



INSTITUTE OF AERONAUTICAL ENGINEERING

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PPTS

ON

BUSINESS LAW AND ETHICS

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UNIT - I

LAW OF CONTRACT - 1872

INTRODUCTION TO LAW

Law is a system of rules and guidelines, usually enforced through a set of institutions. Contract law regulates everything from buying a bus ticket to trading on derivatives markets. Property law defines rights and obligations related to the transfer and title of personal and real property. If the harm is criminalised in legislation or case law, criminal law offers means by which the state can prosecute the perpetrator.

Definitions.

•**Proposal** - When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

•**Promise** - When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

The person making the proposal is called the "promiser and the person accepting the proposal is called the promisee":

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

Agreement - Every promise and every set of promises, forming the consideration for each other, is an agreement.

- Contract** - An agreement enforceable by law is a contract.
- An agreement not enforceable by law is said to be void.

Contracts

Contracts –

- Contract** - An agreement enforceable by law is a contract.
- 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.

What is a contract?

Examples

- I promise to bring chocolates to the whole class. Is there a contract?
- I promise to give you 100 Rs. if ride your bike to Tiananmen Square and back to ICB in less than 2 hours. Is there a contract?
- I give you 2 Rs. for your Coca-Cola. Is there a contract?
- I promise to give you a new bicycle if you agree not to eat Chinese food for one year. Is there a contract?

Definition of a contract

- **A legally binding agreement**
- that means there must be some kind of agreement between two parties
- However, not all agreements are contracts because not all agreements are legally enforceable
- **legally enforceable** means that a court will say that an agreement is a contract

Definition of a contract (cont.)

To decide if an agreement is legally enforceable as a contract, a court will apply the rules and principles of the law of contract

Therefore, knowing a little about these rules can help businesspeople to create valid contracts

Essential elements of a valid contract: (Sec. 10)

- Agreement - Offer & acceptance
- Legal consequences - rights & obligations
- Capacity of the contracting parties
- Consideration
- Legal object
- Free consent
- Certainty
- Possibility of performance
- Writing & registration

Not expressly declared to be void

Offer: Sec.2(a)

An Offer Can be Defined as follows:

An expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed.

Essentials of offer

- It must be an expression of the willingness to do or abstain from doing something.
 - “Such expression must be to another person.
- Such expression must be made with the intention to obtain the assent of the other person to such an act or abstinence.

Communication of Offer.

- The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.
- E.g.** - A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

Acceptance: Sec 2(b)

Acceptance is the second „half“ of a contract. If Bill offers Ben a bag of sweets for 20p, and Ben says „I accept“, clearly a contract has been made. The law explains that there must be evidence from both sides of genuine agreement between parties – the old idea of *consensus ad idem*, or meeting of minds.

Acceptance can be defined as:

Agreement to all terms of an offer by words or conduct.

Essentials of Acceptance

- Acceptance must be given only by the person to whom the offer is made.
- Must be absolute & unqualified.
- Must be in prescribed mode or reasonable manner.
- Must be communicated.
- Within reasonable time.
- Acceptance must succeed an offer.
- Rejected offers can be accepted only if renewed.

Communication of an acceptance

The communication of an acceptance is complete, as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge, of the proposer.

E.g. : B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete, as against A when the letter is posted as against B, when the letter is received by A.

Void Contracts

- In fact, these are not contracts at all
- They have no legal effect
- As we will see in later classes, there are a number of things which can make a contract void – e.g. mistake, illegality
- The important thing to remember is that you cannot enforce a void contract

Void Contracts - Example



Daniel gives his students so much homework that they decide to kill him
They pay a Russian hit man 5000 RMB
to kill Daniel

Void Contracts – Example (cont.)

- However, the Russian simply spends all the money in bars in Sanlitun and then goes home
- He does not kill Daniel
- J
- The students cannot claim their money back because it is illegal to hire a hit man to kill someone

SALE OF GOODS ACT 1930

INTRODUCTION

The sale of goods act 1930 deals with the law relating to sale of goods in India .The term GOODS sec-2(7)means any kind of movable property other than money &Actionable Claims.

The Sale of goods act 1930 is based on English Sale of GOODS Act1893. The presently Act containing 66 section &extend to whole of India except the state of Jammu &Kashmir.

DEFINITION

sec-4(1) defines "A contract of sale of goods is a contract whereby the seller transfers or agree to transfer the property in goods to a buyer for a price"
it consists of following:

Sale

Agreement to sell-sec 4(3)

Essentials of a contract of sale of goods

- ❑ **Transfer of property.** “Property” here means “Ownership”.
- ✓ A mere transfer of possession of goods cannot be termed as sale

Essentials of a contract of sale of goods

- ❑ **Two parties.** There must be *two distinct* parties to a contract of sale, viz., a buyer and a seller.

- ✓ A person cannot buy his own goods.
- ✓ There may be a contract of sale between one “Part-owner” and another.

Essentials of a contract of sale of goods

- ❑ **Goods.** The subject-matter of contract of sale must be “goods”.

- ✓ “Goods” means every kind of movable property other than *actionable claims* and money; and includes stock and shares.

- ✓ “Money” means current money.

Essentials of a contract of sale of goods

- ✓ ‘Actionable claims’ means claims which can be enforced by a legal action or suit.
e.g., account book or *Bahi*, bill of exchange or a promissory note.
- ✓ These cannot be sold but could assigned as per the “Transfer of property Act, 1982”.

Essentials of a contract of sale of goods

- ❑ **Price.** The consideration for a contract of sale must be money consideration called the “price”.
- ✓ If goods sold or exchanged for the other goods will governed by Transfer of Property Act *not by* Sale of Goods Act.

Essentials of a contract of sale of goods

❑ **Include both Sale & an agreement to sell.**

- ✓ Sale (immediate transfer of ownership).
- ✓ agreement to sell (parties are agree but transfer of goods will occur in future).

SALE & AGREEMENT TO SELL-DISTINCTION

1-Nature of contract

sale-a sale is an executed contract

Agreement to sell-is an executory contract.

2-Transfer of Property.

Sale-the property in goods passes from seller to buyer immediately.

Agreement to sell-property in goods passes from seller to buyer at some future date or subject to fulfillment of certain condition.

3)Risk of loss-

in a sale if the goods are destroyed, the risk of loss falls on the buyer even if the goods were in the possession of seller.

In agreement to sell if goods are destroyed the risk of loss falls on a seller even if the goods were in the possession of buyer.

4)Consequences of the breach

On breach of agreement to sell by the seller ,buyer has only personal remedy against the seller .but if after a sale the seller breaks the contract the buyer may sue for delivery of goods or for damages.

In an agreement to sell ,if the buyer fails to accept the goods the seller may sue for the damages only and not for the price. On a sale ,if the buyer does not pay the price ,the seller may sue for the price.

5)Insolvency of the buyer

in a sale if the buyer is adjudged an insolvent ,the seller in the absence of a lien over the goods is bound to deliver the goods to the official receiver or assignee .The seller will ,however ,be entitled to a rateable dividned for the price of goods.

In the agreement to sell, when the buyer becomes insolvent before he pays for the goods ,the seller may not part with the goods.

6) Insolvency of the seller

In the sale ,if the seller becomes insolvent, the buyer is entitled to recover the goods from the official receiver or assignee.

In an agreement to sell , if the buyer has already paid the price and the seller becomes insolvent ,buyer can claim only a rateble dividend and not the goods.

7) General and particular property

an agreement to sell creates a right in personam.

a sale creates a right in rem.

8) Right of re-sales

in a sale ,the seller cannot resell the goods even if he is in possession of goods after sale.

In an agreement to sell ,the seller may sell the goods since ownership is with the seller.

CONDITIONS AND WARRANTIES

DEFINITION

- CONDITION

A 'condition' is a stipulation *essential* to the main purpose of the contract, the breach of which gives the aggrieved party a right to repudiate the contract itself [Sec 12(2)]. In addition, he may maintain an action for damages for loss suffered, if any, on the footing that the whole contract is broken and the seller is guilty of non delivery.

WARRANTY

A 'warranty' is a stipulation *collateral* to the main purpose of the contract, the breach of which gives the aggrieved party a right to sue for damages only, and not to avoid the contract itself.[Sec 12(3)]

MEANING

Condition forms the very basis of a contract of sale, the breach of which causes irreparable damage to the aggrieved party so as to entitle him even to repudiate the contract whereas

Warranty is only of secondary importance, the breach of which causes only such damages as can be compensated for by damages.

Stipulation- a condition or a warranty ?

- “Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition though called a warranty in the contract.” [Sec12(4)]
- The court look to the intention of the parties by referring to the terms of the contract , its construction and the surrounding circumstances to judge whether a stipulation is a condition or a warranty.

Condition and Warranty Distinguished

- As to value – A condition is a stipulation which is essential to the main purpose of the contract, whereas a warranty is a stipulation which is collateral to the main purpose of the contract.[Sec. 12(2)(3)]
- As to the breach – The breach of a condition gives the aggrieved party the right to repudiate the contract and also to claim damages , whereas breach of warranty gives the aggrieved party a right to claim damages only.
- As to treatment – A breach of condition may be treated as a breach of warranty but a breach of warranty cannot be treated as a breach of condition.

When Breach of Condition is to be treated as Breach of Warranty

- Voluntary waiver by buyer. Although on a breach of condition by the seller, the buyer has a right to treat the contract as repudiated and reject the goods, but he is not bound to do so. He may instead elect to waive the condition that is to treat the breach of condition as breach of warranty and accept the goods and sue the seller for damages for breach of warranty.
- Acceptance of goods by buyer. Where the buyer has accepted the goods and subsequently he comes to know of the breach of condition, he cannot reject them, but can only maintain an action for damages. This case does not depend upon the will of the buyer but the law compulsorily treats a breach of condition as a breach of warranty.

Acceptance of only a part of the goods

- If the buyer has accepted only part of the goods and contract is *indivisible*, he will have to treat the breach of condition as the breach of warranty and accept the remaining part of also. But in case of divisible contract, he can repudiate as regards remaining goods, if he has accepted only part thereof. Indivisible contracts are those where price for a lot, consisting goods of different qualities, as such is fixed and not fixed per unit or per bag or per ton, etc.

Express & Implied Conditions & Warranties

- Condition & warranties may be either *express* or *implied*.
- They are said to be *express* when at the will of the parties they are inserted in the contract.
- They are said to be *implied* when law presumes their existence in the contract even without their actually having been put in the contract.
- **Sec. 62** recognises 2 principles:
 - (i) what is expressed makes what is implied to cease &
 - (ii) custom & agreement overrule law.

Implied Conditions

- Condition as to title [Sec. 14 (a)].
- Condition in a sale by description [Sec. 15].
- Condition in a sale by sample [Sec.17].
- Condition in a sale by sample as well as by description [Sec.15].
- Condition as to fitness or quality [Sec.16(1)].
- Condition as to merchantability [Sec.16(2)].
- Condition as to wholesomeness.

Implied Warranties

- Warranty of quiet possession [Sec.14(b)].
- Warranty of freedom from encumbrances [Sec.14(c)].
- Warranty of disclosing the dangerous nature of goods to the ignorant buyer.

PERFORMANCE OF CONTRACT **OF SALE**

“It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale”.

Apart from the transfer of property in goods from the seller to the buyer, a contract of sale of goods envisages two other important events, the delivery of goods to buyer and the payment of price to the seller.

DELIVERY

- Sec2(2) defines delivery of goods as “voluntary transfer of possession from one person to another.” any forced transfer of possession will not amount to delivery of goods.

- **MODES OF DELIVERY:-**

Delivery of goods can be allowed to take place by doing anything which the parties agree to be taken as delivery or which has the effect of putting the goods in the possession of the buyer or his agent. It can be:-

- 1) Actual
- 2) Symbolic
- 3) constructive

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- **Buyer should apply for delivery:-** Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.
- **Place of delivery:-** According to sec 36(1), unless otherwise stated in the contract, the place of delivery shall be determined.
- **Time of delivery:-** According to section 36(2), if the seller is bound to send the goods to the buyer, but no time fixed, the seller is bound to send them within a reasonable time.

- **Delivery by 'attornment'**:- According to sec 36(3), where the goods at the time of sale are in the possession of a third person, there is no delivery by the seller to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf and requires the consent of all three parties.
- **Expenses of delivery**:- According to sec36(2), "Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by seller".

- **Delivery of wrong quantity(sec.37,considered three possibilities)they are;**

- a) Excess delivery
- b) Short delivery
- c) Mixed goods

- **Installment deliveries:-** Should the entire goods be delivered to buyer as one lot or should they be delivered in installments .

Sec 38(1) states that “unless otherwise agreed the buyer of goods is not bound to accept delivery thereof by installments.”

UNPAID SELLER AND HIS RIGHTS

- “Unpaid Seller” defined – The seller of goods is deemed to be an “unpaid seller”
 - (a) when the whole of the price has not been paid or tendered;
 - (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

A seller who has only received a part of the price is also a unpaid seller. Whereas the seller who has received a negotiable instrument, like a bill of exchange, promissory note or cheque, for the price, he is not an unpaid seller. But if before he has delivered the goods, the negotiable instrument is dishonoured, then he becomes an unpaid seller and may exercise his rights.

RIGHTS OF UNPAID SELLER

➤ **Rights of unpaid seller against the goods.**

- 1) Right of lien
- 2) Right of stoppage of goods in transit
- 3) Right of resale

➤ **Rights of unpaid seller against the buyer personally**

- 1) Suit for price
- 2) Suit for damages for non acceptance
- 3) Suit for special damages and interest

Right of lien

'Lien' is the right to retain possession of goods and refuse to deliver them to the buyer until the price due in respect of them is paid or tendered.

An unpaid seller in possession of goods sold is entitled to exercise his lien on the goods in the following cases:

- (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 has become insolvent, even though the period of credit may not have yet expired.**

COMPANIES ACT

Introduction

WHAT IS COMPANY:

- A company is an artificial person created by law.
- A company means a group of persons associated With ^{theego} attainment of a common end, social or economic.
- Section 3(1)(i) of the Companies Act, 1956 defines a company as: “a company formed and registered under this Act or an existing Company”.
- Existing Company” means a company formed registered under any of the earlier Company Laws.

Characteristics of a company

- Separate legal entity
- Limited liability
- Perpetual succession
- Common seal
- Transferability of shares
- Separate property

SEPARATE LEGAL ENTITY-

- A company is in law regarded as an entity from its members. It has an independent corporate existence.
- Any of its member can enter into contracts with it in the same manner as any other individual can and he cannot be held liable for the acts of the company even if he holds virtually the entire share capital.
- The company's money and property belongs to it and not to the shareholders (although the shareholders own the company)

LIMITED LIABILITY-

A company may be a company limited by shares or a company limited by guarantee. In a company limited by shares, the liability of members is limited to the unpaid value of the shares.

PERPETUAL SUCCESSION-

Being an artificial person a company never dies, nor does its life depend on the life of its members. Members may come and go but the company can go on forever. It continues to exist even if all its members are dead. The existence of company can be terminated only by law. It means that a company's existence persists irrespective of the change in the composition of its membership.

COMMON SEAL

- Act through its agents and all such contracts entered into by its agents must be under a seal of the company. The common seal acts as the official signature of the company.

TRANSFERABILITY OF SHARES

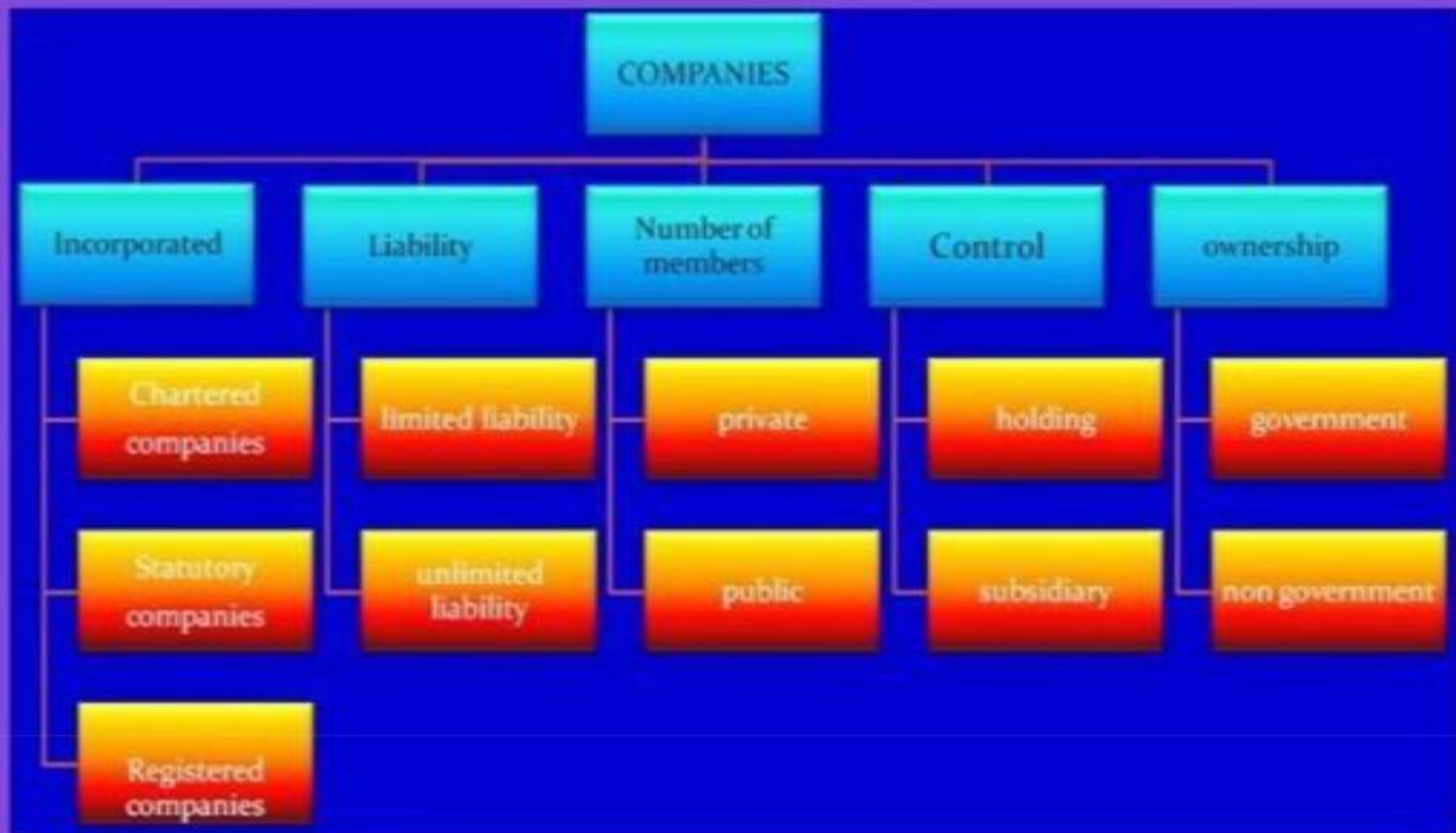
These shares are, subject to certain conditions, freely transferable, so that no shareholder is permanently wedded to the company. When the joint stock companies were established the great object was that the shares should be capable of being easily transferred.

SEPARATE PROPERTY:

As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of its property. The company is the real person in which all its property is vested and by which it is controlled, managed and disposed of.

Types of companies

(Registered under company act 1956)



Statutory companies-

These are the companies which are created by a special Act of the legislature e.g. RBI, SBI, LIC, etc. These are mostly concerned with public utilities as railways, tramways, gas and electricity companies and enterprises of national level importance.

Registered companies-

These are the companies which are formed and registered under the Companies Act, 1956 .

ON THE BASIS OF LIABILITY

1) Companies with limited liability:

LIMITED BY SHARES:

Where the liability of the members of a company is limited to the amount unpaid on the shares, it is known as company limited by shares. If the shares are fully paid, the liability of the members holding such shares is nil. It may be a public or a private company.

LIMITED BY GUARANTEE:

Where the liability of the members of a company is limited to a fixed amount which the members undertake to contribute to the assets of a company in the event of its being wound up, the company is called a company limited by guarantee.

These companies are not formed for the purpose of profit but for the promotion of art, science, charity, sports or for some similar purposes. They may or may not have a share capital.

2) Companies with unlimited liability

Sec 12 specifically provides that any 7 or more persons may form an incorporated company with or without limited liability. In such case every member is liable for the debts of the company. An unlimited company may or may not have a share capital. If it has a share capital, it may be a public company or a private company. It must have its own Articles of Association.

ON THE BASIS OF NUMBER OF MEMBERS

PRIVATE COMPANY-

A company which has a minimum paid-up capital of Rs 1,00,000 or such higher paid up capital as may be prescribed, and by its articles

- a. Restricts the right 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 in, or debentures of, the company,
- d. Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

PUBLIC COMPANY:

A public company means a company which-

(a) has a minimum paid-up capital of Rs. 5 lakh or such higher paid-up capital, as may be prescribed;

(b) is a private company which is a subsidiary of a company which is not a private company;

Every public company, existing on the commencement of the Companies Act, 2000, with a paid-up capital of less than Rs. 5 lakh, within a period of two years from such commencement, enhance its paid-up capital to Rs. 5 lakh.

ON THE BASIS OF CONTROL

Holding companies-

A company is known as the holding company of another company if it has the control over that other company. A company is deemed to be the holding company of another if, but only if, that other is its subsidiary.

Subsidiary company-

A company is known as a subsidiary of another company when control is exercised by the holding company over the former called a subsidiary company.

ON THE BASIS OF OWNERSHIP

Government company -

A government company means any company in which not less than 51% of the paid-up share capital is held by-

- The central government, or
- Any state government, or governments, or
- Partly by central government and partly by one or
- more state government.

Foreign company

It means any company incorporated outside India which has an established place of business in India.

Where a minimum of 50% of the paid up share capital of a foreign company is held by one or more citizens of India or/and by one or more bodies corporate incorporated in India, whether singly or jointly, such company shall comply with such provisions as may be prescribed as if it were an Indian company.

UNIT III

NEGOTIABLE INSTRUMENT

Introduction

- The law relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881 which applies and extends to the whole of country.

Negotiable Instruments

■ Definition:

- ❖ The word *negotiable* means ‘transferable by delivery,’
- ❖ the word *instrument* means ‘a written document by which a right is created in favor of some person.’

- ❖ Thus, the term “*negotiable instrument*” literally means ‘a written document which creates a right in favor of somebody and is freely transferable by delivery.’

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

Types of Negotiable Instruments

Negotiable instruments are of two types which are as follows:

- **Negotiable Instruments recognized by status:**
e.g. Bills of exchange, cheque and promissory notes.
- **Negotiable instruments recognized by usage or customs of trade:**
e.g. Bank notes, exchequer bills, share warrants, bearer debentures, dividend warrants, share certificate

Promissory Note

- **Definition:**

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

Parties to a Promissory Note

There are primarily two parties involved in a promissory note. They are:

- (i) **The Maker or Drawer:** The person who makes the note and promises to pay the amount stated therein. In the above specimen, Sanjeev is the maker or drawer.
- (ii) **The Payee** – the person to whom the amount is payable. In the above specimen it is Ramesh.

In course of transfer of a promissory note by payee and others, the parties involved may be –

- (a) **The Endorser** – the person who endorses the note in favour of another person. In the above specimen if Ramesh endorses it in favour of aslam, and aslam also endorses it in favour of tariq. then Ramesh and aslam both are endorsers.
- (b) **The Endorsee** – the person in whose favour the note is negotiated by endorsement. In the above, it is aslam and then tariq.

Essentials of Promissory Note

1. It must be in writing:

- An oral promise to pay does not become a promissory note
- The writing may be on any paper or book
- **Illustrations:** A signs the instruments in the following terms:
 - “I promise to pay B or order Rs. 500”
 - “I acknowledge myself to be indebted to B in Rs. 1, 000 to be paid on demand, for value received”

Both the above instruments are valid promissory notes.

Essentials of Promissory Note

2. It must contain a promise or undertaking to pay:

- The undertaking to pay may be gathered either from express words or by necessary implication
- although it is valid as an agreement and may be sued upon as such
- **Illustrations:** A signs the instruments in the following terms:
 - “Mr. B I owe you Rs. 1,000”
 - “I am liable to pay to B Rs. 500”

The above instruments are not promissory notes as there is no undertaking or promise to pay. There is only an acknowledgement of indebtedness.

- Where A signs the instrument in the following terms:
 - “I acknowledge myself to be indebted to B in Rs. 1, 000, to be paid on demand, for value received,” there is a valid promissory note

Essentials of Promissory Note

3. The promise to pay must be unconditional:

- The promise to pay must not depend upon the happening of some uncertain event, i.e., a contingency or the fulfillment of a condition
- **Illustrations:** A signs the instruments in the following terms:
 - “I promise to pay B Rs. 500 seven days after my marriage with C”
 - “I promise to pay B Rs. 500 as soon as I can”
- The above instruments are not valid promissory notes as the payment is made depending upon the happening of an uncertain event which may never happen and as a result the sum may never become payable

4. It must be signed by the maker:

- It is imperative that the promissory note should be duly authenticated by the ‘signature’ of the maker
- ‘Signature’ means the writing or otherwise affixing a person’s name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document

Essentials of Promissory Note

5. The maker must be a certain person:

- The instrument must itself indicate with certainty who is the person or are the persons engaging himself or themselves to pay

6. The payee must be certain:

- Like the maker the payee of a pro-note must also be certain on the face of the instrument
- A note in favour of fictitious person is illegal and void

Essentials of Promissory Note

7. The sum payable must be certain:

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

8. The amount payable must be in legal tender money of the country:

- A document containing a promise to pay a certain amount of foreign money or to deliver a certain quantity of goods is not a pronote

Bill of Exchange

■ Definition:

Section 5 of the Negotiable Instruments Act defines a Bill of Exchange as follows:

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

Illustration:

Mr. X purchases goods from Mr. Y for Rs. 1000/-

Mr. Y buys goods from Mr. S for Rs. 1000/-

Then Mr. Y may order Mr. X to pay Rs. 1000/- Mr. S which will be nothing but a bill of exchange.

Parties to a Bill of Exchange

There are three parties involved in a bill of exchange

- (i) **The Drawer** – The person who makes the order for making payment. In the above specimen, Rajiv is the drawer.
- (ii) **The Drawee** – The person to whom the order to pay is made. He is generally a debtor of the drawer. It is Sameer in this case.
- (iii) **The Payee** – The person to whom the payment is to be made. In this case it is Tarun.

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

In a bill where a time period is mentioned, just like the above specimen, is called a ***Time Bill.***

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

Essentials of a Bill of Exchange

1. It must be in writing
2. It must contain an order to pay. A mere request to pay on account, will not amount to an order
3. The order to pay must be unconditional
4. It must be signed by the drawer
5. The drawer, drawee and payee must be certain. A bill cannot be drawn on two or more drawees but may be made payable in the alternative to one of two or more payees
6. The sum payable must be certain
7. The bill must contain an order to pay money only
8. It must comply with the formalities as regards date, consideration, stamps, etc

Cheque

A cheque is the means by which a person who has fund in the hand of a bank withdraws the same or some part of it.

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

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

- a) **Open cheque:** A cheque is called 'Open' when it is possible to get cash over the counter at the bank. The holder of an open cheque can do the following:
- i. Receive its payment over the counter at the bank,
 - ii. Deposit the cheque in his own account
 - iii. Pass it to some one else by signing on the back of a cheque.
- b) **Crossed cheque:** Since open cheque is subject to risk of theft, it is dangerous to issue such cheques. This risk can be avoided by issuing another types of cheque called 'Crossed cheque'. The payment of such cheque is not made over the counter at the bank. It is only credited to the bank account of the payee. A cheque can be crossed by drawing two transverse parallel lines across the cheque, with or without the writing 'Account payee' or 'Not Negotiable'.

- c) **Bearer cheque:** A cheque which is payable to any person who presents it for payment at the bank counter is called 'Bearer cheque'. A bearer cheque can be transferred by mere delivery and requires no endorsement.
- d) **Order cheque:** An order cheque is one which is payable to a particular person. In such a cheque the word 'bearer' may be cut out or cancelled and the word 'order' may be written. The payee can transfer an order cheque to someone else by signing his or her name on the back of it.

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dishonor

- ❑ If , however the drawee decline to accept,the bill will be treated as dishonored by non-acceptance
- ❑ A bill will be considered to have been dishonored by non-payment if its payment is not made on due date after acceptance
- ❑ In these cases ,the legal reqiurment is that the unaccepted or unpaid bill should be handed to a notary public for noting and protesting,wich will be the legal proof

dishonor

- Of the drawee having refused to accept or pay the bill
- Both in case of dishonor by non-acceptance and dishonor by non-payment, the holder of the dishonored instrument must give notice of dishonor to all parties whom the holder seeks to make severally liable thereon.
- If the holder seeks to make several parties jointly liable, notice to some of them will

dishonor

Be sufficient. It will also suffice if the notice is given by some party who remains liable on the instrument and not by the holder.

NOTARY PUBLIC

- It include a person appointed by the central government to perform the functions of a notary public under negotiable instruments act, 1881 and a notary appointed under notaries ordinance, 1961

NOTING

- SECTION 99 of the negotiable instrument act 1881 provides "when a promissory note or a bill of exchange has been dishonored by non-acceptance or non-payment, the holder may cause such dishonor to be noted by a notary public upon the instrument or upon a paper attached thereto or partly upon each.

- Such not must be made within a reasonable time after dishonor and must specify the date of dishonor, the reason, if any assigned for such dishonor or if the instrument has not been expressly dishonored, the reason why the holder treat it as dishonored and the notary's charges

- When the acceptor of a bill of exchange has become insolvent, or his credit has been publically impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security for the acceptor and on its being refused may, with in a reasonable time, cause such facts to be noted and certified as aforesaid. such certificates are called a protest for better security.

HOLDER IN DUE COURSE;

Holder In Due Course: It means any person who, for consideration became its possessor before the amount mentioned in it became payable. In the case of an instrument payable to order, 'holder in due course' means any person who became the payee or endorsee of the instrument before the amount mentioned in it became payable. In both the cases, he must receive the instrument without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. In other words, holder in due course means a holder who takes the instrument bona fide for value before it is overdue, and without any notice of defects in the title of the person, who transferred it to him. Thus a person who claims to be 'holder in due course' is required to prove that:

1. on paying a valuable consideration, he became either the possessor of the instrument if payable to order;
2. he had come into the possession of the instrument before the amount due thereunder became actually payable; and
3. he had come to possess the instrument without having sufficient cause to believe that any defect existed in the title of transferor's from whom derived his title.

HOLDER IN DUE COURSE

3. A holder in due course as against a holder, must have become the payee of the instrument in good faith i.e., without having sufficient cause to believe that any defect existed in-the transferor's title.

UNIT IV

BUSINESS ETHICS

Business ethics?

Business ethics (also known as **corporate ethics**) is a form of [applied ethics](#) or [professional ethics](#), that examines ethical principles and moral or ethical problems that can arise in a business environment. It applies to all aspects of business conduct and is relevant to the conduct of individuals and entire organizations. These ethics originate from individuals, organizational statements or from the legal system. These norms, values, ethical, and unethical practices are what is used to guide business. They help those businesses maintain a better connection with their stakeholders.

Business ethics refers to contemporary organizational standards, principles, sets of values and norms that govern the actions and behavior of an individual in the business organization. Business ethics have two dimensions, [normative business ethics](#) or [descriptive business ethics](#). As a corporate practice and a career specialization, the field is primarily normative. Academics attempting to understand business behavior employ descriptive methods. The range and quantity of business ethical issues reflects the interaction of profit-maximizing behavior with non-economic concerns.

Interest in business ethics accelerated dramatically during the 1980s and 1990s, both within major corporations and within academia. For example, most major corporations today promote their commitment to non-economic values under headings such as ethics codes and social responsibility charters.

Definition

Adam Smith said, "People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices." Governments use laws and regulations to point business behavior in what they perceive to be beneficial directions. Ethics implicitly regulates areas and details of behavior that lie beyond governmental control. The emergence of large corporations with limited relationships and sensitivity to the communities in which they operate accelerated the development of formal ethics regimes.



Business Ethics and the Changing Environment

- **Businesses & governments operate in changing *technological, legal, economic, social & political environments* with competing stakeholders & power claims.**
- **Stakeholders are *individuals, companies, groups & nations* that cause and respond to external issues, opportunities, and threats.**
- **The rate of change and uncertainty in which stakeholders & society must make & manage business & moral decisions have accelerated due to the impact of:**
 - **Internet and information technologies**
 - **Globalization**
 - **Deregulation**
 - **Mergers**
 - **Wars**

What is Business Ethics? Why Does It Matter?

- **Ethical solutions to business and organizational problems may have more than one right alternative and sometimes, no right solution may seem available.**
- **We can learn from *case studies, role playing, and discussions* about how our actions affect others in different situations.**
- **Laura Nash has defined business ethics as “*the study of how personal moral norms apply to the activities and goals of commercial enterprise,*” as dealing with three basic areas of managerial decision making:**
 - **Choices about what the laws should be and whether to follow them**
 - **Choices about economic and social issues outside the domain of law**
 - **Choices about the priority of self-interest over the company’s interests**

Why Does Ethics Matter In Business?

•“Doing the right thing” matters to employers, employees, stakeholders, and the public.

- For companies, it means saving billions of dollars each year in lawsuits, settlements, and theft

- Tobacco industry

- Dow Corning

- Costs to businesses include:

- Deterioration of relationships

- Damage to reputation

- Declining employee productivity, creativity, and loyalty

- Ineffective information flow throughout the organization

Absenteeism



Levels of Business Ethics

- Because ethical problems are not only an individual or personal matter, it is helpful to see the different levels at which issues originate and how they move to other levels.
- Five levels are:
 - Individual
 - Organizational
 - Association
 - Societal
 - International
- Examination of the *RU 486* story



Five Myths About Business Ethics

- A *myth* is “a belief given uncritical acceptance by the members of a group, especially in support of existing or traditional practices and institutions.”
 - **Myth 1: Ethics is a personal, individual affair, not a public or debatable matter**
 - **Myth 2: Business and ethics do not mix**
 - **Myth 3: Ethics in business is relative**
 - **Myth 4: Good business means good ethics**
 - **Myth 5: Information and computing are amoral**



Can Business Ethics Be Taught And Trained?

- **Ethic courses should not:**
 - **Advocate a set of rules from a single perspective**
 - **Not offer only one best solution to specific ethical problems**
 - **Not promise superior or absolute ways of thinking and behaving in situations**



Can Business Ethics Be Taught And Trained?

- **Ethic courses and training can do the following:**
 - **Provide people with rationales, ideas, and vocabulary**
 - **Help people make sense of their environments**
 - **Provide intellectual weapons**
 - **Enable employees to act as alarm systems for company practices**
 - **Enhance conscientiousness and sensitivity**
 - **Enhance moral reflectiveness and strengthen moral courage**
 - **Increase people's ability to become morally autonomous ethical dissenters**
 - **Improve the firm's moral climate**



Can Business Ethics Be Taught And Trained?

- **Other scholars argue that ethical training can add value to the moral environment of a firm and to relationships in the workplace by:**
 - **Finding a match between employer's and employee's values**
 - **Managing the push-back point**
 - **Handling an unethical directive**
 - **Coping with a performance system that encourages unethical means**



Stages Of Moral Development

- **Kohlberg's 3 levels of moral development:**
 - **Level 1: Preconventional level (self-orientation)**
 - **Stage 1: Punishment**
 - **Stage 2: Reward seeking**
 - **Level 2: Conventional level (others orientation)**
 - **Stage 3: Good person**
 - **Stage 4: Law and order**
 - **Level 3: Postconventional level (universal, humankind orientation)**
 - **Stage 5: Social contact**
 - **Stage 6: Universal ethical principles**

CYBERSPACE

- ▶ **Cyberspace** is the electronic medium of computer networks, in which online communication takes place.
- ▶ It is readily identified with the interconnected information technology required to achieve the wide range of system capabilities associated with the transport of communication and control products and services.
- ▶ The term “cyberspace” was first used by the cyberpunk science fiction author William Gibson.

Need for Cyber Law

- ▶ **Cyber space is an intangible and provides an extreme mobility**
 - events taking place on the internet are not happening in the locations where participants or servers are physically located, but "in cyberspace".
- ▶ **Cyber space offers great economic efficiency.**
 - Billions of dollars worth of software can be traded over the Internet without the need for any government licenses, shipping and handling charges and without paying any customs duty.