CP-302: Business Legislation

Max. Marks: 100
External: 70
Internal: 30
Time 3 Hours

Note: The Examiner will set the question paper in two parts encompassing the entire syllabus. Part A will comprise 10 short answer type questions of 5 marks each. Part B will comprise of 5 questions of 10 marks each. A student is required to attempt any eight questions from the part A and any 3 questions from part B.

Objectives: The course is designed to assist the students in understanding the legislature related to business activities.

Course Contents:
Business Legislation Meaning, Rational and Scope of Laws pertaining to Business in Country like India. The Indian Contract Act 1872 : Essentials of a valid contract, Void Agreement, Performance of Contract, Consequences of breach of contract and its remedies, Quasi-Contracts.

The Sale of Goods Act 1930: Formation of contract, rights of an Un-paid seller The Negotiable Instrument Act 1881: As Amended by The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, nature and types, Holder-in-due course, Dishonor and discharge of a Negotiable Instrument.

The Companies Act 1956: Formation of a company, Memorandum of Association, Article of Association, Prospectus- liability for mis-statement, Shares-statutory restrictions, kinds of share capital, Director's Powers, AGMs, Prevention of Oppression and Mismanagement, winding up of a company.

Consumer Protection Act: Rights of Consumer, Dispute Settlement Machinery. An overview of Public Private Partnership Act, Limited Liability Partnership Act, Cyber Laws.

Suggested Readings
1. Tulsian P.C.: Business Legislation, Tata McGraw Hill Publications
2. Tuteja, S.K.: Business Law for Manager, New Delhi, Sultan Chand
3. Satish S Mathur: Business Legislation Tata McGraw Hill Publications
4. Niraj kumar: Business Legislation Himalaya Publishishing House

The list of cases and specific references including recent articles will be announced in the class.

Q: .1 “All contracts are agreements but all agreements are not contracts”. Discuss.
Ans:

Q: 2. Define the term ‘contract’. What are the essentials of a valid contract?

Ans: **Definition of contract**
A contract is a legally binding agreement, that is, an agreement which will be enforced by the courts. Salmond defines contract as, “an agreement creating and defining obligation between the parties.” Halsbury defines a contract to be, “an agreement between two or more persons which is intended to be enforceable at law and is constituted by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act.”

The definition of the term ‘contract’ given in the Act is based on the definition given by Halsbury. Section 2(h) of the Indian Contract Act defines a contract as, “An agreement which is enforceable by law.” This definition has two important components which constitute the basis for a contract. They are:

1. Agreement:
An agreement gives birth to a contract. An agreement is defined as, “Every promise and every set of promises forming consideration for each other.” (Section 2(e)). A proposal when accepted becomes a promise. Thus an agreement is an accepted proposal. An agreement comes into existence only when one party makes a proposal or offer to the other party and the other party signifies his assent thereto. In short, an agreement is the sum total of offer and acceptance.

The following are the characteristics of the definition of agreement as given above:

(a) Plurality of persons:
There must be two or more persons to make an agreement because one person cannot enter into an agreement with himself.

(b) Consensus ad idem:
An agreement is necessarily the outcome of consenting minds or *consensus ad idem*, i.e., the two contracting parties must agree as regards the subject-matter of the contract at the same time and in the same sense.

2. Legal Obligation:
Although every contract is an agreement, there are many kinds of agreements which are not contracts. An agreement to become a contract must give rise to a legal obligation. Obligation is an undertaking to do or to abstain from doing some definite act. The obligation must be such as is enforceable by law. In other words, it must be a legal obligation and not merely moral, social or religious.
To take an example, “Please, come to my house”, says P to D, “and we shall go out for a walk together”. D came to the house of P but P could not leave the house because of some important engagement. D cannot sue P in damages for his not fulfilling the promise, the reason being that there had been no intention between D and P to create any legal obligation by the engagement as made between them. In the circumstances, there was, in the eye of law no contract between P and D. Contracts must not be the sports of an idle hour, or mere matters of pleasantry, never intended by the parties to have any serious effect whatever.

Essential elements of a valid contract:

We know that there are two elements of a contract: (1) an agreement; (2) legal obligation. Section 10 of the Act provides for some more elements which are essential in order to constitute a valid contract. It reads as follows:
"All agreements are contracts if they are made by free consent of parties, competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void." Thus the essential elements of a valid contract can be explained as follows:

1. Agreement: As already mentioned, to constitute a contract there must be an agreement. An agreement is composed of two elements – offer and acceptance. The party making the offer is known as the offeror, the party to whom the offer is made is known as the offeree. Thus, there are essentially to be two parties to an agreement. They both must be thinking of the same thing in the same sense. In other words, there must be consensusad- idem.

An offer to be valid must fulfill certain conditions, such as it must intend to create legal relations, its terms must be certain and unambiguous, it must be communicated to the person to whom it made, etc. An acceptance to be valid must fulfill certain conditions, such as it must be absolute and unqualified, it must be made in the prescribed manner, it must be communicated by an authorized person before the offer lapses.

2. Intention to create legal relationship: As already mentioned there should be an intention on the part of the parties to the agreement to create a legal relationship. An agreement of a purely social or domestic nature is not a contract.
However, even in the case of agreements of purely social or domestic nature, there may be intention of the parties to create legal obligations. In that case, the social agreement is intended to have legal consequences and, therefore, becomes a contract.
Whether or not such an agreement is intended to have legal consequences will be determined with reference to the facts of the case. In commercial and business agreements the law will presume that the parties entering into agreement intend those agreements to have legal consequences. However, this presumption may be negative by express terms to the contrary. Similarly, in the case of agreements of purely domestic and social nature, the presumption is that they do not give rise to legal consequences. However, this presumption is rebuttable by giving evidence to the contrary, i.e., by showing that the intention of the parties was to create legal obligations.

3. Competency of parties: The parties to the agreement must be competent to contract. If either of the parties to the contract is not competent to contract, the contract is not valid. According to Section 11 following are the persons who are competent to contract –
(a) Who are of the age of majority according to the law to which they are subject?
(b) Who are of sound mind?

4. Free Consent: An agreement must have been made by free consent of the parties. Consent may not be free either on account of mistake in the minds of the parties or on account of the consent being obtained by some unfair means like coercion, fraud, misrepresentation or undue influence. In case of mutual mistakes, the contract would be void, while in case the consent is obtained by unfair means, the contract would be voidable.

Examples

1. X has two scooters; one is blue and the other green. He wants to sell his blue scooter. Y who knows of only X's green scooter offers to purchase X's scooter for Rs. 5,000. X accepts the offer thinking it to be an offer for his blue scooter. Held, consent is not free since both the parties do not understand the same thing in the same sense.

5. Lawful consideration: All contracts must by supported by consideration. Gratuitous promises are not enforceable at law. An agreement made for an unlawful consideration is void. Lawful consideration requires both the presence of consideration and the lawfulness of consideration.

Example: A promises to obtain for B an employment in public service and B promises to pay Rs. 1,000 to A. The agreement is void as the consideration for it is unlawful.

6. Lawful object: The object of an agreement must be lawful. Object has nothing to do with consideration. It means the purpose or design of the contract. Thus, when one hires a house for use as a gambling house, the object of the contract is to run a gambling house. According to Section 23, the object is said to be unlawful if –

(a) It is forbidden by law;
(b) It is of such nature that if permitted it would defeat the provisions of any law;
(c) It is fraudulent;
(d) It involves an injury to the person or property of any other;
(e) The court regards it is immoral or opposed to public policy.

7. Agreements not expressly declared void: The agreement must not have been declared to be expressly void. Agreements mentioned in sections 24 to 30 have been expressly declared to be void. Under these provisions, agreement in restraint of marriage, agreement in restraint of legal proceedings, agreement in restraint of trade and agreement by way of wager have been expressly declared void.

8. Certainty and possibility of performance: The terms of the contract must be precise and certain. It cannot be left vague. A contract may be void on the ground of uncertainty. Thus a purported acceptance of an offer to buy a lorry 'on-hire-purchase terms' does not constitute a contract if the hire-purchase terms are never agreed.

9. Legal formalities: An oral contract is a perfectly valid contract, except in those cases where writing, registration etc. is required by some statute. In India writing is required in cases of sale, mortgage, lease and gift of immovable property, negotiable instrument; memorandum and articles of association of a company, etc. Registration is required in cases of documents coming within the scope of Section 17 of the Registration Act.

All the elements mentioned above must be present in order to make a valid contract. If any one of them is absent the agreement does not become a contract.

Q: 3. Distinguish between:

(a) Void and illegal contracts

Ans: (a) A void contract is one which is Unenforceable by law. It has no legal existence and, therefore, is destitute of legal effect. In all contracts there must be legality; otherwise they are void and hence destitute of legal effect. Some contracts are illegal in themselves, e.g., contracts of immoral nature, contracts against public policy, and contracts in restraint of trade. All illegal contracts are void but all void contracts are not illegal. An illegal contract or agreement is destitute of legal effect ab-initio. The difference between void and illegal contracts is significant in cases of collateral transactions, e.g. A, a person, who lent money to another to pay bets already made or lost is not precluded from recovering it; but money advanced for illegal transactions cannot be recovered. Thus the term ‘illegal’ is narrower in meaning than ‘void’ or ‘voidable’. All illegal contracts are void, but all contracts which are void are not necessarily illegal.

(b) Executed and executory contracts

Ans: On the basis of extent to which the contracts have been performed, we may classify them as (i) executed contract, and (ii) executory contracts.

(i) Executed Contract:

An executed contract refers to that contract in which both the parties have fulfilled their respective obligations. In other words, an executed contract is one where nothing remains to be done by either party.

Example: X agrees to paint a picture for Y for Rs.20. When X paints the picture and Y pays the price, it becomes an executed contract.

Sometimes though the contract may appear to be completed at once yet the effects of it may continue, e.g., when a person buys a bun for a penny and subsequently breaks his tooth due to a stone in it, he has a right to recover damages from the seller.

(ii) Executory Contract:

An executory contract refers to that contract in which both the parties to the contract have yet to perform their respective obligations.

In the example referred to above, the contract is executory, if X has not yet painted the picture and Y has not paid the price. Similarly, if A agrees to engage M as his servant from the next month, the contract is executory. A contract may sometimes be partly executed and partly executory. Thus if Y has paid the price to X and X has not.

Q: 4. in what cases the consideration and object of an agreement are said to be unlawful? Illustrate with examples.

Ans: An agreement is defined as, “Every promise and every set of promises forming consideration for each other.”

According to Section 23 of the Indian Contract Act, an agreement of which the object or consideration is unlawful is void. The word ‘object’ in Section 23 is not used in the same sense

as consideration. Object means purpose or design of the contract. It implies the manifestation of intention. Thus, if a person while in insolvent circumstances transfers to another for consideration some property with the object of defrauding his creditors, the consideration of the contract is lawful but the object is unlawful. Both the object and the consideration of agreement must be lawful; otherwise the agreement would be void. The word 'lawful means 'permitted by law'. Section 23 of the Contract Act speaks of three things:
(i) Consideration for the agreement;
(ii) Object for the agreement; and
(iii) Agreement

The consideration or the object of an agreement is unlawful in the following cases:

1. If it is forbidden by law

If the consideration or object for a promise is such as is forbidden by law, the agreement is void. The agreement is forbidden by law, if the legislature penalizes it or prohibits it. It is illegal and cannot become valid even if the parties act according to such agreement. Sections 26, 27, 28 and 30 of the Contract Act deal with cases where the consideration or object of an agreement is considered unlawful. Thus, where the lawful wife was alive, any agreement by the husband to marry another is unenforceable as being forbidden by law. Similarly, an agreement to sublet a telephone, in contravention of conditions is void because it is forbidden by law. Such agreements are illegal not because their consideration or objects is unlawful but because they are forbidden by law.

Example: A promises to obtain for B an employment in the public service and B promises to pay Rs. 1000 to A. The agreement is void as the consideration for it is unlawful.

2. If it is of such a nature that if permitted it would defeat the provisions of any law

If the object or consideration of an agreement is of such a nature that if permitted it would defeat the provisions of any law, the agreement is void. A contract which seeks to exclude the application of a statutory provision to the parties is not valid. An agreement to give an annual allowance to the parents of an adopted Hindu boy in order to induce them to consent to the adoption is void.

3. If it is fraudulent

Agreements which are entered into to promote fraud are void. Thus, an agreement for the sale of goods for the purpose of smuggling them out of the country is void and the price of the goods so sold, cannot be recovered.

4. If it involves or implies injury to the person or property of another

The object or consideration of an agreement will be unlawful if it tends to injure the person or property of another. Thus, an agreement to pull down another's house is unlawful. The word 'injury' means criminal or wrongful harm. Loss which ensues to a trader as a result of competition by a rival trader is not injury within the meaning of this clause.

5. If the court regards it as immoral

Where the consideration or object of an agreement is such that the court regards it as immoral, the consideration is void. The word immoral means inconsistent with what is right. Rent due in respect of a flat let to a prostitute for the purpose of her trade cannot be recovered. Similarly money lent for the purpose of assisting the borrower to visit brothels and bring in prostitutes cannot be recorded in a court of law.

6. If the court regards it as being opposed to public policy
An agreement is unlawful if the court regards it as opposed to public policy. A contract which is opposed to public policy cannot be enforced by either of the parties to it. Any agreement which tends to promote corruption or injustice or is against the interests of the public is considered to be opposed to public policy. Public policy is that principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public. A contract having tendency to injure public interest or public welfare is opposed to public policy. Public policy is not capable of exact definition and, therefore, courts do not generally go beyond the decided cases on the subject. The courts do not invent a new head of public policy. The courts in India have declared certain agreements as opposed to public policy and hence unenforceable or void.

Q: 5 what do you mean by performance of a contract. Under what circumstances a contract need not be performed? And different parties involved in the performance of a contract.
Ans:
Performance of a contract consists in doing or causing to be done what the promisor has promised to do. A contract creates an obligation which continues till the contract has been discharged by actual performance or attempted performance.

Section 37 of the Indian Contract Act provides that the parties to a contract must either

(i) perform their respective promises or
(ii) offer to perform the same, unless
(iii) such performance is dispensed with or
(iv) Excused under the provisions of this act or any other law. Performance may be actual or attempted. When a party has done what he undertook to do there is nothing left for him to do. Then he is said to have performed his obligation. The performance of the contract in order to be complete must, however, be made in accordance with the terms of the contract.

Performance of a contract has two effects:

(i) A party who wishes to enforce the other party's promise may have to show that he has performed or is willing to perform his own promise.
(ii) A party who performs, or tenders performance is thereby discharged from his obligations under the contract.

The contract is completely terminated when both parties completely and precisely perform the exact thing which, each has agreed to do. If one party only performs his promise, he alone, is discharged and he acquires a right of action against the other party.

Conditions under which Contracts need not be performed:

Sections 62 to 67 of the Contract Act deals with contracts which need not be performed. The relevant provisions are as under:

(1) If the parties to a contract agree to novation, rescission or alternation, the original contract need not be performed (Section 62).

(2) The promisee may dispense with or remit performance by the promisor in whole or in part or may extend the time for the performance or may accept any satisfaction in lieu thereof (Section 63).

(3) When a voidable contract is rescinded, the other party need not perform his promise (Section 64).

(4) Where the failure of performance has been caused by the promisee's neglect or refusal, the promisor will be excused. (Section 67).

Participants in the performance of a contract:

1. By the promisor. As a general rule, a contract may be performed by the promisor, either personally or through any other competent person. But where personal consideration are the foundation of the contract, it has to be performed by the promisor himself and in case of his death or disablement a contract will be discharged and the other party would be freed from liablity.

Example: A promises to paint a picture for B, the promise must be performed by A himself.

2. by the agent. Where personal skill is not necessary and the work could be done by any one, the promisor or his representative may employ a competent person to perform it. Thus a contract to sell goods can be assigned by the seller to his agent.

3. By the legal representative.
In the event of the death of the promisor before performance, their representatives are bound by the promises, unless personal considerations are the foundation of the contract. The legal representatives of the deceased promisor cannot be required to perform contract involving personal skill and action. On the death of a person, the benefits and burdens of his contracts pass to the legal representatives as part of his estate.

Example: A promises to deliver goods to B on a certain day on payment of Rs.1000. "A" dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay Rs. 1000 to A's representatives.

4. By third person. If the promisee accepts performance of the promise from a third party, there is a discharge of the contract. Once the third party performs the contract, and that is accepted by the promisee there is an end of the matter and the promisor is thereby discharged. (Section 41). Thus, where a person has accepted apart payment from a third person in full satisfaction of his claim, he cannot later on sue the debtor for the balance.

Q: 6 Explain the breach of contract and its types. What are the various remedies available to a party in case of breach of contract?

Ans: breach of contract

A breach of contract occurs if any party refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. In case of breach, the aggrieved party (i.e., the party not at fault) is relieved from performing his obligation and gets a right to proceed against the party at fault.

A contract terminates by breach of contract. Breach of contract may arise in two ways

(a) Anticipatory Breach, and

(b) Actual Breach.

(a) Anticipatory Breach of Contract (Sec. 39)

Anticipatory breach of contract occurs, when a party repudiates it before the time fixed for performance has arrived or when a party by his own act disables himself from performing the contract.

Examples

(1) A contracts to marry B. Before the agreed date of marriage he married C. B is entitled to sue A for breach of promise.

(2) A promised to marry B as soon as his (A's) father would die. During the father's life time. A absolutely refused to marry B. Although the time for performance had not arrived, B was held entitled to sue for breach of promise.

(3) A contract to supply B with certain articles on 1st of August. On 20th July, he informs B that he will not be able to supply the goods. B is entitled to sue A for breach of promise.

(b) **Actual Breach of Contract**

The actual breach may take place

(a) At the time when performance is due, or

(b) During the performance of the contract.

(a) Actual breach of Contract, at the time when performance is due. If a person does not perform his part of the contract at the stipulated time, he will be liable for its breach.

Example: A seller offers to execute a deed of sale only on payment by the buyer of a sum higher than is payable under the contract for sale, the vendor shall be liable for the breach.

(b) Breach during the Performance of the Contract. Actual breach of contract also occurs when during the performance of the contract one party fails or refuses to perform his obligation under the contract.

Example: A contracted with a Railway Company to supply it certain quantity of railway chairs at a certain price. The delivery was to be made in installments. After a few installments had been supplied, the Railway Company asked A to deliver no more. Held, A could sue for breach of contract.

Remedies for breach of contract:

A remedy is the course of action available to an aggrieved party (i.e. the party not at default) for the enforcement of a right under a contract. Whenever there is breach of a contract, the injured party becomes entitled to any one or more of the following remedies against the guilty party:
1. Rescission of the contract
2. Restitution
3. Suit for specified performance of the contract.
4. Suit for an injunction
5. Suit for damages.
6. Suit upon quantum meruit.

1. Rescission of the Contract

When there is a breach of contract by one party, the other party may rescind the contract and need not perform his party of obligations under the contract and may sit quietly at home if he decides not to take any legal action against the guilty party. But in case the aggrieved party intends to sue the guilty party for damages for breach of contract, he has to file a suit for rescission of the contract. When the court grants rescission, the aggrieved party is freed from all his obligations under the contract; and becomes entitled to compensation for any damage which he has sustained through the non fulfillment of the contract (Sec. 75).

Example: A contacts to supply 100 kg of tea leaves for Rs. 8000 to B on 15 April. If A does not supply the tea leaves on the appointed day, B need not pay the price, B may treat the contract as rescind and may sit quietly at home. B may also file a suit for 'rescission' and claim damages.

2. Restitution

It means return of the benefit received by one party to the contract from the other under a void contract. When a contract becomes void it need not be performed by either party. Section 65 provides that when an agreement is discovered to be void or when a contract becomes void any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it. This section applies to contracts 'discovered to be void' and contracts which become void. It does not apply to contracts which are known to be void. Thus, if A pays Rs 200 to B to beat C, the money is not recoverable.

Example:
A pays B Rs. 1000 in consideration of B's promising to marry C, A's daughter. C is dead at the time of promise. The agreement is void but B must repay A Rs. 1000.

3. Specific Performance:
Under certain circumstances a person aggrieved by the breach of the contract can file a suit for specific performance i.e. for an order by the court upon the party guilty of breach of contract directing him to perform what he promised to do. Specific performance is a discretionary remedy which is allowed only in a limited number of cases. Rules regarding the granting of this relief are contained in the Specific Relief Act.

Example:
A agrees to sell two rare China vases to B. B may compel A to perform the contract specifically, because there is no standard for ascertaining the actual damage which would be caused by the non-performance of the promise. A is looking for a house. For his residence he finds one. He make a contract with the owner of that house 'B' to buy the house. Later, 'B' refuses to sell the house to 'A'. In this case, damages from 'B' for such breach of contract are not adequate remedy for 'A' because he does not get that type of house which he wants in the locality. In this situation, A can appeal to the court for the specific performance of the contract.

Some of the cases in which specific performance of the contract may be enforced are as follows:

(a) Where monetary consideration is not an adequate remedy for the breach of a contract.
(b) When there exist no standard for ascertaining the actual damage caused by the non-performance of the act.
(c) When it is probable that compensation in money on non-performance of the contract cannot be obtained.

In the following cases however specific performance shall not be granted:-
1. Where the contract is of a personal nature.
2. Where damages are an adequate remedy.
3. Where the court cannot supervise the execution of the contract.
4. Where the contract is made by the trustee in breach of their trust.
5. Where the contract is inequitable to either party.

4. Injuction
An aggrieved party can sue for an injuction i.e. an order, of the court restraining the wrong does from doing or continuing the wrongful act complained of. Injuctions are usually granted to enforce negative stipulations in cases where damages are not adequate relief. Injuctions is a preventive relief. It is particularly appropriate in cases of anticipatory breach of contract.

Example:
G agreed to buy the whole of the electric energy required for his house from a certain company. This was interpreted as a promise not to buy electricity from any other company. He was therefore restrained by an injunction from any other company.

5. Suit for Damages
Damages are a monetary compensation allowed to the injured party for the loss or injury suffered by him as a result of the breach of contract. The fundamental principle underlying damages is not punishment but compensation. By awarding damages the court aims to put the injured party into the position in which he would have been, had there been performance and not breach, and not to punish the defaulter party. As a general rule, "compensation must be commensurate with the injury or loss sustained, arising naturally from the breach." "If actual loss is not proved, no damages will be awarded."

Q: 7 "If a contract is broken, the law will Endeavour so far as money can do it, to place the injured party in the same position as if the contract has been performed". Discuss.
Or
Q: Discuss the consequences/damages arises due to breach of a contract.
Ans: Damages are a monetary compensation allowed to the injured party for the loss or injury suffered by him as a result of the breach of contract. The fundamental principle underlying damages is not punishment but compensation. By awarding damages the court aims to put the injured party into the position in which he would have been, had there been performance and not breach, and not to punish the defaulter party. As a general rule, "compensation must be commensurate with the injury or loss sustained, arising naturally from the breach." "If actual loss is not proved, no damages will be awarded."

Assessment of damages.
We will now consider the extent to which a plaintiff is entitled to demand damages for breach of contract. The rules in this regard have been laid down by Section 73 and 74 of Indian Contract Act, 1872. Accordingly, an injured party is entitled to receive from the defaulter party:
(a) Such damages which naturally arose in the usual course of things from such breach. No compensation is to be given generally for any remote or indirect loss sustained by reason of the breach (Ordinary Damages).
(b) Such damages which the parties knew, when they entered into the contract, as likely to result from the breach (Special Damages).
(c) In estimating the loss or damage caused to a party by breach, the means which existed of remedying the inconvenience caused by the breach must also be taken into account (Explanation Sec. 73). (Duty to mitigate damage suffered).
(d) If the terms of contract defines the amount of damages to be paid in case of breach of contract the aggrieved party is entitled only to a reasonable amount of damages which does not exceeds the amount mentioned in the contract. The amount of reasonable damages is decided by the court.

Different kinds of damages.

Damages may be of four kinds:

1. Ordinary or General or Compensatory damages (i.e. damages arising naturally from the breach).
2. Special damages (i.e., damages in contemplation of the parties at the time of contract).
3. Exemplary, Punitive or Vindictive damages.
4. Nominal damages.

1. Ordinary Damages

When a contract has been broken, the injured party can, as a rule always recover from the guilty party ordinary or general damages. These are such damages as may fairly and reasonably be considered as arising naturally and directly in the usual course of things from the breach of contract itself. In other words, ordinary damages are restricted to the "direct or proximate consequences" of the breach of contract and remote of indirect losses, which are not the natural and probable consequence of the breach of contract, are generally not regarded.

Example: A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

2. Special Damages

Special damages are those which arise on account of the special or unusual circumstances affecting the plaintiff. In other words, they are such remote losses which are not the natural and probable consequence of the breach of contract. Unlike ordinary damages, special damages cannot be claimed as a matter of right. These can be claimed only if the special circumstances which would result in a special loss in case of breach of contract are brought to the notice of the other party. It is important that such damages must be in contemplation of the parties at the time when the contract is entered into. Subsequent knowledge of the special circumstances will not create any special liability on the guilty party.

Example: A, having contracted with B to supply 1,000 tons of iron at Rs.100 a ton, to be delivered at a stated time, B contracts with C for the purchase of 1,000 tons of iron at Rs. 80 a ton, telling C that he does so for the purpose of performing his contract with B.C fails to perform his contract with A, and A could not procure other iron, and B, in consequence rescinds the contract. C must pay to A Rs.20,000 being the profit which A would have made by the performance of his contract with B. (Illustration (i) to Section 73). (If C was not told of B's contract then only the difference in contract price and market price, if any, could be claimed).

3. Exemplary or Vindictive or Punitive Damages

These are such damages which are awarded with a view to punishing the guilty party for the breach and not by way of compensation for the loss suffered by the aggrieved party. The cardinal principle of law of damages for a breach of contract is to compensate the injured party for the loss suffered and not to punish the guilty party. Hence, obviously, exemplary damages have not place in the law of contract and are not recoverable for a breach of contract. There are, however, two exceptions to this rule:

(a) Breach of a contract to marry. In this case the amount of the damages will depend upon the extent of injury to the party's feelings. One may be ruined, other may not mind so much.

(b) Dishonor of a cheque by a banker when there are sufficient funds to the credit of the customer. In this case the rule of ascertaining damages is, "the smaller the cheque, the greater the damages." Of course, the actual amount of damages will differ according to the status of the party.

4. Nominal Damages

Nominal damages are those which are awarded only for the name sake. These are neither awarded by way of compensation to the aggrieved party nor by way of punishment to the guilty party. These are awarded to establish the right to decree for breach of contract when the injured party has not actually suffered any real damage and consist of a very small sum of money, say, a rupee or two.

For example, where in a contract of sale of goods, if the contract price and the market price is almost the same at the date of breach of the contract, then the aggrieved party is entitled only to nominal damages.

Q: "Under the Indian Contract Act, there are certain relations resembling those created by a contract." Explain.

Or

Q: What are quasi-contracts? Explain briefly the quasi-contracts provided for by the Indian Contract Act.

Or

Q: Explain the term 'Quasi Contracts' and state their characteristics. Illustrate your answers by giving examples.

Ans: ***meaning of quasi-contract***

A quasi-contract is a kind of contract by which one party is bound to pay money in consideration of something done or suffered by the other party. Though no contractual relation exists between the parties, law makes out a contract for them and such a contract is called a quasi-contract. The basis of quasi-contract is to prevent unjust enrichment or unjust benefit, i.e., no one should grow rich out of another person's loss.

Features or situations cover under Quasi- contract:

1. Claims for necessaries supplied (Section 68)

If a person incapable of entering into a contract or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the supplier is entitled to recover the price from the property of the incapable person.

2. Payment by an interested person (Section 69)
This section provides that a person who is interested in the payment of money which another is bound by law to pay and who, therefore, pays it, is entitled to be reimbursed by the other.

3. Obligation of a person enjoying benefit of non-gratuitous act (Section 70)
Where a person lawfully does anything for another person or delivers, anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof the latter is bound to make compensation to the former in respect of, or to restore the thing so done or delivered.
Examples: (a) A, a tradesman leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

4. Responsibility of finder of goods (Section 71)
A person, who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee. A finder of goods is bound to take as much care of the goods found as a man of ordinary prudence would take of his own goods under similar circumstances. He cannot appropriate the goods without taking proper steps to find out the owner and should keep them for a reasonable time so that the owner may turn up and take them. The finder of the goods is entitled to retain the goods against the owner until he receives compensation from him. He is also entitled to the possession of the goods as against the whole world except the true owner.

The finder, however, can retain the goods in the following cases:
(i) Where the thing found is in danger;
(ii) Where the owner cannot with reasonable diligence by found out;
(iii) Where the owner is found out, but refuses to pay lawful charges of the finder;
(iv) Where the lawful charges of the finder, in respect of the thing found, amount to two-thirds of the value of thing found.

Example: H picked up a diamond from the floor of F's shop and handed over to F to keep it till the owner is found. Inspite of best efforts the true owner could not be reached.
After some time H tendered to F the lawful expenses incurred by him for finding the true owner and asked him (F) to hand over the diamond to him (H). F refused. It was held that
F must return the diamond to H as H was entitled to retain it against the whole world except the true owner.

5. Money paid by mistake or under coercion (Section72)
A person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it.

Example: (a) A and B jointly owe 100 rupees to C. A alone pays the amount to C and
B not knowing of this fact, pay 100 rupees over again to C. C is bound to repay the amount to B.

Conclusion:
A quasi contract rests upon the equitable "doctrine of unjust enrichment" which declares that a person shall not be allowed to enrich himself unjustly at the expense of another. Duty, and not a

promise or agreement, is the basis of such contracts. Contract Act describes cases which are to be deemed quasi-contracts under the Indian law which are (a) when necessaries are supplied to a person incompetent to contract or anyone to whom he is legally bound to support (b) when a person who is interested in the payment of money which another is bound by law to pay (c) where a person lawfully does anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof (d) when a person who finds goods belonging to another and takes them into his custody and (e) a person to whom money has been paid, or anything delivered by mistake or under coercion.

Q: What is a contract of sale of goods? Discuss the essential features of a contract of sale goods?

Ans: **contract of sale**

According to Section 4(1), a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. A contract of sale may be absolute or conditional. In an absolute sale, the property in the goods passes from the seller to the buyer immediately and nothing remains to be done by the seller. Sale on a counter in a shop is an absolute sale. In a conditional contract of sale, the property in the goods does not pass to the buyer absolutely until a certain condition is fulfilled. The term 'contract of sale' is a general term and comprises of:

(1) Sale; and

(2) Agreement to sell

Where the seller transfers the property in the goods immediately to the buyer there is a sale. But where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. Every sale originates in an agreement to sell. It is an agreement of sale which gives birth to a sale. On a sale, the agreement of sale is completely exhausted and ceases to exist.

Essentials of a contract of sale:

To constitute a valid contract of sale, the following essentials must be present. A brief explanation of the various essentials is as follows:

1. Contract

The word contract means an agreement enforceable by law. It resumes free consent on the part of the parties who should be competent to contract. Thus, a compulsory transfer of goods under a Nationalization Act is not a sale. The agreement must be made for a lawful consideration and with a lawful object. In other words all the essential elements of a valid contract must also be present in a contract of sale.

2. Two parties

To constitute a contract of sale, there must be a transfer or agreement to transfer the property in goods by the seller to the buyer. It means that there must be two persons, one the seller and the other the buyer. The seller and the buyer must be two different persons, for a man cannot purchase his own goods. The parties must be competent to contract.

Examples: (a) A partnership firm was dissolved and the surplus assets including some goods were divided among the partners in specie. Tax officer wanted to tax this as a sale.
The Court held that it was not a sale as the partners were themselves joint owners of the goods and they could not be both sellers and buyers. Moreover no money consideration was passed.

4. Goods

The subject-matter of the contract of sale must be the goods, the property in which is to be transferred from the seller to the buyer. Goods of any kind except immovable goods may be transferred. It does not include money and other actionable claims. The seller must be the owner of the goods the ownership of which is sought to be transferred. A debt is not goods because it can only be assigned as per Transfer of Property Act but cannot be sold.

Example: According to a contract between the hotel and resident customers the hotel made a consolidated charge for residents, services and supply of food. No rebate was allowed if food was not taken. On a question being raised whether the supply of food amounted to sale it was held that it was simply a provision of service as the transaction was an indivisible contract of multiple services and did not involve any sale of food.

5. Price

To constitute a valid contract of sale, consideration for transfer must be money paid or promised. Where there is no money consideration the transaction is not a contract of sale, as for instance goods given in exchange for goods or as remuneration for work or labour. However, an existing debt due from the seller to the buyer is sufficient. Further, there is nothing to prevent the consideration from being partly in money and partly in goods or some other articles of value. For example, when an old car is returned to the dealer for a new one and the difference is paid in cash that would also be a sale.

It may be noted that no particular form is necessary to constitute a contract of sale. A contract of sale may be made in writing or by word of mouth or may be implied from the conduct of the parties.

Conclusion:

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. A contract of sale may be absolute or conditional. The essential elements of the contract are (a) contract (b) two parties (c) transfer of property (d) goods and (e) price. Goods are the subject-matter of a contract of sale.

Q: who is an unpaid seller of goods and what are his rights against the goods? Has he any remedy against the buyer personally?

Ans: Unpaid Seller:

A person who has sold goods to another person but has not been paid for the goods, or has been paid partially is called an unpaid seller. Section 45 lays down that a seller is unpaid

(1) When the whole of the price has not been paid or tendered.

(2) When a negotiable instrument or a bill of exchange 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.

The seller remains an unpaid seller so long as any portion of the price however small, remains unpaid.

The term *'seller'* here includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

An analysis of the definition of 'unpaid seller' reveals the following characteristics:
(a) He must sell goods against cash only and not on credit, and he must be unpaid.
(b) He must be unpaid either wholly or partly.
(c) He must not refuse payment when tendered; otherwise he will cease to be an unpaid seller.

Rights of an unpaid seller:

The Sale of Goods Act has expressly given two kinds of rights to an unpaid seller of goods, namely.

(1) AGAINST THE GOODS

(a) When the property in the goods has passed

(i) right of lien
(ii) Right of stoppage of goods in transit
(iii) Right of re-sale.

These rights of an unpaid seller do not depend upon any agreement, express or implied between the parties. They arise by the implication of law.

(b) When property in the goods has not passed.

(i) Right of withholding delivery.

Where the property in goods has not passed to the buyer, the unpaid seller has an addition to other remedies a right of withholding delivery, similar to and co-extensive with his right of lien and stoppage in transit, where the property has passed to the buyer.

2. AGAINST THE BUYER PERSONALLY

(i) Right to sue for price
(ii) Right to sue for damages
(iii) Right to sue for interest

1. RIGHTS OF UNPAID SELLER AGAINST THE GOODS

(i) Right of lien (Section 47-49)

'Lien' is the right to retain possession of goods until payment in respect of them is paid. Section 47(1) describes the circumstances in which an unpaid seller may exercise his right of lien. The unpaid seller of goods, who is in possession of them, can retain possession until payment or tender of the price in the following case:

(a) Where the goods have been sold without any stipulation as to credit;
(b) Where the goods have been sold on credit, but the term of credit has expired.
(c) Where the buyer becomes insolvent.

The right of lien is linked with possession and not with title. It is essentially a right over the property of another person. The unpaid seller's lien can be exercised only so long as the goods are in the actual possession of the seller or his agent. Once the possession is lost, the lien is also lost. The right of lien cannot be exercised during the currency of credit term. When the term expires, the unpaid seller may exercise the right of lien. The lien of the unpaid seller the is for the price only; so when the price has been paid or tendered, he cannot retain possession of the goods any longer. Again the right of lien does not extend to other charges which the seller may have to incur for storing the goods during the exercise of the lien.

Conditions for the Exercise of Right of Lien: The following are conditions precedent to the exercise of the right of lien:
(a) The ownership must have passed to the buyer.
(b) The goods must be in possession of the seller or under his control as bailee, etc.
(c) The possession of the goods by the seller must not expressly exclude the right of lien.
(d) The whole or part of the price must remain unpid. It may be noted that the lien can be exercised only for price. Thus the seller cannot claim lien for godown charges, for storing of goods in exercise of his lien for price.
The lien of an unpaid seller is a particular one. It is the personal right which can be exercised only by him and not by his assignee or his creditors.

Part Delivery: Where an unpaid seller has made party-delivery of the goods, he may exercise his right of lien on the remainder, unless such part-delivery has been made under such circumstances as to show an agreement to waive the lien.
Thus in case of part-delivery of the goods, the unpaid seller may exercise his right of lien on the remainder, but where part delivery has been made under circumstances as to show an agreement to waive the lien, the seller cannot exercise his lien.
Example: A sold certain shares to B. The relative share certificates and transfer forms duly signed were handed over by the seller to the buyer against payment of price by cheque. The buyer became insolvent. It was held by the Privy Council that the seller had no lien on shares because his lien ceased when he parted with the possession.

(ii) Right of stoppage in transit (Sections 50-52)

The second important right which is available to an unpaid seller is the right of stoppage in transit. The right to stoppage means the right to stop further transit of the goods, to resume

possession thereof and to retain the same till the price is paid. The right can be exercised under the following circumstances:
(i) The seller must be unpaid.
(ii) The seller must have parted with the possession of the goods and the buyer must not have acquired it.
(iii) The buyer must be insolvent.
(iv) The property must have passed from the seller to the buyer.

Example

When the goods reach their destination and after taking delivery the buyer puts them on his cart, though the cart has not left the station, the railway company cannot stop the goods at this stage if the seller asks. The transit has already ended.

(iii) Right of re-sale (Section 54)

In addition to the rights of lien and stoppage in transit, the unpaid seller has got the valuable right of re-sale of the goods, which are the subject-matter of the contract. This limited right of resale is conferred by the section 54 which also enumerates the circumstances under which the right of re-sale may be exercised. The right may be exercised in the following cases :

(a) Where the goods are of a perishable nature. In this case the unpaid seller need not give a notice to the buyer of his intention to resell the goods.

(b) Where the unpaid seller has exercised his right of lien or stoppage in transit, he can give notice to the buyer of his intention to resell the goods. If after such notice the buyer does not within a reasonable time pay or tender the price, the seller can resell the goods within a reasonable time. He can recover from the original buyer any loss occasioned by the breach of the contract. The seller shall be entitled to the profits, if any on the resale. If the unpaid seller fails to give such notice he cannot recover damages from the buyer and is under an obligation to pay over the profits, if any, arising from the resale.

(c) Where the seller has expressly reserved a right of resale, in case the buyer makes default. In such a case, on re-sale though the original contract of sale is thereby rescinded, the unpaid seller does not lose his right to claim damages for breach of the contract. Where an unpaid seller who has exercised his right of lien or stoppage in transit, resells the goods, the buyer acquires a good title thereto as against the original buyer.

2. RIGHTS OF UNPAID SELLER AGAINST THE BUYER PERSONALLY

The unpaid seller, in addition to his rights against the goods as discussed above, has the following three rights of action against the buyer personally:

1. Suit for price (Sec. 55).

Where property in goods has passed to the buyer; or where the sale price is payable ‘on a day certain’, although the property in goods has not passed; and the buyer wrongfully neglects or refuses to pay the price according to the terms of the contract, the seller is entitled to sue the buyer for price, irrespective of the delivery of goods.

2. Suit for damages for non-acceptance (Sec.56).
Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. The seller's remedy in these cases is a suit for damages rather than an action for the full price of the goods.

The damages are calculated in accordance with the rules contained in Section 73 of the Indian Contract Act, that is, the measure of damages is the estimated loss arising directly and naturally from the buyer's breach of contract. Where the goods have a ready market the principle applicable is that the seller may recover from the buyer damages equal to the difference between the contract price and the market price on the date of the breach of the contract. Thus, if the difference between the contract price and market price is nil, the seller can get only nominal damages. But where the goods do not have any ready market, the measure of damages will depend upon the facts of each case.

3. Suit for special damages and interest (Sec. 61).
This Section entitles the seller to sue the buyer for 'special damages' also for such loss "which the parties knew when they made the contract, to be likely to result from the breach of it." In fact the Section is only declaratory of the principle regarding 'special damages' laid down in Section 73 of the Indian Contract Act. The Section also recognises unpaid seller's right to get interest at a reasonable rate on the total unpaid price of the goods sold, from the time it was due until it is actually paid.

Q: Define the term 'negotiable instrument'. What are its essential characteristics?

Q: Explain about the various types of negotiable instruments.

Ans: According to Section 13 (a) of the Act, "Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer, whether the word "order" or " bearer" appear on the instrument or not."

In the words of Justice, Willis, "A negotiable instrument is one, the property in which is acquired by anyone who takes it bonafide and for value notwithstanding any defects of the title in the person from whom he took it".
Thus, the term, negotiable instrument means a written document which creates a right in favour of some person and which is freely transferable. Although the Act mentions only these three instruments (such as a promissory note, a bill of exchange and cheque), it does not exclude the possibility of adding any other instrument which satisfies the following two conditions of negotiability:
(1) The instrument should be freely transferable (by delivery or by endorsement. and delivery) by the custom of the trade; and
(2) The person who obtains it in good faith and for value should get it free from all defects, and be entitled to recover the money of the instrument in his own name.

CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT

A negotiable instrument has the following characteristics:

1. Property

The possessor of the negotiable instrument is presumed to be the owner of the property contained therein. A negotiable instrument does not merely give possession of the instrument but right to property also. The property in a negotiable instrument can be transferred without any formality. In the case of bearer instrument, the property passes by mere delivery to the transferee. In the case of an order instrument, endorsement and delivery are required for the transfer of property.

2. Title

The transferee of a negotiable instrument is known as 'holder in due course.' A bona fide transferee for value is not affected by any defect of title on the part of the transferor or of any of the previous holders of the instrument.

3. Rights

The transferee of the negotiable instrument can sue in his own name, in case of dishonour

A negotiable instrument can be transferred any number of times till it is at maturity. The holder of the instrument need not give notice of transfer to the party liable on the instrument to pay.

4. Presumptions

Certain presumptions apply to all negotiable instruments e.g., a presumption that consideration has been paid under it. It is not necessary to write in a promissory note the words ‘for value received’ or similar expressions because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.

5. Prompt payment

A negotiable instrument enables the holder to expect prompt payment because dishonour means the ruin of the credit of all persons who are parties to the instrument.

TYPES OF NEGOTIABLE INSTRUMENT

(a) Negotiable instruments recognised by statute are:

(i) Promissory notes (ii) Bills of exchange (iii) Cheques

(b) Negotiable instruments recognised by usage or custom are:

(i) Hundis (ii) Share warrants (iii) Dividend warrants (iv) Bankers draft (v) Circular notes (vi) Bearer debentures (vii) Debentures of Bombay Port Trust (viii) Railway receipts (ix) Delivery orders.

This list of negotiable instrument is not a closed chapter. With the growth of commerce, new kinds of securities may claim recognition as negotiable instruments. The courts in India usually follow the practice of English courts in according the character of negotiability to other instruments.

Promissory notes:

Section 4 of the Act defines, "A promissory note is an instrument in writing (note being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments."

An instrument to be a promissory note must possess the following elements:

(1) It must be in writing.

(2) It must certainly an express promise or clear understanding to pay.
(3) Promise to pay must be unconditional.
(4) It should be signed by the maker.
(5) The maker must be certain
(6) The payee must be certain
(7) The promise should be to pay money and money only
(8) The amount should be certain
(9) Other formalities like number, place, date, consideration etc.

Q: What is a bill of exchange? How does it differ from a promissory note?

Ans: **Bill of exchange:** A bill of exchange is an instrument is writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or the bearer of the instrument.

Essential conditions of a bill of exchange
(1) It must be in writing.
(2) It must be signed by the drawer.
(3) The drawer, drawee and payee must be certain.
(4) The sum payable must also be certain.
(5) It should be properly stamped.
(6) It must contain an express order to pay money and money alone.
For example, In the following cases, there is no order to pay, but only a request to pay. Therefore, none can be considered as a bill of exchange:

Classification of Bills
Bills can be classified as:
(1) Inland and foreign bills.
(2) Time and demand bills.
(3) Trade and accommodation bills.

Promissory Note: A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or the order of a certain person or to the bearer of the instrument.

Parties to a Promissory Note
1. **Maker.** He is the person who promises to pay the amount stated in the note.
He is the debtor.
2. **Payee.** He is the person to whom the amount is payable i.e. the creditor.
3. **Holder.** He is the payee or the person to whom the note might have been indorsed.
4. The indorser and indorsee (the same as in the case of a bill).

Distinction between bill of exchange and Promissory Note:

(1) **Number of parties:** In a promissory note there are only two parties – the maker (debtor) and the payee (creditor). In a bill of exchange, there are three parties; drawer, drawee and payee; although any two out of the three may be filled by one and the same person,

(2) **Payment to the maker:** A promissory note cannot be made payable the maker himself, while in a bill of exchange to the drawer and payee or drawee and payee may be same person.

(3) **Unconditional promise:** A promissory note contains an unconditional promise by the maker to pay to the payee or his order, whereas in a bill of exchange, there is an unconditional order to the drawee to pay according to the direction of the drawer.

(4) **Prior acceptance:** A note is presented for payment without any prior acceptance by the maker. A bill of exchange is payable after sight must be accepted by the drawee or someone else on his behalf, before it can be presented for payment.

(5) **Primary or absolute liability:** The liability of the maker of a promissory note is primary and absolute, but the liability of the drawer of a bill of exchange is secondary and conditional.

(6) **Relation:** The maker of the promissory note stands in immediate relation with the payee, while the maker or drawer of an accepted bill stands in immediate relations with the acceptor and not the payee.

(7) **Protest for dishonour:** Foreign bill of exchange must be protested for dishonor when such protest is required to be made by the law of the country where they are drawn, but no such protest is needed in the case of a promissory note.

(8) **Notice of dishonor:** When a bill is dishonoured, due notice of dishonour is to be given by the holder to the drawer and the intermediate indorsers, but no such notice need be given in the case of a note.

Q: Define cheque. Distinguish between a cheque and a bill of exchange.
Ans: Cheque: A cheque is an unconditional order in writing drawn by a customer on his bank, requesting the specifying bank to pay on demand a certain sum of money to a person named in the cheque or to the bearer or to the order of a stated person.

Section 6 of the Act defines "A cheque is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand".
A cheque is bill of exchange with two more qualifications, namely, (i) it is always drawn on a specified banker, and (ii) it is always payable on demand. Consequently, all cheque are bill of exchange, but all bills are not cheque. A cheque must satisfy all the requirements of a bill of exchange; that is, it must be signed by the drawer, and must contain an unconditional order on a specified banker to pay a certain sum of money to or to the order of a certain person or to the bearer of the cheque. It does not require acceptance.

Parties to a Cheque

1. **Drawer.** He is the person who draws the cheque, i.e., the depositor of money in the bank.
2. **Drawee**. It is the drawer's banker on whom the cheque has been drawn.
3. **Payee.** He is the person who is entitled to receive the payment of the cheque.
4. The holder, indorser and indorsee (the same as in the case of a bill or note).

Distinction between Bills of Exchange and Cheque:

1. A bill of exchange is usually drawn on some person or firm, while a cheque is always drawn on a bank.
2. It is essential that a bill of exchange must be accepted before its payment can be claimed A cheque does not require any such acceptance.
3. A cheque can only be drawn payable on demand; a bill may be also drawn payable on demand, or on the expiry of a certain period after date or sight.
4. A grace of three days is allowed in the case of time bills while no grace is given in the case of a cheque.
5. The drawer of the bill is discharged from his liability, if it is not presented for payment, but the drawer of a cheque is discharged only if he suffers any damage by delay in presenting the cheque for payment.
6. Notice of dishonour of a bill is necessary, but no such notice is necessary in the case of cheque.
7. A cheque may be crossed, but not needed in the case of bill.
8. A bill of exchange must be properly stamped, while a cheque does not require any stamp.
9. A cheque drawn to bearer payable on demand shall be valid but a bill payable on demand can never be drawn to bearer.
10. Unlike cheques, the payment of a bill cannot be countermanded by the drawer.

Q: Explain the privileges granted to a holder in due course.

Ans: Section 9 of the Act defines 'holder in due course' as any person who (i) for valuable consideration, (ii) becomes the possessor of a negotiable instrument payable to bearer or the endorsee or payee thereof, (iii) before the amount mentioned in the document becomes payable, and (iv) without having sufficient cause to believe that any defect existed in the title of the person from whom he derives his title. (English law does not regard payee as a holder in due course).

The essential qualification of a holder in due course may, therefore, be summed up as follows:

1. He must be a holder for valuable consideration. Consideration must not be void or illegal, e.g. a debt due on a wagering agreement. It may, however, be inadequate. A done, who acquired title to the instrument by way of gift, is not a holder in due course, since there is no consideration to the contract. He cannot maintain any action against the debtor on the instrument. Similarly, money due on a promissory note executed in consideration of the balance of the security deposit for the lease of a house taken for immoral purposes cannot be recovered by a suit.

2. He must have become a holder (possessor) before the date of maturity of the negotiable instrument. Therefore, a person who takes a bill or promissory note on the day on which it becomes payable cannot claim rights of a holder in due course because he takes it after it becomes payable, as the bill or note can be discharged at any time on that day.

3. He must have become holder of the negotiable instrument in good faith. Good faith implies that he should not have accepted the negotiable instrument after knowing about any defect in the title to the instrument. But, notice of defect in the title received subsequent to the acquisition of the title will not affect the rights of a holder in due course. Besides good faith, the Indian Law also requires reasonable care on the part of the holder before he acquires title of the negotiable instrument. He should take the instrument without any negligence on his part. Reasonable care and due caution will be the proper test of his bona fides. It will not be enough to show that the holder acquired the instrument honestly, if in fact, he was negligent or careless.

Under conditions of sufficient indications showing the existence of a defect in the title of the transferor, the holder will not become a holder in due course even though he might have taken the instrument without any suspicion or knowledge.

Example

(i) A bill made out by pasting together pieces of a tom bill taken without enquiry will not make the holder, a holder in due course. It was sufficient to show the intention to cancel the bill. A bill should not be taken without enquiry if suspicion has been aroused.

(ii) A post-dated cheque is not irregular. It will not preclude a bonafide purchase instrument from claiming the rights of a holder in due course. It is to be noted that it is the notice of the defect in the title of his immediate transferor which deprives a person from claiming the right of a holder in due course.

Notice of defect in the title of any prior party does not affect the title of the holder.

4. A holder in due course must take the negotiable instrument complete and regular on the face of it.

Privileges of a holder in due course

1. **Instrument purged of all defects:** A holder in due course who gets the instrument in good faith in the course of its currency is not only himself protected against all defects of title of the person from whom he has received it, but also serves, as a channel to protect all subsequent holders. A holder in due course can recover the amount of the instrument from all previous parties although, as a matter of fact, no consideration was paid by some of the previous parties to instrument or there was a defect of title in the party from whom he took it. Once an instrument passes through the hands of a holder in due course, it is purged of all defects. It is like a current coin. Who-so-ever takes it can recover the amount from all parties previous to such holder (Sec. 53).

It is to be noted that a holder in due course can purify a defective title but cannot create any title unless the instrument happens to be a bearer one.

Example: A bill of exchange payable to bearer is stolen. The thief delivers it to B, a holder in due course. B can recover the money of the bill.

2. **Rights not affected in case of an inchoate instrument:** Right of a holder in due course to recover money is not at all affected even though the instrument was originally an inchoate stamped instrument and the transferor completed the instrument for a sum greater than what was intended by the maker. (Sec. 20)

3. **All prior parties liable:** All prior parties to the instrument (the maker or drawer, acceptor and intervening endorsers) continue to remain liable to the holder in due course until the instrument is duty satisfied. The holder in due course can file a suit against the parties liable to pay, in his own name (Sec. 36)

4. **Can enforce payment of a fictitious bill :** Where both drawer and payee of a bill are fictitious persons, the acceptor is liable on the bill to a holder in due course. If the latter can show that the signature of the supposed drawer and the first indorser are in the same hand, for the bill being payable to the drawer's order the fictitious drawer must indorse the bill before he can negotiate it. (Sec. 42).

5. **No effect of conditional delivery:** Where negotiable instrument is delivered conditionally or for a special purpose and is negotiated to a holder in due course, a valid delivery of it is conclusively presumed and he acquired good title to it. (Sec. 46).

6. **No effect of absence of consideration or presence of an unlawful consideration:** The plea of absence of or unlawful consideration is not available against the holder in due course. The party responsible will have to make payment (Sec. 58).

7. **Estoppels against denying original validity of instrument:** The plea of original invalidity of the instrument cannot be put forth, against the holder in due course by the drawer of a bill of exchange or cheque or by an acceptor for the honour of the drawer. But where the instrument is void on the face of it e.g. promissory note made payable to "bearer", even the holder in due course cannot recover the money. Similarly, a minor cannot be prevented from taking the defense of minority. Also, there is no liability if the signatures are forged. (Sec. 120).

8. **Estoppels against denying capacity of the payee to endorsee:** No maker of promissory note and no acceptor of a bill of exchange payable to order shall, in a suit therein by a holder in due course, be permitted to resist the claim of the holder in due course on the plea that the payee had not the capacity to indorse the instrument on the date of the note as he was a minor or insane or that he had no legal existence (Sec 121)

9. **Estoppels against endorser to deny capacity of parties:** An endorser of the bill by his endorsement guarantees that all previous endorsements are genuine and that all prior parties had capacity to enter into valid contracts. Therefore, he on a suit thereon by the subsequent holder cannot deny the signature or capacity to contract of any prior party to the instrument.

Q: In what different ways may a negotiable instrument be dishonoured? What are the duties of a holder of a dishonoured bill?

Ans: According to Section 13 (a) of the Act, "Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer, whether the word "order" or " bearer" appear on the instrument or not."

In the words of Justice, Willis, "A negotiable instrument is one, the property in which is acquired by anyone who takes it bonafide and for value notwithstanding any defects of the title in the person from whom he took it".
Thus, the term, negotiable instrument means a written document which creates a right in favour of some person and which is freely transferable.

Dishonour of a negotiable instrument may be through following circumstances:
When a negotiable instrument is dishonoured, the holder must give a notice of dishonour to all the previous parties in order to make them liable.

- A negotiable instrument can be dishonoured either by non-acceptance or by non-payment.
- A cheque and a promissory note can only be dishonoured by non-payment but a bill of exchange can be dishohoured either by non-acceptance or by non-payment.

1. Dishonour by non-acceptance (Section 91)
A bill of exchange can be dishonoured by non-acceptance in the following ways:

1. If a bill is presented to the drawee for acceptance and he does not accept it within 48 hours from the time of presentment for acceptance. When there are several drawees even if one of them makes a default in acceptance, the bill is deemed to be dishonoured unless these several drawees are partners. Ordinarily when there are a number of drawees all of them must accept the same, but when the drawees are partner's acceptance by one of them means acceptance by all.

2. When the drawee is a fictitious person or if he cannot be traced after reasonable search.

3. When the drawee is incompetent to contract, the bill is treated as dishonoured.

4. When a bill is accepted with a qualified acceptance, the holder may treat the bill of exchange having been dishonoured.

5. When the drawee has either become insolvent or is dead.
6. When presentment for acceptance is excused and the bill is not accepted. Where a drawee in case of need is named in a bill or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

2. Dishonour by non-payment (Section 92)
A bill after being accepted has got to be presented for payment on the date of its maturity. If the acceptor fails to make payment when it is due, the bill is dishonoured by non-payment. In the case of a promissory note if the maker fails to make payment on the due date the note is

dishonoured by non-payment. A cheque is dishonoured by nonpayment as soon as a banker refuses to pay.
An instrument is also dishonoured by non-payment when presentment for payment is excused and the instrument when overdue remains unpaid (Sec 76).

Duties of the holder upon dishonor:

(1) Notice of dishonour. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment the holder must give notice of dishonour to all the parties to the instrument whom he seeks to make liable thereon. (Sec. 93)

(2) Noting and protesting. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument or upon a paper attached thereto or partly upon each (Sec. 99). The holder may also within a reasonable time of the dishonour of the note or bill, get the instrument protested by notary public (Sec. 100).

(3) Suit for money. After the formality of noting and protesting is gone through, the holder may bring a suit against the parties liable for the recovery of the amount due on the instrument.

Q: What are the various ways in which one or more parties to a negotiable instrument is/are discharged for liability? Discuss.
Ans: The term 'discharge' in relation to negotiable instruments has two meanings:
(1) The discharge of the instrument, and
(2) Discharge of one or more parties from liability on the instrument.

An instrument is said to be discharged when all rights under it are extinguished, or ceases to be negotiable and even a holder in due course does not acquire any rights under it. This happens when the party who is primarily and ultimately liable on the instrument is discharged from liability. A negotiable instrument may be discharged by any of the following ways:
1. by payment in due course.
2. Where the principal debtor becomes the holder.
3. Where it discharges as simple contract.
4. By renunciation, and
5. by cancellation.

1. By payment in due course

A negotiable instrument is discharged by payment made in due course by or for the primary party or by a person who is accommodated, in case the instrument was made or accepted for accommodation. Payment in due course means that it must be made at or after the 'maturity' of the instrument to the 'holder' in good faith, or his agent. The right of further negotiation is denied

(a) When the drawer pays an instrument which is payable to the order of a third person, or
(b) When instrument executed or accepted for accommodation is paid by the party for whose accommodation the instrument was executed.

For final discharge of payment, the principal and the interest, if any, both must be paid. The person paying the instrument has the right to demand the surrender of the instrument.

2. Where the principal debtor becomes the holder
When the primary party lawfully becomes the holder of the instrument in his own right at or after maturity, the instrument is discharged. In the following cases, the instrument will not be discharged:
(a) If the debtor acquires the instrument before maturity, in this case he may negotiate it further in the same way as any other holder could; or
(b) If the holder did not acquire it lawfully or in his own right, as when he acquired it by fraud or as an agent for another person.

3. Where it discharges as simple contract
A negotiable instrument, in certain cases, may be discharged in the same way as a simple contract for the payment of money. Like an ordinary contract, the instrument may be discharged by novating, a covenant not to sue, rescission or substitution of another instrument.

4. By renunciation
A negotiable instrument is discharged when the holder renounces or gives up his right against all the parties to the instrument. It must however, be in writing.

5. By cancellation
The party who is entitled to enforce the payment of an instrument may surrender it to the party liable thereon with an intention to release him from the obligation. This operates as a discharge of the instrument and is known as cancellation. Cancellation may also take place by physical destruction of the instrument itself made with the intention to terminate liability. It may also be done by crossing out signature on the instrument.

Q: Explain the meaning of 'company' with the help of its characteristics. Explain the different types of companies which may be incorporated under the Companies Act 1956?
Ans: meaning of a company
This word has been derived from the combination of two Latin words, namely, 'com' and 'panis'. The word 'com' means together and 'panis means bread. Thus initially the word company referred to an association of persons who took their meals together.
So generally speaking, a company means a voluntary association of individuals formed for some common purpose. It has no strictly technical and legal meaning.

"A company is a association of persons united for a common object."

Justice James

Characteristics of company:

Company is an artificial person created by law for some common purpose of which the capital is divisible into parts, known as shares and with a limited liability. It enjoys the following special characteristics for advantages in comparison with other forms of organization :

1. Artificial Person

A company is an artificial person existing in the eyes of law only. It is invisible, intangible, immortal and lacks the physical attribute possessed by natural persons which means that a company does not eat food, cannot marry and cannot be sent to prison.

It can sell or purchase property. It can sue and be sued in its name. It cannot be regarded as an imaginary person because it has a legal existence. Thus company is an artificial person created by law.

2. Independent Corporate Existence

A company has a separate independent corporate existence. Its entity is always separate from its members. The property of the company belongs to it and not to the shareholders. The company cannot be held liable for the acts of the members and the members cannot be held liable for the acts or wrongs or misdeeds of the company. The company's debts are the debts of the company and the shareholders cannot be compelled to pay them. Thus, once a company is incorporated, it must be treated like any other independent person.

3. Perpetual Succession

A company is created by law and it can be brought to an end by law. The life of the company does not depend upon the life of its members. Members may come and members may go but the company goes on forever until dissolved. Its continuance is not affected by the various incapacities from which its individual members may suffer such as death, illness, mental or physical disability etc. It continues to exist even if all its human members are dead.

4. Common Seal

A company is an artificial person and is competent to enter into contracts. But it does not have any physical existence and it cannot sign any documents personally. It has to act through a human agency known as directors. The seal of the company is affixed on the documents which require the approval of the company. The two directors must witness the affixation of the seal. Thus, the common seal is the official signature of the company.

5. Limited Liability

The liability of the members of the company is limited up to the unpaid value of their shares. In any case a shareholder cannot be called upon to pay more than the amount of his holdings.

For example, if a person is having 50 shares of Rs.10/- each and he has already paid Rs.5/- per share at the time of application and allotment, his unpaid liability comes to Rs.250/- which he has to pay at any time the company calls for that payment. He is not required to pay more than Rs.250/- in any case.

6. Transferability of Shares

The shares of a public company are freely transferable. Section 82 of the Companies Act declares that the shares or other interests of any member in a company shall be movable property transferable in the manner provided by the Articles of the company. The right to transfer shares is a statutory right and it can not be taken away by making a provision to the effect in the Articles. Thus a member is free to sell his shares in the open market and to get back his investment without having to withdraw the money from the company.

7. Separate Property

A company can own, manage, control and dispose of property in its own name. The company becomes the owner of its capital and assets. The shareholders are not the private or joint owners of the company's property. A shareholder does not even have an insurable interest in the property of the company.

Thus the property of the company is not the property of the shareholders; it is the property of the company. The shareholders do not have any legal or equitable interest in the property of the company.

8. Right to Sue

A company, being a legal person, can enforce its rights through suits and by the same token, it can be sued for breach of its legal duties.

E.g. a company was engaged in the manufacturing of television sets. It purchased certain electronic components from another company, named Gupta Company and paid the price for the same. But Gupta Company supplied the components of poor quality. In this case the company which purchased the electronic components may file a suit against Gupta Company for the recovery of the damages.

9. Professional Management

Management is divorced from ownership in the case of the company form of organization. Due to this factor, the corporate sector is capable of attracting the growing cadre of professional managers. The managers are experts in the field of management because of their specialised knowledge of the subject and they function independently and without any interference. Thus, the company form of organization attracts young professional managing personnel to conduct its affairs effectively and efficiently.

<u>Types of companies:</u>

Company is a legal device for the achievement of some common social and economic objectives. It can be defined as an association of persons established by law, having a separate entity from its members and aiming at a common objective. It has a perpetual succession and the liability of its members is limited.

(a) According to Incorporation

The act of forming a corporation or company is called incorporation.

1. ***Chartered Companies:*** These companies are incorporated under the Royal or a special charter granted by the British King or Queen. The powers and nature of business of the

companies of this type are defined in the charter. The sovereign has the power to put an end to the charter if the company fails to follow its terms. The objective of these companies was generally to rule over certain territories, perpetuate army control or to hold trade. The East India Company, which was incorporated by a charter of Queen Elizabeth on 31st December, 1600 with the objective of holding trade with India and which established the British rule in India, is an example of this type of companies.

2. ***Statutory Companies:*** These companies are incorporated by a special act passed by central or state legislature. The objective or objectives, scope, rights and responsibilities of these companies are clearly mentioned in the Act under which these are incorporated. These companies are formed to undertake business of public welfare and national importance. The Reserve Bank of India, The State Bank of India, The Life Insurance Corporation of India and the Food Corporation of India are governed by their respective acts and need not have either the Memorandum of Association or Articles of Association. They also need not use the word 'Limited' with their names.
3. ***Registered Companies:*** Companies formed by registration under the Companies Act 1956 are known as registered companies. Most of the companies in India belong to this type. Any existing company which had been formed and registered under any of the earlier Companies Acts, is also included in this category. It must be noted that such companies come into existence only when they are registered under the Act and a certificate of incorporation is granted to them by the Registrar of Companies. The registered companies are governed by the provisions of the Companies Act, 1956 and by the rules and regulations laid down in 'memorandum' and 'articles' of association of the companies.

(b) According to Liability

The liability of members of a company is the second basis on which the companies can be divided into different kinds. Liability here means the unpaid amount of money a member of the company has to pay for the shares held by him and the amount of guarantee undertaken by him which he has to pay at the time of winding up of the company.

1. ***Companies limited by shares:*** When the liability of the members of a company is limited up to the unpaid value of their shares, it is called a limited liability company or a company limited by shares. This liability or unpaid amount may be called up at any time during the life time of the company or at the time of its winding up.
   For example, if a person holds 100 shares of the value of Rs.10 each and has paid Rs.5 per share with the application and allotment of shares, his total liability will be Rs.500 only which can be called up at any time.
2. ***Companies limited by Guarantee:***
   The liability of a member in these companies is limited to the amount undertaken to be contributed by him at the time of winding up of the company. The amount of guarantee is mentioned in the memorandum of association. As per section 13(3), the memorandum of a company limited by guarantee shall also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of debts and liabilities of the company or of such debts and liabilities of the company.

3. ***Unlimited Companies:*** An unlimited company is that company which has no limit on the liability of its members. It means that its members are liable to contribute to the debts of the company in proportion to their respective interests. In case a member is unable to contribute his share, his deficiency is shared by the rest of the members in proportion to their capital in the company.

(c) According to number of members:

There are two types of companies according to the number of the persons who form the company: private company and public company.

1. ***Private Company:***

   Private company means a company which by its articles –

   a) Restricts the right of members to transfer its shares, if any

   b) Limits the number of its members to 50. This number excludes the past or present employees of the company who are its members.

   (c) Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

2. Public Company

According to the Companies Act, a public company is a company which is not a private company. Thus, it is a company which by its articles does not:-

a) Restricts the right of members to transfer its shares, if any

b) Limits the number of its members to 50.

c) Prohibits any invitation to the public to subscribe for any shares or debentures of the company. The minimum number of members of a public company is seven but there is no upper limit on its membership. Its shares are freely transferable. The word 'Ltd.' may be appended to its name. It can invite the general public to subscribe for its shares.

(d) According to control and management

Control and management of a company refers to the composition of its board of directors or holding of majority of shares. On this basis, companies can be divided into two classes - Holding Company and Subsidiary Company.

1. Holding Company

The Company Law defines a holding company as a company which controls another company.

2. Subsidiary Company

A subsidiary company is a company which is controlled by another company. It is deemed to be controlled by another company.

(e) According to ownership

Companies can be distinguished from one another on the basis of their ownership also. The word ownership here implies the proportion of capital held. The following are the two types of companies on this basis:

1. Government Company:

The Companies Act defines a government company as a company in which not less than 51 per cent of the paid up share capital is held by :

a) The Central Government or
b) Any State Government or
c) Partly by the Central Government and partly by one or more State Governments.
It should be noted carefully that a company which is a subsidiary of a government company shall be considered a government company.

2. Non-Government Companies:
All those companies which are registered and incorporated under the Companies Act but which are not government companies are known as non-government companies. It implies that if 51 per cent or more of the paid up share capital is held by the private sector, it is called a non government or private sector company. Tata Iron and Steel Company Ltd. (TISCO), Reliance Industries Ltd. (RIL) and Hindustan Lever Ltd. (HLL) are a few examples of private sector companies.

(f) According to Nationality
The company also has a nationality like a citizen although it cannot be called a citizen. The nationality of a company is determined by the place of its incorporation. On this basis, there can be two types of companies – Foreign Companies and Indian Companies.

1. Foreign Companies:
Foreign companies are those companies which are incorporated outside India but which have a place of business within India. (Sec.591(1)). Place of business here means an identifiable place where it carries on business such as office, store house, godown etc. Share transfer or share registration office shall also be considered a place of business.
If 50 per cent or more of the paid up share capital of a foreign company is held by Indian Citizens and or by companies incorporated in India whether singly or jointly, it shall be treated as an Indian Company in respect of its business in India.

2. Native or Indian Companies:
All the companies which are not foreign companies according to the provisions of the Act as mentioned above are native or Indian Companies.

Q: What are the different modes of winding up of a company? Discuss in detail.
Ans: Introduction: *"Winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. 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."*
Thus winding up is the last stage in the life of a company. It means a proceeding by which a company is dissolved.

Modes of winding up:

A company can be wound up in three ways:

1. Compulsory winding up by the Court;
2. Voluntary winding up:
   (i) Members voluntary winding up;
   (ii) Creditors' voluntary winding up;
3. Voluntary winding up subject to the supervision of the Court [Sec. 425].

1. Winding Up by the Court: A company may be wound up by an order of the Court. This is called compulsory winding up or winding up by the Court. Section 433 lays down the following grounds where the Court may wind up a company.

A petition for winding up may be presented to the Court on any of the grounds stated below:

1. Special resolution: A company may be wound up by the Court if it has, by a special resolution, resolved that it be, wound up by the Court. But it is to be noted that the Court is not bound to order for winding up merely because the company by a special resolution has so resolved. Even in such a case it is the discretion of the Court to order for winding up or not.

2. Default in filing statutory report or holding statutory meeting: If a company has made a default in delivering the statutory report to the Registrar or in holding the statutory meeting, a petition for winding up of the company may be presented to the Court. A petition on this ground may be presented to the Court by a member or Registrar (with the previous sanction of the Central Government) or a creditor. The power of the Court is discretionary and generally it does not order for winding up in first instance. The Court may, instead of making an order for winding up, direct the company to file the statutory report or to hold the statutory meeting but if the company fails to comply with the order, the Court will wind up the company.

3. Failure to commence business within one year or suspension of business for a whole year: Where a company does not commence its business within one year from its incorporation or suspends its business for a whole year, a winding up petition may be presented to the Court. Even if the business is suspended for a whole year, this by itself does not entitle the petitioner to get the Court to examine as to whether it will be possible for the company to continue its business. Before the order of winding up on this ground the Court is required to see what are the possibilities of resumption of the business of the company. The suspension of the business, for this purpose, must be the entire business of the company and not a part of it.

4. Reduction of membership below the minimum: When the number of members is reduced, in the case of a public company, below 7 and in the case of a private company, below 2, a petition for winding up of the company may be presented to the Court.

5. Company's inability to pay its debts: A winding up petition maybe presented if the company is unable to pay its debt. 'Debt' means definite sum of money payable immediately or at future date. A company will be deemed to be unable to pay its loan in the following conditions (Section 434).

6. Just and equitable (Sec. 433(1)]: The Court may also order to wind up of a company if it is of opinion that it has just and equitable that the company should be wound up. What is 'just and equitable' depends on the facts of each case. The words 'just and equitable' are of wide connotation and it is entirely discretionary on the part of the Court to order winding up or not on this ground.

Thus the Court itself works out the principles on which the order for winding up under the section is to be made.

Q: Write a detailed note on the present status of Cyber Law in India.

Ans: Introduction: At no other time in the 20th century, there have been so drastic changes in human history which have such an impact on commerce – from a small proprietorship firm to an MNC having branches all over the world – from small varieties of tangibles to diverse varieties of un-countable tangibles and even intangibles – from a market of few miles to a global market supported by Internet from a local money-lender to a global finance company, no doubt, we have developed a lot. In the last few years, the methods and style of trading have changed. Trading electronically is no longer new now. It has flourished the idea of cost reduction and timesaving. The following have pushed the way for trading electronically:
(i) The pace of change in the computer system and computer software;
(ii) The growing use of PCs and internet, hence, instant response and convenience of getting information;
(iii) The trend of globalisation;
(iv) The ever increasing volume of organisations;
(v) Rapid drop in telecommunication cost (STD & ISD); and
(vi) Business transformation, hence, personalised attention.
These are drastically pushing the graph of number and volume of transactions through Internet up and the graph of transaction cost down. The US Govt. decided five years ago that E-Commerce was the way to go. The UN has established an Internet based 'Global Trade Point Network' that assists-small and medium size companies' eager to expand globally one estimate suggests that in 1998, one out of every seven trades taking place in US originated as an order over the Internet as opposed to none in 1992. Even in India, 95% of stock trading is done over the screen. The cost of such trading has reduced by at least 75%.
Overall, trading volume has gone up by at least 100% over last five years. ICICI bank is the first bank, which has started net banking in India. A study of Nolan Norton, a computer consultancy firm, showed transaction cut time up to 90% and in-crease in transaction by 25-50% (Source: Finance Times Review). No doubt, Ecommerce will revolutionize trade and commerce. There are two types of goods, which are traded electronically: (i) tangibles and (ii) intangibles i.e. computer software, books, games, education and training material in digitized form.

The significant point to be noted is that as defined above, e-commerce would include transactions involving delivery and payment in traditional manner if offer and acceptance of the offer is through a 'network'. The above definitions of e-commerce are crucial from the perspective of understanding the nature of transactions and the manner in which such transactions change traditional business practices.

The importance of conducting business electronically cannot be undermined. Most businesses are gradually moving towards the digital market place as it offers infinite choices. This has led to the emergence of virtual marketplaces, which are the nothing but the blossoming of real world commercial and consumer transactions into the cyber world. This transition has changed the role of technology from being a mere enabler to being the backbone of business.

Advantages of Cyber Laws

• The IT Act 2000 attempts to change outdated laws and provides ways to deal with cyber crimes. We need such laws so that people can perform purchase transactions over the Net through credit cards without fear of misuse. The Act offers the much-needed legal framework so that information is not denied legal effect, validity or enforceability, solely on the ground that it is in the form of electronic records. In view of the growth in transactions and communications carried out through electronic records, the Act seeks to empower government departments to accept filing, creating and retention of official documents in the digital format. The Act has also proposed a legal framework for the authentication and origin of electronic records / communications through digital signature.

• From the perspective of e-commerce in India, the IT Act 2000 and its provisions contain many positive aspects. Firstly, the implications of these provisions for thee-businesses would be that email would now be a valid and legal form of communication in our country that can be duly produced and approved in a court of law.

• Companies shall now be able to carry out electronic commerce using the legal infrastructure provided by the Act.

• Digital signatures have been given legal validity and sanction in the Act.

• The Act throws open the doors for the entry of corporate companies in the business of being Certifying Authorities for issuing Digital Signatures Certificates.

• The Act now allows Government to issue notification on the web thus heralding e-governance.

• The Act enables the companies to file any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in electronic form by means of such electronic form as may be prescribed by e appropriate Government.

• The IT Act also addresses the important issues of security, which are so critical to the success of electronic transactions. The Act has given a legal definition to the concept of secure digital signatures that would be required to have been passed through a system of a security Procedure, as stipulated by the Government at a later date.

• Under the IT Act, 2000, it shall now be possible for corporate to have a statutory remedy incase if anyone breaks into their computer systems or network and causes damages or copies data. The remedy provided by the Act is in the form of monetary damages, not exceeding Rs. 1 crore.

SUMMARY

The Consumer Protection Act, 1986 was enacted to provide effective, inexpensive simple and speedy redressal to the consumer grievances. In fact, the three-tier redressal agencies envisaged in the Act have started functioning in almost all the states and have been providing effective redressal to consumers. The agencies in fact have done a lot, but still a lot more is to be achieved. They are facing problems in delivering speedy justice. Some of the pressing difficulties include shortage of funds, staff, lack of infrastructure, etc. which are putting hindrances in the smooth functioning of redressal agencies. Due to lack of these essential facilities, the redressal machinery is imitating rather than competing with the Civil Courts and, Civil Courts are known for giving adjournment dates. Strictly speaking adjournment may be made a rare exception and not a rule.
