

LECTURE NOTES ON
BUSINESS LAW AND ETHICS

MBA I Semester
(IARE-R18)

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UNIT – I
LAW OF CONTRACT – 1872

Definition of Business

The term business is understood and explained in different ways by different people. For some, business is an activity, for some it is a method of transacting, for some others, it is a method of money making and some people argue that business is an organized activity to achieve certain pre- determined goals or objectives. Dictionary meaning of business is: the act of buying and selling of goods and services, commerce and trade. Based on all these meanings of business, we may define business as: gainful activity through which various elements of society conduct exchanges of the desirable things.

Nature of Business

Business may be understood as the organized efforts of enterprise to supply consumers with goods and services for a profit. Businesses vary in size, as measured by the number of employees or by sales volume. But, all businesses share the same purpose to earn profits.

The purpose of business goes beyond earning profit. There are:

- ✓ It is an important institution in society.
- ✓ Be it for the supply of goods and services
- ✓ Creation of job opportunities
- ✓ Offer of better quality of life
- ✓ Contributing to the economic growth of the country.

Hence, it is understood that the role of business is crucial. Society cannot do without business. It needs no emphasis that business needs society as much.

Business Goals:

Profit - Making profit is the primary goal of any business enterprise.

Growth - Business should grow in all directions over a period of time.

Power - Business houses have vast resources at its command. These resources confer enormous economic and political power

Employee satisfaction and development - Business is people. Caring for employee satisfaction and providing for their development has been one of the objectives of enlightened business enterprises.

Quality products and services - Persistent quality of products earns brand loyalty, a vital ingredient of success.

Market leadership - To earn a niche for oneself in the market, innovation is the key factor.

Challenging - Business offers vast scope and poses formidable challenges.

Joy of creation - It is through business strategies new ideas and innovations are given a shape and are converted into useful products and services.

Service to society - Business is a part of society and has several obligations towards it.

Objectives:

The primary aim of this unit is to enable you to:

- ✓ Understand the role of Government in regulating the economic and business activities;
- ✓ Have adequate insights into the concept of law of contract and its various essential elements;
- ✓ Explain the performance, discharge and remedies of breach of contract;
- ✓ Know the principles of Partnership and Sale of Goods and their related provisions;
- ✓ Describe the legal provisions relating to Law of Insurance and Negotiable Instruments

Most of the business transactions are based on promises to be performed at a later date. These promises whether made by businessmen or by others create certain rights and obligations and if these rights and obligations are not enforceable, the business world would be paralyzed. It is with the enforcement of these promises that the law of contract is concerned. The contract Act does not lay down the list of obligations that would be enforceable by law but lays down the rules subject to which rights or duties created by the parties would be enforced. The parties to the contract can make whatever rules they want, if these rules are not inconsistent with the provisions of the Act, they would be enforced by courts of law.

Meaning: Sec.2 (h) “An agreement enforceable by law is a contract.” Therefore, a contract has two important elements, one is the agreement, and the other is the obligation which is enforceable by law.

Agreement: Agreement is the outcome of the consensus between the parties who enter into a contract, i.e., the promise made between them, represents concurrence of their minds. (Sec.13). these would not be an agreement if the parties do agree but not on the same thing in the same sense, i.e., consensus is not sufficient. There has to be **consensus ad idem**. Sec.2 (e) defines an agreement as “Every promise or every set of promises forming consideration for each other”. A proposal when accepted becomes a promise.

Example: A received Rs.10, 000 from B and promises to supply him 10 bags of rice after 10 days. It is a promise. It shall be a set of promises if A promises to supply 10 bags of rice after 10 days and B promises to pay him Rs.10, 000 after the rice is supplied. Thus,

Agreement = Offer + Acceptance.

Offer (Proposal): Offer [(proposal) (Sec.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 the other to such act or abstinence, he is said to make a proposal”.

Acceptance: Acceptance has been defined u/s (Sec.2 (b)) as “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”.

Example: A lost his Cell Phone and announced that anybody who brought his cell phone back home would receive Rs.500 as reward. B heard the announcement and brought the Cell Phone back home. He is said to have accepted the proposal by doing the act required by A and hence he can recover the reward.

Promissory: A person who makes the promise is called the „**Promissory**“ or „**Offer or**“. And the person to whom the proposal is made is known as „**Promise**“ or „**Offeree**.“ In case an agreement is a set of promises, then a person becomes a **promissory** and **promise**. Thus if there is an offer, acceptance and consensus ad idem between the parties, there is an agreement. However, this agreement does not become a contract unless there is a corresponding obligation, i.e., enforceability at law.

Obligation (Sec.10): It is the legal duty of a person to carry out what he has promised to do or not to do. All agreements are contracts if they are made by the free consent of the parties competent to enter into contract, for a lawful consideration and with a lawful object and not hereby expressly declared to be void. Therefore, a person becomes legally bound to do what he has promised to do only if the following conditions are fulfilled.

Essential elements of Contract:

Capacity of the Parties: Only those persons who are competent to enter into a contract can create valid obligations. A minor, a lunatic, a drunkard etc., suffer from flaw in capacity to Contract and therefore the contract made with them can't be enforced against them.

Free Consent: Absence of consent does not create a legal obligation. For an agreement to become a contract the parties to an agreement should give their consent

to the agreement out of their own free will. It should not be induced by coercion, undue influence, fraud, misrepresentation, etc.

Lawful Consideration and Object: Consideration means something in return, i.e., „quid pro quo.“ E.g. A promises to give his bike to B for no money, here, there is no consideration, hence no obligation. Without consideration a promise can't be enforceable by law. However, consideration need not be in money or in kind. It may be of an act, abstinence, a promise to do, or not to do something. But consideration should be lawful.

Example: A promises to pay a sum of money to B if B smuggles the object proposed by A. In this case, there is no lawful object.

1. **Intention to create Legal Relationship:** Social obligation can't bring legal relationship. For example: Father promised his son to pay Rs.100 per day for pocket expenses, however, later on, did not pay the said amount. Therefore, if the parties do not intend to be bound by law at the time they make promises, nothing can bind them to their promises, later on.
2. **Possibility of Performance:** Example: A promised B that he would make The Sun rise in the West if B pays him Rs.1 lakh. And B agreed to it, this agreement does not create any legal obligation as it would not be enforceable by law.
3. **Meaning should be certain:** Example: A agrees to sell B's horse. There is nothing whatever to show which horse is intended. The agreement is void for uncertainty.
4. **Legal Formalities (If required):** An agreement to make a gift for natural love and affection should not only be in writing but registered also (Sec. 25). In the absence of any such specific requirement an oral agreement is as enforceable as a written agreement.
5. **Agreements not declared Void:** Indian Contract Act has specifically declared some agreements to be not enforceable at law e.g. Agreements in restraint of trade, Agreements in restraint of marriage, wagering agreements etc. Thus the law of Contract is not the whole law of Agreements. It is the law of those agreements which create obligations.

Kinds of Contracts

1. **Valid Contract:** It is an agreement which fulfils all the essentials of enforceability and can be enforced by either of the parties at the courts of law.

2. **Voidable contract:** Sec 2(I) lays down that “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.” This arises where the consent of one of the parties to the contract is not free. Ex., A, at the point of pistol makes B agree to sell his bicycle for Rs.500. Here B’s consent is not free.

Circumstances in which a contract is voidable are:

(A) At the conception

1. Consent caused by fraud (Sec.14, 17 and 19)
2. Consent caused by coercion (Sec. 14, 15 and 19)
3. Consent caused by misrepresentation (Sec. 14, 18 and 19)
4. Consent caused by undue influence (Sec. 14, 16 and 19A)
5. When one party induces another to enter into an agreement the object of which is unlawful though it is not known to the other party.

(B) By Subsequent Default

1. Where offer of performance is not accepted (Sec. 38)
2. When one party prevents performance of reciprocal promise (Sec. 53)
3. When a party fails to perform at the time fixed, if time is the essence of the contract (Sec.55) Consequences of Rescission of Voidable Contract when a voidable contract is rescinded?
 - A. As regards the party at whose option the contract is voidable, if he has received any benefit from another party to such contract, he must restore such benefit so far as may be, to the person from whom it has been received. The benefit must have been received under the contract and not otherwise. Security for performance is not the benefit received under the contract.
 - B. As regards the other party, he need not perform his promise.
3. **Void Contract:** [Sec 2(j)] “A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable” E.g. A agrees to sell his car to B for Rs.10, 000. All essentials of a contract are fulfilled. If A refuses to sell his car, B can go to the court

and the court would enforce A's promise. But if, before the delivery the car is destroyed by Tsunami, the court cannot enforce anything and hence this contract becomes unenforceable i.e. void. Thus, void contract is one which was a valid contract when it was made but becomes void later on.

Those Agreements which are *void abs initio* (from the very beginning) are called Void Agreements and those which become void later on are called Void Contracts.

Following circumstances will transform a valid contract into a void contract.

- A. **Contingent contract:** A contingent contract to do or not to do something on the happening of an uncertain future event becomes void, when the event becomes impossible (Sec 32).
- B. **Repudiation of a voidable contract:** When a voidable contract is rescinded by the party at whose option it is voidable, the contract becomes void.
- C. **Subsequent impossibility (Sec. 56):** A contract which becomes impossible to perform, after it is made, becomes void.
- D. **Subsequent illegality (Sec. 56):** A contract becomes void if it becomes illegal after it is made.

Consequences of a Void Contract: Sec. 65 lays down that when a contract becomes void, the party who has received any advantage under such agreement should restore it or make compensation for it to the party from whom he received it.

4. **Void Agreement:** An agreement not enforceable by law is called a void agreement. If any of the essentials of obligations (enforceability), other than free consent, is missing the agreement cannot be enforced at Courts of Law.

Invalidating Causes

In the following circumstances an agreement is void abs initio.

- i. If a party to the contract is incompetent to contract (Sec.10, 11 & 12)
- ii. If the agreement is without consideration (Sec. 10, 25) barring certain exceptions.
- iii. If the consideration or object is unlawful (Sec. 23)
- iv. If the meaning of the contract is uncertain (Sec.29)
- v. If the agreement is to do an impossible act (Sec. 56)
- vi. If both the parties enter into an agreement under a mistake as to the essential matter of fact (Sec. 20). There is no consensus ad idem.
- vii. If the agreement is in restraint of trade (Sec. 27) barring certain exceptions.

5. **Illegal Agreement:** An illegal agreement is one which is forbidden by law i.e. it is entered into with the intention of violating the law. Example: A agrees to steal furniture for B for a consideration of Rs. 1, 00,000. It is illegal and therefore it is void. It also attracts the penal provisions of the law it is violating.

While all illegal agreements are void, all void agreements are not illegal. Parties to an illegal agreement cannot get any help or protection from law courts.

6. **Unlawful Agreements:** (Sec. 23). In simple words an agreement may be unlawful because it is:

- a. **Immoral** – i.e. contrary to sound and positive morality as recognized by law, e.g. cohabitation.
- b. **Opposed Public Policy** – i.e. contrary to the welfare of the State as tending to interfere with the civil or judicial administration, or with individual liberty of citizens, e.g. bribing a public servant.
- c. **Illegal** – i.e. contrary to positive law, being forbidden either by statutes law or common law; hence a line of demarcation needs to be drawn between illegal and unlawful agreements.

7. **Unenforceable Contract:** Contracts which have all the essentials of enforceability but cannot be enforced due to certain technicalities like insufficiency of stamp, etc. are termed as unenforceable contracts.

8. **Express Contract:** It is one where the intention of parties is stated in words either

written or spoken. Example: A goes to B's shop and asks him to supply 10 boxes @ Rs.20per box. B tells him that he is ready to supply the boxes at the mentioned rate. This is an Express Contract. The same intention of the parties may be expressed in writing signed by both the parties.

9. **Implied Contract:** The evidence of an implied contract is to be deduced from the acts or conduct of the parties. No exchange of words either written or spoken takes place, but the manifestation of their intentions is inferred from their respective acts or conduct.
10. **Quasi Contracts:** These are those obligations which are imposed by the Contract Act and do not arise from a consensus between the parties. Example: A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. B is bound to pay A for them; the obligation is imposed by law.
11. **An Executed Contract:** It is one where both the parties to a contract have discharged their respective responsibilities by performing them. All transactions of Cash sales are the examples of Executed Contracts.
12. **An Executor Contract:** It is one where one or both the parties are yet to perform their respective promises. It is partly Executed and partly Executory.
13. **Unilateral Contract:** It is one where at the time when the contract is made one party has already performed his obligation and the obligation on the part of the other party only, is outstanding. Example: A goes to a bus stand ticket counter and buys a ticket for journey. A has performed his duty under the contract i.e., to pay the scheduled fare. But the bus authority is yet to perform his promise i.e., of carrying him from one point to another. This is a Unilateral Contract.
14. **Bilateral Contract:** As against Unilateral Contract, a Bilateral Contract is one where at the time of entering into the contract both the parties to the contract are yet to perform their respective promises.

INDIAN CONTRACT ACT

Meaning: "A contract is an agreement made between two (or) more parties which the law will enforce."

Definition: According to section 2(h) of the Indian contract act, 1872. "An agreement enforceable by law is a contract.

According to **SALMOND**, a contract is “An agreement creating and defining obligations between the parties”

Essential elements of a valid contract:

According to section 10, “All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and not here by expressly declared to be void”

In order to become a contract an agreement must have the following essential elements, they are follows:-

Offer and acceptance:

To constitute a contract there must be an offer and an acceptance of that offer.

The offer and acceptance should relate to same thing in the same sense.

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

Intention to create legal relationship:

The parties must have intention to create legal relationship among them.

Generally, the agreements of social, domestic and political nature are not a contract.

If there is no such intention to create a legal relationship among the parties, there is no contract between them.

Example: BALFOUR (vs) BALFOUR (1919)

Facts: A husband promised to pay his wife a household allowance of L 30 (pounds) every month.

Later the parties separated and the husband failed to pay the amount. The wife sued for allowance.

Judgment: Agreements such as there were outside the realm of contract altogether. Because there is no intention to create legal relationship among the parties.

Free and Genuine consent:

The consent of the parties to the agreement must be free and genuine.

Free consent is said to be absent, if the agreement is induced by a) coercion, b) undue influence, c) fraud, d) Mis-representation, e) mistake.

Lawful Object:

The object of the agreement must be lawful. In other words, it means the object must not be Illegal, (b) immoral, (c) opposed to public policy.

If an agreement suffers from any legal flaw, it would not be enforceable by law.

Lawful Consideration:

An agreement to be enforceable by law must be supported by consideration.

Consideration means “an advantage or benefit” moving from one party to other. In other words “something in return”.

The agreement is enforceable only when both the parties give something and get something in return.

The consideration must be real and lawful.

Capacity of parties: (Competency)

The parties to a contract should be capable of entering into a valid contract.

Every person is competent to contract if

. He is the age of majority.

He is of sound mind and

. He is not dis-qualified from contracting by any law.

The flaw in capacity to contract may arise from minority, lunacy, idiocy, drunkenness, etc.,

Agreement not to be declared void:

The agreements must not have been expressly declared to be void u/s 24 to 30 of the act.

Example: Agreements in restraint of trade, marriages, legal proceedings, etc.,

Certainty:

The meaning of the agreement must be certain and not be vague (or) indefinite.

If it is vague (or) indefinite it is not possible to ascertain its meaning.

Example:

‘A’ agrees to sell to ‘B’ a hundred tones of oil. There is nothing whatever to show what kind of a oil intended. The agreement is void for uncertainty.

Possibility of performance:

The terms of an agreement should be capable of performance.

The agreement to do an act impossible in itself is void and cannot be enforceable.

Example:

‘A’ agrees with ‘B’, to put life into B’s dead wife, the agreement is void it is impossible of performance.

Necessary legal formalities:

According to Indian contract Act, oral (or) written are perfectly valid.

There is no provision for contracting being written, registered and stamped.

But if is required by law, that it should comply with legal formalities and then it should be complied with all legal (or) necessary formalities for its enforceability.

Offer (OR) proposal?

legal rules as to a valid offer also discuss the law relating to communication of offer and revocation of offer?

According to section 2(a) of Indian contract act, 1872, defines offer as “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 otherto, such act (or) abstinence, he his said to make a proposal”.

Legal rules (OR) Essential elements of a valid offer / proposal:-

Offer must be capable of creating legal relations: A social invitation, even if it is accepted does not create legal relationship because it is not so intended to create legal relationship. Therefore, an offer must be such as would result in a valid contract when it is accepted.

Offer must be certain, definite and not vague: If the terms of the offer are vague, indefinite, and uncertain, it does not amount to a lawful offer and its acceptance cannot create any contractual relationship.

Offer must be communicated: An offer is effective only when it is communicated to the person whom it is made unless an offer is communicated; there is no acceptance and no contract. An acceptance of an offer, in ignorance of the offer can never be treated as acceptance and does not create any right on the acceptor.

Example: LALMAN SHUKLA (VS) GAURI DATT. (1913)

Facts: 'S' sent his servant, 'L' to trace his missing nephew. He then announced that anybody would be entitled to a certain reward. 'L' traced the boy in ignorance of his announcement. Subsequently, when he came to know of his reward, he claimed it.

Judgment: He was not entitled to the reward.

Offer must be distinguished from an invitation to offer: A proposer/offer must be distinguished from an invitation to offer. In the case of invitation to offer, the person sending out the invitation does not make any offer, but only invites the party to make an offer. Such invitations for offers are not offers in the eyes of law and do not become agreement by the acceptance of such offers.

Example: Pharmaceutical society of Great Britain (vs) Boots cash chemists (1953).

Facts: Goods are sold in a shop under the 'self service' system. Customers select goods in the shop and take them to the cashier for payment of price.

Judgment: The contract, in this case, is made, not when a customer selects the goods, but when the cashier accepts the offer to buy and receives the price.

Offer may be expressed (or) implied: An offer may be made either by words (or) by conduct. An offer which is expressed by words (i.e., spoken or written) is called an ‘**express offer**’ and offer which is inferred from the conduct of a person (or) the circumstances of the case is called an ‘**implied offer**’.

Offer must be made between the two parties: There must be two (or) more parties to create a valid offer because one person cannot make a proposal/offer to him self.

Offer may be specific (or) general: An offer is said to be specific when it is made to a definite person, such an offer is accepted only by the person to whom it is made. On the other hand general offer is one which is made to a public at large and maybe accepted by anyone who fulfills the requisite conditions.

Example: Carilill (vs) Carbolic Ball company (1893).

Facts: A company advertised in several newspapers is that a reward of L 100 (pounds) would be given to any person contracted influenza after using the smoke ball according to the printed directions. Once Mr.Carilill used the smoke balls according to the directions of the company but contracted influenza.

Judgment: she could recover the amount as by using the smoke balls she accepted the offer.

Offer must be made with a view to obtaining the assent: A offer to do (or) not to do something must be made with a view to obtaining the assent of the other party addressed and it should not made merly with a view to disclosing the intention of making an offer.

Offer must not be statement of price: A mere statement of price is not treated as an offer to sell. Therefore, an offer must not be a statement of price.

Example: HARVEY (VS) FACEY (1893):

Facts: Three telegrams were exchanged between Harvey and Facey.

“Will you sell us your Bumper hall pen? Telegram lowest cash price- answer paid”.
[Harvey to Facey].

“Lowest price fro bumper hall pen L 900 (pounds)”. [Facey to Harvey]

“We agree to buy Bumper hall pen for the sum of L 900 (pounds) asked by you”. [Facey to Harvey]

Judgment: There was no concluded contract between Harvey and Facey. Because, a mere statement of price is not considered as an offer to sell.

Offer should not contain a term “the non-compliance” of which may be assumed to amount to acceptance.

COMMUNICATION OF OFFER AND REVOCATION OF OFFER: An offer, its acceptance and their revocation (withdrawal) to be complete when it must be communicated to the offeree. The following are the rules regarding communication of offer and revocation of offer:

Communication of offer:

The communication of an offer is complete when it comes to the knowledge of the person to whom it is made.

An offer may be communicated either by words spoken (or) written (or) it may be inferred from the conduct of the parties.

When an offer/proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.

Revocation of offer: A proposal/offer may be revoked at anytime before the communication of its acceptance is complete as against the proposer, but not afterwards.

Acceptance - the rules regarding a valid acceptance

According to section 2(b) of the Indian contract Act, 1872, defines an acceptance is “when the person to whom the proposal is made signifies is assent thereto, the proposal is said to be accepted becomes a promise”.

On the acceptance of the proposal, the proposer is called the promisor/offeror and the acceptor is called the promise/offeree.

Legal rules as to acceptance: A valid acceptance must satisfies the following rules:-

Acceptance must be absolute and unqualified:

An acceptance to be valid it must be absolute and unqualified and in accordance with the exact terms of the offer.

An acceptance with a variation, slight, is no acceptance, and may amount to a mere counter-offer (i.e., original may or may not accept).

Acceptance must be communicated to the offeror:

For a valid acceptance, acceptance must not only be made by the offeree but it must also be communicated by the offeree to the offeror.

Communication of the acceptance must be expressed or implied.

A mere mental acceptance is no acceptance.

Acceptance must be according to the mode prescribed (or) usual and reasonable manner:

If the offeror prescribed a mode of acceptance, acceptance must given according to the mode prescribed.

If the offeror prescribed no mode of acceptance, acceptance must given according to some usual and reasonable mode.

If an offer is not accepted according to the prescribed (or) usual mode. The proposer may within a reasonable time give notice to the offeree that the acceptance is not according to the mode prescribed.

If the offeror keeps quiet he is deemed to have accepted the acceptance.

Acceptance must be given with in a reasonable time:

If any time limit is specified, the acceptance must be given with in that time.

If no time limit is specified, the acceptance must be given within a reasonable time.

Example: Ramsgate Victoria Hotel Company (vs) Montefiore (1886)

Facts: On June 8th 'M' offered to take shares in 'R' Company. He received a letter of acceptance on November 23rd. He refused to take shares.

Judgment: 'M' was entitled to refuse his offer as the reasonable period which it could be accepted had elapsed.

It cannot precede an offer:

If the acceptance precedes an offer, it is not a valid acceptance and does not result in a contract.

In other words "acceptance subject to contract" is no acceptance.

Acceptance must be given by the parties (or) party to whom it is made:

An offer can be accepted only by the person (or) persons to whom it is made.

It cannot be accepted by another person without the consent of the offeror.

Example: Boulton (vs) Jones (1857).

Facts: Boulton bought a hose-pipe business from Brocklehurst. Jones, to whom Brocklehurst owed a debt, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not addressed to him. Jones refused to pay Boulton for the goods because he, by entering into a contract with Brocklehurst, intended to set off his debt against Brocklehurst.

Judgment: The offer was made to Brocklehurst and it was not in the power of Boulton to step in and accept. Therefore there was no contract.

It cannot be implied from silence:

Silence does not amount to acceptance.

If the offeree does not respond to offer (or) keeps quiet, the offer will lapse after reasonable time.

The offeror cannot compel the offeree to respond offer (or) to suggest that silence will be equivalent to acceptance.

Acceptance must be expressed (or) implied:

An acceptance may be given either by words (or) by conduct.

An acceptance which is expressed by words (i.e., spoken or written) is called '**expressed acceptance**'.

An acceptance which is inferred by conduct of the person (or) by circumstances of the case is called an '**implied or tacit acceptance**'.

Distinguish between void contract and voidable contract.

The following are the differences between void and voidable contract. They are follows:-

Base	Void contract	Voidable contract
Definition	According to section 2(j) a void contract as 'a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable'.	According to section 2(i) a voidable contract is 'an agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or other or others'.
Nature	A void contract is valid when it is made. But binding on the parties it may subsequently become void. We may talk of such a contract as void agreements.	A voidable contract on the other hand is voidable at the option of the aggrieved party and remains valid until rescinded by him. Contract caused by coercion, undue influence, fraud, misrepresentation are voidable. But in case contract is caused by mistake it is void.
Rights	A void contract does not provide any legal remedy for the parties to the contract. It may void of into right from the beginning. In other words it is not a contract at all	The aggrieved party in a voidable contract gets a right to rescind the contract. When such party rescinds it, the contract become void. In case aggrieved party does not rescind the contract with in a reasonable time, the contract remains valid.

Communication of acceptance.

An offer, its acceptance and their revocation (withdrawal) to be complete when it must be communicated. When the contracting parties are face to face and negotiate in person, a contract comes into existence the movement the offeree gives his absolute and unqualified acceptance to the proposal made by the offeror.

The following are the rules regarding communication of acceptance:-

Communication of an acceptance is complete:-

As against the proposer/offeror when it is put into the certain course of transmission to him, so as to be out of the power of the acceptor.

As against the acceptor, when its comes to knowledge of the proposer.

When a proposal is accepted by a letter sent by the post the communication of acceptance will be complete:-

As against the proposer when the letter of acceptance is posted and

As against the acceptor when the letter reach the proposer.

All contracts are agreements but all agreements are not contracts” - explain.

Ans: “All contracts are agreements but all agreements are not contracts”- the statement has two parts.

All contracts are agreement: As per section 2(h) of Indian contract Act, “A contract is an agreement enforceable by law”. Obviously an agreement is a pre requisite (i.e., essential elements) for formation of contract. An agreement clubbed with enforceability by law and several other features (i.e., free consent, consideration, etc..) will create a valid contract. Therefore, obviously all contracts will be agreements.

All agreements are not contracts: As per section 2(e) of Indian contract act, “An agreement is a promise and every set of promises, forming consideration for each other”. Thus, a lawful offer and a lawful acceptance create an agreement only. Therefore all agreements are not contracts.

Conclusion:

Contract = Agreement + Enforceability by law.

Agreement = Offer + Acceptance.

Thus, all agreements are contracts but all agreements are not necessarily contracts.

Explain its kinds of contracts?

Meaning: “A contract is an agreement made between two (or) more parties which the law will enforce.”

Definition: According to section 2(h) of the Indian contract act, 1872. “An agreement enforceable by law is a contract.

According to SALMOND, a contract is “An agreement creating and defining obligations between the parties”

Kinds of contracts: - Contracts may be classified according to their (a) validity, (b) Formation, and (c) Performance.

(a)Classification according to validity:-

A valid contract: A valid contract is an agreement which is binding and enforceable. An agreement becomes a contract when all the essential elements (i.e., offer and acceptance, intention to create legal relationship etc..) are present, in such a case the contract is said to be valid.

A voidable contract: An agreement which is enforceable by law at the option of one (or) more parties thereto, but not at the option of the other (or) others, is a voidable contract. This happens when the essentials elements of a free consent is missing. When the consent of a party to a contract is said to be not free, if it is caused by Coercion, Undue influence, Misrepresentation (or) fraud, etc..,

A void contract: A void contract is really not a contract at all. The term “void” means an agreement which is without any legal effect. In other words “an agreement not enforceable by law is said to be void”.

Illegal contracts: Some agreements are illegal in themselves (ex:- contracts of immoral nature, opposed to public policy etc..) Thus, All illegal contracts are void but all void contracts are not illegal (ex:- A wagering agreement, though void is not illegal).

An unenforceable contract: An unenforceable contract is one which cannot be enforced in a court of law because of some technical defect such as absence of writing (or) where the remedy has been barred by lapses of time.

(b) Classification according to their formation:-

Express contract: An express contract is one, the terms of which are stated in words, spoken (or) written at the time of the formation of the contract.

Implied contract: An implied contract is one in which the evidence of the agreement is shown by acts and conduct of the parties, but not by words, written (or) spoken. In other words where the offer (or) acceptance of any promise made otherwise than in words, the promise is said to be implied promise (or) implied contract.

Quasi-contract: In truth Quasi-contract is not a contract at all. A quasi-contract is acts which are created by law. It does not have any essential elements of a valid contract. It is not intentionally created by parties but it is imposed by law. It is founded upon the 'principles of natural justice, equity and fair play'.

(c) Classification according to their performance:

Executed contract: "Executed" means that which is done. An executed contract is one in which both the parties have performed their respective obligation.

Executory contract: "Executory" means that which remains to be carried into effect. An executory contract is one in which the parties have yet to perform their obligations.

Unilateral (or) one-sided contract: in this type of contract, one party to a contract has performed his part even at the time of its formation and an obligation is outstanding only against the parties.

ilateral contract (or) Two-sided contract: It is a contract in which the obligations on the part of both the parties to the contract are outstanding at the time of the formation of the contract.

void agreements

According to section 2(g) of the Indian contract Act, 1872. 'A void agreement is one which is not enforceable by law'.

A void agreement does not create any legal right (or) obligation. It is void-ab-initio (i.e., void of into right from the beginning).

The following agreements have been expressly declared to void by the contract act:-

- Agreements by incompetent parties. (Section 11)
- Agreements made under mutual mistake of facts. (Section 20)
- Agreements which the consideration (or) object is unlawful. (Section 23)
- Agreements which the consideration (or) object is unlawful in part. (Section 24)
- Agreements made without consideration. (Section 25)
- Agreements in restraint of legal proceedings. (section 28)
- Agreement which the meaning is uncertain. (section 29)
- Agreements by way of wager. (section 30)
- Agreements contingent on impossible events. (section 36)
- Agreements to do impossible Acts. (section 56)

In case of reciprocal promises to do things legal and also other things illegal. The second set (illegal) of reciprocal promises is a void agreement. (section 57)

void agreement and void contract.

Void agreement: According to section 2(g) of the Indian contract Act, 1872. 'A void agreement is one which is not enforceable by law'.

A void agreement does not create any legal right (or) obligation. It is void-ab-initio (i.e., void of into right from the beginning).

Ex: - An agreement with a minor, an agreement without consideration, etc...

Void contract: According to section 2(f) of the Indian contract Act, 1872. "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable'.

A contract, when originally entered into, may be valid and binding on the parties it may subsequently become void. We may talk of such a contract as void agreement.

Ex: - A contract to import goods from a foreign country when a war breaks out between the importing country and the exporting country.

Contingent contract? What are the rules related to contingent contract?

DEFINITION: According to sec (31) of ICA, 1872, a contingent contract is a contract to do or not to do something, if the event, collateral to such contract, does or does not happen.

Thus it is a contract, the performance of which is dependent upon the happening or non-happening of an uncertain future event, collateral to such events.

EX: 'A' promises to pay Rs 10000/-, if B's house is burnt.

ESSENTIAL CHARACTERISTICS OF A CONTINGENT CONTRACT:

Its performance depends upon the happening or non happening in the future of some event.

The event must be uncertain

The event must be collateral

RULES REGARDING PERFORMANCE OF A CONTINGENT CONTRACT: The following are the rules regarding performance of a contingent contract:

Contingent contract upon the happening of a future uncertain event:-

When the happening of such event has possible it becomes enforced and if the happening of such event becomes impossible it becomes void.

EX: 'A' contracts to pay 'B' a sum of money when 'B' marries 'C'. 'C' dies without being married to 'B'. The contract becomes void.

Contingent contract upon the non happening of a future uncertain event: When the happening of such event becomes impossible it becomes enforced and when such event has possible it becomes void.

EX: "A" agrees to sell his car to "B" if "C" dies. The contract cannot be enforced as long as "C" is alive.

Contingent contract upon happening of an event within a specified time: When such event has happened within the specified time it can be enforced and if the happening of such event becomes impossible within the specified time it becomes void.

EX: 'A' agrees to pay 'B' a sum of money if 'B' marries 'C', 'C' marries 'D'. The marriage of 'B' to 'C' must be considered impossible now, although it is possible that 'D' may die and that 'C' may afterwards marry 'B'.

Contingent contract upon non happening of an event within a specified time: When the happening of such event becomes impossible within the specified time it can be enforced and if the happening of such event has happened within the specified time it becomes void.

EX: 'A' promises to pay 'B' a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within a year, and becomes void if the ship is burnt within the year.

Contingent contract upon impossible events: Such an agreement cannot be enforced since it is void. Whether the impossibility of the event was known to the parties or not is immaterial.

EX: 'A' agrees to pay 'B' Rs 1000/- if 'B' will marry A's daughter, 'X'. 'X' was dead at the time of the agreement. The agreement is void.

Contingent contract upon future conduct of a living person: When such person acts in the manner as desired in the contract it can be enforced and if such person does not acts in the manner as desired in the contract it becomes void.

DISCHARGE BY PERFORMANCE.

Performance means the doing of that which is required by a contract. Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. In such a case, the parties are discharged and the contract comes to an end.

Performance of a contract is the most usual mode of its discharge. It may be:

Actual performance

Attempted performance or tender of performance.

Actual performance: When both the parties perform their promises, the contract is discharged. Performance should be complete, precise and according to the terms of the agreement. Most of the contracts are discharged by performance in this manner.

Ex: "A" contracts to sell his car to "B" for Rs.15,000/- as soon as the car delivered to "B" and "B" pays the agreed price for it. The contract comes to an end by performance.

Attempted performance or Tender of Performance: In certain situations the promisor offers performance of his obligation under the contract at the proper time and place but the promisee refuses to accept the performance. This is called as "Tender" or "Attempted Performance". Where a valid Tender is made and is not accepted by the promisee, the promisor shall not be responsible for non-performance and he does not lose his rights under the contract.

"Discharge of a contract by agreement (or) by consent or by mutual consent"

The general rule of law is a thing may be destroyed in the same manner in which it is constituted. This means a contractual obligation may be discharged by an agreement which may be expressed or implied.

The various cases of discharge of a contract by mutual agreement are dealt with in Section 62 and 63 and are discussed below:

Novation (Section.62): Novation takes place:

When substitution of a new contract for the original one either between the same parties or between same parties or

The consideration for the new contract is mutually being the discharge of old contract.

Novation should take place before the expiry of the time of the performance of the original contract.

Ex: "A" owes "B" Rs.10,000/-. He enters into an agreement with "B" a mortgage of his (A's) estate for Rs.5,000/- in place of the debt of Rs.10,000/-. This is a new contract extinguishes the old one.

Rescission (Section.62): Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It may occur:

By mutual consent of the parties (or)

Where one party fails in the performance of his obligation. In such a case, the other party may rescind the contract without claiming compensation for the breach of contract.

In case of rescission, only the old contract is cancelled and no new contract comes to exist in its place. Both in novation and in rescission, the contract is discharged by mutual agreement.

Ex: "A" and "B" enters into a contract that "A" shall deliver certain goods to be by the 15th of this month and that "B" shall pay the price on the 1st of the next month. "A" does not supply the goods. "B" may rescind the contract, and need not pay the money.

Alteration (Section.62): Alteration means a change in one or more terms of a contract with mutual consent of parties. In such a case the old is discharged.

Ex: "A" enters into a contract with "B" for the supply of hundred bales of cotton at his godown No.1 by the 1st of the next month. "A" & "B" may alter the terms of the contract by mutual consent.

Remission (Section.63): Remission means acceptance of a lesser fulfillment of the promise made or acceptance of a sum lesser than what was contracted for. In such a case, Section.63 of the Contract Act allows the promisee to dispense or remit the performance of the promise by the promisor, or to extend the time for the performance of to accept any other satisfaction instead of performance.

“Breach of contract” as a mode of discharge of contract? Or Discharge of breach of contract.

Breach of contract means promisor fails to perform the promise or breaking of the obligations which a contract imposes. It occurs when a party to the contract without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. It confers a right of action or damages on the injured party.

Branch of contracts may be of two types:

Actual breach of contract.

Anticipatory breach of contract.

Actual breach of contract: Actual breach means promisor's failure to perform the promise on due date of performance. When a promisor fails or refuses to perform the promise upon the due date for performance then it is called actual breach of contract. In such a case the promisee is exempted and may resend the contract. Promisee can sue the party at fault for damages for breach of contract.

Ex: O'Neil (vs) Armstrong (1895):

Facts: 'P', a British subject, was engaged by the captain of a war ship owned by the Japanese government to act as a fire man. Subsequently when the Japanese government declared war with china, "p" was informed that the performance of contract would bring him under the penalties of the foreign enlistment act. He consequently left the ship.

Judgment: He was entitled to recover the wages agreed upon.

Anticipatory Breach of contract: It occurs when a party to executory contract declares his intention of not performing the contract before the performance is due. It may take place in two ways.

Expressly by words: here a party to the contract communicates to the other party before the due date of performance, his intention not to perform it.

Ex: Hochster (vs) de la tour (1853):

Facts: "D" engaged "H" on 12th of April to enter into his service as courier and to accompany him upon a tour. The employment was to commence on 1st June. On 11th may "D" rote to "H" telling him that services would no longer be required."H' immediately brought an action for damages although the time for performance had not arrived.

Judgment: He was entitled to do so.

Implied by the conduct: Here a party by his own voluntary act disables himself from performing the contract.

Ex: a person contracts to sell a particular horse to another on 1st of June and before the due date he sells the horse to somebody else.

Effect/right of an anticipatory breach: In case of anticipatory breach, the promisee is excused from performance and he may choose any one of the following two options:

He can treat the contract as discharged so that he is absolved of the performance of his party of the promise.

He can immediately take a legal action for breach or wait till the time the act was to be done.

"Quasi Contract". & types of "Quasi Contract".

Meaning: Under certain special circumstances, a person may receive a benefit to which the law regards another person as better entitled or for which the law considers he should pay it to the other person, even though there is no contract between the parties these relationships are terms as "Quasi Contract" or constructive contracts under the English Law and "Certain relationships resembling those created by contracts" under the Indian Law.

Quasi contract is not made by a process of proposal and acceptance or by free consent. It is a trust upon us by law.

A Quasi-contract rests upon the equitable, which declares that a person shall not be allowed to enrich himself unjustly at the expense of another.

Silent features of Quasi-contract:

It is a right which is available not against a particular person or persons and so, that in this respect it resembles a contractual right.

It does not arise from any agreement of the parties concerned it is imposed by law.

Such Quasi-contractual right is always a right to money, and generally, though not always, to a liquidated sum of money.

TYPES OF QUASI-CONTRACTS: The following are of Quasi-contracts are discussed below.

Supply of necessaries (sec68): according to section 68, if a person incapable of entering into a contract or any one whom he is legally bound to support is supplied by another with necessaries suited to his condition in life the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Ex: 'A', supplies 'B' a lunatic with necessaries suitable to his condition in life. 'A' is entitled to reimburse from B's property.

Payment by an interested person (Section.69) A person, who is interested in payment of money which another is bound by law to pay and who therefore pays it, is entitled to be reimbursed by other.

The essential requirements of Section.69 as follows:

The payment made should be bonafide for the protection of one's interest.

The payment should not be a voluntary one.

The payment must be such as the other party was bound by law to pay.

Ex: 'B' holds land in Bengal on a lease granted by the Zamindar. The revenue payable by 'A' to the Government being in arrears his land is advertised for sale by the Government under the Revenue Law. The sale will be annulment of 'B's lease. 'B' to prevent the sale and the consequent annulment of his own lease pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

Obligation to pay for non-gratuitous acts (Section.70): When a person lawfully does anything for another person or delivers anything to him not intending to do so, gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make the compensation to the former in respect of or restore, the things do done or delivered.

Ex: “A”, a tradesman lease goods at “B” house by mistake. B treats the goods as his own. He is bound to pay for them to A.

Responsibility of finder of goods (Section.71): A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as Bailee. He is bound to take as much care o the goods as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality and value. He must also take all necessary measures to trace its owner. If he does not, he will be guilty of wrongful conservation of the property till the owner is found out, the property in goods will vest in the finder and he can retain the goods as his own against the whole world (except the owner).

Ex: “F” picks up a diamond on the floor of ‘S’ s shop. He hands it over to ‘S’ to keep it till the real owner is found out. No one appears to claim it for quite some week’s inspite of wide advertisement in the news papers. ‘F’ claims the diamond from ‘S’ who refuses to return. ‘S’ is bound to return the Diamond to ‘F’ who is entitled to retain the diamond against the whole world except the true owner.

Mistake or coercion (Section.72): A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it to the person who paid it by mistake or under coercion.

Ex: “A” & “B” jointly owe Rs.100/- to “C”. A alone pays the amount to C and B not knowing this fact pays Rs.100/- over again to “C”. C is bound to pay the amount to B.

SALE OF GOODS ACT

Distinction between sale and an agreement to sell?

Contract of sale of Goods:

It is a contract where by the seller transfers (OR) agrees to transfer the property in goods to the buyer for a price.

Sale and Agreement to sell:

In sale of goods, the property in the goods is transferred from the seller to the buyer immediately then the contract is called **sale**, but where the transfer of property in the goods passes only after the seller has fulfilled certain conditions subsequently is called an **agreement to sell**.

Essentials of a contract of sale: The following are the Essential elements are necessary for contract of sale:

There must be at least two parties: there must be two distinct parties (i.e., seller and Buyer) to effect a contract of sale and they must be competent to contract. Section 2(1) defines 'A person who buys (or) agrees to buy goods is called a **Buyer**' and Section 2(13) defines 'A person who sells (or) agrees to sell is called **seller**'.

Subject matter must be 'Goods': There must be some goods, the property in which is (or) is to be transferred from the seller to the buyer. The goods which form the subject matter must be movable.

Consideration is price: The consideration for the contract of sale, called price, it must be money. Where there is no consideration, it would be a gift, there is no contract of sale. Similarly, where goods are sold for a price, which is to be paid partly in cash and partly in goods then it is considered as contract of sale.

Transfer of general property: There must be a transfer of general property from the buyer to the seller.

Absolute (OR) Qualified: A contract of sale may be absolute or conditional.

Essential elements of a valid contract: All the essentials of a valid contract must be present in the contract of sale.

The following are the differences between the sale and Agreement to sell are as follows:

conditions and warranties of the sale of goods act, 1930?

According to section 12(1) of sales of goods act, 1930. 'A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition (or) a warranty.

Condition and Warranties:

Condition: According to section 12(2) a ‘**Condition**’ is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

Warranty: According to the section 12(3) a ‘**Warranty**’ is stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to the right to reject the goods and treat the contract as repudiated.

Whether a stipulation in a contract of sale is a condition (or) warranty depends in each case of the construction of the contract. A stipulation may be a condition, though called a warranty in a contract.

Implied Conditions: The Act prescribes some of the implied conditions in a contract. Buyer can

repudiate contract for breach of any of these conditions:-

Condition as to title: Section 14(a) In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller, that,

In case of a sale, he has the right to sell the goods and

In case of an agreement to sell; he will have a right to sell the goods at the time when the property is to pass.

Thus, if seller sells stolen goods, the buyer can repudiate the contract and claim damages also, as the seller had no right to sale the goods.

Sale by description: (section 15) where there is a contract for the sale of goods by description, there is an implied condition that that the goods shall correspond with the description. ‘Sale of goods by description’ includes the following:

Where the buyer has not seen the goods and relies on their description given by the seller.

Where the buyer has seen the goods but he relies not on what he has seen but what was stated to him and deviation of the goods from the description is not apparent.

Packing of goods may sometimes be a part of description.

Condition as to quantity (or) fitness: (section 16(1)) where the buyer, expressly (or) by implication, makes known to the seller the particular purpose for which he requires the goods, so as to show that the buyer relies on the seller's skill (or) judgment, and the goods are of a description which is in the course of the seller's business to supply, there is an implied condition that the goods shall be reasonable fit for the purpose. This will not apply where specific goods are sold under their patent (or) trademark. Thus, the four conditions must be fulfilled:

The **purpose** must have been **disclosed** (expressed or implied) by the buyer.

The buyer must have **relied** on the seller's skill (or) judgment.

The **seller's business** must be to sell those goods.

The goods should not have been sold **under a patent (or) trademark**.

Conditions as to merchantability: (Section 16(2)) where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quantity; provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

Condition implied by custom: (section 16(3)) An implied condition as to quantity (or) fitness for a particular purpose may be annexed by the usage of trade. The purpose for which the goods are required may be ascertained from the acts and conducts of the parties and from the nature of the description of the article purchased.

Example: Priest (vs) last (1903):

Facts: 'P' asked for a hot water bottle of 'L', a retail chemist. He was supplied one which burst after a few days use and injured 'P's wife.

Judgment: 'L' was liable for breach of implied condition because 'P' had sufficiently made known the use for which he required the bottle.

Sale by sample: (Section 17) In a sale by sample the following are the implied conditions

The bulk shall correspond with the sample in quantity.

That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

That the goods shall be free from any defects rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

Example: Frost (vs) Aylesbury Dairy Co.Ltd (1905):

Facts: 'F' brought milk from 'A'. the milk contained germs of typhoid fever. 'F's wife took the milk and got infection as a result of which she died.

Judgment: 'F' could recover damages.

Condition as to wholesomeness: In the case of eatables and provisions, in addition to the implied condition as to merchantability there is another implied condition that the goods shall be wholesome.

Implied Warranties: The implied conditions in a contract of sale are as follows:-

Warranty of quiet possession: (section 14(b)) In a contract of sale, unless contrary intention appears, it is implied that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way disturbed in the enjoyment of the goods in consequence of the seller's defective title to sell, then the buyer is entitled to sue the seller for damages.

Warranty of freedom from encumbrances: (section 14 (C)) means that the goods are free from any charge (or) encumbrances in favour of any third party, not declared to (or) known to the buyer. in such a case he shall have a right to claim damages for breach of this warranty.

Warranty as to quantity (or) fitness by usage of trade:(Section 16(4)) An implied warranty as to quantity (or) fitness for a particular purpose may be annexed by the usage of trade.

Warranty as to disclose dangerous nature of goods: Where a person sells goods knowing that the goods are inherently dangerous (or) they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger. In such a case the seller warn the buyer otherwise he would be held liable.

CONSUMER PROTECTION ACT, 1986.

Objects of consumer protection Act, 1986?

The law relating to consumer protection is contained in the consumer protection Act, 1986. The act applies to all goods and services. The central government however by notification published in the Official Gazette exempts any goods (or) Services.

Objects of the Act: The following are the objectives of Consumer Protection Act, 1986. They are follows:-

Better Protection of Consumers: The act seeks to provide for the better protection of the interest of consumers and for that purpose, makes a provision for the establishment of consumer councils and other authorities for settlement of consumer disputes and for matters connected therewith.

Protection of rights of consumers: The Act, seeks to promote and protect the rights of consumers such as:-

The consumer has the right to be protected against marketing of goods and services which are hazardous to life and property.

They have the right to be informed about the quality, quantity, potency, purity, standard and price of goods (or) services so as to protect the consumers against the unfair trade practices.

The consumers also have the right to seek redressal against the unfair trade practices (or) restrictive trade practices of exploitation of the consumers. And

The consumer has Right of education.

Consumer protection Councils: The objectives of Consumer protection Act, 1986, are sought to be promoted and protected by the Consumer Protection Councils established at the central and State levels.

Quasi-Judicial machinery for speedy redressal of consumer disputes: The Act also seeks to provide speedy and simple redressal to consumer disputes. For this purpose, there has been set up a quasi-judicial machinery at the district, state and central levels. These quasi-judicial bodies are supposed to give reliefs of a specific nature, and also provide compensation to consumers whenever appropriate.

NEGOTIABLE INSTRUMENT ACT, 1881

The law relating to negotiable instruments is primarily contained in the Negotiable Instruments Act, 1881. The word „negotiable“ means transferable from one person to another and the term „instrument“ means „any written document by which a right is created in favor of some person.“ Thus, the negotiable instrument is a document by which rights vested in person can be transferred to another person in accordance with the provisions of the Negotiable Instruments Act, 1881. The Negotiable Instruments Act does not affect the provisions of Sections 31 and 32 of the Reserve Bank of India Act, 1934. But, the following are Not Promissory Notes. Ex. “I promise to pay B Rs. 500 and all other sums which shall be due to him.”

Essentials or Characteristics of a Promissory Note:

1. Inwriting.
2. Promise to pay.
3. Unconditional.
4. Signed by the Maker.
5. Certain Parties.
6. Certain sum of money.
7. Promise to pay money only.
8. Number, place, date etc.
9. It may be payable in installments
10. It may be payable on demand or after a definite period
11. It cannot be made payable to bearer on demand or even payable to bearer after a certain period (Sec. 31 of RBI Act).
12. It must be duly stamped under the Indian Stamp Act

Bill of exchange:

A „bill of exchange“ is defined by Section 5 as “„an instrument“ in writing, containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or the order of, a certain person, or to the bearer of the instrument.”

Characteristic features of a bill of exchange:

- It must be in writing.
- It must contain an order to pay and not a promise or request. Words, like „Please pay Rs. 10,000 to an on demand and oblige, do not constitute the instrument a bill of exchange.
- The order must be unconditional.
- There must be three parties, viz., drawer, drawer and payee. The parties must be certain.
- It must be signed by the drawer.
 - The sum payable must be certain or capable of being made certain. The

order must be to pay money and money alone.

- It must be duly stamped as per the Indian Stamp Act.
- Number, date and place are not essential. Oral evidence may be obtained as to date and place of execution.

Cheque:

A cheque is defined as „a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand“ (Section 6). Thus, a cheque is a bill of exchange with two added features, viz.: (i) it is always drawn on a specified banker;

(ii) And it is always payable on demand and not otherwise.

Distinction between Promissory Note and bill of exchange

Promissory note differs from a bill of exchange in the following respects:

Difference between bill of exchange And Cheque:

	Cheque		Bill of Exchange
1.	Must be drawn only on a Banker.	1.	Can be drawn on any person Including a banker.
2.	The amount is always Payable on demand.	2.	The amount may be payable on Demand or after a specified time.
3.	The cheque is not entitled to Days of grace.	3.	A sight bill is entitled to Three days of grace.
4.	Acceptance is not needed.	4.	A bill payable after sight must be Accepted.
5.	A cheque can be crossed	5.	Crossing of a bill of exchange is Not possible.

Holder and Holder-In-Due-Course:

According to section 8, a **holder** of a negotiable instrument is “a person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.” Thus, a person who has obtained the possession of an instrument by theft or under a forged endorsement is not a holder as is not entitled to recover the amount of the instrument.

A „holder in-due-course“: Is “a person who for consideration became the possessor of a promissory note, bill of exchange or cherub, if payable to bearer, or the payee or endorsee thereof, if payable to order, before the amount mentioned in it becomes payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title (Section 9).”

Ambiguous Instrument (Sec.17): An ambiguous instrument is one which may be construed either as a promissory note or as a bill exchange. The holder may at his option treat it as either and the instrument shall be treated accordingly.

Where Amount is stated differently in Figures and Words (Sec. 18): If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid

Inchoate Instruments (Sec.20): An inchoate instrument means an instrument that is incomplete in certain respects. The person so signing shall be liable upon the instrument, in the capacity in which he signed the same, to any holder-in-due-course for such amount. But, a person other than a holder-in-due-course cannot recover from the person delivering the instrument anything in excess of the amount intended by him to be paid there under.

Minor (Sec. 26): A minor may draw, indorse, deliver and negotiate negotiable instruments so as to bind all parties except himself.

Agency (Sec. 27): Every person capable of binding himself or of being bound may so bind himself or be bound by a duly authorized agent acting in his name.

Liability of Agent Signing (Sec. 28): An agent who signs his name to a P/N, B/E or Cheju without indicating thereon that he does not intend thereby to incur personal

responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of Legal Representative (Sec.29): A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cherub is liable thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

Negotiable Instruments Made, etc.: Without Consideration (Sec.43): A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.

Partial Absence or Failure of Money Consideration (Sec.44): When the consideration for which a person signed a promissory note, bill of exchange or cherub consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.

Partial Failure of Consideration not Consisting of Money (Sec. 45): When a part of the consideration for which a person signed a promissory note, bill of exchange or cherub, though not consisting of money, is ascertainable in money

without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Lost or Stolen Instruments [Sec. 58]: When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorse who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder.

However, if such possessor or indorse is a holder, in due course, he shall be entitled to receive the payment thereof.

Lost Instruments: When a bill or note is lost, the finder acquires no title to it as against the rightful owner. He is also not entitled to sue the acceptor or maker in order to enforce payment on it. If the finder obtains payment, the person who pays it in due course may be able to get a valid discharge for it. But the true owner can recover the money due on the instrument from the finder.

Stolen Instruments: (1) A person cannot enforce payment of it against any party thereto nor can he retain it against the party from whom he had stolen it. (2) If the thief negotiates the instrument to a purchaser for value who has notice of the theft, the transferee cannot acquire a better title than the thief and thus cannot enforce payment. (3) If a person who has stolen a bill or note payable to bearer transfers it to a holder in due course, he confers a good title on him or any person deriving title from such holder.

Instruments Obtained For Unlawful Consideration

A holder, in due course, however, obtains a good title to an instrument which was originally made or drawn or subsequently negotiated for an unlawful consideration.

Forged Instruments: The most common species of forgery is fraudulently writing the name of an existing person. It is also a forgery to sign the name of a fictitious person or non-existing person. Even a man's signature of his

own name may amount to forgery, if it is put with the intention that the signature should pass for the signature of another person of the same name.

Cheque

A chequer is the usual method of withdrawing money from an account with a banker. A chequer, in essence, is an order by the customer of the bank directing his banker to pay on demand, the specified amount, or to the order of the person named therein or to the bearer. Section 6 defines a chequer as “bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

Requisites of A Cheque:

- **Written Instrument.** A cheque must be an instrument in writing.
- **Unconditional Order.** A cheque must contain an unconditional order.
- **On a Specified Banker Only.** A cheque must be drawn on a specified banker.
- **A Certain Sum of Money.** The order must be only for the payment of money and that too must be specified.
- **Payee to be certain.** A cheque to be valid must be payable to a certain person.
- **Payable on Demand.** A cheque to be valid must be payable on demand and not otherwise.
- **Amount of the Cheque.** Amount of the cheque must be clearly mentioned.
- **Dating of Cheques.** The drawer of a chequer is expected to date it before it leaves his hands.

A chequer bearing an earlier date is **ante-dated** and the one bearing the later date is called **post-dated**. In India, a chequer that bears a date earlier than six months is a **stale chequer and** cannot be claimed for. In England, chequer can remain in circulation for a period of twelve months.

Crossing Of Chequers:

Crossing of a chequer is a direction to the paying banker by the drawer that payment should not be made across the counter. The payment on a crossed chequer can be collected only through a banker.

Section 123, defines crossing as, “Where a cherub bears across its face an addition of the words „and company“ or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words „not negotiable“, that addition shall be deemed a crossing and the cherub shall be deemed to be crossed generally. A cherub having the cross marks such as „X“ is not generally regarded as a crossed cherub. A cherub that is not crossed is called an open cherub.

Significance of Crossing:

Payment cannot be claimed across the counter on a crossed cherub, crossing of cherubs serves as a measure of safety against theft or loss of cherubs in transit. By crossing a cherub, a person, who is not entitled to receive its payment, is prevented from getting the cherub encased at the counter of the paying banker.

Types of Crossing:

Crossing may be either (1) General or (2) Special.

General Crossing: The term general crossing implies the addition of two parallel transverse lines.



Special Crossing: „Special Crossing“ implies the specification of the name

of the banker on the face of the chequer. Section 124 in this regard, reads: Where a chequer bears across its face, an addition of the name of a bank, either with or without the words „not negotiable“, that addition shall be deemed a crossing, and the chequer shall be deemed to be crossed to that banker.” The object of special crossing is to direct the drawer banker to pay the chequer, only if it is presented through the particular bank mentioned therein. Thus, it makes the chequer system still safer.

Specimens of Special Crossing

State Bank of India
State Bank of India
Account pay
State Bank of India
Not negotiable
State Bank of India

Not Negotiable Crossing: By including the words „not negotiable“, the cherub is deprived of its special feature of negotiability. Such a cherub is like any other goods where the title of the transferee is always subject to the title of the transferor. A bank, therefore, should be extra careful in paying such cherubs.

Account Payee Crossing (A/c Payee crossing): An A/c payee crossing signifies that the drawer intends the payment to be credited only to the payee's account and in none else. The addition of „A/c payee“ to a crossing has no legal sanctity and the paying banker may ignore such a direction without being liable for any damages.

Not Negotiable, A/c Payee Crossing: The instrument is rendered not negotiable, plus A/c payee crossing directs the collecting banker to collect it for the payee only and warns that if the amount is collected for someone else, he may be held liable for damages.

Endorsement/Endorsement

- It must be written on the instrument itself and be signed by the endorser.
- The endorsement must be of the entire instrument.
- Where in a negotiable instrument payable to order, the payee or endorsee is wrongly designated or his name is miss-spelt, he should sign the instrument in the same manner as given in the instrument.
- Where there are two or more endorsements on an instrument, each endorsement is deemed to have been made in the order in which it appears on the instrument, until contrary is proved.
- An endorsement may be blank or full. It may also be restrictive.

Bill of exchange And Promissory Note Kinds of Bills

1. **Inland Bill:** “a promissory note, bill of exchange or cherub drawn or made in India and payable in or drawn upon any person resident in India”. (Section 11).
2. **Foreign Bills:** According to Section 12, a foreign bill is negotiable instrument which is noted as an inland instrument.
3. **Trade and Accommodation Bills:** A trade bill is a bill of exchange issued in respect of a genuine trade transaction. Such bills are drawn by the seller on the

buyer in respect of payment of the price of the goods sold and purchased.

4. **Time Bills (Since Bills):** Time bills, also called as since bills, are bills payable at a fixed period after date or sight of the bills.
5. **Demands Bills:** A bill of exchange or a promissory note is payable on demand when
6. **Clean and Documentary Bill:** Where the banker is instructed to deliver to the drawer of the bill, the documents of title against acceptance of the bill, the bill is called as Documents against Acceptance of Bill (**D/A Bill**) and where the documents are to be released only against payment, it is called as Documents against Payment of Bill (**D/P Bill**).

Parties to a bill of exchange

- ❖ The Drawer
 - ❖ The Drawee
 - ❖ The Payee
 - ❖ The Holder
 - ❖ The Endorser
 - ❖ The Indorsee
7. **Drawer in Case of Need:** Such a person whose name is mentioned as an alternative drawer is called a drawer in case of need".
 8. **Acceptor for Honor:** An acceptor for honor is a person who, on the refuse by the original drawer to accept the bill or to furnish better security when demanded by the notary, accepts the bill in order to safeguard the honor of the drawer or any endorser.

Parties to a Promissory Note

The Maker > the Payee > the Holder

- ❖ The Endorser
- ❖ The Indorsee

9. **Capacity of Parties:** The capacity of a party to draw, accept, make or endorse a bill or note is co-extensive with his capacity to enter into contract.

Acceptance:

The acceptance of a bill is the indication by the drawer of his assent to the order of the drawer. An acceptance of a bill may be **general** or **qualified**.

Presentment:

Presentment of a negotiable instrument is made for two purposes.

- ❖ For acceptance, and for payment.

Dishonor:

A bill of exchange may be dishonored either by non-acceptance or by non-payment.

Dishonor by Non-Acceptance: Section 91 enumerates the circumstances when a bill will be considered as dishonored by non-acceptance.

Dishonor by Non-Payment: A negotiable instrument is said to be dishonored by non-payment when the maker, acceptor or drawer, as the case may default in payment upon being duly required to pay the same (Section 92)

Self Assessment Questions:

1. “Every contract is an agreement but every agreement is not a contract”. Do you agree with this statement?
2. “Performance of the conditions of a proposal is an acceptance of the proposal” – Comment.
3. “A Promise against a promise is a good consideration” – Comment.
4. What is the nature and extent of partner’s authority to bind the firm by his acts? Are third parties affected by restrictions placed on the implied authority?

5. What are the legal consequences, if the goods are not delivered in time and the payment is not made in time?
6. What are the fundamental principles of Insurance? Explain the losses in life Insurance.
7. What do you mean by crossing a chequer? What are the circumstances in which a banker is entitled to dishonor a chequer?
8. What is Agency by „Ratification“? What are the essential conditions to make a valid ratification?
9. Enumerate the rights and obligations of finder of lost goods.
10. Explain and illustrate the circumstances under which contracts need not be performed.

Key Words

- **Agreement:** A pact, convention, or treaty between nations, sub-national entities, organizations, corporations.
- **Contingent Contract** is a Contract which has to do or not to do something.
- **A quasi-contract (or implied-in-law contract)** is a fictional contract created by courts for equitable, not contractual purposes
- **A partnership** is an arrangement where parties agree to cooperate to advance their mutual interests.
- **Insurance law** is the name given to practices of law surrounding insurance, including insurance policies and claims.
- **The Holder in Due Course (HDC)** doctrine is a rule in commercial law that protects a purchaser of debt.
- **Drawer** - the person (or bank) who is expected to pay a check or draft when it is presented for payment.

Company Management & Remuneration

Directors:

A company in the eyes of the law is an artificial person. The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board.

Definition of Director:

The Companies Act defines a „director“ as “any person occupying the position of a director by whatever name called” [Sec.2 (13)]. This is however, an inadequate definition.

Only Individuals Can Be Directors (Sec. 253):

Nobody corporate, association or firm can be appointed as director of a company.

Number of Directors: Minimum Number (Sec.252):

Every public company (other than a deemed public company) shall have at least 3 directors and every other company (e.g., a private company, a deemed public company) at least 2 directors.

Share Qualification of Directors

The Articles of a company usually require its directors to hold a certain number of shares. Such shares are called qualification shares. The nominal value of the qualification shares should not exceed Rs.5, 000. He should obtain his qualification shares within 2 months after his appointment as director.

Appointment of Directors

1. First Directors (Sec. 254 and Clause 64 of Table A)

- > The Articles of a company usually name the first directors by their respective names or prescribe the method of appointing them.
- > If the first directors are not named in the Articles, the number of directors and the name of the directors shall be determined in writing by the subscribers of the Memorandum

or a majority of them (Clause 64 of Table A).

- > If the first directors are not appointed in the above manner, the subscribers of the Memorandum who are individuals become directors of the company.

2. Appointment of directors by the company (Sacs. 255 to 257, 263 and 264)

Directors must be appointed by shareholders in general meeting. At least 2/3rds of the total number of directors shall be liable to retire by rotation. Such directors are called rotation directors.

Appointment of a new director (Sec. 257): (1) Fourteen days^{ss} notice and deposit of Rs.500. (2) Consent in writing to act as director (Sec. 264). (3) Separate ordinary resolution for each appointment (Sec.263).

Retirement of directors where annual general meeting is not held: A director who is to retire by rotation at the annual general meeting shall not continue in office after the last day on which the annual general meeting in each year should have been held.

3. Appointment of director by directors (Sacs. 260, 262 and 313)

The directors of a company may appoint directors: (1) as additional directors

(Sec.

260), (2) in a casual vacancy (Sec. 262) and (3) as alternate director (Sec. 313).

4. Appointment of directors by third parties:

The number of directors so appointed shall not exceed 1/3rd of the total number of directors, and they are not liable to retire by rotation.

5. Appointment by proportional representation (Sec. 265):

The system of proportional representation ensures representation of the minority shareholders on the Board of Directors.

6. Appointment of directors by the Central Government (Sec. 408):

Any director appointed by the Central Government shall not be required to hold any qualification shares

Roles of a Director: Directors as Agents:

A company, as an artificial person, acts through directors who are elected representatives of the shareholders.

Directors as Employees:

Although the directors of a company are its agents, they are not employees or servants of the company for being entitled to privileges and benefits which are granted under the Companies Act to the employees.

Directors as Officers:

For certain matters under the Companies Act, the directors are treated as officers of the company [sec.2 (30)].

Directors as Trustees:

Directors are treated as trustees Of the Company's money and property; and of the powers entrusted to them.

Disqualifications of Directors Disqualification of Directors (Sec.274)

The following persons are disqualified for appointment as directors of a company:

1. A person of unsound mind.
2. An undercharged insolvent.
3. A person who has applied to be adjudicated as an insolvent and his application is pending.
4. A person who has been convicted by a court of any offence involving moral turpitude and a period of 5 years has not elapsed from the date of expiry of the sentence.
5. A person whose calls in respect of shares of the company held for more than 6 months have been in arrears.
6. A person who is disqualified for appointment as director by an order of the court under Sec. 203.
7. Such person is already a director of a public company which

Managerial Remuneration Managerial Personnel:

The expression „managerial personnel“ refers to the (a) managing director. (b) Whole-time / part-time directors, or (c) Manager.

Overall Maximum Managerial Remuneration (Sec. 198):

Remuneration not to exceed 11 per cent: The total managerial remuneration of the directors and the manager in respect of any financial year shall not exceed 11 per cent of the net profit of the company for that financial year computed in the manner laid down in Sec. 349 and 350.

Meetings of Directors (Sec. 285 To 288)

- Number of meetings – once in every 3 months (Sec. 285).

- Notice of meetings (Sec. 286): Every officer of the company whose duty is to give notice and who fails to do so shall be punishable with fine which may extend to Rs.1,000.
- Quorum for meetings (Sec.287): The quorum shall be 1/3rd of its strength or 2 directors, whichever is higher.

Powers of Directors

General Powers of the Board (Sec. 291):

The Board of directors of company is entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do.

Powers To Be Exercised At Board Meetings (Sec. 292): The following powers, on behalf of the company,

- To make calls on shareholders in respect of money unpaid on their shares
- The power to authorize the buy-back of shares
- To issue debentures
- To borrow moneys otherwise than on debentures
- To invest the funds of the company; and make loans.

Other powers: These powers are:

- To fill vacancies in the Board (Sec. 262)
- To sanction or give consent for certain contracts in which particular directors, their relatives and firms are interested (Sec. 297)
- To receive notice of disclosure of directors' interest in any contract or arrangement with the company (Sec. 299)
- To receive notice of disclosure of shareholdings of directors (Sec. 308)
- To appoint as managing director or manager a person who has already been the managing director or manager of another company (Secs. 316 and 386)

- To make investments in companies in the same group (Sec. 372).

Exceptions:

- Directors acting malaise.
- Directors themselves wrong-doers.
- Incompetency of Board.
- Deadlock in management.
- Residuary powers. I.e., powers not expressly conferred on the directors or shareholders, in a general meeting.

Powers to be exercised with the approval of company in general meeting

(Sec. 293):

- To sell, lease or otherwise dispose of.
- To remit or give time for repayment of any debt.
- To invest (excluding trust securities) the amount of compensation received.
- To borrow moneys where the moneys to be borrowed (together with the moneys already borrowed by the company) are more than the paid-up capital.
- To contribute to charitable and other funds not directly relating to the business.

Audit Committee [Sec. 292-A as introduced by the Companies (Amendment) Act, 2000]:

The Audit Committee shall act in accordance with terms of reference to be specified in writing by the Board.

Duties of Directors

1. Fiduciary duties and
2. Duties of care, skill and diligence.

3. Fiduciary Duties: As fiduciaries

Other Duties of Directors:

- To attend board meetings,
- Not to delegate his functions except to the extent authorized by the Act or the constitution of the company, and
- To disclose his interest.

Liabilities of Directors

Liability to third parties: (1) Material misrepresentations. (2) Independently of the Act: Directors, as agents of a company, are not personally liable on contracts entered into on behalf of the company. (3) Liability for acts ultra virus the company:

Where a director enters into a contract, which is ultra virus the company, the director is personally liable for breach of implied warranty of authority. (4) Liability for frauds and torts.

1. Liability to the company

The liability of directors towards the company may arise from

- Ultra virus acts,
- Negligence,
- Breach of trust, and Misfeasance.

Vacation of Office, Removal and Resignation of Directors Vacation of office by directors (Sec. 283):

(1) Statutory Vacation.

(2) Additional grounds in case of private companies.

(3) Acceptance of office of profit.

Removal of Directors

Directors may be removed by: 1.The Central Government
2.The shareholders, 3.The Company Law Board.

(1) Removal by Share holders:

In certain circumstances, the shareholders may remove the directors.

(2) Removal by Central Government: (Sec. 388-B to 388-E): The Central Government may, in certain circumstances, remove managerial personnel from office on the recommendation of the Company Law Board.

Business Ethics – Definition

There are many definitions of business ethics, but the ones given by **Andrew Crane** and **Raymond C. Baumhart** are considered the most appropriate ones.

According to Crane, "Business ethics is the study of business situations, activities, and decisions where issues of right and wrong are addressed."

Baumhart defines, "The ethics of business is the ethics of responsibility. The business man must promise that he will not harm knowingly."

Features of Business Ethics

There are eight major features of business ethics –

- **Code of Conduct** – Business ethics is actually a form of codes of conduct. It lets us know what to do and what not to do. Businesses must follow this code of conduct.
- **Based on Moral and Social Values** – Business ethics is a subject that is based on moral and social values. It offers some moral and social principles (rules) for conducting a business.
- **Protection to Social Groups** – Business ethics protect various social groups including consumers, employees, small businesspersons, government, shareholders, creditors, etc.

- **Offers a Basic Framework** – Business ethics is the basic framework for doing business properly. It constructs the social, cultural, legal, economic, and other limits in which a business must operate.
- **Voluntary** – Business ethics is meant to be voluntary. It should be self-practiced and must not be enforced by law.
- **Requires Education & Guidance** – Businessmen should get proper education and guidance about business ethics. Trade Associations and Chambers of Commerce should be active enough in this matter.
- **Relative Term** – Business ethics is a relative term. It changes from one business to another and from one country to another.
- **New Concept** – Business ethics is a relatively newer concept. Developed countries have more exposure to business ethics, while poor and developing countries are relatively backward in applying the principles of business ethics.

Principles of Business Ethics

The principles of business ethics are related to social groups that comprise of consumers, employees, investors, and the local community. The important rules or principles of business ethics are as follows –

- **Avoid Exploitation of Consumers** – Do not cheat and exploit consumer with measures such as artificial price rise and adulteration.
- **Avoid Profiteering** – Unscrupulous business activities such as hoarding, black-marketing, selling banned or harmful goods to earn exorbitant profits must be avoided.
- **Encourage Healthy Competition** – A healthy competitive atmosphere that offers certain benefits to the consumers must be encouraged.
- **Ensure Accuracy** – Accuracy in weighing, packaging and quality of supplying goods to the consumers has to be followed.
- **Pay Taxes Regularly** – Taxes and other duties to the government must be honestly and regularly paid.
- **Get the Accounts Audited** – Proper business records, accounts must be managed. All authorized persons and authorities should have access to these details.
- **Fair Treatment to Employees** – Fair wages or salaries, facilities and incentives must be provided to the employees.

- **Keep the Investors Informed** – The shareholders and investors must know about the financial and other important decisions of the company.
- **Avoid Injustice and Discrimination** – Avoid all types of injustice and partiality to employees. Discrimination based on gender, race, religion, language, nationality, etc. should be avoided.
- **No Bribe and Corruption** – Do not give expensive gifts, commissions and payoffs to people having influence.
- **Discourage Secret Agreement** – Making secret agreements with other business people to influence production, distribution, pricing etc. are unethical.
- **Service before Profit** – Accept the principle of "service first and profit next."
- **Practice Fair Business** – Businesses should be fair, humane, efficient and dynamic to offer certain benefits to consumers.
- **Avoid Monopoly** – No private monopolies and concentration of economic power should be practiced.
- **Fulfil Customers' Expectations** – Adjust your business activities as per the demands, needs and expectations of the customers.
- **Respect Consumers Rights** – Honor the basic rights of the consumers.
- **Accept Social Responsibilities** – Honor responsibilities towards the society.
- **Satisfy Consumers' Wants** – Satisfy the wants of the consumers as the main objective of the business is to satisfy the consumer's wants. All business operations must have this aim.
- **Service Motive** – Service and consumer's satisfaction should get more attention than profit-maximization.
- **Optimum Utilization of Resources** – Ensure optimum utilization of resources to remove poverty and to increase the standard of living of people.
- **Intentions of Business** – Use permitted legal and sacred means to do business. Avoid Illegal, unscrupulous and evil means.

Follow **Woodrow Wilson's** rules – There are four important principles of business ethics. These four rules are as follows –

- **Rule of publicity** – According to this principle, the business must tell the people clearly, what it tends to do.

- **Rule of equivalent price** – The customer should get proper value for their money. Below standard, outdated and inferior goods should not be sold at high prices.
- **Rule of conscience in business** – The businesspersons must have conscience while doing business, i.e. a morale sense of judging what is right and what is wrong.
- **Rule of spirit of service** – The business must give importance to the service motive.

Cybercrime can cause direct harm or indirect harm to whoever the victim is.

However, the largest threat of cybercrime is on the financial security of an individual as well as the government.

Cybercrime causes loss of billions of USD every year.

Types of Cybercrime

Let us now discuss the major types of cybercrime –

Hacking

It is an illegal practice by which a hacker breaches the computer's security system of someone for personal interest.

Unwarranted mass-surveillance

Mass surveillance means surveillance of a substantial fraction of a group of people by the authority especially for the security purpose, but if someone does it for personal interest, it is considered as cybercrime.

Child pornography

It is one of the most heinous crimes that is brazenly practiced across the world. Children are sexually abused and videos are being made and uploaded on the Internet.

Child grooming

It is the practice of establishing an emotional connection with a child especially for the purpose of child-trafficking and child prostitution.

Copyright infringement

If someone infringes someone's protected copyright without permission and publishes that with his own name, is known as copyright infringement.

Money laundering

Illegal possession of money by an individual or an organization is known as money laundering. It typically involves transfers of money through foreign banks and/or legitimate business. In other words, it is the practice of transforming illegitimately earned money into the legitimate financial system.

Cyber-extortion

When a hacker hacks someone's email server, or computer system and demands money to reinstate the system, it is known as cyber-extortion.

Cyber-terrorism

Normally, when someone hacks government's security system or intimidates government or such a big organization to advance his political or social objectives by invading the security system through computer networks, it is known as cyber-terrorism.

Cyber Security

Cyber security is a potential activity by which information and other communication systems are protected from and/or defended against the unauthorized use or modification or exploitation or even theft.

Likewise, cyber security is a well-designed technique to protect computers, networks, different programs, personal data, etc., from unauthorized access.