Endorsement must be of the entire instrument. An Endorsement which purports to transfer only a part of the amount of the instrument is not a valid Endorsement.

7. Delivery: In order to make a complete and effective Endorsement, the instrument must be delivered by the indorser to the indorsee.

8. It must be made by the holder of the instrument.

9. It must be completed by the delivery of the instrument.

10.It must be signed by the endorser. It must be on the back or face of instrument or on a slip of paper annexed thereto.

Persons Entitled to Indorse:

1. **Payee**
2. **Maker, drawer or holder**
3. **Indorsee**
4. **Joint makers, drawers etc.**

Kinds of Endorsements

1. Blank or general Endorsement: When the indorser signs his name only on the instrument for the purpose of its negotiation, it is called the blank or general Endorsement. Illustration: Anta has a Cheque payable to 'Anta or order' Anta merely signs on the instrument. It constitutes a blank Endorsement.

2. Full or special Endorsement: When an indorser signs his name and adds a direction to pay the amount mentioned in the instrument to or to the order of a specified person, it is called the Endorsement in full. Illustration: Anita is a holder of a Cheque. He writes 'Pay Banta or Order or Pay Banta only' and signs the Cheque. It is a full or special Endorsement.

3. Restrictive Endorsement: Illustration: (a) 'Pay the contents to Banta only'. (b) 'Pay Banta for my use'.

4. Partial Endorsement: Sometimes, an Endorsement purports to transfer only a part of the amount of the instrument. Such an Endorsement is called as partial Endorsement. It is not a valid Endorsement for the purpose of negotiation.

5. Conditional or qualified Endorsement: When an indorser inserts a condition in his Endorsement, it is called a conditional Endorsement. Sometimes, an indorser by express words in the Endorsement may exclude his liability on the instrument makes the right of the indorsee to receive the amount due

thereon on the happening of a specified event or on the implement of some condition. In such a case, the Endorsement is said to be conditional.

Effects of Endorsement:

1. An unconditional Endorsement of a negotiable instrument followed by an unconditional delivery of the instrument has the following effects:
2. The property in the instrument stands transferred to the indorsee.
3. The indorsee gets the right of further negotiation of the instrument [Sec. 50]
4. The indorsee is entitled to sue all parties, whose names appear on it.

Discharge of a negotiable instrument "**Discharge means release from obligation**." Discharge can take place-

1) **By payment in due course:** The instrument is discharged by payment made in due course by the party who is primarily liable to pay, or by a person who is accommodated in case the instrument was made or accepted for his accommodation, The payment must be made at or after the maturity to the holder of the instrument if the maker or acceptor is to be discharged. A payment by a party who is secondarily liable does not discharge the instrument.

2) **By party primarily liable by becoming holder (Section 90):** If the maker of a note or the acceptor of a bill becomes its holder at or after its maturity in his own right, The Negotiable Instruments Act, 1881 4.5 instrument is discharged.

3) **By express waiver:** When the holder of a negotiable instrument at or after its maturity absolutely and unconditionally renounces in writing or gives up his rights against all the parties to the instrument, the instrument is discharged. The renunciation must be in writing unless the instrument is delivered up to the party primarily liable.

4) **By Cancellation:** Where an instrument is intentionally cancelled by the holder or his agent and the cancellation is apparent thereon, the instrument is discharged. Cancellation may take place; by crossing out signatures on the instrument, or by physical destruction of the instrument with the intention of putting an end to the liability of the parties to the instrument.

5) **By discharge as a simple contract:** A negotiable instrument may be discharged in rile same way as any other contract for the payment of money. This includes for example, discharge of an instrument by innovation or rescission or by expiry of period of limitation.

Dishonour of a negotiable instrument

An instrument is said to be dishonored when the acceptance and/or payment is refused on a duly presented instrument. Thus, a negotiable instrument may be dishonored in two ways:

1. **by non acceptance, and**
2. **by non payment**

Dishonor by Non-acceptance:

Only a bill may be dishonored by non acceptance. A bill is deemed to be dishonored by non acceptance in any of the following cases:

a. **Refused to accept**
b. **Not signed by all the drawees**
c. **Not accepted by any partner**
d. **Bill not accepted within forty eight hours.**
e. **Drawee could not be found**

Dishonour by Non-payment:

a. **Default in payment**
b. **When excused from presentment**

On the dishonour of a cheque, one can file a suit for recovery of the cheque amount along with the cost & interest under order XXXVII of Code of Civil Procedure 1908 (which is a summary procedure and) can also file a Criminal Complaint u/s 138 of Negotiable Instrument Act for punishment to the signatory of the cheque for haring committed an offence. However, before filing the said complaint a statutory notice is liable to be given to the other party.

NOTICE OF DISHONOUR

When a negotiable instrument is dishonored by non acceptance (bill) or by non-payment, the holder may sue against the parties liable for the same. But he can do so only when he has served a formal notice to the effect.

The notice of dishonor is necessary for two reasons:

a. **To warn the party about his liability.**
b. **To secure rights of the holder**

Notice by Whom?

The notice of dishonor may be given by any of the following:

i. **By the holder.**
ii. **By any party receiving the notice of dishonor. He may do so if he wants to hold any prior party liable to himself.**
iii. **By an agent of the holder**

Notice to Whom?

i. **To all prior parties.**
ii. **To some one of the several parties.**
iii. **To an agent of the person.**
iv. **To the legal representative, in case the party liable is dead.**
v. **To the official assignee, in case the party liable has been declared insolvent.**

Time and Place of Notice:

i. The notice must be given within a reasonable time after dishonour.
ii. The notice must be given at the place of business. In case the party has no place of business, it must be given at the residence of the party.

Dishonour of certain cheques for insufficiency of funds

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within 15 days of the receipt of the said notice.

Explanation - For the purposes of this section, debt or other liability means a legally enforceable debt or other liability.

Ingredients of the offence under Section 138, NIA: It is manifest that to constitute an offence under Section 138 of NIA, the following ingredients are required to be fulfilled:

1. a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability; that cheque has been presented to bank within a period of three months from the date on which it is drawn or within the period of its validity whichever is earlier;
2. that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
3. the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
4. The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Section 139 - Presumption in favour of holder

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability. The effect of these presumptions is to place the evidential burden on the accused of proving that the cheque was not received by the complainant towards the discharge of any liability. Because both sections 138 and 139 require that the court shall presume the liability of the drawer of the cheques for the amounts for which the cheques are drawn…it is obligatory on the courts to raise this presumption in every case where the factual basis for the raising of this presumption had been established. It introduced an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused.

NOTING

Meaning – Noting is the process of recording the fact and reasons of dishonor of negotiable instrument by the notary public upon the dishonored instrument. In other words, noting consists of recording and authenticating the fact and reasons of dishonor of a negotiable instrument by the notary public.

Need – Noting is not compulsory in the case of an inland bill or note. But noting serves as an authentic and official proof of dishonor of an instrument by non acceptance or non-payment. It serves as an evidence of dishonor of a negotiable instrument in the legal proceedings before the Court.

Procedure of Noting – When a promissory note or a bill of exchange is dishonoured, the holder may request within a reasonable time after its dishonor to a notary public for its noting. On receipt of the request, the notary public takes following steps:

The notary public makes a formal demand upon the acceptor or maker for acceptance or payment. It may be noted that such demand may be made either by the notary public personally or by his clerk. If authorized by agreement or usage, the demand may be made by a registered letter.

When it is not then accepted or paid, the notary public records the fact of dishonor upon the instrument, or upon a paper attached thereto or party upon each.

Such a note must specify the following things:

a) The fact of dishonour.
b) The date of dishonor of the instrument.
c) The reasons, if any, assigned for such dishonor.
d) If the instrument has not been expressly dishonored, the reasons why the holder treats it as dishonored.
e) The notary's charges. [Sec. 99]

In addition, the notary public also makes a reference of his register and puts signature with seal on the instrument.

PROTEST

Protest is a certificate issued by a notary public attesting the fact of dishonor of a negotiable instrument recorded upon the dishonored instrument.

Contents of protest

1. The instrument itself or a literal transcript of it which must contain everything written or printed thereon.
2. The name of the person for whom and against whom the instrument has been protested.
3. A statement that payment or acceptance, or better security (as the case may be) has been demanded of such person by the notary public; and the terms of his answer, if any
4. If the person gave no answer, or that he could not be found a statement to that effect.
5. The date, place and time of dishonor of the instrument. If better security has been refused; the place and time of refusal.

Distinction between Noting and Protest

The notice is different from protest on the following grounds: **Nature -** Noting consists of recording the fact and reasons of dishonor of a negotiable instrument upon the instrument. Protest is a certificate as to fact and reasons that an instrument has been dishonored or the acceptor has refused to give a better security for the bill. **Contents -** The contents of noting are limited to the date and reasons (express or implied) of dishonor.

But contents of protest are more detailed as specified under Section 101. **Scope -** Noting can be done even without protest but protest is issued only after the noting has been done.

Requirement - Noting is optional in case of inland bill or note. But a foreign bill must be protested if it is required by the law of the place where they are drawn.

Conclusion

Negotiable Instruments plays a major role in the trade world. We can also see the use of negotiable instruments in the international trade. We can assume that the international trade is also developing with the negotiable instrument. The nature of negotiable instrument is an area of law which has major influence on any person in his professional field. Negotiable instrument plays a major role in different part of the world in raising the economy. The negotiable instrument is of contractual in nature and it characterizes the fact that it is negotiable.