Law of Contract

Introduction

The law relating to contract is contained in the Indian Contract Act 1872. It deals with general principles of the law of contract and some special contract. The law of contract introduces certainty in business transactions. The purpose of law of contract is to ensure the realization of reasonable expectation of the parties who enter into a contract. This Act does not affect any usage or custom of trade. The law of contract was passed to make the principles and procedures of business transactions uniform throughout the country.

Objects:

1) To ensure security and stability in business world.
2) To bring definiteness in business dealings.
3) To bring uniformity in transactions.
4) To compel parties to keep their promises.
5) To award damages for non - performing contracts.
6) Enforcement of legal right and obligation.

Indian Contract Act Deals With

- General principles of law of contract.
- Some special contracts.
- Stages in formation of contract.
- Essential elements of contract.
- Performance of contract.
- Breach of contract.
- Remedies for breach of contract.

Definitions: - **Contract**

1) Contract is an agreement enforceable by law.

2) Contract is an agreement creating and defining obligations between the parties.

3) An agreement creating and defining obligations between the parties is contract.

4) Every agreement and promise enforceable by law is a contract.

5) A contract is an agreement enforceable at law, made between two or more persons by whom rights are acquired by one or more to act or forbearances on the part of other or others.

Meaning:-

1) Contract is an agreement between two or more parties.
2) The agreement can be fulfilled with help of law.
3) Contract creates legal relations and obligations between the parties who enter into contract.
4) An agreement and promise which is legal is contract.

Definitions: **Agreement**

1) Every promise and every set of promise forming the consideration for each other is agreement.
2) Agreement is an accepted promise.
3) Offer + Acceptance = Agreement
4) An agreement is a combination of two ideas namely a proposal and acceptance of proposal.

Definitions: - **Proposal** (Offer)

1) Under British law, proposal means an offer.
2) Proposal means an expression of desire by one person to another, to do, or not to do something, and desire is expressed to obtain other persons consent.
3) When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of another to such an act or abstinence, he is said to make a proposal.

Types of Contract

- Void contract
- Voidable contract
- Illegal contract
- Enforceable contract/ unenforceable contract
- Express contract
- Implied contract
- Tacit contract
- Executed contract
- Executory contract
- Unilateral contract
- Bilateral contract

Meaning:-

1) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

   A contract which is not enforceable by law is void contract.
2) An agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract.
3) Illegal contracts are the contracts which the law prohibits to be made.

4) Unenforceable contract is a contract which is good in substance but because of some technical defect one or both the parties cannot sue upon it.
5) Express contract: - a contract which is made by words either spoken or written is said to be an express contract.
6) Implied contract is a contract which is implies by law though parties never intended.
7) A tacit contract is a contract which is completed by the conduct or performance of parties.
8) If the consideration for the promise in a contract is given or executed, such type of contract is called contract with executed consideration.
9) Executory contract is so called because the reciprocal promises or obligation which serves as consideration is to be performed in future.
10) A unilateral contract a one-sided contract in which only one party has to perform his promise or obligation to do or forbear.
11) Where the obligation or promise in a contract is outstanding on the part of both the parties, it is known as bilateral contract.

The person making the offer is known as offeror (proposer) or promisor.

The person to whom offer is made is called offeree. When the offeree accepts the offer, he is called acceptor or promise.

Essentials of valid contract

According to section 10 "All agreements are contracts if they are made by the 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."

Following essential elements must co-exist in order to make a valid contract:

1) Creation of legal obligation through offer and acceptance.
2) Lawful consideration.
3) Capacity

4) Free consent

5) Lawful agreement

Proposal / offer and Its Validity

Proposal or offer is the first step in contract. It is a medium through which one party communicates or expresses his desire to do something or abstain from doing something.

Following are essential points for legal or valid offer:-

1) Possible or Definite Act
2) View or object of acceptance
3) Creation of legal relationship.
4) Invitation of offer is not the offer.
5) Inquiry is not a proposal.
6) Complete communication of proposal must be made.
7) All terms and conditions of proposal must be communicated.
8) All the offers may be specific or general.

When an offer will lapse? (Life of offer)

1) An offer lapses when a notice of revocation has been given at any time before its acceptance is complete as against the offeror.
2) An offer is said to be lapsed if it is not accepted within prescribed timing.
3) An offer lapses when pre-conditions and acceptances are not made or pre-condition are not fulfilled.
4) An offer will be said as a lapse when the offeree comes to know about the death of offeree or his insanity.
5) An offer lapse if a counter offer is made to it.
6) An offer lapse if it is not accepted according to specific conditions or prescribed mode.

Acceptance :

A contract emerges from the acceptance of an offer. Acceptance is an expression by the offeree of his willingness to be bound by the terms of the offer.

When the offeree signifies his assent to the offeror, the offer is said to be accepted.

An offer once accepted becomes promise.

As per section 2(b) defines the acceptance of proposal as, when the person to whom the proposal is made signifies his assent there to the proposal is said to be accepted.

Acceptance may be express and implied. The acceptance is express when it is communicated by words spoken or written or by doing some required act. It is implied when it is to be gathered from the surrounding circumstances or the conduct of the parties.

When an offer is made to a particular person it can be accepted by him alone. If it is accepted by any other person there is no valid acceptance.

Rules for Acceptance Section 7

1) Acceptance must be unqualified and absolute.
2) Acceptance must be communicated to the offeror.
3) It must be according to the mode prescribed or usual and reasonable.
4) It must be accepted in reasonable time.
5) It must be accepted by specific party if it is a condition.
6) Acceptance must be made before lapse of time or before withdrawal of proposal.
7) Once the proposal is rejected it cannot be accepted subsequently.
8) All condition of acceptance must be fulfilled.
9) Here silence of party cannot be called acceptance.

Communication of an offer is complete when it comes to the knowledge of the offeree.

Communication of an acceptance is complete as against the offeror when it is put in the course of acceptor, when it comes to the knowledge of the offeror.

Consideration:

Consideration is price paid for the contract. It is essential element of a contract. Without consideration contract cannot be enforced. Consideration means something in return generally a contract without consideration is void.

Definition of consideration:

It is the price for which the promise of the other is bought and promise thus given for value is enforceable.

Consideration is the price agreed to be paid by the promsiee for the obligation of the promisor.

When at the desire of the promisor to the promise or any other person has done or obtained from doing, or does, or promises to do or to abstain from doing something such act or abstinence or promise is called a consideration.

Consideration means something which is of some value in the eye of law. It may be benefit.

In short:

a) Consideration is doing or not doing something which the promise desires to be done or not done.
b) Consideration must be at the desire of the promisor.
c) It may be more from one person or any other person.
d) Consideration may be past present or future.
e) Consideration may not be adequate but should be real one.

Legal Rules for Consideration

- It must move at the desire of the promisor.
- It may move from promisee or any other person.
- It may be an act abstinence or return promise.
- It may not be adequate.
- It should not be illusory.
- It must not be something which the promisor is not already bound to do.
- It must not be illegal, immoral or opposed to general public.

When the arrangement without consideration is enforceable by law.

1) When it is in writing and registered made out of natural love affection by a person in near relationship.

2) When it is compensation for past voluntary services.

3) When it is promise to pay time barred debts.

4) When it is completely gift.

5) When it is an agreement to create agency.

Essentials of Valid Contract

Introduction

Agreement enforceable by law is contract. Agreement must satisfy all conditions mentioned in section 10 for validity.

All agreement are contract if they are made by the free consent of the parties competent to contract with lawful object and for lawful consideration and the agreements are not expressly declared to void by this act. An agreement should be also be in writing and registered if it is necessary by any law.

In other words agreement can be turn into contract only when,

1) They are entered into by free consent.
2) The parties are competent to do the contract.
3) The object of contract is lawful.
4) The consideration of contract is lawful.
5) It is not declared as a void.
6) It is in writing (if necessary).

In other words all contracts are agreement but all agreement is not contract.

Following Agreements are Enforceable by Law:

1) Legal offer and acceptance
2) Free contract
3) Competent parties
4) Lawful object
5) Lawful consideration
6) Agreement must not be void
7) Writing and registration (if necessary)
8) Certainty and possibility and performance
9) Certain of legal relationship.

Capacity to Contract

OR

Competent Parties to contract

The parties who enter into contract must have the capacity to do so. Capacity here means competency of parties to enter into valid contract.

According to section 11 every person is competent to contract.

1) Who is of the age of majority according to the law of which he is subject to.
2) He is of sound mind.
3) He is not disqualified from contracting by any law to which he is subject.

Following persons **are incompetent** to enter into contract:

1. Minors
2. Persons of unsound mind
3. Persons disqualified by any law to which they are subject to.

According to section 3 of Indian majority Act 1875 a minor is person who has not completed eighteen years f age.

Following **are rules for minor** agreement:

1) An agreement with or by a minor is void and inoperative.
2) Minor can be only a promise or beneficiary.
3) His agreement cannot by be ratified by him on attaining the age of majority.
4) If he has received any benefit under a void contract/agreement he cannot be asked to compensate
5) He can always plead minority.
6) There cannot be specific performance by him.
7) He cannot enter into a contract of partnership.
8) Minor cannot be declared as insolvent.
9) Minor can be an agent.
10) Minor is liable for necessaries.
11) His parents/guardian is not liable for the contract entered into by him.

Contract of Persons of Unsound Mind

One of the essential condition of competency of parties to a contract is that they showed be of sound mind.

Section 12 reads as follows:

A person said to be of sound mind for the purpose of making a contract if, at time when he makes it, he is capable of understanding it and of forming a rational judgment as to it effect upon his interest.

Soundness of a mind and a person depends on 2 facts,

1) His capacity to understand the business concern.
2) His ability to form a rational judgment as to its effect upon his interest.

Lunatics, drunken, intoxicated persons are incapable of contracts.

- Unsound mind
- Alien enemies
- Convicts
- Sovereign and ambassadors

Free Consent

It is essential to the creation of contract that the parties are agree upon the same thing in the same scence at the same time and that their consent of free.

According to section 13, two or more person are said to consented when they agree upon the same thing in the same scence.

According to section 14, consent is said to be free when it is not caused by-

1) Coercion
2) Undue influence
3) Fraud
4) Misrepresentation
5) Mistake

When there is no consent there is no contract.

Where there is consent but it is not free and caused by coercion, undue influence fraud, misrepresentation, the contract is voidable at the option of the party whose consent is so caused.

When a person is compelled to enter into a contract by the use of force by the party or under threat "coercion" is said to be employed. In coercion such act is done that other party will enter into contract.

Coercion may proceed from any person, may be directed against any person even a stranger coercion includes fear physical compulsion and menaces to goods. A throat to commit suicide amounts coercion.

Undue Influence

Undue influence is also called as moral coercion. Sometimes a party is compelled to enter into an agreement against his will as a result of unfair persuasion by the other party. This happen when a special kind of relationship exists between the parties one party is in position to exercise undue influence over the other.

Exp: Doctor - Patient

Teacher - Student

Master – Servant

Pleader – Client

According to section 16 a contract is said to be induced by undue influence where the relation between the parties are such that are of the parties is in position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

The law presumes the position of a person to be dominating over the will of the other party, when the person has real or apparent authority over other person.

Fraud

Fraud means deliberate making of the false statements regarding the subject matter of the contract with an intention to deceive the other party.

An also representation may be made knowingly or without belief in its truth and intended to other party to act upon it. There may be concealment of material fact.

Frauds Includes

1) The suggestion that a fact is true when it is not true.
2) The person making the suggestion does not believe that the statement is true.
3) The active concealment of a fact by a person having knowledge or belief of the fact.
4) A promise made without any intention of performing it.
5) Any act to deceive the other party.
6) Any such act or omission as the law specially declares to be fraudulent.

Essentials Elements of Fraud

1) There must be false representation.
2) The representation must be related to the fact.
3) The representation must be made before conclusion of contract.
4) The intention must be to deceive the other party.
5) The other party must have relied upon the representation.
6) The other party must have suffered some loss.

Mis-Representation

Mis-representation is a mis-statement or concealment of a material fact or facts essential to a contract, without any intention to deceive the other party. The person making the suggestion believes it to be true. In mis-representation the aggrieved party can rescind the contract. There can be no suit for damages.

Mistake

It is define as erroneous belief about something. It may be mistake of law or of fact.

Mistake of Law

Ignorance of law is no excuse is a well settled rule of law. A party cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of the law. A mistake of a law is therefore no excuse and the contract cannot be avoided.

Mistake of Fact

1) Bilateral mistake
2) Unilateral mistake

Bilateral mistake:

Where both the parties to an agreement are under a mistake as to matter of fact essential to the agreement, there is a bilateral mistake. In such a case agreement is void.

Unilateral mistake:

When in a contract only one of the parties is mistaken about the value or quality of the subject matter or in expressing or understanding the terms or the legal effect of the agreement, the mistake is of unilateral in nature.

Condition for Bilateral Mistake:

1) The mistake must be mutual.
2) The mistake must relate to matter of fact essential to the agreement.

Examples or cases/instances of bilateral mistake

1) Mistake as to subject matter of contract.
2) Mistake as to existence of subject matter.
3) Mistake as to the identity of the subject matter.
4) Mistake as to the quality of the subject matter.
5) Mistake as to the quantity of the subject matter.
6) Mistake as to the title of the subject matter.
7) Mistake as to the possibility of performing the contract.

Legality of Object and Consideration

An agreement, the object or consideration of which is unlawful is void. The law will not enforce the contract of which object and consideration is unlawful.

The consideration or object is unlawful,

- If it is forbidden by law.
- If it defeats any provision of law.
  - If it is fraudulent in nature.
  - If it involves injury to the person.
  - If it is immoral or opposed to general public policy.

Agreements opposed to Public Policy

1) Agreement in restraint of trade.

1) Agreements of trading with enemy.
2) Agreement to commit a crime.
3) Agreement which interfere with administration of justice.
4) Agreement to restraint and legal proceeding.

5) Agreement in restraints of parental rights.
6) Agreement restricting person liberty.
7) Agreement in restraints of marriages.
8) Agreement to break marriages.
9) Agreement to defraud creditors or revenue authorities.

Following agreements are expressly declared as a void:

1) Agreement by incompetent parties.
2) Agreement made under mutual mistake of fact.
3) Agreement made without consideration.
4) Agreement in restraint of marriages.
5) Agreement in restraint of trade.
6) Agreement in restraint of legal proceedings.
7) Agreement the meaning of which is uncertain.
8) Agreement by way of wager.
9) Agreement of impossible acts.

Performance of Contract

Performance of contract takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed.

Section 37 lays down that the parties to a contract must either perform or offer to perform their respective promises unless such performance is dispensed or with excused.

Offer to Perform

Sometimes it so happens that the promise offers to perform his obligation under the contract at the proper time and place but the promise does not accept the performance. This is known as attempted performance or tender.

According to section 38 where promise has made an offer if performance to the promisee and the offer has not been accepted, the promisor is not responsible for non-performance nor does he thereby lose his rights under the contract.

Following are requisites of valid tender:

1) It must be unconditional.
2) It must be of the whole quantity contracted for or of the whole obligation.
3) It must be by a person who is in a position and is willing to perform the promise.
4) It must be made at the proper time and place.
5) It must be made to the proper person, may be promise or his authorized agent.
6) It must be in proper form.

Contracts which need not to be performed

A contract needs not to be performed,

1) When its performance becomes impossible.
2) When parties agreed to rescind or alter.
3) When the promise dispenses with remits wholly or in part the performance of the promise made to him or extends the time for such performance or accepts any satisfaction for it.
4) When the person at whose option it is voidable, rescinds it.
5) When the promise neglects or refuses to afford the promisor reasonable facilities for the performance of his promises.

By whom must contract be performed?

1) It can be performed by promisor himself.
2) It can be performed by the agent or his representative.
3) It a promisee accepts performance any third person.
4) It can be performed by joint promisors.

Discharge of Contract

Discharge of contract means termination of the contractual relationship between the parties.

A contract may be discharged,

1) By performance
2) By agreement
3) By impossibility
4) By lapse of time
5) By operation of law
6) By breach of contract

A contractual obligation may be discharged by agreement which may be express or implied. Novation takes place when new contract is substituted for an existing one between the same parties. Novation should take place before expiry of the time and performance of original contract.

Rescission of a contract takes place when all or some of the terms of contracts are cancelled. It may occur by mutual consent of the parties. It may be total partial.

Alteration of contract may take place when one or more of the terms of the contract is/are altered by the mutual consent of the parties to the contract.

Rescission means acceptance of a lesser fulfillment of the promise made.

Waiver takes place when the parties to a contract agree that they shall no longer be bound by the contract. Consideration is not necessary for waiver.

Merger takes place when an interior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract.

Discharge by impossibility and performance:

If an agreement contains an undertaking to perform impossibility, then it is void agreement. Law does not recognize what is impossible, and what is impossible does not create an obligation.

The impossibility of performance may be full into 2 categories:

1) Impossibility existing at the time of agreement which is knows to parties or unknown to parties.
2) Impossibility arising subsequent to the formation of contract. In such a case the contract becomes void when the act becomes impossible or unlawful.

Discharge by Supervening Impossibility

1) Destruction by subject matter, when the subject matter of a contract, subsequent to its formation is destroyed without any faculty of the parties to the contract, the contract is discharged.
2) It may be discharged by non-existing or non-occurrence of a particular state of things.
3) Death or incapacity: When the performance of a contract depends on the personal skill or qualification of a party the contract is discharged on the illness or incapacity or death of that party.
4) Change in law: When subsequent to the formation of a contract, change of law takes place and the performance of contract becomes impossible, then the contract is discharged.

Breach of Contract

A breach of contract occurs when a party there to without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. It may be actual breach of contract.

Anticipatory or constructive breach of contract

Actual breach of contract: it may take place at the time of performance due; one party fails or refuses to perform his obligation under the contract.

Actual breach of contract may occur while during the performance of contract. One party may refuse to perform by words or by act.

In case of anticipatory breach of contract a party declares his intention not to perform a contract before actual performance.

Remedies for Breach of Contract:

A party whose contract has been broken by the other party has following remedies against the party breaking the contract.

1) He can file suit against the other party for the damages caused to him due to the breach of contract.
2) He can sue the other party for the specific performance of the contract, so that the party breaking the contract is compelled to perform the contract according to its terms to be fulfilled.
3) He can file a suit of injunction to prevent him from the breach of contract.
4) By way of rescission of the contract, he will be relieved from obligation.
5) By way of quantum meruit (As much as work).

Rescission

When a contract is broken by one party the other party may sue to treat the contract as rescinded and refuse the further performance. He relived himself from any liability or legal obligations.

When the party treats the contract as rescinded, he makes himself liable to restore any benefits he has received under the contract to the party from whom such benefits were received.

Damages for Breach of Contract

Doctrine of Restitution:

Damages means monetary compensation allowed to the injured party by the court for the loss suffered by it.

An object of awarding damages for the breach of contract is to put the injured party in the same financial position as if the contract had been performed.

The monetary compensation is known as Doctrine of Restitution.

Rules for Assessment of Damages

1) A party injured or aggrieved by the breach of contract is entitled to such damages as would ordinarily arise in the natural course. These damages are known as ordinary damages.
2) The question of loss of profit must have been brought to the notice of other party beforehand.
3) Damages are to be given only for the loss arising out of the direct causes and it is not to be given for the losses arising due to remote causes.
4) If the party incurred any additional expenses in reducing the los he can recover it from the party making breach of contract.
5) When the damages for the non-delivery of goods available in the market are to be awarded, the damages are calculated by taking into account the difference between the market price on day, breach of contract and the contract price.
6) If the parties provide for a fixed sum that is to be awarded in case of the breach of contract, the said amount can be claimed not the actual loss.
7) The sentimental injury or injuries to the feelings are not considered while awarding the damages.
8) The aim to award the damages to the aggrieved party is to put that party so far as monetary losses are concern to the same position as if the contract had been perform.

9) The damages are given by the way of compensation only. There is no intention to punish the party.

Specific Performance

In certain cases of the breach of contract the damages are not adequate remedy. In such cases the court may direct party which has broken the contract to carry out its promise according to the terms and conditions. This is known as order of specific performance.

In following cases specific performance can be enforced:

1) When the act agreed to be done is of such a nature that the compensation in the form of money or monetary terms may not be an adequate relief for the non-performance and contract.
2) When there exists no standard of deciding the actual damage cause for the non-performance of the act.
3) When it is probable that the compensation in the form of money cannot be received for the non-performance of the act.

In following cases specific performance will not be granted:

1) When damages are an adequate remedy.
2) The contract is not certain, or, it is inequitable to either party.
3) The contract is revocable in nature.
4) The contract is made by trustee in breach of their trust.
5) The contract is of personal in nature.

Quantum Meruit

It means as much as earned.

A right to sue on quantum meruit arises where the contract is party performed by one party and it has been discharge by the breach of contract by other party.

The right is founded not on the original contract which has been discharged but on the implied promise by the other party to pay what has been done.

Rules for Quantum Meruit

1) When an agreement is discovered to be void the rule is applicable.
2) When something is done without any intention to do so gratuitously.
3) When there is an express or implied contract to render services but there is no agreement as remuneration.
4) When one party refuses to perform a contract.

Contract of Indemnity and Guarantee

This contract is a type of contingent contract. It is explain in section 124.it is a contract by which one party promises to save the other from loss casued to him by conduct of the promisor himself, or the conduct of any person. All the damages in case of loss will be awarded in the contract of indemnity.

Rights of Indemnity Holder

1)Damages-An indemnity holder when sued is entitled to recover from the indemnifier all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.

2) Costs- All costs which he may be compelled to pay in any such suit in instituting or defending it provided the indemnify-holder had contravened the orders of the promise and acted prudently or provided the promisor authorized him to bring the suit. Costs must be such as would have been incurred by a prudent man.

3) All Sums- All sums which he may have paid under the terms of any compromise of any suit. The compromise must not be contrary to the

orders of the promisor or it must be authorized by the promisor and must be one which would be prudent for the promise to make.

4) Suit for Specific Performance-Besides the above rights an indemnity holder can sue for specific performance of the contract of indemnity.

Contract of Guarantee

The contract of guarantee is the contract to perform the promise made or discharge liability incurred by third person in case of default, it is explain in section 145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety and surety entitled to recover from principal debtor whatever some he has rightfully paid under the guarantee.

Essentials of Contract of Guarantee

1) Three parties are essential for contract of guarantee.
2) The parties must be creditor, principal debtor and surety.
3) There must be tripartite agreement between creditor and debtor creditor and surety and surety and principal debtor.
4) There must be primary liability of some person other than surety. The liability must be enforceable by law.
5) There must be principal debt in existence. If there is no such debt then there is no contract.
6) The contract of guarantee must have all the essential elements of a valid contract. A contract of guarantee should also be supported by some consideration.

Nature of surety's liabilities

It is explained in section 128; the liability of surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. This section suggest that the surety is liable to the same extent has the principal debtor. When the debtor cannot be held liable to any defect in the document executed by him, the surety also ceases to be liable on the contract entered into by him. The surety has right against principle debtor and creditor; it is explained under section 140 and 141.

Sales of Goods Act

The sale of goods act is most common of all commercial contracts. This Act came into existence in 1930.

Formation of Contract Sale:

A contract of sale of goods is a contract where by the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part owner and another. The contract of sale may be absolute or conditional. The contract of sale is a generic term and includes both a sale and agreement to sell.

Sale and Agreement to Sell:

Where a under a contract of sale the property in the goods is to transferred from the seller to the buyer the contract is called a sale but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called to sell.

Essentials of Contract of Sale:

Following essential elements are necessary for a contract of sale:-

1) There must be two parties – buyer and seller. The parties must be competent to contract.
2) There must be some goods the property in which is or is to be transferred from seller to the buyer. The goods which are subject matter of contract must be movable.
3) The consideration for the contract of sale called price. It must be in terms of money.
4) There must be a transfer of general property as different from special property in goods from the seller to the buyer.
5) All essential elements of a valid contract must be present in the contract of sale.

Subject matter of contract of sale:

Goods are the subject matter of contract of sale.

Goods means every kind of movable property other than actionable claims and money and includes stocks and shares, growing crops, grass and things attached to or forming part of land which agreed to be served before sale or under the contract of sale. Trademarks, copy rights, patent rights, goodwill, electricity, water, gas are all goods.

Classification of Goods

1) Existing goods: These are the goods which are owned and possessed by the seller at the time of sale. It can be subject matter of sale. It may be specific goods, ascertained goods and unascertained or generic goods. The unascertained goods are defined by description.

2) Future goods: These are the goods which a seller does not possess at the time of the contract but which will be manufactured or produced or acquired by him after making the contract of sale.
3) Contingent goods: these are the future goods. These goods will be acquired by the seller depending upon the contingent event which may or may not happen.

Difference between Sale and Agreement to Sell

Sale:

A) Transfer property – In a sale the property in the goods transfer from the seller to the buyer immediately. The seller is no more owners of the goods.

Agreement to Sell:

A1) In agreement to sell the transfer of property in goods is to take place in future time or subject to certain conditions.

Sale:

B) Sale is executed contract.

Agreement of Sell:

B1) Agreement to sell is executory contract.

Sale:

c) In sale if the goods are destroyed the loss falls on the buyer even though the goods are in the possession of the seller.

Agreement of Seller:

C1) In agreement to sell, if the goods are destroyed the loss falls on the seller even though the goods are in the possession of the buyer.

Sale:

d) In a sale if the buyer fails to pay the price of the goods or if there is a breach of a contract by the buyer the seller can sue for the price, even though the goods are still in his possession.

Agreement to Sell:

D1) In an agreement to sell if there is a breach of contract by the buyer, the seller can only sue for damages and not for the price even though the goods are in the possession of the buyer.

Sale:

e)In a sale, the seller cannot re-sell the goods. If he does so the subsequent buyer does not acquire a title to the goods.

Agreement to Sell:

E1)in an agreement to sell in case of re-sell the buyer who takes the goods for consideration and without notice of the prior agreement, get a good title.

Sale:

f) A sale is a contract plus conveyance. It gives right to the buyer to enjoy the goods as against the world at large including the seller.

Agreement to Sell:

F1) An agreement to sell is merely a contract it gives right to buyer against the seller to sue for damages.

Sale:

g)In a sale if the buyer becomes insolvent before he pays for the goods the seller in the absence of a lien over the goods must return them to the official receiver or assignee.

Agreement to Sell:

G1) In agreement to sell if the buyer becomes insolvent and has not yet paid the price the seller is not bound to part with the goods until he paid for.

Hire Purchase Agreement

A hire purchase agreement is a contract where by the owner of the goods lets them on hire to another person called hirer on payment of rent to be paid in installments and upon an agreement that when a certain number of such installments are paid, the ownership in goods will pass to the hirer. The hirer may return the goods at any time without any obligation to pay the balance rent. It is not a contract of sale.

In hire purchase agreement ownership is transferred from the seller to the hire purchaser only when a certain agreed number of installments are paid.

The hire purchaser has an option to terminate the contract at any stage and cannot be forced to pay further installment.

The installments paid by the hire purchaser are regarded as hire charges and not as payment towards price till option to purchase the goods is exercised.

Document of title to Goods

A document of title to goods in one used in the ordinary course of business as profit of the possession or control of goods. It symbolizes the goods and confers a right on the purchaser to receive the goods or to further transfer such right to another person.

Conditions to be fulfilled by a document of title to the goods.

1) It must be used in the ordinary course of business.
2) The undertaking to deliver the goods to the possessor of the document must be unconditional.
3) The possessor of the document by virtues of holding such document must be entitled to receive the goods unconditionally.

Caveat Emptor – Let the buyer beware

Caveat emptor means let the buyer beware. In sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore when a person buys some goods he must examine them completely. If the goods turn out to be defectives or do not suit his purpose, or if he depends upon his own skill and judgment and makes a bad selection he cannot blame to anybody.

The buyer must take utmost care before while buying the goods.

Exception to the rule:

1) Where the buyer expressly makes known to seller the particular purpose for which he is in need of goods and relies on seller than it is duty of the seller to provide such goods.

2) In case of a contract where goods are transfer under patent or trade mark then the rule of caveat is not applicable.
3) I f goods are purchased by description from a seller who deals with such types of goods then the buyer can assure the right quality goods are purchased.
4) When the consent of buyer is taken by fraud then buyer is not responsible.

Transfer of Property:

There are 3 stages in the performance of a contract at sale of goods by a seller.

1) The transfer of property in goods.
2) Transfer of possession of the goods.
3) Passing the risk.

Transfer of property in goods from the seller to the buyer is the main object of contract of sale. Property means not possession of goods. It means the ownership of goods.

Risk follows ownership- unless otherwise agreed risk follows ownership. Whether the delivery of goods is made or not is not consider here unless and until the property in goods is not transfer from seller to buyer the risk remains with seller.

When the goods are in any damaged or destroyed by the action of third party it is only the owner of the goods who can take action.

The primary rule for ascertaining when the property in goods passes to the buyer is:

1) Goods must be ascertained. It must be of specific nature.
2) There must be intention of parties to transfer the property.

Performance of contract of sale

Performance of contract of sale means as regards the seller delivery of the goods to the buyer and as regards to buyer acceptance of the delivery of the goods and payment for them in accordance with contract.

A contract of sale involves reciprocal promises. The seller promises the delivery of goods and buyer promises to accept and pay for it.

NEGOTIABLE INSTRUMENT ACT

Introduction:

The law in India relating to negotiable instrument is contented in negotiable instrument act. It deals with promissory note, bills of exchange and cheques. The act extents to the whole of India.

Definitions of Negotiable Instrument

Negotiable instrument is a method of transferring a debt from one person to another. The law has not defined the term negotiable instrument. As per section 13 of his act negotiable instrument means a promissory note, bill of exchange or cheques payable either to order or to bearer. It is one in which the property is acquired by the person in which the person has takes its bonafide for value.

Following are the characteristic of Negotiable Instrument:

1) Negotiable instrument is freely transferable.
2) The property in negotiable instrument passes from one person to another by mere.
3) The title of holder free from all the defects. A person taking an instrument bonafide and for valued is known as holder in due course. This title is free from all defects.
4) A person can recover the amount mention in the negotiable instrument.
5) The conditions life take time of acceptance, time of transfer, stamping are applicable all negotiable instrument.

Promissory Note

It is an instrument in writing not being a bank note or currency not, containing an unconditional undertaking sign by the maker to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument. The person who makes the promissory note and promises to pay is called the maker.

Following are the essential elements of promissory note.

1) Writing: the instrument must be in writing. Verbal promise to pay is not negotiable instrument. Writing includes and typewriting.
2) An instrument must contain an express promise to pay only acknowledgment of indebtedness or implied undertaking is not sufficient, it will not constitute promissory note.
3) The promissory to pay in the instrument must be definite and unconditional, if the condition is including and if it is uncertain then it is invalid instrument.
4) The instrument must be signed by the maker otherwise it will be incomplete. Mere writing the name is not sufficient to the completeness of the instrument signature of the maker is essential.
5) The instrument must point out with certain deal as to who the maker is and who is payee. The part is to the instrument must be certain it cannot be made payable to the maker himself.
6) The promissory note must contain the certain sum of money payable to certain person. Any other form of payment and uncertainty is not accepted.
7) The note must contain the payment of money only. The transfer of money's worth will not constitute promissory note.
8) The formalities like date, number, place, consideration are all applicable to the promissory note.
9) It may be payable on demand or after definite period of time.

Bills of Exchange

A bill of exchange is an instrument in writing containing an unconditional order sign by the maker directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

The bill of exchange is important and popular negotiable instrument. The parties are drawer, drawee and payee. The person who gives the order to pay or who makes the bill is called drawer. The person who is directed to pay is called drawee. When drawee accepts the bills he is called acceptor.

Following are the essential element of bill of exchange:

1) It must be in writing.
2) It must be contain in order to pay.
3) The order to pay must be unconditional.
4) Three parties are required for a bill that is drawer, drawee and payee.
5) The parties must be certain.
6) It must be signed by the drawer.
7) The sum payable must be certain.
8) It must contain an order to pay money only.
9) The formalities like number, date, place, consideration are necessary. Proper stamping is to be made.

Difference between bill of exchange and Promissory Note

1. Parties

A1. In promissory note there are two parties i.e. maker and payer.

A2. In bills of exchange there are three parties i.e. drawer, drawee, and payee.

2. Payment

B1. The promissory note contains an unconditional promise to pay the amount.

B2. The bills of exchange contain an unconditional order to pay the amount.

3. Position of party

C1. The maker of the note is the debtor and they himself undertakes to pay.

C2. The drawer of a bill is the creditor who directs the drawee to pay the amount.

4. Acceptor

D1. The maker of note is related to the acceptor of the bill but he cannot undertake to pay unconditional.

D2. Whereas in case of bill the acceptor may accept the bill conditionally because he is not the originator of the bill.

5. Liability

E1. The liability of maker of a note is primary and absolute.

E2. Whereas the liabilities of drawer and the payer is secondary and the conditional.

6. Position of payee

F1. The note cannot be made payable to maker himself.

F2. Whereas the in case of bill the drawer and the payer one and the same person.

7. Acceptance

G1. A note required no acceptance as it is sign by the person who is liable to pay.

G2. A bill payable after sight or after a certain period must be accepted by the drawee.

8. Bearer

H1. A note cannot be drawn and payable to bearer.

H2. A bill can be so drawn and payable to the bearer on demand.

9. Relation with payee

I1. The maker of a note stands in immediate relation with the payee.

I2. The drawer of the bill stands immediate with the acceptor and not the payee.

10. Provisons

J1.certain provision like presentment acceptance, acceptance honor, bill in sets is applicable to the bills but not to the notes.

Cheque

Cheque is a bill of exchange drawn upon a specified banker and payable on demand. Cheque is like bill of exchange but along with bill it has two additional points:

1) It is always drawn on specified banker.
2) It is always payable on demand.

All cheques are bill of exchange but all bills of exchange are not cheques. A cheque must have all the essential requisites of a bill of exchange. It must be sign by the drawer; it must contain unconditional order on specified banker to pay certain sum of money or to order of specified person or the bearer of the cheque. It does not required acceptance.

Distinguish between Cheque and bill of exchange

1) A bill of exchange may be drawn on any person including banker. But a cheque is always drawn on a banker.
2) A bill must be accepted before the drawee can be called upon to make payment upon it. A cheque requires no acceptance.
3) A bill which is not express to payable on demand is entitled to three days of grace. A cheque is not entitled to any days of grace.
4) A bill may be payable on demand or after the expiry of a certain period after date. A cheque is always payable on demand.
5) A bill must be duly presented for a payment but the acceptor or the drawer of the bill will be the discharge from the liabilities. This is not possible in cheque.
6) A bill cannot be crossed but cheque can be crossed.
7) A bill required is stamping in certain cases but cheque does not require any stamping.
8) The payment of the bill cannot be countermanded. But the cheque can be.
9) A bill may be noted and protested in case of dishonor. A cheque does not require nothing or protesting.

Crossing of cheque

A crossing is a direction to the paying banker to pay the money generally to the banker or not to pay to holder across the counter. The banker paying a crossed cheque over the counter is not a prudent practice. A object of crossing is to secure payment to a banker so that it could be traced to the person receiving the amount. The crossing is done by making two parallel lines either at left hand or right hand side of the cheque. The crossing may be written on not negotiable or specific name of the bank.

Following are the types of the crossing:

1) General crossing

   A cheque is cross generally when it has to transverse parallel lines marked across its face. There may be a general crossing if its bears and abbreviation as and company one can negotiable work between two parallel lines.

2) Special crossing

   When a cheque is crossed by two parallel lines and the name of the banker is written two parallel lines it is called special crossing. There may be word not negotiable written between two lines it will be paid only when presented by the banker.

3) Not negotiable crossing

   When cheques are crossed it two parallel lines written on that "Account payee" it means it is to be credited parties account only. Counter payment is not possible it is also called restricted crossing.

Dishonor of cheque

Cheque is a negotiable instrument drawn on specific banker orders it to pay specific amount to a specific person after specific date. Now a day's large number of transactions is entered into by way of cheques but it is observed that some cheque of dishonor, it is merely cheating in the transaction. When any cheque drawn by person is written by the bank unpaid, the cheque is considered as dishonored. The person drawing the cheque is deemed to have committed an offence and shall be punished as per legal provisions.

A condition to be fulfilled before the person is liable (enforcement of punishment):

1) Existence of live account:

The cheques should be drawn by a person on an account maintain by him with the banker. Existence of a live account at the time of issue of cheque is priorer conditions for attracting penalty.

2) Issue of is discharged of depth of liability:

   A cheque is issue unpaid by the bank must have been issue in discharged of a depth or any other liability. A cheque given as a gift for any other reason will not attract penalty.

3) Presentation of the cheque:

   The cheque must have presented to the bank within a period of three months of date on which it is drawn after that validity date the legal penalty will be not attracted. Written of the cheque unpaid the cheque must be written either because the money standing to the credit of that account is insufficient to another cheque.

4) Issue of the notice of dishonor

   The payee or the holder endue course of the cheque has to give a notice in writing making a demand for payment amount of money to the drawer. Such notice must be given within 30 days.

Negotiation

Negotiation is the transferring of an instrument from one person to another. It is transfer in such a manner as to convey title and to constitute the transfer by negotiation or transfer their own. The transfer means transfer by negotiation or transfer by assignment. A transfer by negotiation takes place as per section 14; it may be transfer by delivery or endorcement and delivery. The transfer by assignment means where a person transfers his rights to receive the payment of the depth. It is said that transfer by assignment is completed. When the negotiable instrument is transferred the holder who has taken it for value gets good title of the instrument. The condition is that the instrument is should not be forged.

Endorsement

Negotiable instrument works as substitute for money it simple form of transfer of money from one person to another. Endorsement means signing the instrument. It creates legal rights. When the maker or the holder of a negotiable instrument signs it is said that he has endorse it and he is called endorser. It means transferring the endorsement by the holder by the holder by signing the instrument. The signature is considered for purpose of negotiation. There are two persons in the endorsement, one endorser who make the endorsement and second endorsee the person to whom the instrument is endorsee.

Following are the valid conditions for valid endorsement:

1) The signature of endorser is necessary for endorsement.
2) The sequence of endorsement determines the order of responsibility.
3) Endorsement must be made in writing.
4) There is no definite place for endorsement but it is convenient that it should be made on front side.
5) The delivery of the endorsement it is absolutely necessary.

Types of Endorsement

1) General Endorsement

   In this endorsement the endorser signs his name on the face of instrument. The name of endorsee is no specified on it, it is like bearer endorsement.

2) Special Endorsement

   Along with the endorsement if some matter regarding direction of the instrument is added then it is known as special endorsement. The general endorsement can be converted in to special endorsement but a special endorsement cannot be converted into general endorsement.

3) Restrictive Endorsement

An endorsement is set to be restrictive when it restricts the right of further negotiations. It may be for specific worker.

4) Conditional Endorsement

The endorsement may be conditional or qualified. It controls the liability of the endorser. It controls by mentioning some condition in the instrument. It is not restrictive endorsement.

This endorsement can be done by

1) Sans resources endorsement
2) Facultative endorsement
3) Sans Frais endorsement
4) Liability depend upon situation

Noting and Protesting

When a promissory note of a bill of exchange is dishonor the holder can, after giving due notice of dishonor sue any or all prior parties liable thereon. He must get the fact anthoticated by nothing. It means a notary public confirms the fact by making formal demand.

The noting contained following particular:

1) Fact of dishonor
2) Date of dishonor
3) Reason of honor
4) Notary changes

Noting is not compulsory for inland bills.

Protest

A protest must be contained following particular:

1) Name of the person for whom and against whom it is protested.
2) Place and time of dishonor.
3) Signature of notary.
4) It is a formal certificate of dishonor issued by a notary public to the holder of the bill or note on his demand.

Drawee in case need

The maker of bill of exchange or cheque is called drawer. When in the bill or any endorsement thereon the name of any person is given in addition to the drawee he is known as drawee in case of need. When his name is mention then the instrument cannot be dishonor unless and until it is also dishonor by drawee in case of need.

CONSUMER PROTECTION ACT

The consumer protection act passed in parliament on 24 Dec 1986. It is come into force on 15th April 1987. It is amended three times after that it is very important act in commercial dealings. It is applicable to whole of India except Jammu and Kashmir.

Following are silent features of the act:

1) It is applicable for the sale of all types of goods and services.
2) It is applicable to public, private and co-operative sector.
3) The main object of the act is to protect the consumer's interest and settled the disputes between business and consumer.
4) The purpose of the act is to make the provision for establishment of consumer council and authorities to settle the disputes.
5) The provisions are made to promote and protect the rights of the consumer against the hazardous goods and to inform the public about quality, quantity, standard and price of the goods.
6) This act provides platform the consumers to redressed to disputes.

7) It includes the provisions for compensation in case of damage suffered by consumer.

Definitions:

1) Consumer:
    i. Consumer means any person to buys and good for consideration which has been paid or promises to pay fully or partly or includes any users of such goods other than who buys it.
    ii. A person is said to be consumer if he hires or alias of any services for consideration which has been paid for promise to pay for the consideration.
2) Complaint:
    i. A complaint is any allegation made in writing by complainant in relation to unfair trade practice and restrictive trade practice.
    ii. Any written allegation made by the person for suffering the defects in the goods or services.
    iii. Any written allegation made against the deficiency in respect of goods or services. Nay charge made in the complaint for price of the goods.
3) Service:
    i. It means service of any description made available to general users. It includes banking, financing, insurance, transport, processing, electricity, loading and boarding, construction, entertainment etc.
4) Complainant:
    ii. A complainant means a consumer or any voluntary consumer, association, registered under the company's act 1956. In certain cases the central government and state government can be complainant.

iii. A complainant means one or more consumers where interest is same.

5) Unfair Trade:

It means, a trade practices which for the purpose of promoting the sale, use or supply of any goods or for provision of any service adopts by way of unfair method.

This are applied as follows.

i. A falls representation about standard, quality, quantity, grade, composition, style or model.
ii. Falls representation about the services for particular,
iii. Falls representation about secondhand renovated, reconditioned of all goods new goods.
iv. Falls representation about approval, performance, characteristics, accessories of the goods.
v. Falls and miss representation about usefulness goods and services.
vi. Falls miss representation about guarantee of the goods.
vii. Misrepresentation statement about materiality and originality of the goods.

Who is not consumer?

As per the consumer protection act, the consumers are to be protected from unfair trade practices. The condition is that the person purchasing the goods must been consumer one. He should not be trader. According section 2 of the act following persons are not consumers:

1) A person purchasing or obtaining goods for the purpose of resale or any commercial purpose.

2) A person buying goods without any consideration is not consumer.
3) A person who hires the goods or services without any consideration is not consumer.
4) A person obtaining service under a contract of personal service is not consumer.
5) A person using goods without prior approval of the buyer is not consumer.
6) A person who is beneficially of services but getting them without consent of the supplier is not consumer.

Consumer Protection Council

The interest of the consumer are sought to be promoted and protected under the act. To protect the consumer following are various councils which are working under the act.

- District consumer protection council:

This council is formed at district level. It is established by state government. 36 members are necessary for formation of district council. Following is the composition of district council:

i. Collector of the district as president.
ii. Additional collector.
iii. 17 government officers.
iv. Activists in voluntary consumer's organization.
v. Representatives of business.
vi. Kerosene distributors – 1
vii. Petrol distributors – 2
viii. Gas distributors – 2
ix. Representation of business organization – 2

The council meets on first Monday on every month. The president of council decides the date, place and venue of the meeting.

Following is the rule of council:

1) To protect the consumer interest.
2) To discuss and solved the problem of consumer.
3) To seek the redressed to arrange the program for council protection.
4) Every member of the district forum shall fold office for term 5 years or up to age of 65. Whichever is earlier?
5) The honorarium and salary will be decided as per section 10 subsection 3 of the act.
6) The jurisdiction of the district council is classified into monetary jurisdiction and territorial jurisdiction. As per monetary jurisdiction the district council can bill in the cases of rupees up to 5 lakhs.

<u>The powers of district council</u>:

The power of district council is under section 4 these are as follows:

1) The district council can summon and enforce the attendance of a concern party or witness. It has power to examine the witness on oath.
2) The forum has the power to order form production any document or other material object which can be used as evidence.
3) The forum can ask the party for evidence in form of affidavits.
4) The forum can report the matter to concern, lapse for testing.
5) The forum can appoint commission for examination of witness.

<u>State commission</u>

The state forum consist three members out of age one is president. He is the sitting judge of High Court. His appointment will be made by state government. The other members are experts in the field of Law, Economics

and Administration etc. The salary and allowances will be determined by state government. Every member will hold office for 5 years or up to the age of 67 which is earlier. The state can consider the cases where value of goods and services is rupees twenty lakhs to one corer. It can entertain the appeals against the order of district forum. It has more power than district forum. The procedure of redresser is same as district forum. The powers of state forum are same as district forum.

National Commission

The national commission for consumer forum consist 5 members. The one is president and one among the four should be women member. The president of the commission will be the sitting judge of Supreme Court and other four members must be experience in the field of Economics, Law and administration. A salary and allowances shall be prescribed the central government. The member will hold the office for 5 years at the age of 70 which ever earlier. They are not eligible for reappointment. The cases will be referring which value rupees one corer and more. The national commission can entertain the appeal against the order of any state commission. They have got power of Civil Court against the order of national commission within 30 days from the order.

Following are the power of the national commission:

1. The commission can follow the instruction to submit periodical returns or report for pending cases. It can order uniform procedure for hiring matters. It can ask the parties to produce to necessary documents.
2. The national commission can review the order of state.
3. It can safe aside the order as per section 22.
4. It can transfer the cases from one district to another district or from one state forum to another.
5. It can regulate the matters for consumer right and protection.

INDIAN PARTNERSHIP ACT 1932

The partnership is relationship between persons to have agreed to share the profits of a business carried on by all any one of them acting for all. People who have entered into partnership with one another is called partner. The partnership is association of two or more persons but the maximum number of partners must be twenty and incase of banking business it must be ten. The parties competent to contract can enter into partnership firm. The partnership is carried out for purpose of business only. It may be for trade, business, occupation, profession. The object of the partnership is sharing of profits. There equally liable for losses. Mutual faith and understand is necessary for partnership fund. The minor can be admitted for purpose of benefits only.

Partnership and Company

The partnership and company are two different entities whish can be elastrate as follows:

1.Legal status:

a.1.The partnership firms are control by Indian partnership Act 1932.

b.1.The company is govern and controlled by Indian Companies Act 1956.

2.Minimum numbers

a.2.For partnership minimum two and maximum twenty members are allowed.

b.2.For company (public company) minimum seven and no maximum limit is mention.

3.Liability

a.3.Liability of the partner is unlimited.

b.3.The liability of the member is limited.

4.Registration

a.4.The registration of partnership is not compulsory. But

b.4.The registration of the company is compulsory.

5.Area of operation

a.5.The area of operation of partnership firm is limited. But

b.5.The area of operation of company is wide.

6.Professional management

a.6.The management of partnership firm is not professional. But

b.6.The management of company may be professional.

7.Ownership and firm

a.7.In partnership the ownership and firm cannot be divided in partnership firm.

b.7.The ownership and management can be divided in company.

8.Nature of capital

a.8.The capital of partnership firm is contributed by the partners generally it is as per the partnership did.

b.8.The capital of company is contributed by way of share capital.

9.Perpatual succession and commence

a.9.The partnership is not having perpetual succession and comancy. But

b.9.The company is having perpetual succession and comancy.

10.Process of winding up

a.10.The process of winding up of the firm depends on partners.

b.10.The process of winding up of the company depends on the legal process.

Partnership and Hindu and divided family

The business of Hindu and divided family is heritable asset. The entire family members are working as partner of the business. The members of join Hindu family are not partners as such but the nature of work is like partners.

Difference between Partnership and Hindu divided family

1.Mode of creation

a.1.Parnership is essentially the result of an agreement.

b.1.The joint Hindu family arises from status and not the result of an agreement.

2.Interest in business

a.2.In partnership firm the partner does not acquire the interest in partnership firm by birth.

b.2.In Hindu and divided family the members acquires the interest by birth.

3.Admission of new partner

a.3.The new partner is join in the firm by way of consent of all other partners.

b.3.In join Hindu family the male member becomes member of the business by birth.

4.Female member

a.4.Female member can be admitted in partnership firm.

b.4.In joint family business the female member does not become member by birth.

5.Liability of member

a.5.In partnership firm the liability of partner is unlimited.

b.5.In joint family business the 'Karta' personally liable for debts and other member are liable to the extent of their interest.

6.Registration

a.6.In case of partnership firm the registration is compulsory.

b.6.In joint family business does not require registration.

Test of Partnership

The teat of partnership firm depends on several factors:

1) Contractual relationship

To relationship between the partners, contractual is depends on the partnership deed the contractual relationship exist for the purpose of partnership like share of profit, salary to partner, capital contribution etc. It may show the responsibilities of maintaining accounts and day to day affairs of work.

2) Mutual trust and faith

The test of the partnership is on mutual trust and faith of all the partners. One is working for one. There must be mutual faith and trust. No partnership makes secret profit out of firm.

3) Principle and Agent relationship

The relationships among the partners are like the agent is working for principle. Partners are agent as well as principle.

4) Mere sharing of profit

It is not partnership firm. Only sharing of the profit is not the weird test of partnership business. There must be co-ownership and mutual faith and trust.

Types of partners:

1) Active partner

The active partner is also known as Actual partner. He takes active part in the day to day management of the firm. He is fulflashed of the firm. The share of the profit of active partner depends on the agreement. He is agent of his business as well as agent of all partners. A public notice is requiring on the retirement of active person.

2) Nominal partner

He make allows his name to use in the firm for purpose of business. Generally such partners are not contributing capital in the firm. Due to their role they are known as nominal partner.

3) Partner in profit only

In certain cases the partner admitted in the firm for profit only, they are not liable for debts and losses. Minors are the best example of partners in profit. This partner may not take active part in business.

4) Partner by estopple or holding out partner

When a person represents that he is a partner and working in capacity of the partner but actually he is not partner, it known as holding out partner. If any transaction is made through such partner the firm is not liable for the loss if any.

Registration

The registration of the firm is not compulsory. But if the firm is registered it provides certain advantages to the company. The registration of the firm protects the partnership firm dealing with outside people. As per section 57

on the partners will make the application with registrar of firms by providing certain details. After payment of prescribe fees if everything is within law then the register will issue the certificate of registration.

Following are the clauses of registration:

- Name of the firm
- Address
- Name of the partners
- Contribution of the partners
- Nature of partnership
- Ratio of capital
- Ratio in which profit and loss will be share
- Any interest on capital or drawings
- Rules regarding day to day management
- Rules for admission and retirement of partners

Effects of non-registration of the firm:

1) A partner of non register firm cannot file sue against the firm.
2) No sue can be file on behalf of or register firm against third party.
3) The non register firm or the partner of unregister firm cannot file sue against third party claim of any set of.

Rights of the partners

1) Right to take part in business activity

   Every partner has got right to take part in business activity. But it is subject to the agreement between the partners. But as per the general principle of partnership all partners can take part in business.
2) Right to consulted

Every partner has right to be consulted in all matters affecting the business on partnership firm. He can express his opinion before decision.

3) Right to access books of accounts

   Every partner has right to access the books of accounts of the firm. They can demand the copy of final accounts.

4) Right for share in capital

   The partner has got right to share in profits a per profit sharing ratio. But the right to share profit depends on agreement between partners.

5) Right for interest in capital

   The partner can demand interest on capital as peer the rate mention in the partnership deed. This is as per provision 13.

6) Right to retire

   As per section 32 the partner has got right for retirement. It is as per the consent of other partner. If it is expressly provide in the agreement then partner will retire after agreement.

7) Prevention of new partner

   A partner has got right to prevent a entry for new partner in the firm, because the entry of new partner depends on the consent of all partners.

8) Agent

   Every partner has got right to work as an agent of the firm. It is as per section 19.

<u>Duties of partners</u>

1) To carry out of the business for common advantage

   It is the duty of the partner to carry out the business for common benefit for all the partners. All the transactions entered into must provide benefit to all partners.

2) Duty for trust and faith

It is the duty of the partner to observe the faith and keep trust on all partners. A partner should not make secret profit out of partnership firm.

3) To share losses

   As per section 13 it is the duty of the partner to share the losses as per deed.

4) To account for personal benefit

   If a personal benefit is obtain by the partner due to transaction of the firm then it is a duty to account it is the firm.

5) To indemnify fraud

   As per section 10, if a partner could some loss to the partnership firm or entered into fraud then he should indemnify it.

Admission, Retirement, Expulsion of partners and their Liabilities:

1) Admission

   New partner is admitted in the firm as per the consent of other partners. Section 31 of the act provides the entry of new partner in the firm. Any person including heri can be admitted in the firm with the consent of all other partners. The incoming partner will bring the capital as per the decision of partnership firm. In the event of reconstitution of the firm he will be held liable for the past debt before his admission.

2) Outgoing partners

   When any of the partners ceases to be partner in the firm because of the following reasons he's called outgoing partner:

   i. It may be by retirement of partner
   ii. Expulsion of partner
   iii. Insolvency of partner
   iv. Death of partner
   v. Transfer of interest of share of partner

3) The retirement of the partner can take place by the consent of all other partners. If the partnership expressly mentions the date of retirement then the partner will retire automatically.
4) When the partnership at will then partner can provide notice of retirement. A retire partner is liable to the debts of the firm and for all acts of the firm up to the debts of the retirement. The retire partner is discharge from liability after his retirement.
5) Expulsion

   The partner may be expulsed from the firm if the majority of the firm takes the decisions. It is mention under section 33 of the act. A notice of intention of the expulsion must be given to such partners. The expulsed partner is liable to pay a debt up to the debt of expulsion. The partner who is illegal expulsed may claim the amount from the firm.
6) Insolvency of the firm

   Where the partner of the partner declared as an insolvent then he will not remain as a partner in the firm. The firm may dissolve or not. In such case he is insolvent then he is not liable to pay debt.
7) Death of partner

   If nothing is not provided in the agreement then the firm dissolves automatically by the death of partner. If the ongoing partners decides to continue then not liable to pay the debt of the firm. The estate of deceased partner cannot be use for payment of debts.