BL NOTES **Prof.(Dr.) Joysingha Mishra**

MOD: 1

Definition of Contract:

The Indian Contract Act, 1872 defines the term "Contract" under its section 2 (h) as "An agreement enforceable by law". In other words, we can say that a contract is anything that is an agreement and enforceable by the law of the land. It came into force on September 1, 1872. It determines the circumstances in which promise made by the parties to a contract shall be legally binding on them. In the very beginning the Act contained 266 Sections and 10 Chapters. In the year 1930, it's provisions relating to the "Sales of Goods" and in 1932, the provision relating to "Partnership" were revoked from this Act on the proclamation of separate Acts was made for the same.

The Indian Contract Act, 1872 as on the date contains the provisions:
1) General Principles of the law of contracts and quasi- contracts (Sec 1-75)
2) Certain special kinds of contracts, which are:
i) Indemnity and Guarantee (Sec 124-147)
ii) Bailment and Pledge (Sec 148-181)
iii) Agency (Sec 182 to 238)

How ever the Indian Contract Act is not a complete and exhaustive law on all types of contracts. There are separate Acts that deal with contracts relating to Negotiable Instruments, Transfer of Property, Sales of Goods, Partnership, Insurance and others. The Act does not effect on any usage or Custom of Trade.

How a contract is made:
All contracts are based on agreements which are either express or implied.
The sequence of procedure:
Definition: (Sec-2)
i) Proposal [Sec 2 (a)]:
When any person signifies to another his/ her willingness to do or to abstain from doing anything with view to obtain the assent of that to such act or abstinence the it is said to be a proposal.
ii) Promise [Sec 2 (b)]:
When the person to whom the proposal is made signifies his/her assent thereto, the proposal is said to be accepted. When a proposal is accepted then it becomes a promise.
iii) Offeree/ Promisee [Sec 2(c)]:
The person who makes the offer / proposal is called a offeror/ Promisor and the person to whom offer/ proposal is made is called a 'offeree/ promise'.

iv) Consideration for the Promise [Sec 2 (d)]:
When, at the desire of the promisor, the promise or any other person has done or abstained from doing, or promises to do or to abstain from doing , something , such act or abstinence or promise is called a consideration for the promise.
v) Agreement [Sec 2 (e)]:
Every promise and every set of promises, forming consideration for each other.

vi) Reciprocal promises [Sec2 (f)]:
promises which form the consideration or part of the consideration for each other are called Reciprocal promises.
vii) Void Agreement [Sec2 (g)]:
An Agreement not enforceable by law is Void Agreement.
viii) Contract [Sec2 (h)]:
A contract as an "agreement enforceable by law ".
ix) Voidable Contract [Sec2 (i)]:
An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a Voidable Contract.
X) Void Contract [Sec2 (j)]:
A contract which ceases to be enforceable by law is Void Contract.
Meaning and Definition of a Contract:
Sec 2(h) of the Indian Contract Act 1872 defines a contract as an agreement 'enforceable by law'. So, Contract is an exchange of promises by two or more parties.

When such agreement fulfils the conditions of Sec 10 of the Indian Contract Act, it becomes a 'contract'.

According to Salmond "A contract is an agreement creating and defining obligations between parties,"
According to Pollock "Every agreement and promise enforceable by law is a contract".

Classification of Contracts:
Contracts can be classified on the basis of

Classification of Contracts

On the basis of Enforceability	On the basis of formation	On the basis of performance	On the basis of Obligation
Valid contract	Express Contract	Executed Contract	Unilateral Cont
Void contract	Implied Contract	Executory Contract	Bilateral Contract
Valid Agreement	Quasi Contract		
Voidable Contract			

Illegal Contract

Unenforceable Contract

1. Express Contract

A contract is said to be an express contract, if the terms of a contract are expressly agreed upon between the parties (either by words spoken or written) at the time of formation of the contract. An express promise results in express contract. A promise is said to be an express promise, when the offer or acceptance of any promise is made in words.

2. Implied Contract

An implied contract is one for which the proposal or acceptance is made otherwise than in words. Where the proposal or acceptance of any promise is made otherwise than in words, the promise is known as implied promise. Implied contracts are inferred from the circumstances of the case and conduct of the parties.

For example, when A takes a cup of milk in a hotel, there is an implied contract.

3. Quasi – Contract

A quasi-contract is one, which is created by law. In the quasi-contract, there is no intention on either side to make a contract. In a quasi-contract, rights and obligations arise not by an agreement but by operations of law.

For example, where certain letters are delivered to a wrong addressee, the addressee is under an obligation to return the letters.

Classification of Contracts according to performance:

According to the extent of performance of contracts, contracts may be classified as:

1. Unilateral Contract

It is also called as one-sided contract. In a unilateral contract, only one party has to satisfy his obligation at the time of the formation of it, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.

For example, A takes a public auto to go to Mount Road. A contract comes into existence as soon as A was dropped in Mount Road. By that time, auto man has fulfilled his obligation, only A has to fulfil his obligation i.e. paying the auto- man.

2. Bilateral Contract

A contract is said to be a bilateral contract where the obligations of both the parties to the contract are pending at the time of formation of the contract. In this type of contract, a promise on one side is exchanged for a promise on the other.

For example, A promises to stitch a blouse and B promises to pay Rs.30. Here A promises to stitch the blouse and B promises to pay. Thus each party is both a promisor and a promisee.

Agreement:

An Agreement is a promise between two entities creating mutual obligations by law. Section 2(e) of the Indian Contract Act, 1872 defines an agreement as 'Every promise and every set of promises, forming the consideration for each other, is an agreement' The definition of agreement means the act of coming to a mutual decision, position or arrangement. An example of an agreement is the decision between the owner and tenant to share the rent for an apartment.

Types of Agreement:

- Valid Agreement,
- Void Agreement,
- Voidable Agreement,
- Express and Implied Agreement.
- Domestic Agreement,
- Unenforceable or Illegal Agreement

Essentials of a Contract:

The contracts are infinitely varied in length, terms, and complexity, all contracts must contain the six essential elements.

- Offer.
- Acceptance.
- Awareness.
- Consideration.
- Capacity.
- Legality.

Offer and Acceptance:

The Indian Contract Act 1872 defines acceptance in Section 2 (b) as "When the person to whom the proposal is made signifies his assent thereto, the offer is said to be accepted. The proposal when accepted becomes a promise." An offer can be revoked before it is accepted.

Consideration:

Consideration, in contract law, an inducement given to enter into a contract that is sufficient to render the promise enforceable in the courts. The technical requirement is either a detriment incurred by the person making the promise or a benefit received by the other person. This is a price concept in the Contract Act.

Capacity of Parties:

According to Section 11, "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject."

Legality of Object:

The legality of the object in contract law stipulates that the consideration and the object of a contract are considered legal except when: They are specifically forbidden by law. They are fraudulent in nature. The nature of the object and the consideration is such that it defeats the purpose of the law.

Performance:
Performance, in law, an act of doing that which is required by a contract. The effect of successful performance is to discharge the person bound to do the act from any future contractual liability. Each party to the contract is bound to perform to fulfil the promises according to the stipulated terms.

Discharge of Contract:
A contract is said to be discharged by performance when both the parties perform all the primary obligations both express and implied which are set out under the contract. The obligation is considered performed only if the performance complies with the standard of performance required.

The 6 types through which discharge of contract through agreement or consent could take place are:

- Novation.
- Rescission.
- Alteration.
- Remission.
- Waiver.
- Merger.
- Accord and satisfaction.

Discharge of a Contract

1] Discharge by Performance.
2] Discharge by Mutual Agreement.
3] Discharge by the Impossibility of Performance.
4] Discharge of a Contract by Lapse of Time.
5] Discharge of a Contract by Operation of Law.
6] Discharge by Breach of Contract.
7] Discharge of a Contract by Remission.

How a contract can be discharged by performance and breach?

In order to discharge a contract by performance, both the express and implied terms must be performed. Furthermore, the terms must be performed to the expected standard of performance. There are two different types of performance: The strict contractual obligations.

What is the most common way to discharge a contract?

The discharge of a contract is the termination of the obligation. The most common way is a discharge by performance, which means the contract comes to an end when both parties have fulfilled their respective duties.

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Breach of Contract:

A breach of contract occurs when one party in a binding agreement fails to deliver according to the terms of the agreement. A breach of contract can happen in both a written and an oral contract. The parties involved in a breach of contract may resolve the issue among themselves, or in a court of law.

The Four Breach of Contract Elements

- An offer;
- Mutual acceptance of the terms;
- A meeting of the minds;
- Communication by both parties of their acceptance; and
- Mutual intent that the contract be legally binding.

Remedies for Breach of Contract

1] Recession of Contract.

When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations. Recession is a complete cancellation of the contract, which means all provisions will be terminated. Contracts are cancelled on a variety of grounds. Common withdrawal reasons include: Mutual Consent.

2] Sue for Damages.

A contract is a legal promise to perform certain obligations. When a party breaks a promise, then the other parties to the contract might suffer losses due to non-performance of the obligation. The Indian Contract Act, 1872, has laid down some specific rules for filing a suit for damages in such cases.

3] Sue for Specific Performance.

Specific performance means fulfilling a promise made under a contract as agreed. A suit for specific performance can be filed by any party, in a court of competent jurisdiction, who has suffered loss due to non-performance of contract on part of the other party to the contract.

4] Injunction.

An injunction is a court order, usually one telling someone not to do something. An injunction is a legal remedy imposed by a court. In simple terms, an injunction means that one of the parties to a certain action must either do something or refrain from doing something. There are three types of injunctions: preliminary injunction, temporary restraining order, and a permanent injunction.

5] Quantum Meruit:

Quantum meruit is a Latin phrase and is related to the Indian Contract Act, 1872. It means “what one has earned” or “as much as he has earned”. Even if there is no specific contract this law implies a promise to pay a reasonable amount for the labour and material furnished.

Quasi contract:

An obligation that the law creates in the absence of an agreement between the parties. A quasi contract is a contract that exists by order of a court, not by agreement of the parties. Courts create quasi contracts to avoid the unjust enrichment of a party in a dispute over payment for a good or service. A quasi-contract (or implied-in-law contract or constructive contract) is a fictional contract recognised by a court. The notion of a quasi-contract can be traced to a concept used in some modern legal systems. It refers to situations in which a defendant is bound *as if* there were a contract. When the plaintiff sued on such a 'contract' by bringing an action of *indebitatus assumpsit*, she was not enforcing some consensually assumed obligation, but rather an obligation imposed by law.

Types of Quasi contract:

Sections 68 – 72 of the Indian Contract Act, 1872 detail circumstances under which a Quasi contract comes to exist. Remember, there is no real contract between the parties and the law imposes the contractual liability due to the peculiar circumstances.

Quasi Contract Type 1: Payment by an Interested Person

Someone who's interested in monetary payment from another person who's bound by law to pay them is entitled to be reimbursed by the other person. For example, if a consignee had a fire in their vehicle during transit and suffered loss, the insurer can claim the loss so they can get compensated.

Quasi Contract Type 2: Obligation to Pay for Nongratuitous Act

If a person does something under the law for another person or delivers them something without having the intention of doing it gratuitously, the receiver is bound by law to pay the giver for delivering their product or service. If a tradesperson accidentally leaves their goods at another person's house, that person can't treat them as their own unless they pay for them.

According to Section 71 of the Indian Contract Act 1872, someone who finds goods that don't belong to them and takes them has similar responsibilities as a bailee.

This section states that anyone who receives something that was delivered under coercion or by accident needs to return or repay it. For example, say a railroad company won't deliver specific goods to a consignee except if they get paid for the illegal charge of the carriage. The consignee will then pay the sum that was charged to receive the goods that he's estimated to recover, which means many of the charges were illegal.

Contingent Contract:

A contingent contract is an agreement that states which actions under certain conditions will result in specific outcomes. Contingent contracts usually occur when negotiating parties fail to reach an agreement. A contingent contract can also be viewed as protection against a future change of plans. The contract is characterized as "contingent" because the terms are not final and are based on certain events or conditions occurring. Contingent contracts can also lead to effective agreement when each party has different time preferences. For example, one party may desire immediate payoffs, while the other party may be interested in more long-term payoffs. Further, contingency contracts can foster an agreement in negotiations involving resolute differences of expectations about the future.

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Contract of Agency:

The Law of Agency is contained in Section 182 to 238 under Chapter X of the Indian Contract Act, 1872. The term Agency has not been defined in the Indian Contract Act, 1872 but a general definition may be coined on the basis of the provisions of agency given in the Indian Contract Act, 1872.

So, by a Contract of Agency, we mean a relation in which a person employs another person to do any act for him or to represent him in dealing with third person so as to bind himself by the acts of such another person.

The Law of Agency is based on the following general rules:

What a person does by another, he does by himself. Thus, the Acts of the agent are the Acts of the Principal.

According to Cheshire and Filfoor, “ Agency is a comprehensive word which is used to describe the relationship that arises where one man is appointed to act as the representative of another.

Essentials of contract of agency:

The terms Principal and agent have been defined under Sec. 182 of the Indian Contract Act, 1872. The act defines an agent as an individual who has been employed by another to act/deal on behalf of him and the person who employs the agent, i.e., the person whom the agent represents is called the principal.

An agent in its essence is an individual who, acting at his/her discretion and judgment, has the ability to make the principal directly liable to third parties, i.e., enable the principal to sue or be sued by any third party directly.

The agent may or may not always be directly employed by the principal himself, i.e., the relationship between the principal and the agent may not always arise out of a contractual relationship, there might be different situations that give rise to the contract of agency, situations like a necessity, through an obligation attributed upon a person by law or otherwise.

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As per the view of the Indian Contract Act, even consideration is not an essential element for the creation of an Agency; hence no consideration is required to be presented while the formation of an agency.

These principles of the contract act are based upon the ideologies of Common Law, which specify that no consideration is required to give an individual the authority of an agent, neither does it bar any one of the parties from suing each other, either it be for the negligence on part of the agent or for the recovery of due compensation from the principal.

While the Contract Act sets out certain general guidelines for the contract of agency, it is not to be considered exhaustive. Thus, to prevent disagreements later on, certain additional formalities have been prescribed by numerous statues and the Hon’ble courts, dependent on the diverse kinds of agencies; such as:

- The Registration act, 1908; provided that an agent for the purpose of registration and execution of a document must be affected in writing [3].
- A proxy to be appointed for attending the meeting of a company should be registered in writing and that too only in the prescribed form [4].

- A Power of attorney issued on behalf of the company should only be under the company's common seal [5].

These guidelines, while simple hold the potential to declare the principal contracts void, thus demand to be followed very cautiously Principal and Agent: Existence of Agency [6]

As per "The Yale Law Journal"

The following article analyses the aftermath of the judgement of Eagle Iron Co. Vs Baugh, 41 South. Rep. 663. (Ala.); where it was held that the declarations of an agent (alleged) himself cannot be used to establish authority.

It has been interpreted that when it comes to Parol evidence for proving the existence of agency and establishing authority, the words of an agent hold just as weight as the words of a stranger testifying (under oath) to any facts relating to the agency, which he believes to be true.

The issue discussed in the above article is also applicable to Indian law and the principal reason behind that might be the fact that the Indian Contract Act only lays down certain general guidelines for the special Contract of agency; and even the explanations/principals provided are so wide and general that they include and treat everyone in the same criteria as an agent, regardless of the *reason* and the *intention* behind the hire. Which ends up creating chaos as it includes in the definition of an agent, everyone from the employee hired at a multinational for the management of the company's assets to the cobbler hired beside the road to blacken one's shoes.

In the Indian Context, a *simple test* [7] can be conducted to establish if a binding contract of agency is in place, i.e. certain criteria have been set by the *Patna High Court*, which if needed could be looked upon to check for the existence of an agency;

- If the "agent" is willing to act on behalf of the principal, i.e. if he purposes to enter into transactions on behalf of its principal.
- If he has the authority to create, modify or terminate contractual relations between the principal and third parties.

and if these criteria are successfully met, it can be reasoned that there exists a contractual relationship between the two parties, where one of the parties has agreed to represent the other, while the other has given him the authority to do so and subsequently bind him into Contractual relations with third parties.

Further, the author uses the example of the manager from the above case to list down different remedies available with the principal in cases where the other party has proven to be dishonest; some of them being,

1. Recovery: if while still working under the principal, the agent has engaged in a breach of his duties and during that if he has received some benefits, the principal is entitled to those benefits along with the recovery of damages caused to him due to the breach.

2. Another measure designed to secure the rights of the principal is for the principal to retain the compensation of the agent and given there aren't many guidelines regarding this, it is left to the discretion of the court if to allow the principal to retain the compensation to the dishonest agent, even if to a certain extent.

While comparing different state laws regarding the compensation to be provided to a dishonest agent, he observes that the actual loss suffered, if any, by the principal is immaterial in the determination by the court, if the principal can retain back the compensation to be paid to the dishonest agent.

Remedies:

The principal can also bring an action in damages against the agent if he commits a pure breach of contract. Cause for money had and received: If an agent earns money from the transaction without informing the Principal, the principal can bring an action againstthe agent to recover such money.

Principal may recover damages. Principal may recover the agent's profits. If the agent violates a duty of loyalty, the principal may rescind the transaction.

The principal has contract and tort remedies if the agent breaches his/her fiduciary duties.

AVOIDANCE: The principal has the right to avoid any contract entered into with the agent if the agent has breached the agency agreement.

Essentials of Contract of Agency:

In a contract of agency, the principal employs agent on his own behalf to represent him before a third person with or without the consideration to the agent. It is also important that the agent shall act as per the directions of the principal. Essential Elements of a Valid Contract. According to the Act, "All agreements are contracts if they are made by free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void".

Essential are:
i) Agreement
ii) Contractual Capacity
iii) Consideration
iv) Privity of Contract
v) Essential elements of a Valid Contract

MODES OF CREATING AGENCY:

a) By Express Authority (sec- 186 and 187)
b) By Implied authority (sec-187) :
    a) By Estoppel (sec 237)
    b) By Holding-out
    c) By Necessity
    d) By Ratification
    e) By Operation of Law

Creating agency:
There are four main methods of creation of agency:

- Agency by Express agreement.
- Agency by Operation of law.
- Agency by Ratification.
- Agency by Implied authority.
- Agency by Necessity.
- Agency by Estoppel.

An agency is created by express appointment when the principal appoints the agent by express agreement with the agent. This express agreement may be an oral or written agreement between the principal and the agent. The one exception is where an agent is appointed to execute a deed on behalf of the principal.

Types of an Agency contract:

1. Express Agency

- A contract of agency can be made orally or in writing. Example of a written contract of agency is the Power of Attorney that gives a right to an agency to act on behalf of his principal in accordance with the terms and conditions therein.
- A power of attorney can be general or giving many powers to the agent or some special Powers, giving authority to the agent for transacting a single act.

2. Implied Agency

- Implied agency arises when there is any conduct, the situation of parties or is necessary for the case.

a. Agency by Estoppel (Section 237)

- Estoppel arises when you are precluded from denying the truth of anything which you have represented as a fact, although it is not a Fact.
- Thus, where **P** allows third parties to believe that A is acting as his authorized agent, he will be estopped from denying the agency if such third-parties relying on it make a contract with an even when A had no authority at all.

b. Wife as Agent

- Where a husband and wife are living together, we presume that the wife has her husband's authority to pledge his credit for the purchase of necessaries of life suitable to their standard of living. But the husband will not be liable if he shows that:
- (i) he had expressly warned the tradesman not to supply goods on credit to his wife; or
- (ii) he had expressly forbidden the wife to use his credit; or
- (iii) he already sufficiently supplies his wife with the articles in question; or
- (iv) he supplies his wife with a sufficient allowance.

Similarly, where any person is held out by another as his agent, the third-party can hold that person liable for the acts of the ostensible agent, or the agent by holding out. Partners are each other's agents for making contracts in the ordinary course of the partnership business.

c. Agency of Necessity (Sections 188 and 189):

- In certain circumstances, a person who has been entrusted with another's property may have to incur unauthorized expenses to protect or preserve it. This is called an agency of necessity.
- For example, a sent a horse by railway. On its arrival at the destination, there was no one to receive it. The railway company, is bound to take reasonable steps to keep the horse alive, was an agent of the necessity of A.
- A wife deserted by her husband and thus forced to live separate from him can pledge her husband's credit to buy all necessaries of life according to the position of the husband even against his wishes.

Agency by Ratification:

- Where a person not having any authority act as agent, or act beyond its authority, then the principal is not bound by the contract with the agent in respect of such authority. But the principal can ratify the agent's transaction and accept liability. In this way, an agency by ratification arises.
- This is ex- post- facto agency— agency arising after the event. By this ratification, the contract is binding on principal as if the agent had been authorized before. Ratification will have an effect on the original contract and so the agency will have effect from the original contract and not on ratification. 17.01. 22

In the framework of Principal-Agent relationship, the prime responsibility of an agent is to be the link between the ***Principal*** and the ***Third Person***.

Suppose, *A* likes the way *B* works professionally and wants that B should sell his products in the market. He makes an express announcement of *B*'s appointment s *A*'s agent and gets it publicized. *B* also gets to know through one of the media publications that he has been appointed by A as his agent.

If it could have been that simple to have an agent, the concept would not have required legal nuance. The most important element in this relationship is ***consent***. The consent must come from both the parties whereby their *intention* to enter into the relationship is clear. There must also be a claim or exercise of control by one party, i.e., the Principal over the other.

Thus, the will and act are the two important elements that go into the creation of an agency.

Revocation:

Revocation is a noun form of the verb revoke, which means to take back, withdraw, cancel or terminate. Revoke and revocation are typically used in the context of officially taking back or cancelling some kind of right, status, or privilege that has already been given or approved.

Section 201 **Termination of agency**:

An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated.

First method is revocation of a proposal by communication or notice. A proposal/offer may be revoked by the proposer/ offeror by giving notice to the offeree before it is accepted. Notice of revocation will take effect when it is in the knowledge of the offeree before the communication of acceptance.

Important points to be noted:

- By notice of revocation:
- By lapse of time:
- By non-fulfillment of a condition precedent to acceptance:
- By death or insanity of the proposer:
- By Counter Offer:
- By acceptance not being accepted in the mode prescribed:
- By rejection of the offer by offeree:

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Agency

An agent is a person employed to do any act or enter into a contractual relationship with others (third parties) on behalf of his principal. An agent acts as a connecting link between his principal and third parties.

While representing his principal, an agent acts in the same capacity as of his principal. An agent is authorized by his principal to act on his behalf. An agent binds his principal legally in business transactions with third parties due to their agency relationship.

According to Section 201 of the Indian Contract Act, 1872, Termination of agency takes place in the following circumstances: –

1. By revocation of authority by the principal.
2. By renunciation of his authority by the agent.

3. On the performance of the contract of agency.
4. On the death of either principal or agent.
5. By insanity of either principal or agent.
6. With the expiration of time period fixed for the contract of agency.
7. By an agreement made between the principal and his agent.
8. With the insolvency of principal or agent (in few cases).
9. When the principal and his agent is an incorporated company, by its dissolution
10. With the destruction of the subject matter. (Section 56)

When an Agency is Irrevocable

When the agency cannot be terminated, it is known as an irrevocable agency. There are some situations when revocation of an agency by the principal is not possible, as follows:-

1. When the agency is coupled with interest then this is a case where an agent has interest in the subject matter of such agency. Where the agency is coupled with an interest, it does not come to an end even in the case of death or insanity or insolvency of the principal.

2. When an agent has incurred personal liability, then the principal cannot revoke the agency, the agency becomes irrevocable. For Example – P appoints Q as his agent. Q purchases some wheat as per the instructions of P in his contract.

3. Personal name. Now, in such a case P cannot revoke the agency.

4. Where the agent has partly exercised the authority, and it is irrevocable with regard to liabilities which arises from the acts performed. (section 204) For Example – Mr. X appoints Mr. Y as his agent. On Mr. X's direction, Mr. Y purchases 100kg cereals in the name of his principal 'Mr. X'. Now, in such a case Mr. X cannot revoke the agency.

When Revocation takes Effect

- Revocation of an agency takes its effect when the principal revokes the agency, it comes into effect only when it is known to the agent. However, in the case of third parties, termination comes into effect only when such termination of agency comes to their knowledge.

- According to Section 210 of the Indian Contract Act, 1872 termination of an agent's authority also terminates the sub-agent's authority appointed by the agent. A per Section 209 of Indian Contract Act, 1872 it is the duty of an agent to protect his principal's interest in case his principal becomes of unsound mind or dies.

- It is the duty of an agent that on the termination of an agency due to death of the principal or his becoming insane, to take all the reasonable steps on behalf of his late principal or dying principal to protect the interest that the latter entrusts to him.

Types of Agency:

Recurring issues in agency law include whether the “agent” really is such, the scope of the agent's authority, and the duties among the parties. The five types of agents include: general agent, special agent, subagent, agency coupled with an interest, and servant (or employee).

- There are four main categories of agent, although you are unlikely to need the services of all of them:
- Artists' agents: An artist's agent handles the business side of an artist's life.
- Sales agents.
- Distributor.
- Licensing agents.

Artists' agents:

Talent agents are those who actively seek employment for artists such as live performances and movie parts. Talent agents normally receive a ten percent commission for their services. The role of the talent agent is usually limited to seeking out employment opportunities for the artist. In California, talent agents are regulated by the Act. Personal managers, on the other hand, are involved with both the day-to-day business and the long-term development of an artist's career. Managers may handle an artist's finances, organize meetings, counsel the artist in his personal relationships, provide artistic coaching to the artist, and engage in other similar activities.

Sales Agent:

One who is authorized or appointed by a manufacturer to sell or distribute his products within a given territory but who is self-employed, takes title to the goods, and does not act as agent for a principal.

Distributor Agent:

One who is authorized or appointed by a manufacturer to sell or distribute his products within a given territory but who is self-employed, takes title to the goods, and does not act as agent for a principal.

General Agent- Agent appointed to do all acts relating to a specific job. Sub-Agent-An agent appointed by an agent.

Co-Agent are agents together appointed to do an act jointly.

A Broker is an agent whose job is to create a contractual relationship between two parties.

Special Agent:

- He is the one who is appointed or employed to do or perform only a specific act, task or function. Outside of this special act, task or function, he has no authority or power. Thus, any act of the agent outside his authority cannot bind the principal.

- A Universal agent is one who is authorised to do all the acts which the Principal can lawfully do and can delegate.
- A Special Agent: If the special agent does anything outside his authority, the principal is not bound by it and third parties are not entitled to assume that the agent has unlimited powers.

Mercantile agents:

Some of the important characteristics of the mercantile agents are as follows. They have the authority of buying and selling goods on behalf of the principal or consign them for sale. They are not indulged in personal business, but certainly represent the business for all the dealings.

a. Factors:

A factor is a person who is appointed to sell goods which are put in his possession or to buy goods for his principal. He is the evident owner of the goods in his custody and can thus sell them in his own name and receive payment for them.

- He also has an insurable interest in the goods in his custody and a general lien regarding any claim that may arise out of the agency.

b. Brokers:

A broker is a person whose business is to make contracts with the other parties for the sale and purchase of goods or securities for brokerage.

He does not have the possession of the goods and acts in the name of the principal. Also, he has no lien over goods because he has no possession of goods.

c. Del Credere Agent:

A del credere agent is a person who ensures or guarantees his principal that the creditors of goods will pay for the goods they buy for extra remuneration. In the case of failure to pay by the third party, he needs to pay the due amount to his principal.

d. Bankers:

The relation between a banker and a customer is basically that of a debtor and creditor. However, when a banker buys or sells securities or collects cheque, dividends, interests, bills of exchange or promissory notes on behalf of his customer, he becomes the agent of his customer. Thus, he has a general lien on all the securities in his possession regarding the general balance due to him by the customer.

e. Partners:

As per the Partnership Act, every partner is an agent as well as the principal of every other partner in a Partnership firm. Also, every partner is the agent of the firm for the business of the firm.

f. Auctioneers:

An auctioneer is a person who sells the goods by auction. An auction is a process by which goods are sold to the highest bidder in a public competition. He cannot warrant his principal's title to the goods.

He is the agent of the seller until the goods are auctioned or knocked down. However, after the knockdown, he becomes the agent of the buyer. Also, he is evidence that the sale took place.

The Board are advised that *so far as Kachha arahtias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB. But the position is different with regard to Pacca arahtias.* A Pacca arahtia is not, in the proper sense of the word, an agent or even *del credere* agent. The relation between him and his constituent is substantially that between the two principals. On the basis of various Court pronouncements, following principals of distinction can be laid down between a Kachha arahtia and a Pacca arahtia:

(1) A Kachha arahtia acts only as an agent of his constituent and never acts as a principal. A Pacca arahtia, on the other hand, is entitled to substitute his own goods towards the contract made for the constituent and buy the constituent's goods on his personal account and thus he acts as regards his constituent.

(2) A Kachha arahtia brings a privity contract between his constituent and the third party so that each becomes liable to the other. The Pacca arahtia, on the other hand, makes himself liable upon the contract not only to the third party but also to his constituent.

(3) Though the Kachha arahtia does not communicate the

name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The Pacca arahtia, on the other hand, does not inform his constituent as to the third party with whom he has entered into a contract on his behalf.

(4) The remuneration of a Kachha arahtia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the Pacca arahtia.

(5) The Kachha arahtia, unlike the Pacca arahtia, does not have any dominion over the goods.

(6) The Kachha arahtia has no personal interest of his own when he enters into transaction and his interest is limited to the commission agent's charges and certain out of pocket expenses whereas a Pacca arahtia has a personal interest of his own when he enters into a transaction.

(7) In the event of any loss, the Kachha arahtia is entitled to be indemnified by his principal as is not the case with Pacca arahtia.

Compensation:

(6) Compensate the agent for injury caused (Sec 225): the principal must take compensation to his agent in respect of injury caused to the agent by the principal's neglect or want of skill.

(7) Misrepresentations or fraud by agent (Sec 238):

Misrepresentations made, or frauds committed, by an agent acting in the courses of business for his principal, has the same effect on agreement made by such agent as if such misrepresentations or fraud had been made or committed by the principal. In order that a principal shall be made liable for the misrepresentations and frauds committed by the agent, such misrepresentations or frauds must be committed by the agent.

1) in the course of the business of his principal; and
2) the act must be within the scope of agent's authority.

(8) To repudiate contract (Sec 215): If an agent deals on his own account in the businessof the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent or that the dealings of the agent have been disadvantageous to him.

(9) To claim benefit (Sec 216): if an agent without the knowledge of the principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

- A principal owes certain contractual duties to his/her agent. A principal's primary duties to his/her agent include: To compensate the agent as agreed; and. To indemnify and protect the agent against claims, liabilities, and expenses incurred in the agent correctly discharging the duties assigned bythe principal.
- An agent is not generally liable for contracts made; the principal is liable. But the agent will be liable if he is undisclosed or partially disclosed, if the agent lacks authority or exceeds it, or, of course, if the agent entered into the contract in a personal capacity.

- The principal and agent both have the power to terminate an agency at any time. After termination, the agent can no longer act on behalf of the principal.

Principal's duties to Agent:

The Principal is bound to indemnify the agent against any lawful acts done by him in the exercise of his authority as an agent. The Principal is bound to indemnify the agents against any act done by him in good faith, even if it ended up violating the rights of third parties.

A principal owes certain contractual duties to his/her agent. A principal's primary duties to his/her agent include: To compensate the agent as agreed; and. To indemnify and protect the agent against claims, liabilities, and expenses incurred in the agent correctly discharging the duties assigned by the principal.

Indian Contract Act 1872: sec-148:

A 'bailment' is 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'.

There are three types of bailments:

(1) for the benefit of the bailor and bailee;

(2) for the sole benefit of the bailor; and

(3) for the sole benefit of the bailee.

A Bailment is a transfer or delivery of movable goods/property from one party/person to another person/party for any specific task or service or promise.

Pledge is defined as the delivery of movable asset/goods/ property to secure debt/ loan or performance of a contract or promise.

A bailment is ended when its purpose has been achieved, when the parties agree that it is terminated, or when the bailed property is destroyed. A bailment created for an indefinite period is terminable at will by either party, as long as the other party receives due notice of the intended termination.

A bailment for the mutual benefit of the parties is created when there is an exchange of performances between the parties.

A bailment agreement is an agreement where one person agrees to take physical possession of another person's property for safekeeping or other purpose, but doesnot take ownership of it, with the understanding it will be returned at a later date.

There are generally two parties to the contract of Bailment. The person who is the owner and delivers the good is called 'bailor' while the person to whom the goods are delivered is called 'bailee'.

Duties & Rights of Bailee

- Duty to take care of the goods. How to Prepare for Judiciary Exams.
- Duty to return goods.
- To make proper use of goods bailed.
- Duty not to mix his own goods with the goods of bailor.
- Duty not to question the title of the bailor.
- Duty of bailee to pay increase or profit from goods bailed.

Duties & Rights of the bailor

- Duty to disclose faults.
- Duty to repay bailee's expenses.
- Duty to indemnify the bailee.
- Duty to compensate bailee for breach of warranty.
- Duty to claim back the goods.
- Right to enforce bailee's performance.
- Right to claim damages.
- Right to claim compensation against unauthorized use of goods.

Bailee's Lien:
'Lien' means right to retain possession of goods until some debt or claim is settled.

Types of lien:
<u>Particular lien</u>:
Particular lien is one in which the person has a right to retain the possession of goods for which the charges are due. Particular lien is available only to bailee against those goods in respect of which he has rendered some service involving the exercise of labour or skill.

<u>General Lien</u>:
The general lien is the right over certain goods or a property that are in possession of the person until the promised liability has been cleared.

TERMINATION OF BAILMENT:
Termination. A bailment is ended when its purpose has been achieved, when the parties agree that it is terminated, or when the bailed property is destroyed. Once a bailment ends, the bailee must return the property to the bailor or possibly be liable for conversion.
A bailment is a temporary transaction. It may end in many ways, such as

I. through agreement of the parties,
II. acts of the parties,
III. destruction of the bailed property, and
IV. operation of law.
v. at the death of bailor or bailee

Precises of Termination:
1) Termination of every contract of bailment (whether Gratuitous or not) under circumstances:
i) on the expiry of fixed period:
ii) on fulfilment of the purpose:
iii) inconsistent use of goods:
iv) destruction of the subject matter of bailment:

2) Termination of Gratuitous Bailment:
i) Before the expiry of a fixed period
ii) On the death of bailor or bailee

Sales of Goods Act:

The Indian Sale of Goods Act, 1930 is a Mercantile Law, which came into existence on 1 July 1930, during the British Raj, borrowing heavily from the Sale of Goods Act 1893.
In the contract of sale, the exchange of goods takes place immediately. In the agreement to sell the parties agree to exchange the goods for a price depending on the fulfilment of certain conditions at a future specified date. The nature in the sale is absolute. The nature ofthe agreement to sell is conditional. In the contract of sale, the exchange of goods takes place immediately. In the agreement to sell the parties agree to exchange the goods for a price depending on the fulfilment of certain conditions at a future specified date. The nature in the sale is absolute. The nature of the agreement to sell is conditional.

Difference between sales and agreement to sale:

An agreement for sale is a promise in future, that the property will be transferred to the rightful owner while sale deed is the actual transfer of property ownership to the buyer.

- When a seller agrees to hand goods that they own over to the buyer in exchange for money, this is called a contract of sale. Once the exchange is completed, it is simply called a sale. Before the sale is completed, but the intention to sell is present, it is known as an agreement to sell.

Section under Sales of Goods Act:

Buyers: [2(1)]
Delivery: [2(2)]
Deliverable state [2(3)]
Document of title of Goods: [2(4)]
Fault: [2(5)]
Future Goods: [2(6)]
Goods: [2(7)]
Insolvent [2(8)]
Mercantile Agents: [2(9)]
Price: [2(10)]
Productivity: [2(11)]

Quality of Goods: [2(12)]
Seller: [2(13)]
Specific Goods: [2(14)]
Contract of Sales of Goods: [2(15)]

While the Contract Act sets out certain general guidelines for the contract of agency, it is not to be considered exhaustive. Thus, to prevent disagreements later on, certain additional formalities have been prescribed by numerous statues and the Hon'ble courts, dependent on the diverse kinds of agencies; such as:

- The Registration act, 1908; provided that an agent for the purpose of registration and execution of a document must be affected in writing [3].
- A proxy to be appointed for attending the meeting of a company should be registered in writing and that too only in the prescribed form [4].
- A Power of attorney issued on behalf of the company should only be under the company's common seal. [5]

These guidelines, while simple hold the potential to declare the principal contracts void, thus demand to be followed very cautiously Principal and Agent: Existence of Agency [6]

Finder of Goods:

Any person who finds the goods belonging to another person and takes the goods in his custody is the finder of goods. For Example, B had forgotten to carry bike he had driven to A place. Then A would take care of the same to inform police station and simultaneously B.

Finder of goods is entitled to search and found the real owner of the goods. It is also remembered that the finder is entitled to have a finder goods title over the things found and that his right is enforceable against all except the real owner.

Responsibility of a finder of lost goods has been laid down by section 71 of the Contract Act, 1872 which states that "a person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as baillee." A finder of the goods is subject to the same responsibilities as bailor also.

Duties of the Finder of Goods:

- The finder should take reasonable care of the goods found.
- He should not out the goods for his personal use.
- He should not mix the goods found with his own goods.
- He should find the real owner of the goods and then should entrust the goods to him.

According to Section 169 of the Indian Contract Act, if the finder of goods is unable to find the true owner after due diligence or if the owner refuses to pay the lawful charges to the finder then he may sell the goods if When lawful charges of the finder amount to two- thirds of the value of goods.

CONDITION AND WARRATY:

A condition is a stipulation which is essential to the main purpose of the contract. A warranty is a stipulation which is collateral to the main purpose of the contract. A breach of condition may be treated as a breach of warranty. This happens if the affected party decides to claim damages only.

An uncertain future act or event whose occurrence or non-occurrence determines the rights or obligations of a party under a legal instrument and especially a contract. A clause in the instrument describing the act or event and its effect.

- Express Warranty.
- Warranty In Law.
- Express or Implied Warranty Definition.
- Warranty in Contract Law.
- Warranty Examples.
- Manufacturer Warranty Law.
- Product Warranty.

Warranty:

Warranty is the additional stipulation and a written guarantee that is collateral to the main purpose of the contract. The effect of a breach of a warranty is that the aggrieved party cannot repudiate the whole contract however, can claim for the damages. A Condition forms the core of the contract i.e. considered as an essential to the main purpose of the contract. Therefore, the repercussion would be repudiation of the contract or claim for damages or both depending upon the breach and case.

Thus, unless a contrary intention appears, the following implied warranties attach to a contract of sale:

(a) the seller has a right to sell the property at the time when the ownership is to pass, while the buyer shall from that time have and enjoy the legal and peaceful possession of the property;

(b) the property.

According to Sec. 12(1) of the Sale of Goods Acts, 1930, a stipulation in a contract of sale with reference to goods which are the subject thereof may be:

i) A condition [(Sec.12 (2)] or

ii) A warranty [(Sec.12 (3)]

Implied warranties are governed by state laws, not federal laws. The two key types of implied warranties are merchantability and fitness. Merchantability says that a product will meet reasonable expectations of the buyer, while fitness means the product meets the buyer's intended use.

A warranty is a type of guarantee that a manufacturer or similar party makes regarding the condition of its product. It also refers to the terms and situations in which repairs orexchanges will be made in the event that the product does not function as originally described or intended.

Implied conditions and warranties are those which are implied by law or custom; these shall prevail in a contract of sale unless the parties agree to the contrary. In case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

Who may demand performance?

There is no such direct provision on this matter in the Act.

A contract's performance may be demanded by any one of the following:

1) A Promisee- the person who was given the promise, is primarily the person who can demand the performance of the promise according to the terms of the contract.

2) An Agent can always take necessary action to demand performance or enforce the contract on behalf of the Promisee.

3) Legal Representative- in case of death of the promise before the performance of an impersonal contract, the contractual rights may develop upon the legal successors. They may demand the performance of the contract.

4) Third person – Normally a stranger to the contract cannot sue on a contract even if he is a beneficiary under it.

However, in some exceptional situations, a third person may enforce a contract.

A contract breach occurs when one or both parties do not fulfil the legal obligations ofthe agreement. The aggrieved party can file a law suit and possibly receive a judgment for the breach. One must have a valid legal reason to get out of a contract without being sued.

There are several remedies for breach of contract, such as award of damages, specific performance, rescission, and restitution. In courts of limited jurisdiction, the main remedy is an award of damages.

Rescission in remedies for breach of contract:

In contract of law, Rescission is an unwinding of a transaction. It is an equitable remedy which allows a contractual party to cancel the contract. Parties may rescind if they are victims of a vitiating factor, such as misrepresentation, mistake, duress, or undue influence.

Restitution:

When a ' Plaintiff ' in case of a contract to the original position which he/she enjoyed before entering into contract and secondly to prevent the unjust enrichment of the defendant that is to stop him from making wrongful gains which he is not entitled as per law to make.

Many commercial agreements contain express provisions for remedies. For example, in a contract for the sale of goods, the buyer may be entitled to require the seller to make good or replace defective items. There may be a presumption (which may be expressed in the contract) that all the terms which are to govern their contractual relationship have been included by the parties in express written form in the contract itself. In doing so they intended to displace any rights and remedies provided by law (such as the buyer's right to terminate the contract for fundamental breach) which are not specified in the contract.

The purpose of a cumulative remedies’ clause is to ensure that the parties' rights specifically provided for in the agreement are in addition to their rights provided by the general law. Any particular remedy that a party envisages it may need should be specifically preserved in the contract.

Damages

Unlike the equitable remedies of specific performance and injunction damages for loss in a breach of contract claim are available as of right.

An innocent party may claim damages from the party in breach in respect of all breaches of contract. The damages may be nominal or substantial. Nominal damages are awarded where the innocent party has suffered no loss as a result of the other's breach and substantial damages are awarded as monetary compensation for loss suffered as a result of the other party's breach.

For an innocent party to obtain substantial damages he must show that he has suffered loss as a result of the breach(remoteness) and the amount of his loss (measure). It is up to the party in breach to argue that the innocent party has failed to mitigate his loss.

Remoteness of loss

The innocent party may only recover damages for loss suffered as a result of the breach provided it is not too remote. The aim of damages is to put him in the position he would have been had the contract been properly performed.

The principles of remoteness are given the following losses are recoverable:

- All loss which flows naturally from the breach.
- All loss which was in the contemplation of the parties at the time the contract was made as a probable result of the breach. If the loss does not fall within the above categories, then it will be too remote and will not be recoverable.

Unpaid Seller:

a) When the whole of the price has not been paid or tendered;

b) When a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

Under the contract of sale if the property of the goods is already passed but he refuses to pay for the goods the seller becomes an unpaid seller. In such a case. the seller can sue the buyer for wrongfully refusing to pay him/ her the due.

Following 3 rights are available to the unpaid seller if property in goods has passed to the buyer;
(a) RIGHT OF LIEN
(b) RIGHT OF STOPPAGE IN TRANSIT
(C)RIGHT OF RESALE

Right of lien: is the right to retain the goods until whole of the price of goods is paid or tendered.

Right of Stoppage in Transit.
This right is an extension to the right of lien. The right of stoppage in transit means that an unpaid seller has the right to stop the goods while they are in transit, regain possession, and retain them till he receives the full price.

If a buyer fails to pay the price within the decided time, then unpaid seller has the right to stop the goods in transit. The unpaid seller has the right to resell the goods.

DAMAGE:
Generally, there are two types of damages that can be awarded in a breach of contract case: Compensatory damages, sometimes called actual damages, and consequential damages, sometimes called special damages.

The breaches in contract normally fall into any of four categories: minor, material, fundamental (repudiatory), and anticipatory.

- A minor breach of contract.
- A material breach of contract.
- A fundamental breach of contract.
- An anticipatory breach of contract.
- Repudiation.
- Damages.
- Specific performance.

Quantum meruit is a Latin phrase and is related to the Indian Contract Act, 1872. It means “what one has earned” or “as much as he has earned”. In simpler terms, it refers to the actual value of the services rendered or performed. The Black Law Dictionary states that quantum meruit means “as much as one deserves”.

Consumer Protection Act, 1986 enables the ordinary consumers to secure less expensive and often speedy redressal of their grievances. The Act mandates establishment of Consumer

Protection Council at the Centre as well in each States and District, with a view to promoting the consumer awareness.

Statement of objects and reasons of The Consumer Protection Bill, 1986

1. The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matter connected therewith.

2. It seeks, *inter alia*, to promote and protect the rights of consumers such as-

(a) the right to be protected against marketing of goods which are hazardous to life and property;
(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
(c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;
(d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
(e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
(f) right to consumer education.

3. These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.

4. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be setup at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for noncompliance of the orders given by the quasi-judicial bodies have also been provided.

The Consumer Protection Act, 2019. Long Title: An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto. THE CONSUMER PROTECTION ACT 68 OF 1986.

Consumer Protection Act 2019:

The Act features focuses on giving customer more power by taking transparency to another level. In September 2020 government declared a new draft known as advertising code which gives customer protection against false advertisements, moreover protecting the customer from the celebrities who try to fool customers by doing paid review(s) of the products/services. The great thing about the advertising code is that it is applicable throughout all mediums of communication like Social Media, Print Media, etc.

Rights of consumers:

The consumer protection bill 2019 primarily define the following consumer rights.

1. Be protected against marketing of goods and services which are hazardous to life and property.
2. Be informed of the quality, quantity, potency, purity, standard and price of goods and services.
3. Be assured of access to a variety of goods or services at competitive prices.
4. Seek redressal against unfair and restrictive trade practices.

LIST OF AMENDING ACTS:

1. The Consumer Protection (Amendment) Act, 1991 (34 of 1991) (w.r.e.f. 15-6-1991).
2. The Consumer Protection (Amendment) Act, 1993 (50 of 1993) (w.r.e.f. 18-6-1993).
3. The Consumer Protection (Amendment) Act, 2002 (62 of 2002) (w.r.e.f. 15-3-2003).

Complaint's handling procedure:

1 - Listen to the complaint. Thank the customer for bringing the matter to immediate attention.

2 - Record details of the complaint.

3 - Get all the facts.

4 - Discuss options for fixing the problem.

5 - Act quickly.

6 - Keep the made promises on.

7 - Follow up.

Consumer redressal forum:

Redressal Agencies under the Consumer Protection Act:

The Consumer Protection Act provides for setting up of a three-tier Quasi-judicial enforcement machinery at the District, State, and the National levels. They are referred to as the 'District Forum', 'State Commission', and the 'National Commission'.

Consumer Dispute:

According Sec. 2(1)(e) "Consumer dispute means where a person against whom a complaint has been made, denies or pledge allegations contained in the complain.

Redressal Forum:

District Forum:

The District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees one crore. If the Central Government feels necessary, it would provide other values as it deems fit. 19.2.22

State Commission:

In State Commission, complaints are filed where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore but does not exceed rupees ten crore.

National Commission:

The National Consumer Disputes Redressal Commission (NCDRC), India is a quasi-judicial commission in India which was set up in 1988 under the Consumer Protection Act of 1986. Its head office is in New Delhi. The National Consumer Disputes Redressal Commission (NCDRC) will now have jurisdiction to entertain consumers complaints where the value of the goods or services exceeds Rs 2 crore as against the earlier limit of over Rs 10 crore.

Doctrine of Caveat Emptor:

Caveat emptor, (Latin: “let the buyer beware”), in the law of commercial transactions, principle that the buyer purchases at his own risk in the absence of an express warranty in the contract. Obviously, caveat emptor applies, but you can usually find good shoes at fair prices. The rules of caveat emptor apply, but it's definitely worth looking. The rule of caveat emptor applies, but if you shop carefully, you can make a killing. Under the principle of caveat emptor, for example, a consumer who purchases a Thermo Product/ Induction cooker and later discovers that it has a leak or technical problem, So is stuck with the defective product.

Question arise Whether the Buyer inspected the product prior to the sale. If yes then that might change their mind. So the principle says the buyer must keep eyes open while purchasing.

Power of Redressal Agencies:

The Redressal Agencies namely:

- District Forum,
- State Commission &
- National Commission

have all the powers of Civil courts such as
(a) summoning & enforcing of witnesses and examining the witnesses on oath
(b) discovery & production of any document or other material as evidence and seize the evidence as a proof.
(c) Receiving evidence on affidavit

These redressal agencies have the jurisdiction to adjudicate the complaints received from consumers against any defect in the goods purchased or deficiencies in the services availed or any unfair/ restrictive trade practices, etc. adopted by any trader or person.

MOD 3:

COMPANIES ACT

J S MISHRA

The Most Important Features of a Company (Indian Companies Act, 1956)

- Incorporated Association:
- Independent Legal Entity:
- Separate Property:
- Perpetual Existence:
- Common Seal:
- Separation of Ownership and Management:
- Limited Liability:
- Transferability of Shares:

- Artificial Legal Person: A **company** is an artificial person created by law.
- Separate Legal Entity: A **company** has a distinct entity separate from its members or shareholders.
- Separation of Ownership from Management:
- Number of Members:

Primary Classification

Companies are primarily classified into private and public. Private companies or private limited companies are those companies that are closely-held and have less than 200 shareholders. Public companies are limited companies that have more than 200 shareholders and are listed on a stock exchange.

There are 4 main types of business organization:

- Sole proprietorship,
- Partnership,
- Corporation,
- Limited Liability Company (LLC)

Other 3 types of business organization:

- LLP (Limited Liability Partnership).
- Series LLC (Series Limited Liability Company).
- C corporation (Corporate corporation).
- S corporation (Sub-chapter corporation).
- Non-profit corporation.

Types of Companies Based on The Number of Members

- Public Limited Company.

- Private Limited Company.
- One Person Company.
- Companies Limited By Shares.
- Companies Limited By Guarantee.
- Unlimited Company.
- Chartered Or Royal Chartered Companies.
- Registered Or Incorporated Companies.

Holding company:

Where a company has control over another company, it is known as the Holding Company and the company over which control is exercised is called the Subsidiary Company.

A Company is deemed to be under the control of another if;

1. That other controls the composition of its Board of Directors; or
2. The other company holds more than half in nominal value of its equity share capital
3. It is a subsidiary of a third company which itself is a subsidiary of the controlling company.

Subsidiary Company

A subsidiary company is a company owned and controlled by another company; known as a holding company or a parent company. If a parent company has control over the operations of the subsidiary company is called holding company.

A subsidiary company;

- owned and controlled by another company.
- If a Holding company or parent company owns 50% of the voting stock of the subsidiary company, its operations are controlled by the holding company.
- If the parent company holds 100% of the voting stock, the subsidiary company structure is referred to as a wholly-owned subsidiary.

The key factors of Indian Companies Act 2013:

1. The act has launched all new class action suits that keep the shareholders as well as the stakeholders more aware and informed regarding their major rights.

2. The act lends more power to shareholders wherein their approvals are required for numerous important transactions.

3. It insists on appointing a minimum of 1 female director on the company’s board (for companies in specific class).

4. The act requires companies in specific class to spend specified amount on initiatives or activities that reflect CSR (Corporate Social Responsibility) on an annual basis.

5. It has launched the National Company Law Tribunal as well as the National Company Law Appellate Tribunal for replacing the Company Law Board in addition to the Board for Industrial and Financial Reconstruction. #

6. The act has proposed a simple and fast track process for mergers as well as amalgamations of companies in specific class like the subsidiary and holding, as well as small organizations after they have obtain the government's approval.

7. It also gives permission to international mergers, either ways i.e. a foreign organization merging into an Indian Company, and vice versa. However, such mergers would take place only after permission has been duly obtained by the RBI.

8. The act prohibits insider trading and forward dealings. It places prohibition on the directors as well as the key management members from buying the call as well as the put options of the company's shares, in cases where the individual is capable of accessing any information that is price sensitive.

9. The Act lays down that a private ltd. company can now have a maximum of 200 shareholders as opposed to 50 that was permitted in the Companies Act, 1956.

10. An association or partnership may have the maximum partners/person as prescribed but it should not exceed 100. However, the above restriction is not applicable to a partnership or association constituted by the Chartered Accountants, Lawyers and Company Secretaries etc. as they need to follow their specific laws.

11. The Act has also introduced a new type of Pvt. Company – One Person Company. Such company can have just 1 director as well as 1 shareholder. The previous act required a minimum of 2 shareholders as well as 2 directors for establishing a Pvt. Company.

12. The Company Act 2013 has provided for entrenchment in the articles of association.

13. The Act has given a proposal for E-Governance in case of numerous company procedures such as maintenance as well as electronic inspection of documents, keeping the books of accounts in electronic format, placement of company's financial statements on their website, etc.

14. Each company must have a minimum of 1 director who must have stayed in the country (India) for at least 182 days and not less.

15. The Act also states that at least 1/3rd of the company's board should consist of independently operating directors in the case of all the listed organizations. Similar other classes or class of public organization must also appoint independently operating directors. No independently operating director may hold the office for over 2 terms of 5 years consecutively.

16. The Act states that the companies must give a prior 7 days’ notice before calling a board meeting. Companies may send the notice electronically to every single director at his/her registered address.

17. The Act also defines all the specific duties of a company director.

18. It doesn’t place any restriction on a company in India to indemnify (compensation for loss or harm) its officers and directors, which was earlier applicable in the previous act.

19. The Act insists on rotation of auditors as well as auditing firms in the case of a public company.

20. The Act places prohibition on auditors for the performance of non-auditing service for the organization where they have been appointed as auditors for the purpose of ensuring accountability and independence of auditors.

21. The liquidation and rehabilitation procedure of the organizations dealing with financial problems have become time bound as per the new act.

Piercing the corporate veil or lifting the corporate veil is a legal decision to treat the rights or duties of a corporation as the rights or liabilities of its shareholders. The *veil* doctrine is invoked when shareholders blur the distinction between the *corporation* and the shareholders.

It refers to the situation where a shareholder is held liable for its corporation's debts despite the rule of limited liability and/of separate personality.

Circumstances in which the Court can lift the Corporate Veil. When Company tries to avoid Legal Obligations: When the corporate personality is used to avoid any legal obligation, the Court can disregard the legal personality and can identify with its members.

The doctrine of lifting the corporate veil means ignoring the corporate nature of the body of individuals incorporated as a company. It allows a company to perform juristic acts in its own name, as well as to sue and to be sued.

The most common ground when the courts lift the corporate veil is if the members of the company are indulged in fraudulent acts. In such cases, the courts lift the veil of the company to find out the real state of affairs of the company.

Steps in Incorporation of a Company

1. Ascertaining Availability of Name.
2. Preparation of Memorandum of Association and Articles of Association.
3. Printing, Signing and Stamping, Vetting of Memorandum and Articles.
4. Power of Attorney.
5. Other Documents to be Filed with the Registrar of Companies.
6. Statutory Declaration in e-Form No.

Incorporation is the legal process used to form a corporate entity or company. A corporation is the resulting legal entity that separates the firm's assets and income from its owners and investors.

Corporations can be created in nearly all countries in the world and are usually identified as such by the use of terms such as "Inc." or "Limited (Ltd.)" in their names. It is the process of legally declaring a corporate entity as separate from its owners.

The steps for forming a Private Limited Company:

1. Digital Signature Certificate (DSC) has to be obtained.
2. Director Identification Number (DIN) has to be obtained.
3. A name has to be selected for the company.
4. The availability of the name has to be checked.

The incorporation of private companies is carried under the Companies Act. The Companies Act has undergone a lot of changes in regards to the registration of a private limited company. Most of the prominent changes were made in the time period between 2014 and 2018.

Advantages and Disadvantages of incorporating a Private Limited Company:

- **Advantages:** The advantages of incorporating a Private Limited Company in India are as follows:
    1. **The risk to personal assets is limited:** The liabilities of the shareholders of a private limited company are limited. That basically means that a shareholder will have to pay the company's liability only up to the extent of the contribution that he/she has made.
    2. **A different legal entity:** Legally, a Private Limited Company or PLC is a separate entity from the owner. Thus, the Company will be responsible for its own assets and liabilities, and debtors and creditors. The creditors cannot legally proceed against the owner to recover their invested money. 7/3/22
    3. **Trustworthiness:** When a business gets the Private Limited Company tag, its trustworthiness increases manifold. The sole reason behind this is the registration of the company with the Registrar of Companies (ROC) under the Companies Act, 2013. The details of a registered company can be checked through the Ministry of Corporate Affairs (MCA). While the company is formed, the details of all the directors of the company are also furnished. Hence, the company will have a lot of clarity and thus, considered more trustworthy.
    4. **Raising the capital:** Entrepreneurs prefer registering their business as a Private Limited Company or PLC as it becomes easier for them to sell equities and raise funds through them. It also helps them to expand the business while restricting the liabilities. However, registering a business as a Private Limited Company requires the business owners to meet some compliances.
    5. **Uninterrupted existence:** Companies have the 'perpetual succession' feature which allows the uninterrupted existence of the business till the

time it is legally dissolved. Since a company is a separate entity, the death or cessation of a member does not affect the functioning of the company. It keeps functioning in spite of a change in membership.

Disadvantages: Although there are a number of advantages of registering a business as a Private Limited Company, there are certain disadvantages that might affect the business in the future, especially, if the setup is a small or micro enterprise. The disadvantages of incorporation of Private Limited Company can be summed as follows:

1. **Lengthy registration process:** The registration process can take as much as 10 to 15 days. It is not a viable option for an unregistered entity like a proprietorship business to register itself as a private limited company as the process consumes a lot of time and money. However, the company can enjoy a plethora of power, rights, and advantages, once the company is registered.
2. **Ownership division:** The biggest disadvantage of registering a company is the fact that the sole ownership is lost. A minimum of two individuals is required to form a Private Limited Company. One acts as the director while the other will be the shareholder. In case a sole entrepreneur wishes to register his/her business as a Private Limited Company, he/she cannot do that himself/herself. Once the sole ownership is lost, the decision- making power is also divided. For any major decisions to be taken by the company, the consent of at least two persons would be necessary.
3. **Compliance formalities:** There are a number of compliances that are to be met by the company after it is incorporated. These are as follows:

- Board
- **Compliance formalities:** There are a number of compliances that are to be met by the company after it is incorporated. These are as follows:
  - ✓ Board meetings are to be held by the company.
  - ✓ General meetings are to be held by the company.
  - ✓ The company has to get its accounts audited.
  - ✓ The company has to maintain a statutory register and file annual returns with the Ministry of Corporate Affairs every year.
  - ✓ Irrespective of the type of business, a company has to comply with the tax and labour laws.
- **Rise in personal liability:** Although the members of the company will be able to enjoy the limited liability, the company will be entirely w3eresponsible for its own debt and liability. However, there are certain cases where the personal liability of the members would rise up. For instance, if the name of the company is incorrectly described in an act or a contract, the liability falls on the individuals who are responsible for making the contract or doing the act.
- **Winding up of the company:** The process of winding up a Private Limited Company is quite complicated if compared to the winding up of an unregistered company. It consumes a lot of time and is costly.

How to form a Private Limited Company (PLC) – (Step-By-Step Guide)

Incorporation of a business into a Private Limited Company is a complicated process and involves a lot of compliances that have to be met. A Private Limited Company can be formed in one of the following ways:

1. Incorporating a new company in order to start a new business.
2. Converting an existing business (either sole proprietary or partnership) into a company.

Discussed below are the steps which have to be followed for forming a Private Limited Company:

1. Digital Signature Certificate (DSC) has to be obtained.
2. Director Identification Number (DIN) has to be obtained.
3. A name has to be selected for the company.
4. The availability of the name has to be checked.
5. Form SPICe or INC- 32 has to be filled up.
6. e-MoA (INC- 33) and e-AoA (INC- 34) have to be filled up.
7. An application has to be made for PAN and TAN.

1. Digital Signature Certificate (DSC) has to be obtained In order to proceed with the registration process, a Digital Signature Certificate or DSC has to be obtained from a certifying agency which is recognised by the government. The digital signature is required at the time of filing the forms related to company formation. Since the registration process is online, all the forms require a valid digital signature. It is necessary to obtain a Class 2 or Class 3 Digital Signature Certificate or DSC. If the person applying for the incorporation is already pre-verified, his/her identity can be substantiated against the pre-verified database. Such cases of verification will come under Class 2 category of DSC. On the other hand, if the person is not pre-verified, he/she has to appear before a registering authority to authenticate his/her identity. In this case, the person will come under the Class 3 category of DSC.

2. Director Identification Number (DIN) has to be obtained For a person who wants to be the director of the company, it is mandatory to obtain the Director Identification Number or the DIN. There are 2 methods through which a DIN can be obtained. They are as follows:

a) **Filing SPICe:** A Director Identification Number or DIN is issued to each of the proposed directors at the time of filing form SPICe (or INC- 32). The DIN will be issued to the directors who do not have a DIN. However, the issuance of DIN is limited to 3 directors under this process.

b) **Filing Form DIN 3:** This is an option applicable to companies which are already existent. For filing the DIN 3 form, the proposed director is required to provide his/her basic details along with an identity proof like Aadhaar Card or PAN card and an address proof.

3. A name has to be selected for the company Naming the company is the mark of its individual existence. The applicant may pick up any suitable name for the company, provided the following points are honoured:

I. The company cannot be registered with a name which is undesirable as per the Central Government's opinion.

II. The name of the company has to end with the word ‘Limited’ in case the liability of the members is limited.

III. The name of the company has to end with 'Private Limited' if it is a private company.
IV. The name which is chosen for the company should not resemble the name of another registered company.
V. The name which is chosen for the company should not be identical to the name of another registered company.

4.The availability of the name has to be checked Once the name has been decided, the applicant has to get the name approved through one of the following options:

I. **Using Reserve Unique Name (RUN) to incorporate a company:** The Reserve Unique Name web service, popularly known as the RUN web service, has been introduced by the Ministry of Corporate Affairs (MCA) for the purpose of incorporating a company. You need a Ministry of Corporate Affairs (MCA) account in order to use the RUN web service. Earlier RUN gave just one chance for applying for a name for incorporation. In case of a rejection, second chances were not available. However, with effect from 23 March 2018, the Ministry has permitted the proposal of two names and one re-submission (RSUB) for reserving a name under RUN. Nevertheless, it is advisable to follow the guidelines minutely while selecting a name in order to avoid rejection of the name.
II. **Using SPICe (INC- 32) form to incorporate a company:** This is a cheaper and relatively better option for the incorporation of a company. Applying through form SPICe or INC- 32 allows the applicant to refill the same form again in case of a rejection. That too for no extra charges. Moreover, if the name is rejected in the second chance as well, the applicant can choose to file the form afresh. Thus, it is a cheaper and more convenient option.

5. Form SPICe or INC- 32 has to be filled up The form SPICe or INC- 32 has been introduced by the Ministry of Company Affairs as a simple form of incorporating a company electronically. A single application can serve the below-mentioned purposes:

I. Applying for the allotment of Director Identification Number or DIN
II. Reserving the company's name
III. Incorporating a new company
IV. Applying for PAN and TAN

6. e-MoA (INC- 33) and e-AoA (INC- 34) have to be filled up The e-MoA and e-AoA forms have to be filled up next. e-MoA stands for electronic Memorandum of Association and e-AoA stands for electronic Articles of Association. The e-MoA is responsible for representing the charter of the company. The e-AoA, on the other hand, is responsible for containing the internal rules and regulations of the company. Both the forms are required to be digitally signed by the subscribers to the Memorandum of Association and Articles of Association.

7. An application has to be made for PAN and TAN As mentioned earlier, the application for Personal Account Number or PAN and Tax Deduction and Collection Account Number or TAN can also be made through form SPICe ((Simplified Proforma for Incorporating a Company Electronically)) (or INC- 32). Under the form SPICe, form 49A is to be filed for PAN, while form 49B is to be filed for TAN. These forms will be generated automatically by the system once the form SPICe is submitted. Once the forms are generated, the applicant has to download them to affix the digital signature and upload the forms on the MCA portal. Upon approval of the registration by Ministry of Corporate Affairs (MCA), a Corporate Identity Number (also known as CIN) will be allocated. This CIN can be tracked on the MCA portal.

Ultra vires (Latin: "beyond the powers") is a Latin phrase used in law to describe an act which requires legal authority but is done without it. Its opposite, an act done under proper authority, is intra vires ("within the powers"). An action is said to be ultra vires that though legal by itself, is not authorised by the object clause in the Memorandum of Association. The term ultra vires to a company means beyond the legitimate power of the company. Everything else would-be ultra vires a company but an ultra vires act of the company shall be ineffective and can not be ratified even if it is agreed to by the whole body of its members. The purpose of these restrictions is to protect the interest of the investors and creditors of the company. For example, if a company's constitution might outline the procedure for appointing directors to its board. If board members are added or removed without following the procedures mentioned in memorandum of Association and Article of Association, then those actions would be described as ultra vires.

The Doctrine of Ultra Vires is a fundamental rule of Company Law. It states that the objects of a company, as specified in its Memorandum of Association, can be departed from only to the extent permitted by the Act. The Memorandum of Association delegate some Legal Authorities or Power to perform the assign Duties. But when that authorities do the work beyond their power, or delegated rights, it's called-"Ultra Vires" the work perform beyond the power is consider as Invalid.

Basic Principles of Doctrine of Ultra Vires

1. An ultra vires transaction cannot be ratified by all the shareholders, even if they wish it to be ratified.
2. The doctrine of estoppel usually precluded reliance on the defence of ultra vires where the transaction fully performed by one party.
3. The contract fully executory, the defence of ultra vires might also raise by either party.
4. If the contract partially performed, and the performance held insufficient to bring the doctrine of estoppel into play, a suit for quasi contract for recovery of benefits conferred available.

A prospectus is defined as a legal document describing a company's securities that have been put on sale. The prospectus generally discloses the company's operations along with the purpose of the securities being offered.

A prospectus is a formal document that is required by and filed with the Securities and Exchange Commission (SEC) that provides details about an investment offering to the public. A prospectus is filed for offerings of stocks, bonds, and mutual funds.

The prospectus is a legal document, which outlines the company's financial securities for sale to the investors. According to the companies act 2013, there are four types of the prospectus, abridged prospectus, deemed prospectus, red herring prospectus, and shelf prospectus.

Abridged Prospectus – Abridged prospectus is a memorandum, containing all salient features of the prospectus as specified by SEBI. This type of prospectus includes all the information in brief, which gives a summary to the investor to make further decisions.

A deemed prospectus has been stated under section 25(1) of the Companies Act, 2013. When any company to offer securities for sale to the public, allots or agrees to allot securities, the document will be considered as a deemed prospectus through which the offer is made to the public for sale.

Red herring Prospectus: A red herring prospectus is a prospectus used when there is a book built public issue. It contains all the material facts and information excluding the price or quantum of the securities offered for sale.

A shelf prospectus is a type of prospectus that allows a single short form prospectus to be filed on SEDAR for a public offering where the issuer has no present intention to immediately sell all of the securities being qualified as soon as a receipt for the final shortform prospectus has been obtained.

The prospectus must be issued within 90 days of the date on which a copy thereof is delivered for registration. [sec.60]

Penalty for non-registration of a Prospectus:

If a prospectus is issued without a copy thereof being delivered to the Registrar for registration, or without the necessary documents or the consent of the expert, the the company and every person, who is knowingly a party to issue the prospectus, shall be punishable with fine which may extend to Rs. 5,000/-.

Consequences of Mis-statement in a Prospectus [Sec.56 to 59]

A prospectus can be issued by or on behalf of a company or in relation to an intended company only when a copy thereof has been delivered to the Registrar for registration. If there is any misstatement of a material in a prospectus or if the prospectus is wanting any factual material, there may arise the following liability:
1) Civil Liability includes the following:
i) Compensation: The person responsible to hide or missed the required facts is liable to compensate to every person who subscribes for any shares, debentures or any other for the loss or damage by reason of any untrue statement included therein.
ii) Damages for Deceit or Fraud: Any person induced to invest in the company by fraudulent statement in a prospectus can sue the company and person responsible for such damage or loss. The share should be surrendered to the company before the company is sued for damage. Fraud occurs when any statement is made without belief in truth or carelessness.
iii) Recession of the Contract for Misrepresentation: recession means here avoiding the fact of the contract. Any person can apply to the court for recession of the contract if the statement on which he/ she has taken the shares are false or caused by misrepresentation. Misrepresentation must be of material fact and not by of law. It should be noted that a person

cannot claim recession of contract on misrepresentation, if he had the means of discovering the truth with ordinary diligence.

iv) Liability for Non-compliance (Sec.56): A Director or other person responsible for not setting out matters and reports required to be set-out matters in the prospectus as provided under Sec.56 of the Act, shall be punishable with fine which may be extended to Rs.50,000/-.

v) Liability under General Law:

vi) Penalty for Contravening [sec. 57 & 58]: if any prospectus is issued in contravention of

Sec.57 (Expert to be unconnected with formation or management of company), or Sec. 58 (Expert's consent to issue of prospectus containing statement by him):
The company and every person who is knowingly a party to the issue thereof, shall be punishable with a fine which may extend to Rs.50,000/-[Sec. 59 (1)].

vii) Penalty for issuing the prospectus without delivering for registration: If a prospectus is issued without a copy thereof being delivered to the Registrar, the company and every person who is knowingly a party to issue of the prospectus shall be punishable with fine which may extend to Rs. 50,000/-[Sec.60(5)].

2) Criminal Liability [Sec 63(1) & 68]

3) Fraudulently Inducing Persons to Invest Money:

i) Any agreement with a view to acquire, dispose of, subscribe for, or underwriting shares or debentures; or

ii) Any agreement, the purpose of which is to secure a profit to any of the parties from the yield of shares or debentures; or by reference to fluctuation in the value of shares or debentures; shall be punishable with imprisonment for a term which may extend to 5 years or with fine which may extend to Rs.100,000/- or both.

The doctrine of indoor management, also known as Turquand rule is a 150-year old concept, which protects the outsiders against the done by the company. Any person who enters into a contract with the company shall ensure that the transaction is authorised by the articles and memorandum of the company.

In companies' law, the doctrine of constructive notice is a doctrine where all persons dealing with a company are deemed (or "construed") to have knowledge of the company's articles of association and memorandum of association. The doctrine of indoor management is an exception to this rule.

EXCEPTIONS TO THE DOCTRINE OF INDOOR MANAGEMENT

- Knowledge of Irregularity.
- Negligence.
- Forgery.
- Representation by way of Articles.
- Acts outside the scope of apparent authority.

Forgery:

It may be noted here that the **doctrine of indoor management** does **not** protect a person where forgery is involved. A company cannot be held liable for forgeries committed by its officers. When a document is forged, it is total nullity in the eyes of law andthe **doctrine** cannot be availed of in such a case.

The "Indoor Management Rule" is well established in Canadian law. This common law rule holds that parties dealing with a corporation, acting in good faith and without knowledgeof any irregularity, are entitled to assume that a corporation's internal policies and proceedings have been followed and complied with.

Exceptions to the Doctrine of Indoor Management:

a) Knowledge of Irregularity:
When a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim benefit under the rule of indoor management. He may in some cases be himself a part of the internal procedure. The rule is based on common dereliction of duty.
b) Negligence:
Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he cannot claim the benefit of the rule of under the rule of Indoor Management. The protection of the rule is also available where the circumstances surrounding the contract are so suspicious as to invite inquiry.
c) Forgery:
The rule in Turquand's case does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.
d) Acts outside the Scope of Apparent Authority:
If an officer of a company enters into a contract with a third party and if the act has in fact been delegated to the officer with whom the plaintiff entered into the contract. But if the officer of the company acts fraudulently under his ostensible authority on behalf of the company, the company is liable to admit fraudulent act.
e) Void or Illegal Transaction:
The doctrine of indoor management shall not apply to those transactions which are void of illegal *ab initio*.

A director is someone elected or appointed to manage a company's business and affairs. Every registered company must have at least one director. Who as director provides key information about the company is recorded on the Companies Register. As per The Companies Act of 2013, a 'director' is defined under Section 2(34) as "director appointedto the Board of a company". [1] In general parlance, a director may be understood as a naturalperson vested with the duty of providing directions to the company in which he is appointed.

Types of Directors
Following are the categories of directors who constitute 'Board' of a Company:

1. Ordinary directors: Ordinary directors are also referred to as simple director who attend board meeting of a company and participate in the matters put before the board. These directors are neither whole time directors nor managing directors.

2. Managing Director: According to Sec.2 (54) of the Indian Companies Act "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

3. Whole-time directors: A whole-time executive director includes a director in the whole-time employment of the company.

4. Alternate director: The Board Meeting may be held at a time when a director is, absent for a period of more than three months from the state and in such a situation, an 'alternate director' is appointed. The Board of Directors can appoint the additional director in the absence of a director if so authorized by articles or by a resolution passed by the company in general meeting. The alternate director shall work until the original director return or up to the period permitted to the original director.

5. Professional Directors: Any director possessing professional qualifications and do not have any pecuniary interest in the company are called as "professional directors".

6. Independent directors: Sec. 2(47) defines independent directors to mean an independent director referred to in Sec. 149(5).

7. Nominee Directors: The banks and financial institutions which grants loans to a company generally impose a condition as to appointment of their representative on the board of the concerned company. These nominated persons are called as nominee directors.

A company director's duties can include:

- determining and implementing policies and making decisions
- preparing and filing statutory documents with the Companies Office or other agencies
- calling meetings, including an annual meeting of shareholders
- maintaining and keeping records
- binding the company to contracts with suppliers, lenders and others dealing with the company.

Director's Qualification:
The person must have completed the age of eighteen or above. Nationality can be that of Indian or otherwise. The person should have his own Digital Signature Certificate (DSC) through which Director's Identification Number (DIN)[6] shall be obtained.

As regards to the qualification of directors, there is no direct provision in the Companies Act, 2013.But, according to the different provisions relating to the directors; the following qualifications may be mentioned:
1. A director must be a person of sound mind.
2. A director must hold share qualification, if the article of association provides such.
3. A director must be an individual.
4. A director should be a solvent person.
5. A director should not be convicted by the Court for any offence, etc.

Disqualifications of a director:
Section 164 of Companies Act, 2013, has mentioned the disqualification as mentioned below:
1) A person shall not be capable of being appointed director of a company, if the director is
(a) Of unsound mind by a court of competent jurisdiction and the finding is in force;
(b) An undischarged insolvent;
(c) Has applied to be adjudicated as an insolvent and his application is pending;
(d) Has been convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence;
(e) Has not paid any call-in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or
(f) An order disqualifying him for appointment as director has been passed by a court in pursuance of section 203 and is in force, unless the leave of the court has been obtained for his appointment in pursuance of that section;
2) Such person is already a director of a public company which:
(a) Has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999; or
(b) Has failed to repay its deposits or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more:
Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company, in which he is a director, failed to file annual accounts and annual returns under sub-clause (A) or has failed to repay its deposit or interest or redeem its debentures on due date or paid dividend referred to in clause (B).

Appointment of Director:
(1) Every person who is to be appointed as Director of a company shall has to put an application electronically in Form DIR-3, to the Central Govt. for the allotment of a Director Identification Number (DIN) along with such fees as provided in the Companies (Registration Offices & Fees) Rules 2014.

(2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.

(3) (a) The applicant shall download Form **DIR-3** from the portal, fill in the required particulars sought therein and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically-

(i) photograph;

(ii) proof of identity;

(iii) proof of residence;

(iv) verification by the applicant for applying for allotment of DIN in Form **DIR-4**; and

(v) specimen signature duly verified.

(b) **Form DIR-3** shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by –

(i) a chartered accountant in practice or a company secretary in practice or a cost accountant in practice; or

(ii) a company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed as director.

(4). Allotment of DIN.- (1) On the submission of the Form **DIR-3** on the portal and payment of the requisite amount of fees through online mode the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.

(2) After generation of the provisional DIN, the Central Government shall process the applications received for allotment of DIN under sub-rule (2) of rule 9, decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

(3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email.

Share Qualification of Director:

*Qualification shares are the minimum number of shares a person must own, as provided in the articles of the company, in order to qualify to become a director of the company. Qualification shares must be acquired by a director within 2 months of his appointment.

*Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors. There must be a minimum of two shareholders and maximum of 200. For directors, the minimum is two and maximum of 15. Directors are appointed by the shareholders at a general meeting. In the absence of a higher requirement adopted by a company in its articles of association (AOA), directors are generally appointed by a simple majority vote.

Most commonly, directors are appointed by the shareholders at the Annual General Meeting (AGM), or in extreme circumstances, at an Extraordinary General Meeting (EGM). A resolution for the appointment is put to a vote, and passed if a majority of shares are voted in favour.

A company meeting:

A company meeting may be defined as a concurrence or coming together of at least a quorum of members in order to transact either ordinary or special business of the company.

A meeting therefore, can be defined as a lawful association, or assembly of two or more persons by previous notice for transacting some business. The meeting must be validly summoned and convened. Such gatherings of the members of companies are knownas company meetings.

Features of company meetings

- A proper notice should be given for convening the meeting.
- Two or more members of the company must be present at the meeting.
- There must be a transaction of some lawful business.
- The meeting must be held at the place, date and time mentioned in the notice convening the meeting.

(1) The quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio- visual means shall also be counted for the purposes of quorum under this sub-section. For example, a board with 20 members and a 40 percent quorum requirement means that a meeting can be held when 8 members are present. Then, if the bylaws require a simple "majority of a quorum" to carry a vote, five members (a majority of the eight in attendance) can determine the fate of an issue.

Winding up of a company:

Winding up is the process of dissolving a company. While winding up, a company ceases to do business as usual. Its sole purpose is to sell off stock, pay off creditors, and distribute any remaining assets to partners or shareholders. An Administrator, called a liquidator is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights." Winding up of a company is defined as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors. If the tribunal by any means finds that it is just & equitable that the company should be wound up.

The directors may also be liable for unpaid sales taxes (which cannot be recovered) in winding up proceedings under the provisions of the Central Sales Tax Act, 1956, unless they prove that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on their part in. A company's shareholders or partners may trigger a voluntary winding up, usually by the passage of a resolution. If the company is insolvent, the shareholders may trigger a winding-up to avoid bankruptcy and, in some cases, personal liability for the company's debts.

Modes of Winding-up of Companies:

The Creditors' Voluntary Winding-up is done by the following successive steps: (i) A resolution for the winding up of the company in a general meeting of the company. (ii) A liquidator or liquidators are appointed by the meeting of members and the meeting of the creditors. (iii) A committee of inspection.

Compulsory Winding Up by the Court: Winding up of a Company by an order of the court is called the compulsory winding up. Section 433 of the Companies Act lays down the circumstances under which a Company may be compulsorily wound up.

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The term is used primarily as synonymous with liquidation, which is the process of converting assets to cash.

Voluntary Winding Up

A company's shareholders or partners may trigger a voluntary winding up, usually by the passage of a resolution. If the company is insolvent, the shareholders may trigger a winding-up to avoid bankruptcy and, in some cases, personal liability for the company's debts. Even if it is solvent, the shareholders may feel their objectives have been met, and it is time to cease operations and distribute company assets.

Winding up vs. Bankruptcy

Winding up a business is not the same as bankruptcy, though it is usually an end result of bankruptcy. Bankruptcy is a legal proceeding that involves creditors attempting to gain access to a company's assets so that they can be liquidated to pay off debts. Although there are various types of bankruptcy, the proceedings can help a company emerge as a new entity that is debt-free and usually smaller.

Conversely, once the winding-up process has begun, a company can no longer pursuebusiness as usual. The only action they may attempt is to complete the liquidation and distribution of its assets. At the end of the process, the company will be dissolved and will cease to exist.