

University of Global Village (UGV), Barishal
Department of Business Administration
Advance Business Law

Course Code : 0421-511	Credits : 03
Exam Hours : 03	CIE Marks : 90 SEE Marks : 60

❖ **Course Learning Outcomes (CLOs):** Upon completing this course, students should be able to.

CLO1	Describe and Demonstrate understanding of fundamental legal concepts, principles, and doctrines relevant to business operations, such as contract law, intellectual property law.
CLO2	Illustrate Analyze Apply and Evaluate legal principles and rules to analyze and resolve hypothetical and real-world legal issues and scenarios encountered in business contexts.
CLO3	List Summarize and Evaluate the enforceability of contracts and remedies available for breach of contract under common law and statutory provisions.
CLO4	Apply and Analyze legal reasoning skills to interpret statutes, regulations, case law, and legal precedents relevant to business law matters.

❖ **Course plan specifying Topics, Teaching time and CLOs.**

Sl no.	Topic	Hours	CLOs
1	An Introduction to Law		CLO1 CLO2
2	Offer and Acceptance		CLO1 CLO2 CLO3
3	Consideration		CLO2
4	Free Consent		CLO1 CLO2 CLO3
5	Company Act 1994		CLO2 CLO3
6	Sales of Goods Act 1930		CLO2 CLO4

❖ **Course plan specifying content, CLOs, co-curricular activities (if any), teaching learning and assessment strategy matching with CLOs**

Week	Topic	Teaching-Learning Strategy	Assessment Strategy	CLOs
1	An Introduction to Law: Law and The Elements of Contract Law from different perspective In General, What is Law? Importance of Law Society and the Law Difference between Rules and Law.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Assignment 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Written Test 	CLO1 CLO2
2	An Introduction to Law: Rule of Law Three elements of Rule of Law Define Business law Commercial Suit Scope of Commercial Law Sources of Bangladeshi business law Importance of Knowledge of Business Law.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Exercise 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Class Test ▪ Written Test 	CLO1 CLO2
3	An Introduction to Law: Nature and Essentials of a Contract Elements of Valid Contract Kinds of Contracts Valid Contract Void Contract Voidable Contract Illegal Contract Unenforceable Contract Executed contract Executory contract.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Exercise 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Written Test 	CLO1
4	Offer and Acceptance: The Proposal or Offer Requirements for Valid Offer.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Assignment 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Class Test ▪ Written Test 	CLO2 CLO3
5	Offer and Acceptance: Difference between Offer and Invitation to Offer. The Acceptance Who can accept? Requirements for Valid Acceptance.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Problem Solving ▪ 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Written Test 	CLO1 CLO2
6	Offer and Acceptance: Fundamentals of Communication of Offer and Acceptance Communication of Offer Communication of Acceptance Offer & acceptance by post When does an offer come to an end? Case Law.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Problem Solving ▪ Exercise 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Written Test 	CLO1 CLO2
7	Consideration: Consideration Defined Types of Consideration: Present Consideration Past Consideration Future Consideration Legal Rules as to Consideration.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Problem Solving 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Class Test 	CLO2
8	Consideration: Characteristics of a good consideration What can be consideration? Difference between English and Indian law regarding consideration No Consideration No Contract” Exceptions to the Rule (Sec. 25) Stranger to a Contract: Can a person who is not a party to a contract	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Problem Solving 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Class Test ▪ Written Test 	CLO2

	sue upon it? Capacity to Contract.			
9	Consideration: Minor Law Relating to minor's Agreements Rule of Estoppel Contingent Contract Characteristics of Contingent Contract Contingency dependent on act of party. Rules regarding contingent contract Wagering Contract Difference Between contingent contract & wagering contract.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Assignment 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Class Test 	CLO2
10	Free Consent: Free consent defined Coercion Consequences of Coercion Duress Undue Influence When Undue influence suspected Difference between Undue Influence and Coercion.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Written Test 	CLO1
11	Free Consent: Misrepresentation Types of Misrepresentations Fraud Types of Fraud Can Silence be Fraudulent? Distinction Between Fraud and Misrepresentation Contracts of Uberrimae Fidel Types of Uberrimae Fidel Mistake Deception.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Assignment 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Class Test ▪ Written Test 	CLO1 CLO2 CLO3
12	Company Act 1994: Definition of Joint Stock Company Characteristics of company Advantages of a Joint Stock Company Disadvantages of a Joint Stock Company Classification of Company: Joint Stock Company Chartered Company Statutory Company Registered Company.	<ul style="list-style-type: none"> ▪ Written exam ▪ MCQ test ▪ Presentation 	<ul style="list-style-type: none"> ▪ Written exam ▪ MCQ test ▪ Oral test 	CLO2 CLO3
13	Company Act 1994: Differences between Private Limited and Public Limited Company Conversion of public limited company into a private company Conversion of private company into a public limited company Formation of a company Memorandum of Association Clauses of memorandum of association	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Exercise 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Class Test ▪ Written Test 	CLO2 CLO3
14	Company Act 1994: "Doctrine of Ultra Vires" Articles of Association Differentiate between Memorandum of Association and Articles of Association Prospectus Who will be liable for untrue statements in the prospectus? Directors and Board of Directors: Appointment of Directors: Retirement of Directors.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Problem Solving 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Written Test 	CLO2 CLO3
15	Sales of Goods Act 1930: Sales of Good Act defined Contract of sales Distinction between sale and agreement to sell Different Fundamental Definition of the act Types of Goods	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Exercise ▪ Assignment 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Class Test ▪ Written Test 	CLO2 CLO3
16	Sales of Goods Act 1930: Essential elements of sale of goods act Conditions and Warranties.Difference Between Condition & Warranty.	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Problem Solving ▪ 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Written Test 	CLO3 CLO4
17	Sales of Goods Act 1930: Consequences of Breach of Conditions When A condition can be treated as a Warranty Doctrine of Caveat Emptor Exceptions to the Doctrine of Caveat Emptor	<ul style="list-style-type: none"> ▪ Lecture ▪ Discussion ▪ Assignment 	<ul style="list-style-type: none"> ▪ Question & Answer (Oral) ▪ Written Test 	CLOs

Assessment and Evaluation

1) **Assessment Strategy:** Group Discussion, Class tests, Case Study, Term Paper, Presentation.

2) **Marks distribution:**

a) **Continuous Assessment:**

- Class attendance is mandatory. Absent of 70% classes; disqualify the student for final examination only authority recommendation will be accepted with highly reasonable causes.
- Late submission of assignments is not allowed. Late submission of assignments will be only taken with highly reasonable causes and 20% mark will be deducted.
- To pass this course student will have to appear mid-term and final examination.

b) **Summative:**

❖ **CIE- Continuous Internal Evaluation (90 Marks)**

Bloom's Category	Test	Assignments	Quiz	External Participation in Curricular/ Co-curricular Activities (15)
Marks (out of 90)	(15)	(15)	(15)	
Remember	05			Bloom's Affective Domain: (Attitude or will) Attendance: 15 Copy or attempt to copy: - 10 Late Assignment: -10
Understand	05	06	07	
Apply	05			
Analyze	10		08	
Evaluate	05	09		
Create	10			
	05			

❖ **SEE- Semester End Examination (60 Marks)**

Bloom's Category	Test
Remember	10
Understand	10
Apply	10
Analyze	10
Evaluate	10
Create	10

3) Make-up Procedures: Dates for exams will be strictly followed. No makeup exam (Normal case), for exceptional case university rules and regulation should be followed.

Learning Materials

1) **Recommended Readings:**

- Industrial Law And Commercial Law by Arun Kumar Sen & Jitendra Kumar Mitra.

2) **Supplementary Readings:**

- Law of Contract by Dr Muhammad Ekramul Haque.

Week: 1
Slides 2-14

Well come to this session

Business Law

Course Code: BUS-311



MD. AL SABAHEL

- Lecturer at UGV
- BBA & MBA from DU
- Major in Marketing
- Contact me by email : ahmedalsabahel@gmail.com

Or

Mobile no. : +8801912700601

Ice breaker

- Please introduce yourself.



Assessment Tasks

- Class Participation 30%
- Assignment 10%
- Attendance 10%
- Quiz test 10%
- Mid Term 30%
- Final Exam 40%



An Introduction to Business Law

Law and The Elements of Contract

Chapter-01



Law and The Elements of Contract

After finishing this chapter, students will be able to,

- ✓ Define law and Business law.
- ✓ Differentiate law and rule.
- ✓ Analyze law from different perspectives.
- ✓ Understand the importance of law.
- ✓ Identify and understand the essentials of contract and its types.

Law from different perspective

- ✓ A citizen may think “law” as set of rules which he/she must obey.
- ✓ A lawyer may think “law” as a vocation.
- ✓ A legislator may consider “law” as something created by him.
- ✓ A judge may think “law” as guiding principles to be applied in making decisions.

In General, What is Law?

We can define law as a set of rules and regulations which regulates our relationships with other individuals and with the state.

In a broad sense, it may be defined as a rules of behavior recognized and enforced by the state to control and regulate the behavior of people, to protect their property and contractual rights with a view to securing justice, peaceful living and social security.

1.1 In General, What is Law?

According to Holland, Law is , “ a rule of external human action enforced by the sovereign political authority”

From this definition it follows that there are three essential characteristics of law.

1. Law is a rule relating to the actions of human beings.
2. Law attempts to regulate the external actions of human beings.
3. Law is enforced by the State.

According to Woodrow Wilson, “ Law is that portion of the established habit and thought of mankind which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and the power of government.

Importance of Law

- 1. Laws set the standard for acceptable (and unacceptable) behaviors.**
- 2. Laws provide access to justice.**
- 3. Laws keep everyone safe.**
- 4. Laws protect the most vulnerable in society.**
- 5. The process of creating laws encourages civil and political engagement.**

Importance of Law

- 6. Laws offers people a variety of career options.**
- 7. Laws are important to maintain peace.**
- 8. Laws are important for social progress.**
- 9. Laws make human rights a reality.**
- 10. Laws are not always good for society.**

Society and the Law

Society: a group of persons, living in any, who are united by some common bond-uniformity of factors like nearness, nature of the people, habit, custom, inhibition, beliefs, culture, tradition.

- ✓ Common bond lead to forming social rules.
- ✓ Break of rules means excommunication or ostracism.
- ✓ Law enforced by state- objective is to bring order.
- ✓ Break of law means punishment
- ✓ Law must be framed and changed on the basis of social needs.

Week: 2
Slides 15-28

Society and the Law

- If there is a change of social rules usually there occurs a change of law.

Example, landlord and feudal vs peasant.

- Alternatively change of law also leads to change of the rules of society.

Example, Legislation has enlarged the rights of Hindu women regarding inheritance, property rights and marital rights.

Difference between Rules and Law

Points of difference	Rules	Law
Definition	Explicit principles governing conduct or procedure within a particular area of activity.	Set of rules and regulations that regulates our relationship with other individuals and with State.
Creation	Created by individuals or Groups .	Created by State or Government.
Enforceability	Enforced by individuals or Groups .	Enforced by State or Government or legal authorities.
Punishment	Flexible and light punishment.	Stiff punishment including imprisonment or capital punishment.
Example	Treating senior persons with respect.	Following the traffic laws.

1.2 Rule of Law

- **Rule of law-** applying the same law over all the persons and giving equal rights and privileges.
- **Three elements of Rule of Law:**
- 1.No man is punishable except for a distinctive breach of law.
- 2. No man is above law.
- 3. Statues and judicial decisions.



Examples of some Laws

The Explosive Substances Act 1908,
The Prevention of Corruption Act 1947,
The Anti-Corruption Act 1957
The Dowry Prohibition Act 1980,
The Narcotics Act 1990
The Women and Children Oppression Act 1995
The Anti-Terrorism Act 2013.

1.3 Define Business law

- ✓ **Business law** encompasses all of the laws that dictate how to **form and run a business**. This includes all of the laws that govern how to start, buy, manage and close or sell any type of business
- ✓ Legal rules that (1) determine the rights and duties of parties engaged in trade and commerce, (2) govern disputes arising out of ordinary transactions of buyers and sellers, and (3) settle issues concerned with banking, insurance etc.
- ✓ The matter related to industry, trade and commerce are related with business or commercial law

Commercial Suit

Commercial Suit: A suit between merchants, bankers, and traders, relating to mercantile transactions is a commercial suit.

- ✓ It follows that all laws which must be referred to in order to decide such suits come within the scope of commercial law.
- ✓ Commercial law or mercantile law may therefore be defined as that part of law which regulates the transactions of the mercantile community.



Scope of Commercial Law

The scope of commercial law is large. It includes the laws relating to

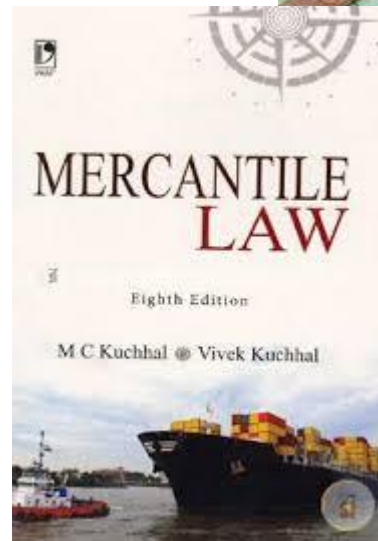
- Contract.
- Partnership.
- Negotiable instruments.
- Sale of goods.
- Companies.

It must be noted that there is no fixed line of division between commercial law and other branches of law.

- The law of contract is not only applicable to business but also applicable to persons.

Sources of Bangladeshi business law

- ✓ Parliament
- ✓ English Mercantile Law
- ✓ Judicial Decisions
- ✓ Custom & Usage



Sources of Business Law

English Mercantile Law: English laws are the primary sources of Indian Mercantile Law. English laws are based on customs and usages of merchants in England.

The Statute Law: The various Acts passed by the Indian Legislature are the main sources of mercantile law in India, e.g. Indian Contract Act 1872, The Partnership Act 1932, The Negotiable Instruments Act 1881, The Companies Act 1994, Bangladesh Labor Law 2006 etc. are statute law.



Sources of Business Law (Cont..)

The Common Law : This source consists of all those unwritten legal doctrines embodying customs and traditions developed over centuries by the English courts. Thus, the common law is found in the collected cases of the various courts of law and is sometimes known as 'case law'. The common law emphasizes precedents.

Sources of Business Law (Cont..)

Customs and Usages: The customs and usages of a trade are also one of the sources of mercantile law in India. These customs and usages govern the merchants of a trade in their dealings both each other. Some Acts passed by the Indian Legislature recognizes the importance of such customs and usages.

Importance of Knowledge of Business Law

It is essential to know about business law before starting a business, as it will help you operate your business without the hindrances of ignorance.

Business structure laws: There are different laws for different business entities. Be certain you learn about the business laws that govern the kind of business entity that you choose to start. Company Act, Partnership Act.

Licensing Laws: In order to operate a business certain licenses are required and there are some important business laws you need to know. If a business operates without these licenses, it is illegal and the business may be dissolved or forced to close.

Importance of Knowledge of Business Law (Cont..)

Trademark and Patent Laws: These are laws that deal with ownership of intellectual property rights, and inventions. They are necessary to protect a business.

Employment Laws: These are laws regarding the hiring and firing of employees, their rights, compensation, safety, work place discrimination, child labor laws, overtime pay structure, disability laws and unemployment laws.

Tax Laws: These include franchise tax, income tax and other state and federal tax requirements of a business. These are very important business laws you need to know before starting a business.

Week: 3
Slides 29-42

Importance of Knowledge of Business Law (Cont..)

Environmental Laws: The government enforces the environmental laws for the discharge of hazardous waste and the recycling laws pertaining to the business.

Health Department Permits: This is necessary if your business deals with food products. You must get health department permits to operate your business.

Fire Department Permits and Air and Water Pollution Control Permits: There are laws that certain kinds of business entities must get permits from these departments to operate.

Beware of Laws the discussed laws contains basic business laws you need to know before starting a business. It is necessary to take precautions that you are not violating any law by operating your business. You must obtain all the necessary permits and licenses from the appropriate authority.

1.4 Nature and Essentials of a Contract



The term “Contract” in ordinary sense means an agreement between two persons.

The law of contract seeks to regulate the behavior of persons who make contracts, so that any conflict arises between these persons later may be resolved.

Meaning of Contract:

Sec. 2 (h) defines a contract: “ An agreement enforceable by law is a contract.”

e.g. C makes an agreement with D to sell him some goods for Rs. 25000.

-B invites a friend S to dinner. He makes elaborate preparations. S fails to turn up for dinner and all the preparation made by B go waste. Since this was not a contract between the parties, B cannot take S to court for legal action against him for breaking the commitment to come for the dinner.

- How could it be said that the above was not a contract although it was clearly an agreement between the two friends?**

Elements of Valid Contract

1. An Agreement or offer and acceptance:

-Agreement = Proposal + their acceptance

-Agreement Must made by two person, one is making offer and another is accepting this offer.

2. Intention to create legal relationship

-Court would like to measure the degree of seriousness.

-Not every loose conversation, not any exchange of pleasantries, not a casual social commitment, consider as a contact.

3.Capacity of Parties

**Everybody is able to make contract except Minor,
Person of Unsound mind,
Person who are disqualified by any other law.**

4.Consideration

“Something in Return”

e.g. B promise to S that He will buy his bike for Rs.35000.

5.Free Consent

**If the parties make the agree. without any kind of
pressure or misguidance, then the agree. would be the
result of Free Consent.**

**“Consensus ad idem” between parties, which means that
there must be complete understanding of each other’s
mind between them.**

6. Lawful object

e.g. I will kill you Mr. if you do not give me 100 bottle wine.

7. Certainty

The agreement must not be vague. It must be possible to ascertain the meaning of the agreement

8. Possibility of Performance

The agreement must be capable of being performed. A promise to do an impossible thing cannot be enforced

9. Void (Cancelled) agreement

Always void i.e. without legal effect because of their nature.

Agreement in restraint to marriage, trade, legal proceedings, uncertain meaning, wagering agreement

e.g. Agreement made without consideration

Agreement to do impossible act.

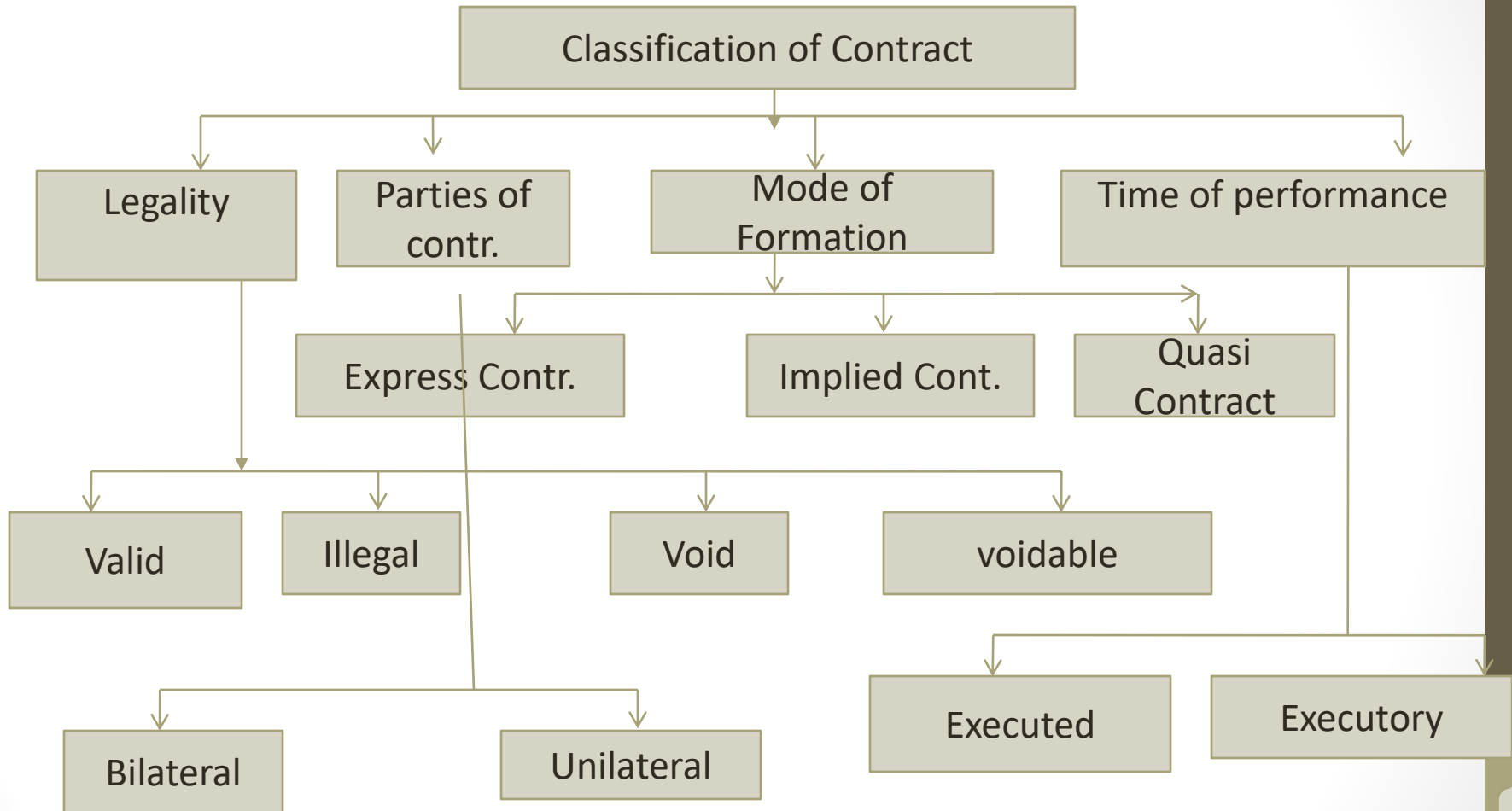
Agreement on the meaning of which uncertain etc.

10. Writing, Registration & legal Formalities

-Necessary fulfillment of certain formalities for making certain specific types of contract

-Made in written or in presence of witness.

Kinds of Contracts (Sec. 68 to 72)



1. Classification of Contract on the basis of Enforceability or legality:

a. Valid Contract:

Contract which satisfy all the essential elements of a valid contract.

b. Void Contract:

An agreement which is not enforceable by law is said to be void

An agreement may be enforceable at the time when it was made but later on, due to certain reason, it become void and unenforceable.

c. Voidable Contract:

An agreement which is enforceable by law at the option of one or more of the parties thereto but not at the option of the others is a voidable contract.

d. Illegal Contract:

All illegal agreement are void but all void agreement are not necessarily illegal.

e.g. An agreement with minor is void but not illegal.

e. Unenforceable Contract:

Certain contract become void because the law court will not enforce them due to not fulfillment of certain formalities.

2. Classification of Contract on the Method of Formation

a. Expressed Contract:

Contract is made by words spoken or written.

b. Implied Contract:

Contract which come into being on account of the act of the parties and not by their express words, written or spoken.

c. Quasi Contract:

There are certain dealings which are not contracts strictly, though the parties act as if there is a contract. The contract act specifies various situations which come within quasi contract

3. **Classification of Contract on the basis of the time of Performance**

a. Executed Contract

Where both the parties to the contract have fulfilled their respective obligation, the contract is said to be executed.

b. Executory Contract

Where one or both the parties to the contract still to perform certain things in future or under the terms of the contract something remains to be done, the contract is termed as an executory contract.

Example: X agrees to Y that in the coming next month X provides 100 ton rice to Y. It is an executory contract.

Case Law

- A invite B to out for dinner together. B accepts the offer. A hires a taxi but B does not turn up. A has to give the dinner some compensation. Can A recover it from B?

Week: 4
Slides 44-52

Chapter – 02

OFFER AND ACCEPTANCE

Offer &
Acceptance



OFFER AND ACCEPTANCE

Formation of Agreement required two steps , making of a proposal by one person and acceptance of this proposal by other.

Agreement= Offer + their acceptance



The Proposal or Offer

Sec. 2 (a) define an offer in these words:

“When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent (acceptance) of that other to such act or abstinence, he is said to make a proposal”

A proposal is also called an offer. The promisor or the person making the offer is called “offeror”. The person to whom the offer is made is called the “offeree”

e.g. R tells S : “ I am ready to sell my machine for Rs.9000,are you ready to buy”.

This is clear offer from R to S.

Requirements for Valid Offer

1. An offer may be expressed or may be implied from the circumstances:

-Must be made in a manner which leave no doubt about it.

-Proposal made in words, the promise is said to be expressed, and proposal made otherwise than in words, it is said to be implied.

e.g. Express offer, B tells S : “Can you repair my computer?” –

Example of implied offer: A transport company runs buses along the street. this is an offer by the company to carry passenger at the scheduled fares. The offer is accepted when a passenger gets up on the bus with the intention of becoming a passenger.

Requirements for Valid Offer

2. Offer may be made to a definite person; to some definite class of persons; or to the world at large

There must be destination of offer.

-If offer is targeted for one specific person, or a definite class of person it is called a **specific offer.**

-If it is targeted for the whole world at large, it is called **general offer. e.g. Advertisement **Example: P-17-18****

3. Offer must intend to create legal relation

A offer must be one which creates legal relationship. A **social party or **an invitation to play cards** is not a legal relation**

4. The terms of the Offer must be certain, definite, unambiguous and not vague in meaning

Offer must be definite and certain in meaning

Example: X says to Y, 'I will give some money if you marry Z'

This is not an offer because the amount of money to be paid is not certain.

5. A mere statement of intention is not an offer

e.g. Availability of Books in Book Store being available for letting out. Display of suit with price tag-All are example of invitation to offer. Advertiser may or may not sell this.

e.g. Publishing of Time Table by railways are example of expression of an intention.

6. An Offer must be communicated to the offeree

Example: G sent to his servant L in search of his missing nephew. Subsequently G announced a reward for information concerning the boy. L brought back the missing boy, without having known of the reward. Held, there was no contract between L and G and the reward cannot be claimed.

Lalman Shulka vs Gauri

Dutt

7. An offer may be conditional:

An offer may be made subject to condition. In such cases, the conditions must be clearly communicated to the offeree

Example: X agrees to buy goods from Y and signed an order form given by Y containing a number of clauses in small print, without reading them. held, clauses were binding on X

L'Estrange V. Graucob Ltd

8. Printed Contracts:

Often contain a large number of terms and conditions which exclude liability under the contract.

Example: life insurance corporation, Railway administration, statutory corporation, Telecommunication industry

What is difference between Invitation to Offer and General Offer?

Invitation to Offer: Aims at taking the customer to the advertiser to start negotiation.

General Offer: Aims at leading the offeree (to whom offer made) to the performance of specified condition which would amount to acceptance of offer.

Difference between Offer and Invitation to Offer.

BASIS FOR COMPARISON	OFFER	INVITATION TO OFFER
Meaning	When one person expresses his will to another person to do or not to do something, to take his approval, is known as an offer.	When a person expresses something to another person, to invite him to make an offer, it is known as invitation to offer.
Defined in	Section 2 (a) of the Indian Contract Act, 1872.	Not Defined
Objective	To enter into contract.	To receive offers from people and negotiate the terms on which the contract will be created.

Week: 5
Slides 54-62

Difference between Offer and Invitation to Offer.

Essential to make an agreement	Yes	No
Consequence	The Offer becomes an agreement when accepted.	An Invitation to offer, becomes an offer when responded by the party to whom it is made.

The Acceptance

Sec. 2 (b) “When a person to whom the proposal is made , signifies his assent thereto, the proposal is said to be acceptanced.”

A proposal , when accepted become a promise.

The person making the proposal is called “promisor**” and the person accepting the proposal is called the “**promisee**”**



Who can accept?

An offer can be accepted only by the person or persons for whom the offer is intended

An offer made to a particular person can only be accepted by him because he is only the person intended to accept.

Example: X sold his business to Y without disclosing the fact to his customers. Z sent an order for goods to X by name. Y received it & sent a letter of acceptance. Held, there is no contract between Y and Z because Z never made any offer to Y.

Bolton V. Jones

Requirements for Valid Acceptance

1. **Must be absolute and unqualified acceptance of all terms of the offer:**

Offeree should neither add to nor reduce from the offer anything from his side.

If there is any variation even on an unimportant point, between the terms of the offer and the acceptance, there is no contract

-M offer A land to N at \$280. N replied accepting and enclosing, \$80, & promising to pay the balance by monthly installments of \$50. Held, there is no contract, as there was no unqualified acceptance

Neale V. Merrett

2. **Conditional Acceptance:**

An acceptance with a variation is no acceptance; it is simply a counter-proposal

Example: X offer to sell his house for Rs 12000. Y said, accepted for Rs 10000. This is not an acceptance but a counter offer or counter proposal

Hyde V. Wrench

3. Contracts subject to condition:

There are cases where an 'immediate' binding contract is formed although some of the parties' rights and obligations may be dependent upon the happening of a particular event.

EX. The agreement may contain such a term as 'subject to the purchaser's solicitors approving the title'.

4. Clarification:

an explanation which makes the offer clear or easier to understand

Seeking the clarification of offer neither amounts to the acceptance of the offer nor to the making of a counter offer

5. The acceptance must be expressed in some usual or reasonable manner

- The offeree may express his acceptance **by word of mouth**, telephone, telegram or by post.

Example: P offers to buy Q's bicycle at Rs 50. Q may accept this offer by starting so orally or through telephone or by writing a letter or by sending a telegram to that effect

- An offer may also be accepted **by conduct**. If the offeree does what the offeror wants him to do, there is acceptance of the offer by conduct

Example: A widow invited her niece to stay with her in her residence and promised to settle on her particular immovable property. The niece stayed with her till death. held, that the niece was entitled to the property because she had accepted the aunts offer by going to her residence and staying with her as desired

V. Rao V A. Rao

6. Mental acceptance or uncommunicated assent does not result in a contract

No contract is formed if the offeree remains silent & does nothing to show that he has accepted the offer.

A acceptance must be communicated to the offeror or shown by conduct.

Example: A person received an offer by letter; he wrote an letter accepted, put the letter in his drawer and forgot all about it. Held there was no contract because the other party was not informed.

Brogden V. Metropolitan Rly.

7. The mode of acceptance:

When the promisor prescribes a particular mode of acceptance , the offeree must follow the particular mode of acceptance otherwise it cannot be accepted by the law

Example: *If the offeror says, ‘acceptance to be sent by the telegram’ the offeree must send a telegram.*

Eliaison V. Henshow

8. Time of Acceptance:

If the offeror prescribes a time, the acceptance must be done within that time. If no time is prescribed the acceptance must be done within reasonable time.

The reasonable time will be depends on the fact or the case

Example: *Ramsgate Victoria Hotel Co. V. Montefiore p-29*

9. When acceptance is complete:

The communication of an acceptance is complete, as against the proposer, when it is put in a course of transmission to him.

Sec. 4 contract of act 1872.

Example: 1) A proposes by a letter to sell his house to B at a certain price. The communication of the proposal is complete when B receive the letter.

2) B accept A's proposal by letter send by post. The communication of acceptance is complete as against A. when the letter is posted, as against B, when the letter is received by A.

10. Before Offer:

This is a natural sequence. Acceptance must not be given before the offer

Example: *Lalman V. Gauri Dutt. P-20*

11. The acceptance must be made while the offer is in force e.g. before the offer has been revoked or offer has lapsed or expired.

Week: 6
Slides 64-69

Fundamentals of Communication of Offer and Acceptance

1. Communication of Offer

An offer is said to have been made when it comes to knowledge of the other person for whom it was intended.

A offer can be communicated to the offeree or offerees

- A. **By word of mouth**
- B. **By writing**
- C. **By conduct.**

- Brogden Vs Metropolitan railways Co.

The communication of the proposal is complete when it comes to the knowledge of the person to whom it is made **Sec. 4 contract act 1872**

2.3 Communication of Offer, Acceptance

2. Communication of Acceptance

For Acceptance two steps required: (i) Offeree transmits his acceptance and (ii) Message reaches the Offeror.

A. Offer & acceptance by post:

An offer and acceptance can be accepted by post if no other mode of acceptance specially prescribed by the proposer. here the post office worked as a agent to the principal The letter must be correctly addressed, must be post and not enough to give it to somebody to post.

If the letter is duly addressed and posted, there will be a formal acceptance even though the offeror does not actually receive it.

Example: G applied for shares in a company. A letter of allotment was posted but the letter did not reach G. Held, there was a binding contract and G was the shareholder of the company.

B. Offer and acceptance through telephone:

There are certain rules regarding oral communication. It has been held that the offer and acceptance **must be audible, heard and understood** .

A communication send through telex or teleprinter machine in the office is valid. And in this case there is no exception to the general rule that acceptance is not complete until communicated.

Entores ltd. V. Miles far Eastern Corporation

C. Offer and acceptance through microphone:

The announcement for the purpose of auction and other purpose.

Microphones have not yet acquired notoriety as carriers of binding representations.

Promises held out over loud speakers are often claptraps of politics

2.4 When does an offer come to an end?

An offer come to end by Revocation or laps and Rejection of Offer.

A. Revocation or laps or Withdrawal of Offer (Sec.6)

1. By communication of notice of revocation by Offeror before its acceptance is completed against him

2. By laps of time

- X offer Y to sell some goods on 1st May and agreed to give him three days time to accept. Y accepted offer on 5th May.

3. By non-fulfillment of condition by offeree

4.By death or insanity of Offeror

- An offer lapses by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

5. If counter offer is made:

6.If Offer is not accepted according to prescribed mode.

Example: P says to Q I will sell my house at Delhi to you for Rs. 50000 if you are married. The offer cannot be accepted until and unless Q is married.

7.By refusal

A proposal once refused is dead and cannot be retrieved.

Example: P.30

Case Law

A garment store gave the following advertisement in a newspaper: “Special sale for tomorrow only. Men’s Suits reduced from Rs. 200 to Rs. 100.” Is it offer?

P says to Q, “I will sell you a camera.” Is it offer?

A advertises that he would pay Rs. Rs.200 to anyone who finds and return his lost book. Is it offer?

A offer by a latter to sell his car to B for Rs. 15000. B, at the same time, offer by latter to buy A’s car for Rs.15000. The two letters cross each other in the post. Is there a contract between A and B?

Week: 7
Slides 71-82

Consideration

Chapter-03

Consideration

After finishing this chapter, students will be able to,

- ✓ Define consideration.
- ✓ Explain types of considerations.
- ✓ Understand legal rules regarding consideration.
- ✓ Understand the characteristics of good consideration.
- ✓ Illustrate the rules that are essential to Minor contract.

3.1 Consideration

-“*Something in Return*”

Sec. 2 (d) defines consideration as follow : “When at the desire of the promisor, 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 abstinences or promise is called a consideration for promise.”

-Consideration is the benefit that each party gets or expects to get from the contractual deal

Example: P agrees to sell a house to Q for Rs 80000. For P’s promise, the consideration is Rs. 80,000. for Q’s consideration is the house.



Types of Consideration

- **Past Consideration:** When the consideration of one party given before the date of the promise, it is said to be past

Example: X does some work for Y in the month of January (without expecting any payment). In February Y promises to pay him some money. The consideration of X is past consideration.

Under English law past consideration is no consideration & a contract based on past consideration is void.

- **Present Consideration:**

Consideration which *moves simultaneously* with the promise is called present consideration.

Example: B buys a article from a shop and pays the price immediately. the consideration moving from B is present or executed consideration.

Future consideration :

When the consideration is to move at a future date, it is called future or executory consideration.

Example: A promises to pay money at a future date for goods to be delivered at a future date is valid contract.

3.2 Legal Rules as to Consideration

1. Desire or request of the promisor is essential

e.g. A saves B's goods from fire without being asked to do so. A can not demand payment for his service.

2. Consideration must be real and not illusory.

the impossible acts and illusory or non existing goods cannot support a contract

Example: X promises to put life into Y's dead wife should Y pay him Rs. 500.

X promises to supply Y one tola of gold brought from the sun. The consideration is sham & illusory and there is no contract

3. Public Duty:

where the promise is already under an existing public duty, an express promise to perform, or performance of, that duty will not amount to consideration.

Example: A contract B to pay money to be a witness who has received a subpoena to appear at a trial.

Collins V. Godefroy

Legal Rules as to Consideration

4. Promise to a stranger:

A promise made to a stranger to perform an existing contract, is enforceable because the promisor undertakes a new obligation upon himself which can be enforced by the stranger.

Example: X wrote to his nephew B, promising to pay him an grant of \$150 in consideration of his marrying C. B was already engaged to marry C. Held, the fulfillment of B's contract with C was consideration to support X's promise to pay the annuity.

Shadwell V. Shadwell (1860)

5. Consideration not need to be adequate:

An agreement to which the consent of the party is freely given is not void merely because the consideration is inadequate.

e.g. X sell his house worth Rs 1 lac for Rs. 100 to Y. X's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

6. It must not be illegal, immoral or opposed to public policy.

if the consideration of the object of the agreement is illegal, the agreement cannot be enforced. Same principles applies if the consideration is immoral or opposed to public policy. E.g. A decides to sell goods to B and smuggle them outside the country

7. Consideration may be past, present or future.

Past Con. : A finds B's Son and B promises to pay A 10000.

Present Con. : At the time of making promise

Future Con. : A promises to deliver goods to B when the ship arrives and b promises to pay A Rs 1000 against the receipts of goods. Its future, as both the parties will perform after the arrival of ship.

8. Con. May moved from the promisee or from other person.

e.g. P a person granted some properties to his wife C directing her at the same time to pay an annual allowance to his brother R. C also entered into an agreement with R promising to pay the allowance to R. This agreement can be enforced by R *even though no part of the consideration received by C moved from R.*

Chinnaya V. Ramaya

Characteristics of a good consideration

1. There must be desire of the promisor.
2. It must be real.
3. It must be reasonable.
4. It must not be illegal, immoral or opposed to public policy.
5. It can be for present , past and future.
6. It may comes from the promisee or any person



What can be consideration?

Subject to the essential rules regarding consideration, the following can be consideration:

1. Physical goods
2. Services.
3. Forbearance (for example not to sue).
4. Arbitration or the compromise of disputed claims
5. Settlement or composition with creditors

Difference between English and Indian law regarding consideration

1. In English law there has been a difference between formal and simple contract. A **formal contract** which is in writing or printed, signed, sealed, delivered to the other parties. Besides this all the other contract is **simple contract**. Formal contracts don't require consideration but simple contract must require consideration.

Other side, in case of Indian law of contract hasn't any distinction between formal and simple contract. Except some cases all contract require consideration.

2. Under English law, past consideration is no consideration but under Indian contract act past consideration is good consideration.

Difference between English and Indian law regarding consideration

3. Under English law, consideration must move from the promisee

But under Indian law it may move from the promisee or any other person.

4. The rules regarding Devolution of joint Rights and Liabilities are also different in English and Indian law. **In Indian law**, if any person dies then his rights and liabilities go to his legal representatives

But in case of English law, if any person dies then his legal representatives will not be liable for fulfilling the promise. All the liability devolves upon the surviving promisors.

Week: 8
Slides 84-96

“No Consideration No Contract” Exceptions to the Rule (Sec. 25)

“A promise without consideration is a gift; one made for a consideration is a bargain”

Salmond & Windfield

There are exceptional case where a contract is enforceable even though there is no consideration.

Exceptions:

1. Natural Love and Affection

e.g. A father promises to pay his son 1000 because of affection and love and registers it. It's a contract

An agreement without consideration is valid under section 25 (1) only if the following requirements are complied with:

- The agreement is made by a written document
- The document is registered according to the law
- The agreement is made on account of natural love & affection
- The parties to the agreement stand in a near relations to each other.

“No Consideration No Contract” Exceptions to the End (Sec. 25)

2. Compensation for voluntary services sec-25(2)

e.g. X finds Y's purse and give it to him. Y promises to give X Rs. 50. This is contract.

3. Promise to pay a time-barred debt. Sec- 25(3)

A promise to pay, wholly or in part, a debt which is barred by the law of limitation can be enforced if the promise is in writing and is signed by the debtor or his authorized agent.

Example: D owes B Rs. 1000 but the debt is barred by the limitation act. D signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

4. No consideration is required to create an agency

Sec 185

“No Consideration No Contract” Exceptions to the End (Sec. 25)

5. Completed gift:

Section 25 (1) state that, nothing in this section shall affect the validity as between the donor and donee, of any gift actually made.

Example: If any person gives certain properties to another according to the provisions of the transfer of property act(by written and registered doc.) he cannot subsequently demand the property back on the ground that there was no consideration.

Stranger to a Contract: *Can a person who is not a party to a contract sue upon it?*

'A stranger to a contract, who is not a party to it, cannot file a suit to enforce it.

Example: A contract between P & Q cannot be enforced by R.

It was a fundamental principles of English law that only a person who is a party to a contract can sue on it and that the law knows nothing of a right gained by the third party arising out of a contract

Dunlop pneumatic tyre co. V. Selfridge & CO

There have some **exception** where a stranger to the consideration can sue to enforce it provided he is a party to the contract

Example: A contract between P,Q and R whereby P pays money to Q for delivering goods to R can be enforced by R although he did not pay any part of the consideration.

Stranger to a Contract: *Can a person who is not a party to a contract sue upon it?*

Exceptions :

There are certain exceptions to the rule that a stranger to the contract can not sue upon it.

1. Beneficiaries in the case of reliance or trust:

Example: D agrees to transfer certain properties to T to be held by T in trust for the benefit of C. C can be enforce the agreement though he has not a party to the agreement.

2. Provision of marriage settlement of minor:

“Khwaja Muhammad Khan V. husaini Begum”

3. Family settlement:

When family disputes are settled by mutual agreement and the terms of settlement are written down in a document, it is called family settlement.

Stranger to a Contract: *Can a person who is not a party to a contract sue upon it?*

4. Assignee of a contract:

Under certain circumstances a party to a contract can transfer his rights under the contract to third party.

Example: the holder of a **bill of exchange** can transfer it to any person he wishes and the **transferee or the assignee** can sue on the contract even though he was not a party to it originally

5. Acknowledgment of liabilities:

When the promisor by his conduct , acknowledges himself as an agent of the third party, a binding obligation is thereby incurred towards him.

Example: between the two parties A and B, if C acknowledges himself as a agent of A then C will be liable where as he is not directly involved in the contract.

3.4 Capacity to Contract

'Capacity' means Competency of the parties to enter into a valid contract.

Sec.11 declares the following persons to be incompetent to contact:

- i. Minor
- ii. Persons of Unsounded Mind
- iii. Persons disqualified from any other law.



Minor

- According to Indian Minority Act, 1875., a person who has not completed his 18th year of age is considered to be minor.

Exceptions:

- (1) When a guardian of a minor's person or property is appointed by a court of law.
- (2) When a minors property is taken over by the court of wards for management.

In both cases minor continues up to the completion of the 21th year.



Law Relating to minor's Agreements

“NO LEGAL ACTION TAKEN AGAINST MINOR”

1. Minor's Agreement is Void

Agreement of minor is absolutely void and nullify.

e.g. A minor take loan of Rs. 20000 from money lender and put mortgage of his house in favor of money lender. Later, minor started an action to get the mortgage cancelled.

2. A minor can be a promisee

An agreement under which a minor has received a benefit can be enforced as against the other party.

In other word, minor can be a promisee but not a promisor. So if the minor has performed his part of the promise, but the other party hasn't the minor being in the position of a promisee he can enforce the contract.

e.g. D an infant professional boxer, held a licence from the British boxing Board under which his money was to be stopped if he was disqualified. D sued to recover it. Held, the contract was for his benefit and was binding on him.

Doyle V. White City Stadium

3. “Rule of Estoppel” does not apply against minor

-If minor mislead the other party to believe that he is of the majority age, and then some benefits get under an agreement, he will be permitted to deny latter the fact that he was of minority age. Thereby, he will have no liability towards the other party.

Where **“Rules of Estoppel”** is a rule of evidence. when a man has, by word, spoken or written, or by conduct induce another to believe that a certain state of things exists, he will not be allowed to deny the existence of that state of things.

4. Law regarding restitution or compensation

-No recovery from Minor. A minor cannot be compelled to compensate for or refund any benefit which he has received under a void agreement.

Example: A minor sells a house for Rs. 10000. later he files a suit to set aside the sale on the ground of minority. He may be decided to refund the purchase amount received by him.

5. No specific performance of promises shall be ordered.

An agreement by a minor being void, the court will never direct specific performance of such agreement by him.

6. No ratification on attaining majority age.

e.g. K (minor) take loan from B of Rs.10000 and give promissory note in favor of B .K will not be liable under this Promissory Note even after attaining majority age by K. BCZ it is a void agreement.

7. Minor's liability for necessities

If person provide any support or necessities to minor who are not enable to make contract, this person who had provide necessity have right to reimburse from the property of the minor, because it is benefit of the minor.

8. Minor as a member of partnership firm

Minor can not be partner. But he can get the benefits of partnership with the consent of all partners.

9. A company share of a Minor

A minor can become a shareholder in a company **through his guardian** who will act as his trustee.

Minor directly can not entered into contract with the company.

10. A Minor can be an agent

A minor can be appointed as a agent because agent do not incur personal Liability

11. Position of minor's guardian

-Parents or guardians are not liable for Minor's act

An agreement made by the guardian is binding on the minor if it is for the benefit of the minor or for the legal necessity.

12. No Insolvency of Minor:

- Court can not be declared insolvency by court even though there dues payable from the properties of the minor.

Week: 9
Slides 98-107

CONTINGENT CONTRACTS

- "Contingent contract" defined.-A " contingent contract " is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustration A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Contingent contract is a **conditional promise**. A promise is **unconditional** when the promisor undertakes to perform it in any event. A promise is **conditional** when performance is due only if an event , collateral to the contract, does or doesn't happen

Here **collateral** means subordinate but from same source, connected but aside from main line.



CONTINGENT CONTRACTS

- **Collateral Event :**

A collateral event means a event which is, neither a performance directly promised as part of the contract, nor the whole of the consideration for the promise.

Pollock and Mulla

Example: A promise to pay B Rs. 10,000 if Bs house is burnt, is a contingent contract

Because, The liability of A arises only when Bs house in burnt. This is an event Collateral to the main contract because **the burning of B's house is not the performance required from B under the contract NOR **is it the consideration obtained from B**. It is an independent event.**

CHARACTERISTICS OF CONTINGENT CONTRACTS

- 1. The performance of such contracts depends on a contingency. i.e. on the happening or non happening of the future event.**
- 2. In a contingent contract, the event must be collateral i,.e. incidental to the contract.**
- 3. The contingency is uncertain. If the contingency is bound to happen, the contract is due to be performed in any case and is not therefore a contingent contract.**

Contingency dependent on act of party.

The performance of a contingent contract depends on the happening or non- happening of a collateral event . The word 'event' includes an 'act'; and the 'act' may be of a party to the contract or of a third party. **Thus a promise to buy certain goods if the party's engineer approves of them, is valid. Here the engineer's approval is the act on which the performance of the promise to purchase is contingent.**

Rules regarding contingent contract

1. The happening of a future uncertain event:

Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

Illustrations:

A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy. The contract cannot be enforced by law unless and until C refuses to buy the horse.

Rules regarding contingent contract

2. The non happening of an uncertain event:

Example: A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sink.

3. When event to be deemed impossible:

Example: A agrees to pay B a sum of money if B marries to C. C marries D. the marriage of B to C must now be considered impossible Although it is possible that D may die and that C may afterwards marry B.

Rules regarding Contingent contract

4. The happening of an event within a fixed time:

Example: A promise to pay a sum of money if a certain ship return within a year. The contract may be enforced if the ship return within the year and become void if the ship is burnt with in the year.

5. The non-happening of an event within a fixed time:

Example: A promise to pay a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship doesn't return within a year or burnt with in the year.

Rules regarding Contingent contract

6. Impossible event:

- **Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.**

Illustrations

- **(a) A agrees to pay B 1,000 rupees if two parallel lines should meet. The agreement is void.**
- **(b) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement**

Wagering Contract

Wagering Contract:

a contract by which a promisor agrees that upon the occurrence of an uncertain event or condition he or she will render a performance for which there is no agreed consideration exchanged, and under which the promisee or the beneficiary of the contract is not made whole for any loss caused by such occurrence.



Example: A and B agree with each other that if it rains on Tuesday, A will pay Rs. 100 to B and if it does not rain on Tuesday, B will pay A Rs. 100. Such an agreement is a wagering agreement and hence is void

Difference Between contingent contract & wagering contract

Differences Between a Wagering Agreement and a Contingent Agreement:

- | | |
|--|--|
| <ul style="list-style-type: none">• <u>Wager agreement</u>• There is a reciprocal promise.• It is a void contract.• Others are not interested in the contract.• It is contingent in nature.• Here, the parties have no interest in the subject matter.• It is a game, losing and gaining alone matters | <ul style="list-style-type: none">• <u>Contingent agreement</u>• There is no reciprocal promise.• It is a valid contract.• Others are interested in the contract.• It may not be wagering in nature.• Here, the parties may have interest in the subject matter.• It is not a game, only losing and gaining doesn't matters. |
|--|--|

Jay Shah, FMS-B.

Week: 10
Slides 109-119

Free Consent

Chapter -04



Free Consent

After finishing this chapter, students will be able to,

- ✓ Define free consent.
- ✓ Understand the consequences of free consent.
- ✓ Distinguish between misrepresentation and fraud.
- ✓ Explain different types of misrepresentation.
- ✓ Illustrate the ways of determining fraudulent.

4.1 Free Consent

An agreement is valid only when it is the result of the “ free consent” of all the parties to it.

According to Section 13: “ Two or more persons are said to consent when they agree upon the same thing in the same sense”.

According section 14: Consent is not free if it is caused by,

- ✓ Coercion
- ✓ Undue influence
- ✓ Fraud
- ✓ Misrepresentation
- ✓ Mistake

Coercion

Definition:

According to section 15: “ Coercion is the committing or threatening to commit , any act forbidden by the Indian Penal Code, or unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever with the intention of causing any person to enter into an agreement”.

Example: P threatens to shoot Q if he does not let out his house to P, and Q agrees to do so.

4.2 Consequences of Coercion

A contract brought by coercion is voidable at the option of the party whose consent was so caused.

Special Cases_

- ✓ Prosecution- Threat to file a suit against a person.
- ✓ High Prices and High Interest Rates-These acts are not forbidden by law.
- ✓ A Threat to Commit Suicide.
- ✓ Duress- Threat to obtain consent.



Duress

Duress: refers to a situation where one person makes unlawful threats or otherwise engages in coercive behavior that causes another person to commit acts that they would otherwise not commit.

Example: Threatening to harm someone's family if they refused to sign a contract



Undue Influence

Definition:

According Section 16 “A contract is said to be induced by undue influence where one of the parties is in a position to dominate the will of the other and he uses the position to obtain an unfair advantage over the other”.

Example:

P, a man enfeebled by disease or age, is induced by B's influence over him as his medical attendant to agree to pay B an unreasonable sum for his professional services.

Consequences of Undue Influence: This agreement is voidable at the option of the party.

When Undue influence suspected

- ✓ Inadequacy of consideration.
- ✓ Fiduciary relationship between the parties.
- ✓ Inequality between the parties as regards age, intelligence, social status etc.
- ✓ Absence of independent advisors for the weaker party.
- ✓ Unconscionable bargains.



Difference between Undue Influence and Coercion

1. In coercion the influence arises **from threatening to commit** an offence punishable under the Indian Penal Code. However, in undue influence, the influence arise from the **domination** of the will of one person over another.
2. Cases of coercion are mostly cases of the use of **physical force** while in undue influence there is **mental pressure**.

4.3 Misrepresentation

Representation is a statement or assertion, made by one party to the other, before or at the time of the contract, regarding some fact relating to it.

Misrepresentation arises when the representation made is inaccurate but the inaccuracy is not due to any desire to defraud the other.

Example: A says to B who intends to purchase A's land " My land produces 12 maunds of rice per bigha". A believes the statement to be true. Later on it transpires that the land does not produce that amount of rice.

Types of Misrepresentations

Innocent misrepresentation is a false statement of material fact by the defendant, who was **unaware at the time of contract signing** that the statement was untrue.

Negligent misrepresentation is a statement that the defendant **did not attempt to verify** was true before executing a contract.

Fraudulent misrepresentation is a statement that the defendant made **knowing it was false** or that the defendant made recklessly to induce the other party to enter a contract.



Week: 11
Slides 121-128

Fraud

Definition:

The term "fraud" includes all acts committed by a person with a view to deceiving another person.

"To deceive" means to "Induce a man to believe that a thing is true which is false."

Example: A sells his house to B without disclosing the fact of mortgage.



Types of Fraud

- False Statement.
- Active Concealment.
- Intentional Non-Performance.
- Deception.
- Fraudulent Act or Omission.

Can Silence be Fraudulent?

1. The general rule is that mere silence is not fraud.

Example: Not disclosing market price information.

2. Silence is fraudulent, “If the circumstance of the case are such that it is the duty to speak.

Example: Insurance contract.

3. Silence is fraudulent where the circumstances are such that, “silence is in itself equivalent to speech”

Example: “If you do not deny it, I shall assume that the horse is sound”

Distinction Between Fraud and Misrepresentation

1. **Different Intention:** In misrepresentation there is no intention to deceive. Fraud implies an intention to deceive.
2. **Different Belief:** If the statement is honest, even though it was wrong, there is only misrepresentation and if the statement is dishonest it is a case of fraud.
3. **Different Rights:** In case of fraud the party can rescind the contract. In case of misrepresentation the only remedy is rescission.

Contracts of Uberrimae Fidel

Definition: are contracts where law imposes upon the parties the duty of making a full disclosure of all material facts.

In such contracts, if one of the parties has any information concerning the subject matter of the transaction which is **likely to affect the willingness of** the other party to enter into the transaction, he is bound to disclose the information.

Types of Uberrimae Fidei

- Contracts of insurance.
- Fiduciary relationship.
- Contracts for the sale of immovable property.
- Allotment of shares of companies.
- Family Settlement.



Mistake

Definition: may be defined as an erroneous belief concerning something. Consent can not be said to be free when an agreement is entered in under a mistake.

Example: M agrees to buy from N a certain horse. It turns out that the horse was dead at the time of the bargain though neither party was aware of the fact. The agreement is void.



Deception

Deception: means making false representations or submitting false documents (whether or not material to the application), or failing to disclose material facts.

Example: A friend invited you to their dinner party and asks how you liked their casserole dish. You thought it was disgusting but your respond with a dodge, saying, “Wow! I've never tasted anything like that before,” deceptively implying you enjoyed your meal without actually saying anything untrue



Week: 12
Slides 130-146

Company Act 1994



Definition of Joint Stock Company

Company means a company formed and registered under this Act or existing company.

(Company Act, 1994)

A joint stock company is 'an association of many persons who contribute money or money's worth to a common stock and employ it for a common purpose'.

Definition of Joint Stock Company

Justice Marshall : “A company is an artificial being, invisible, intangible and existing only in contemplation of law”.

Justice Lindley : “A company is a voluntary association or an organization of many persons who contribute money or moneys worth to a common stock and employ it in some trade or business and who share the profit or loss arising therefore”



CHARACTERISTICS OF A COMPANY

- 1. Registration
- 2. Voluntary association
- 3. Legal personality
- 4. Contractual capacity
- 5. Management
- 6. Capital
- 7. Permanent existence
- 8. Registered office
- 9. Limited liability
- 10. Common seal
- 11. Transferability



- - 13. Statutory obligations
 - 14. Not a citizen
 - 15. No fundamental rights
 - 16. Social objective
 - 17. Centrally administered

-

Advantages of a Joint Stock Company

The power and presence of corporations in American business suggest that this form has certain advantages over other forms of business ownership:

- ❖ High amount of capital
- ❖ Limited liability
- ❖ Low risk investment
- ❖ Perpetual succession
- ❖ Separate entity
- ❖ Transferability of share
- ❖ Efficient management
- ❖ Credit facility

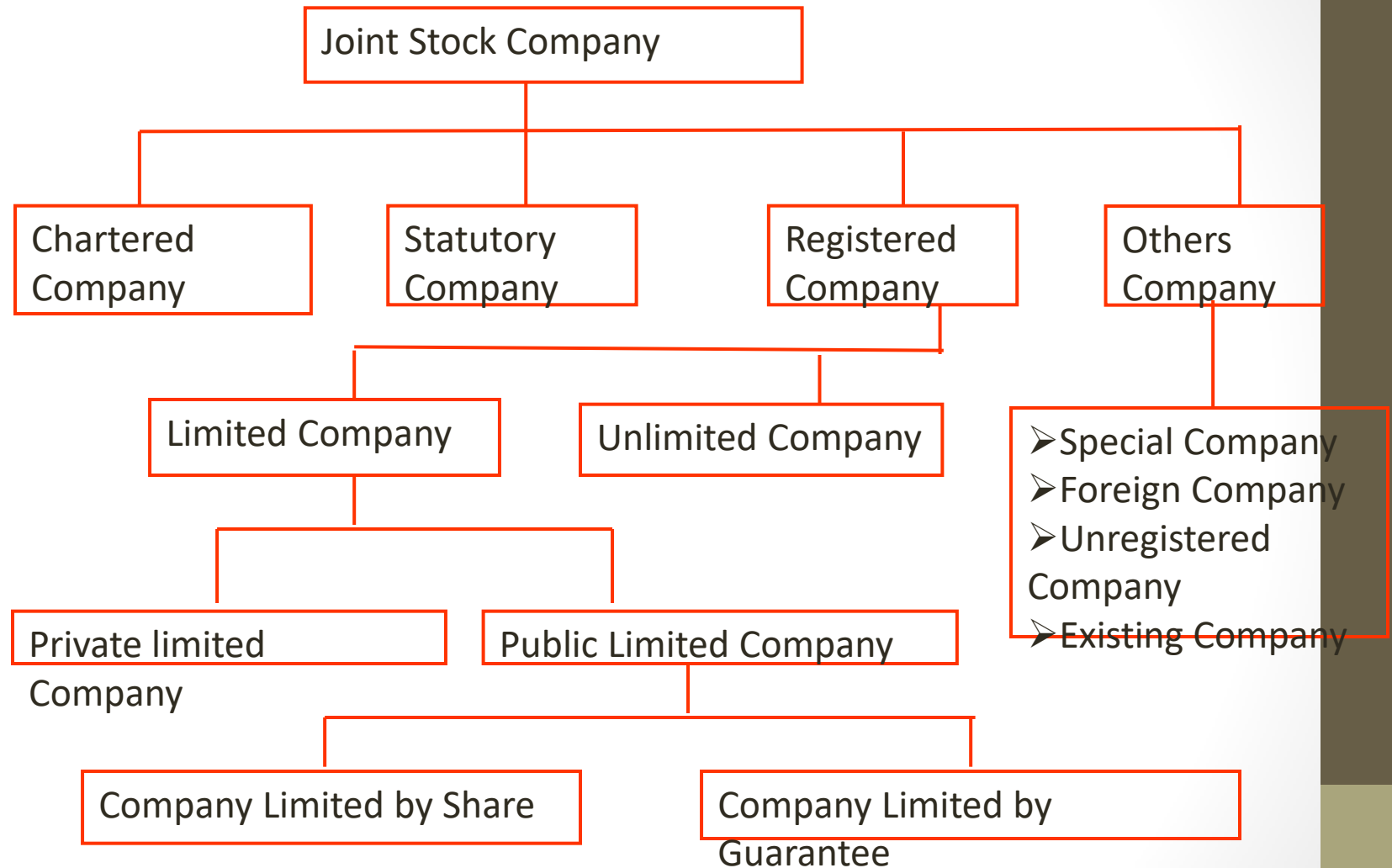


Disadvantages of a Joint Stock Company

As was true with the other forms of business organization , the corporation has some disadvantages. Some of the more obvious ones follow:

- 1.Complexity of formation
- 2.Creation of monopoly business
- 3.Bureaucracy
- 4.Nepotism
- 5.High administrative cost
- 6.Overlook to the shareholder
- 7.Scope of fraud
- 8.Tide following of law
- 9.Expose of secrecy

Classification of Company



Chartered company

In 1844, the first Company Act was issued in the England . A chartered company is a company which is incorporated by royal charter obtained from the crown. This type of company is in vogue in England a century ago. The examples of such companies are:

- The Chartered Bank of England
- Chartered Mercantile Bank of India and
- East India Company.



Statutory company

A company formed and regulated by the special Act of legislature is known as a statutory company. Usually such companies are formed for the purpose of maintaining and accelerating the pace of economic development in the country. The examples of statutory companies are as follows:

- Bangladesh Bank
- Bangladesh Biman
- BRTA
- WASA
- DESA
- TNT
- PDB



Registered Company

A registered company means a company formed and registered under the companies Act 1994. Broadly there are two types of registered companies from the view point of liabilities of members:

1 . Limited company : A limited liability company of which the liability of each member is limited to the face value of the share held by him and the capital of the company is divided into the number of shares. This type of company is two types:

- Private Limited Company: A private limited company means a company which by its articles of association,
 - a) Restricts the right to transfer the shares
 - b) Limits the number of its members to fifty excluding persons who are in the employment of the company
 - c) Prohibits any invitation to the public to subscribe for the shares or debentures of the company.

➤ Public Limited Company: It is a voluntary Association of at least seven or more persons, authorized and recognized under the law as a separate legal entity apart from its owners who agree to supply capital and share the profits or losses. A public limited company may be of two types which are the following:

a) **A company limited by shares** : It is a company, of which the liability of each shareholder is limited to the face value of the shares held by him. If he pays the full amount of his share, he gets freed from any other liability.

b) **A company limited by guarantee** : A company is called a company limited by guarantee, when each shareholder undertakes to contribute a certain amount to the liability of the company in the event of its being wound up while he is a member, In this company which members are bearing a company limited by guarantee, for the unpaid amount of share they are liable. If they paid full amount of share they are free from the liability. This organization is usually formed for furthering the cause of education or some professional cause.

2. Unlimited Company: Unlimited Liability Company is a company of which the liability of each shareholder is unlimited- each shareholder is liable for the debts of the company to an unlimited extent. In other words the liability of the member extends beyond the face value of shares held by him to his personal properties.

Other Companies

- **Existing Company:** A company formed and registered under any of the previous company law.
- **Foreign Company:** Companies incorporated outside Bangladesh which establishes a place of business within Bangladesh.
- **Non-trading Association:** Any association which operates its activities for the welfare of our society in non-profit making manner.
- **Special Company:** Any company registered under the Companies Act which is also controlled by any other special orders or acts. For example-banking companies, insurance companies.

Other Companies

In accordance with the basis of control, public companies can be divided into ---

- **Government Company:** *A public ltd. company whose 51% ownership is under the control of Government.*
- **Non-government Company:** *A public ltd. company whose 51% ownership is under the control of general public.*
- **Holding Company:** A company which controls the policies of another company through-(i) the ownership of its share or (ii) control over the composition of its Board of Directors.
- **Subsidiary Company:** A company which is controlled by a holding company.

Differences between Private Limited and Public Limited Company

- To start a Public Limited Company, you must have at least 7 members, while a private company can be started with 2 members.
- The second difference between them is that, a public company can have a minimum of 3 directors, whereas the private Ltd. company can have a minimum of 2 directors.
- It is compulsory to call a statutory general meeting of members, in case of a public company, whereas there is no such compulsion in the case of a private company.
- In a Public Ltd. Company, there must be at least 5 members, personally present at the Annual General Meeting (AGM) for constituting requisite quorum. On the other hand, in case of a Private Ltd. Company, that number is 2.
- The issue of prospectus/statement in lieu of prospectus is mandatory in case of a public company, but the same is not mandatory for private companies.
- In order to start a business, the public company needs a certificate of commencement of business after incorporation, whereas a private company can start its business just after receiving a certificate of incorporation.

Conversion of public limited company into a private company

In companies act 1994 there has been a provision in sec. 232 to convert a public limited company into a private one

- **Procedure of conversion:**

- 1. Adaptation of special resolution**

- Special resolution needs to be passed at the general meeting of the company
- Notice is required to be served all the share holders **at least two days** before the meeting is held
- The resolution has to be passed at **least 3/4 of the present voters** in the meeting including authorized proxies

Week: 13
Slides 148-164

Conversion of public limited company into a private company

2. Alteration of article of association:

After the resolution has been passed, the conflicting provisions of the previous articles applicable for a public company to be altered.

New added article shall include:

1. Number of the member should not be more than 50
2. Shares not transferable
3. Prohibition of any invitation to the public to subscribe for its shares debenture

3. Rectification of name:

The word “private” is required to be added at the end of the name of the company although its not mandatory

4. Submission of document:

Copies of resolution, altered articles, rectified name etc are necessary to be send to the registrar.

If registrar authorized such documents then the day of passing resolution will be deemed to be the day of conversion

Conversion of private company into a public limited company

Procedure of conversion: sec. 231

- Adaptation of special resolution
- Alteration of articles
- Submission of prospectus:

After date of alteration within 30 days, a prospectus or a statement in lieu of prospectus is required to be filed with the office of the registrar.

- Enhancement of the number of directors
- Rectification of names

Formation of a company

- Stages of formation of a company:
 - a) Promotion
 - b) Preparation of documents
 - c) Registration
 - d) Capital subscription
 - e) Collection of certificate of commencement

Formation of a company

1. Promotion:

Two person in case of private ltd. Co. & 7 person for public ltd. Co. are required to be made convene for this purpose.

Promoters of the above mentioned persons do the following thing-

a) Taking necessary decision:

Take decision about the name of the co, financial plan, whether the co. is a public or private co. etc

b) Collecting name clearance certificate:

Promoters are required to have a name clearance certificate from the registrar's office.

After obtaining the name clearance certificate the necessary steps for registration are needed to be taken within 30 days.

Formation of a company

- **Preparation of document:**

The promoters prepare at least two important document;

- a) Memorandum of association
- b) Article of association

- a) **Preparation of memorandum of association:**

Sec 6 provide the memorandum of a company limited by share

Sec. 7 provides limited by guarantee

Sec. 8 provides the memorandum of an unlimited company

Co. limited by share contain the followings-

Name of the co.

Nature of the co.

Liabilities of the co.

Objective of the co.

Proposed approximate amount etc.

Sec. 9 provides the preparation and presentation method of memorandum

Formation of a company

- Preparation of article of association:

It is the second important document of a Co. so promoters need to prepare article.

Sec. 17 (1) provides that the company limited by guarantee and an unlimited Co. shall and a Co. limited by shares may registered together with the company.

Sec. 19 provides the procedure of making & presenting the articles of a company.

3. Registration or certificate of incorporation:

After submission the document to the registrar if he satisfied then he shall register the documents with in 30 days from the date of reception

In case of refusal the grounds to be communicated with in ten days after that period. Sec 23(1)

On the registration the registrar shall certify that the company is incorporation. Sec 24(1)

Here the registration fees mentioned in sch II shall have to be paid.

Formation of a company

4. Capital subscription:

Private co raises capital personally but public co. issues the prospectus and are necessary activities are to be performed.

5. Obtaining the certificate of commencement:

After a company registered it has corporate personality.

Private co. can commence its business immediately after business But public ltd. Co must obtain a certificate of commencement.

a) Share held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription.

Formation of a company

- b) Every director of the company has paid in cash of the shares taken by him sec. 150
- c) A verified declaration by the secretary or any of the directors of the co. that the above mentioned conditions have been fulfilled sec 150 (1) (c)
- d) A state in lieu of prospectus where the prospectus has not been issued

sec. 150 (1) (d)

After all activities have been performed, the registrar shall issue a certificate of commencement of business sec. 150 (2)

Memorandum of Association

- It is the main document of the company
- It contains the **fundamental conditions upon which the company can be incorporated**
- It contains the **objects** of the company's formation
- The company has to **act within objects specified** in the MOA
- It **defines as well as confines** the powers of the company
- Any thing done beyond the objects specified in the MOA will be **ultra vires. Their transactions will be null and void**
- The outsider have **to perform** looking into the MOA



Objectives of MOA

- Gives security to the existing share holders
- Gives securities to the outsiders who want to deal with the company
- Provide the structure of the company
- Provide the objectives for which the company is established
- Define the power of the company and its extended limit
- Make the outsider known about the authorized capital, paid up capital & about the liability of the company

Clauses of memorandum of association

- Subject to the provisions of the Company Act-1994, Sec-6, 9 & 11, the memorandum of association of every company shall contain the following particulars:
- **Name clause:** The name of the company with the word “limited” at the end of the name of a public company and the words “private limited” at the end of a private company.
- **Situation and address clause:** The name of the place in which the registered office of the company is to be situated.
- ***The place of registered office can be informed to the registrar within 30 days of incorporation or commencement.***
- **Object clause:** The objects of the company must be stated separately-
 - The main objects and incidental objects and auxiliary to the main objects;
 - Other objects not included in (i).If there is any transaction which is outside the scope of the powers specified in the objective clause, it will be regarded as **Ultra-vires**

Clauses of memorandum of association

- **Liability clause:** The nature of the liability of the members, i.e. whether limited by shares or guarantee or unlimited.
- **Capital clause:** The memorandum shall state the amount of share capital with which the company proposes to be registered, and the divisions thereof into shares of a fixed amount.
- **Subscription and consent clause:** Each subscriber of the memorandum shall take at least one share and shall write opposite to his name the number of shares he takes. The memorandum shall be signed by each subscriber, who shall add his address and description in the presence of at least two witnesses who shall attest the signature.

“Doctrine of Ultra Vires”

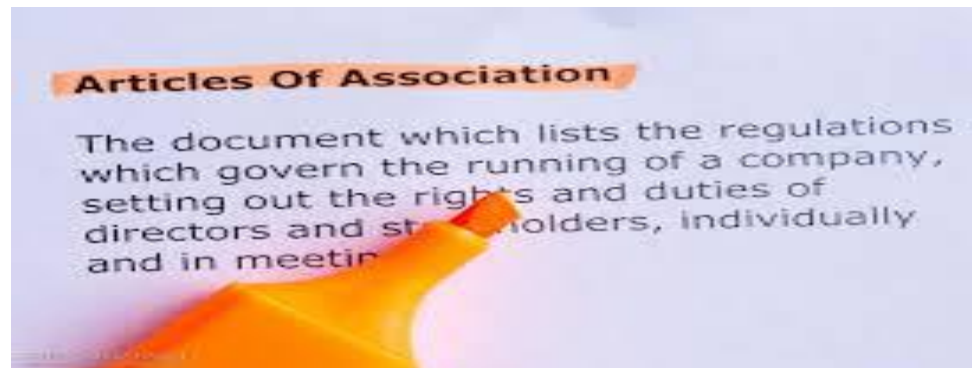
- The powers exercisable by the company are to be confined to the objects **specified in the MOA**.
- So it is better to define and include the provisions regarding the **acquiring of business, sharing of profits, promoting company and other financial, gifts, political party funds etc**
- If the company acts beyond the powers or the objects of the company that is specified in the MOA, the acts are considered to be of ***ultra vires***. Even if it is ratified by the all the members, the action is considered to be ineffective.
- Even the charitable contributions have to be based on the object clause.

“Doctrine of Ultra Vires”

The object clause of the memorandum of the company contains the object for which the company is formed. An act of the company must not be beyond the object clause otherwise it will be ultra vires and therefore, void and cannot be ratified even if all the member wish to ratify. This is called the doctrine of ultra vires. The expression “ultra vires” consists of two words: ‘ultra’ and ‘vires’. ‘Ultra’ means beyond and ‘Vires’ means powers. Thus, the expression ultra vires means an act beyond the powers. Here the expression ultra vires is used to indicate an act of the company, which is beyond the powers conferred on the company by the objects clause of its memorandum. An ultra vires act is void and cannot be ratified even if all the directors wish to ratify it. Sometimes the expression ultra vires is used to describe the situation when the directors of a company have exceeded the powers delegated to them. Where accompany exceeds its power as conferred on it by the objects clause of its memorandum, it’s not bound by it because it lacks legal capacity to incur responsibility for the action, but when the directors of a company have exceeded the powers delegated to them. This use must be avoided for it is apt to cause confusion between two entirely distinct legal principles. Consequently, here are restricting the meaning of ultra vires objects clause of the company’s memorandum

Articles of Association

- It is the companies **bye- laws or rules to govern** the management of the company for its **internal affairs and the conduct of its business.**
- AOA defines the **powers of its officers** and also **establishes a contract between the company and the members and between the members *inter se***
- *It can be originally framed and altered by the company under previous or existing provisions of law.*



AOA

- AOA plays a **subsidiary part** to the MOA
- Any thing **done beyond the AOA will be considered to be irregular and may be ratified by the shareholders.**
- The content of the AOA may differ from company to company as the Act has not specified any specific provisions
- Flexibility is allowed to the persons who form the company to adopt the AOA within the requirements of the company law
- The AOA will have to be conversant with the MOA, as they are contemporaneous documents to be read together.
- Any **ambiguity and uncertainty in one of them may be removed by reference to the other.**

Contents of Article of Association

The Articles of Association is a document which contains **rules, regulations** and **bye-laws** regarding the **internal management** of the company.

- a) Direction: rules regulations of the companies daily activities & management
- b) Information about the directors
- c) Information regarding the capital
- d) Information regarding shares
- e) Information regarding meeting
- f) Taking loans
- g) Dividend
- h) Maintaining accounts
- i) Recruitment & selection
- j) seal
- k) dissolution

Week: 14
Slides 166-179

Differentiate between Memorandum of Association and Articles of Association

<i>Subject of distinction</i>	<i>Memorandum of Association</i>	<i>Articles of Association</i>
<i>i. Nature</i>	It is the fundamental charter of the company determining its constitution and objectives.	It is document containing rules regarding internal management.
<i>ii. Importance & validity</i>	It is main and basic document of the company. Its validity is always supreme.	It is supporter document to memorandum. Any rule in the articles contrary to the memo is invalid.
<i>iii. Description</i>	There have basic and short descriptions of fundamental matters of the company.	There have descriptions in details regarding rules of internal management.
<i>iv. Necessity of preparation</i>	It is mandatory to prepare for a company.	If it is not prepared, Schedule-I of the Company Act may be taken as articles.
<i>v. Defining relationship</i>	The memo defines the power of the company and the relationship between the company and the members and also non-members.	Articles define and regulate the relationship between the company and the members and the relationship between the members inter se.
<i>vi. Alteration of contents</i>	Its contents can be changed only the adoption of certain formalities. Certain clauses cannot be altered without the sanction of the Government and of the Court.	Its contents can be changed easily by passing a special resolution.
<i>vii. Ultra vires activities</i>	Acts beyond the powers of the memo (ultra vires) are void.	Acts done by the company beyond the articles can be ratified by the shareholders.
<i>viii. Registration</i>	Its registration is mandatory.	Its registration is not mandatory.

prospectus

- It is an **invitation** issued to the public to **purchase or subscribe shares or debentures** of the company.
- A document inviting people to subscribe any share or debenture of a company is called prospectus.
- **“Document containing offer of shares or debentures for sale is to be deemed as prospectus.”**
-----**Sec. 142 of the Company Act-1994**
- “Any document described or issued as a prospectus and includes any notice, circular, advertisement, or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any share in, or debentures of a body corporate.”
-----Sec. 2(56) of the Indian Company Act-1956
- It is an **invitation** issued to the public to **purchase or subscribe shares or debentures** of the company.
- Every **prospectus must be dated**. The date of publication and the date of issue must be specifically stated in the prospectus

Objectives of Prospectus

- Collection of capital
- Obligation of companies act
- Importance to potential share-holders



Contents of prospectus

In Bangladesh, the contents of prospectus according to the company act 1994, sec 135, schedule 3 hold as follow:

- Name of the company
- Address of the head office of the company
- Objectives of the company
- Name of the people who put signature, their address, profession & description about how much share they bought
- Number of shares & their classification
- Number of debentures & their classification
- Number of share regarding worthiness of directors & prices
- Enrollment of directors

Contents of prospectus

- Share-holders power of voting & dividend policy
- Profit of the company & contribution of the shareholders in the asset of the company
- Policy and methods of distribution of profit
- Name address of the directors, managers & executives
- Provision about transferring of shares
- Amount of primary expenses at initiating of the company
- Method of retain earning's being used
- Auditors name & address
- Before formulation of the co. whether there is any contract with a person or company
- Explanation about companies profit & loss accounts, liabilities & assets. Mention the auditors name regarding this.

untrue statements in the prospectus

“Untrue statement” in connection with a prospectus shall be deemed to include:

- A statement which is misleading in the form and context in which it is included, and
- An omission (of any matter) which is calculated to mislead.

Who will be liable for untrue statements in the prospectus?

Subject to the provisions of the section 145(1), the following persons will be liable for untrue statements in the prospectus:

- Every person who is a director of the company at the time of the issue of the prospectus;
- Every person who has authorized himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after interval of time;
- Every person who is promoter of the company; and
- Every person who has authorized the issue of the prospectus;

Directors and Board of Directors:

- The fundamental principle relating to the administration of a company is that its board of directors, which the representative body elected by shareholders and others, shall direct and control its affairs.
- “Directors include any person occupying the position of director by whatever name called.”

-Sec-2(f) of the Company Act -1994

- The board of directors is the most supreme authority in case of management of a company. Since a company is treated as an artificial person in the contemplation of law, directors perform various important activities on behalf of the company. Although the day to day administration of the company is assigned to the professional management personnel, their activities are supervised by the board of directors.
- Every public company shall have at least three directors and private company shall have at least two directors

Appointment of Directors:

Directors can be appointed in the following ways:

- ***By promoters:*** initially promoters appoint the directors or they become directors. They are enlisted in the MOA & AOA . Initial directors are self-appointed and they resign after the first general meeting.
- ***By shareholders:*** The directors of the company shall be elected by the members from among their number in general meeting through voting system directly. This is the general procedure to appoint directors. This kind of appointment process is described in AOA.
- ***By board of directors:*** Any casual vacancy occurring among the directors may be filled in by the other directors but the person appointed shall be a person qualified to be elected as a director. Some time they can appoint new directors in blank posts according to the AOA
- ***By managing agent:*** Sometimes managing agent can appoint director of the company but its number cannot be more than one third of the total number of the directors.
- ***By government:*** Government is entitled to appoint one or more directors in any company, if think necessary in response of application of the shareholders or other reasons.

Disqualifications of Directors

Subject to the provisions of the Company Act, sec-94(1), a person shall not be capable of being appointed director of a company, if-

- He has been found to be of unsound mind by a competent court; or
- He is insolvent; or
- He has applied to be adjudicated as an insolvent and his application is pending; or
- He has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or
- He is a minor.

Power of Directors

The board of directors of a company shall be entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do. However, some of the powers of the directors are stated below:

- To lay down the general policies of the business;
- To issue and allot the shares among specified shareholders;
- To call the required amount of money from the shareholders;
- To cease and forfeit the shares upon which the called money are not paid;
- To issue debentures and to collect the required amount of money from other sources;
- To decide any rational decision on behalf of the company;
- To appoint and supervise professional management personnel of the company;
- To transfer a part of profit to reserve fund; if necessary
- To declare dividend for the shareholders;
- To supervise and take care of accounts of the company;
- To perform any contract on behalf of the company;
- To approve loan or to invest money in other businesses;
- To make arrangement for annual general meeting and any extra general meeting according to law; etc.

Retirement of Directors

1. Retirement at the first general meeting:

Initial directors have to retire on the day of the first AGM. Its mandatory but they can re-elect by the vote of the shareholders

2. Annual retirement:

Its mandatory that One third of the directors get retirement. If they wish they can compete again in the election.

3. Resignation:

Any directors can resign voluntarily. In this case he has to submit resignation letter to the register office of the company.

Removal of directors

1. Removal by the shareholders

Under sec. 106, a company may remove any of its share directors by extra ordinary resolution before the expiry of his period

To remove any director a special notice is required to be served to the general members **not less than fourteen days before** the meeting

Concerned director shall be required to serve a notice in this regard & shall also be entitled to heard before passing the resolution on the meeting.

2. Removal by the government

- a) If the directors ignores rules, regulations or cheat or alleged for any crime
- b) If any directors rules the business that is not similar to the given objectives of the Co.
- c) If any directors makes the great loss for the company
- d) If the directors drive the company to any wrongful act.

.

Removal of directors

3. Compulsory Removal:

- a. If directors will not purchase minimum share
- b. If anyone is proved insane
- c. Announcement of the bankruptcy by the court.
- d. Punished by the court by any illegal activities
- e. Announced unfit for directorship by the court.



Week: 15
Slides 181-194

Sales of Goods Act (1930)



Sales of Goods Act

After finishing this chapter, students will be able to

- ✓ Define sales of goods act.
- ✓ Distinguish between sales and agreement to sell.
- ✓ Illustrate the fundamental elements of sales of goods act.
- ✓ Explain different types of goods.
- ✓ Analyze basics of doctrine of caveat emptor.
- ✓ Analyze the consequences of breaching warranties.

INTRODUCTION

- Before The Sales of Goods Act, transactions relating to sales and purchase of goods were regulated by The Indian Contract Act 1872.
- The Indian Sales Of Goods Act was passed in 1930 and **sections 76 to 123** were repealed from The Indian Contract Act.
- It came into force on **1st July 1930** and **22nd Sept. 1963** the word Indian was removed and now the present act is called The Sales Of Goods Act 1930.
- In Bangladesh this law was effective from **26th March 1971**

5.1 DEFINATION

According to Section 4(1) of The Sales of Goods Act,1930.

“contract of sales of goods is a contract whereby the seller transfer or agrees to transfer the property in goods to the buyer for a price”

- ❖ Contract of Sale is a broad term ,which includes both ***sales*** and ***an agreement to sell***

CONTRACT OF SALE

Under Section 4(3) the Contract of Sale Includes:-

1) SALE:- Sale means where the ownership in goods is transferred from the seller to the buyer.

2) AGREEMENT TO SELL :- Agreement to sell includes **where the transfer of ownership in goods is to take place at a future time** or subject to the **fulfillment of some condition**.



Distinction between sale and agreement to sell

S.No	BASIS	SALE	AGREEMENT TO SELL
1.	Transfer of ownership	Transfer of ownership of goods takes place immediately.	Transfer of ownership of goods takes place in future times.
2.	Nature of Contract	It is an executed contract.	It is an executory contract because something remains to happen.
3.	Remedial measure	In the case of a sale, the unpaid seller has certain reliefs available. E.g. stoppage of transit, resale etc.	In an agreement to sell, the seller's remedy for breach of contract by the buyers, is a suit for damages.

Cont.

4.	Transfer of Risk	Transfer of risk* of loss of goods takes place immediately as the ownership is been transferred. As a result in case of destruction of goods, the loss shall be beared by the buyer.	Transfer of risk of loss of goods does not takes place because the ownership is not transferred. As a result, in case of destruction of goods the loss shall be bore by the seller.
----	-------------------------	---	---

5.2 DIFFERENT FUNDAMENTAL DEFINATION OF THE ACT



A. BUYER AND SELLER

- **“BUYER”**

means a person who buys or agrees to buy good. [Section 2(1)]

- **“SELLER”**

means a person who sells or agrees to sell the good. [Section 2(13)]

❖ A person cannot be a buyer as well as a seller as a person cannot buy his own goods



GOODS

“**GOODS**” means every type of movable property other than actionable claim and money but it can include stock and shares, crops etc.



Cont.

- **ACTIONABLE CLAIM:-** It means which can be enforced through the courts of Law. e.g. debt due.
- **MONEY:-** means the legal tender i.e. the currency of the country but not old coins.
- **PRICE** means the MONEY CONSIDERATION for the sale of goods. Sec. 2(10)

GOODS

U/s 2(7) GOODS MEANS

“GOODS” means every type of movable property other than actionable claim n money but it can include, FURNITURE, CLOTHING,FRUITS, stocks and shares, crops, etc.”

- **ACTIONABLE CLAIM:-** It means which can be enforced through the courts of Law, e.g. debt due.
- **MONEY:-** means the legal tender i.e. the currency of the country but not old coins
- **IMMOVABLE PROPERTY**

Things attest to the earth. Cannot separate from the earth.

TYPES OF GOODS



**Existing
goods**



**Future
goods**



**Contingent
goods**

Week 16
Slides 196-209

1. Existing goods

EXISTING GOODS

means the goods ,which are either owned or possessed by the seller at the time of contract of sale.

Existing goods are of **Two** types:

a) Specific or Ascertained goods

Goods which can be clearly identified and recognized as separate things e.g. a particular picture of a painter or a ring with distinctive feature. Sec 2(4)

b) Generic or Unascertained goods

A merchant agreed to supply one bag of wheat from his godown to a buyer. It is a sale of unascertained goods

2.Future goods

FUTURE GOODS

means goods to be **manufactured** or **produced** or **acquired** by the seller after the making of the contract of sale. Sec 2(6)

There is an agreement to sell only.

For Example:-X will sell the goods to Y all the crops to be grown at Barisal in his farm.

3. Contingent goods

CONTINGENT GOODS

means those goods, acquisition of which by the seller depends upon a contingency, which may or may not happen. Sec 6(2)

- For example:-X agrees to sell to y all the crops to be grown at Z's farm in Barisal during the year 2007 season for sum of 1 lakh taka, if Z sells the crops.
- If X recover his lost horse then he sell it to Y at taka 12000/-

5.3 Essential elements of sale of goods act

- **Moveable goods:** it deals only with movable goods, excepting actionable claims and money sec 2(7). The act does not apply to immovable properties.
- **Movable Goods for Money:** there must be a contract for exchange of movable goods for money.

The sale must be money consideration an exchange of goods for goods is not a sale

- **Two parties:**
- **Formation of the contract of sale:**

Essential elements of sale of goods act

- **Method of forming the contract:** by writing, by word of mouth or may be implied from the conduct of the party
- **The terms of contract:** parties may agree upon any term considering time, place and mode of delivery.
 - ❖ The terms are in two types 1) essential 2) non-essential
- **Other essential elements:** valid contract, free consent, consideration & lawful object

Price

For every sale or purchase there must be a price of the goods.

PRICE means the **MONEY CONSIDERATION** for the sale of goods.

Sec. 2(10)

- i. When there is no consideration, it amounts to gift and not sale
- ii. However, the consideration may be partly in money and partly in goods because the law does not prohibit as such.

Ascertainment of Price

- **Price ascertained by joint agreement or by course of dealings:**

The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner there by agreed or may be determined by the course of dealing between parties. Sec. 9 (1)

Example: S buys some crops from R in the month of May. Therefore It is fixed that the price of that crops will be paid on 1st June, in market price. So the price will be fixed on that day regarding the market price of that crops.

Ascertainment of Price

- **Ascertainment of Reasonable Price:**

Where there is no provision made in the contract regarding price, the buyer must pay a reasonable price. What is the reasonable price is a question of fact depending upon the circumstances of the case. **Sec. 9**

Example: R sent to B ten ton rice of same quality on 10th November. In the time of sale it wasn't said anything about price. In this case, the market price of that specific quality of rice will be considered the price for rice.

Ascertainment of Price

- **Ascertainment of Price by the Third Party:**

(1) In such case if the third party cannot make the valuation, the agreement to sell becomes void

BUT if the goods of any part thereof had been delivered to and appropriated by the buyer, he shall pay a reasonable price therefor. **Sec. 10(1)**

(2) Where the third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault is entitled to damage. The innocent party can sue for the demerger upon the guilty person

Sec. 10(2)

Destruction of Goods Or Consequences of Perishable Goods

- Sec. 7 and 8 describe the consequences of perishable goods which are sold

(1) Goods Perishing Before Making a Contract: Sec. 7

Example: there is a sale of cargo of corn. Without the knowledge of the seller, the cargo had before the sale become heated and was therefore landed at another port and sold. The sale is void. **Couturier V. Hastile**

Destruction of Goods or Consequences of Perishable Goods

(2) Goods perishable before the sale but after agreement to sell:
Sec. 8

Example: There was a contract for the sale of a horse. The buyer would use it for eight days for trail and it was not suitable, it would be returned. Three days before the delivery of the horse. It died, without any fault on the either party. The contract was avoided.

Elphick V. Barness

5.4 CONDITIONS & WARRANTIES

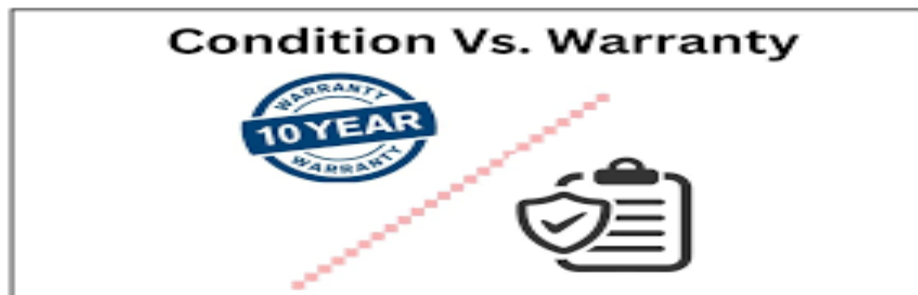
- A stipulation (or term) in a contract of sale with reference to goods may be a condition or warranty

Sec 12, Sale of goods act 1930

Condition:

A condition is a stipulation **essential to the main purpose of contract**, the breach of which gives rise to a right to treat the contract as repudiated.

Sec 12 (2)



CONDITIONS & WARRANTIES

Warranty:

A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim damages but not a right to reject the goods and treat the condition as repudiated. **Sec 12 (3)**

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 contact**. A stipulation may be a condition though called a warranty in the contract.” [Sec12(4)]
- Conditions and warranties may be expressly stated in a **written document** or **may be implied from the circumstances** under which the contract was entitled into.
- 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.

Week: 17
Slides 209-220

Stipulations as to Time

Stipulations as to time in a contract of sale fall under the following:

“Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be the essence of the contract of sale, **whether** any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.”

Sec 11

Stipulations as to Time

Example: Delivery was to be given on October . Owing to a strike in the port of loading the goods were not shipped until November. Held, buyer were entitled to reject.

J. Aron & Co. V. C. Wegimont.

Reasonable time a question of fact

Where is this act any reference Is made to a reasonable time,

“The question what is a reasonable time is a question of fact.”

Sec 63

When A condition can be treated as a Warranty

Section 13 deals with cases where a breach of condition is to be treated as a breach of warranty, as a consequence of which the buyer loses his right to rescind the contract and has to be satisfied with a claim for damages only.

1. Voluntary waiver of a condition:

The buyer may elect to treat a breach of condition as a breach of warranty, i.e. instead of repudiating the contract he may accept performance and sue for damages, if he has suffered any. Sec 13 (1)

Where a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may waive the condition

Example: certain goods were promised to be delivered on 1st June, time being made the essence of the contract. The goods were delivered on the 2nd June. The buyer may accept the goods.

2. Compulsory waiver of a condition:

When a contract of sale is not severable and the buyer has accepted the goods or a part of thereof, he cannot repudiate the contract but can only sue for the damages. In such a case, the breach of condition can only be treated as a breach of warranty, unless there is a contract to the contrary. Sec 13(2)

If a buyer prevents the fulfillment of a condition contained in the contract, the condition become invalid.

Difference Between Condition & Warranty

Condition

1. It is a stipulation which is essential for the main purpose of the contract.
2. In case of breach of a condition, the aggrieved party can repudiate the contract of sale.
3. A breach of condition may be treated as breach of warranty under certain circumstances.

Warranty

1. It is a stipulation which is collateral to the main purpose of the contract.
2. In case of breach of warranty, the aggrieved party can claim damages only.
3. The warranty cannot become a condition.

Consequences of Breach of Conditions

1. If a condition is broken there arises a right to treat the contract repudiated **Sec 12(2)**

2. Repudiation of contract before due date:

Where either party to a contract of sale repudiates the contract before the date of delivery, **the other may either treat the contract as subsisting and wait till the date of delivery,** or he may treat the contract as void and sue for damages for the breach. **Sec. 60**

Consequences of Breach of Warranty

1. A breach of warranty gives rise to a claim for damages **but not to a right to reject the goods and treat the contract as repudiated. Sec. 12(3)**
2. **Remedy for breach of warranty:**
 - 1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods, but he may....
 - **Set up suit against the seller the breach of warranty in diminution or extinction of the price; or**
 - **Sue the seller for damages for breach of warranty.**

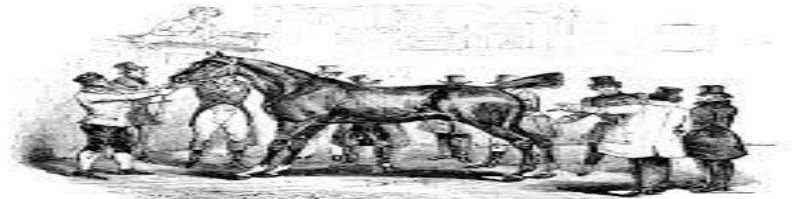
When A condition can be treated as a Warranty

- (2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damages. **Sec 59**

DOCTRINE OF CAVEAT EMPTOR

MEANING OF CAVEAT EMPTOR : SECTION 16

Caveat emptor is a Latin term meaning "**let the buyer beware**". It is a general rule of law that a purchaser assumes the risk of his/her purchase. The intent of the rule is to place a duty of care on the buyer in selecting an item and putting forth appropriate inquiry before completing the sale. In this way, a seller is also protected from liability for buyer's remorse .



EXAMPLE :

you buy a used car which you are told is in perfect condition, but it immediately breaks down

EXCEPTION OF DOCTRINE OF "CAVET EMPTOR"

- **In case of the seller is guilty of fraud:**

If the consent of the buyer was obtained by fraud, the seller is not protected by the doctrine of caveat emptor.

- **In case of sales by description : section 15**

When the goods are sold by description and the goods supplied by the seller do not correspond to the description . Such as external features, product name, brand etc.

- **In case of sale by sample : section 17**

Where the goods are sold by sample and the goods supplied by the seller do not correspond with the sample.

EXCEPTION OF DOCTRINE OF "CAVET EMPTOR"

- In case of sale by sample as well as description :

section 15

where the goods are sold by sample as well as description and the goods supplied do not correspond with sample as well as description .

- Fitness for a particular purpose : section 16 (1)

Where the seller or the manufacture is a dealer of the type of goods sold by him and the buyer has disclosed the purpose for which goods are required and relied upon the seller's **skill or judgment** .

Except the above cases the seller is not liable to any penalty if the goods purchased are found to be unfit by the buyer for the purposes he had in mind.