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SEMESTER I

Author: Mr. Sehanawaz

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Registrar

UNIT - 1: THE INDIAN CONTRACT ACT 1872

STRUCTURE

1.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe nature of contract
- Identify needs of contract
- State the need and importance of contract
- List the kinds of contract

1.1 INTRODUCTION

The Contract Act refers to a set of laws that regulate contracts in a particular jurisdiction. In general, a contract is an agreement between two or more parties that creates enforceable obligations. The Contract Act sets out the rules for forming and enforcing contracts, and it provides remedies in case of breach of contract.

In most countries, the Contract Act is based on common law principles, which means that the law is developed through court decisions. However, some jurisdictions have adopted a statutory approach, which means that the law is set out in a statute or code.

The Contract Act typically covers topics such as offer and acceptance, consideration, capacity, legality, and interpretation of contracts. It also deals with issues such as breach of contract, remedies, and discharge of contracts.

Overall, the Contract Act is a fundamental area of law that is essential for understanding how agreements are formed, how they are enforced, and how disputes are resolved in a legal context.

1.2 GENERAL PRINCIPLES OF CONTRACT

A contract is defined as "An agreement which is enforceable by law" in Section 2(h) of the Indian Contract Act, 1872. The agreement between two or more parties to do or refrain from doing what they decided upon in exchange for something, that is, a consideration, is what is known as a contract.

The intention to establish legal relations is one of the general principles in the construction of a contract.

a proposal and acceptance.

Legitimate Consideration.

capacity of the parties involved.

Freedom of Will.

The contract's goal must be legitimate.

The agreement must not be void and must also possess the qualities of clarity and the potential for performance in order to be legally enforceable.

For the contract to be enforceable and have meaning, all of the aforementioned components must be present. An agreement does not become a contract and is not legally binding if any of these elements are missing. This means that while every agreement is a contract, not every agreement qualifies as one. In accordance with Section 10 of the Constitution, "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void." This implies that if the requirements of a contract are satisfied, then all agreements are contracts.

An agreement is a pledge made by two parties that legally binds them to one another. An agreement is defined as "Every promise and every set of promises, forming the consideration for each other, is an agreement" under Section 2(e) of the Indian Contract Act, 1872. We comprehend that the term "agreement" refers to two elements by its basic definition under section 2(e). –

A promise Section 2(b) of the Indian Contract Act of 1872 defines promise. When one party makes an offer—that is, proposes to do or refrain from doing something—and the other party responds, we might say that the offer has been accepted. This then turns into a commitment. Promises generally fall into one of four categories. Chapter 9 of the Indian Expressed Promises: According to Section 9 of the Indian Contract Act of 1872, they are defined. Whether communicated verbally or in writing, commitments made in connection with offers or acceptances are referred to as expressed promises.

The Indian Contract Act of 1872's Section 9 defines implied promises. Implied promises are those that have been made when an offer or acceptance has been made in a manner other than through express words.

The Indian Contract Act of 1872's Section 2(f) defines reciprocal promises. Reciprocal promises are those that form as consideration for the conclusion of an agreement, i.e., as consideration for one another.

Alternative Promises: According to Section 58 of the Indian Contract Act of 1872, they are defined. The type of promises known as alternative promises are those that offer a choice between two options.

Acceptance - A promise must be unconditionally accepted for the contract to be enforceable, and this acceptance may be conveyed verbally or physically. When dealing with generic offers or general promises of continuation, acts may also imply acceptance. Acceptance, communication, and revocation are covered in Section 3.

Consideration is defined in Section 2(d) of the Indian Contract Act of 1872 as "when at the desire of the promisor, the promisee or any other person has done, or abstained from doing, or does, or promises to do, anything."

or to pledge not to do anything; in this case, the act, promise, or abstinence is referred to as a consideration for the promise.

The phrase "consideration" simply denotes "something in exchange," or "QUID PRO QUO."

Given that it explains the rationale behind each party's participation in the agreement, consideration is one of a contract's most crucial elements. A consideration must have worth in the eyes of the law and can take the form of a financial exchange for goods or services or a swap of one kind of good for another kind of good. Any consideration must also be legal, and if it isn't, the contract is void ab initio (from the start). The following are some of the guidelines to be followed:

Any promise, whether past, executory, or executed, must be accompanied by consideration that is related to the promise.

Past consideration is when something has been finished and the pledge is made after the deliberation is over. Executed consideration consists of one promise made before an action, whereas executory consideration consists of two promises.

Any consideration offered by the promisee is required in order for it to be enforceable. This implies that a promise cannot be enforced by a party that has not given any consideration in connection with the commitment. And only the party who gave consideration for it has the right to enforce that guarantee. According to the ruling in the case of Tweddle v. Atkinson, the son cannot make good on the promise he made to his father.

He was not making it legally binding on him because he had not given it any thought.

According to the law, consideration must have some economic or material value, even if it is very little. It can't just be for nostalgic or emotional reasons. In the 1853 decision of White v. Bluett, it was decided that an ambiguous guarantee of receiving recompense for unfair treatment could not qualify as a valid payment.

Even though the consideration need not be sufficient, it must be worth something to the other person. However, the court is not concerned with the topic's market price, so the consideration may not be sufficient. Chappell & Co. Limited v. Nestlé is a case in point.

It was shown that contemplation might be of little worth.

A pledge that involves less than the full amount of debt is not enforceable. Payment of a lesser amount does not satisfy the full amount that was agreed upon. Even if the opposing party agrees, a partial payment of an obligation does not discharge the entire debt. In Pinnel's Case, it can be seen that a consented-to and well-attested agreement to accept a less sum as payment for a debt due does not create a legally binding obligation because there is no new consideration to back up the new agreement.

Competence - In order for a contract to be enforceable, both parties must be able to enter into one. This means that at the time the contract was established, they had to be of legal age and in a stable mental state. Additionally, they cannot be bankrupt or otherwise incapable of forming a contract.

Free Consent - This means that both parties' consent to enter into a legal relationship must be freely given and cannot be the result of any of the following, subject to the provisions of Sections 20, 21, and 22: coercion, as defined in Section 15, undue influence, as defined in Section 16, fraud, as defined in Section 17, misrepresentation, as defined in Section 18, or mistake. When consent would not have been provided if it weren't for the existence of such as deception, misrepresentation, fraud, extortion, or error.

1.3 DEFINITIONS

Section 2 (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;

Section 2 (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;

Section2 (c) The person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”;

Section 2 (d) 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 abstinence or promise is called a consideration for the promise;

Section 2 (e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

Section 2 (f) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;

Section 2 (g) An agreement not enforceable by law is said to be void;

Section 2 (h) An agreement enforceable by law is a contract;

Section 2 (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

Section 2 (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

1.4 CHARACTERISTICS OF CONTRACT

A legally enforceable agreement between two or more parties is referred to as a contract. It is crucial to have a contract in place since it outlines the parameters of the agreement between the parties. This transparency is crucial in making sure that everyone knows what is expected of them and can assist to prevent any misunderstandings later on.

The contract offers some security in the event that things do go wrong and guarantees that the parties will carry out the tasks and responsibilities as intended.

A contract must contain several characteristics in order to be legitimate and recognized by the common law, including an offer, acceptance, consideration, the desire to establish legal relations, authority and ability, and certainty. A contract is not enforceable without these components and may possibly not be upheld in court.

It is crucial to keep in mind, nevertheless, that not all legal transactions must be in writing in order to be enforceable. For instance, if all necessary components are present, an oral agreement between two parties is nevertheless enforceable. All bilateral contracts must contain the necessary components to be legitimate and enforceable under contract law, regardless of whether they are written or spoken. An offer from one party and an acceptance from the other are prerequisites for the existence of a contract. A contract cannot exist without an offer, hence it is a crucial component. It is a promise made by one side to enter into a deal if the other party fulfills their end of the contract. It involves a person who wants particular products, services, or other performances and a person who can carry out the duty of delivering it.

The other party must be informed of the offer, which must be specific and explicit. The offeree then has to openly or indirectly accept the offer's contractual terms. If the offeree accepts the offer, a binding agreement is created and will be upheld. A formal statement of an agreement's terms that the offeror is prepared to be bound by is known as an offer. It must be clear and made to form a legally binding agreement.

Agreement: A contract requires mutual agreement between the parties involved. This means that there must be an offer made by one party and an acceptance of that offer by the other party. Both parties must be in consensus on the terms and conditions of the contract.

Intention to create legal relations: For a contract to be enforceable, there must be an intention by the parties to create a legally binding relationship. Contracts entered into with friends or family members, for example, may lack this intention.

Legality: Contracts must have a lawful purpose and cannot be for illegal activities. If the subject matter or purpose of the contract is illegal, the contract will be considered void and unenforceable.

Capacity: The parties entering into a contract must have legal capacity, meaning they must be of legal age and possess the mental competence to understand the terms and obligations of the contract. Minors, mentally incapacitated individuals, and individuals under the influence of drugs or alcohol may lack the capacity to enter into contracts.

Free consent: The consent of the parties must be free from duress, undue influence, fraud, or misrepresentation. Each party must enter into the contract voluntarily and without being coerced or deceived.

Writing (in some cases): While many contracts can be oral or implied, certain types of contracts must be in writing to be enforceable. These include contracts for the sale of real estate, contracts that cannot be performed within one year, and contracts for the sale of goods over a certain value, as required by the Statute of Frauds.

It's important to note that contract laws may vary in different jurisdictions, and the specific requirements and enforceability of contracts may differ.

Consideration

Consideration is what each contracting party forgoes or agrees to do in exchange for entering into the agreement. It could be a valuable item like cash, products, services, or real estate. Think about an employment agreement between an employer (the promiseor) and an employee (the promisee). The employee accepts the employment offer made by the company after receiving it. Here, the employee's consideration is their promise to work for the employer, whereas the employer's consideration is the employment (and paying the employee).

But it could also mean refraining from doing something that the promisee has a right to do, which would be harmful to them. If someone forbids you from smoking in your own home, for instance, that is a factor.

It's not necessary to invest money in consideration. Most of the time, courts won't evaluate how adequate the consideration is. The parties are free to make a poor deal. The courts have traditionally ruled that a "mere peppercorn" can qualify as consideration. However, there are circumstances when courts will make an exception for employee non-compete clauses and take into account the value of the consideration.

the desire to establish legal relations

A contract must demonstrate a desire to establish legal relations in order to be considered binding. The use of formal language, such as "I agree to..." or "This contract is binding on the parties," can demonstrate this. It's not necessary to formalize intent, though. It is implied by the actions of the parties.

Intent is significant because it shows how seriously the parties intended to accept the agreement's obligations as well as its advantages.

There cannot be a legally enforceable agreement if one party does not accept all of the terms, hence any agreement must be seen as a whole and taken into account in its whole. For instance, there is no contract if you sign a contract to buy a house and the seller does not agree to one of the conditions. The contract can be void if it is missing this component. A typical entire agreement provision declares that any prior written or verbal statements are superseded and that a written contract incorporates all of the terms.

power and capability

A party's eligibility to enter into a contract is determined by contract law. Each party to the agreement must be of legal age to give their consent. This implies that they must be of legal age and be able to comprehend the conditions of the agreement. The agreement may be null and void if one party lacks the legal competence to sign it.

A contract is only enforceable if each of these requirements is met. The agreement can be void or impossible to enforce if one component is absent.

Certainty

A contract must contain specific provisions in order to be upheld, and the ability to uphold the fundamental principles of an agreement must be ensured. These terms must be explicit and clear.

Any agreement must include two key terms: the price to be paid for the promised obligation (the service to be provided, the good to be sold, etc.), and the consideration or price to a deal (something of value given in exchange for something else of value).

The contract can be null and void if any of these clauses are omitted. For instance, if you agree to pay $500 for a car but the contract doesn't specify what kind of automobile it is, the contract is null and void.

The same holds true if you agree to sell your car for $500 but aren't told what kind of car you're selling.

If a contract's provisions are excessively ambiguous or uncertain, the courts may not uphold it. For example, if the parties cannot agree on what constitutes "goods" in a contract for the sale of goods, the contract cannot be enforced.

1.5 KINDS OF CONTRACT

1.Valid Contracts-Contracts that are valid have all the necessary components and can be enforced in court. Legal responsibilities are established between contractual parties by a legitimate contract. It offers one party justification to compel another party to do something or not.

Legal responsibility for contract performance rests with the parties. If a party breaches a contract, the other side may file a lawsuit.

In many situations, signing on the dotted line binds you to uphold the terms of the agreement, but there are several situations that render contracts legally unenforceable. There are numerous factors in contract law that determine whether a contract is legitimate or not. When you attempt to comprehend what renders an agreement legally binding, things could get confusing.

2.Void Contract- Consult a specialist in that field if you have any issues regarding contracts. Void agreements are not binding. A void contract typically lacks one or more crucial components that would give it legal force. As it isn't a real contract, neither party to it needs to take any action to end it. If all necessary criteria for validity, such as capacity and free consent, are met when the contract is made, it can be considered legitimate. However, the contract becomes worthless and loses its ability to be enforced if it is impossible to fulfill or if the law changes in the future and makes performance impossible. A contract loses its ability to be enforced when it conflicts with public policy. No one may bring a claim for non-performance.

3.Voidable Contracts.

Voidable contracts seem to be valid since they possess the criteria for enforcement. Yet, they also feature a weakness that might allow one or both sides to revoke it. A voidable contract may initially have legal force but end up being null and void. If a victim does not act, it is still seen as genuine.

The majority of sales agreements have contingency clauses, which render them voidable.

A party must exercise its right to enforce a voidable agreement in order to make it enforceable. Legally, the contract can be carried out or not by either party. Usually, only one party is required to abide by the terms.

4. Express Contract

When the terms of a contract are explicitly agreed upon by the parties (either by verbal or written communication) at the time the agreement is formed, the agreement is said to be express. Express contract is the consequence of an explicit promise. When a commitment is made or accepted verbally, it is referred to as an express promise.

2. Implicit Contract

When a proposal or acceptance is made without the use of explicit language, an implicit contract is created. Implied promises are made when a proposition or acceptance of a promise is made in a manner other than verbally. Implicit contracts can be deduced from the facts of the situation and the behavior of the parties.

An implied contract exists, for instance, when A drinks milk in a hotel.

3Quasi-contract.

A quasi-contract is a contract made possible by the law. Neither party intends to enter into a contract as part of the quasi-contract. Rights and obligations in a quasi-contract are created by the law, not by an agreement.

For instance, the addressee is required to return any letters that are sent to the incorrect recipient.

Contract classification based on performance

Contracts can be divided into two categories: unilateral contracts and bilateral contracts, depending on the extent of performance.

1. Unilateral Contract

One-sided contract is another name for it. In a unilateral contract, only one party is required to perform their duty at the moment the contract is formed, with the other party having already done so at that time or earlier.

For instance, A rides a shared vehicle to Mount Road. As soon as A was thrown onto Mount Road, a contract was created. When that happens, auto guy has already fulfilled his obligation; only A is left to do so.

2. Bilateral Contract

When both parties' obligations under the contract remain unfulfilled at the moment the contract is formed, it is considered to be a bilateral contract.

In this kind of agreement, one party makes a commitment in return for another party's pledge.

For instance, 0 agrees to pay Rs. 30 and A promises to sew a shirt. In this case, A guarantees to sew the blouse, while 0 guarantees to pay. As a result, each party is a promisee and a promisor.

Contracts are categorized based on how they are executed.

Contracts are divided into two categories: executed contracts and executory contracts, depending on how they were put into action.

1. Executed Contract

Under the Indian Contract Act, 1872, a valid contract is formed when certain essential elements are present, including offer and acceptance, lawful consideration, capacity to contract, free consent, lawful object, and certainty of terms. Once these elements are fulfilled, the contract becomes binding on the parties involved.If you're referring to the execution of a contract, it typically refers to the process of signing or otherwise expressing agreement to the terms and conditions outlined in the contract. The execution of a contract can be done in several ways, such as

Express Agreement: The parties involved explicitly express their consent to the terms of the contract through written or oral communication. For example, signing a written agreement or explicitly agreeing to the terms in a recorded conversation.

Implied Agreement: The parties' actions or conduct may imply their agreement to the terms of the contract. For instance, if a person starts performing the obligations outlined in the contract, it implies their acceptance of the contract.

Electronic Means: In recent years, electronic contracts and electronic signatures have gained recognition. The Information Technology Act, 2000, provides legal recognition to electronic contracts and electronic signatures, subject to certain conditions.

Once a contract is executed, the parties are bound by its terms and are expected to fulfill their respective obligations as per the agreement. It is essential to review the specific terms and conditions of the contract and consult with a legal professional to ensure a proper understanding of the rights and obligations under the executed contract.

2. Executory Contract

A contract that is entirely unperformed or that still requires action from both contracting parties is said to be executory. A contract may occasionally be partially executed and partially executory.

Other Contract

More contract kinds exist in addition to the ones mentioned above. Such a contract type is a contingent contract.

1. Contingent Contract

A contingent contract is a type of agreement where the performance or fulfillment of certain terms and conditions is dependent on the occurrence of a specific event. In other words, the contract's execution and obligations are contingent upon the happening or non-happening of a future event. The event upon which the contract depends is typically uncertain or outside the control of the parties involved. It could be the outcome of a future event, such as the success of a particular project, the occurrence of a natural disaster, or the performance of a specific action by one of the parties. The contingency may also involve the absence of an event, such as the non-occurrence of a certain condition. Contingent contracts are commonly used in various areas, including business, insurance, and real estate. For example, in the business context, a company may enter into a contingent contract with a salesperson, where the salesperson's commission is contingent upon achieving a specific sales target. If the target is met, the commission is paid; otherwise, no commission is due. It's important to note that the terms and conditions of contingent contracts must be clearly specified in the agreement to avoid any ambiguity or disputes. The occurrence or non-occurrence of the specified event should be objectively determinable. Additionally, the contract should outline the rights and obligations of each party in case the contingency is met or not met.

It's always advisable to consult with a legal professional to ensure that contingent contracts are properly drafted and comply with applicable laws and regulations in your jurisdiction.

The crucial components of a Contingent Contract are:

It is an uncertain event, it is a collateral to the contract, and the contingency determines whether the contract will be performed.

The most typical types of contingent contracts are insurance, indemnification, and guarantee contracts.

1.6 SUMMARY

The Contract Act refers to a set of laws that regulate contracts in a particular jurisdiction. In general, a contract is an agreement between two or more parties that creates enforceable obligations. The Contract Act sets out the rules for forming and enforcing contracts, and it provides remedies in case of breach of contract. A contract is defined as "An agreement which is enforceable by law" in Section 2(h) of the Indian Contract Act, 1872. The agreement between two or more parties to do or refrain from doing what they decided upon in exchange for something, that is, a consideration, is what is known as a contract. Section 2 (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. A legally enforceable agreement between two or more parties is referred to as a contract. It is crucial to have a contract in place since it outlines the parameters of the agreement between the parties. Valid Contracts-Contracts that are valid have all the necessary components and can be enforced in court. Void Contract- Consult a specialist in that field if you have any issues regarding contracts. Void agreements are not binding. Voidable contracts seem to be valid since they possess the criteria for enforcement. Express contract is the consequence of an explicit promise. When a commitment is made or accepted verbally, it is referred to as an express promise. When a proposal or acceptance is made without the use of explicit language, an implicit contract is created. A quasi-contract is a contract made possible by the law. Neither party intends to enter into a contract as part of the quasi-contract. One-sided contract is another name for it. In a unilateral contract, only one party is required to perform their duty at the moment the contract is formed, with the other party having already done so at that time or earlier. When both parties' obligations under the contract remain unfulfilled at the moment the contract is formed, it is considered to be a bilateral contract. Under the Indian Contract Act, 1872, a valid contract is formed when certain essential elements are present, including offer and acceptance, lawful consideration, capacity to contract, free consent, lawful object, and certainty of terms. A contract that is entirely unperformed or that still requires action from both contracting parties is said to be executory. A contract may occasionally be partially executed and partially executory.A contingent contract is a type of agreement where the performance or fulfillment of certain terms and conditions is dependent on the occurrence of a specific event. The crucial components of a Contingent Contract are:

It is an uncertain event, it is a collateral to the contract, and the contingency determines whether the contract will be performed.

The most typical types of contingent contracts are insurance, indemnification, and guarantee contracts.

1.6 KEYWORD

- **Jurisdiction:** Jurisdiction refers to the legal authority or power that a particular court or governing body has to interpret and apply the law, make decisions, and enforce laws within a specific geographic area or over a certain subject matter. It determines which court or governing body has the right to hear a particular case and make decisions regarding legal matters.
- **Consent:** Consent refers to the voluntary and informed agreement or permission given by an individual to engage in a particular action or activity. It is an important concept that plays a fundamental role in personal relationships, interactions, and various domains such as law, medicine, research, and sexual encounters.
- **Occurrence:** The term "occurrence" refers to an event, incident, or happening that takes place or takes effect. It describes something that takes place or exists in a specific time or context. An occurrence can be a wide range of things, such as a natural phenomenon, a social event, a scientific observation, a personal experience, or any other type of incident or situation. The word "occurrence" is often used to discuss and analyze various events or phenomena in different fields, including science, literature, sociology, and everyday conversation.
- **Contingent:** the term "contingent" refers to something that could have been different or might not have existed. It is contrasted with "necessary," which refers to something that could not have been otherwise. For example, it could be argued that human existence is contingent because it relies on various factors and circumstances.
- **Implicit:** Implicit meaning refers to the underlying or hidden message conveyed through indirect or subtle ways, often requiring interpretation or inference. It refers to the deeper significance or connotation beyond the literal or explicit content of a text, conversation, or piece of art.

1.7 LEARNING ACTIVITY

1. Define Express contract.

____

____

2. State the principles of contract.

____

____

1.8 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions

- Define Proposal and acceptance?
- Identify the need of contract ?
- Elaborate about the nature of Executed contract.
- What are the criteria for valid contract?
- What do u mean by promisor?
- What do u mean by certainity?

Long Questions

- Define Consideration? Explain the need of consideration in contract.
- Identify and discuss kinds of contract?
- Elaborate about the nature of Contigent contract.
- Describe characteristics of contract.
- Explain capacity of the parties.

B. Multiple Choice Questions

1. The phrase "consideration" simply denotes "something in exchange," or "QUID _________ QUO."

a. PRO

b. LOW

c. HIGH

d. SLOW

2. A contract requires mutual agreement between the ___________ involved.

a. Governors

b. Vendors

c. Parties

d. Lawyers

3. The consent of the parties must be free from duress, undue influence, fraud, or___________________.

a. Representation

b. Misrepresentation

c. Origination

d. Influential

4. ___________ is what each contracting party forgoes or agrees to do in exchange for entering into the agreement.

a. Consideration

b. Consent

c. Offer

d. Acceptance

5. A ____________ is only enforceable if each of these requirements is met

a. consideration

b. Offer

c. Proposal

d. contract

Answers

1-a, 2-c, 3-b. 4-a, 5-d

1.9 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT - 2: ESSENTIAL OF A VALID CONTRACT

STRUCTURE

2.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe importance of acceptance.
- Identify scope of offer
- State the need and importance of free consent
- List the functions of void agreements

2.1 INTRODUCTION

In the realm of business and legal transactions, the foundation of any contractual agreement lies in the intricate dance between two fundamental concepts: offer and acceptance. From the simplest of agreements to complex commercial deals, the process of offer and acceptance forms the basis upon which parties bind themselves to rights and obligations.

In this introduction, we will explore the essence of offer and acceptance, their significance in the formation of contracts, and the key elements that make them legally enforceable. Whether you are a budding entrepreneur, a legal enthusiast, or simply curious about the intricacies of contractual relationships, this discussion will shed light on the fundamental principles that underpin the world of agreements.

An offer serves as the initial expression of willingness to enter into a legally binding agreement. It outlines the terms and conditions that the offering party proposes to the other party, signaling their intention to create a contractual relationship. However, it is essential to distinguish an offer from mere invitations to treat, which are preliminary communications inviting negotiations rather than a definitive proposal.

Acceptance is the unequivocal and unconditional agreement by the offeree to the terms of the offer. It indicates the willingness to be bound by the proposed terms and marks the moment when a contract comes into existence. Acceptance must mirror the terms of the offer and be communicated in the prescribed manner, establishing mutual assent between the parties involved.

For a contract to be valid, there must be a "meeting of the minds" between the offeror and the offeree. This means that both parties must understand and agree upon the essential terms of the contract. A genuine and voluntary consensus must be reached regarding the subject matter, price, quantity, and other vital aspects of the agreement.

2.2 OFFER AND ACCEPTANCE

An offer refers to a promise that one party makes in exchange for another party's performance. In other words, it is an invitation to enter into a contract on certain terms. It can be expressed in many different ways, from a short and simple oral statement to a long and detailed written statement. However, you have to make sure that your offer is clearly communicated and reasonable in order to convince the other party that you are actually making an offer.

What Is an Offer?

In order to create a valid contract, one party must make an offer, another party must accept the offer, and consideration must be exchanged. The one who makes the offer is known as the "offerer," while the person who receives the offer is called the "offeree." Although you can make an offer with just a single-sentence verbal statement, you and the other party will generally benefit from a detailed written description of the offer and its terms.

An offer refers to a promise that is dependent on a certain act, promise, or forbearance given in exchange for the initial promise. It is a demonstration of your willingness to enter into an agreement and an invitation to the other party to conclude the agreement by expressing assent.

Determining whether a party has actually made an offer is a common challenge in a contract case. As a rule of thumb, the offer must be definite and reasonable enough for the receiving party to believe that it is indeed an offer. If your offer includes terms such as quantity, price, quality, and place and time of delivery, the court may find that you have indeed made an offer.

A simple price quote is generally not regarded as an offer. While an advertisement may be considered an invitation to an offer, is not an actual offer. However, if advertisement promises to give out an award, it may constitute an offer. For contracts involving real estate, the sale of goods for $500 or more, or transactions taking longer than a year to complete, a verbal offer is not enforceable against the offerer. Such contracts must be written in order to be enforceable.

Acceptance, Rejection, and Termination of an Offer

If the one receiving the offer decides to accept it and make a partial payment, the offerer may be bound to the terms and conditions of the offer. Once the offerer takes the payment, an agreement is struck. He or she will then be legally obligated to perform his or her part of the contract. If the offerer fails to fulfill his or her contractual duties, the offeree is entitled to take legal action.

If the offer is rejected, it is regarded as terminated. If changes are made to the terms of the offer, the initial offer will be terminated and replaced with a new offer. The new offer is referred to as a counteroffer. If it is indicated that an offer will end within a certain timeframe, the receiving party cannot accept it after the expiration date. An offer may be automatically terminated after a reasonable amount of time.

Essentials of a Valid Offer

There are two types of offer: general offer and specific offer. A general offer is made to a group of people, while a specific offer is specifically made to one person. In order for an offer to be considered valid, it must meet the following requirements:

Must be communicated

Must be made with the purpose of obtaining the assent of the other party

Must be capable of establishing legal relation, meaning that consideration must be a two-way process

Must contain language that is certain and no element of uncertainty

In addition, an offer may be express or implied. An express offer is made in the presence of conversation, while an implied offer is communicated in the absence of conversation. In a situation where the offerer says that silence means consent, the offer is considered invalid. Acceptance of an offer must be communicated.

Several types of offers exist as well. One is called the express offer, which is handled through words written on paper or stated orally. If made orally, the express offer can be made by telephone or face-to-face. Another type of offer is one that is implied. When conveying the desire to make an offer through signs or acting, this may be taken as an implied offer. However, if one of the parties observes silence in the transaction, an implied offer isn't considered valid.

An offeror can also make a specific offer, which is made to a specific group or individual and must be accepted by the specific group to which it was made.

A general offer is not made to any specific individual or group, but rather made to the public. As long as the person making the offer abides by its terms, they can respond to a general offer. For example, John puts an advertisement in the local newspaper that anyone who finds his missing dog will receive a reward of $100. Brittany reads the offer in the newspaper and finds the lost dog. After she finds the dog, she calls John to let him know that she found his dog. Brittany would be entitled to receive the $100 award as John advertised in the newspaper.

A cross offer involves both parties in which one makes an offer to the other that is similar to what the other would have offered without realizing it. For example, Jason emails Amber to purchase her vehicle for $500, while at the same time, Amber sends an email to Jason with a price of $500 for her vehicle. This cross-offer situation requires one party to accept the other's offer. The final type of offer is a called an open or standing offer. This offer is continuous until it has been accepted.

Identifying a Valid offer

In order for an offer to be valid, it must be clearly communicated, giving the offeree a chance to accept or reject it. Clear communication can include actions, oral communication, or in writing.

An offer that is legitimate can be made to a team, a single person, or the general public. Valid offers are definite in their substance. It must be distinguishable from an invitation to treat in order to be valid.

Classification of a Valid Offer

Offers can also be grouped into two primary categories:

Bilateral Unilateral

The differences between the two classifications are especially important in the revocation, communication of acceptance, and advertisements related to offers. A bilateral offer has two sides, involving two parties who are contractually obligated to perform according to the terms and are equally committed. Bilateral offers may start as invitations to treat as they can lead to further negotiations and bargaining. Most offers are bilateral, and many of the common contract laws apply to them. Some of these rules include the way acceptance can be communicated to the person making the offer and how advertisements can be used.

A unilateral offer is made by one person in exchange for the performance of a specific act.

Acceptance is described in Section 2(b) of the Indian Contract Act of 1872 as occurring "when the person to whom the proposition has been made shows his assent thereto. As a result, when accepted, the proposition becomes a promise.

According to the definition, acceptance occurs when the offeree accepts the proposition without conditions from the giver. An offer like this becomes a promise if it is accepted.

The suggestion also becomes irrevocable once it is accepted and becomes a proposal. An offer does not constitute a promise, but once it is accepted, a promise is made. A promise is also unrevocable because it binds parties to legal responsibilities.

An offer may be withdrawn prior to acceptance. However, once acceptance has been made known, it cannot be changed or withdrawn.

Regulations for Valid Acceptance

1) Only the person to whom the offer was made can accept it.

A specific offer or proposition can only be accepted by the person to whom it was made. No third party can accept the offer without the offeree's knowledge.

2) It must be unqualified and absolute.

Acceptance must be unwavering and unqualified. Conditional acceptance is not allowed because that would be a counteroffer, and a counteroffer voids the original offer.

Here is an illustration. B is offered 2000 in exchange for A's bicycle. B declares that he will agree if A will sell it for 1500. This will be considered a counteroffer rather than the offer being accepted.

Additionally, it has to be expressed in a particular way. If there isn't a defined way to convey something, it must be done so in a reasonable and usual way, or as it would be in the course of everyday business. Additionally, implied acceptance may be demonstrated through actions, actions, etc.

The law, however, prohibits accepting silence as a sign of acceptance. Therefore, the offeror cannot state that the offer will be regarded accepted if no response is received.

3) The acceptance must be disclosed.

A proposal must be acknowledged to the promisor in order for it to be accepted and turn into a contract. If no specific form has been defined, the communication must take place in any form that would normally be used in business.

Furthermore, the offeree must be aware that an offer has been made if he accepts the proposition. He cannot express acceptance if he is unaware of the offer.

Therefore, when A offers to sell B certain products, and B accepts all the terms. He drafts a letter of acceptance but neglects to post it. As a result, the acceptance is invalid because it was not transmitted.

4] It has to be set to the recommended mode.

The offer must be accepted in the way that is specified by the offeror. If no such method is specified, it must be in a practical way that would be used in daily operations.

However, if the offeror does not object after the offer has been accepted in a different way, it will be assumed that he has approved of that acceptance.

A thus makes B an offer to buy his farm for ten lakhs. He requests that B reply via postal mail. B sends A an email approving his offer. A can now ask B to send the response in the designated manner. However, if A does not, it indicates that he has agreed to B's acceptance and that a promise has been made.

5] Implied Acknowledgement

According to Section 8 of the Indian Contract Act of 1872, acceptance by the promisee's conduct or actions is acceptable. Therefore, implicit acceptance is acceptable if a person does certain acts that indicate that he has accepted the offer. A's actions will therefore suggest that he has accepted the offer if he agrees to buy 100 bales of hay from B for 1000/- and B sends over the items.

Regulations for Acceptance

The terms of the offer must be in line with the unconditional acceptance.

The acceptance must be expressed verbally or nonverbally.

When given in a specific way, the acceptance is communicated.

Acceptance is never contingent.

The contract cannot be produced by mental assent or unspoken acceptance.

There must be a way to accept things.

Regarding acceptance, there must be a temporal component.

The acceptance must be finished.

An offer must be made by one party to another in order to create a contract. An unequivocal acceptance of the offer is required.

Once it can be legally enforced, the agreement is considered to be a contract. Without a contract, an offer or acceptance is notExists a Spectrum of Contract Acceptances?

There are two types of acceptances on bills: general acceptances and qualified acceptances. When it is unconditional and unqualified, widespread acceptance is seen as absolute and general.

General acceptance is consent that is granted without qualification. A general acceptance is when someone agrees to a request to pay a specific sum in full and without any conditions. In the absence of additional payment arrangements, this is a typical form of acceptance.

To be considered a general rule, an acceptance must be general. When a condition is added to acceptance of an instrument, acceptance is qualified.

Three varieties of acceptance exist

Embrace approval

Implied approval

Conditional approval

All of these ways of acceptance are legitimate, but it is advisable to sign a formal contract to ensure that there is a legally binding provision in the event of a lawsuit. Acceptance ultimately expresses and establishes consent to the contract.

Variety Of Acceptance: Conditional approval

A qualified acceptance is another name for a conditional acceptance. This occurs when a recipient of an offer informs the source of the offer that he or she will accept the offer if the terms and conditions are modified or if a specific event occurs. When you are unsure about how your situation will play out or if there are factors that could change your existing standing, a conditional acceptance can be helpful.

Additionally, it serves as a counteroffer. Before a contract may be made, the initial offerer must accept a counteroffer. It establishes standards for the offer's acceptance. There are five main categories of conditional acceptance:

capable of placing

capable of amounting

capable of time

acceptance only by some

Acceptance of periodic payments

A bill is qualified to place when the drawee exclusively pays it at that particular location. If the drawee accepts the exchange and accepts the payment for only a portion of what is owing, the transaction is qualified to amount. When the drawee accepts the trade and settles the bill at a period other than that specified in the contract, it is qualified to time.

When some drawees agree to the swap but not all, this is known as acceptance by some only. When the drawee agrees to pay the debt in installments, the drawee accepts installment payments. At the beginning of the agreement, this must be made extremely explicit.

The agreement must make the condition of acceptance very plain and immediately understandable. In order for the bearer of the instrument to comprehend what was accepted, the drawee must make any qualifications they choose to make during acceptance based on certain criteria.

2.3 CONSIDERATION

A contract's foundation is made up of consideration. An agreement without consideration is ineligible to be considered a binding contract. The Indian Contract Act, 19872 specifies that consideration is something done at the promisee's request. The promisor has the right to request something of the promisee or anybody else in exchange for consideration. The contract's consideration is understood to be this act of abstention.

previous thought

Prior to entering into any agreement, the promisee must have provided past consideration—something they had already done (or refrained from doing). For instance, in June, Mr. A gave Mr. B transportation. Mr. B and Mr. A agreed to exchange Rs. 1,000 in July in exchange for the service. The act was committed prior to the promise to pay, hence it serves as past consideration. It is frequently referred to as moral concern. Let's examine how.

Consider that you are on the road when you see an accident. You assist the victim and transport them to the hospital. A few days later, the person offers Rs—2,000 as thanks for your assistance and any costs you may have paid. We will take your assistance as previous consideration.

current or completed thought

When you engage into a contract and concurrently give the promisor the consideration, this is what is meant. Any action of this nature is always taken (or not taken) in response to a contract with a third party.

Consider purchasing fruits from a seller and paying him right away for them. As signed or present consideration, this payment is considered.

Future or executory consideration

When the promiseor, promisee, or both postpone the deed, it is considered future contemplation. It denotes that the parties' responsibilities have not yet been fulfilled.

Consider buying a car from a showroom that will be delivered the following week. You consent to paying the vendor once the car is delivered. This suggests that you and the seller have a contract in place with a future consideration.

The consideration is valid for a number of reasons. Let's delve into the specifics.

A consideration must satisfy the conditions listed below in order to be valid:

The consideration must advance in accordance with the promisor's wishes.

This suggests that only when the promisor has asked for it will the consideration be considered valid. In essence, any voluntary action does not qualify as legitimate compensation. For instance, a person is not required to compensate you if you discover their lost wallet and then ask for a compensation. You offered assistance voluntarily; the person did not ask for it.

The promisee may transfer the consideration to anyone else.

The promisee is not required to provide the consideration. From any other person, it might move. As long as you are a party to the contract, you may file a lawsuit even if you were not given consideration.

The benefit must be legal.

The contract is invalid because the consideration was unlawful. According to the Act, consideration is considered illegal if it violates any other laws, causes harm to a person or his property, or is immoral.

The proposal must be plausible and real.

A meaningful thought cannot be an impossible act. Anything determined and accepted as consideration must be possible to be carried out. Illegality might also be physically impossible. The consideration also can't be ambiguous.

The factor might not be sufficient.

According to Indian law, adequate compensation is not required. It is up to the parties to negotiate. A party's poor negotiating skills do not render the contract null and void.

The choice must be made with both partners' free permission, though. For instance, you decide to sell your 1,000 rupee collection of books for 200 rupees. Legally, you cannot afterwards say that this was not given enough thought.

What role does consideration play in contracts?

Any contract made without consideration is void, according to the Indian Contract Act of 1872. It is crucial because it places responsibility on both parties to keep their word. If it is absent, the burden on the parties could not be sufficient to assure the contract's fulfillment.

There are, however, several exclusions to this rule. These are the groups they fall under.

Can contracts exist without any form of payment?

There are some situations when you can enter into lawful contracts without consideration, even though the Act considers it to be obligatory. As follows:

when a decision is made out of genuine love and compassion. Closely related parties are involved in this. The arrangement must be put in writing.

when someone offers unpaid services to another person's advantage. The first requirement is that the deed must be performed out of gratitude and not for one's own gain. Second, the promisee must be compensated by the promisor. A written or oral agreement may be made.

A pledge to repay a debt that has run out of time may also be unreliable. However, a written agreement is required.

whether it is an agreement to establish an agency.

If a whole present is promised, then.

To sum up, consideration is a crucial component of a legal contract. Without it, the agreement is null and void and cannot be carried out. It is crucial to remember that in order to enter into a contract, a valid consideration must be provided, regardless of how adequate it may be. It might have happened in the past, present, or in the future.

2.4 CONTRACTUAL CAPACITY

Introduction:

Contractual capacity is an essential element in contract law that determines the legal competence of parties to enter into a binding agreement. It refers to the ability of individuals to understand the terms of a contract, comprehend its consequences, and possess the legal authority to be bound by its terms. This essay will explore the concept of contractual capacity under the Contract Act, highlighting its significance, the requirements for capacity, and the consequences of lacking capacity.

I. Significance of Contractual Capacity:

Contractual capacity plays a crucial role in ensuring the fairness and integrity of contractual relationships. It protects parties from being coerced or deceived into agreements that they may not fully understand or be capable of fulfilling. By establishing the legal competence of individuals, contractual capacity promotes the principle of freedom of contract while maintaining a balance between protecting vulnerable parties and preserving the enforceability of agreements.

II. Requirements for Contractual Capacity:

A. Age:

One of the fundamental factors determining contractual capacity is age. Minors, individuals below the age of majority, are generally considered to have limited capacity. While minors can enter into contracts, their ability to do so is subject to certain restrictions. Contracts entered into by minors are usually voidable at their option, providing them with protection against potentially unfavorable or exploitative agreements.

B. Mental Capacity:

Mental capacity refers to an individual's ability to understand the nature and consequences of their actions. Contract law recognizes that individuals with mental impairments may lack the necessary capacity to form a binding contract. If a person is suffering from a mental illness or is incapable of understanding the terms of the contract, their capacity may be deemed impaired, rendering the contract voidable.

C. Intoxication:

Intoxication from alcohol or drugs can impair an individual's judgment and decision-making abilities. In contract law, contracts entered into while under the influence of intoxicants may be voidable if the party can prove that they lacked the capacity to understand the terms of the agreement at the time of its formation.

III. Consequences of Lacking Capacity:

A. Void vs. Voidable Contracts:

Contracts entered into by parties lacking contractual capacity may be classified as either void or voidable. Void contracts are considered to have no legal effect from the beginning, as if they never existed. Voidable contracts, on the other hand, remain valid until the affected party exercises their right to avoid the contract. Minors, individuals with mental impairments, or those under the influence of intoxication can typically void contracts they entered into due to their limited capacity.

B. Restitution and Protection:

When a contract is voided due to a lack of capacity, the parties are generally restored to their pre-contractual positions. This means that any benefits exchanged under the contract must be returned, and the parties should be placed in the position they were in before the contract was formed. These restitutionary measures aim to protect parties who lacked capacity and prevent unjust enrichment or exploitation.

IV. Exceptions to the Capacity Rule:

While contractual capacity is generally required for a valid contract, there are certain exceptions to this rule. For example, contracts for necessaries, such as food, shelter, and clothing, are enforceable against minors, even if they lack capacity. Additionally, contracts entered into by individuals acting as agents or representatives of others may be binding, regardless of their personal capacity.

Conclusion:

Contractual capacity is a vital aspect of contract law, safeguarding the interests of individuals entering into agreements. By recognizing the limitations of certain parties and providing remedies for their protection, contractual capacity ensures the fairness and integrity of contractual relationships. Understanding the requirements for capacity and the consequences of lacking it is crucial for both legal practitioners and individuals entering into contracts, as it allows them to navigate contractual obligations with confidence and clarity.

2.5 FREE CONSENT

What Is Free Consent?

The Indian Contract Act defines consent as "it is when two or more persons agree upon the same thing and in the same sense" under Section 14.

Example "A" consents to let "B" buy his home. A wants to sell one of his three homes in Haridwar. B believes he is purchasing his home in Delhi. In this instance, 'A' and 'B' have not agreed upon the same thing in the same sense. Therefore, there is no consent nor a subsequent contract.

1. Coercion (Section 15)

According to Section 15 of the Indian Contract Act of 1872, coercion is defined as either performing or threatening to perform an act that is prohibited by the Indian Penal Code (45 of 1860) or the illegal holding or threatening to hold onto any property, to the detriment of any person, with the purpose of pressuring someone to sign a contract.

Coercion is the act of compelling someone to sign a document. When threats or intimidation are used to coerce a party into giving consent, i.e. when it is not voluntary consent.

In order to increase the credibility of a threat, coercion may really involve causing physical and mental suffering. The threatened person may then cooperate or obey under threat of further injury.

Example: 'A' went for a walk; 'B' comes up to him with a stranger, draws his gun, and demands that 'A' hand up all of his goods. The agreement of 'A' was coerced in this situation.
Effect

The result is that the contract becomes voidable due to coercion. It suggests that the contract may be voidable at the whim of the person whose agreement was not given freely. Therefore, it is up to the aggrieved party to decide whether to uphold the agreement or dissolve it.

Coercion-inducing methods

Threatening to engage in any behavior that is illegal under Indian law.

the act of holding property against its will or even threatening to hold it in order to force someone to sign a contract.

IPC prohibited behavior

The court must determine if the alleged act of coercion is an offense in a civil action because the word act is prohibited under the Indian penal code.

Threatening to bring a false charm with the intention of pressuring someone into doing something is equivalent to blackmail or coercion. In the case of Ranganayakamma v. Alwar Sett, the widow was unable to remove her husband's body until she gave her approval for the adoption. According to the court, her consent was pressured and was not given voluntarily. It is obvious that using coercion involves doing something illegal or threatening to do something illegal.

Illegal Possession of Property

If consent is obtained by the illegal enclosing of property or the threat of doing so, coercion is said to have taken place.

The father's installment payment at that point was made under duress with the ultimate intention of preventing the property from being sold, since the legislature annexed the property with the express purpose of admitting the child's due fine. Under the land detention class, intimidation is when the government refuses to release a temporary worker's installment until he gives up his demand for higher rates.

the onus of proof

The side defending the coercion has the burden of evidence. He is under further pressure to provide evidence. This is thus because a threat cannot come from sheer possibility or anxiety.

A person must demonstrate that there was a danger that was illegal and that it forced him to enter into a contract that he otherwise would not have in order to establish coercion.

There are some situations when you can enter into lawful contracts without consideration, even though the Act considers it to be obligatory. As follows:

when a decision is made out of genuine love and compassion. Closely related parties are involved in this. The arrangement must be put in writing.

when someone offers unpaid services to another person's advantage. The first requirement is that the deed must be performed out of gratitude and not for one's own gain. Second, the promisee must be compensated by the promisor. A written or oral agreement may be made.

A pledge to repay a debt that has run out of time may also be unreliable. However, a written agreement is required.

whether it is an agreement to establish an agency.

If a whole present is promised, then.

In summary

A legitimate contract must have consideration as a necessary component. Without it, the agreement is null and void and cannot be carried out. It is crucial to remember that in order to enter into a contract, a valid consideration must be provided, regardless of how adequate it may be. It might have happened in the past, present, or in the future.

Section 16: Undue Influence

In accordance with Section 16 of the Indian Contract Act of 1872, an influence is deemed to be undue influence when: One of the parties to the contract is in a position of trust and unfairly dominates the other party.

Such a person takes unfair advantage of the other by taking advantage of his superior position.

Undue influence is characterized by three factors: the relationship, trust, and authority.

Careful consideration of the contract's provisions constitutes unfair persuasion.

where there is a fiduciary relationship between two parties

A trust-based partnership is referred to as a fiduciary relationship. A person expects not to be betrayed when they place their trust and faith in another. if the other person violates the faith and confidence placed in him and wields improper influence.

Examples of fiduciary relationships are those between a lawyer and a client, a trustee and a trust, a spiritual guide and a follower, a doctor and a patient, a parent and a kid, a husband and wife, a master and a servant, and a guardian and ward.

In other terms, we can argue that undue influence happens when one party has the ability to affect the choice of another party to the transaction.

Example

After being promised good results by his teacher, "A" agreed to sell his gold ring to "B" for Rs 200. Here, A's consent was coerced by his teacher; it was not freely provided.

Effect

An agreement is voidable at the discretion of the person whose consent was obtained by undue influence. Any such agreement may be annulled. The contract can only be avoided or canceled by one of the parties. The third party has no control over this right.

The Burden of proof

Two things need to be considered if the plaintiff wishes to file a lawsuit to void a contract that was signed under duress. The Indian Evidence Act of 1872 and the Indian Contract Act of 1872 include the law's provisions. According to the law, a plaintiff must establish two elements in order to show that he was under undue influence

The defendant must not only have a dominant position, but also exercise it.

It claims that merely demonstrating the prospect of undue influence on the part of the dominant party is insufficient for the plaintiff to succeed. There must be proof that someone influenced the plaintiff by using their power. For the plaintiff to escape a contract, the possibility of the same is insufficient.

(Section 17) Fraud

The Indian Contract Act's Section 17 defines fraud as any of the following actions taken by a contracting party, its accomplice, or its agent with the intent to deceive or convince the other party or its agent to enter into the contract:

Any act or omission that the law deems fraudulent, including the effective concealing of a fact by someone who knows about it, a promise made without any intent to keep it, and any other act suitable to deceive.

Fraud does not exist when there is simple silence on information that could influence someone's desire to sign a contract unless the situation is such that, in light of those circumstances, The individual who remains silent must talk unless doing so would be equivalent to speaking quickly.

Effect

The contract that resulted from fraud is void.

The party who was mislead may terminate the agreement.

The party is liable for recouping the damages as a result of the fraudulent agreement.

Evidence and Burden of Proof's

In the vast majority of cases, fraud cannot be established with actual, tangible evidence. By definition, it is concealed in its movement. It makes sense that fraud must have been committed if the evidence provided points to wrongdoing. Circumstantial proof is typically the only method for dealing with fraud-related issues. The goals of justice would regularly, if not always, be defeated if this weren't allowed. The only person to be held accountable for complicity in fraud is a willful perpetrator. Subject to the legislation of the party who was defrauded, any actual damages caused by fraud may be recovered as a remedy for restitution, even if they were not reasonably foreseeable. Contributory negligence would not lessen the severity of the sanctions. Making false statements (Section 18)

According to the Indian Contract's Section 18, misrepresentation is distorting the truth.

Misrepresentation is when false information is made public, leading to the assumption that the other side will make a deal and lose it. However, the guilty party's information was given genuinely believing it to be true. It is claimed that misrepresentation has been made.

First off, it is misleading when a liar claims that there is no evidence to support their claim.

Second, there has been a violation of a duty that has resulted in bias on the part of one party or the other. Last but not least, a person made a mistake as a result of the act or information being misrepresented. Effect

If the party who has suffered because of the deception when entering into a contract has the option to do so, the contract may be rescinded under the Specific Relief Act of 1963 within a reasonable amount of time.

Misrepresentation types

Two different kinds of misrepresentation exist:

Unscrupulous Misrepresentation

When a misrepresentation occurs owing to negligence and the absence of any justifiable basis, it is seen as negligent;

Only when the representative owed the representee a duty to handle carefully is negligent misrepresentation recognized;

A person would only be held accountable if specifically, he had disregarded the responsibility mentioned;

Even when there is no fiduciary connection, the two parties are nonetheless accountable to one another.

innocent fabrication

It is referred to be an innocent misrepresentation if the assertion is supported by solid evidence, there is no inaccuracy, and there is no ulterior motivation.

When someone makes an innocent misstatement when entering into a contract, they have the right to cancel the agreement but are not entitled to compensation for their losses.

Contracts are not voidable unless there are valid reasons to do so. To establish this reality, innocence in misrepresentation would be sufficient.

The Burden of proof

By demonstrating that "He had reasonable grounds to believe that the evidence portrayed were valid during the time the contract was made," the defendant must prove that the misrepresentation was not committed fraudulently in order to avoid bearing the burden of proof. The burden of proof is disproportionately on the party making the false statement.

Inaccuracy (Section 20)

Under Indian Contract Law, there are two types of errors: errors of fact and errors of law.

Error of Fact

A mistake of fact occurs when one or both parties to the contract have erroneously understood a phrase that is crucial to understanding the agreement. This might happen due to confusion, carelessness, or other factors. A mistake is never intentional; it is an unintentional oversight.

These errors may be unilateral or bilateral.

Bilateral Mistake (Section 21)

A bilateral mistake is one in which both parties to a contract are affected by a factual error that is crucial to the agreement.

Mutual or common mistakes are other names for bilateral blunders. The idea of consent does not apply when all parties agree to something and do so in the same way. The agreement is void because there isn't any consent.

Example "A" agrees to buy a cow from "B," but it turns out that the cow was already dead when the agreement was made, even though neither side was aware of this. The agreement is regarded as void.

Unilateral mistake(Section 22)

When only one party to the contract makes a mistake, it is called a unilateral error. In this situation, the contract is not null and void. According to Section 22 of the Act, a mistake made by one party would not render the contract null and void. Therefore, even if only one side made a mistake, the agreement is still enforceable.

Example "A" and "B" engage into a contract for the purchase of a horse, which "A" believes to be a racing horse. 'A' does not concur with 'B'. A horse is not actually a racing horse. A cannot terminate the agreement.

Error of law

The error could be caused by an error in Indian law or a mistake in a foreign legislation. The general rule is that ignorance of the law is not an adequate defense if the error relates to Indian laws. This implies that neither party can assert that the other is ignorant of the law.

According to the Contract Act, no party may seek redress on the grounds that they were not aware of Indian law. An improper reading of any legal provisions will likewise fall under this category.

However, disregard for international law is not treated similarly. Foreign law provides some wiggle room because the parties are not required to understand it. Therefore, a mistake under foreign law is actually treated as a factual error under the Indian Contract Act.

Conclusion

An agreement must have free consent in order to be legally binding. Free consent is crucial, and this cannot be emphasized enough. The Party must freely and gladly consent. It is essential that you agree to the contract voluntarily and without being under any duress. The freedom of the parties' assent is crucial since it could jeopardize the contract's legality. The aggrieved party has the right to void the agreement if the consent was gained or caused by coercion, undue influence, fraud, misrepresentation, or error.

2.6 LEGALITY OF OBEJCTS

According to Section 23 of The Indian Contract Act, a contract must have a lawful object and consideration in order to be valid. The object of a contract is the reason why the parties enter into it. The transfer of the agreed-upon consideration from one party to the other results from the accomplishment of the aim. Let's examine the legal object contract law's criteria for defining what constitutes a lawful object and consideration.

Legal Purpose and Legal Consideration

According to contract law, the consideration and the goal of a contract are both regarded legal unless: They are expressly prohibited by law.

They are inherently dishonest.

The goal of the legislation is defeated due to the nature of the object and the consideration.

They involve harm or injury to a person or persons as well as to property.

are viewed as immoral by the legal system.

contravene public policy.

prohibited by law

A contract is void if it contains an illegal object or a forbidden consideration. The term "illegal consideration of the object" refers to illegal, criminal conduct. When establishing the legality of an act, the relevant authority's laws and regulations are also taken into account. These laws and norms are not applicable, though, if they conflict with the law.

A contract is void if it contains a prohibited by law term, however all void contracts may not be illegal.

Deceptive in Nature

Contracts that have deceptive terms for their object or consideration are null and invalid.

Example: A signs a contract with B promising to reimburse B if he steals money from C. The contract is void since this is a fake object.

thwarts the intent of the law

The agreement will be ruled invalid if it was made with the intent to violate any legal requirements. If: The purpose of the contract is to carry out an illegal act, it is void.

The contract's intended outcome is illegal either openly or subtly.

Without violating the clauses, it is impossible to complete the contract.

Example: A and B enter into a contract in which B agrees not to file a lawsuit on A's behalf if A robs B of his home. The terms of the IPC legislation are violated by this transaction.

involves harm or injury to a person or piece of property.

There cannot be any property damage or harm to third parties as a result of the contract's purpose.

Examples include writing a book on someone's life without getting their permission.

the destruction of a building.

violation of permissions.

Copyrights are being violated.

A and B sign a contract whereby if A damages a city landmark, A will pay B a certain amount of money. This agreement lacks a legitimate concern, a legitimate goal, and it is not deemed to be legal.

illegal in moral terms

The contract shall not be regarded as void if its purpose and/or consideration are judged immoral. Immoral acts go against the reasonable and proper standards of social behavior or individual conduct.

Example: A lends money to B on the understanding that B will wed A after divorcing C. A cannot file a lawsuit against B to recoup the funds if B does not divorce C. The fundamental tenet of this agreement is immoral, hence it will be regarded as invalid.

Contrary to Public Policy

In terms of company law, an item must not violate public policy in order to be considered lawful.

Public policy exists to maintain and defend the overall welfare of the community, not to restrict any individual's rights. Here are some examples of contracts that are seen to be against public policy:

An agreement is null and void if it is made with a party from a nation with which India does not have friendly relations.

Restricting legal action: A contract that forbids a party from taking legal action is deemed invalid.

Champerty and Maintenance: In a maintenance agreement, a party pledges to support a legal action in which he has no personal stake. Champerty is when one party promises to support another in court in exchange for a cut of the awarded damages or settlement.

an agreement to engage in public office trafficking

pacts designed to establish monopolies

a consent to broker a union as payment.

an arrangement that interferes with legal processes and encourages corrupt behavior on the part of state or judicial personnel.

2.7 VOID AGREEMENTS

"An agreement that is not enforceable by law" is the definition of a void agreement according to the Indian Contract Act of 1872. Additionally, void agreements can occur frequently; some of these instances were detailed in earlier articles. However, the contract contains some clauses that are explicitly stated to be void.

1] Agreement in Restraint of Marriage

Any contract that prevents a major (adult) from getting married is null and void. Minors are not covered by this. But under the contract laws, an adult's agreement to forego marriage in exchange for some benefit is expressly void.

Therefore, if A agrees that he won't get married unless B gives him $50,000, that agreement is null and void.

2] Agreement in Restraint of Trade

An agreement that prohibits someone from engaging in business of any kind, practicing law, or engaging in any type of trade is clearly void. Such a contract tramples on a person's constitutional rights.

There are a few instances where this rule does not apply. If a person sells his business and goodwill along with it, the buyer may request that the seller refrain from operating the same type of business within the city borders.

Accordingly, the agreement to restrain the seller's trade will be effective as long as the buyer or his successor operates that firm.

In a similar vein, if a departing partner is permitted to engage into such a trade restraint agreement with the partnership business. An agreement between partners not to run a competitive firm while a partnership is still in existence is also a legal contract.

One thing to keep in mind with regard to the aforementioned agreements is that their conditions must be acceptable. Such reasonable terms are to be assessed in light of each particular scenario and context and are not prescribed by the act.

Let's look at the situation where doctor A hires B as his assistant for three years. B pledges not to practice medicine elsewhere for the next three years.

Despite being a trade constraint, this agreement is legitimate.

But suppose A, a lawyer, sells B, along with the goodwill, his law firm. A also consents to refrain from practicing law for the next 20 years anywhere in the state. The clauses are totally illogical, hence this is not a legal contract.

Agreement to Stay Legal Actions (number three)

An agreement that explicitly forbids one party from exercising his legal rights under a contract through the judicial system, arbitration, etc. is clearly void.

There are, however, some exceptions, such as when the agreement specifies that any disputes between the parties shall be resolved by arbitration and that the judgment rendered in such arbitration will be final and a valid contract.

Additionally, such an agreement is legitimate if the parties concur that any issue they may have now or in the future will be resolved by arbitration. Such a contract, however, must be in writing.

An Agreement with Uncertain Meaning

Uncertainty in the meaning of an agreement renders it void and prevents it from being legally binding. Obviously, a contract cannot be executed if its fundamental meaning cannot be guaranteed. However, the contract is deemed genuine if the doubt can be eliminated.

Say, for instance, that A consents to sell 100 kg of fruit to B. Due to the omission of the fruit's species, this contract is null and invalid.

However, the agreement would be enforceable if A exclusively sold oranges because the meaning would be clear.

5] Wagering Contract

An agreement to wager is void according to the Indian Contract Act. A wager's foundation is that it is based on whether an uncertain occurrence will occur or not. Depending on the outcome of such an unknown event, each side would either profit or lose money in this situation.

The following are the components of a wagering agreement. The agreement will be null and void if all conditions are satisfied.

must include a commitment to pay money or the equivalent in money.

is dependent on the occurrence or absence of a specific event

It must be an uncertain event.

It is beyond the control of any party.

At the time the agreement is made, there must be a shared desire to wager.

The only interest that should exist between the parties is the wager's stake.

The following contracts are not regarded as wagering agreements: insurance contracts, share market transactions, athletic competition transactions, and competitions involving skills.

2.8 SUMMARY

In the realm of business and legal transactions, the foundation of any contractual agreement lies in the intricate dance between two fundamental concepts: offer and acceptance. From the simplest of agreements to complex commercial deals, the process of offer and acceptance forms the basis upon which parties bind themselves to rights and obligations. An offer serves as the initial expression of willingness to enter into a legally binding agreement. It outlines the terms and conditions that the offering party proposes to the other party, signaling their intention to create a contractual relationship. However, it is essential to distinguish an offer from mere invitations to treat, which are preliminary communications inviting negotiations rather than a definitive proposal. An offer refers to a promise that one party makes in exchange for another party's performance. In other words, it is an invitation to enter into a contract on certain terms. It can be expressed in many different ways, from a short and simple oral statement to a long and detailed written statement. However, you have to make sure that your offer is clearly communicated and reasonable in order to convince the other party that you are actually making an offer. An offer refers to a promise that is dependent on a certain act, promise, or forbearance given in exchange for the initial promise. It is a demonstration of your willingness to enter into an agreement and an invitation to the other party to conclude the agreement by expressing assent. A contract's foundation is made up of consideration. An agreement without consideration is ineligible to be considered a binding contract. The Indian Contract Act, 19872 specifies that consideration is something done at the promisee's request. The promisor has the right to request something of the promisee or anybody else in exchange for consideration. The contract's consideration is understood to be this act of abstention. consideration is a crucial component of a legal contract. Without it, the agreement is null and void and cannot be carried out. It is crucial to remember that in order to enter into a contract, a valid consideration must be provided, regardless of how adequate it may be. It might have happened in the past, present, or in the future. Contractual capacity is an essential element in contract law that determines the legal competence of parties to enter into a binding agreement. It refers to the ability of individuals to understand the terms of a contract, comprehend its consequences, and possess the legal authority to be bound by its terms. This essay will explore the concept of contractual capacity under the Contract Act, highlighting its significance, the requirements for capacity, and the consequences of lacking capacity. Contractual capacity is a vital aspect of contract law, safeguarding the interests of individuals entering into agreements. By recognizing the limitations of certain parties and providing remedies for their protection, contractual capacity ensures the fairness and integrity of contractual relationships. Understanding the requirements for capacity and the consequences of lacking it is crucial for both legal practitioners and individuals entering into contracts, as it allows them to navigate contractual obligations with confidence and clarity. The Indian Contract Act defines consent as "it is when two or more persons agree upon the same thing and in the same sense" under Section 14. Example "A" consents to let "B" buy his home. A wants to sell one of his three homes in Haridwar. B believes he is purchasing his home in Delhi. In this instance, 'A' and 'B' have not agreed upon the same thing in the same sense. Therefore, there is no consent nor a subsequent contract. An agreement must have free consent in order to be legally binding. Free consent is crucial, and this cannot be emphasized enough. According to Section 23 of The Indian Contract Act, a contract must have a lawful object and consideration in order to be valid. The object of a contract is the reason why the parties enter into it. "An agreement that is not enforceable by law" is the definition of a void agreement according to the Indian Contract Act of 1872. Additionally, void agreements can occur frequently; some of these instances were detailed in earlier articles. However, the contract contains some clauses that are explicitly stated to be void. The following contracts are not regarded as wagering agreements: insurance contracts, share market transactions, athletic competition transactions, and competitions involving skills.

2.9 KEYWORDS

- **Wagering:** The term "wagering" refers to the act of placing a bet or making a gamble on the outcome of an event or situation, typically involving the potential for winning or losing money. Wagering is commonly associated with activities such as sports betting, casino games, poker, and other forms of gambling where individuals or groups place bets on the likelihood of certain outcomes. It involves staking something of value, usually money, on the result of the event, with the expectation of winning additional value or losing the initial stake. Wagering can be done in various settings, including physical establishments such as casinos or through online platforms.
- **Subsequent:** The term "subsequent" refers to something that occurs or happens after a particular event or point in time. It implies a sequence or order in which events or actions unfold. When we talk about something being "subsequent," it means it follows or comes after something else in a chronological or logical progression.
- **Remedies:** The term "remedies" refers to measures or actions taken to address or solve a problem, correct a situation, or provide relief from a particular issue or harm. Remedies can be legal, medical, or general solutions applied to mitigate or resolve a problem.
- **Contractual:** contractual meaning is derived from the language and terms used in the contract itself. The interpretation of contractual terms is based on the objective intent of the parties involved and is determined by applying principles of contract law, including the plain meaning rule, the principle of good faith and fair dealing, and any applicable statutory or case law. Contractual meaning can be significant in resolving disputes, clarifying obligations, and determining the rights and liabilities of the parties involved in a contract. Courts may be called upon to interpret contractual terms and determine their legal effect when disputes arise between contracting parties.
- **Clause:** In the realm of legal contracts, a clause refers to a specific provision or section within a contract that outlines the rights, obligations, terms, or conditions agreed upon by the parties involved. Clauses are used to define and regulate various

aspects of the contract, such as payment terms, termination conditions, warranties, and dispute resolution procedures.

2.10 LEARNING ACTIVITY

- Define free consent.

____

____

- State the principles of consideration.

____

____

2.11 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions:

1. Define offer?
2. Explain what is consideration?
3. Describe briefly about acceptance?
4. What do you understand by majority age?
5. What is a free consent?

Long Questions:

1. What is a consideration? Explain the various features of consideration?
2. Describe the contractual capacity.
3. What are the components of acceptance?
4. Describe about the contractual capacity?
5. Explain void contracts?

B. Multiple Choice Questions

1. ____________ is the act of compelling someone to sign a document.

a. Coercion

b. Conclusion

c. Compellent

d. Extraction

2. A person must demonstrate that there was a danger that was _________ and that it forced him to enter into a contract

a. legal

b. illegal

c. major

d. minor

3. The Indian Contract Act's __________ defines fraud as any of the following actions taken by a contracting party

a. Section 19

b. Section 15

c. Section 17

d. Section 28

4. __________ does not exist when there is simple silence on information

a. Fraud
b. Misrepresentation
c. Coercion
d. Influence

5. Mutual or common mistakes are other names for ____________ blunders.

a. unilateral

b. multilateral

c. lateral

d. bilateral

Answers:

1-a,2-b,3-c,4-a,5-d.

2.12 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT – 3: DISCHARGE OF CONTRACT

STRUCTURE

3.0 LEARNING

After studying this unit, you will be able to:

- Define breach of contract
- Describe Performance of Contracts
- State Breach Of Contract.

3.1 INTRODUCTION

According to Section 2(a) of the Indian Contract Act of 1872, the word "offer" has been defined. A person makes an offer when they declare their willingness to perform an act or refrain from performing one in exchange for the consent of the person they are making the offer to.

When used literally, the word "performance" refers to how something is done. In a legal sense, "performance" refers to the accomplishment of the responsibilities that one party has towards the other under the terms of the agreement they have agreed into. For instance, suppose that A and B sign a contract that requires A to deliver a book to B in exchange for payment of the consideration of 500 rupees. Here, B gives A 500 rupees and, in accordance with the terms of the contract, A gives him the book.

The Contract Act's Section 37 discusses performance. There are two sorts of performance, which are as follows:

- Actual performance: Actual performance of the contract is defined as the actual discharge of the duty or responsibility that a party has agreed to fulfil and the absence of any additional work that the party is obligated to carry out in accordance with the promise. He is alleged to have fulfilled the pledge in actuality.
- Attempted performance: When the performance is eventually due, an attempt is made. The promisee prevents the promisor from fulfilling his commitment or carrying out his responsibility, hence he is unable to do so. The attempted performance of a promise refers to the circumstance when the promisor truly meant to fulfil his commitment or carry out his duty but was impeded by an unforeseen infirmity.

Attempting to perform is also referred to as Tender. There are two sorts of tenders:

- Tendering of goods and services: When goods are offered for acceptance in line with the provisions of the contract, the discharge of the contract to deliver goods and services is complete. If the products and services so offered are rejected, the offeror is released from responsibility and is required to take the rejected goods and services back.
- Tender of money: When a debtor offers the creditor money that is due, but the debtor declines to accept it, this is referred to as a money tender. The need to repay the debt

does not end for the debtor. The discharge of debt cannot, therefore, ever follow a money tender.

Tender of performance

Sections 37 to 39 deal explicitly with how the parties to the contract will carry out their obligations under the contract. The parties to a contract are required by Section 37 of the Indian Contract Act, 1872, to either perform or propose to perform the commitments that have been agreed upon under the contract. According to Section 2(b) of the Indian Contract Act, a promise is a proposal put forth by the offeror and accepted by the offeree. Therefore, each party is required by law to carry out the obligations that have been established by the terms of the contract. Unless the provisions of the contract specifically exempt or waive the person's execution of the duty.

If there is no indication to the contrary from the provisions of the contract, the promises made by the parties to the agreement after their death bind their representatives. As an illustration, consider a contract between two parties, A and B, in which A promises to provide to B some things in exchange for B paying A a specific sum of money on a specific day. However, if A passes away before the contract is finished, his representative will still be held to the promise he made. As a result, they have a duty to deliver the items to B, and B has a duty to pay the stipulated sum to A's representation.

However, if the pledge is made in reference to a person's unique talents and qualities, his representative will not be held to the commitment he made. For instance, consider the scenario where A pledged to commission a painting for B on a specific day at a specific cost. A passes away before the contract is fulfilled. The promise made by A is not binding on its representatives, and neither A nor B may compel the representative to specifically carry out the commitment.

The parties' obligation to perform

The duties that the parties to a contract are required to uphold are known as the obligations in the contract. In a contract, the parties often trade items that have monetary value in the eyes of the law. The chosen item for exchange may be a good, a service, cash, etc. Contractual duties can be seen, for instance, in the sale of a product like a vehicle. The obligation to pay for the car is on one side, while the obligation to transfer ownership is on the other. The terms that govern the obligations, such as the mode and sum of payment and the timing or location of delivery, will be specified in the contract.

There was a contract between the plaintiff and the defendant for the sale of the property in M. Kamalakannnan v. M. Manikanndan. In this case, the plaintiff withheld a portion of the money that was specified in the contract in order to compel the defendant to fulfil some of its obligations, such as giving up the property that was occupied by the tenants and giving the plaintiff the vacant property. The defence made the claim that failure to pay a portion of the consideration led to a breach of the contract's provisions.

In Geo-Group Communications INC v. IOL Broadband Ltd, the parties to the contract signed an agreement and adhered to its provisions to the fullest extent possible, eliminating the need for additional execution of the documents. The agreement was referred to as one of the initial and provisional draughts created for debate and consideration only. When the contract was contested in court, the judge ruled that it was legal and gave the claimant the right to redress.

Tender submission is equivalent to making a proposal.

When a lender responds to an invitation, it is seen as a proposal to contract rather than the actual contract. The tender in M/S Great Eastern Energy vs. M/S Jain Irrigation Systems Ltd. included a four-month validity period. The court ruled that no acceptance may be made following the end of the tender period. Accepting the tender after the end of its validity time and the tenderer's inability to perform did not constitute an improper forfeiture of the security deposit amount.

Representatives of the promisor are bound by promises.

According to the caveat attached to Section 37 of the Act, in the event that the promisors pass away, their representatives would be held to their promises unless a contrary intention was clear from the terms of the contract. According to Basanti Bai v. Sri Prafulla Kumar Routrai, if a person passes away without leaving a legal heir, the person who gains ownership of the contract's subject matter through the deceased party would be responsible for carrying out the promise on his or her behalf. The Cuttack High Court, however, ruled that because the plaintiff was unable to establish the validity of the supposed agreement, she was not entitled to the benefits of the above-mentioned legal concept in the current case.

provision for renewal

The clause for renewal is the clause that specifies how the initial contract terms will be extended or restarted.

The provisions of the contract in Hardesh Ores Pvt. Ltd v. M/S. Hede and Company included a renewal clause. According to the provisions of the contract, the party with the power to extend the agreement did so. The other party, however, declined to agree to the revised conditions brought on by renewal. The Supreme Court ruled that the best course of action in such a situation for the party who is authorised by the contract's terms to renew the terms of the contract is to have the renewal proclaimed and enforced by a court of law or to have the court declare the contract's renewal.

Tender of performance

An obligation under the contract should be offered by the offeror to the offeree. The "tender of performance" refers to the made offer. The promisee has the option to accept the offer. If the promisee decides not to accept the offer, neither the offeror nor the promisee will lose their rights under the terms of the agreement if the contract's conditions are not performed. Therefore, it is a well-established principle that if the tender of performance is not accepted, the promisor will no longer be obligated to uphold the conditions of the contract, and he has the right to sue the other party if they don't. A tender of performance is equivalent to performance, as stated in Section 38 of the Contract Act. Every performance proposal must meet the following prerequisites:

- Section 38(1) requires that the offer be unconditional;
- Section 38(2): In order to give the party a fair amount of time to verify that the person making the offer to him is competent to enter into a contract, the offer must be made at the correct time and place;
- Section 38(3) states that the offeror must give the offeree a reasonable amount of time to verify that the goods being offered to him are the same ones to which the offeror is contractually obligated if the offer is to deliver goods to the offeree.

Tender of performance should be unconditional

A tender must be unconditional, according to paragraph 1 of Section 38, which means that it cannot be accompanied by any clauses, provisions, or conditions that are either prior to or following the tender. The court in this decision explained the circumstances in which the tender becomes conditional in Haji Abdul Rehman Haji Mahomed. The court held that a tender becomes conditional when it deviates from the provisions of the contract that were initially drafted and accepted by the parties. It is unreasonable to require a party to accept the amended or altered conditions of the contract that were not initially agreed upon by the parties, therefore making it essential. A might, for instance, offer to pay B a given amount of money in exchange for B agreeing to sell him a specific quantity of items. It is invalid since it is a conditional tender. The same would apply if A had submitted a single check for two products, only one of which was due right away and the other wasn't due for some time. Given that the check was one and indivisible, it could either be accepted in full or not at all. It was decided that the promisee had the right to reject the check.

The performance tender must be submitted at the appropriate time and location.

According to Section 38(2) of the Act, the tender of performance must be made at a time, place, and under conditions that give the recipient of the offer a reasonable opportunity to confirm that the offeror is capable of performing the obligations he has agreed to under the terms of the contract.

According to the court's ruling in P.L.S.A.R.S., Sabapathi Chetty (Deceased) v. Krishna Aiyar, the parties to the tender of performance typically determine the time and location. At the time and location specified in the contract, the tender of performance must be made. The promisor has no further duties if the performance is made within the designated time and location.

In Startup v. Macdonald, the defendant made a ten-ton purchase of linseed oil that was to be delivered to the plaintiff within the final 14 days of the month of March. On the fourteenth day, at night, the plaintiff tendered the defendant. However, the defendant refused to accept the tender, alleging the lateness of the offer. In this case, the court determined that the defendant should be held accountable for violating the terms of the contract, and it rejected his argument that the tender was accepted late because it was made before midnight even though it was made recently.

The plaintiff and defendant in Afovos Shipping Co. v. R Pagnan made an international agreement. The contract's terms stated that the amount that served as its consideration had to be received by the 14th day of the month, but the defendant renounced the agreement earlier than that. According to the court, the defendant should have postponed the contract's repudiation until the 14th of the month.

In accordance with Section 138(2) of the Act, the tender must be submitted in a manner that gives the other party a reasonable opportunity to verify that the person submitting the tender is able and willing to perform all of the contract's requirements. According to Section 138(3) of the Act, the commodities that are the subject of a tender must match those that are listed in the tender's description in order for the tender to be valid.

In Dixon v. Clark, the court ruled that the debtor's obligation to repay the debt is not in any way absolved by the fact that payment was offered but rejected.

The principle of "old standing" that was established in the aforementioned case was upheld in Vidya Vati v. Devi Das. In order to regain vacant possession of his property, the debtor was required to repay his loan, and his tender was also turned down. The court decided that the debtor was not exempt from paying before regaining possession, nonetheless.

Who must carry out contracts?

The Contract Act's provisions for contract performance are found in Section 40. The Section states that any promise made in a contract must fundamentally be fulfilled by the promisor himself, and no other person may fulfil the promise on his behalf, if it is clear from the wording of the contract that this was the parties' intention. In all other contracts, if the promisor is not present to carry out the promise, another competent person may do so in his place provided that the terms of those other contracts do not suggest any comparable intention. Suppose, for instance, that A offers B a particular amount of money. A may directly pay B the money or could delegate payment to another person on A's behalf. If, as in the scenario above, A passes away without designating the one who can make the payment on his behalf. Then, either they must choose someone else to act as his representative or they must make the payment on his behalf.

Conclusion

According to Section 2(a) of the Indian Contract Act of 1872, the word "offer" has been defined. An offer is an indication of a person's willingness to perform an act or refrain from performing one with the goal of winning the approval of the person to whom the offer is made.

When used literally, the word "performance" refers to how something is done. Performance refers, in a legal sense, to the parties' satisfaction or completion of their obligations to the other party under the terms of the contract they engaged into. For instance, if A and B agree into a contract, its terms stipulate that A must provide B a book in exchange for paying the consideration of 500 rupees. Here, B gives A 500 rupees and, in accordance with the terms of the contract, A returns the money by giving B the book. The Contract Act's Section 37 discusses performance.

3.2 MODES OF DISCHARGE OF CONTRACT

The Indian Contract Act, 1872 provides various modes of discharge of a contract. A contract can be discharged by performance, agreement, breach, frustration, operation of law, or impossibility of performance. In this response, I will outline each mode of discharge in detail.

In contract law, the concept of discharge refers to the termination or conclusion of a contractual agreement. It signifies the point at which the rights and obligations created by the contract come to an end. The Indian Contract Act, 1872 provides several modes of discharging a contract, each with its own set of requirements and consequences.

Discharge can occur through various means, including performance, agreement, breach, frustration, operation of law, or impossibility of performance. These modes provide mechanisms for parties to either fulfill their contractual obligations, alter or terminate the contract, or be excused from further performance due to certain unforeseen circumstances. Performance is the most straightforward mode of discharge, where both parties fulfill their respective obligations as agreed upon in the contract. Discharge by agreement occurs when the parties mutually consent to terminate or modify the contract, while discharge by breach arises when one party fails to perform their obligations, leading to a violation of the contract. Frustration comes into play when an unforeseen event renders the contract impossible to perform or significantly alters the nature of the obligations. This allows the parties to be relieved from further performance. Discharge by operation of law occurs through certain legal principles or events, such as death, insolvency, merger, limitation periods, or the illegality of performance. Furthermore, discharge by impossibility arises when the performance of the contract becomes objectively impossible due to unforeseen circumstances or events beyond the control of the parties. Understanding the different modes of discharge is crucial for parties to know when and how a contract may come to an end, as well as the rights and remedies available in such situations. It is important to note that the specific requirements and consequences of discharge may vary depending on the terms of the contract, applicable laws, and the jurisdiction in which the contract is governed.By comprehending the modes of discharge, individuals and businesses can effectively manage their contractual relationships, resolve disputes, and navigate the legal implications associated with the termination of contractual obligations

Discharge by Performance:

A contract is said to be discharged by performance when the parties fulfill their respective obligations under the contract. It can be achieved through actual performance or tender of performance. Actual performance occurs when both parties fulfill their obligations as agreed upon in the contract. Tender of performance takes place when one party offers to perform their obligations, but the other party refuses to accept it.

Discharge by Agreement:

A contract can be discharged by agreement when both parties mutually agree to terminate or alter the contract's terms. This can be done by way of novation, rescission, or alteration. Novation occurs when a new contract is substituted for the existing one, with the consent of all parties involved. Rescission happens when the parties agree to cancel the contract, restoring them to their pre-contractual positions. Alteration takes place when the parties agree to modify the terms of the contract.

Discharge by Breach:

A contract can be discharged by breach when one party fails to perform their obligations as specified in the contract. The innocent party may choose to terminate the contract and claim damages for the losses suffered due to the breach. Alternatively, the innocent party can keep the contract alive and sue for specific performance if the breach is of a serious nature.

Discharge by Frustration:

Frustration occurs when an unforeseen event renders the contract impossible to perform or significantly changes the nature of the contractual obligations. In such cases, the contract is automatically discharged, and the parties are excused from further performance. The doctrine of frustration applies when the event is beyond the control of the parties and is not due to any fault or negligence on their part.

Discharge by Operation of Law:

Certain events or legal principles can discharge a contract by operation of law. These include:

a. Death or Insolvency: If a party to a personal service contract dies or becomes insolvent, the contract is automatically discharged.

b. Merger: When a contract is absorbed or incorporated into a subsequent contract between the same parties, the original contract is discharged.

c. Limitation Period: If the right to sue on a contract becomes time-barred under the law of limitation, the contract is discharged.

d. Illegality: If the performance of a contract becomes illegal due to changes in law or public policy, the contract is discharged.

Discharge by Impossibility of Performance:

A contract can be discharged if the performance becomes impossible due to unforeseen circumstances or an event beyond the control of the parties. Impossibility may arise due to the destruction of the subject matter, the death or incapacity of a party essential for performance, or the outbreak of war or natural disasters.

It's important to note that this is a general overview of the modes of discharge under the Indian Contract Act, 1872. For more specific and detailed information, it is advisable to consult the Act itself or seek legal advice.

3.3 BREACH AND REMEDIES AGAINST BREACH OF CONTRACT

Breach of Contract

When one of the contracting parties fails to uphold the terms of the agreement, there has been a breach of the agreement. Even when the contract is not being performed as agreed, there is still a breach. However, such a breach of contract has several remedies that give the injured party compensation for damages. This article discusses contract breaches, including their varieties and available remedies.

When one party doesn't carry out their obligations under a contractual contract, there has been a breach of the agreement. A contract can be broken in a number of ways, including by failing to provide the promised goods or services, by providing goods or services that fall short of expectations, or by failing to make the agreed-upon payments for the promised products or services.

- The non-breaching party normally has to demonstrate the following in order to prove a contract breach:

1. There was a binding agreement between the parties.
2. The non-breaching party fulfilled its contractual responsibilities.
3. The breaching party did not fulfil its contractual responsibilities.
4. Damages were incurred by the non-breaching party as a result of the breach.

It is crucial to remember that not all contract violations are created equal. While some breaches may be small and have little or no effect on the contract's performance, others could be so serious that they invalidate the entire agreement. The exact terms of the contract and the circumstances surrounding the violation will determine the seriousness of the breach and the potential remedies.

Types of Contract Breach

There are two categories of breach of contract. Its varieties are as follows:

Anticipatory

The anticipatory breach is one caused by one of the parties. The violation will take place either explicitly or by behaviour. Eventually, the offending party will hint that a breach is about to occur. If there is compensation and the injured party waits for the actual breach, the loss will not be sufficient.

In the Hochster v. De La Tour case, it was determined that if the contract is rejected before the performance, a claim for damages may be filed. De la Tour consents to hire Hochster as their for a period of three months in accordance with that. Hochster is hired by De La Tour in April with a start date of June. But by May, De La Tour cancels the appointment. Suing them is Hochster. De La Tour contends that Hochster is bound by the agreement and that he must be prepared to fulfil up until the three months are due. However, Lord Campbell CJ rejects the claim and grants Hochster the damages.

Actual

A breach occurs when a party refuses to uphold the terms of the agreement. One of the parties breaches the agreement if they fail to finish their performance by the deadline or withdraw before it is due.

For three months, Poussard was scheduled to perform opera in London. When she became ill, the production team found a replacement. When she returned, the producers declined to take her back. As it was determined that the producers' defence was valid, the court sided with them. She was not given the damages by the court. She is obligated to perform starting on day one, according to the contract. The producers rejected her contract since she didn't follow the terms of the agreement.

Remedies for the Breach of Contract:

Suit for Rescission

If one side breaks the agreement, the other party is not required to follow it. If the displeased party terminates the agreement, it is void. The party that was wronged may claim damages. The disgruntled party typically cancels the contract and then files a lawsuit for damages. The purpose of this lawsuit is to recover the breach's damages.

Suit for Injunction

An injunction is an order from the court imposing a restraint. The court has the authority to stop someone from performing a certain act. The harmed party may initiate a lawsuit for an injunction if the defendant does an unlawful act. This might be either transitory or long-term.

Suit for Specific Performance

A sanction that the court grants to both parties to compel compliance with the contract. One of the most popular suits is this one. The harmed party won't get enough relief in the form of financial recompense.

Suit for Quantum Meruit

For contracts, "quantum merit" refers to the fair market worth of the services. When someone is hired but the contract isn't complete or can't be carried out, the employer has the right to sue the employee for the value of the services provided as well as any enhancements that were made. According to the law, the employer must give the worker the compensation he or she deserves for the services rendered. The employee cannot break the terms of the contract and file a claim for the quantum meruit if he is bound by an express contract for a specified sum.

Suit for Damages

Damages that result naturally from a violation are referred to as general damages or ordinary damages. In the lawsuit, the party that was wronged must establish both the losses and their dollar value.

Liquidated Damages and Penalty: Some contracts cover the subject of breaking, including its repercussions and penalty. If such a contract is broken, the party responsible for the breach must pay the other party the agreed-upon sum. It is fair remuneration, and it shouldn't go beyond the limit specified in the contract. There shouldn't be any barriers in the way of the parties making the liquidated damages provisions.

Special Damages: In order to receive special damages, the party who was wronged must demonstrate a special loss.

Exemplary or Punitive Damages: This claim seeks compensation for emotional or mental distress, which may have been caused by the violation. In most cases, the court is responsible for such damages.

Nominal Damages: A remedy for the breach is offered, whereas there wasn't one in the actual. It offers a limited solution and is more technical than necessary.

3.4 SUMMARY

According to Section 2(a) of the Indian Contract Act of 1872, the word "offer" has been defined. A person makes an offer when they declare their willingness to perform an act or refrain from performing one in exchange for the consent of the person they are making the offer to. When used literally, the word "performance" refers to how something is done. In a legal sense, "performance" refers to the accomplishment of the responsibilities that one party has towards the other under the terms of the agreement they have agreed into. Sections 37 to 39 deal explicitly with how the parties to the contract will carry out their obligations under the contract. The promise made by A is not binding on its representatives, and neither A nor B may compel the representative to specifically carry out the commitment. The duties that the parties to a contract are required to uphold are known as the obligations in the contract. In a contract, the parties often trade items that have monetary value in the eyes of the law. According to the caveat attached to Section 37 of the Act, in the event that the promisors pass away, their representatives would be held to their promises unless a contrary intention was clear from the terms of the contract. An obligation under the contract should be offered by the offeror to the offeree. The "tender of performance" refers to the made offer. A tender must be unconditional, according to paragraph 1 of Section 38, which means that it cannot be accompanied by any clauses, provisions, or conditions that are either prior to or following the tender. The Contract Act's provisions for contract performance are found in Section 40. The Section states that any promise made in a contract must fundamentally be fulfilled by the promisor himself, and no other person may fulfil the promise on his behalf, if it is clear from the wording of the contract that this was the parties' intention. According to Section 2(a) of the Indian Contract Act of 1872, the word "offer" has been defined. An offer is an indication of a person's willingness to perform an act or refrain from performing one with the goal of winning the approval of the person to whom the offer is made. The Indian Contract Act, 1872 provides various modes of discharge of a contract. A contract can be discharged by performance, agreement, breach, frustration, operation of law, or impossibility of performance. In contract law, the concept of discharge refers to the termination or conclusion of a contractual agreement. It signifies the point at which the rights and obligations created by the contract come to an end. The Indian Contract Act, 1872 provides several modes of discharging a contract, each with its own set of requirements and consequences. When one of the contracting parties fails to uphold the terms of the agreement, there has been a breach of the agreement. Even when the contract is not being performed as agreed, there is still a breach. The anticipatory breach is one caused by one of the parties. The violation will take place either explicitly or by behaviour. A breach occurs when a party refuses to uphold the terms of the agreement. One of the parties breaches the agreement if they fail to finish their performance by the deadline or withdraw before it is due. If one side breaks the agreement, the other party is not required to follow it. If the displeased party terminates the agreement, it is void. The party that was wronged may claim damages. The disgruntled party typically cancels the contract and then files a lawsuit for damages. The purpose of this lawsuit is to recover the breach's damages. A sanction that the court grants to both parties to compel compliance with the contract. One of the most popular suits is this one. The harmed party won't get enough relief in the form of financial recompense. Damages that result naturally from a violation are referred to as general damages or ordinary damages. In the lawsuit, the party that was wronged must establish both the losses and their dollar value.

3.5 KEYWORD

- **Compliance:** Compliance refers to the act of conforming to rules, regulations, guidelines, or standards set by an authority, organization, or legal framework. It involves following specific requirements or directives to ensure adherence to established protocols, laws, policies, or industry best practices. Compliance can be mandatory or voluntary, depending on the context.
- **Anticipatory:** The term "anticipatory" refers to something that is characterized by anticipation or expectation. It typically involves predicting or preparing for future events, outcomes, or possibilities based on present knowledge or experiences.
- **Sanction:** "sanction" refers to an official action taken by a government, organization, or authority to impose a penalty or enforce a rule or policy. Sanctions are often used as a form of punishment or deterrent against undesirable behavior or to influence a change in behavior. For example, economic sanctions may be imposed on a country to restrict trade and financial transactions as a response to its actions or policies.
- **Explicit:** Explicit meaning refers to the direct and obvious interpretation or message conveyed by a piece of communication, such as a text, speech, or artwork. It is the surface-level or literal meaning that can be readily understood without the need for interpretation or inference. The explicit meaning is typically clear, concrete, and straightforward, leaving little room for ambiguity or multiple interpretations. It is the opposite of implicit meaning, which involves hidden or implied messages that require deeper analysis or understanding to grasp.
- **Breach:** the term "breach" generally refers to a violation, infringement, or unauthorized access that disrupts the normal functioning, security, or integrity of a system, contract, or agreement. The specific meaning can vary based on the context in which it is used.

3.6 LEARNING ACTIVITY

3. Define discharge by agreement

____

____

4. State the principles of discharge by frustration.

____

____

3.7 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions

- Define discharge of contract.
- Identify and discuss discharge by breach?
- Elaborate about the breach of contract?
- What are the criteria that actual breach?
- Explain breach of contract by performance?
- Critically anticipatory contract?

Long Questions

- What is a discharge by contract?
- Describe the breach of contract?
- What are the remedies of breach of contract?
- Describe about the quantum meruit?
- Explain the suit for damages?

B. Multiple Choice Questions

1. When one of the contracting parties fails to uphold the terms of the agreement, there has been a ____________of the agreement.

a. breach

b. Contraction

c. proposal

d. acceptance

2. Frustration occurs when an unforeseen event renders the contract _____________to perform

a. impossible

b. possible

c. major

d. lethal

3. An obligation under the contract should be offered by the offeror to the_________.

a. drawer

b. drawee

c. offeree

d. payee

4. The duties that the parties to a contract are required to uphold are known as the ___________in the contract.

a. coercion

b. parties

c. obligations

d. breach

5. The Contract Act's Section _____ discusses performance.

a. 38

b. 39

c. 36

d. 37

Answers

1-a, 2-a, 3-c. 4-c, 5-d

3.8 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT - 4: CONTINGENT CONTRACTS

STRUCTURE

4.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe nature of Quasi Contracts
- Identify scope of Contract of indemnity
- State the need and important of contingent contract

4.1 INTRODUCTION

A legally binding agreement is referred to as a contract. [The Indian Contract Act, 1872, Section 2(h)]. Every contract must contain an agreement that was reached with the voluntary assent of persons who were legally able to do so, for a legal consideration, and with a legal purpose. The intention is to create a contract, not to void the agreement. Sir Pollock's definition, which asserts that every agreement and commitment that is legally enforceable constitutes a contract, served as the foundation for the definition of contracts in the Indian Contract Act of 1872. An agreement and something further, i.e., an agreement and its legal enforceability, are thus necessary for the establishment of a contract. Typically, the word dependent denotes "subject to chance."

This word has been used to signify conditional, much as how we typically use it, in the Indian Contract Act of 1872. Future events are characterized by uncertainty. Contingency contracts are all about predicting the likelihood that an unknown event will become certain, projecting what will happen if it doesn't, and then estimating the potential to deal with the results. Even if a contract has been legally made, the parties may agree that it must satisfy a contingency before obligations under it can be fulfilled. The parties to the conditions agree that, in the event of the occurrence of the contingency on the contracting of a valid contract, the rights will be upheld and the obligations will become payable.

The Latin proclamation "Nemo debet locupletari ex aliena jactura"—which states that no person should profit unfairly from another's suffering—is the source of quasi-contract laws. One of the major tenets of Roman law was this.

The word "quasi" denotes some but not total similarity. The term "quasi contract" refers to laws that are similar to conventional contract law but not exactly so. A standard contract needs a few key elements to be considered enforceable. Offers, acceptance, deliberation, and the presence of two or more people who are of sound mind and legal capacity are all included

4.2 CONTIGNENT CONTRACT

Under the Indian Contract Act, a contingent contract is defined in Section 31. It states that a contingent contract is a contract that depends on the occurrence or non-occurrence of a specific event in the future. The event may or may not happen, and it is uncertain at the time of making the contract.

Here are some key points to understand about contingent contracts under the Indian Contract Act:

Contingency: A contingent contract is based on the happening or non-happening of a future event. The event must be uncertain and should not be within the control of either party. If the event is certain to happen, it does not qualify as a contingent contract.

Performance based on the event: The rights and obligations of the parties involved in a contingent contract depend on the occurrence or non-occurrence of the specific event. Once the event happens or fails to happen, the contract becomes enforceable or void.

Examples of contingent contracts: Some common examples of contingent contracts include insurance contracts, where the payment of the insurance claim depends on the occurrence of a specific event, such as an accident or damage; wagering contracts, where the payment is contingent on the outcome of an uncertain event, like a sports match or a lottery; and contracts based on the existence of a particular state of things, such as buying a property if a certain development plan is approved.

Void if event becomes impossible: If the event on which a contingent contract is based becomes impossible, the contract becomes void. For example, if a person agrees to sell their property to another person upon the death of a specific individual, but that individual dies before the contract is executed, the contract becomes void.

It's important to note that contingent contracts must still fulfill the other requirements for a valid contract, such as offer and acceptance, consideration, capacity, free consent, and lawful object and consideration. If a contingent contract meets these criteria and the event occurs or fails to occur as per the contract's terms, it becomes enforceable, and the parties are bound by its provisions.

4.3 QUASI CONTRACTS

A contract that is established by a court to stop one party from unfairly enriching themselves at the expense of another is referred to in law as a quasi-contract, also known as an implied-in-law contract. It is a legal fallacy used to impose a contractual obligation on a party that didn't formally agree to a contract but nonetheless received something of value from the other party.

The doctrine of quasi-contracts has its roots in the unjust enrichment doctrine of classical Roman law. This doctrine's fundamental tenet is that no one should be permitted to profit from another's loss without making up for it.

In contemporary law, quasi-contracts are frequently employed to offer a remedy when one party has given another party goods or services but the parties haven't actually entered into a contract. A party cannot be unjustly benefited by receiving a benefit from another party by using quasi-contracts to prevent this from happening.

How Do Quasi Contracts Work?

A contract that is inferred by law and serves as a redress in disputes between parties without a contract is known as a quasi contract. A quasi contract is a judicially determined legal duty for one party to make restitution to the other, as opposed to a typical contract. In other words, a quasi contract is a decision that is made in the past to fix a situation where one party gains something at the expense of the other.

These agreements may be imposed when a party accepts products or services that may not have been requested. The providing party therefore has an expectation of being paid as a result of the acceptance.

Knowledge about Quasi Contracts

In common-law states, quasi contracts date back to the Middle Ages and were first used to describe a legal action known as indebitatus assumpsit, which means to be indebted or to have taken on a debt in Latin.

Using this legal theory, the courts were able to force one party to make the other pay as if there had already been a contract or other agreement between them. Therefore, it is believed that the law implies that the defendant must abide by the terms of the trade. The quasi contract has typically been used to impose restitution obligations since its inception.

It would be decided that the defendant must compensate the plaintiff. Quantum meruit, or the amount deserved, is the Latin term for restitution, and it refers to the amount or degree to which the defendant was unjustly profited.

Because a judge creates this remedy when a contract between two parties is not present, it is sometimes known as a constructive contract. A court won't make a pseudo contract if there is already an agreement or contract in existence because there is no reason to do so.

Elements of a Quasi-Contract

In order for a court to determine that a quasi-contract exists, the following conditions must be satisfied:

Benefit Received: One party must have gotten something from the other as the first requirement of a quasi-contract. The advantage may come in the shape of products, services, or real estate.

The recipient of the benefit must have been unjustly enriched, which is the second requirement of a quasi-contract. This indicates that they benefited at the expense of another party without having a valid legal justification for doing so.

Legal Obligation: A quasi-contract must have a legal obligation to pay for the benefit received as its third component. This obligation is governed by a court order and not by a written agreement between the parties.

Purpose

When one party receives a benefit or piece of property from another, a quasi-contract describes the responsibility of the first party to the second. Without a written contract, a person may provide anything of value to another without their knowledge or consent. It is presumed that a reasonable individual would pay for it, return it, or provide some other kind of payment to the giver in exchange for the good or service.

In order to protect a giver from exploitation and prevent others from unfairly benefiting, quasi contracts are granted as a remedy.

Legality

Neither party is required to consent to the agreement because it was created in a court of law and is therefore enforceable.

When one side has an advantage over another, the quasi-contract is intended to produce a fair result. The plaintiff, the person who was wronged, is entitled to compensation equal to the worth of the item from the defendant, the party who gained it.

Requirements

A judge must have the following conditions before issuing a quasi contract:

- A transfer must have resulted in a loss for one person, the plaintiff.
- The defendant must have either received the valuable item or admitted receiving it, kept it, and made no attempt or offer to pay for it.
- The burden of proof then shifts to the plaintiff to show why the defendant received an unjust enrichment.

- The product or service was not presented as a gift.
- It was necessary to give the defendant the option to accept or reject the benefit.

Contract vs. Quasi-Contract

Quasi-contract	Contract
That Is Only Implied in Law	Can Be Express or Implied
Ordered by a Judge	Initiated by Party Agreement
No Contract Exists	A Legal Contract Exists

Quasi Contract

Only Implied in Law: An implied duty to pay is one that is made possible by the law, in this case, a judge who provides a remedy.

Ordered by a Judge: Since contracts implied by law are not covered by contract law, judges order quasi-contracts.

No Contract Exists: Quasi contracts are not contracts; rather, they are means of resolving disagreements between parties when one party has benefited unfairly.

Contracts

Can Be Express or Implied: Express and implied contracts are the two main forms of agreements. An express contract is one in which the conditions are specified and are accepted by both parties. When both parties agree to a trade but there are no clear stipulations, there is an implicit contract.

Agreement of the Parties: The parties to an exchange consent to the exchange.

Existence of a Legal Contract: Both express and implied contracts are regarded as valid and enforceable by law.

Quasi-Contract Types

Express and implied quasi-contracts are the two different varieties of quasi-contracts.

Express Quasi-Contracts: An express quasi-contract is created when two parties seek and receive products or services from one another without really entering into a contract. The court will infer a contract in this situation and order the party who benefited from it to pay for it.

Implied Quasi-Contracts: When one party receives a benefit from another without that party's agreement, but in conditions that make it unfair for the party to keep the benefit without paying for it, there is an implied quasi-contract. The court will infer a contract in this situation and order the party who benefited from it to pay for it.

- Sections 68 through 72 of the Contract Act of 1872 provide the following descriptions of the various forms of quasi contracts:
- Section 68: A third party provides the goods to a person who is unable to sign contracts on behalf of the incapable person or anyone he is legally required to support. The property of the disabled person may be used by other parties to recoup the supplier's cost.
- Section 69: Anyone who makes a payment on another party's behalf is required to do it in accordance with the law. As a result, the party who made the payment has a claim to compensation from the other.
- Section 70: The recipient is required to pay the first party when they perform a legal act for another person or deliver something without intending to do so gratuitously.
- A person who discovers goods that belong to another party and claims possession of them is subject to the same obligations as a bailee, according to Section 71.
- Section 72: A person who has been forced into accepting a payment or delivery or who received money in error is required to pay it back.

Quasi-contract examples

1. Auto Repair: Let's say you take your car to the shop for repairs, but you can't come to an agreement on the cost of the work. As a result of your disagreement over the price, the technician completes the repair and hands you the bill, which you decline to pay. The court can decide that a quasi-contract exists in this situation and order you to pay for the repair.
2. Landscape: Let's say you hire a landscaper to look after your lawn, but you can't come to an agreement on the cost of the services. You don't agree on the price, so the landscaper does the tasks and gives you a bill that you refuse to pay. The court can decide that a quasi-contract exists in this situation and order you to pay for the services.

3. Emergency Services: Let's say you need an ambulance to take you to the hospital for an urgent medical issue, but your condition prevents you from giving consent. The court can decide that a quasi-contract exists in this situation and order you to pay for the services.

Benefits and Drawbacks of Quasi Contracts

The fact that quasi contracts are frequently founded on the unjust enrichment principle is one benefit of employing them. As a result, no side will be given an unfair edge over another. As a result, it protects innocent victims of wrongdoing and serves as a legitimate substitute for monetary damages, ensuring that the provider of products or services is adequately reimbursed. As pseudo contracts are established by court order, all parties concerned are required to abide by them.

There are a few shortcomings or restrictions as well. The recipients of assistance who did so recklessly, needlessly, or by mistake will not be held accountable. A person can be held accountable for a quasi-contract, but his liability is limited to the amount he has been paid. Therefore, there is no provision for the recovery of an amount greater than that which has already been obtained by the plaintiff. If the plaintiff only receives a portion of the services or goods he originally contracted for, he is ineligible for compensation because the full sum was not recovered.

Plaintiffs are required to forfeit all profits if there is a written agreement between the parties. A plaintiff can only obtain relief if he can show that he experienced losses as a result of the defendant's breach of the contractual obligations, even if a quasi contract is a legal remedy that protects recipients of the services or goods from unjust enrichment.

Pros

- Prevents one party from unfairly benefitting at the expense of another
- Court order is legally binding

Cons

- Not suitable in all cases
- Amount cannot include additional damages

Quasi Contracts: What Are They?

A quasi contract is sometimes referred to as a "implied contract," in which the defendant is required to pay the plaintiff back damages, or a "constructive contract," which is a contract that is created when there isn't already one between the parties.

What Exactly Is a Quasi Contract, Exactly?

Instead of being an agreement between the parties to prevent encroachment, a quasi-contract is an obligation between them that is established by a court order.

What Is an Example of a Quasi Contract?

As an illustration, suppose Person A agrees to pay $100 to Person B to assist them in moving into a new flat. It is not a written contract; rather, it is an oral agreement. Person B agrees to the task, declines an alternative opportunity, and arrives on the designated day to assist with the transfer. However, when Person B arrives, Person A informs them that they are no longer required and the work has been cancelled. Person B launches a civil lawsuit to recover the unpaid debt, and if the judge finds that money is owed, a quasi-contract may be established.

The conclusion

A defendant must act in accordance with the terms of a quasi-contract with the plaintiff if one exists. It is made to prevent unfairly enriching one party at the expense of the other. Unjust enrichment is when someone gains unfairly from events or someone else's misery. When a formal contract would not have existed otherwise, a judge will make a quasi-contract as a settlement after the event.

4.4 CONTRACT OF INDEMNITY

Under the Indian Contract Act, 1872, a contract of indemnity is defined in Section 124. It is a contract whereby one party agrees to compensate another party for any loss or damage that may be incurred by the latter due to an act or omission of the promisor or any other person. Here are some key points regarding the contract of indemnity under the Indian Contract Act:

Definition: Section 124 of the Indian Contract Act defines a contract of indemnity as a contract in which one party promises to safeguard the other party against any loss or damage caused by the conduct of the promisor himself or by the conduct of any other person.

Parties Involved: The contract of indemnity involves two parties: the indemnifier (promisor) and the indemnity holder (promisee). The indemnifier promises to compensate the indemnity holder for any loss or damage suffered.

Scope of Indemnity: The indemnity can extend to any loss, damage, or liability incurred by the indemnity holder. It can be specific to a particular event or cover a range of potential risks and contingencies. The contract may specify the conditions and limitations of the indemnity.

Consideration: Like any other contract, a contract of indemnity requires valid consideration to be enforceable. Consideration may take the form of money, services, goods, or any other benefit provided by the indemnity holder in exchange for the indemnifier's promise to indemnify.

Rights and Obligations: The indemnity holder has the right to claim compensation from the indemnifier for any loss or damage suffered within the scope of the contract. The indemnifier is obligated to indemnify the holder for the agreed-upon losses, subject to the terms and conditions of the contract

Indemnity against Third-Party Claims: The contract of indemnity may also cover indemnity against claims made by third parties against the indemnity holder. If the indemnity holder is held liable by a third party, the indemnifier may be obligated to compensate the holder for the liability.

Enforcement and Rights of Parties: The rights and obligations of the parties to a contract of indemnity can be enforced through legal action. The indemnity holder has the right to seek compensation for the losses suffered, and the indemnifier may be held liable for the agreed-upon indemnity.

It's important to note that the Indian Contract Act provides for the general principles governing contracts, and specific clauses and terms in a contract of indemnity may vary depending on the agreement reached between the parties. When entering into a contract of indemnity, it is advisable to seek legal advice and ensure that the contract's terms and conditions are clearly defined and mutually agreed upon by both parties involved.

4.5 CONTRACT OF GUARANTEE

Under the Indian Contract Act, 1872, a contract of guarantee is defined in Section 126. It is a contract where one party agrees to be responsible for the debt, default, or obligation of another party, known as the principal debtor, in case the principal debtor fails to fulfill their obligations. Here are some key points regarding the contract of guarantee under the Indian Contract Act:

Definition: Section 126 of the Indian Contract Act defines a contract of guarantee as a contract to perform the promise or discharge the liability of a third person in case of their default. The person giving the guarantee is called the "surety," the person for whom the guarantee is given is the "principal debtor," and the person to whom the guarantee is given is the "creditor."

Tripartite Relationship: A contract of guarantee involves three parties - the surety, the principal debtor, and the creditor. The surety promises to the creditor that they will fulfill the obligations of the principal debtor in case the principal debtor defaults.

Nature of Liability: The surety's liability is secondary and arises only when the principal debtor fails to fulfill their obligations. The surety's liability is co-extensive with that of the principal debtor, meaning the surety can be held liable for the same amount as the principal debtor's debt.

Written Agreement: According to Section 126, a contract of guarantee must be in writing, signed by the surety, or their authorized agent. The written agreement serves as evidence of the guarantee and helps avoid potential disputes regarding the terms and conditions of the guarantee.

Consideration: Like any other contract, a contract of guarantee requires valid consideration. The consideration may be in the form of a fee, commission, or any other benefit received by the surety from the principal debtor or any other party in exchange for the surety's guarantee.

Rights and Obligations: The creditor has the right to demand payment from the surety in case of default by the principal debtor. The surety is obligated to fulfill the obligations of the principal debtor and compensate the creditor for any loss suffered due to the principal debtor's default.

Discharge of Surety: The surety's liability can be discharged under certain circumstances, such as when there is a variation in the terms of the contract without the surety's consent, when the creditor releases the principal debtor without the surety's consent, or when the principal debtor's obligations are discharged.

Rights of Surety: The surety has certain rights, including the right to demand that the principal debtor fulfill their obligations, the right to be indemnified by the principal debtor for any payments made on their behalf, and the right to the benefit of any securities held by the creditor.

It's important to note that the Indian Contract Act provides for the general principles governing contracts, and specific clauses and terms in a contract of guarantee may vary depending on the agreement reached between the parties. When entering into a contract of guarantee, it is advisable to seek legal advice and ensure that the contract's terms and conditions are clearly defined and mutually agreed upon by all parties involved.

4.6 SUMMARY

A legally binding agreement is referred to as a contract. [The Indian Contract Act, 1872, Section 2(h)]. Every contract must contain an agreement that was reached with the voluntary assent of persons who were legally able to do so, for a legal consideration, and with a legal purpose. This word has been used to signify conditional, much as how we typically use it, in the Indian Contract Act of 1872. Future events are characterized by uncertainty. The Latin proclamation "Nemo debet locupletari ex aliena jactura"—which states that no person should profit unfairly from another's suffering—is the source of quasi-contract laws. The word "quasi" denotes some but not total similarity. The term "quasi contract" refers to laws that are similar to conventional contract law but not exactly so. Under the Indian Contract Act, a contingent contract is defined in Section 31. It states that a contingent contract is a contract that depends on the occurrence or non-occurrence of a specific event in the future. The event may or may not happen, and it is uncertain at the time of making the contract. A contingent contract is based on the happening or non-happening of a future event. The event must be uncertain and should not be within the control of either party. If the event is certain to happen, it does not qualify as a contingent contract. It's important to note that contingent contracts must still fulfill the other requirements for a valid contract, such as offer and acceptance, consideration, capacity, free consent, and lawful object and consideration. If a contingent contract meets these criteria and the event occurs or fails to occur as per the contract's terms, it becomes enforceable, and the parties are bound by its provisions. A contract that is established by a court to stop one party from unfairly enriching themselves at the expense of another is referred to in law as a quasi-contract, also known as an implied-in-law contract. It is a legal fallacy used to impose a contractual obligation on a party that didn't formally agree to a contract but nonetheless received something of value from the other party. A contract that is inferred by law and serves as a redress in disputes between parties without a contract is known as a quasi contract. A quasi contract is a judicially determined legal duty for one party to make restitution to the other, as opposed to a typical contract. In other words, a quasi contract is a decision that is made in the past to fix a situation where one party gains something at the expense of the other. In common-law states, quasi contracts date back to the Middle Ages and were first used to describe a legal action known as indebitatus assumpsit, which means to be indebted or to have taken on a debt in Latin. When one party receives a benefit or piece of property from another, a quasi-contract describes the responsibility of the first party to the second. Neither party is required to consent to the agreement because it was created in a court of law and is therefore enforceable. Only Implied in Law: An implied duty to pay is one that is made possible by the law, in this case, a judge who provides a remedy. When one party receives a benefit from another without that party's agreement, but in conditions that make it unfair for the party to keep the benefit without paying for it, there is an implied quasi-contract. The fact that quasi contracts are frequently founded on the unjust enrichment principle is one benefit of employing them. As a result, no side will be given an unfair edge over another. As a result, it protects innocent victims of wrongdoing and serves as a legitimate substitute for monetary damages, ensuring that the provider of products or services is adequately reimbursed. As pseudo contracts are established by court order, all parties concerned are required to abide by them. A quasi contract is sometimes referred to as a "implied contract," in which the defendant is required to pay the plaintiff back damages, or a "constructive contract," which is a contract that is created when there isn't already one between the parties. Under the Indian Contract Act, 1872, a contract of indemnity is defined in Section 124. It is a contract whereby one party agrees to compensate another party for any loss or damage that may be incurred by the latter due to an act or omission of the promisor or any other person. Under the Indian Contract Act, 1872, a contract of guarantee is defined in Section 126. It is a contract where one party agrees to be responsible for the debt, default, or obligation of another party, known as the principal debtor, in case the principal debtor fails to fulfill their obligations. It's important to note that the Indian Contract Act provides for the general principles governing contracts, and specific clauses and terms in a contract of guarantee may vary depending on the agreement reached between the parties. When entering into a contract of guarantee, it is advisable to seek legal advice and ensure that the contract's terms and conditions are clearly defined and mutually agreed upon by all parties involved.

4.7 KEYWORDS

- **Conventional:** The term "conventional" generally refers to something that is based on or in accordance with commonly accepted practices, standards, or customs. It implies adherence to traditional or established norms rather than being innovative or unconventional. Conventional can be used to describe various aspects of life, such as behavior, ideas, attitudes, practices, or methods, that are considered typical, customary, or expected within a particular society, culture, or context.
- **Constructive:** Constructive meaning refers to the notion of finding purpose, fulfillment, and value in one's actions, thoughts, and relationships. It involves actively seeking and creating positive outcomes and contributions in various aspects of life. Constructive meaning can be understood as a personal, subjective experience that emerges when individuals engage in activities that align with their values, interests, and aspirations.
- **Legitimate:** The term "legitimate" typically refers to something that is lawful, valid, or acceptable according to established rules, laws, standards, or principles. It implies that something is genuine, authentic, or authorized. The concept of legitimacy can be applied to various contexts, including legal, social, political, and moral domains.
- **Indemnity:** Indemnity refers to a legal and financial concept that involves providing protection or compensation for any losses, damages, or liabilities incurred by one party due to the actions, omissions, or responsibilities of another party. It is a contractual agreement in which one party agrees to compensate or reimburse the other party for any potential losses or damages they may suffer.
- **Adequate:** The term "adequate" refers to something that is satisfactory or sufficient for a particular purpose or requirement. When something is considered adequate, it means that it meets the basic expectations or standards, without being exceptional or outstanding. Adequacy implies that the item, situation, or performance is satisfactory and acceptable, even if it may not be perfect or ideal. Adequacy can be subjective and context-dependent, as what is considered adequate can vary depending on the specific circumstances or individual preferences.

4.8 LEARNING ACTIVITY

- Define contingent contract

____

____

- State the quasi contract.

____

____

4.9 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions:

1. Define contingent contract Performance based on the event?
2. Explain what is contract of indemnity?
3. Describe briefly quasi-contract?
4. What do you understand by indemnity?
5. What are features of contignent contract?

Long Questions:

1. What is a Elements of a Quasi-Contract?
2. Describe the Purpose of a Quasi-Contract
3. What are the components contingent contract?
4. Describe about the contract of indemnity?
5. Explain the contract of gurantee

B. Multiple Choice Questions

1. It's important to note that the Indian Contract Act provides for the __________principles governing contracts.
   a. General
   b. Specific
   c. Major
   d. Crucial
2. Under the Indian Contract Act, _______, a contract of guarantee is defined in Section 126.
   a. 1872
   b. 1876

c. 1896
d. 1905

3. The doctrine of __________ -contracts has its roots in the unjust enrichment doctrine of classical Roman law.
   a. Breach
   b. Performance
   c. Offer
   d. Quasi
4. _________if event becomes impossible.
   a. Void
   b. Void ab initio
   c. Valid
   d. Quid pro quo
5. Some common examples of ______________contracts include insurance contracts.
   a. Concept
   b. Contingent
   c. Contractual
   d. Conclusion

Answers

1-a, 2-a, 3-d, 4-a, 5-b

4.10 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT - 5: SALE OF GOODS ACT 1930

STRUCTURE

5.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe nature of human resource management
- Identify scope of human resource
- State the need and importance of HRM
- List the functions of HRM

5.1 INTRODUCTION

5.2 CONTRACT OF BAILMENT

Under the Indian Contract Act, 1872, a contract of bailment is governed by Sections 148 to 181. A contract of bailment refers to a legal relationship where one party (the bailor) delivers certain goods to another party (the bailee) for a specific purpose, with the understanding that the bailee will return the goods or deal with them according to the bailor's instructions. Here are some key points regarding the contract of bailment under the Indian Contract Act:

Definition: A contract of bailment is defined in Section 148 as the delivery of goods by one party to another for a specific purpose, with the condition that the goods will be returned or dealt with according to the bailor's instructions.

Bailor and Bailee: The parties to a contract of bailment are the bailor and the bailee. The bailor is the person who delivers the goods, and the bailee is the person who receives and holds the goods.

Purpose of Bailment: The goods are delivered by the bailor to the bailee for a specific purpose or use. The purpose can be varied, such as safekeeping, transportation, repair, lending, or storage.

Delivery of Goods: For a valid contract of bailment, there must be an actual physical delivery of the goods from the bailor to the bailee. The bailee must have exclusive possession and control over the goods during the bailment period

Duties of the Bailee: The bailee has certain duties and responsibilities towards the goods during the bailment. These include taking reasonable care of the goods, using them only for the agreed-upon purpose, and returning the goods to the bailor or disposing of them as per the bailor's instructions.

Rights and Obligations of the Bailor: The bailor retains ownership of the goods during the bailment period and has the right to receive the goods back from the bailee. The bailor can also impose certain instructions or restrictions on the bailee regarding the use or treatment of the goods.

Liability of the Bailee: The bailee is generally liable to the bailor for any loss, damage, or misuse of the goods during the bailment period, unless the loss occurred due to an unforeseen event or circumstances beyond the bailee's control.

Termination of Bailment: A contract of bailment can be terminated in various ways, including by the completion of the purpose for which the goods were bailed, by expiration of the agreed-upon time period, by mutual agreement, or by the occurrence of an event specified in the contract.

Gratuitous Bailment and Bailment for Reward: Bailments can be classified as either gratuitous or for reward. In a gratuitous bailment, no consideration is involved, and the bailee owes a higher degree of care towards the goods. In a bailment for reward, consideration is exchanged, and the standard of care may vary based on the terms of the agreement.

It is important to note that the specific terms and conditions of a contract of bailment may vary depending on the agreement between the parties. It is advisable to seek legal advice and ensure that the terms of the bailment contract are clearly defined and mutually agreed upon by both the bailor and the bailee.

5.3 CONTRACT OF AGENCY

Under the Indian Contract Act, 1872, the contract of agency is governed by Sections 182 to 238. A contract of agency is established when one person (the principal) appoints another person (the agent) to act on their behalf in legal or business matters. The agent acts under the control and authority of the principal and represents their interests. Here are some key points regarding the contract of agency under the Indian Contract Act:

Definition: A contract of agency is defined in Section 182 as a contract where one person appoints another person to act on their behalf and with their authority to perform certain acts or transactions.

Principal and Agent: The parties to a contract of agency are the principal and the agent. The principal is the person who appoints the agent to act on their behalf, and the agent is the person who accepts the authority and acts on behalf of the principal.

Creation of Agency: Agency can be created by express agreement, implied agreement, or necessity. An agency relationship is typically created through a contract, where the principal authorizes the agent to perform specific acts or make decisions on their behalf.

Authority and Power of Agent: The authority of the agent can be either actual authority or apparent authority. Actual authority is explicitly given by the principal to the agent, either orally or in writing. Apparent authority arises when the principal, by words or conduct, leads third parties to believe that the agent has the authority to act on their behalf.

Duties of Agent: The agent has certain duties and responsibilities towards the principal, including acting in the principal's best interests, following their instructions, exercising reasonable care and skill, maintaining confidentiality, and providing accurate accounts and information.

Duties of Principal: The principal has duties towards the agent, such as paying remuneration or commission as agreed, reimbursing the agent for any expenses incurred in carrying out their duties, and indemnifying the agent for any loss or liability incurred while acting within the scope of their authority.

Rights and Liabilities of Principal and Agent: The principal is bound by the acts of the agent performed within the scope of their authority, and third parties can hold the principal liable for the agent's actions. The agent, on the other hand, has the right to receive compensation, be reimbursed for expenses, and seek indemnification from the principal for authorized actions.

Termination of Agency: Agency can be terminated by mutual agreement, expiration of the agreed-upon term, completion of the specific task, revocation by the principal or renunciation by the agent, death or insanity of either party, or occurrence of any event specified in the contract.

Sub-Agent: An agent can appoint a sub-agent with the principal's consent. The sub-agent acts on behalf of the agent and assists in carrying out the principal's instructions.

It's important to note that the Indian Contract Act provides for the general principles governing contracts, and the specific terms and conditions of an agency relationship may vary depending on the agreement between the principal and the agent. It is advisable to seek legal advice and ensure that the terms of the agency contract are clearly defined and mutually agreed upon by both parties.

5.4 CONTRACT OF SALE

As we have seen, a sale results in the transfer of ownership of the items from the seller to the buyer. An agreement to sell, however, does not automatically transfer ownership of the property in the items. The agreement's goal is to transfer the commodities at a later time, once certain requirements are met or certain contingent clauses are satisfied.

As a result, we can see that a contract for the sale of goods can either be a sale or an agreement to sell. Whether the condition assumes an immediate transfer of property from the seller to the buyer or one that occurs at a later time depends on the condition.

The Act in Section 4(3), defines what an agreement to sell is. The section 4(3) of the sale of Goods Act defines it as, "where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell."

Now, the question is: How does this change from a sale agreement to a sale happen? If and only if the deadline or prerequisites for the fulfillment of the sale contract are met, the agreement to sell will turn into a transaction.

- Two parties i.e. Buyer and Seller
- Goods
- Transfer of the property in goods
- Cost
- All Essential elements of a valid contract must be fulfilled

Two Parties: A contract of sale of goods is bilateral in nature wherein property in the goods has to pass from one party to another. One cannot buy one's own goods.

For example, A is the owner of a grocery shop. If he supplies the goods (from the stock meant for sale) to his

family, it does not amount to a sale and there is no contract of sale. This is so because the seller and buyer must be

two different parties, as one person cannot be both a seller as well as a buyer. However, there shall be a contract of

sale between part owners. Suppose A and B jointly own a television set, A may transfer his ownership in the

television set to B, thereby making B the sole owner of the goods. In the same way, a partner may buy goods from the firm in which he is a partner, and vice-versa. However, there is an exception against the general rule that no person can buy his own goods. Where a pawnee sells the goods pledged with him/her on non-payment of his/her

money, the pawnor may buy them in execution of a decree.

2. Goods: The subject matter of a contract of sale must be goods. Every kind of movable property except actionable

claims and money is regarded as 'goods. Contracts relating to services are not considered as contract of sale.

Immovable property is governed by a separate statute, 'Transfer of Property Act'.

3. Transfer of ownership: Transfer of property in goods is also integral to a contract of sale. The term 'property in

goods' means the ownership of the goods. In every contract of sale, there should be an agreement between the buyer and the seller for transfer of ownership. Here property means the general property in goods, and not merely a special property.

Thus, it is the general property, which is transferred under a contract of sale as distinguished from special property,

which is transferred in case of pledge of goods, i.e., possession of goods is transferred to the pledgee or pawnee

while the ownership rights remain with the pledger. Thus, in a contract of sale there must be an absolute transfer of the ownership. It must be noted that the physical delivery of goods is not essential for transferring the ownership

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party to another. One cannot buy one's own goods.

For example, A is the owner of a grocery shop. If he supplies the goods (from the stock meant for sale) to his family, it does not amount to a sale and there is no contract of sale. This is so because the seller and buyer must be

two different parties, as one person cannot be both a seller as well as a buyer. However, there shall be a contract of

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television set to B, thereby making B the sole owner of the goods. In the same way, a partner may buy goods from

the firm in which he is a partner, and vice-versa.However, there is an exception against the general rule that no

person can buy his own goods. Where a pawnee sells the goods pledged with him/her on non-payment of his/her

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2. Goods: The subject matter of a contract of sale must be goods. Every kind of movable property except actionable

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two different parties, as one person cannot be both a seller as well as a buyer. However, there shall be a contract of

sale between part owners. Suppose A and B jointly own a television set, A may transfer his ownership in the

television set to B, thereby making B the sole owner of the goods. In the same way, a partner may buy goods from

the firm in which he is a partner, and vice-versa.However, there is an exception against the general rule that no

person can buy his own goods. Where a pawnee sells the goods pledged with him/her on non-payment of his/her

money, the pawnor may buy them in execution of a decree.

2. Goods: The subject matter of a contract of sale must be goods. Every kind of movable property except actionable

claims and money is regarded as 'goods. Contracts relating to services are not considered as contract of sale.

Immovable property is governed by a separate statute, 'Transfer of Property Act'.

3. Transfer of ownership: Transfer of property in goods is also integral to a contract of sale. The term ‘property in goods’ means the ownership of the goods. In every contract of sale, there should be an agreement between the buyer and the seller for transfer of ownership. Here property means the general property in goods, and not merely a special property.

Thus, it is the general property, which is transferred under a contract of sale as distinguished from special property, which is transferred in case of pledge of goods, i.e., possession of goods is transferred to the pledgee or pawnee while the ownership rights remain with the pledger. Thus, in a contract of sale there must be an absolute transfer of the ownership. It must be noted that the physical delivery of goods is not essential for transferring the ownership

1. Two Parties: A bilateral contract for the sale of goods requires that ownership of the products pass from one party to the other. One can't purchase their own products. For instance, A runs a food store. It does not constitute a sale and there is no contract of sale if he gives the items (from the stock intended for sale) to his family. Because one individual cannot be both a seller and a buyer, the seller and the buyer must be two separate parties. But there must be a sale agreement between co-owners. For example, if A and B both own a television set jointly, A may transfer his ownership to B, making B the sole owner of the items. Similar to this, a partner may purchase things from the company in which he or she is a partner, and vice versa. There is an exception to the general rule that no one can purchase their own things, though. When a pawnee sells the items promised to them after failing to pay their debt, the pawnor may purchase them to carry out a court order.
2. Goods: In a sale agreement, the object of the transaction must be products. All transportable property types are categorized as "goods," with the exception of money and actionable claims. Contracts for the provision of services are not regarded as

sales agreements. The "Transfer of Property Act" is a unique statute that governs immovable property.

3. Transfer of the property in goods: A contract of sale must also include the transfer of ownership in the goods. The ownership of the products is referred to as "property in goods." Every contract of sale should contain a clause stating how ownership will be transferred between the buyer and seller. Property here refers to a good's overall characteristics rather than just a particular one. Thus, general property, as opposed to special property, is transferred under a contract of sale, and when goods are pledged, special property is transferred. i.e., while ownership rights remain with the pledger, possession of the property is given to the pawnee or pledgee. Therefore, there must be a complete transfer of ownership in a contract of sale. It should be emphasized that transferring ownership does not need the actual delivery of the goods.

4. Cost: The buyer must pay a certain cost for the items. The monetary consideration for the selling of commodities is referred to as the "price." As a result, the consideration in a sale contract must always be paid for with money. When items are provided in return for other goods, it is not a sale; rather, it is an exchange, which was common in ancient times.

Similar to this, if someone gives the things to someone else without expecting anything in return, it counts as a gift or act of charity rather than a sale. Explicitly speaking, items must be sold for a specific sum of money, or the price. However, the consideration may be made up of both cash and valuable commodities. In addition, there is no requirement for payment at the time the sale contract is formed.

5. All requirements for a legal contract: A contract of sale is a specific kind of contract, thus for it to be enforceable, it must contain all the necessary components of a valid contract, including free assent, consideration, the capacity of the parties to the contract, a legitimate purpose, the satisfaction of any necessary formalities, etc.

1. Obligations of the Seller and the Buyer

As stated in the Sale Agreement, the Seller is required to deliver the items. The customer is required to accept the products and pay according to the terms of the sale contract.

1. Delivery and Payment are Concurrent

   Delivering the items and receiving money are related requirements. Unless otherwise agreed, the buyer must be prepared to pay for the delivery of the products, and the seller of the goods must be prepared to deliver the goods in exchange for payment.

2. Regulations for the Delivery of Goods

   The buyer or any other person he has designated to hold the items on his behalf may take custody of the goods after they have been delivered to them.

3. Partial Goods Delivery

   The property in the items is transferred in the same way as full delivery when partial delivery is done as a step toward full delivery. Delivery of the remaining products does not include partial deliveries made with the intention of separating them from the total.

4. The Buyer Must Request Delivery

   Unless otherwise specified, the buyer of the products must request delivery from the seller, with the terms of delivery being the circumstances outlined in the Contract.

5. Where It Is Delivered

   When drafting the Contract of Sale, both the buyer and the seller must concur on any express or implicit terms of delivery. If the Contract doesn't contain such terms and conditions:

6. The location where the products are when the sale is made is where they are delivered.

   The location where the items are at the time of the sale agreement is where they are delivered. Deliveries are made to the location of manufacture if the goods are not available at that time.

7. the delivery windows

   Delivery of the items shall take place within a reasonable amount of time if the time was not stated in the Contract.

8. Goods in Third Party's Possession

If a third party is holding the items at the time of the sale, that party must inform the buyer that they are being kept on his behalf.

9. Time for Delivery Bid Submission

   Unless otherwise provided in the Contract, the demand for delivery shall be made at a reasonable hour.

10. Delivery Charges

    Unless otherwise specified in the Contract, the seller is responsible for paying the costs associated with getting the items into a deliverable form.

11. Wrong Quantity of Goods Delivered By "goods for delivery," we mean the items the seller sends at the time of delivery. The buyer has the right to reject the delivery of the products if the seller sends a smaller or larger quantity of the goods for delivery than what is stipulated in the Contract.
12. The buyer has the right to reject any goods that do not adhere to the Contract if the seller provides a mixture of goods, some of which do not.

5.5 DIFFERENCE BETWEEN SELL AND AGREEMENT TO SALE

The terms "sell" and "agreement to sale" refer to different stages in a transaction involving the transfer of goods or property. Here's an explanation of each term:

Sell: Selling refers to the actual act of transferring ownership or possession of goods or property from one party (the seller) to another party (the buyer) in exchange for a mutually agreed-upon consideration, typically money. When a seller sells an item, the transaction is completed, and the buyer takes immediate possession and ownership of the goods.

Agreement to Sale: An agreement to sale, also known as a sales agreement or a contract for sale, is a legal document that outlines the terms and conditions agreed upon by the buyer and the seller for the sale of goods or property. It serves as a preliminary or intermediate step before the actual sale takes place. The agreement to sale specifies the details of the transaction, including the description of the goods, the purchase price, payment terms, delivery terms, warranties, and any other conditions both parties have agreed upon. It establishes a mutual understanding and commitment between the buyer and the seller to complete the sale at a future date or upon the fulfillment of certain conditions.

In summary, "sell" refers to the completed act of transferring ownership, while an "agreement to sale" is a legal agreement outlining the terms and conditions for the sale that precedes the actual transfer of ownership. The agreement to sale sets the stage for the sale transaction, and once all the conditions are met, the sale is finalized, and the transfer of ownership occurs.

5.6 SUMMARY

Under the Indian Contract Act, 1872, a contract of bailment is governed by Sections 148 to 181. A contract of bailment refers to a legal relationship where one party (the bailor) delivers certain goods to another party (the bailee) for a specific purpose, with the understanding that the bailee will return the goods or deal with them according to the bailor's instructions. A contract of bailment is defined in Section 148 as the delivery of goods by one party to another for a specific purpose, with the condition that the goods will be returned or dealt with according to the bailor's instructions. Bailor and Bailee: The parties to a contract of bailment are the bailor and the bailee. The bailor is the person who delivers the goods, and the bailee is the person who receives and holds the goods. Purpose of Bailment: The goods are delivered by the bailor to the bailee for a specific purpose or use. Delivery of Goods: For a valid contract of bailment, there must be an actual physical delivery of the goods from the bailor to the bailee. The bailee must have exclusive possession and control over the goods during the bailment period. Duties of the Bailee: The bailee has certain duties and responsibilities towards the goods during the bailment. Rights and Obligations of the Bailor: The bailor retains ownership of the goods during the bailment period and has the right to receive the goods back from the bailee. It is important to note that the specific terms and conditions of a contract of bailment may vary depending on the agreement between the parties. It is advisable to seek legal advice and ensure that the terms of the bailment contract are clearly defined and mutually agreed upon by both the bailor and the bailee. Under the Indian Contract Act, 1872, the contract of agency is governed by Sections 182 to 238. A contract of agency is established when one person (the principal) appoints another person (the agent) to act on their behalf in legal or business matters. The agent acts under the control and authority of the principal and represents their interests. A contract of agency is defined in Section 182 as a contract where one person appoints another person to act on their behalf and with their authority to perform certain acts or transactions. As we have seen, a sale results in the transfer of ownership of the items from the seller to the buyer. An agreement to sell, however, does not automatically transfer ownership of the property in the items. The agreement's goal is to transfer the commodities at a later time, once certain requirements are met or certain contingent clauses are satisfied. As a result, we can see that a contract for the sale of goods can either be a sale or an agreement to sell. Whether the condition assumes an immediate transfer of property from the seller to the buyer or one that occurs at a later time depends on the condition. The Act in Section 4(3), defines what an agreement to sell is. The section 4(3) of the sale of Goods Act defines it as, “where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.” Two Parties: A contract of sale of goods is bilateral in nature wherein property in the goods has to pass from one party to another. One cannot buy one’s own goods. As stated in the Sale Agreement, the Seller is required to deliver the items. The customer is required to accept the products and pay according to the terms of the sale contract. The terms "sell" and "agreement to sale" refer to different stages in a transaction involving the transfer of goods or property. Here's an explanation of each term: Sell: Selling refers to the actual act of transferring ownership or possession of goods or property from one party (the seller) to another party (the buyer) in exchange for a mutually agreed-upon consideration, typically money. When a seller sells an item, the transaction is completed, and the buyer takes immediate possession and ownership of the goods. Agreement to Sale: An agreement to sale, also known as a sales agreement or a contract for sale, is a legal document that outlines the terms and conditions agreed upon by the buyer and the seller for the sale of goods or property. It serves as a preliminary or intermediate step before the actual sale takes place. The agreement to sale specifies the details of the transaction, including the description of the goods, the purchase price, payment terms, delivery terms, warranties, and any other conditions both parties have agreed upon. It establishes a mutual understanding and commitment between the buyer and the seller to complete the sale at a future date or upon the fulfillment of certain conditions. "sell" refers to the completed act of transferring ownership, while an "agreement to sale" is a legal agreement outlining the terms and conditions for the sale that precedes the actual transfer of ownership. The agreement to sale sets the stage for the sale transaction, and once all the conditions are met, the sale is finalized, and the transfer of ownership occurs.

5.7 KEYWORD

- **Bailment:** Bailment refers to a legal relationship in which someone (the bailor) transfers possession of personal property to another person (the bailee) for a specific purpose or period of time. The property can be tangible items such as goods, documents, or valuables.
- **Preliminary:** The term "preliminary" refers to something that comes before or precedes the main or final stage of a process, investigation, or event. It indicates an initial or preparatory step that sets the foundation for subsequent actions or decisions.

Preliminary work is often conducted to gather information, assess feasibility, or establish a baseline before moving forward with more extensive or conclusive activities.

- **Possession:** possession refers to the physical control or ownership of property, assets, or objects. It signifies having the right to control, use, or dispose of something. Possession can be temporary or permanent, and it often comes with certain legal rights and responsibilities.
- **Clause:** a clause refers to a specific provision or section within a legal document, such as a contract or a law. It outlines a particular condition, requirement, or agreement. For example, a non-disclosure clause in a contract would specify the terms and conditions related to the confidentiality of certain information.
- **Commodity:** Commodity refers to a raw material or primary agricultural product that can be bought and sold in large quantities, typically without much differentiation between individual units. It is a basic good that is interchangeable with other goods of the same type and is used in the production of other goods or consumed directly.

5.8 LEARNING ACTIVITY

5. Define Sale of Goods.

____

____

6. State the contract of sale.

____

____

.5.9 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions

- Define sale.
- Define bailment of goods.
- Elaborate about the contract of agency.
- What are the criteria that determine whether an bailment is good for moveable goods or sale by agent?

- Identify the purpose of bailment of goods?
- Identify the purpose of contract of agency?

Long Questions

- What is a contract of sale?
- Describe the contract of bailment?
- What are the components of contract of bailment?
- Describe about the difference between sell and agreement to sale.
- Explain agreement to sale.

B. Multiple Choice Questions

1. An agreement to sale, also known as a ________agreement or a contract for sale

a. sales

b. performance

c. quasi

d. breach

2. Transfer of property in goods is also ___________to a contract of sale.

a. integral

b. material

c. external

d. agreement

3. An __________can appoint a sub-agent with the principal's consent.

a. agency

b. principal

c. agent

d. author

4. The parties to a contract of ___________are the principal and the agent.

a. principal

b. agent

c. agency

d. lawyer

5. _______________can be classified as either gratuitous or for reward.

a. performance

b. breach

c. quasi

d. Bailments

Answers

1-a, 2-a, 3-c. 4-c, 5-d

5.10 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT – 6: CONDITIONS AND WARRANTIES

STRUCTURE

6.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe nature conditions
- Identify scope warranties
- State the difference between conditions and warranties.
- List the Transfer of ownership in goods including sale by a non-owner

6.1 INTRODUCTION

The Sale of Goods Act of 1930 governs contracts for the sale of goods. The Jammu & Kashmir state is the only exception to the Act's coverage of all of India. The Indian Contract Act of 1872 governed all sales of goods transactions up until 1930. The Act of 1930 replaced Sections 76 through 123. An uncommon element of a contract for the sale of goods is the transfer of ownership of the products, the delivery of the items, the rights and obligations of the buyer and seller, the remedies for breach of the contract, the implied conditions and warranties, etc. The Sale of Goods Act of 1930's provisions apply to these peculiarities.

The Act addresses the topic of movable property. The sale of real estate is not covered by this Act. The Transfer of Property Act, 1882 is a separate law that governs all immovable property transactions, including as sales, leases, donations, and so forth.
What is a contract of sale? Definition and ideas
The agreement between the buyer and the seller with the intention of exchanging property is known as the contract of the sale. According to Section 4(1), a contract for the sale of goods is one in which the seller transfers or agrees to transfer the property in the products to the buyer in exchange for money.

•According to section 4(1), of the Sale of goods act, 1930 'Contract of sale of goods is a contract whereby the seller transfer or agrees to transfer the property in goods to the buyer for a price'. A contract of Sale of goods include both (i) sale and (ii) an agreement to sell Sale: Ownership in the goods is transferred by the seller to the buyer immediately at the time of contract Whereas Agreement to sell: The transfer of ownership in goods is to take place, at a future time or subject to fulfillment of some condition.

6.2 CONDITIONS AND WARRANTIES

The selling contract or any other contract may require the fulfillment of specific clauses. The condition is a fundamental prerequisite on which the entire contract is predicated, whereas the warranty is a written assurance under which the seller agrees to fix or replace the product in the event of a defect. The provisions relating to Conditions and Warranties are clarified in Sections 11 to 17 of the Sale of Goods Act.

A distinction between a condition and a warranty is made in Section 12 of the Act. The way the requirement is interpreted will determine if anything is a condition or warranty. Instead than focusing on the word's form, the meaning should be centered on its function.

Condition

A condition is the cornerstone of the entire contract and essential to carrying it out in the framework of the Sale of Goods Act, 1930. The offended party has the right to treat the contract as repudiated if the conditions are broken. In other words, the buyer has the choice to revoke the contract or refuse to take the items if the seller doesn't comply with a requirement. If the customer has already made a payment, he is entitled to both a price refund and compensation for the contract's breach.

For instance, Sohan is interested in buying a horse from Ravi that has a top speed of 50 km/h. The horse that Ravi displays is suitable for you, he says. Buys the horse is Sohan. Later, he discovers that the horse's top speed is only 30 km/h. Due to the buyer's request not being met, this is a condition violation. The conditions can also be divided into the following groups.

Kind of conditions

Expressed Conditions

A clause in a legal agreement that stipulates that something must be done or exist is how the term is defined in the dictionary. The term "expressed conditions" refers to clauses that both parties agree to include in the contract and that are necessary for it to work.

Implied conditions

In many sorts of sales contracts, the parties implicitly accept a number of conditions. Consider the supposition made during a sale by description or sale by sample. The Sale of Goods Act, 1930's Sections 14 to 17 describe implied conditions.

Unless otherwise agreed, the parties presume that these implicit terms are included in the contract itself. Let's quickly examine these situations:

Condition relating to title implied

The fundamental yet crucial implied terms on the part of the seller are as follows: First, he has the legal right to sell the items.

Second, if there is a sale agreement, he will have the right to sell the products when the contract is fulfilled.

As a result, the buyer has the right to reject the products if the vendor lacks the legal authority to sell them. He has the right to receive his entire purchase price back.

In Rowland v. Divall (1923), the party paid for and purchased a used automobile from the former. Due to the seller's lack of a title to sell the car, he lost it after six months. It was decided that the party who had been wronged could get the money back.

Condition implied as to the description

Moving on to the Act's Section 15, There is an implied requirement in the sales contract that the goods must match the description. The buyer has the choice of accepting or rejecting goods that do not match the product description. Say, for instance: Ram purchases a car from "B" that he believes to be brand new, but the vehicle is not brand new. Ram' can dismiss the vehicle.

The provided Act's Section 16(2) states that the items must be of merchantable condition. In other words, the products are of a caliber that a sane individual would find acceptable. For instance, A bought a sugar sack from B that was ruined by ants. It is no longer fit for use because the requirement of merchantability has been violated. The buyer has the right to inspect the products before accepting them, as is clear from this section. However, a purely opportunity-based sale without a thorough inspection would not be enough to strip the buyer of his rights.

Even if he approves the goods, he may repudiate the contract if the examination does not reveal the defect but it is discovered within a reasonable amount of time after the items are delivered.

Particularly in the case of edibles, the implicit requirements must be that they are healthful, sound, and fairly appropriate for the purpose for which they are acquired. For instance, Amit buys milk that has typhoid germs in it, and after consuming it, he passes away. His wife may file a damage claim.

Implied terms of the sample sale

According to Section 17 of the Act, the following implicit conditions may exist in a contract of sale by sample:

that in terms of quality, size, color, etc., the real products would match the sample.

that the purchaser has a fair opportunity to evaluate the products against the sample.

The products are also free of any flaw that would make them unsellable.

For instance, a business marketed specific shoes with a unique type of sole through sample sales to the French Army. It was discovered that they weren't fashioned from the same sole later, when the bulk was arrived. The buyer was entitled to a price and damage reimbursement.

Implied terms of sale as evidenced by a sample and a description

According to Section 15 of the Sale of products Act of 1930, the products offered in a sale by sample and description must match both the sample and the description. In the 1854 case Nichol v. Godis, imported refined rapeseed oil was sold. The oil that was provided was identical to the oil in the sample, but it also contained a blend of additional oils. In this instance, it was decided that the seller was required to return the money.

Implied terms of sale as evidenced by a sample and a description

The products offered in a sale by sample and description must match both the sample and the description, according to Section 15 of the Sale of Products Act of 1930. Imported refined rapeseed oil was offered for sale in the 1854 case Nichol v. Godis. The oil that was given out was the same oil that was in the sample, but it also contained a mixture of other oils. It was determined that the seller in this case had to return the money.

Warranty

The additional clause and written assurance that is collateral to the contract's primary goal is known as a warranty. The result of a warranty breach is that the party that was wronged cannot reject the entire contract, but they may seek damages instead. Contrary to a breach of condition, a breach of warranty does not entitle the buyer to treat the products as repudiated.

Kinds of Warranty

Express Warranty

Those warranties that are included in the contract and are typically accepted by both parties are referred to as expressed warranties.

Implied Warranty

The term "implied warranties" refers to those guarantees that the parties took for granted to be included in the sale contract even though they did not expressly do so. The following implicit warranties are included in the selling contract, subject to the contract:

Warranty as to undisturbed possession

According to Section 14(2) of the relevant Act, there is an implied promise that the buyer will have continuous possession of the goods. In fact, if the consumer becomes dissatisfied with the goods at any time after receiving them, He may bring a claim against the vendor for warranty breach.

Example: 'X' bought a used bike from 'Y'. He rode the bike despite being unaware that it had been stolen. Later, he was forced to give the same back. Y can be sued by X for breach of warranty.

Guarantee about the absence of encumbrances

There is an implied warranty in Section 14(3) that the items will be free of any charge or encumbrances that are in the favor of any third party that the buyer is unaware of. However, if it can be demonstrated that the buyer was aware of the situation when the contract was made, he will have no legal recourse.

For instance, A promises to give C possession of his items in exchange for a loan of Rs. 20,000. A later sells those items to B. If B experiences any damages, he has the right to pursue them.

implicit promise to disclose Hazardousness of the sold items

It is the seller's responsibility to alert the buyer to any potential hazard if the items being sold are intrinsically harmful or are likely to be dangerous and the buyer is unaware of this fact. The vendor will be responsible if this guarantee is broken.

For instance, if A buys a horse from B and B's horse is aggressive, it is the seller's responsibility to warn A of the potential risk. A sustained severe wound while riding the horse. A has the right to sue B for damages.

Condition

1. Section 12(2) of the Sale of Goods Act, 1930 defines Condition.
2. A condition is a clause that is necessary to the contract's main objective.
3. Its failure to perform could be interpreted as a breach of the contract.
4. The party who was wronged may consider the interaction repudiated.
5. A conditional breach is equivalent to a warranty breach.

Warranty

1. Section 12(3) of the Sale of Goods Act, 1930 defines Warranty.
2. Stipulation that is only incidental to the contract's core goal.

3. Its failure to fulfill cannot be interpreted as a breach of the contract.
4. The party who was wronged can seek compensation instead of treating the communication as repudiated.
5. A warranty violation cannot be considered a conditional breach.

Section 13 of the Act specifies the cases wherein a breach of Condition sink to the level of breach of Warranty. The buyer's will determines the first two of the following points, but the last is required and serves as estoppel against him:

The buyer's waiver of the condition transforms it into a warranty.

A condition would become equivalent to a warranty if the buyer decided to treat a conditional breach as a warranty breach.

When the buyer has accepted the entire or a portion of the products under an indivisible contract, the condition is treated as a warranty. As a result, the contract cannot be canceled. Damages, however, may be demanded. Both the customer and the seller present certain preconditions regarding the method of payment, delivery, quality, quantity, and other requirements when selling or buying items. Depending on the circumstances, these restrictions are either viewed as conditions or warranties. These ideas must be grasped since they safeguard the interests of the parties in the event of contract breach.

When condition to be treated as warranty [Sec.13]-

When the buyer decides to treat a violation of the condition as a warranty violation.

When the buyer has accepted the products, in whole or in part, and the contract cannot be broken.

6.3 TRANSFER OF OWNERSHIP IN GOODS INCLUDING SALE BY NON-OWNER

The transfer of ownership in goods, including sale by a non-owner, refers to the legal process through which ownership rights in a particular item or goods are transferred from one party to another. Typically, ownership transfer occurs when the goods are sold, but it can also happen through other means such as gifts or inheritance. However, when a non-owner sells goods, certain legal implications and considerations come into play.

In general, for a valid transfer of ownership to occur, certain essential elements must be met, such as a valid agreement between the parties, an intention to transfer ownership, and the actual delivery of the goods. These elements may vary to some extent depending on the legal jurisdiction and the specific circumstances of the transfer. Let's delve into the process in more detail:

Agreement: The first step in transferring ownership of goods is reaching an agreement between the seller (non-owner) and the buyer. This agreement typically involves negotiations on the terms and conditions of the sale, including the price, quantity, quality, and any specific warranties or guarantees.

Legal Capacity: Both the seller and the buyer must have the legal capacity to enter into a contract. This means they must be of legal age and possess the mental capacity to understand the nature and consequences of the transaction.

Intention to Transfer Ownership: It is essential that the seller has the intention to transfer ownership of the goods to the buyer. If the seller does not have ownership rights or lacks the intention to transfer ownership, the transfer may be considered void or invalid.

Delivery: Delivery of the goods is a crucial aspect of ownership transfer. It involves the physical transfer of possession or control over the goods from the seller to the buyer. Delivery methods can vary depending on the nature of the goods and the agreement between the parties. It can include physical delivery, symbolic delivery (e.g., handing over keys or documents), or even constructive delivery (e.g., providing access to digital goods).

Payment: In most cases, the buyer is required to provide consideration, usually in the form of payment, in exchange for the goods. Payment can occur simultaneously with the delivery or be agreed upon through other payment terms specified in the agreement.

Good Faith and Title: The buyer must act in good faith, meaning they are not aware of any defect in the seller's ownership rights or any other factors that may affect the transfer. If the buyer knows or should have known about the seller's lack of ownership, the transfer may be considered voidable.

Legal Protection: Laws and regulations exist to protect both buyers and sellers in the transfer of goods. These laws may vary across jurisdictions, but they generally provide remedies for parties who have suffered losses due to a non-owner's sale or fraudulent transfer.

It's important to note that if a non-owner sells goods without proper ownership rights or without the consent of the true owner, the true owner may have legal remedies available to recover the goods or seek compensation for any losses incurred. Additionally, the buyer may face legal consequences for purchasing goods from a non-owner without proper authorization.

It is advisable to consult with a legal professional or refer to the specific laws and regulations in your jurisdiction to fully understand the intricacies and requirements related to the transfer of ownership in goods, particularly when a non-owner is involved in the sale.

6.4 SUMMARY

The Sale of Goods Act of 1930 governs contracts for the sale of goods. The Jammu & Kashmir state is the only exception to the Act's coverage of all of India. The Indian Contract Act of 1872 governed all sales of goods transactions up until 1930. The Act of 1930 replaced Sections 76 through 123. An uncommon element of a contract for the sale of goods is the transfer of ownership of the products, the delivery of the items, the rights and obligations of the buyer and seller, the remedies for breach of the contract, the implied conditions and warranties, etc. The Sale of Goods Act of 1930's provisions apply to these peculiarities. The Act addresses the topic of movable property. The sale of real estate is not covered by this Act. The Transfer of Property Act, 1882 is a separate law that governs all immovable property transactions, including as sales, leases, donations, and so forth. The selling contract or any other contract may require the fulfillment of specific clauses. The condition is a fundamental prerequisite on which the entire contract is predicated, whereas the warranty is a written assurance under which the seller agrees to fix or replace the product in the event of a defect. The provisions relating to Conditions and Warranties are clarified in Sections 11 to 17 of the Sale of Goods Act. A distinction between a condition and a warranty is made in

Section 12 of the Act. The term "expressed conditions" refers to clauses that both parties agree to include in the contract and that are necessary for it to work. The term "implied warranties" refers to those guarantees that the parties took for granted to be included in the sale contract even though they did not expressly do so. For instance, A promises to give C possession of his items in exchange for a loan of Rs. 20,000. A later sells those items to B. If B experiences any damages, he has the right to pursue them. When the buyer has accepted the entire or a portion of the products under an indivisible contract, the condition is treated as a warranty. As a result, the contract cannot be canceled. Damages, however, may be demanded. Both the customer and the seller present certain preconditions regarding the method of payment, delivery, quality, quantity, and other requirements when selling or buying items. Depending on the circumstances, these restrictions are either viewed as conditions or warranties. These ideas must be grasped since they safeguard the interests of the parties in the event of contract breach. The transfer of ownership in goods, including sale by a non-owner, refers to the legal process through which ownership rights in a particular item or goods are transferred from one party to another. Typically, ownership transfer occurs when the goods are sold, but it can also happen through other means such as gifts or inheritance. However, when a non-owner sells goods, certain legal implications and considerations come into play. In general, for a valid transfer of ownership to occur, certain essential elements must be met, such as a valid agreement between the parties, an intention to transfer ownership, and the actual delivery of the goods. These elements may vary to some extent depending on the legal jurisdiction and the specific circumstances of the transfer. Agreement: The first step in transferring ownership of goods is reaching an agreement between the seller (non-owner) and the buyer. Legal Capacity: Both the seller and the buyer must have the legal capacity to enter into a contract. It is advisable to consult with a legal professional or refer to the specific laws and regulations in your jurisdiction to fully understand the intricacies and requirements related to the transfer of ownership in goods, particularly when a non-owner is involved in the sale.

6.5 KEYWORDS

- **Intricacies:** The term "intricacies" refers to the complex and detailed aspects or elements of something. It describes the finer or more subtle aspects that may be difficult to understand or unravel. When we talk about the intricacies of a subject, we are referring to its nuances, intricately connected parts, or hidden complexities that require closer examination or analysis to fully comprehend. It often implies that the subject or topic being discussed is involved, intricate, or sophisticated in nature. Exploring the intricacies of a subject can involve examining its interconnections, relationships, and the fine details that contribute to its overall complexity.
- **Essential:** The essential meaning refers to the fundamental or core significance of something. It is the underlying message or concept that gives substance and purpose to an idea, statement, or action. The essential meaning often captures the essence or essential qualities that define and distinguish a particular subject or topic.
- **Pursue:** Pursuing meaning is a deeply personal and introspective journey that involves seeking a sense of purpose, fulfillment, and significance in life. It revolves around discovering what truly matters to you and aligning your actions and values with that understanding.
- **Inheritance:** Inheritance typically refers to the process by which individuals receive or acquire assets, properties, rights, or obligations from a person who has passed away, commonly known as the deceased or the decedent. These assets can include financial resources, real estate, personal possessions, investments, and other valuable items.
- **Prerequisite:** The term "prerequisite" refers to something that is required or necessary as a condition for something else to happen or be accomplished. It is typically used to describe a condition, skill, knowledge, or qualification that must be met or obtained before proceeding with a particular activity, course, job, or goal. Prerequisites serve as foundational or preparatory requirements that ensure individuals have the necessary background or capabilities to engage in a specific task or pursue further learning or advancement. Fulfilling prerequisites helps to ensure a smoother and more successful outcome in various contexts, such as education, employment, or project management.

6.6 LEARNING ACTIVITY

- Define conditions?

____

____

- State what are warranties?

____

____

6.7 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions:

- Define express condition?
- Explain what is condition by description?
- Describe briefly about condition by sale?
- What do you understand by condition by sample?
- What is a warranties?

Long Questions:

- What is a condition? What are types of conditions?
- Describe the warranties?
- What are the components of transfer of ownership?
- Describe about the transfer of ownership in goods, including sale by a non-owner?

B. Multiple Choice Questions

1. Laws and regulations exist to protect both buyers and sellers in the transfer of___________.

a. goods

b. services

c. contract

d. agreement

2. Delivery of the goods is a crucial aspect of ________transfer.

a. ownership

b. employee

c. manager

d. CEO

3. Section ____ of the Act specifies the cases wherein a breach of Condition sink to the level of breach of Warranty.

a. 18

b. 17

c. 16

d. 13

4. The selling contract or any other contract may require the fulfillment of ________clauses.

a. Specific
b. General
c. Major
d. Casual

5. The Sale of Goods Act of _________- governs contracts for the sale of goods.

a. 1929

b. 1930

c. 1905

d. 1992

Answers

1-a, 2-a, 3-d, 4-a, 5-b

6.8 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT – 7: SALES OF GOODS ACT 1930.

STRUCTURE

7.8 References

7.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe nature of contract
- Identify scope of unpaid seller
- List the functions of rights of unpaid seller

7.1 INTRODUCTION

A sales contract, which describes the terms and circumstances of a transaction between a buyer and a seller, is a legally enforceable agreement. Normally, the contract specifies the products or services being sold, the transaction's cost, and any other terms or conditions to which both parties have agreed.

- **Parties:** The names and addresses of the buyer and seller participating in the transaction should be listed at the beginning of the sales contract.
- A complete description of the goods or services being offered, including their amount, quality, and any other pertinent information, should be included in the contract.
- **Price and terms of payment:** The contract must include the agreed-upon cost of the products or services as well as the terms of payment, including the due date and mode of payment.
- **Delivery and shipment conditions:** The contract should outline the delivery conditions, such as the delivery address and any associated fees or obligations.
- **Guarantees:** The contract should specify any warranties or guarantees that the vendor is providing for the products or services.
- The contract should specify each party's obligations for indemnification and liabilities in the case of any losses or damages.
- **Dispute resolution:** The contract should specify how disagreements between the buyer and seller will be settled.
- **Termination and cancellation:** The terms under which any party may terminate or cancel the agreement should be outlined in the contract.
- **Governing law and jurisdiction:** The agreement's governing law and jurisdiction should be stated in the contract.

- **Signatures:** To demonstrate their acceptance of the contract's terms and conditions, both the buyer and the seller must sign it and date it.

7.2 PERFORMANCE OF CONTRACT

Sales contracts are crucial in outlining the specifics of a deal between a buyer and a seller. They outline the parties' rights and responsibilities, as well as the cost of the products or services, delivery conditions, payment requirements, and any warranties or guarantees. Both parties must comply with their commitments and comprehend the terms of the contract in order for sales contracts to be performed. The performance of sales contracts will be thoroughly covered in this essay, along with the significance of precise and succinct language, the dangers of non-performance, and the remedies available in the event of a breach.

1. **Importance of using simple, direct language**

A sales contract's terms should be precise and unambiguous to prevent misunderstandings or disagreements between the parties. The items or services being sold, the price, the terms of delivery, and the payment requirements should all be made clear in the contract. Along with any warranties or guarantees, it should also list the appropriate remedies in the event of a violation. Both parties may understand their commitments and prevent any misunderstandings or disputes with the use of a clear and straightforward contract.

2. **Non-performance risks**

A sales contract's non-performance may have serious repercussions for both parties. Non-performance by the seller may result in financial loss, harm to their reputation, and legal action. Non-performance by the seller may cost the customer more money and lost chances as well as cause a delay in acquiring the products or services. Legal action, which may be expensive and time-consuming, might also result from non-performance.

3. **Actions for a breach**

The opposite party may be entitled to a number of remedies if one party breaches their responsibilities under the sales contract, including:

a. Contract termination is an option for either party in the event of a breach. Damages may also be sought. The contract may be terminated immediately or after providing the party that violated it notice of the violation and a time to make things right.

b. Specific performance: If the products or services are one-of-a-kind, the non-breaching party may ask the court for specific performance, which obligates the party in breach to uphold their end of the bargain.

c. Damages: If a party violates the terms of the agreement, the other party may seek damages to make up for any losses they have suffered. The cost of the products or services, any additional fees, and any missed opportunities might all be considered damages.

4**. Reduction of losses**

Mitigation refers to taking action that is appropriate to lessen damages sustained as a result of the breach. For instance, if a customer violates a contract by failing to pay for goods, the seller is obligated to try to minimise their losses by reselling the products to another buyer at a fair price.

Conclusion

Sales contracts are crucial in outlining the specifics of a deal between a buyer and a seller. Both parties may understand their commitments and prevent misunderstandings or disagreements by using clear and straightforward words. A sales contract's non-performance may have serious repercussions for both parties, and remedies for violation include contract termination, specified performance, and monetary compensation. In the event of a breach, both parties also have a responsibility to reduce their damages. A well-written sales contract may reduce the risk of non-performance and assist assure contract performance.

7.3 UNPAID SELLER

Sec. 45(1) of the Sale of products Act states that the seller of the products is considered to be an unpaid seller if any of the following conditions is met: (A) the entire amount of the purchase price has not been presented or paid; or (B) a bill of exchange or other negotiable instrument has been accepted as a conditional payment.

Section 45(2) states. The term "seller" refers to anybody who holds the position of seller, an agent who paid for or is directly responsible for the price, an agent to whom the bill of lading has been endorsed, a consignor, or an agent who paid for or is accountable for the price.

AND the vendor of the products may be regarded as an underpaid vendor:

1. If the price is due but it hasn't been paid. He has to be able to sue immediately away for the price.

2. A bill of exchange or other movable property was obtained but was not honored.

An unpaid seller refers to a person or entity who has sold goods to a buyer but has not yet received the full payment for those goods. The term "unpaid seller" is commonly used in the context of commercial transactions and is recognized under various legal systems to protect the rights of sellers when buyers fail to fulfill their payment obligations.

Here are a few key points to understand about the concept of an unpaid seller:

Definition: An unpaid seller is someone who has sold goods on credit or on other terms that involve deferred payment, and the payment remains outstanding. The seller retains the status of an unpaid seller until they receive full payment for the goods.

7.3.1 RIGHTS OF UNPAID SELLER

1. RIGHTS against products

2. Rights against the individual buyer

Rights against the goods: are divided into two categories:

1.WHEN items have passed ownership

2. when ownership of things hasn't been transferred

Once ownership of the products has passed:

If ownership of the items has transferred to the buyer, the unpaid seller is entitled to the following three rights:

Rights of lien, stoppage in transit, and resale are examples of (a) rights. RIGHT OF LIEN:

The ability to keep goods until the full amount of the purchase price is paid or tendered is known as a right of lien.In cases when products have been sold without a credit condition, the right of lien may be exercised.

WHERE items have been purchased on credit, but the credit time has ended.

When the buyer has become bankrupt but the credit period has not yet ended

Guidelines for liens:

If the seller is in possession of the items, one lien may be satisfied. Even though the ownership of the items or the title documents have been transferred, an underpaid seller may still exercise their claim to a lien. If just a portion of the items are delivered, the seller may exercise the right of lien on the remaining amount. however, if the seller has only delivered some of the goods, it indicates that they intend to release the lien.

2. The Unpaid Seller can only use the right of lien to enforce payment of the price, not for any other fees.

3. Only the seller may exercise the right of lien

5. UNPAID seller cannot exercise the right of lien if he has expressly waived it. UNPAID seller can exercise the right of lien even if he is in possession of the goods as bailee or agent.

6. Even if an unpaid seller has received a decree for the price of the goods, they retain their right of lien.

RIGHT OF STOPPAGE IN TRANSIT: After the unpaid seller has given up the goods, the buyer has the legal right to stop the items in transit. He has the right to resume possessing the commodities if they are in transit as long as they are in the course of transit. This option is only open to the underpaid seller when both the buyer and the goods are in transit and the buyer becomes insolvent.

Unpaid seller may exercise right to lien either by taking physical possession of the goods or by filing a lawsuit.

BY NOTIFYING THE CARRIIER OR OTHER BAILEE IN POSSESSION OF THE GOODS OF YOUR CLAIM. Additionally, notice may be delivered to the principal or the individual in charge of the items.

DURATION OF TRANSIT: Goods are considered to be in transit as of the moment they are handed over to a carrier or other bailee with the intention of being sent to the buyer. The courier has the option to retain the goods as the 1.BUYER'S AGENT

2. Agent for SELLER

3. AS A SOLIDARITY.

He may exercise his entitlement to a stoppage in transit in cases two and three. HOWEVER, the transit ends.

1 if the customer or his representative accepts the delivery before getting to the destination

2 If the carrier acknowledges the buyer or his agent as holding the goods on the buyer's behalf after arriving at the designated destination, and 3 If the carrier wrongly refuses to deliver the items to the buyer.

RIGHT OF RESALE: Unpaid seller has the right to resell the goods if the goods are perishable and the buyer does not pay within a reasonable amount of time. If the seller incurs a loss on the resale, he may seek compensation from the buyer. If the seller makes a profit, the buyer will receive it.

RIGHTS TO DENIED DELIVERY:

When ownership of the goods has not yet passed to the buyer, the unpaid seller furthermore has a right of withholding delivery that is equivalent to the right of lien.

Rights of an unpaid seller against the buyer in a price-related lawsuit: THE SELLER MAY SUE FOR THE PRICE WHERE PROPERTY HAS PASSED

2 Lawsuit for Non-Acceptance Damages: When a customer unfairly refuses to accept and pay for goods, the seller may file a non-acceptance lawsuit against the customer.

3 Repudiation of the contract due date by buyer: If the buyer rejects the contract before its due date, the seller has two options: either he can wait until delivery or he can treat the contract as rescinded and seek damages.

4.suit for interest: When a seller and buyer have an explicit agreement regarding interest on the price of the goods from the day the payment becomes due, the seller may sue the buyer to recover the interest.

After exercising his power of lien or delay in transportation, an underpaid seller is granted this highly valuable right. The seller has the right to keep the goods until the buyer pays the price after using the lien or stoppage in transit rights. When the goods are perishable (section 54 (2)), when the unpaid seller who has exercised his right of lien or stoppage in transit notifies the buyer of his intention to resell (section 54 (2)), or if the buyer fails to pay the price within a reasonable amount of time after the exercise of such a right, the unpaid seller may resell the goods. where the seller expressly maintains the right to resell the property in the event that the buyer should default (Section 54(4)).

Warning of resale

The unpaid seller must give the buyer a reasonable notice of the resale before proceeding with the deal. However, if the items are perishable, no prior warning is needed. Such a notice gives the buyer the option of either fulfilling his obligation by making arrangements for the payment of the price and receiving the goods, or, if he is unable to pay, of supervising the sale to ensure that it is done properly since the buyer will ultimately be responsible for the loss on the resale. In addition to giving him a reasonable opportunity to fulfill the contract or oversee the sale, notice must be made within a reasonable amount of time following the breach of contract.

loss or gain from resale

The seller may experience a loss on the resale or he may experience a profit. The issue that emerges is whether the seller can retain the profit from the sale and seek compensation from the original buyer for the loss. The provision in Section 54 (2) states that the unpaid seller may "recover from the original buyer damages for any loss occasioned by his breach of contract, the provision being that the resale is properly made, i.e., after due notice to the buyer (except when the goods are of a perishable nature), and within a reasonable time."

However, the buyer will not be entitled to any potential resale profit. Because the loss happened as a result of the original buyer's failure to fulfill his contract, the seller is entitled to compensation from him upon resale. The buyer's failure to pay the price has forced the seller to resell the item because giving him the profit would be tantamount to breaking the terms of the agreement. Since nobody can profit from their own mistakes, the seller may keep the extra. It should be emphasized that the seller's entitlement to recover damages in the event of a loss on resale and to keep the surplus in the event of a profit on resale is contingent upon the original buyer receiving notification of the resale (unless the items are perishable in nature). If such notice is not given, the underpaid seller will not be entitled to the profit, if any, on the resale, per section 54 (2). If the seller delays the resale unreasonably and suffers more damage than he would have if it had been made in a reasonable amount of time, He would be qualified to pursue damages in an amount equivalent to the discrepancy between the contract price and the market price on the day the resale should have been completed. In the case of Mysore Sugar Co. Ltd. v. Manohar Metal Industries, the buyer had 22 S. 63. 23 AIR 1982 Kant. 283. made a mistake in taking the items, the seller issued him notice on September 12, 1966, stating that the contract would be considered abandoned if the buyer did not lift the things within three days. The things were not lifted by the buyer. On December 30, 1966, the seller sold the items again. The seller attempted to recoup the resale loss.

The value realized on the re-sale did not provide a good basis to fix the damages due to the excessive wait of more than 3 months in making the re-sale after notice to the buyer, particularly in the sinking market as in the present case. The seller would not have experienced a loss if the resale had been done correctly in September 1966, hence the seller's request for reimbursement was denied.

Damages assessed upon resale

According to section 54 (2), the unpaid seller may seek damages from the original buyer for any loss caused by his breach of contract upon the proper completion of the resale.

The difference between the contract price and the resale price represents the loss that would otherwise be suffered by the seller, and as a result, that amount would also be used to calculate damages. It should be noted that the calculation of damages in cases of resale differs from that in cases of breach of any other contract because in those other situations, damages are governed by the clause in section 73 of the Indian Contract Act, which states that the calculation of damages is the difference between the contract price and the market price in effect on the date of the breach of contract. Given that the buyer must be notified before the resale, Re-sale cannot be done on the date of contract breach, and the seller may receive a different price than what was offered on that date. If the resale has been made properly, it can be seen that the Sale of Goods Act's section 54(2) applies, permitting a difference between the contract price and the resale price. The method under section 73 of the Indian Contract Act, which allows for the difference between the contract price and the market price, is used to determine damages if the resale was improperly made.

According to Section 54(4), the initial contract of sale is voided in cases where the seller expressly reserves the right of resale in the event that the buyer should default and resell the items. Even though the contract between the seller and the original buyer is voided, this subsection safeguards the seller's ability to sue the customer whose failure to pay led to the resale in order to recover damages.

7.4 SUMMARY

A sales contract, which describes the terms and circumstances of a transaction between a buyer and a seller, is a legally enforceable agreement. Normally, the contract specifies the products or services being sold, the transaction's cost, and any other terms or conditions to which both parties have agreed. Sales contracts are crucial in outlining the specifics of a deal between a buyer and a seller. They outline the parties' rights and responsibilities, as well as the cost of the products or services, delivery conditions, payment requirements, and any warranties or guarantees. Both parties must comply with their commitments and comprehend the terms of the contract in order for sales contracts to be performed. A sales contract's terms should be precise and unambiguous to prevent misunderstandings or disagreements between the parties. A sales contract's non-performance may have serious repercussions for both parties. The opposite party may be entitled to a number of remedies if one party breaches their responsibilities under the sales contract. Both parties have a responsibility to limit their damages in the event of a breach. Sales contracts are crucial in outlining the specifics of a deal between a buyer and a seller. Both parties may understand their commitments and prevent misunderstandings or disagreements by using clear and straightforward words. Sec. 45(1) of the Sale of products Act states that the seller of the products is considered to be an unpaid seller if any of the following conditions is met: (A) the entire amount of the purchase price has not been presented or paid; or (B) a bill of exchange or other negotiable instrument has been accepted as a conditional payment. An unpaid seller is someone who has sold goods on credit or on other terms that involve deferred payment, and the payment remains outstanding. The seller retains the status of an unpaid seller until they receive full payment for the goods. . The seller has the right to keep the goods until the buyer pays the price after using the lien or stoppage in transit rights. When the goods are perishable (section 54 (2)), when the unpaid seller who has exercised his right of lien or stoppage in transit notifies the buyer of his intention to resell (section 54 (2)), or if the buyer fails to pay the price within a reasonable amount of time after the exercise of such a right, the unpaid seller may resell the goods. where the seller expressly maintains the right to resell the property in the event that the buyer should default (Section 54(4)). The unpaid seller must give the buyer a reasonable notice of the resale before proceeding with the deal. However, if the items are perishable, no prior warning is needed. Such a notice gives the buyer the option of either fulfilling his obligation by making arrangements for the payment of the price and receiving the goods, or, if he is unable to pay, of supervising the sale to ensure that it is done properly since the buyer will ultimately be responsible for the loss on the resale. According to section 54 (2), the unpaid seller may seek damages from the original buyer for any loss caused by his breach of contract upon the proper completion of the resale. According to Section 54(4), the initial contract of sale is voided in cases where the seller expressly reserves the right of resale in the event that the buyer should default and resell the items. Even though the contract between the seller and the original buyer is voided, this subsection safeguards the seller's ability to sue the customer whose failure to pay led to the resale in order to recover damages.

7.5 KEYWORD

- **Transit:** Transit can also pertain to the movement of goods, often involving customs and border control, where the goods are being transported from one country or region to another.
- **Unambiguous:** The term "unambiguous meaning" refers to a situation where the meaning of a word, phrase, statement, or any form of communication is clear, precise, and can only be interpreted in one way. In other words, there is no room for confusion, uncertainty, or multiple possible interpretations. When communication has

unambiguous meaning, the intended message is easily understood by the receiver without any ambiguity or misunderstanding. This is particularly important in legal documents, scientific research, technical specifications, and any context where precision and clarity are crucial.

- **Repercussions:** The term "repercussions" refers to the consequences, effects, or outcomes that arise as a result of a particular action, event, or decision. It suggests that there are subsequent effects that follow from an initial cause, often implying that these effects may be significant or far-reaching. Repercussions can be positive or negative, depending on the context, and they can affect individuals, groups, organizations, or even entire societies. The word is commonly used to highlight the importance of considering the potential outcomes or aftermath of a certain action before proceeding.
- **Safeguard:** The term "safeguard" typically refers to a measure or action taken to protect or ensure the safety, security, or well-being of someone or something. It involves implementing precautions, strategies, or protocols to prevent potential harm, damage, or risks. Safeguards can be physical, procedural, or technological in nature, and they are employed in various contexts, such as personal safety, cybersecurity, financial systems, legal frameworks, and environmental protection.
- **Completion:** Completion refers to the act or process of finishing or concluding something. It implies reaching the end or achieving a state of completion.

7.6 LEARNING ACTIVITY

7. Define contract?

____

____

8. State the performance of contract?

____

7.7 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions

- Define Non-performance risks?
- Identify and discuss Actions for a breach?
- Elaborate about the nature of anticipatory breach?
- What are the RIGHTS against products
- Rights against the individual buyer
- Identify the Rights against the individual buyer

Long Questions

- What are performance of contract?
- Describe the unpaid seller?
- What are the components of rights of unpaid seller?
- Describe about the types of performance of contract?

B. Multiple Choice Questions

1. The ________seller must give the buyer a reasonable notice of the resale before proceeding with the deal.

a. unpaid

b. paid

c. main

d. general

2. The method under ___________of the Indian Contract Act, which allows for the difference between the contract price and the market price

a. section 73

b. section 74

c. section 68

d. section 79

3. The seller may experience a _______on the resale or he may experience a profit.

a. profit

b. gain

c. loss

d. expense

4. Both parties have a responsibility to limit their damages in the event of a____________.

a. Performance

b. Quasi

c. Breach

d. Sale

5. Sales contracts are __________in outlining the specifics of a deal between a buyer and a seller.

a. major

b. general

c. specific

d. crucial

Answers

1-a, 2-a, 3-c. 4-c, 5-d

7.8 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT – 8: PARTNERSHIP LAWS

STRUCTURE

8.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe nature of partnership firms
- Identify scope of partnership firms
- State the features of partnership firm
- List the function of registration

8.1 INTRODUCTION

In a partnership firm, two or more individuals work together to run a business with the goal of making money and splitting that money. In order to run the business, the partners pool their funds and collaborate. In accordance with Section 12 of the Indian Partnership Act, a partnership must be created with the intention of conducting a legitimate business. Property co-ownership is not regarded as a partnership.

A partnership firm can be created when two or more individuals collaborate as partners. The Indian Partnership Act, 1932, which governs this partnership firm, is in effect. If the Partnership Act of 1932 is silent on a subject, the Indian Contract Act also applies to the partnership.

In many nations around the world, there is a piece of legislation known as the Partnership Act that controls how partnerships are formed and run. The Act specifies the duties, obligations, and rights of partners in a partnership as well as the procedures for ending and dissolving the partnership.

In order to carry out a business operation with the goal of producing a profit, two or more individuals form partnerships. In a partnership, each partner shares in the company's gains and losses as well as the management and day-to-day operations of the company.

The Partnership Act normally addresses a variety of subjects, such as what constitutes a partnership, how to form a partnership, the rights and obligations of partners, the division of gains and losses, partners' obligations, and the procedure for ending a partnership.

The Partnership Act's establishment of the idea of a "general partnership," the most popular kind of partnership, is one of its fundamental elements. In a general partnership, each partner has an equal say in how the company is run and controlled, as well as an equal say in how much money it makes and loses. Overall, the relationship Act offers a framework with defined standards and rules that helps assure the success and duration of the relationship for people who choose to do so in a systematic and organized manner.

The Partnership Act could apply to limited partnerships or limited liability partnerships in addition to general partnerships. These partnerships might be subject to various rules and regulations depending on the jurisdiction than general partnerships.

8.2 NATURE AND CHARACTERSTICS OF PARTNERSHIP

Section 4 of the Indian Partnership Act defines a partnership as “Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all”.

A partnership firm is a type of business entity where two or more individuals come together to carry on a business for profit. The essential features of a partnership firm are:

1. Agreement: There must be a written or oral agreement between the partners to carry on the business. The agreement should state the rights, duties, and obligations of each partner.

2. Number of Partners: A partnership firm must have at least two partners and can have a maximum of 20 partners, in the case of a regular partnership firm. However, in the case of a banking business, the number of partners can exceed 20.

3. Business Objective: The partnership firm must be established with the objective of carrying on a business for profit.

4. Sharing of Profits: The partners must agree to share the profits and losses of the business according to the terms set out in the partnership agreement.

5. Joint Ownership: The partners must jointly own the assets of the partnership firm.

6. Unlimited Liability: The partners are jointly and severally liable for the debts and obligations of the partnership firm. This means that each partner is personally responsible for the debts of the partnership firm.

7. Management: The partners must actively participate in the management of the business.

8. Registration: Although it is not mandatory, it is advisable for a partnership firm to be registered with the Registrar of Firms. Registration provides legal recognition to the partnership firm and helps in resolving disputes among the partners.

8.3 REGISTRATION

The Indian Partnership Act, 1932 governs partnership firms in India. Although it is not required to register one's partnership firm because there are no penalties for doing so, it is acceptable because an unregistered firm is not granted some rights.

Fundamental Issues Associated with Not Registering a Company

If a partner does not register the business under the Indian Partnership Act, 1932, the following are the main disadvantages that will arise:

(1) A partner has no legal right to sue the other partners or the company in any court to enforce any rights arising from commitments made or rights granted under the Partnership Act.

(2) A right arising from an undertaking cannot be used by or in support of one firm against another firm in any court of law.

(3) In addition, in a dispute with a third party, the firm or any of its affiliates are not permitted to claim a set off (i.e., a basic negotiation of debts owed by the parties at issue to one another) The Indian Partnership Act's (1932) procedure for registering partnership

(4) Sending an application filled out in Form No. 1 is the first step in the process of registering or incorporating a partnership firm. According to section 58's requirements, it must include the following information:

the company's name.

The partners' full names and addresses for their primary residences. the firm's timeframe.

When each partner first joined the company, according to business.

the location of the company's primary business transactions.

the names of any further locations where the company performs its functional duties.

All of the associate partners must sign this commitment, or each partner's principal agent acting on their behalf must do so.

Second, all partners must obtain their signatures on the application form in the presence of a witness who must be an advocate, a gazette officer, a vakil, a magistrate, or a registered accountant. Registration cannot take place if a partner refuses to sign the application form; instead, their name must be dribbled. The Registrar must receive the application as described above, along with the required fees, at the address listed. States are permitted to enact their own regulations governing the fee structure for partnership registration or incorporation under section 71 of the Indian Partnership Act.

The Indian Partnership Act's Schedule I, however, specifies the maximum required fees that may be imposed by the states. The maximum registration price for a statement under section 58 is Rs. 525, according to Schedule I.

Date of Partnership Registration

A partnership is deemed to be registered, in accordance with Section 59, when a registrar is satisfied with the fidelity of the application submitted in accordance with

When a partner passes away, the firm is not responsible for the debts that were incurred after the date of his passing. When it comes to a superannuation partner, he is still responsible as long as he doesn't provide public notice. The Registrar does not record the public notice, and as of the date of this notice, he is discharged of all obligations. Therefore, registering a business is essential to receiving this benefit.

8.4 SUMMARY

In a partnership firm, two or more individuals work together to run a business with the goal of making money and splitting that money. In order to run the business, the partners pool their funds and collaborate. In accordance with Section 12 of the Indian Partnership Act, a partnership must be created with the intention of conducting a legitimate business. Property co-ownership is not regarded as a partnership. A partnership firm can be created when two or more individuals collaborate as partners. The Indian Partnership Act, 1932, which governs this partnership firm, is in effect. If the Partnership Act of 1932 is silent on a subject, the Indian Contract Act also applies to the partnership. The Partnership Act could apply to limited partnerships or limited liability partnerships in addition to general partnerships. These partnerships might be subject to various rules and regulations depending on the jurisdiction than general partnerships. Section 4 of the Indian Partnership Act defines a partnership as "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all". A partnership firm is a type of business entity where two or more individuals come together to carry on a business for profit. The Indian Partnership Act, 1932 governs partnership firms in India. Although it is not required to register one's partnership firm because there are no penalties for doing so, it is acceptable because an unregistered firm is not granted some rights. Fundamental Issues Associated with Not Registering a Company. If a partner does not register the business under the Indian Partnership Act, 1932, the following are the main disadvantages that will arise: A partner has no legal right to sue the other partners or the company in any court to enforce any rights arising from commitments made or rights granted under the Partnership Act. A right arising from an undertaking cannot be used by or in support of one firm against another firm in any court of law. In addition, in a dispute with a third party, the firm or any of its affiliates are not permitted to claim a set off (i.e., a basic negotiation of debts owed by the parties at issue to one another) The Indian Partnership Act's (1932) procedure for registering partnership. A partnership is deemed to be registered, in accordance with Section 59, when a registrar is satisfied with the fidelity of the application submitted in accordance with: When a partner passes away, the firm is not responsible for the debts that were incurred after the date of his passing. When it comes to a superannuation partner, he is still responsible as long as he doesn't provide public notice. The Registrar does not record the public notice, and as of the date of this notice, he is discharged of all obligations. Therefore, registering a business is essential to receiving this benefit.

8.5 KEYWORDS

- **Registrar:** a registrar is an organization or company authorized by the Internet Corporation for Assigned Names and Numbers (ICANN) to manage the registration of domain names. When you want to register a domain name for a website, you typically go through a domain registrar to purchase and manage that domain name.
- **Fidelity:** Fidelity refers to the quality or state of being faithful, loyal, or devoted to someone or something. It implies a sense of trustworthiness, reliability, and steadfastness. For example, in a personal relationship, fidelity often refers to remaining loyal and committed to one's partner.
- **Superannuation:** The primary objective of superannuation is to help individuals accumulate sufficient savings during their working years to support themselves financially when they retire. It aims to alleviate the burden on government-funded retirement programs and enable individuals to maintain their living standards and enjoy a comfortable retirement.
- **Deemed:** The concept of being deemed involves making a judgment or decision based on certain criteria or standards. It implies an official or authoritative assessment, often with legal or formal implications.
- **Intention:** The term "intention" refers to a mental state or a conscious plan to perform an action or achieve a particular outcome. It involves having a purpose, aim, or objective in mind when engaging in an activity. Intentions reflect our desires, motivations, and the reasons behind our actions.

8.6 LEARNING ACTIVITY

- Define partnership

- State the meaning of partner.

8.7 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions:

- Define partnership firm?
- Explain what is nature of partnership?
- Describe briefly about meaning of partnership?
- What do you understand profit sharing ration of partner?
- Define registration of partnership?

Long Questions:

- What is a partnership firm? Explain nature of partnership?
- Describe the registration of partnership firm.
- What are the characterstics of partnership?
- Describe about the need of partnership?
- Explain profit sharing ration of partnership?

B. Multiple Choice Questions

1. A partnership firm can be created when __________or more individuals collaborate as partners.

a. Two

b. Three

c. Four

d. One

2. A partnership firm is a type of business entity where two or more individuals come together to carry on a business for __________.

a. Profit
b. Loss
c. Gain
d. Expenses

3. A partner has no ______right to sue the other partners or the company in any court to enforce any rights.

a. Illegal
b. Major
c. Specific
d. Legal

4. The partners' full ________and addresses for their primary residences.

a. Names
b. Contacts
c. Signatures
d. Fellowship

5. A partnership is deemed to be registered, in accordance with ____________.

a. Section 65
b. Section 59
c. Section 63
d. Section 78

Answers

1-a, 2-a, 3-d, 4-a, 5-b

8.8 REFERENCES

- Readings:
- 1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.
- 2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning
- 3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.
- 4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

- AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.
- bjects/different-kinds-of-approaches-to-hrm- page1.html

UNIT - 9: PARTNERSHIP LAWS

STRUCTURE

9.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe the types of partners
- Identify scope of partners
- State the rights and duties of partner
- Describe what is implied authority of a partner

9.1 INTRODUCTION

A partnership firm can be created when two or more individuals collaborate as partners. The Indian Partnership Act, 1932, which governs this partnership firm, is in effect. If the Partnership Act of 1932 is silent on a subject, the Indian Contract Act also applies to the partnership.

In many nations around the world, there is a piece of legislation known as the Partnership Act that controls how partnerships are formed and run. The Act specifies the duties, obligations, and rights of partners in a partnership as well as the procedures for ending and dissolving the partnership.

In order to carry out a business operation with the goal of producing a profit, two or more individuals form partnerships. In a partnership, each partner shares in the company's gains and losses as well as the management and day-to-day operations of the company.

9.2 TYPES OF PARTNERS

General Partner Types

The types of partners we frequently work with are included in the list below. Since the Partnership Act of 1932 does not restrict any sort of partnership that the partners desire to define for themselves, the list of partners below is not intended to be exhaustive.

Active/Managing Partner

An active partner primarily participates in the day-to-day operations of the company as well as the conduct and administration of the business firm. On behalf of the other partners, he manages the day-to-day business operations. He may serve in a variety of roles, including manager, advisor, organizer, and controller of the company's operations. To be more specific, he manages key company operations as an agent of all the other partners. Additionally, pursuant to the partnership agreement's condition, the active partner may choose to no longer receive compensation from the company.

His function inside the partnership is of the utmost significance. He must therefore give a public notice of his decision if he ever wants to depart from the partnership firm. In order to release himself from responsibility for the actions of the other partner, he publishes a notification. He would be responsible for the actions of the other partners after his retirement if he didn't publish a notice of his retirement.

Sleeping Partner

A "dormant partner" is another term for a sleeping partner. This partner is not an active member of the partnership firm's daily operations. A person who has enough capital or an interest in the company but is unable to work full-time on the business can take on the role of a sleeping partner. He is obligated by everything the other partners do, though.

Like any other partner, a sleeping partner contributes share capital to the business. Additionally, he still shares in the company's gains and losses. It is not necessary for a dormant partner to give public notice when he decides to leave the partnership firm if he so chooses.

A dormant partner is not permitted to take compensation from the company since he is not involved in the day-to-day management of the business. If the partnership agreement does in fact pay dormant partners, that compensation is not deductible under the Income Tax Act of 1961.

Nominal Partner

No genuine or meaningful interest in the partnership firm is held by a nominal partner. In other words, he has no say in how the company is run and is merely lending his name to it. Due to his reputation, the business can increase market sales or gain greater respect from the public.

For instance: The purpose of a partnership between a partner and a celebrity or business tycoon is to bring value to the company and to promote branding by leveraging the individual's notoriety and goodwill.

This partner does not contribute any capital to the company, hence he does not partake in profits or losses. It is important to remember that a nominal partner is nonetheless responsible for the actions of the other partners in front of outsiders and third parties.

Estoppel by Partnership

A partner through estoppel is one who makes it clear through words, deeds, or conduct that they are a partner in the firm. In other terms, Even though he is not a partner in the company, he has portrayed himself in a way that seems he has acquired that status through holding out or estoppel. It is important to remember that even while he does contribute to the firm's management or capital, he is responsible for the loans and credits the company obtains because of his participation in the firm.

'Holding out' requires two things in order to be successful:

First and foremost, the individual holding himself forth must have indicated by words, deeds, or behaviour that he is a partner in the firm.

Second, the other party must convincingly demonstrate that he knew about the representation and took action as a result of it.

Partner in Profits only

This business partner is just responsible for contributing to the firm's profits; he or she is not responsible for any losses. Additionally, if a partner in a "partner in profits only" arrangement works with any third parties or outsiders, he will only be held accountable for his actions for personal gain. He is not permitted to participate in the company's management. Such partners are connected to the business in exchange for their money and goodwill.

Minor Partner

A person who has not reached the legal majority age is considered a minor.

A person is deemed to have reached the age of majority under Section 3 of the Indian Majority Act of 1875 when he turns 18 years old. A juvenile may, however, also be designated to receive the Partnership's benefits.

It is important to remember that Section 11 of the Indian Contract Act, 1872 forbids minors from engaging into contracts since such agreements are void from the start. However, if a set of criteria and processes are followed in line with the law, the Partnership Act of 1932 permits a minor to benefit from a partnership. A minor will receive a part of the company's profits, but his share-only liability for losses applies.

After turning 18 years old and reaching the age of majority, a minor must determine within six months whether they want to join the firm as a partner. In both situations, a small partner must declare his intentions publicly if he decides to remain a partner or intends to retire.

Secret Partner

The secret partner in a relationship occupies the space between the active and sleeping partner. Outsiders and third parties are not aware of the secret partner's presence in the company. Since he shares in the business's profits and obligations for losses, his liability is unbounded. Even working for a company is an option for him.

Outgoing partner

A retiring partner who does not dissolve the company is known as an outgoing partner. As a result of his departure from the current firm, he is referred to as a departing or retiring partner. Such a partner is accountable for any responsibilities and debts accrued before to retirement. If, however, he fails to give a public notice indicating his retirement from the partnership firm, he may be held liable for his ongoing commitments.

exclusive partner

A limited partner is a partner whose liability is limited to the amount of capital he has contributed to the partnership company.

Sub-Partner

A partner who includes another person in his ownership of the company is known as a sub-partner. He provides the other a portion of his share.

It is important to remember that the relationship is between the sub-partner and the partner, not the partnership company. A sub-partner is not an employee of the company and has no obligation to the company as a result.

Typically, a sub-partner accepts a profit-sharing arrangement from the third party. Such a partner is not permitted to identify oneself as such in the original firm. Additionally, he is not liable for the actions of the original business's partners and has no rights reserved in the original firm. Only the partner who hired him as a sub-partner can be held accountable for his agreed-upon portion of profits.

Different Partner Types Under the Partnership Act

based on objectives

in light of tenure

In line with nature

Considering legality

According to Registration

In line with the objectives

Joint Venture at Will

When a partnership is established, the partners have the freedom to choose how long they want it to last. As a result, a partnership is said to be at will anytime it is formed without being assigned a particular duration.

Any partner may issue a notice of intent to dissolve such a partnership, which is based on the partners' will and is subject to termination at any time. This partnership was formed with the intention of operating a legitimate business indefinitely.

Fixed-Term Partnership

In this kind of partnership, the collaboration is for a set amount of time, such as 5 years, 2 years, or any other time period that is defined. After the aforementioned time period expires, the partnership terminates automatically.

Flexible Collaboration

Flexible partnerships are those that are neither for a set period of time nor for a specific undertaking.

9.3 RIGHTS AND DUTIES OF PARTNER

Rights of a Partner

The rights of a partner in a partnership firm are as follows.

Article 12(a): Right to participate in how business is conducted

As a partnership business is a business of the partners and their management abilities are typically coextensive, all partners of a partnership firm have the right to participate in the business done by the firm. The Court of Law may become involved in such situations if a partner's management authority is tampered with and the person has been unlawfully barred from participation. The other partner may not do so without the permission of the court, which it will do.

For a partner who has been unfairly denied the right to participate in management, additional remedies include a suit for dissolution, a suit for accounts without requesting dissolution, and so forth.

Unless there is a written agreement between the partners to the contrary, the aforementioned legal provisions shall apply. Partnership agreements frequently include clauses stating that a particular partner has only a limited amount of management authority or that one or more partners retain exclusive control over the partnership. Usually, the majority opinion of the partners will be taken into consideration. Although, when there is a change, like the firm itself, the majority rule would not be applicable. In these circumstances, the partners' unanimity is essential.

Section 12(d): Book Access Rights

Every partner of the business, whether an active partner or a sleeping partner, has the right to access any of the partnership firm's books. The partner has the right to examine and, if necessary, take a copy of the same. This right must, however, only be used legitimately.

Right to compensation under Section 13(a)

No partner of the firm has the right to obtain compensation in addition to his share of the company's profits for participating in the firm's business. Nevertheless, this norm may occasionally be altered by an express agreement or a course of business, in which case the partner will be entitled to compensation. Since compensation is due under the firm's ongoing use, a partner may demand payment even in the absence of a contract. In other words, when it is common to compensate a partner for managing the partnership firm's operations, the partner may be entitled to payment even in the lack of a written agreement specifying the terms of the payment.

It is usual for partners to agree that a managing partner will earn additional compensation above his share, salary, or commission in exchange for the trouble he will incur managing the firm's operations.

Chapter 13(b): Right to profit-sharing

Each partner is entitled to an equal share of the company's profits. In a similar vein, the partnership firm's losses also contribute equally. A partner's share must be determined by asking the other partners if they have reached an agreement on it. If there is no agreement, it can be assumed that each party will receive an equal portion of the profits, and the party making the claim will have the burden of showing otherwise.

There is no correlation between how much each partner will put to the capital of the partnership firm and how much they will share in the profits.

Chapter 13(c): Capital gains interest

According to the partnership deed, if a partner contributes interest on capital, the interest will only be paid out of earnings in that situation. In principle, unless there is a specific agreement or usage to the contrary, interest on capital subscribed by partners is not permissible. The fundamental tenet of this legal regulation is that a partner who invests capital in a company is not a creditor of the company but rather an entrepreneur. Before a partner is eligible for interest on the capital they contributed to the business, the following conditions must be met.

a written agreement to that effect or a certain partnership's custom.

any business practice that does this; or

a legal provision that grants him the right to such interest on the capital.

Chapter 13(d): Expenses for advances

A partner is eligible to claim interest at the rate of 6% per year on any advances they make to the partnership business over and above the capital they are required to invest. The interest on advances continues to accrue even after dissolution and until the date of payment, whereas the interest on capital accounts stops accruing upon dissolution.

It should be emphasized that the Partnership Act distinguishes between a partner's capital contribution and his advance to the company. While the capital interest only accrues interest when there is a written agreement to that effect, the advance made by the partner is treated as a loan that must accrue interest.

Article 13(e): Right to compensation

All of the firm's partners are entitled to reimbursement from the company for any payments made and obligations assumed by them throughout the normal and legitimate course of the company's activity. This also includes taking immediate action to prevent a loss for the company if the payments, Liability and actions are those that a prudent man in his situation would take, incur, or carry out under identical conditions.

Right to refuse the entrance of a new partner under Section 31

In a partnership firm, each partner has the power to forbid the addition of a new partner without the approval of the other partners.

Article 32(1): Freedom to retire

In a partnership firm, each partner has the option to leave the company with the approval of the other partners. This can be accomplished in the case of a partnership created at will by serving notice to that effect on each of the other partners.

Section 33: The ability to avoid expulsion

In a partnership firm, each partner is entitled to carry on running the company. Unless authorized under a partnership agreement and used in good faith and for the benefit of the partnership firm, a partner cannot be expelled from the firm by any majority of the other partners.

Section 36(1): The right of a departing partner to operate a rival firm

A partner who leaves the partnership firm may continue to run a company that is in competition with the firm. The partner may even publicize this activity, but he or she must do so without using the firm's name, presenting himself as conducting the firm's business, or contacting any of the clients who were doing business with the firm prior to the partner ceasing to be a partner.

Section 37: The departing partner's right to share any future profits

If a partner has died or ceased to be a partner and the remaining partners continue the business of the firm with the firm's property without concluding any accounts between them and the departing partner or his estate, the departing partner or his estate has, at his or her discretion, the right to such share of profit made since he or she ceased to be a partner as may be attributable to the use of his share of the firm's property or inter alia.

Section 40: Firm dissolution rights

With the approval of all the other partners, a partner of a partnership business may dissolve the partnership. However, if the partnership is at-will, any partner may dissolve the company by notifying the other partners in writing of his desire to do so.

Partner's obligations

The responsibilities of a partner in a partnership firm are as follows.

Section 9: Partner's general responsibilities

Legal obligations compel partners to continue the partnership firm's operations. The following is a list of a partner's general duties.

To operate the firm to the greatest mutual advantage, a partner is necessary.

A couple ought to be fair and devoted to one another.

A partner is required to provide the truthful account and all relevant facts on all matters affecting the partnership firm to any other partner or his legal representative.

Section 10: Fraud indemnification

In accordance with Section 10, a partner of a partnership firm is responsible for making up for any harm done to the firm's operations or reputation as a result of that partner's dishonesty.

Article 13(f): To provide compensation for willful neglect

A partner in a partnership firm is required under the Section to make up for any losses or damages incurred by the company as a result of the partner's intentional negligence in operating the business.

Sections 12(b) and 13(a) require careful performance of responsibilities without payment.

Each partner is legally required to perform their obligations related to the management of the company's business conscientiously under Section 12(b) of the Indian Partnership Act. Additionally, Section 13(a) specifies that a partner is not normally entitled to compensation for taking part in the operation of the business. A partner must also allow his teammates to benefit from his expertise and abilities.

Chapter 13(b): sharing losses

In a partnership firm, each member is equally responsible for the harm the company suffers.

Article 16(a): To report any profit

A partnership firm's partners are required to account for any profits they make for themselves through the firm's commercial dealings, from using the firm's assets, from using its name in marketing campaigns, or from any other source.

Article 16(b): To track and pay for business competitors' profits

If a partner runs a business that is similar to the firm's and competes with it, the partner must be responsible for and pay the firm all earnings earned in the business. Any losses incurred by the partnering firm shall not be held accountable.

9.4 IMPLIED AUTHORITY OF PARTNER

S.4 of the Indian Partnership Act defines partnership. It suggests that all of them acting on behalf of all of them are to conduct the firm's operations. The authority of a spouse may be explicit or tacit. In the absence of an express agreement, it is either expressed verbally, in writing, or implicitly. In that particular situation, the law itself grants some authorities while prohibiting the partners from doing other duties. "Implied" refers to authority granted to the partner as a result of what is clear from his position in the firm in connection to the business that the firm does.

According to the common understanding of the law, each partner is seen as the praepositus negotiis societatis, or agent of the partnership, and is able to bind the other partners to his activities as long as they fall within the parameters of the partnership. Each partner is regarded as the partnership's agent, and as such, each has the same rights, powers, obligations, and protections under the law as apply to agents. As a result, they serve in both the capacity of partner and agent.

'Implied authority' is the power of a partner to obligate the company to his activities, according to Section 19 of the Indian Partnership Act (see here). The second section of S. 19 provides a negative rule listing all the tasks that a partner is not allowed to perform, drawing a line between where the implied authority is extended and restricted. The first part of S. 19 uses an affirmative rule to determine the implied authority of a partner. The act must be done in a way that suggests a desire to bind the firm in order to establish implied authority.

The courts have distinguished between trade and non-trading partnerships for the purposes of implying authority and with an expected need to contain such authority. A number of decisions have established that a business that deals in the purchase and sale of things is a trading concern since the need to borrow money and issue negotiable instruments is absolutely necessary for traders, but not for professionals like lawyers. There can never be an implied authorization to borrow money for a non-trading business. For instance, the firm is responsible if a partner borrowed money from a third party without permission and that money was utilized for business reasons.

According to Section 18 of the Indian Partnership Act, "a partner is the firm's agent for the purposes of the firm's business." Until and unless there is a clause or a declaration that indicates otherwise, the partner has an inferred right to bind the company. According to S.19(1) of the Partnership Act, only actions taken by a partner within the regular course of the business of the partnership bind the partnership to such activities. Additionally, S.20 contends that a contract between the partners themselves may limit or increase the implied authority given to the partners. Even with such a restriction in place, the firm is still bound by anything the partner does while acting on the firm's behalf as long as the other party is not aware of the partner's implied authority's restriction.

S.19(2) of the Partnership Act lists a number of actions that a partner cannot take without express permission, even if there is no usage or custom to the contrary. These actions include submitting a dispute to arbitration, opening a bank account on the firm's behalf, and transferring or purchasing real estate on the firm's behalf.

In the lack of any other statutory precedents, the list supplied in S.19(2) serves as the only yardstick to measure and contain the implicit authority of partners, despite the fact that it is not all-inclusive. Despite the legal limitations, every action taken by a partner on the firm's behalf is binding on the company until and unless the third party is aware of the limitations and does not know or suspect that the individual is not a partner.

9.5 SUMMARY

A partnership firm can be created when two or more individuals collaborate as partners. The Indian Partnership Act, 1932, which governs this partnership firm, is in effect. If the Partnership Act of 1932 is silent on a subject, the Indian Contract Act also applies to the partnership. General Partner Types: The types of partners we frequently work with are included in the list below. Since the Partnership Act of 1932 does not restrict any sort of partnership that the partners desire to define for themselves, the list of partners below is not intended to be exhaustive. A "dormant partner" is another term for a sleeping partner. This partner is not an active member of the partnership firm's daily operations. A person who has enough capital or an interest in the company but is unable to work full-time on the business can take on the role of a sleeping partner. He is obligated by everything the other partners do, though. No genuine or meaningful interest in the partnership firm is held by a nominal partner. In other words, he has no say in how the company is run and is merely lending his name to it. Due to his reputation, the business can increase market sales or gain greater respect from the public. This partner does not contribute any capital to the company, hence he does not partake in profits or losses. It is important to remember that a nominal partner is nonetheless responsible for the actions of the other partners in front of outsiders and third parties. Flexible partnerships are those that are neither for a set period of time nor for a specific undertaking. The Court of Law may become involved in such situations if a partner's management authority is tampered with and the person has been unlawfully barred from participation. S.4 of the Indian Partnership Act defines partnership. This partner does not contribute any capital to the company, hence he does not partake in profits or losses. It is important to remember that a nominal partner is nonetheless responsible for the actions of the other partners in front of outsiders and third parties. Each partner is entitled to an equal share of the company's profits. In a similar vein, the partnership firm's losses also contribute equally. According to the partnership deed, if a partner contributes interest on capital, the interest will only be paid out of earnings in that situation. It suggests that all of them acting on behalf of all of them are to conduct the firm's operations. The authority of a spouse may be explicit or tacit. In the absence of an express agreement, it is either expressed verbally, in writing, or implicitly. In that particular situation, the law itself grants some authorities while prohibiting the partners from doing other duties. "Implied" refers to authority granted to the partner as a result of what is clear from his position in the firm in connection to the business that the firm does. 'Implied authority' is the power of a partner to obligate the company to his activities, according to Section 19 of the Indian Partnership Act (see here). The second section of S. 19 provides a negative rule listing all the tasks that a partner is not allowed to perform, drawing a line between where the implied authority is extended and restricted. According to Section 18 of the Indian Partnership Act, "a partner is the firm's agent for the purposes of the firm's business." Until and unless there is a clause or a declaration that indicates otherwise, the partner has an inferred right to bind the company. S.19(2) of the Partnership Act lists a number of actions that a partner cannot take without express permission, even if there is no usage or custom to the contrary. These actions include submitting a dispute to arbitration, opening a bank account on the firm's behalf, and transferring or purchasing real estate on the firm's behalf.

9.6 KEYWORD

- **Arbitration:** Arbitration is a legal process used to settle disputes between parties outside of the traditional court system. It involves the submission of a dispute to one or more impartial individuals, known as arbitrators, who are chosen by the parties involved. The arbitrators review the evidence, listen to arguments from both sides, and then make a binding decision, known as an arbitration award, which resolves the dispute.
- **Inferred:** The inferred meaning refers to the interpretation or understanding that can be derived from a given context or information, even if it is not explicitly stated or directly expressed. It involves making logical deductions, drawing conclusions, or inferring implications based on the available evidence or clues. Inferred meaning often relies on the reader or listener's ability to read between the lines, grasp implied messages, or understand the subtext. It requires analyzing the context, tone, non-verbal cues, and overall context to arrive at a deeper understanding of the intended meaning. Inferred meaning is subjective and can vary based on individual interpretations and perspectives.
- **Vein:** The term "vein" is occasionally used metaphorically to refer to a distinctive characteristic or underlying quality. For example, someone may say that an artistic talent runs in their veins, suggesting that it is an inherent part of their nature or lineage.
- **Implied:** Implied meaning refers to the underlying or suggested message conveyed through indirect or subtle cues in communication, such as tone, context, body language, or cultural references. It is the meaning that is not explicitly stated or directly expressed, but rather inferred or understood through the interpretation of these implicit signals.
- **Dispute:** The term "dispute" refers to a disagreement or conflict between two or more parties over a particular issue or matter. It involves a difference of opinion, conflicting interests, or opposing viewpoints that lead to a dispute. Disputes can occur in various

contexts, such as personal relationships, business transactions, legal matters, or even international conflicts.

9.7 LEARNING ACTIVITY

- Define active partner

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- Define sleeping partner

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9.8 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions

- Define who is a partner?
- Explain who is managing partner?
- Explain Right to participate?
- What are the Right to compensation?
- What is right Book Access?

Long Questions

- Explain the various types of partners?
- Describe the rights of partner?
- What are the duties of partner?
- Describe about the implied authority of partner?
- Explain what is inspection of books?

B. Multiple Choice Questions

1. ____________ authority' is the power of a partner to obligate the company to his activities.

a. Implied

b. Explicit

c. Expelled

d. Impelled

2. Right to refuse the entrance of a new partner under___________.

a. Section 31

b. Section 36

c. Section 41

d. Section 42

3. A "dormant partner" is another term for a ______________ partner.

a. real

b. nominal

c. sleeping

d. individual

4. Since the Partnership Act of _________ does not restrict any sort of partnership that the partners desire to define for themselves.

a. 1931

b. 1945

c. 1932

d. 1976

5. A partnership firm can be created when two or more individuals _________as partners.

a. participated

b. constructed

c. frustrated

d. collaborate

Answers

1-a, 2-a, 3-c. 4-c, 5-d

9.9 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT – 10: PARTNERSHIP LAWS

STRUCTURE

10.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe nature of human resource management
- Identify scope of human resource
- State the need and importance of HRM
- List the functions of HRM

10.1 INTRODUCTION

Introduction to Partnerships: Partnerships are commercial entities created when two or more people decide to operate a business jointly for profit. Partnership law regulates the legal framework for partnerships. Due to its adaptability, simplicity in creation, and shared managerial duties, partnerships are a common type of company organisation.

Partnership Formation: A partnership is often created by an agreement between the partners, also referred to as a partnership agreement or articles of partnership. A formal partnership agreement is strongly advised to outline the rights, duties, and obligations of the partners, even if it is not always legally necessary.

Partnership Types:

General Partnership: All partners in a general partnership have the same rights and obligations. Additionally, they are personally liable indefinitely for any debts and liabilities of the partnership. Profits and losses are normally shared equally, unless otherwise agreed, and each partner has the authority to bind the partnership to commercial contracts.

General partners and limited partners both participate in limited partnerships (LPs). While limited partners provide cash but have only limited accountability for partnership obligations, general partners operate the company and are personally liable. In general, limited partners don't become involved in running the partnership.

Limited Liability Partnership (LLP): An LLP is a partnership in which each member is only liable for a small portion of the partnership's debts and liabilities as a result of the conduct of the other partners. Professionals like attorneys and accountants frequently employ LLPs.

Rights and Obligations of Partners: Partners in a partnership owe each other specific fiduciary obligations, such as good faith, loyalty, and care. Partnerships are built on mutual trust and collaboration. Partners are entitled to view partnership information, participate in partnership administration, and split profits and losses.

Partners' Liability: In a general partnership, each partner may be held personally liable for the partnership's whole debt or obligation. This is known as joint and several liability. Limited partners in an LP are only liable for their own conduct, whereas partners in an LLP are only liable for those of their fellow partners.

Partnership Property and Dissolution: Assets purchased under a partnership's name or utilised for partnership purposes are considered the partnership's property. A partnership may end for a number of reasons, including the passing of time, mutual consent, the departure of a partner, or the demise of a partner. Dissolution involves closing the business, selling off assets, and dividing the revenues among the partners.

Partnership Termination: Following dissolution, the partnership moves into its termination phase, during which the residual assets are fully allocated, the debts are settled, and any excess is divided among the partners. The legal life of the partnership is over upon termination.

Conclusion:

Partnership law provides the basis for partnerships by addressing the creation, rights, obligations, and dissolution of partnerships. Partners must be aware of the legal ramifications of partnerships and should think about seeking legal counsel before creating or ending a partnership.

10.2 MODE OF DISSOLUTION OF PARTNERSHIP

Partnership dissolution and partnership firm dissolution are two distinct ideas. A partnership can be dissolved, although a firm can be dissolved together with its partners, whereas a partnership can be dissolved, it indicates a change in the business relationship between partners. All assets and liabilities in this situation have been resolved and are being disposed of properly.

When one of the partners engaged with the firm decides to no longer be involved in it moving forward, that is when a partnership is said to dissolve. Compared to ending a partnership, it is completely different. The procedure that finally results in the dissolution of a partnership is known as dissolution.

Following dissolution, the remaining partners continue their relationship, but it is a totally new and different partnership. Motives for ending a partnership

The following list includes some of the possible causes of a partnership's dissolution:

partner's passing.

the acceptance of a new companion.

bankruptcy of a current partner.

An early partner retirement.

due to a partnership period expiring after a predetermined period of time that was fully agreed upon by all partners.

How can a partnership end?

In most cases, when a partner stop taking part in the business operation, the partnership ends or is dissolved. Three separate processes can lead to the disintegration.

When a partner agrees to end the partnership at a specific period, this is referred to as an act of the partners. For example, parties may decide that a partnership shall last for a period of five years. At the conclusion of the five (5) year period, the partners may terminate the agreement. A partner's suspension under a particular circumstance may occasionally be noted. The partnership may end if one of the partners violates one of the rules.

By virtue of the law A legally binding agreement has the effect of forming a partnership. As a result, the partnership agreement may be terminated for any obstruction to the agreement or illegal commercial operations. For instance, it is illegal to form a partnership to trade illegal goods.

By court order: A partner may request the dissolution of the partnership, and the law will only permit the dissolution under the following circumstances: the partner's inability to work; the partner's breach of the agreement; the partner's mental instability; and unfavorable partner behavior that affects the partnership.

Statement of Dissolution - The statement must be sent to the secretary of state. The form is available on the secretary of state's website. Name, date, and grounds for dissolution of the partnership must all be on the form.

Giving Personal Notice—To accomplish this, personally notify the partnership's creditors. Additionally, notify those connected to the cooperation by placing a press notice.

Problems Every Business Partnership Faces

1) Partnerships have issues

Potential problems are bound to arise in every union. We all remember when Enron realized that the partnerships they created were being used inappropriately, increasing the company's financial reports that thousands of Enron employees and the company's depositors relied on as a key factor in deciding whether to buy or sell its stock. The public's trust in the corporation was destroyed by these partnerships and other significant accounting irregularities, and Enron went bankrupt.

2) Obligation

Partners frequently bear full responsibility for the actions of other partners. All general partners are liable for errors made by one general partner as well as any additional debt or other obligations that result from such errors.

3) Capital Raising

Since all common partners in general partnerships have unlimited liability, raising capital might be difficult. Investors may find it more striking when choosing an LP or LLP because it permits a limited partner to engage without accepting any responsibility. However, as was already mentioned, LPs and LLPs have some restrictions that must be considered. Additionally, it costs more money to form an LP or LLP than a general partnership.

4) Safeguarding Your Partnership Interest

A partnership has many advantages, but there are also many things to look out for when adding a partner. Partners must always have a written agreement that establishes restrictions on each partner's ability to make decisions. The agreement must specify how decisions will be made, earnings will be distributed, and problems will be resolved, among other things. If the partnership does not succeed, the legal agreement should specify in detail how partners may be discredited, how new partners may be admitted, and what measures would be taken if the partnership were to be suspended.

Conclusion

As a final point, it should be noted that the partnership's fundamental idea and the related statutory provision require a vital inspection because the remnants of the colonial past must fundamentally be polished in order to fit them into our contemporary social realities. This inspection of our contemporary social realities is necessary.

From the above explanation of how a partnership dissolves, it can be inferred that the partners have certain rights and obligations that they must fulfill. One can assert these rights and obligations with the help of the Indian Partnership Act, 1932, as it contains provisions addressing the issue.

The statute explicitly lays out the grounds for dissolution of the partnership, making it impossible for anyone to profit from the same, and it also promotes a positive work environment

10.3 NATURE OF LLP

By collaborating, limited liability partnerships (LLPs) enable partners to take advantage of economies of scale while simultaneously lowering their exposure to the acts of other partners. LLPs are a flexible legal and tax organization.

Before becoming overly excited, it is crucial to check the regulations in your country (and your state), as with any legal business. In other words, consult a lawyer first. There is a considerable probability that they have first-hand knowledge of an LLP.

The liability of each participant in a limited liability partnership (LLP) is restricted to the amount they invested in the company.

Having business partners entails sharing the risk, utilizing unique talents, and creating a hierarchy of tasks.

Since the partnership has limited responsibility, then creditors are prohibited from seizing a partner's private property or income.

Professional organizations including law firms, accountancy firms, medical offices, and wealth managers frequently use LLPs.

LLP versus LLC

Both a limited liability partnership (LLP) and an LLC provide protection for their owners. Depending on your legal jurisdiction, the LLP is a formal structure that has a written partnership agreement and typically has yearly reporting requirements.

However, it differs from an LLC in terms of management standards and liability safeguards. When it comes to who can run the company, LLCs are more flexible. LLPs need to distribute management responsibilities evenly. LLCs shield members from personal liability for debts or claims made against the company. A partner in an LLP is not held accountable for the errors of another partner.

Overall, an LLP is a better choice than an LLC or other corporate organization for a certain sort of professional due to its flexibility.

The LLP is a flow-through entity for taxation purposes, just like an LLC. As a result, the partners receive untaxed profits and are responsible for covering their own taxes. A corporation, which is taxed as an entity and has its shareholders subject to additional taxes on distributions, is preferred to both an LLC and an LLP.

LLP versus LP

In an LLP, all partners are eligible to take part in partnership management, just like in a general partnership. This is crucial to understand because there is another sort of partnership—a limited partnership (LP)—in which the general partner (GP), who holds all the authority and most of the liabilities, is silent while the other partners are still financially involved.

Advantages of an LLP

LLP users frequently rely greatly on their reputation. The majority of LLPs are founded and run by a team of experts with a wealth of combined expertise and clients. By combining their resources, the partners can operate more cheaply while also expanding the LLP's potential. Office space, staff members, and other things can be shared. Most importantly, cost reduction enables the partners to generate greater revenues from their activities than they otherwise might.

A number of junior partners who work for the LLP partners in the hopes of one day becoming full partners may also be employed by the LLP. These less experienced partners receive a salary but frequently have no ownership or liability in the partnership.

What matters is that they are recognized experts who are capable of handling the tasks that the partners bring in.

This is yet another method that LLPs assist the partners in expanding their businesses. Junior partners and staff members handle the grunt labor, freeing the partners to concentrate on generating new business.

The flexibility to add and remove partners is another benefit of an LLP. An LLP has a partnership agreement, and the terms of the agreement can be followed when adding or retiring partners. This is helpful since the LLP can always add partners who bring with them existing clients. The choice to add typically needs to be approved by all of the current partners.

LLPs Internationally

LLPs are prevalent worldwide, albeit they differ from the American form to varied degrees. An LLP is a tax-through entity designed for professionals who all actively participate in managing the partnership and is recognized as such in the majority of nations.

There is frequently a list of occupations that are permitted for LLPs, including architects, accountants, lawyers, and consultants. The degree of liability protection also varies, but LLPs in the majority of nations shield particular partners from the fault of any other partner.

10.4 FEATURES OF LLP

A Limited Liability Partnership (LLP) is a legal business structure that combines the advantages of a partnership and a limited liability company (LLC). Here are some key features of an LLP:

Limited Liability: Like an LLC, the partners in an LLP have limited liability, which means their personal assets are generally protected from the debts and liabilities of the LLP. Each partner is responsible only for their own actions and the actions of the individuals they supervise.

Separate Legal Entity: An LLP is considered a separate legal entity from its partners. It can own property, enter into contracts, sue, and be sued in its own name. This provides a clear distinction between the LLP and its partners.

Flexibility: LLPs offer flexibility in terms of internal organization and management. The partners have the freedom to define their roles, responsibilities, profit-sharing arrangements, and decision-making processes through a partnership agreement.

Perpetual Succession: LLPs have perpetual succession, which means the LLP continues to exist even if one or more partners leave or new partners join. The death, insolvency, or retirement of a partner does not affect the continuity of the LLP.

Taxation: LLPs are generally treated as pass-through entities for tax purposes. This means that the profits and losses of the LLP are passed through to the individual partners, who report them on their personal tax returns. The LLP itself does not pay taxes at the entity level.

Professional Practice: LLPs are commonly used by professionals such as lawyers, accountants, architects, and consultants to form partnerships and provide professional services. In some jurisdictions, LLPs are specifically designed for professional practices.

Regulatory Requirements: LLPs are subject to certain regulatory requirements, such as the filing of annual statements, financial statements, and tax returns with the appropriate government authorities. The specific requirements vary depending on the jurisdiction in which the LLP is registered.

It's important to note that the features and regulations surrounding LLPs may vary depending on the country and jurisdiction. It is advisable to consult with a legal or financial professional familiar with the laws and regulations in your specific jurisdiction when considering the formation of an LLP.

10.5 SUMMARY

Partnerships are commercial entities created when two or more people decide to operate a business jointly for profit. Partnership law regulates the legal framework for partnerships. Due to its adaptability, simplicity in creation, and shared managerial duties, partnerships are a common type of company organisation. Partnership law provides the basis for partnerships by addressing the creation, rights, obligations, and dissolution of partnerships. Partners must be aware of the legal ramifications of partnerships and should think about seeking legal counsel before creating or ending a partnership. Partnership dissolution and partnership firm dissolution are two distinct ideas. A partnership can be dissolved, although a firm can be dissolved together with its partners, whereas a partnership can be dissolved, it indicates a change in the business relationship between partners. All assets and liabilities in this situation have been resolved and are being disposed of properly. The statute explicitly lays out the grounds for dissolution of the partnership, making it impossible for anyone to profit from the same, and it also promotes a positive work environment By collaborating, limited liability partnerships (LLPs) enable partners to take advantage of economies of scale while simultaneously lowering their exposure to the acts of other partners. LLPs are a flexible legal and tax organization. Both a limited liability partnership (LLP) and an LLC provide protection for their owners. Depending on your legal jurisdiction, the LLP is a formal structure that has a written partnership agreement and typically has yearly reporting requirements. In an LLP, all partners are eligible to take part in partnership management, just like in a general partnership. This is crucial to understand because there is another sort of partnership—a limited partnership (LP)—in which the general partner (GP), who holds all the authority and most of the liabilities, is silent while the other partners are still financially involved. LLP users frequently rely greatly on their reputation. The majority of LLPs are founded and run by a team of experts with a wealth of combined expertise and clients. By combining their resources, the partners can operate more cheaply while also expanding the LLP's potential. LLPs are prevalent worldwide, albeit they differ from the American form to varied degrees. An LLP is a tax-through entity designed for professionals who all actively participate in managing the partnership and is recognized as such in the majority of nations. A Limited Liability Partnership (LLP) is a legal business structure that combines the advantages of a partnership and a limited liability company (LLC). It's important to note that the features and regulations surrounding LLPs may vary depending on the country and jurisdiction. It is advisable to consult with a legal or financial professional familiar with the laws and regulations in your specific jurisdiction when considering the formation of an LLP.

10.6 KEYWORDS

- **Consult:** "consult" means to seek advice, information, or opinion from someone or something in order to make a decision or gain insight. It involves reaching out to an expert or a knowledgeable person for their guidance or expertise.
- **Prevalent:** The word "prevalent" is an adjective that describes something that is widespread, common, or dominant in a particular situation or among a specific group of people. It refers to the state of being prevalent, which implies that something is frequently or widely observed, existing, or occurring.
- **Majority:** The term "majority" refers to the greater part or number of something, representing more than half of the total. It signifies a group, category, or population that constitutes the largest portion or holds the greatest influence in a particular context. The concept of majority is often used in various domains, such as politics, voting, demographics, and decision-making processes, to determine the prevailing opinion, outcome, or representation. The opposite of a majority is a minority, which refers to the smaller part or number.
- **Statute:** The term "statute" refers to a formal written law enacted by a legislative body, such as a parliament or a congress. Statutes are typically created to establish rules, regulations, and standards that govern a specific jurisdiction or area of law.

They can cover a wide range of topics, including criminal offenses, civil rights, taxation, contracts, and more.

- **Dissolution:** dissolution refers to the termination or cancellation of a contract, partnership, or marriage. It involves the formal process of ending a legal entity or relationship.

10.7 LEARNING ACTIVITY

- Define dissolution.

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- Define LLP.

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10.8 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions:

- Define LLP.
- Explain what is dissolution of partnership.
- Describe briefly about bankruptcy of a current partner.
- What do you understand by
- What is a tour brochure?

Long Questions:

- What are documents required for dissolution of partnership?
- Describe the evolution LLP?
- What are the features of LLP?
- Describe about the nature of LLP?
- Explain what are modes of LLP?

B. Multiple Choice Questions

1. ________s are subject to certain regulatory requirements, such as the filing of annual statements.

a. LLP
b. LLC
c. LMC
d. LPG

2. The statute explicitly lays out the grounds for ____________ of the partnership.
a. Dissolution
b. Solution
c. Deprived
d. Approved

3. A partner may __________the dissolution of the partnership.
a. Participate
b. Order
c. Accept
d. Request

4. An LLP is a partnership in which each member is only liable for a __________ portion of the partnership's debts and liabilities as a result of the conduct of the other partners.
a. Small
b. Large
c. Medium
d. Maximum

5. Partnerships are commercial __________created when two or more people decide to operate a business jointly for profit.
a. Partner
b. Entities
c. Purpose
d. particular

Answers

1-a, 2-a, 3-d, 4-a, 5-b

10.9 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT – 11:PARTNERSHIP LAWS

STRUCTURE

11.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe nature of human resource management
- Identify scope of human resource
- State the need and importance of HRM
- List the functions of HRM

11.1 INTRODUCTION

The liability of each participant in a limited liability partnership (LLP) is restricted to the amount they invested in the company.

Having business partners entails sharing the risk, utilizing unique talents, and creating a hierarchy of tasks.

Since the partnership has limited responsibility, then creditors are prohibited from seizing a partner's private property or income.

Professional organizations including law firms, accountancy firms, medical offices, and wealth managers frequently use LLPs.

LLP versus LLC

Both a limited liability partnership (LLP) and an LLC provide protection for their owners. Depending on your legal jurisdiction, the LLP is a formal structure that has a written partnership agreement and typically has yearly reporting requirements.

However, it differs from an LLC in terms of management standards and liability safeguards. When it comes to who can run the company, LLCs are more flexible. LLPs need to distribute management responsibilities evenly. LLCs shield members from personal liability for debts or claims made against the company. A partner in an LLP is not held accountable for the errors of another partner.

Overall, an LLP is a better choice than an LLC or other corporate organization for a certain sort of professional due to its flexibility.

The LLP is a flow-through entity for taxation purposes, just like an LLC. As a result, the partners receive untaxed profits and are responsible for covering their own taxes. A corporation, which is taxed as an entity and has its shareholders subject to additional taxes on distributions, is preferred to both an LLC and an LLP.

11.2 DISTINGUISH BETWEEN LLP AND PARTNERSHIP

Limited Liability Partnership (LLP) and partnership are both forms of business entities, but they have significant differences in terms of liability, management, and legal structure. Here's a distinction between LLP and partnership:

Liability: In a partnership, the partners have unlimited liability, which means they are personally liable for the debts and obligations of the partnership. Their personal assets can be used to satisfy the partnership's liabilities. In an LLP, the liability of each partner is limited to their agreed contribution and they are not personally liable for the debts and liabilities of the LLP. The personal assets of the partners are generally protected from the liabilities of the LLP.

Legal Entity: A partnership is not considered a separate legal entity from its partners. It is a relationship between the partners based on an agreement. On the other hand, an LLP is a separate legal entity from its partners. It is created and registered under specific legislation and has its own legal existence, independent of its partners.

Management: In a partnership, the partners have the authority to manage the business and make decisions collectively or as per the terms of the partnership agreement. In an LLP, the partners can agree on the extent of their involvement in the management and can designate designated partners who have the authority and responsibility to manage the LLP's affairs.

Regulatory Compliance: Partnerships are subject to fewer regulatory requirements compared to LLPs. LLPs are required to comply with specific registration, disclosure, and filing requirements as per the LLP Act or relevant legislation in their jurisdiction. They must file annual statements and other mandatory documents with the regulatory authorities.

Perpetual Existence: Partnerships are generally dissolved upon the death, retirement, or insolvency of a partner unless otherwise stated in the partnership agreement. LLPs, being separate legal entities, have perpetual existence and can continue to operate even if there are changes in the partners.

Transferability of Ownership: Partnership interests are typically not freely transferable without the consent of the other partners. LLPs, however, may allow the transfer of ownership or partnership interests, subject to the provisions of the LLP agreement.

It's important to note that the specific characteristics and regulations governing partnerships and LLPs may vary across jurisdictions. It is advisable to consult with legal and tax professionals or refer to the relevant legislation in your specific jurisdiction for accurate and up-to-date information.

11.3 LLP AND COMPANY

A Limited Liability Partnership (LLP) and a company are both legal business structures, but they differ in terms of their formation, management, liability, and taxation. Here's a distinction between LLP and company:

Formation: A company is formed by registering under the Companies Act, whereas an LLP is formed by registering under the Limited Liability Partnership Act. The process of formation, including the required documentation and legal formalities, can vary between jurisdictions.

Ownership and Management: In a company, ownership is represented by shares, and the company is managed by directors appointed by the shareholders. In an LLP, ownership is based on a partnership agreement, and partners manage the business collectively or appoint designated partners to manage the LLP.

Liability: In a company, the liability of shareholders is generally limited to the extent of their shareholding. This means that shareholders are not personally liable for the company's debts and obligations. In an LLP, the liability of partners is limited to the extent of their capital contribution, but partners may be personally liable for their own actions or professional negligence.

Taxation: Companies are subject to corporate tax on their profits, while shareholders may also be subject to personal income tax on dividends they receive. LLPs, on the other hand, are usually taxed as partnerships, where the LLP itself is not taxed, and partners are individually taxed on their share of the profits.

Legal Status and Perpetuity: A company is a separate legal entity from its owners, meaning it can enter into contracts, own property, and sue or be sued in its own name. It has perpetual existence, independent of changes in ownership or management. An LLP is also a separate legal entity, but its existence depends on the partners. If partners leave or retire, it may require additional steps to continue the LLP's operations.

It's important to note that the specific regulations and requirements for companies and LLPs can vary across different countries and jurisdictions. It's advisable to consult local laws and seek professional advice when considering the formation of either business structure.

11.5 LLP AGREEMENT

An LLP agreement is a legal document that outlines the rights, responsibilities, and obligations of the partners in a Limited Liability Partnership (LLP). While the specific contents of an LLP agreement may vary depending on the jurisdiction and the partners' preferences, here are some common elements typically included:

Name and Address: The agreement begins by stating the name of the LLP, its registered address, and the date of its formation.

Nature of Business: It specifies the nature of the business carried out by the LLP and any specific activities or services it will engage in.

Partners' Details: The agreement lists the names, addresses, and other relevant details of all the partners involved in the LLP.

Contribution and Capital: It outlines the initial capital contributions made by each partner and the manner in which additional capital contributions will be made if required.

Profit Sharing and Loss Allocation: The agreement specifies how profits and losses will be allocated among the partners. This may be based on a fixed ratio, a percentage of capital contributions, or any other agreed-upon method.

Management and Decision-Making: It defines the decision-making process within the LLP, including the appointment of designated partners, their roles, and responsibilities. It may also outline the process for admitting new partners and the requirements for partner meetings.

Salaries, Withdrawals, and Loans: The agreement may address the partners' salaries, allowances, or any permitted withdrawals from the LLP's profits. It might also stipulate guidelines for partners seeking loans from the LLP.

Retirement, Death, or Resignation: It describes the procedures and consequences in the event of a partner's retirement, death, or voluntary resignation from the LLP, including the buyout or transfer of their share.

Dispute Resolution: The agreement may include provisions for resolving disputes between partners, such as through mediation or arbitration, before resorting to litigation.

Confidentiality and Non-Compete Clauses: It may include clauses that require partners to maintain the confidentiality of the LLP's information and restrict their engagement in competing businesses during and after their association with the LLP.

Dissolution and Winding Up: The agreement outlines the circumstances under which the LLP may be dissolved, the procedures for winding up its affairs, and the distribution of assets among the partners.

It's important to note that an LLP agreement is a legally binding document and should be drafted with the assistance of a legal professional who is knowledgeable about the relevant laws and regulations in your jurisdiction. The specific requirements and permissible provisions may vary, so it's advisable to seek legal advice to ensure compliance and protection of the partners' interests.

11.6 PARTNER AND DESIGNATED PARTNER

Designated partners typically refer to individuals who hold specific responsibilities and authority within a partnership firm, particularly in the context of a limited liability partnership (LLP). In an LLP, the designated partners have defined roles and obligations as per the LLP agreement and relevant laws. Here are some key points about designated partners:

Appointment: The LLP agreement specifies the process of appointing designated partners. Usually, all partners in an LLP are considered designated partners by default, but the agreement may designate specific partners for specific roles or responsibilities.

Responsibilities: Designated partners have certain statutory duties and obligations under the LLP Act. They are responsible for ensuring compliance with legal and regulatory requirements, maintaining proper books of accounts, filing annual returns, and representing the LLP in legal matters.

Legal Authority: Designated partners have the authority to act on behalf of the LLP. They can enter into contracts, execute agreements, and make decisions in the ordinary course of business, unless restricted by the LLP agreement.

Designated Partner Identification Number (DPIN): Each designated partner is required to obtain a DPIN from the Ministry of Corporate Affairs (MCA) in India. It serves as a unique identification number for the designated partner.

Liability: Designated partners, like all partners in an LLP, have limited liability, meaning their personal assets are protected in case of any liabilities or debts incurred by the LLP. However, designated partners can be held personally liable for their own acts of negligence or misconduct.

Designation Changes: The LLP agreement may allow for changes in the designation of partners over time. New partners can be appointed as designated partners, and existing designated partners may be removed or have their roles changed, subject to the provisions outlined in the LLP agreement.

It's important to note that the specific rules and regulations surrounding designated partners may vary depending on the jurisdiction. The above information provides a general understanding of the concept, but it's always advisable to consult with a legal professional or refer to the LLP Act or relevant laws in your specific jurisdiction for accurate and up-to-date information.

11.7 SUMMARY

The liability of each participant in a limited liability partnership (LLP) is restricted to the amount they invested in the company. LLP versus LLC. Both a limited liability partnership (LLP) and an LLC provide protection for their owners. Depending on your legal jurisdiction, the LLP is a formal structure that has a written partnership agreement and typically has yearly reporting requirements. Overall, an LLP is a better choice than an LLC or other corporate organization for a certain sort of professional due to its flexibility. The LLP is a flow-through entity for taxation purposes, just like an LLC. Limited Liability Partnership (LLP) and partnership are both forms of business entities, but they have significant differences in terms of liability, management, and legal structure. It's important to note that the specific characteristics and regulations governing partnerships and LLPs may vary across jurisdictions. It is advisable to consult with legal and tax professionals or refer to the relevant legislation in your specific jurisdiction for accurate and up-to-date information. A Limited Liability Partnership (LLP) and a company are both legal business structures, but they differ in terms of their formation, management, liability, and taxation. It's important to note that the specific regulations and requirements for companies and LLPs can vary across different countries and jurisdictions. It's advisable to consult local laws and seek professional advice when considering the formation of either business structure. An LLP agreement is a legal document that outlines the rights, responsibilities, and obligations of the partners in a Limited Liability Partnership (LLP). While the specific contents of an LLP agreement may vary depending on the jurisdiction and the partners' preferences. It's important to note that an LLP agreement is a legally binding document and should be drafted with the assistance of a legal professional who is knowledgeable about the relevant laws and regulations in your jurisdiction. The specific requirements and permissible provisions may vary, so it's advisable to seek legal advice to ensure compliance and protection of the partners' interests. Designated partners typically refer to individuals who hold specific responsibilities and authority within a partnership firm, particularly in the context of a limited liability partnership (LLP). In an LLP, the designated partners have defined roles and obligations as per the LLP agreement and relevant laws. It's important to note that the specific rules and regulations surrounding designated partners may vary depending on the jurisdiction. The above information provides a general understanding of the concept, but it's always advisable to consult with a legal professional or refer to the LLP Act or relevant laws in your specific jurisdiction for accurate and up-to-date information.

11.8 KEYWORDS

- **Relevant:** The term "relevant" is an adjective that describes something as being closely connected or applicable to a particular matter or situation. When something is relevant, it is significant, important, or directly related to the subject or context at hand. It implies that the information, idea, or concept is suitable, pertinent, or has bearing on the topic being discussed or considered. The concept of relevance is often subjective and dependent on the specific context or criteria being used to determine its applicability.
- **Compliance:** Compliance refers to the act of conforming to rules, regulations, laws, standards, or guidelines that are set by external authorities or organizations. It involves adhering to the prescribed requirements and ensuring that actions, behaviors, and practices align with established norms and expectations.
- **Designated:** The term "designated" refers to something that has been specifically assigned or chosen for a particular purpose or role. It indicates that a particular person, place, object, or concept has been officially or formally identified or appointed to fulfill a specific function or carry out a specific task.
- **Taxation:** Taxation refers to the process of levying and collecting taxes by a government authority. Taxes are compulsory payments imposed on individuals, businesses, or other entities to finance public expenditures and support government functions. The primary purpose of taxation is to generate revenue to fund government operations, such as infrastructure development, public services, healthcare, education, defense, and social welfare programs.
- **Preference:** The term "preference" refers to a personal inclination or choice for one thing over another. It represents a subjective liking or favoring of one option, object, or situation compared to others. Preferences can vary greatly among individuals and are influenced by a range of factors, including personal taste, experiences, values, cultural background, and individual needs. Preferences can apply to various aspects of life, such as food, music, fashion, hobbies, relationships, career choices, and more. Understanding one's preferences can help inform decision-making and contribute to personal satisfaction and fulfillment.

11.9 LEARNING ACTIVITY

- Define LLP.

____

____

- State the meaning of designated partner.

____

____

11.10UNIT END QUESTIONS

A. Descriptive Questions

Short Questions:

- Define partnership laws?
- Explain what is LLP?
- Describe briefly about designated partner?
- What do you understand by partner?
- What is a company?

Long Questions:

10.0 What is a distinguish between LLP and Partnership?

11.0 Describe the evolution of LLP and COMPANY.

12.0 What are the features LLP.

13.0 Describe about the LLP agreement?

14.0 Explain partner and designated partner?

B. Multiple Choice Questions

1. Designated partners have certain statutory duties and obligations under the ______Act.

a. LLP

b. LLC

c. LPG

d. CNG

2. The agreement may address the partners' salaries, allowances, or any permitted ____________from the LLP's profits.

a. withdrawals

b. deposits

c. usage

d. throwable

3. A company is a separate legal entity from its owners, meaning it can enter into contracts, own property, and sue or be sued in its own__________.

a. address

b. contacts

c. purpose

d. name

4. A Limited Liability Partnership (LLP) and a company are both ____________business structures.

a. legal

b. illegal

c. purpose

d. business

5. The liability of each participant in a limited liability partnership (LLP) is restricted to the amount they __________in the company.

a. manufactured

b. invested

c. calculated

d. region

Answers

1-a, 2-a, 3-d, 4-a, 5-b

11.11 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT – 12:PARTNERSHIP LAWS

STRUCTURE

12.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe nature of human resource management
- Identify scope of human resource
- State the need and importance of HRM
- List the functions of HRM

12.1 INTRODUCTION

In an LLP, all partners are eligible to take part in partnership management, just like in a general partnership. This is crucial to understand because there is another sort of partnership—a limited partnership (LP)—in which the general partner (GP), who holds all the authority and most of the liabilities, is silent while the other partners are still financially involved.

Advantages of an LLP

LLP users frequently rely greatly on their reputation. The majority of LLPs are founded and run by a team of experts with a wealth of combined expertise and clients. By combining their resources, the partners can operate more cheaply while also expanding the LLP's potential. Office space, staff members, and other things can be shared. Most importantly, cost reduction enables the partners to generate greater revenues from their activities than they otherwise might.

A number of junior partners who work for the LLP partners in the hopes of one day becoming full partners may also be employed by the LLP. These less experienced partners receive a salary but frequently have no ownership or liability in the partnership.

What matters is that they are recognized experts who are capable of handling the tasks that the partners bring in.

This is yet another method that LLPs assist the partners in expanding their businesses. Junior partners and staff members handle the grunt labor, freeing the partners to concentrate on generating new business.

The flexibility to add and remove partners is another benefit of an LLP. An LLP has a partnership agreement, and the terms of the agreement can be followed when adding or retiring partners. This is helpful since the LLP can always add partners who bring with them existing clients. The choice to add typically needs to be approved by all of the current partners.

12.2 INCORPORATION DOCUMENT

The incorporation process for a Limited Liability Partnership (LLP) typically involves several steps. While the specific requirements may vary depending on the jurisdiction, here is a general outline of the LLP incorporation process:

Name Reservation: Choose a unique name for the LLP and check its availability with the relevant regulatory authority. The name should comply with the naming guidelines and restrictions specified by the authority.

Obtain Digital Signatures: The designated partners of the LLP need to obtain digital signature certificates (DSC) from authorized certifying agencies. DSCs are required for filing electronic documents during the registration process.

Obtain Designated Partner Identification Number (DPIN): Each designated partner must obtain a DPIN from the Ministry of Corporate Affairs (MCA) or the relevant regulatory authority. This can usually be done by submitting an online application.

Prepare LLP Agreement: Draft an LLP agreement that outlines the rights, responsibilities, profit-sharing ratio, and other terms and conditions among the partners. The agreement should comply with the LLP Act and regulations.

File Incorporation Documents: Prepare the necessary incorporation documents, including Form LLP-1 (Incorporation Document and Subscriber's Statement) and Form LLP-2 (Incorporation Incorporation), along with the LLP agreement. These documents need to be filed online with the MCA or the appropriate authority.

Pay Registration Fees: Pay the prescribed registration fees to the regulatory authority. The fees may vary based on factors such as the LLP's capital contribution and the jurisdiction in which it is being registered.

Certificate of Incorporation: After the registration documents are reviewed and approved, the authority will issue a Certificate of Incorporation. This certificate confirms the formation of the LLP and includes important details such as the LLP's name, registration number, and date of incorporation.

Obtain PAN and TAN: Apply for a Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN) for the LLP from the relevant tax authorities. These are necessary for tax-related purposes.

Compliance Requirements: Once the LLP is incorporated, it must fulfill ongoing compliance requirements such as maintaining proper books of accounts, filing annual returns, and complying with tax and regulatory obligations.

It's essential to note that the LLP incorporation process and specific requirements can vary from country to country. Therefore, it is advisable to consult the LLP Act, regulations, and seek professional guidance from a legal expert or a company registration service to ensure compliance with the specific jurisdiction's requirements.

12.3 INCORPORATION BY REGISTRATION

There are two types of Partnership Firms:

Unregistered partnership firms and,

Registered partnership firms

Starting a business does not necessitate registering a company, and there is no consequence for doing so. This choice is fully up to the partners and business owners. It is possible to register a corporation after it has been formed. The only drawback of an unregistered firm is that it is not eligible for the advantages and rights stipulated in Section 69 of the Partnership Act.

To formalize the business and take advantage of the many privileges provided by the Act, it is usually advised to register the company sooner rather than later.

What is and how is a partnership deed created?

An agreement called a partnership deed specifies and lists all the rights, obligations, and other formalities pertaining to the partners and the business.

The following information should be included when registering a business online:

The partners' names.

Name and nature of the company, as well as the financial investments made by each partner.

The percentage that partners split profits and losses.

Each partner's obligations and rights.

The procedures and guidelines for how the business should run.

Any other details or clauses might be decided by the partners individually.

Formation of a Partnership Company

A partnership firm can be registered through a simple and easy process. The Act on Indian Partnership, Its registration is governed by Section 58. The procedure comprises submitting the required documents and fees to the state's Registrar of Firms, depending on where the firm is located. The application must also be signed and approved by each of the firm's partners.

After the Registrar of Firms has cross-verified the application for registration in accordance with the provisions under Section 58 and found that they have been complied with, the firm is registered in the entry of statements, and the registration certificate is ultimately issued in the name of the firm.

The company must submit applications for registration with both the Income Tax Filing Department and the Registrar of Firms because they are separate organizations. The company must also own a PAN card in addition to this. so that timely completion of further bank account openings, intricate financial operations, and transactions is ensured.

Documents Needed to Form a Partnership

You must submit other paperwork in addition to the application form, such as:

Copies of the Partnership Deed that was created.

Application form.

The following types of documentation are required for the partners' address and identification proof:

Driving Permit, Aadhar Card, Voter ID, and Passport

Proof of any real estate owned or rented by the business.

receipt for a water or power bill.

The benefits and drawbacks of a partnership business

Every business, organization, or proprietorship has advantages and disadvantages, and partnership companies are no different.

Anyone can form a Partnership firm because the incorporation and compliance procedures are straightforward. These are vastly better than LLPs and other businesses because they don't need to file monthly or yearly returns or taxes. The financial statements of the company are kept private as a result.

Partnership firms, however, are limited in terms of size. In actuality, investors, venture capitalists, and others are very wary when approaching businesses. This is due to the fact that a partnership's operations are less open than those of other businesses and companies that are registered in other ways.

Conclusion

Therefore, creating a partnership firm is a great way to launch a business. On the other hand, when such firms are registered, they must reflect the goals and objectives of the owners and partners. All things considered, it is safe to state that the partnership model produces wonders, and it is advised that it be registered.

12.4 PARTNERS AND THEIR RELATIONSHIP

Partners' interactions with one another

Even if the partners are free to create a partnership agreement that spells out their obligations, Section 11 of the Indian Partnership Act, 1932 has a number of rights and obligations that cannot be changed by the partners entering into a different agreement. In a partnership firm, all the partners are agents, therefore they are all required to operate in good faith with one another. According to Section 9 of the Indian Partnership Act of 1932, any agreement that one partner signs binds the other partners as well.

Partners' legal obligations to one another

Unless otherwise specified in the partnership agreement, the following rights may be exercised by partners in a partnership firm:

Right to Take Part in the Management of the Business

According to Section 12(a) of the legislation, partners of a firm are entitled to take part in its operations. However, this privilege may be restricted by an agreement clause, allowing only a select number of partners to actively participate in the business.

Right to access the company's books and records

Both active and inactive partners have an equal right to see and copy the company's books of accounts.

the freedom to express one's opinions

The firm's partners are all free to voice their thoughts. Any business-related decision may be made using the majority opinion.

Sharing of Profits Rights

The partners' profit-sharing ration is specified in the partnership agreement. The partners have a right to an equal share of the firm's profits in the absence of a similar provision in the deed.

Right to Indemnification

A partnership firm's partners are entitled to indemnification for any payments paid or liabilities assumed by any of them while conducting business. A decision or action of this nature must be deemed reasonable in the ordinary course of business.

Right to Capital Interest

Any advances that partners make to the firm are subject to a 6% interest charge. They do not have the right to any interest on the capital investment they made, but they may choose to do so if they so choose. They can achieve this by using the company's income.

Partner obligations Inter-se

A partnership's partners have specific obligations to one another as a result of the requirement that they operate in good faith:

Section 9: Duty to Act in Good Faith The partners are expected to carry out their general obligations in good faith for the benefit of the company as a whole and to be loyal to one another.

Section 9 - Duty to Render True Accounts

The partners must not keep any business-related information a secret from one another. Every partner has a responsibility to present accurate financial information about the company and make all necessary disclosures about its operations.

Duty to Exercise Due Care—Section 12(b)

The firm's partners are expected to perform responsibly. According to Section 13(f), any partner who willfully neglects something is responsible for compensating the other partners for any losses they sustain.

Section 10: Duty to Indemnify for Fraud

Every partner in a firm has a responsibility to reimburse the company for any damages brought on by their wrongdoing or fraud. The partners must hold each other harmless for any losses incurred because the firm is responsible for the partners' activities.

Section 16(b)'s duty not to compete

The partners cannot benefit financially from running any rival businesses. Any such gains they generate must be reported to the company.

Duty Regarding the Firm's Property

The assets of the partnership may only be used for the firm's operations, according to the partners. Since it is jointly held by all the partners and the company, it cannot be exploited for personal gain.

The Partner's Responsibilities

The responsibilities of a partner are as follows:

One must always behave honestly.

One must exercise diligence, refrain from competition, and constantly offer accurate accounts.

The company's assets must be used responsibly.

It is forbidden to pursue personal gain.

Any deception must be compensated for.

12.5 SUMMARY

In an LLP, all partners are eligible to take part in partnership management, just like in a general partnership. This is crucial to understand because there is another sort of partnership—a limited partnership (LP)—in which the general partner (GP), who holds all the authority and most of the liabilities, is silent while the other partners are still financially involved. LLP users frequently rely greatly on their reputation. The majority of LLPs are founded and run by a team of experts with a wealth of combined expertise and clients. The incorporation process for a Limited Liability Partnership (LLP) typically involves several steps. Name Reservation, Obtain Digital Signatures, Obtain Designated Partner Identification Number (DPIN), Prepare LLP Agreement, File Incorporation Documents, Pay Registration Fees, Certificate of Incorporation, Obtain PAN and TAN, Compliance Requirements. It's essential to note that the LLP incorporation process and specific requirements can vary from country to country. Therefore, it is advisable to consult the LLP Act, regulations, and seek professional guidance from a legal expert or a company registration service to ensure compliance with the specific jurisdiction's requirements. There are two types of Partnership Firms: Unregistered partnership firms and Registered partnership firms. An agreement called a partnership deed specifies and lists all the rights, obligations, and other formalities pertaining to the partners and the business. Therefore, creating a partnership firm is a great way to launch a business. On the other hand, when such firms are registered, they must reflect the goals and objectives of the owners and partners. Even if the partners are free to create a partnership agreement that spells out their obligations, Section 11 of the Indian Partnership Act, 1932 has a number of rights and obligations that cannot be changed by the partners entering into a different agreement. Partners' legal obligations to one another. Unless otherwise specified in the partnership agreement, the following rights may be exercised by partners in a partnership firm: Right to Take Part in the Management of the Business. According to Section 12(a) of the legislation, partners of a firm are entitled to take part in its operations. Both active and inactive partners have an equal right to see and copy the company's books of accounts. the freedom to express one's opinions: The firm's partners are all free to voice their thoughts. Any business-related decision may be made using the majority opinion. Sharing of Profits Rights: The partners' profit-sharing ration is specified in the partnership agreement. The partners have a right to an equal share of the firm's profits in the absence of a similar provision in the deed. Right to Indemnification: A partnership firm's partners are entitled to indemnification for any payments paid or liabilities assumed by any of them while conducting business. Right to Capital Interest: Any advances that partners make to the firm are subject to a 6% interest charge. The Partner's Responsibilities. The responsibilities of a partner are as follows: One must always behave honestly. One must exercise diligence, refrain from competition, and constantly offer accurate accounts. The company's assets must be used responsibly. It is forbidden to pursue personal gain. Any deception must be compensated for.

12.6KEYWORDS

- **Incorporation:** Incorporation refers to the process of forming a legal entity, typically a company or a corporation, that is recognized as a separate legal entity from its owners or shareholders. It is the act of establishing a business entity as a distinct legal entity, separate from its owners or shareholders, with its own rights, liabilities, and obligations.
- **Refrain:** A refrain refers to a repeated line, phrase, or verse in a song or poem. It often appears at the end of each stanza or verse and helps create a rhythm or emphasize a particular idea.
- **Diligence:** Diligence refers to the quality of being careful, thorough, and persistent in one's work or efforts. It involves paying attention to details, working with focus and determination, and consistently exerting effort to achieve a goal or complete a task.
- **Indemnification:** Indemnification refers to the process of compensating someone for a loss, damage, or injury they have incurred. It involves providing financial protection or reimbursement to a person or entity for any losses, expenses, or liabilities they have suffered as a result of a specific event or situation.
- **Reputation:** Reputation refers to the general opinion or perception that individuals, groups, organizations, or entities have about someone or something based on their past actions, behavior, achievements, or public image. It is the overall assessment of a person or entity's character, credibility, trustworthiness, and esteem in the eyes of others.

12.7 LEARNING ACTIVITY

- Define what is incorporation.

____

____

- State the principles of registration.

____

____

12.8 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions:

- Define what is incorporation?
- Explain what is partnership firm?
- Describe briefly about Right to access the company's books and records?
- What do you understand by freedom to express opinion?
- What is a share in profits?

Long Questions:

- What is a need of incorporation document?
- Describe the evolution of incorporation by registration?
- What are the partners and its relationship
- Describe about the Section 9 - Duty to Render True Accounts?
- Explain What is and how is a partnership deed created?

B. Multiple Choice Questions

1. One must exercise____________, refrain from competition, and constantly offer accurate accounts.

a. diligence

b. render

c. accounts

d. deed

2. According to ______________(a) of the legislation, partners of a firm are entitled to take part in its operations.

a. Section 12

b. Section 14

c. Section 13

d. Section 21

3. Starting a business does not necessitate registering a________, and there is no consequence for doing so.

a. owner

b. manager

c. business

d. company

4. The incorporation process for a Limited Liability _______________ typically involves several steps.

a. Partnership

b. deed

c. capacity

d. capability

5. __________users frequently rely greatly on their reputation.

a. LLC

b. LLP

c. LMC

d. LPG

Answers

1-a, 2-a, 3-d, 4-a, 5-b

12.9 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT – 13: NEGOTIABLE INSTRUMENT ACT 1881

STRUCTURE

13.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe nature of human resource management
- Identify scope of human resource
- State the need and importance of HRM
- List the functions of HRM

13.1 INTRODUCTION

Negotiable instruments are important financial instruments that facilitate commercial transactions by providing a secure and convenient means of transferring monetary claims. These instruments are legally recognized and regulated by specific laws in most jurisdictions. They offer certain benefits, such as ease of transfer, negotiability, and enforceability.

It's important to note that the specific laws and regulations governing negotiable instruments can vary between jurisdictions. Therefore, it's advisable to consult the relevant laws in your country or seek legal advice to understand the specific requirements and implications of negotiable instruments in your jurisdiction.

Negotiable instruments are governed by specific laws and regulations in most countries, such as the Uniform Commercial Code in the United States, the Bills of Exchange Act in the United Kingdom, and the Negotiable Instruments Act in India. These laws establish the legal framework for the creation, transfer, and enforcement of negotiable instruments.

The benefits of using negotiable instruments in commercial transactions include increased efficiency, reduced risk, and increased flexibility. Negotiable instruments are easy to transfer, and they provide a clear record of payment obligations, making it easier to track payments and reduce disputes. They are also easily negotiable, allowing businesses to quickly access funds by selling the instrument to a third party for cash.

However, the use of negotiable instruments also involves certain risks and challenges, such as the risk of fraud, the risk of non-payment or non-acceptance, and the need for careful record-keeping and documentation.

Overall, negotiable instruments provide a valuable tool for facilitating commercial transactions, and businesses should understand the legal requirements and best practices associated with their use to effectively manage the associated risks and maximize their benefits.

13.2 MEANING

Written agreements known as Negotiable Instruments allow for the transfer of benefits from the original holder to a new holder. Alternatively said, negotiable instruments are legal contracts that guarantee payment to the assignee (the person to whom they are delivered or assigned) or another designated party. These documents, which can be transferred, contain a promise to pay the bearer or holder the specified amount upon demand or at any later date.

These instruments can be transferred, as was already explained. The final holder receives the cash and is free to put them to his own use. In other words, once an asset is transferred, the new owner acquires full legal ownership to the asset. When one thinks of negotiable instruments, or NIs, they typically picture checks and bills of exchange.

These instruments are nothing more than exchangeable, monetary-valued texts. The two primary attributes of Negotiable Instruments are hence their monetary value and transferability.

The Negotiable Instruments Act, 1881 is in charge of overseeing NIs in India. This law both defines these instruments and addresses each category of them separately.

Bills of exchange, promissory notes, and checks are all governed by it. In India, there are other traditional payment mechanisms (such Hundis) that are comparable to NIs; however, they are not covered by this statute.

If other transactional methods meet a few prerequisites, they could also be compared to NIs. Any instrument may qualify as an NI, for instance, if it is freely transferable by delivery or endorsement. It should also come with specific rights, such as the ability for the owner to file a lawsuit in his own name.

Easily transferable features of Negotiable Instruments Transferring a negotiable instrument is simple and cost-free. There aren't many formalities or papers involved in this transfer. Ownership of the instrument may be easily transferred through delivery or by way of an authorized endorsement.

All negotiable instruments must be in writing, whether they are handwritten notes, printed documents, engraved documents, typewritten documents, etc.

Payment Schedule Must Be Certain: An order is not regarded as a negotiable instrument if the payment terms are flexible. Even if there isn't a definite day, there should be a certain timeframe. For instance, if the date of payment is contingent upon the passing of a particular person, it is seen as a negotiable document because death is a particular occurrence.

Payee also needs to be certain: The recipient of the payment needs to be a certain person or people. A negotiable instrument may also have more than one payee. In this context, "person" encompasses fictitious individuals like body corporations, labor unions, chairs, and secretaries.

13.3 CHARACTERISTICS

Negotiable instruments are important financial instruments that facilitate commercial transactions by providing a secure and convenient means of transferring monetary claims. These instruments are legally recognized and regulated by specific laws in most jurisdictions. They offer certain benefits, such as ease of transfer, negotiability, and enforceability.

Common examples of negotiable instruments include:

Promissory Notes: A promissory note is a written promise by one party (the maker) to pay a specific sum of money to another party (the payee) at a designated time or upon demand.

Bills of Exchange: A bill of exchange is an unconditional written order by one party (the drawer) to another party (the drawee) to pay a specified amount of money to a third party (the payee) at a predetermined time or upon demand.

Cheques: A cheque is a written order by an account holder (the drawer) instructing a bank to pay a specific amount of money to a designated payee.

Key features and concepts related to negotiable instruments include:

Negotiability: Negotiable instruments are designed to be transferable from one party to another by mere delivery or endorsement. The holder of a negotiable instrument has the legal right to transfer the instrument to another party, who then becomes the new holder and gains the same rights as the previous holder.

Holder in Due Course: A holder in due course is a person who acquires a negotiable instrument in good faith, for value, and without notice of any defects or irregularities. A holder in due course enjoys certain legal protections and can enforce the instrument against prior parties.

Endorsement: Endorsement refers to the signing or stamping of the back of a negotiable instrument by the holder, thereby transferring ownership rights to another party. Endorsements can be blank (bearer), special (payable to a specific person), or restrictive (limits the further negotiation of the instrument).

Payment and Discharge: The payment of a negotiable instrument generally discharges the liability of the parties involved. Once a negotiable instrument is paid in full, the obligation to pay is extinguished.

Dishonor and Liability: If a negotiable instrument is not honored, it is considered dishonored. Parties involved may be held liable for the dishonor, subject to the provisions of the applicable laws.

Negotiable Instruments Act: Many countries have specific legislation governing negotiable instruments. For example, in India, the Negotiable Instruments Act, 1881, provides the legal framework for negotiable instruments, defining their characteristics, rights, liabilities, and procedures for enforcement.

It's important to note that the specific laws and regulations governing negotiable instruments can vary between jurisdictions. Therefore, it's advisable to consult the relevant laws in your country or seek legal advice to understand the specific requirements and implications of negotiable instruments in your jurisdiction.

13.4 TYPES

Bearer Bonds

They are bonds that corporations or governments issue that are not registered. The bondholder will get a coupon and principal installment, as the name suggests. The first bondholder's file is not kept on file by the issuer. An owner-in-law is the person who is actually in charge of the bond's bearer. Therefore, there is a high likelihood that Bearer bonds may be lost, stolen, or destroyed.

Cheques

The amount that one person pays to another is stated on a cheque. It contains the name of the holder and the account number from which the money will be deducted. It also includes the person who is making the payment. No one else can use the check to conduct fraud, even if it is unclaimed.

Traveler's Cheques

The traveler's cheque is another, less common kind of negotiable document. The individual making the payment on the date the document is issued is the signer, and they both need two signatures to be valid.

When it is time to release the payment, another signature is needed. When banks issue the documents in other nations using prepaid monies, they are helpful. Traveler's cheque are becoming harder to find, and a lot of international merchants don't take them.

Orders for Exchange

They are legally binding documents in transactions involving both commodities and services. These bills mandate that one person give another a specific sum of money. The bill-payer accepts the exchange bill, a legal agreement for payment.

Promisory Notes

The terms and circumstances of a loan arrangement between two parties are set forth in a promissory note, which is a legal document. It is a written promise made by one party to another party to pay a certain amount of money to them on demand or at a specific date. Commercial transactions and personal loans frequently involve promissory notes, which are used as proof of debt in court.

Characteristics of a Promissory Note

Individuals involved: The borrower and lender should both be named on the promissory note as parties to the loan transaction.

Loan amount: The amount of the loan should be stated in the promissory note.

Terms of repayment: The promissory note should specify the circumstances of loan repayment, including the interest rate, If a promissory note is given out, it specifies the amount owed, the interest rate, and the date on which the payment is due. They are written records that demonstrate a commitment to pay made between a payer and a recipient, similar to other negotiable instruments.

the timeline for repayment and any fines associated with late payments.

Date of Maturity: The maturity date, also known as the day on which the loan will be fully returned, should be specified in the promissory note.

Collateral: The promissory note should specify the collateral being used to secure the transaction if it is a secured loan.

Signatures: Both the borrower and the lender must sign the promissory note.

Legal terminology: The promissory note should be written in legal words that clearly identify the parties, the loan amount, and the terms of repayment.

Notarization: The promissory note may occasionally need to be notarized in order to be legally binding.

Using a promissory note has benefits.

Formalizes the loan agreement: A promissory note establishes a precise and formal understanding between the borrower and the lender, preventing any ambiguities or disagreements.

Legal evidence of the debt due by the borrower to the lender: A promissory note is used as legal evidence of the debt.

Flexibility: The repayment terms and interest rate of promissory notes can be altered to suit the unique requirements of the lender and borrower.

Potential for interest revenue: The promissory note specifies an interest rate that the lender may apply to the loan amount in order to generate interest income.

Simple to generate: Promissory notes can be used in a range of loan transactions and are simple to create.

A promissory note, which details the terms and circumstances of a loan agreement between two parties, is a legally enforceable instrument. It is a useful method for formalizing a loan agreement and giving the lender official documentation of the borrower's debt. Promissory notes are simple to make and can be tailored to the borrower's and lender's unique requirements.

The paper contains all necessary information, including the interest rate, the issue date, the principal sum, and the payee's signature. Promissory notes have the benefit of enabling businesses to get capital outside of conventional financial institutions.

13.5 SUMMARY

Negotiable instruments are important financial instruments that facilitate commercial transactions by providing a secure and convenient means of transferring monetary claims.

Negotiable instruments are governed by specific laws and regulations in most countries, such as the Uniform Commercial Code in the United States, the Bills of Exchange Act in the United Kingdom, and the Negotiable Instruments Act in India. These laws establish the legal framework for the creation, transfer, and enforcement of negotiable instruments.Written agreements known as Negotiable Instruments allow for the transfer of benefits from the original holder to a new holder. These instruments can be transferred, as was aldy explained. These instruments are nothing more than exchangeable, monetary-valued texts. The two primary attributes of Negotiable Instruments are hence their monetary value and transferability. Negotiable instruments are important financial instruments that facilitate commercial transactions by providing a secure and convenient means of transferring monetary claims. They are bonds that corporations or governments issue that are not registered. The amount that one person pays to another is stated on a check. The traveler's cheque is another, less common kind of negotiable document. The individual making the payment on the date the document is issued is the signer, and they both need two signatures to be valid. They are legally binding documents in transactions involving both commodities and services. These bills mandate that one person give another a specific sum of money. The bill-payer accepts the exchange bill, a legal agreement for payment. The terms and circumstances of a loan arrangement between two parties are set forth in a promissory note, which is a legal document. Characteristics of a Promissory Note: Individuals involved: The borrower and lender should both be named on the promissory note as parties to the loan transaction. Loan amount: The amount of the loan should be stated in the promissory note. Terms of repayment: The promissory note should specify the circumstances of loan repayment, including the interest rate, If a promissory note is given out, it specifies the amount owed, the interest rate, and the date on which the payment is due. Date of Maturity: The maturity date, also known as the day on which the loan will be fully returned, should be specified in the promissory note. Collateral: The promissory note should specify the collateral being used to secure the transaction if it is a secured loan. Signatures: Both the borrower and the lender must sign the promissory note. Legal terminology: The promissory note should be written in legal words that clearly identify the parties, the loan amount, and the terms of repayment. Notarization: The promissory note may occasionally need to be notarized in order to be legally binding. Using a promissory note has benefits: Formalizes the loan agreement: A promissory note establishes a precise and formal understanding between the borrower and the lender, preventing any ambiguities or disagreements. Flexibility: The repayment terms and interest rate of promissory notes can be altered to suit the unique requirements of the lender and borrower. Potential for interest revenue: The promissory note specifies an interest rate that the lender may apply to the loan amount in order to generate interest income. A promissory note, which details the terms and circumstances of a loan agreement between two parties, is a legally enforceable instrument.

13.6 KEYWORDS

Lender: A lender refers to an individual, organization, or financial institution that provides funds or assets to another party with the expectation that the borrowed amount will be repaid, usually with interest or other agreed-upon terms. Lenders can include banks, credit unions, mortgage companies, online lenders, and other entities that specialize in providing financial assistance. Lending can occur for various purposes, such as personal loans, business financing, mortgages, auto loans, student loans, and more. The lender takes on the risk of providing the funds and typically requires the borrower to sign a loan agreement outlining the terms and conditions of the loan.

Circumstances: The term "circumstances" refers to the conditions, factors, or situations that surround and influence a particular event, situation, or individual. It encompasses the various aspects and variables that shape or affect a given situation. Circumstances can include environmental conditions, social factors, personal attributes, or any other relevant factors that contribute to a specific context. Understanding the circumstances is important for gaining a comprehensive understanding of a situation and making informed decisions or judgments.

Potential: The phrase "potential meaning" typically refers to the possible interpretation or significance of something. It suggests that there is a range of possible meanings or implications that could be attributed to a particular concept, statement, action, or situation. Exploring the potential meaning of something involves examining different perspectives, contexts, and underlying messages to gain a deeper understanding of its possible connotations. This can be done through analysis, discussion, and reflection.

Ambiguities: Ambiguities refer to situations, statements, or expressions that have multiple possible meanings or interpretations. It is a condition where something is unclear, uncertain, or open to more than one interpretation. Ambiguities can arise in various forms, including language, context, actions, or intentions.

Notarization: Notarization refers to the process of having a document or transaction authenticated and certified by a notary public. A notary public is a public officer who is authorized to perform certain legal formalities, such as witnessing signatures, administering oaths, and verifying the authenticity of documents.

13.7 LEARNING ACTIVITY

- Define what is negotiable instrument?

____

____

- State the principles of types of negotiable instrument?

____

____

13.8 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions:

- Define promissory note?
- Explain what is bills of exchange?
- Describe briefly cheque?
- What do you understand by Bearer Bond?
- What is a traveler cheque?

Long Questions:

- What is a negotiable instrument?
- Describe the characteristics of negotiable instrument?
- What are the components of negotiable instrument?

B. Multiple Choice Questions

1. Written agreements known as __________________ allow for the transfer of benefits from the original holder to a new holder.

   a. Commercial instrument
   b. Negotiable instrument
   c. Consumer instrument

d. Stable instrument

2. The bill-payer _________________, a legal agreement for payment
   a. Accept the exchange bill
   b. Reject the exchange bill
   c. Withdraw the exchange bill
   d. Follows the exchange bill

3. A _________ is a written order by an account holder (the drawer) instructing a bank to pay a specific amount of money to a designated payee.
   a. Demand Drafts
   b. Bills of exchange
   c. Promissory note
   d. Cheque
4. The traveler's cheque is another, _______ common kind of negotiable document.
   a. Less
   b. More
   c. Consume
   d. Major

5. Legal evidence of the debt due by the borrower to the _________.

a. borrower

b. lender

c. seller

d. buyer

Answers:

1-a, 2-a, 3-d, 4-a, 5-b.

13.9 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.

UNIT – 14: NEGOTIABLE INSTRUMENT ACT 1881

STRUCTURE

14.0 LEARNING OBJECTIVES

After studying this unit, you will be able to:

- Describe nature of human resource management
- Identify scope of human resource
- State the need and importance of HRM
- List the functions of HRM

14.1 INTRODUCTION

Negotiable instruments play a crucial role in modern business transactions and financial systems. Here are some of the key reasons why negotiable instruments are important:

Facilitate Trade and Commerce: Negotiable instruments, such as checks, promissory notes, and bills of exchange, provide a convenient and efficient method for transferring ownership of money or goods. They enable businesses and individuals to engage in commercial transactions and conduct trade with greater ease and flexibility.

Payment Convenience: Negotiable instruments offer a portable and widely accepted means of payment. They allow parties to settle debts and obligations without the need for physical exchange of cash, reducing the risks and inconveniences associated with carrying large amounts of money.

Credit and Financing: Negotiable instruments often serve as instruments of credit, enabling businesses and individuals to obtain financing or extend credit to others. For example, a company can issue a promissory note to borrow funds from a bank or issue a trade acceptance to defer payment to a supplier.

Legal Protection: The use of negotiable instruments is supported by a well-established legal framework and specific laws governing their creation, transfer, and enforcement. This legal protection helps ensure the security and enforceability of transactions involving negotiable instruments, providing parties with recourse in case of disputes or non-payment.

Transferability and Endorsement: Negotiable instruments are designed to be easily transferable. They can be negotiated by endorsement and delivery, allowing parties to transfer their rights and obligations to others. This transferability promotes liquidity in financial markets and facilitates the flow of goods and services.

Proof of Debt and Payment: Negotiable instruments provide a documented record of financial obligations and payments. They serve as evidence of a debt or claim, making it easier to establish and enforce rights in case of disputes or legal proceedings.

Time Value of Money: Negotiable instruments often include terms such as interest rates and maturity dates, allowing parties to account for the time value of money. This enables businesses and individuals to factor in interest or discounts when issuing or accepting negotiable instruments, aligning payments with the timing of transactions.

Overall, negotiable instruments offer a range of benefits, including increased efficiency, flexibility, and security in commercial transactions. They promote economic activity, facilitate credit and financing, and provide a legal framework for the exchange of value.

14.2 PROMISORY NOTE

A promissory note is a legally binding document that contains a written promise from one party (the "promisor" or "maker") to pay a specific sum of money to another party (the "promisee" or "payee") at a specified time or upon demand. It serves as evidence of a debt and outlines the terms and conditions of the loan or financial transaction. Here are the key details typically included in a promissory note:

Parties Involved: The promissory note identifies the parties involved, including their legal names, addresses, and any additional relevant information that helps identify them accurately.

Date: The note includes the date when the promissory note is created. This is important for record-keeping and establishing the timeline of the agreement.

Principal Amount: The principal amount is the specific sum of money that the promisor promises to repay to the promisee. It should be clearly stated in both numerical and written forms.

Interest Rate (if applicable): If interest is charged on the loan, the promissory note specifies the interest rate, whether it's a fixed or variable rate, and how it is calculated. The interest rate determines the additional amount the promisor must pay on top of the principal when repaying the loan.

Repayment Terms: The promissory note outlines the terms and schedule for repayment. This includes the frequency of payments (e.g., monthly, quarterly, annually), the due date(s) of each payment, and the total number of payments required.

Payment Method: The note may specify the accepted methods of payment, such as check, electronic transfer, or cash, along with any instructions or requirements for making payments.

Late Payment and Default Terms: The promissory note defines the consequences if the promisor fails to make payments on time or defaults on the loan. This may include penalties, late fees, acceleration clauses (allowing the entire balance to become due immediately), or other remedies available to the promisee.

Collateral (if applicable): If the promissory note is secured by collateral, such as real estate or personal property, details about the collateral and the rights and obligations of both parties related to it should be included.

Governing Law and Jurisdiction: The note specifies the governing law that applies to the agreement and the jurisdiction where any legal disputes or claims arising from the promissory note will be addressed.

Signatures: The promissory note must be signed by the promisor and, in some cases, witnessed or notarized to make it legally enforceable. This ensures the parties' acknowledgment and consent to the terms outlined in the document.

Promissory notes are commonly used in various financial transactions, including personal loans, business loans, mortgage loans, and other credit arrangements. It's important to consult with legal professionals or financial advisors to ensure the promissory note meets the specific requirements and regulations of your jurisdiction and to address any specific considerations related to your situation.

14.3 BILLS OF EXCHANGE

A bill of exchange is a negotiable instrument that involves an unconditional written order from one party, known as the "drawer," to another party, known as the "drawee," to pay a specified sum of money to a third party, known as the "payee," either immediately or at a future date. It is a commonly used instrument in domestic and international trade transactions.

Here are the key components and details of a bill of exchange:

Parties Involved: The bill of exchange involves three parties: the drawer, the drawee, and the payee. The drawer is the party who initiates the bill by issuing the order to the drawee. The drawee is the party on whom the order is drawn and who is obligated to make the payment. The payee is the party to whom the payment is to be made.

Unconditional Order: The bill of exchange contains an unconditional written order from the drawer to the drawee, directing the drawee to pay a specific sum of money to the payee. The order must be clear and unambiguous, indicating the exact amount to be paid.

Date and Place of Issuance: The bill of exchange specifies the date and place of issuance. This helps in determining the maturity date and the jurisdiction applicable to the bill.

Maturity Date: The bill of exchange states the maturity date, which is the date when the payment becomes due and payable by the drawee to the payee. It can be a specific date or a defined period from the date of the bill. The maturity date is crucial in determining when the payment should be made.

Payment Terms: The bill of exchange may include terms regarding the method and place of payment, such as payment in cash, by check, or through electronic means. It may also specify the currency in which the payment should be made.

Acceptance: If the drawee agrees to the order and commits to making the payment, they may "accept" the bill of exchange by signing it. Acceptance signifies the drawee's obligation to pay the specified amount on the maturity date. However, a bill of exchange can also be "non-accepted," in which case it functions as an order for payment without the drawee's formal acceptance.

Endorsement: A bill of exchange can be transferred to another party through endorsement. Endorsement involves the signature of the payee on the back of the bill, thus transferring their right to receive payment to another party. Endorsement allows for the negotiation and transfer of the bill to subsequent holders.

Negotiability: A bill of exchange is a negotiable instrument, meaning it can be freely transferred from one party to another, who becomes the new holder and has the right to enforce payment. The negotiability of bills of exchange promotes liquidity and facilitates trade by allowing for their easy circulation in the market.

Legal Protection: Bills of exchange are subject to legal frameworks and regulations, such as the Uniform Commercial Code (UCC) in the United States or the Bills of Exchange Act in many other countries. These laws provide rules and guidelines for the creation, endorsement, negotiation, acceptance, and enforcement of bills of exchange, ensuring their legal validity and enforceability.

Bills of exchange serve as important instruments in international trade, allowing parties to establish payment obligations, provide security for transactions, and facilitate the smooth flow of goods and services. They provide flexibility and convenience in commercial transactions by offering a widely accepted and regulated means of payment.

14.4 CHEQUE

A cheque is a written instrument that directs a bank or financial institution to pay a specific amount of money from the drawer's (payer's) account to the payee (recipient) identified on the cheque. It is a commonly used form of payment in business and personal transactions. Here are the key details and elements typically included in a cheque:

Drawer: The drawer is the person or entity who writes and signs the cheque, issuing the instruction to the bank to make the payment. The drawer's name, address, and account number are usually printed or pre-printed on the cheque.

Payee: The payee is the individual or entity designated to receive the payment. The payee's name is typically written on the cheque, indicating who is entitled to the funds.

Date: The cheque must include the date when it is issued. This is important for record-keeping purposes and to establish the timeline of the transaction.

Amount in Figures and Words: The cheque specifies the amount of money to be paid, both in numerical digits and written words. This dual representation helps prevent fraud or alteration of the cheque amount.

Currency: The currency in which the payment is to be made should be clearly stated, such as US dollars, euros, or any other applicable currency.

Signature: The cheque must be signed by the drawer. The signature authorizes the bank to pay the specified amount to the payee.

Payee's Endorsement: If the payee wishes to transfer the cheque to someone else, they may endorse the back of the cheque by signing it. This allows the payee to pass on the right to collect the funds to another party.

Bank Information: The cheque usually includes the name of the bank and branch where the drawer holds the account. Sometimes, the bank's address, account number, and routing number are also pre-printed on the cheque.

MICR Encoding: At the bottom of the cheque, you'll find a series of numbers and symbols printed using magnetic ink character recognition (MICR) technology. These encoded characters contain information such as the bank's routing number, account number, and cheque number, which facilitate automated processing and verification.

Memo/Reference Line: The cheque may provide a space for the drawer to include a memo or note that helps identify the purpose of the payment or any other relevant details.

Cheques serve as a legal document and provide a record of the transaction. When the payee deposits or cashes the cheque, the amount is debited from the drawer's account and credited to the payee's account. It's important to note that cheque usage and acceptance may vary across different countries and regions, and specific regulations and practices may apply.

14.5 HOLDER IN DUE COURSE

A "holder in due course" is a legal term that refers to a person who acquires a negotiable instrument (such as a promissory note or a bill of exchange) in good faith, for value, and without notice of any defects or claims against the instrument. The concept of a holder in due course provides certain legal protections and rights to the holder.

To qualify as a holder in due course, the following conditions must generally be met:

Good Faith: The holder must acquire the negotiable instrument without knowledge of any facts that would indicate its invalidity or the existence of any defenses or claims against it. The holder should not have any reason to believe that the instrument is irregular, fraudulent, or unenforceable.

Value: The holder must give value in exchange for the negotiable instrument. This typically means that the holder provides consideration, such as money, goods, or services, in return for the instrument. A holder who receives the instrument as a gift or without providing any value would not qualify as a holder in due course.

Notice: The holder must acquire the instrument without notice of any defects or claims. This means that the holder should not have knowledge of any problems or legal disputes related to the instrument, such as prior non-payment, forgery, alteration, or illegality.

When someone meets the requirements to be a holder in due course, they gain certain advantages and protections under the law, including:

Rights Free from Defenses: A holder in due course takes the instrument free from most defenses and claims that the original parties may have against each other. This means that the holder's rights to payment are generally unaffected by disputes or conflicts between the previous parties.

Enforceability: A holder in due course has the right to enforce the instrument against the party who originally issued it. The holder can demand payment from the maker or drawee of the instrument, subject to certain legal requirements.

Priority: A holder in due course typically has priority over competing claims or interests in the instrument. If multiple parties have conflicting rights or claims related to the instrument, the holder in due course generally has a superior position.

Protection from Personal Defenses: Personal defenses, such as lack of consideration or failure of consideration, generally do not affect the holder in due course's rights to payment. These defenses may only be asserted against the original parties to the instrument and not against the holder in due course.

It's important to note that the specific rules and requirements for being a holder in due course may vary depending on the jurisdiction and the applicable laws governing negotiable instruments, such as the Uniform Commercial Code (UCC) in the United States.

14.6 PRIVELEGES OF HOLDER IN DUE COURSE

A holder in due course (HDC) is a legal term that refers to a person who acquires a negotiable instrument (such as a promissory note or cheque) in good faith, for value, and without notice of any defects or irregularities. When someone qualifies as an HDC, they are granted certain privileges and protections under the law. Here are the key privileges of a holder in due course:

Rights free from Defenses: An HDC takes the negotiable instrument free from most defenses and claims that could have been raised against the original parties involved in the transaction. This means that even if there are disputes or problems between previous parties, the HDC's rights to the instrument are not affected.

Holder's Rights Against Prior Parties: An HDC has the right to enforce payment of the instrument against all prior parties involved in the transaction, including the maker or drawer, endorsers, and prior holders. The HDC can pursue legal remedies and seek the full amount due on the instrument.

Defenses Limited to Fraud, Forgery, or Voidability: The privileges of an HDC are subject to certain limited defenses that can be raised by prior parties. These defenses generally include fraud in the inducement, forgery, alteration, lack of legal capacity, duress, or infancy. Other defenses, such as breach of contract or disputes between parties, may not be valid against an HDC.

Value and Good Faith Requirement: To qualify as an HDC, the person acquiring the instrument must have given value (such as money, goods, or services) in exchange for the instrument and must have done so in good faith, without knowledge of any defects or irregularities. The concept of good faith implies honesty and lack of knowledge of any circumstances that would cast doubt on the instrument's validity.

Priority over Subsequent Holders: If there are multiple holders of the same instrument, the HDC generally has priority over subsequent holders. This means that if the instrument is dishonored or the maker defaults, the HDC has a superior claim to payment compared to later holders.

It's important to note that the privileges of an HDC are not absolute and can be subject to specific legal requirements and limitations under different jurisdictions. The specific laws and regulations regarding negotiable instruments and holders in due course can vary between countries. It's advisable to consult legal professionals or reference the applicable laws in your jurisdiction for more detailed and accurate information.

14.7 TYPES OF ENDORSEMENT

There are several types of endorsements that can be used to transfer the ownership or rights of a negotiable instrument, such as a check or a promissory note. Here are the most common types of endorsements:

Blank Endorsement: A blank endorsement involves the signature of the endorser on the back of the instrument without specifying the name of the new endorsee. This type of endorsement effectively turns the instrument into a bearer instrument, meaning it can be negotiated by transfer of possession alone. Anyone in possession of the instrument can become the holder and enforce its payment.

Special or Full Endorsement: A special endorsement involves the signature of the endorser along with the name of the specific person or entity to whom the instrument is being transferred. The instrument can only be negotiated to the specified endorsee, and subsequent transfers would require additional endorsements.

Restrictive Endorsement: A restrictive endorsement limits the further negotiation or transfer of the instrument. It includes specific instructions or conditions that the endorsee must follow. Common examples of restrictive endorsements include "For Deposit Only" or "Pay to [Name of Bank] for Credit to Account [Account Number]." These endorsements restrict the instrument to be deposited into a specified bank account and prevent further negotiation.

Conditional Endorsement: A conditional endorsement places conditions or qualifications on the payment of the instrument. For example, an endorser may endorse the instrument with the condition that payment will only occur upon the occurrence of a specific event or the fulfillment of a particular requirement.

Qualified Endorsement: A qualified endorsement limits the liability of the endorser. It includes language that disclaims or restricts the endorser's responsibility for the payment of the instrument. Common qualifiers include "Without Recourse" or "Without Liability."

Facultative Endorsement: A facultative endorsement allows the endorser to choose whether to be liable or not. The endorser can either be held liable for the payment of the instrument or disclaim liability, depending on their choice.

It's important to note that the specific requirements and legal implications of endorsements may vary depending on the jurisdiction and the applicable laws governing negotiable instruments. Therefore, it is advisable to consult the relevant laws and regulations or seek legal advice when dealing with endorsements.

14.8 CROSSING OF CHEQUE

Crossing of a cheque refers to the process of drawing two parallel lines across the face of a cheque. This crossing creates a specific instruction to the bank regarding the way the cheque should be handled and paid. The crossing is typically done with the intention of enhancing the security and control over the payment of the cheque. Here are the main types of crossings:

General Crossing: When two parallel lines are drawn across the face of the cheque without any additional instructions or words, it is known as a general crossing. The general crossing indicates that the cheque should be deposited into the payee's bank account and cannot be cashed over the counter. It helps prevent the cheque from being fraudulently cashed by unauthorized individuals.

Special Crossing: In addition to the two parallel lines, the name of a specific bank is written between the lines in a special crossing. This type of crossing instructs the paying bank to only make the payment through the mentioned bank. The cheque can only be credited to the account of the payee in the specified bank.

Both general and special crossings can be made on a cheque to provide an extra layer of security and ensure that the payment is made through the banking system.

The benefits of crossing a cheque include:

Reduced Risk of Loss: Crossing a cheque reduces the risk of loss or theft since it cannot be easily cashed over the counter. The cheque can only be deposited into the payee's bank account, making it traceable and more secure.

Payment Control: Crossed cheques provide better control over the payment process. By specifying a particular bank through special crossing, the drawer can ensure that the payment is made only through that bank and no other.

Accountability: Crossings create a clear paper trail as the cheque passes through the banking system. This helps in tracking and verifying the movement of funds, ensuring accountability and transparency.

It's important to note that crossing a cheque is optional, and it is up to the drawer to decide whether to cross a cheque or not. Additionally, the specific regulations and practices related to crossing cheques may vary across different jurisdictions.

14.9 BOUNCING OF CHEQUE

The term "bouncing of a cheque" refers to a situation where a cheque presented for payment is dishonored or not honored by the bank on which it is drawn. It means that the bank refuses to make the payment mentioned on the cheque due to various reasons. Here are some key points related to a bounced cheque:

Insufficient Funds: The most common reason for a cheque to bounce is insufficient funds in the drawer's bank account. If the account balance is not enough to cover the amount mentioned on the cheque, the bank will return it unpaid, resulting in a bounced cheque.

Account Closed or Frozen: If the drawer's bank account is closed, dormant, or frozen, the cheque will bounce because the bank cannot process the payment without an active and sufficient account.

Irregular Signature or Discrepancy: If there is a discrepancy or irregularity in the signature on the cheque compared to the specimen signature on record, the bank may consider it suspicious and reject the payment, resulting in a bounced cheque.

Stale or Post-Dated Cheque: A cheque is considered stale if it is presented for payment after a certain period (typically 3-6 months) from the date mentioned on the cheque. Similarly, if a cheque bears a future date and is presented before that date, it is considered post-dated. Banks usually do not honor stale or post-dated cheques, resulting in a bounce.

Payment Stop Order: The drawer may issue a stop payment order to the bank, instructing them not to honor the cheque. This could be due to various reasons, such as a dispute with the payee, loss of the cheque, or a change in circumstances. A stop payment order leads to the cheque bouncing.

Consequences of a bounced cheque:

Non-Payment and Legal Consequences: When a cheque bounces, the payee does not receive the payment as expected. The payee can take legal action to recover the amount owed, which may involve filing a complaint or initiating legal proceedings.

Penalty Charges: Banks typically impose penalty charges on the drawer for bouncing a cheque. These charges can vary depending on the bank's policies and the terms of the account.

Damage to Reputation: Bouncing a cheque can harm the drawer's reputation, as it indicates financial instability or unreliability in honoring payment obligations.

Legal Liability: Bouncing a cheque may result in legal liability for the drawer. In some jurisdictions, the act of issuing a bounced cheque can be a criminal offense, subjecting the drawer to fines or imprisonment.

It's important to note that laws and regulations related to bounced cheques can vary across jurisdictions. If you are facing a situation involving a bounced cheque, it is advisable to consult with legal professionals and seek guidance based on the specific laws and regulations of your country or region.

14.10 SUMMARY

Negotiable instruments play a crucial role in modern business transactions and financial systems. Facilitate Trade and Commerce: Negotiable instruments, such as checks, promissory notes, and bills of exchange, provide a convenient and efficient method for transferring ownership of money or goods. Overall, negotiable instruments offer a range of benefits, including increased efficiency, flexibility, and security in commercial transactions. They promote economic activity, facilitate credit and financing, and provide a legal framework for the exchange of value. A promissory note is a legally binding document that contains a written promise from one party (the "promisor" or "maker") to pay a specific sum of money to another party (the "promisee" or "payee") at a specified time or upon demand. Promissory notes are commonly used in various financial transactions, including personal loans, business loans, mortgage loans, and other credit arrangements. A bill of exchange is a negotiable instrument that involves an unconditional written order from one party, known as the "drawer," to another party, known as the "drawee," to pay a specified sum of money to a third party, known as the "payee," either immediately or at a future date. It is a commonly used instrument in domestic and international trade transactions. Bills of exchange serve as important instruments in international trade, allowing parties to establish payment obligations, provide security for transactions, and facilitate the smooth flow of goods and services. They provide flexibility and convenience in commercial transactions by offering a widely accepted and regulated means of payment. A cheque is a written instrument that directs a bank or financial institution to pay a specific amount of money from the drawer's (payer's) account to the payee (recipient) identified on the cheque. A "holder in due course" is a legal term that refers to a person who acquires a negotiable instrument (such as a promissory note or a bill of exchange) in good faith, for value, and without notice of any defects or claims against the instrument. The concept of a holder in due course provides certain legal protections and rights to the holder. It's important to note that the specific rules and requirements for being a holder in due course may vary depending on the jurisdiction and the applicable laws governing negotiable instruments, such as the Uniform Commercial Code (UCC) in the United States. A holder in due course (HDC) is a legal term that refers to a person who acquires a negotiable instrument (such as a promissory note or cheque) in good faith, for value, and without notice of any defects or irregularities. When someone qualifies as an HDC, they are granted certain privileges and protections under the law. There are several types of endorsements that can be used to transfer the ownership or rights of a negotiable instrument, such as a check or a promissory note. Crossing of a cheque refers to the process of drawing two parallel lines across the face of a cheque. This crossing creates a specific instruction to the bank regarding the way the cheque should be handled and paid. The crossing is typically done with the intention of enhancing the security and control over the payment of the cheque. The term "bouncing of a cheque" refers to a situation where a cheque presented for payment is dishonored or not honored by the bank on which it is drawn. It means that the bank refuses to make the payment mentioned on the cheque due to various reasons. It's important to note that laws and regulations related to bounced cheques can vary across jurisdictions.

14.11KEYWORDS

Dishonored: The term "dishonored" can describe a situation where someone has acted in a way that violates moral or ethical principles. It signifies a breach of trust, integrity, or loyalty.

Endorsement: The term "endorsement" refers to the act of expressing approval, support, or recommendation for a person, product, service, idea, or organization. It typically involves a public declaration or statement by an individual or entity that confirms their positive opinion or association with the subject being endorsed. Endorsements can take various forms, including written or verbal statements, testimonials, advertisements, sponsorships, or affiliations. They are often used in marketing and advertising to leverage the credibility and influence of well-known individuals or reputable organizations to promote a particular product or cause. Endorsements can significantly impact public perception and consumer behavior, as they signal trust, reliability, and expertise in the endorsed entity or its offerings.

Irregularities: The term "irregularities" refers to deviations, anomalies, or abnormalities from what is considered normal, expected, or standard. It implies a departure from the usual or typical pattern, behavior, or condition. Irregularities can occur in various contexts, such as financial transactions, physical phenomena, biological processes, administrative procedures, or mathematical sequences.

Intention: The word "intention" refers to a person's purpose, goal, or objective behind their actions or thoughts. It relates to the underlying motivation or aim that drives someone to do or think something. Intentions can be conscious or unconscious and may vary in their clarity or level of awareness. They can range from simple everyday actions, such as intending to make a phone call, to more complex long-term goals, such as intending to pursue a specific career or improve personal relationships.

Recipient: The term "recipient" typically refers to a person or entity that receives something, such as a gift, a message, or a benefit. It is commonly used to describe the person or organization on the receiving end of an action or transaction.

14.12 LEARNING ACTIVITY

- Define negotiable instrument

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- State the principles of bills of exchange

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14.13 UNIT END QUESTIONS

A. Descriptive Questions

Short Questions:

- Define bouncing of cheque?
- Explain what is Mass Tourism?
- Describe briefly about types of endorsement?
- What do you understand by privileges of holder in due course?
- What is a crossing of cheque?

Long Questions:

15.0 What is a negotiable instrument? Explain the features of negotiable instrument?

16.0 Describe the promissory note and its features.

17.0 What is bills of exchange and its features?

18.0 Describe about the cheque and its types.

19.0 Explain what is holder in due course

B. Multiple Choice Questions

1. A ___________ is a legal term that refers to a person who acquires a negotiable instrument.

a. HDC

b. HDS

c. HDFC

d. HDS

2. ______________are subject to legal frameworks and regulations.

a. Bills of exchange

b. Promissory note

c. cheque

d. Demand Drafts

3. A ______________________can be transferred to another party through endorsement.

a. promissory note

b. cheque

c. Demand Drafts

d. bill of exchange

4. The bill of exchange involves __________parties.

a. three

b. two

c. five

d. four

5. The ___________________defines the consequences if the promisor fails to make payments on time or defaults on the loan.

a. bills of exchange

b. promissory note

c. Cheque

d. Demand drafts

Answers

1-a, 2-a, 3-d, 4-a, 5-b

14.14 REFERENCES

Readings:

1. M.C. Kuchhal, and Vivek Kuchhal, Business Law, Vikas Publishing House, New Delhi.

2. Ravinder Kumar, Legal Aspects of Business, Cengage Learning

3. SN Maheshwari and SK Maheshwari, Business Law, National Publishing House, New Delhi.

4. Aggarwal S K, Business Law, Galgotia Publishers Company, New Delhi.

AkhileshwarPathak, Legal Aspects of Business, McGraw Hill Education.