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* Chapter 1 :- Sources of Law. *

- Law is a command of sovereign, which regulates human behaviour described by various juris.

• Significance :-

- Law is not static. It is Dynamic. Law changes as per requirement of society.

* Jurispredence and legal theory.

- The word jurispredence is derived from the word 'juris' means law and 'predence' which means knowledge. So, jurispredence means knowledge of law

- The meaning of jurispredence has changed over a period of time as the boundries of discipline are not rigid.

- It has two flod aspect

- abstract body of rules
- Social machinery for securing order.

1] Analytical Jurispredence :-

- Analytical jurispredence focuses on abstract theory of law which is based on pure science.

- It is based on those foundation of objective factors which are universally true.

- Law should not be shifting sand of individual preference, it should be followed and accepted by all.

2] Sociological Jurispredence :-

- Sociological jurispredence says that law made to solve social problems, it is answer to social problems.

- If someone wants to understand the law it is necessary to understand social problems first.

3] Teleological Jurispredence

- The teleological jurispredence highlights that law is made for human resources & it is related to human reasons.

- It is intimately related to notion of purpose.

- There is supreme end which law follows.

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* Jeremy Bentham :-

- He placed man under command of two sovereign i.e pain & pleasure.
- He used / followed the principal of benevolence.
- His concept states that, 'happiness of each will result into happiness of all'.
- He stated that law is made for common good not for selfish reason.

1) Source → will of sovereign.
2) Subject → may be personal thing.
3) Extent → Coverage of act.
4) Aspect → command,
non-command,
prohibited,
non-prohibited.
5) Remedial rules → address to judges.
6) Objects → Purpose of act.
7) Force → to obey the law.

- Criticism — i) He doesnot specified proper meaning of law.

ii) He doesn't gave consideration to custom as law.

* John William Salmond :-

- Law is made to give justice

- Justice is primary source of law.

- Law is secondary, unessential and accidental.

- He stated that justice is possible without law but such system is not desirable.

• Criticism :- • Justice is end and law is medium question by some laws.

• Justice is not the only purpose of law.

* There is contradiction in his own theory.

* Roscue pound :-

- He explained that, law is based on society where, maximum want of satisfaction and minimum of friction & waste.

- There has to be identification of certain interest as individual, public & social.

- Law recognize and secure all interest legally.

* Prof. HLA Hart :-

Positivism : as per Prof. HLA Hart

- Prof. HLA Hart was british legal philosopher. He listed many things as meanings ~~rearelated~~ related to 'positivism'. Those meanings are as follows :-

  - Laws are basically the commands
  - The analysis of legal concept is
    - worth living.
    - different from sociological and historical enquiries into law,
    - It is different from critical evaluation.
  - Decisions can be removed logically from predetermined rules without option to social aims, policy or morality.
  - Moral judgements cannot be established by rational agrument, evidence or proof.
  - Law it is laid down should be kept away from the law that ought to be.

* Hans kelsen :- He is positivist

- He stated that law is based on 'normative science'.

- He considered sanction 'norm' as an essential element of law.

- According to kelsen, 'Law is a primary norm which stipulates sanction'.

- He focused on what was the law instead of what it should be.

- He explained law as 'normative science'. His theory is pyramidal structure of norms.

- Norms ~~dervi~~ derives from basic norm such norms called as grund norms.

• Criticism :- • It is difficult to know grundnorm.

• He primarly focused on International laws not to muncipal laws.

* School of law :-

I Natural school of law :-

" Natural school of law says that certain rights & duties exist due to human nature and it can be understand through human reason. This school focuses on morality and justice."

- **Ancient theory :-**

  - There are two types of philosophers. Under this school.

    - Roman and ancient jurists.

Roman philosophers

Ulpine	Cicero	Justinian's Digest
Law is a art & science what is equatable and good.	Law is the highest reason implented in nature	Law is a standard of what is just and unjust.

Greek philosophers

Heraclitus

- 1st Greek philosopher.
- He said there are 3 main features of law - destiny, reason and order, which are interconnected.

Plato

- His theory is characterized by two aspects - wisdom and reason.

- **Medieval Theory** :-

  - It is based on theological idea i.e God.

  - The law of god is actually true Dharma connecting law with god.

Thomas Aquinas = He is the expert in this ~~cate~~ theory. He divided law into 4 categories.

a) Law of God
b) Natural law
c) Divine law.
d) Human law.

- **Renaissance Theory :-**

  - Reason is the main foundation of this theory.

  - It has two different features i.e. more secular, political founded due to human reasons.

  - It promots natural rights of a man and the state.

Major proponents =

1) Hugo grotius :- It is a duty of sovereign to safeguard of citizens.

2) Immanuel kant :- Man is guided by his own conscience. Natural law is based on right reasons.

- **Modern Theory :-**

  - This theory rejects the old theories. This theory is a ~~rival~~ ~~riv~~ revival of some other theories and revival of Natural law.

* **Judicial Precedents :-**

1) Declaratory and Original precedents

  - A declaratory precedent is the one which is merely the application of an already existing

rule of law. In case of advance precedents are more numerous. It is a law for future because it is now applied.

2) Persuasive precedents

- A persuasive precedent is one which the judge are not obligated to follow but they will take into consideration. In India, the decision of one high court are only persuasive precedent in other high court.

3) Absolutely Authoritive Precedents :-

- An absolutely authoritive precedent is one which judges must follow whether they approve of it or not. An authoritative precedent is a legal source of law.

4) Conditionally Authoritative Precedent :-

- A conditionally authoritative precedent is one which though ordinarily binding on court before which it is cited, is liable to disregarded in same circumstances.

* Ethical School

- Ethics means moral values.

- It states that law and ethical values are not related.

- It also says that, society must have ethical value and ethical purpose.

* Sociological School :-

- This school states that society and law are inter-related.

* Realist School of law

According to Holmes :- Law is statement of circumstances in which public force will ~~be~~ be brought to bear upon through courts.

* Statutes or Legislation.

- Legislation is source of law which is consists declaration of legal rules by authority.

- It is also called as 'Juris scriptum' it means written law.

Legislation

Supreme and Subordinate.

- Supreme legislation.

  - Supreme legislation have its power directly from constitution.

  - It connot be revoked, abolished or controlled by other legislative authority.

- Subordinate legislation.

  - Subordinate legislation have its power by supreme authority of legislation.

  - It has it's continue existance.

  - The parliament of India have power over the powers of supreme legislation.

* Personal law.

- In lots of cases the courts are required to apply the personal laws of party.

- In case of Hindu there personal law found in :- "Shruti" which contains 4 vedas.
  1) There are 3 main Smritis i.e. the codes of Manu, Yajnavalkya & Narada.
  2) The 4 Veda's are - rugveda, yajurveda, atharvaveda, Samveda.

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- The personal law of Mohommedas found in :- Hadis, Ijmas, The holy karan. Mohommedas are governed by their personal law.

* Doctrine of Stare Decisis :-

- Adhere to the decision and do not unsettle things which are established.

- This doctrine bring certainity and uniformity in law.

- This doctrine means like cases should be treated alike.

- The rule is based on public policy and expediency.

* Obiter Dicta.

- Obiter Dicta means 'said by the way'.

- Judge while giving judgement says many things which are not strictly necessary for desicion, judges are not bound ~~not~~ to ~~it~~ follow them although they can take advantage out of it.

* Ratio Decidendi.

- When we say judicial is binding as a precedent what we means is rule formulated in decision must be applied when similar facts arise in future.

- Ratio dencidendi means reason for deciding all material facts of · elements of decision is ratio decidendi and immaterial elements are obiter dicta

- Ratio decidendi is binding as presidend and and not the obiter dicta.

* Secondary source of law.

• Justice, Equality and Good Conscience.

- In absence of any law, custom or personal law case should be decided on basis of justice, equality and good conscience.

- Justice, equity and good conscience originated from british administration in India.

- British government directed that when that law was silent case should be decided on the basis of justice, equality and good conscience.

- Supreme court has also established the same rule.

* Sources of English law :-

i] Comman law :-

- Common law is made by judgement of judges, on decision of certain principles.
- These principles have been built up over many years as to form complete statement of law.

ii] Law Merchant :-

- It is most important source of merchantile law.
- Law merchant means those customs which are binding on traders in their dealings with each other.
- Custom has to be proved by the party claiming it.

iii] Equality :-

- It is a body of rules.
- It is primary source of which was neigher custom nor written law.

iv] Statue law :-

- Statue law is the portion of which is derived from legislation or enactment of parliament or legislative bodies.

- It is important source of merchantile law.

* Merchantile or Commercial law.
  - English merchantile law.
  - Judicial decisions.
  - Indian legislature.
  - Customs and Trade wages.

19th Aug 2023

* CH.2 :- CONSTITUTION OF INDIA *

- The constitution of India is Supreme law of India popularly known as "Mother of all laws".
- The constituent assembly under the chairmanship of Dr. B.R. Ambedkar took almost 3 years to draft the constitution.
- It came into force on January 26, 1950.

* PREAMBLE

We, people of India, having solemnly resolved to constitute India into SOVEREIGN SOCIALIST ~~DEMO~~-SECULARDEMOCRATIC REPUBLIC & to secure to allits citizens:

1) Justice, social, economic & political
2) Liberty of thought, expression, belief, faith and worship; EQUALITY of status & of opportunity; and to promote among them all;
3) Fraternity assurity the dignity of the individual and the unity & integrity of the Nation, in our constituent assembly this Twenty-six day of november, 1949, do hereby adopt, enact & give to ourselves this constitution.

* Constitution of India is basically federal but with certain unitary features.
  1) Dual Government
  2) Distribution of Powers
  3) Supreme constitution.

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4) Independance of Judiciary.
5) Written constitution,
6) Single Constitution
7) Residuary Power
8) Strong Centre
9) Emergency power
10) Single citizenship
11) Rigid procedure for the amendment of constitution

* FUNDAMENTAL RIGHTS.

The fundamental rights may be classified as follows –

- Articles 15, 16, 19 and 30 are guaranteed only to citizens
- Articles 14, 20, 21, 22, 23, 25, 27 & 28 are available to any person on the soil of India – citizen / foreign
- The rights guaranteed by Articles 15, 17, 18, 20, 24 are absolute limitations upon the legislature power.

* WHAT DO YOU MEAN BY STATE?

Article 12, :- Unless the context otherwise requires the state includes –

- The Government of India & Parliament of India.

- The Government ~~of~~ & Legislature of each of the state.

- All local / other authorities.

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- written within territory of India, or
- under the control of government of India.

Case law :- R.D. Shetty Vs. International Airports Authority and
Ajay Hasia V. khalid Mujib.

It was held by Supreme Court that corporations acting as agency of government would become State only if :-

1) The entire capital of ~~govern~~ corporation is held by government.

2) If the corporation enjoys a monopoly status which is protected by state.

3) The state exercises deep & persuasive control in corporations.

4) The functions of corporation are of public importance and closely related to government functions.

5) If department of government is transferred to corporation.

6) The financial assistance of state is so much as to meet almost the entire expenditure of corporation.

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Case law :- Zee Telefilms Ltd. Vs. Union of India.

It was held by Supreme Court that Board of Control for Cricket in India (BCCI) was not state because it wasn't not shown to be under the control of government.

* ARTICLE 13

It lays down the rules of interpretation in regard to laws inconsistent with or inderogation of fundamental Rights

Pre - constitutional laws → inconsistent with fundamental Rights → Void

Post - constitutional laws → inconsistent with fundamental Rights → Void

- Article 13 (1) :- It states that all pre-constitutional laws are void to the extent to which they are inconsistent with fundamental Rights.

- Article 13 (2) :- State shall not make any law i.e. (Post - constitutional laws) which contradicts the fundamental Rights & if such law is made, then it shall be void to the extent to which it is inconsistent with any such right.

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* DOCTRINE OF SEVERABILITY –

- Not entire law becomes invalid if some part is inconsistent with fundamental rights.

- Only such part will become invalid and void which is inconsistent with fundamental rights & rest of law will stand.

- If after separating invalid part, valid part is capable of giving effect to legislatures intent then only it will survive, otherwise entire law will be declared as void.

* DOCTRINE OF ECLIPSE

Law made before comencement of constitution will become dormant / eclipsed to extent it comes under shade of fundamental rights (to the extent it is inconsistent with fundamental rights) Eclipsed will again become active & effective when fundamental rights are removed by amendment of constitution.

* Case law – Ram krish al dalmiya Vs. Justice tendulkar.

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* DOCTRINE OF WAIVER

- It is based on premise that a person is his best judge & that he has liberty to waive the enjoyment of any right conferred on him by state.

- However, the person should have knowledge of his rights.

- It was discussed in Basheshar Nath V. CIT, that it was not open to citizens to waive any of the fundamental rights.

* RIGHT OF EQUALITY [Article 14 to 18] :-

- Article 14 :- The state shall not deny any person equality before law or the equal protection of law within the territory of India.

- Equality before law :-
  - The term 'Equality before law' is borrowed from English common law.
  - The term Equality before law is negative term.
  - It means absence of any special privilege to any individual.
  - It means law will not give any special privilege to any person
  - It also states that there no man above law.
  - Law cannot favour someone.

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- Equal protection of law -
  - It ~~equc~~ is of American Origin
  - The Equal protection of law is positive concept
  - It means among the equals law should be equal.
  - In simple words, in equal circumstances law should give equal treatment to equals.

- Legislative Classification

1) It forbids class legislation, but does not forbid classification.

2) There should be clear differentiation between people who included & excluded for classification. The classification should have rational nexus.

3) The classification may be founded on different basis, ~~m~~ namely geographical or according to objects or occupations or the alike.

4) If there is discrimination, then he has to prove it.

5) A Single individual can be treated a class by himself on account of special circumstances.

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* ARTICLE 20 (1) : PROTECTION AGAINST EX-POST FACTO LAWS

If particular act was not an offence at time when a person did that act then he cannot be convicted under law, which with ~~retrop~~ retrospective declares that act is an offence

* ARTICLE 15 :- Prohibition of Discrimination on Grounds of Religion etc.

- Article 15 (1) : prohibits state from discrimination on Grounds of Religion, Race, Caste, sex, place of birth or any of them.

- Article 15 (2) : lays down that no citizen shall be subjected to any disability, restriction or condition with regard to access to shops, public restaurants, hotels and place of public entertainment OR The use of wells, tanks, bathing ghats, roads & places of public resort, maintained ~~wo~~ wholly or partially out of state funds or dedicated to the use of the general public.

- Article 15 (3) : Empowers state to make special provisions for the protection of children & women.

- Article 15 (4) : Permits state to make special provision for the advancement of
  - Socially & educationally backward classes of citizens,

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- Scheduled casts &
- Scheduled tribes.

• Article 15 (5) : Part Permits the state to make special provisions for advancement of any socially and educationally backward classes citizens or SC or ST such provisions relate to their admission to educational institutions including private educational institutions whether aided or unaided.

• Article 15 (6) : Nothing in this article shall prevent the state from making special provisions for economically backward peoples and special provisions relate to their admission to educational institutions including private educational institutions

* ARTICLE 16 :- Equality of Opportunity in Matters of Public Employment.

• Article 16 (1) : guarantees to all citizens equality of opportunity in matters relating to employment or appointment of office under state

• Article 16 (2) : prohibits discrimination against a citizen on grounds of religion, race, caste, sex descent, place of birth or residence

However, there are some exeptions -
i) Parliament can make any law for appointment or employment to office under Govt. of state

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on a union territory & ~~shall~~ such appointment shall be an essential qualification.

ii) ~~An~~ provision can be made for reservation of appointment or posts for ~~economi~~ backward class.

iii) Nothing in this shall prevent state from making any provision for reservation in matters of promotion for SC or ST

iv) Article 16(4B) provides for carrying over of unfilled vacancies reserved for SC/ST to subsequent years, which is simply referred to as the 'carry forward rule'

v) A law shall not be invalid if it provides that the incumbent of an officer in connection with the affair of any religious / denominational institution / any member of the governing body thereof shall be person professing a particular religion or belonging to a particular denomination.

* ARTICLE 17 : Abolition of Untouchability

- It says that "untouchability" is abolished and its practice in any form is forbidden.

- The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law

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- Untouchabilitity does not include istigation to social boycott

* ARTICLE 18 : Abolition of Title.

- British government used to confer titles to persons who showed special allegiance to them.

- The person who has these title considers himself superior than other people.

- It had the effect of unequality

- To avoid this practice Article 18 provides- that,
  - state cannot give any title
  - Military / academic titles can be given
  - Citizen of India shall not accept any title, place of profit from foreign states without consent of president.

* Right to freedom [ARTICLE 19 TO 22]

- ARTICLE 19 (1)(a) : freedom of speech & expression
  - It says that all citizens shall have right to freedom of speech & expressions.

  - It means right to express one's beliefs and opinions freely by word of mouth, writing, printing, picturers or any other mode.

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- Right to speech & expression includes right to make good or bad speech

- It also includes right of not to speak.

- It also includes freedom of peaceful demonstration, dramatic performance & cinematography.

- Expressions can be given even by signs.

- It includes freedom of press & right to publish one's opinion is also included.

- It was held by Supreme Court that right to fly the National flag freely with respect and dignity is a fundamental right of citizen.

- Right to know is also a right to freedom.

- It also includes right to remain silent.

- Right to freedom of speech & expression also includes the right to communicate through any media - print, electronic & audio visual.

- Dramatic performance is also form of speech and expression. It was held by Supreme Court that Censorship of films including pe-censorship is justified under Article 19 but with reasonable restrictions.

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- Grounds Of Restriction

1) Sovereignty & integrity of India
2) Security of state
3) Friendly relations with foreign state
4) Public order
5) Decency or morality
6) Contempt of court
7) Incitement of an offence
8) Defamation

- ARTICLE 19 (1) (b) : Freedom to assemble peacefully and without arms

- Freedom of assembly is an essential element in democratic Govt.

- It say that all citizens shall have right to assemble peacefully & without arms.

- This right is not absolute and it subject to limitations in form of reasonable restrictions.

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- Grounds of Restrictions

1) Sovereignty and Integrity of India.

2) Public order.

- ARTICLE 19 (1) (C) : Freedom to form association and union.

- The freedom of association includes freedom to hold meeting and to take out processions without arms.

- It says that all citizens shall have right to become or not to become a member of any Association or Union.

- Supreme Court observed that assuming the right to form an association 'implies a right not to form an association'

- This right is not absolute and it subject to limitations in form of reasonable restrictions.

- Grounds of Restrictions

1) Sovereignty and integrity of India
2) Public Order
3) Morality

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- ARTICLE 19 (1) (d) : Right of Movement.

  - This right ensures right to move freely throughout the territory of India.

  - This right does not extend to travel abroad and this also has some reasonable restrictions.

  - Grounds of Restriction

    1) In the interest of general public
    2) Protection of interest of any schedule of any schedule tribe.

* ARTICLE 19 (1) (e) : Freedom of Residence

  - It gives right to reside and settle in any part of territory of India.

  - This freedom is said to be intended to remove internal barriers within the territory of India to enable every citizen to travel freely and settle down in any part of state or union territory.

  - This right also has some restrictions.

  - Grounds of Restrictions
    1) In the interest of general public.

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2) Protection of interest of any schedule of any schedule tribe.

* ARTICLE 19 (1) (g) : Right to trade, Occupation, Profession or Business.

- It says all citizens shall have right to practice any profession, trade, occupation, business.

- This right has some reasonable restrictions

- Grounds of Restrictions

1) In the interest of general public
2) Prescribing Professional / Technical qualification necessary for carrying out any occupation, trade or business.
3) State can create monopolies & then that business, trade cannot be carried out by anyone.

* ARTICLE 20(2) :- Protection against Double Jeopardy

- No person can be prosecuted or punished for the same offence more than once.

- If a person has been let off after prosecution without being punished, he can be prosecuted again.

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- This protection can be given only if a person is prosecuted as well as punished for an offence.

* ARTICLE 20 (3) : Protection against self - incrimination

- No person accused of any offence shall be compelled to be a witness against himself.

- This protection is available only when all the three conditions are fulfilled :

1) He must be accused of an offence

2) There must be compulsion to be witness

3) The compulsion should result in his giving evidence against himself.

* Article 21 :- RIGHT TO LIFE & PERSONAL LIBERTY.

- This ~~act~~ article confers on every person the fundamental right to life and personal liberty.

- It says that, "No person shall be deprived of his life or personal liberty except according to procedure established by law"

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- Right to life includes those things which make life meaningful. Every person has right to make his life meaningful.

- It guarantees right to live with human dignity. Right to live in freedom from noise pollution is a fundamental Right protected by Article 21.

- The term personal liberty extends to variety of matters like right to bail, right not to be handcuffed except under very few cases, right to speedy trial, right to legal aid etc.

- It was held by Supreme Court that right to life and personal liberty includes right to privacy.

• ARTICLE 21A : Right to Education.

According to this, the State shall provide free and compulsory education to all children of the age of six to fourteen years.

* ARTICLE 22 : Right against arrest.

- A person who is arrested cannot be detained in custody unless he has been informed, as soon as he may be, of the grounds for such arrest.

- such person shall have right to consult & to be defended by legal practioner of his choice.

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- A person who is arrested must be produced before the magistrate within period of twenty - four hours.

- It may be noted that a fore said safe guards are not available to
  i) Alien enemies ; &
  ii) Persons arrested or detained under preventive detention law.

• Preventive Detention

- It means detention of person without trial
- The object of preventative detention is not to punish a person for having done something but to prevent him from doing it.
- No offence is proved nor any charge formulated but yet a person is detained because he is likely to commit an act prohibited by law.
- Parliament & state legislations both entitled to pass a law of preventive detention.

- Such persons cannot be detained for period longer than 3 months.

- If advisory board thinks that person who is detained shall be arrested for more than 3 months then person can be arrested for more than 3 months

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- Communication made to him the ground on which the order for his detention was ~~md~~ made

- The person who is detained shall be given opportunity of being heard.

* ARTICLE 23 : Prohibition of traffic in human beings and forced labour

- This article imposes complete ban on traffic in human beings, beggar and other similar forms of forced labour.

- The contravention of these provisions is declared punishable by law.

- "Traffic" in human beings means to deal in men and women like goods to sell or otherwise dispose them off.

- "Beggar" means involuntary work without payment.

* ARTICLE 24 :- Prohibition of employment of children.

- This article prohibits the employment of children below age of fourteen in any factory or mine.

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* RIGHT TO FREEDOM OF RELIGION [Articles 25 to 28]

- ARTICLE 25 :

  - This article gives every person,
    i) Freedom of conscience, &
    ii) the right freely to profess, practice and propagate religion

  - Special right has been accorded to the sikhs to wear Kirpan as part of professing their religion.

- ARTICLE 26 : A religious denomination is not a 'citizen'. provisions of this article grants to every religious denomination -
  - The Right to maintain institutions for religious and charitable purpose.
  - In matters of religion right to manage its own affairs.
  - Right to own movable or immovable property.
  - Right to administer that property in accordance with law.

- ARTICLE 27 :-

  According to this article, no person can be compelled to pay taxes, the proceds of which are specially appropriated in payment of expenses for promotion or maintainence of any particular religion or religious ~~deno~~ denomination

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- ARTICLE 28 :- Prohibits religious instruction in certain educational institutions.

The article states -

i] No religious instruction can be provided in any educational institution which is wholly maintained out of state funds.

ii] No person attending an educational institution recognised by state or receiving aid out of state funds cannot be required -

iii] To take part in any religious instruction that is imparted

iv] To attend any religious worship.

* CULTURAL & EDUCATIONAL RIGHT

- ARTICLE 29 :- This article guarantees two rights -

- Any section of citizens residing in the territory of India can have a distinct language, script or culture of its own and has right to conserve it.

- No citizen can be denied admission into any educational institution on ground of religion, race, caste, language or any of them.

- ARTICLE 30 :- It provides following :-

- All minorities, whether based on religion

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or on ~~religion~~ language have right to establish and administer educational institutions of their own choice.

- The state cannot discriminate any educational institution on a ground that it is under management of minorty whether it is based on religion or language.

* RIGHT TO CONSTITUTIONAL REMEDY

• It is a cardinal principle of jurisprudence that where there is right there is remedy. (ubi jus ibi remedium)

• If rights are given without being remedy for their enforcement, they are of ~~on~~ no use.

• ARTICLE 32 :- It is fundamental right that a person whose fundamental right is violated has right to move to Supreme Court. He can directly raise matter before highest court & supreme court is empowered to issue directions or writs in nature of :-

1) Habeas Corpus
2) Mandamus
3) Prohibition
4) Quo warranto
5) Certiorari

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- ARTICLE 33 :- This article authorise parliament to restrict fundamental Rights in relation to members of armed forces, para-military forces, police forces & analogous forces.

- ARTICLE 34 :- This article says that Parliament may by law indemnify any person in service of union or state for an act done during martial law.

- ARTICLE 35 :- This article provides that Parliament has empowered to make a law restricting a fundamental right. Parliament can alone do so, not the state legislature.

* ARE THE FUNDAMENTAL RIGHTS AMENDABLE ?

i] In Shankari Prasad Vs Union of India, it was decided by Supreme Court that no part of our constitution was unamendable and parliament may amend any provision of the constitution including fundamental Rights.

ii] In Golak Nath's Vs state of Punjab, Supreme revised its earlier decision and contended that Parliament has no power to amend ~~fu~~ fundamental rights.

iii] Parliament passed the Constitution 24th amendment Act and introduced some changes & amended fundamental Rights. The act declared that Parliament has the power to amend the fundamental Rights.

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iv] In Keshavnanda Bharti Vs. State of kerela Supreme Court held that Parliament can amend any part of Constitution including fundamental rights. But, it made clear by court that Parliament cannot alter the basic structure or ~~to~~ framework of constitution.

v] In 42nd Amendment it was held that parliament can amend constitution even by altering its basic structure.

vi] In Minerva Mill Ltd Vs. Union of India, The Supreme Court was convinced that the basic structure of constitution should be preserved & the unlimited power given under 42nd amendment act should not prevail.

* DIRECTIVE PRINCIPLES OF STATE POLICY.

- Directive principles are ideals which the Union & state govt. must keep in mind while formulating policies or passing a law.

- The directive principles differ from fundamental Rights in following respects :-

1) The directives are not enforceable in the Courts.

2) The Directives require to be implemented by legislation & ~~so~~ as long as there is no law

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carrying out policy laid down in directive no state or individual can violate any existing law.

3) The Directives do not carry away any legislative power from the appropriate legislative.

4) The Court cannot declare any law as void on ground that it contravences any directive principles.

5) The court cannot competent to compel the govt. to carry out any directive or make any law for that purpose.

6) It is duty of State to implement the directives, it can do so but subject to limitations imposed by different provisions of constitution.

• Conflict between a Fundamental Right & Directive Principle - Initially, the Courts adopted a strict view ~~in~~ that a Directive Principle could not override fundamental Right.
- In case of coflict between the two fundamental Rights would prevail over Directive principles.

• Important Directive Principles -

1) Organised Village Panchayats
2) Equal Justice and free legal ~~remed~~ aid
3) Just and Human conditions for work.
4) Right ~~to~~ to work, education and public assitance in certain cases.

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5) Living wages and securing standard of living to workers.
6) Protection of Environment, forest and wildlife
7) Protection of monuments and places of National Importance
8) Free & compulsory education for children.
9) Equal right for Men and Women
10) Equal pay for equal work for men & women
11) Distribution of ownership of material resource for common good.
12) Ensure Health of citizens at workplace
13) Protection of child & youth against exploitation.

* FUNDAMENTAL DUTIES

1) To abide by the constitution and respect its ideals and institutions, the National flag & the National Anthem

2) To follow & cherish the noble ideals which ~~inspired~~ inspired our national struggle for freedom

3) To protect the sovereignty, unity and integrity of india.

4) To defend the country and render national service when called upon to do so.

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5) To promote harmony and the spirit of common brotherhood, to renounce practices derogatory to dignity of women

6) To value and preserve the rich heritage of our composite culture.

7) To protect and improve the natural environment including forests, lakes, rivers & wild life and to have compassion for living creatures.

8) To develop the scientific temper, humanism and the spirit of inquiry & reform

9) To safe guard public property and to abjure violence

10) To provide opportunities for education to one's child or ward between the age of six and fourteen years.

* ORDINANCE MAKING POWERS

- President in case of union.

i] Administrative power
ii] Military power
iii] Legislative power
iv] Judicial power

- Governor in case of state

i] Administrative power

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ii] Legislative power
iii] Judicial power

- Our constitution has a special feature ordinance-making power of president.
- This independent power of court executive to legislate by ordinance has the following peculiarities :

  - This power will available to President only when both the houses of Parliament are not functioning. Even, when one house is not functioning President gets this power.

  - This power is to be exercised by President on advice of his council of Ministers.

  - The president must be satisfied about the need for ordinance & he cannot be compelled.

  - Ordinance must be laid before Parliament when it re-assembles and shall automatically cease to have effect at earlier of the following two dates → expiration of 6 months from the date of re-assembly & date of passing of resolution for disapproval.

- Distribution of legislative powers
  The constitution of India has made two fold distributions of legislative powers between Union & states :- On basis of territory
  On basis of subject matter.

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- Territorial Jurisdiction -

Parliament can make laws for the whole or any part of India and Legislature of state make laws for the whole or any part of state.

- Subject matter Jurisdiction -

Union list	State list	Concurrent list
↓	↓	↓
Parliament has power to legislate.	State legislature has power to legislate	Both has power
↓	↓	↓
There are 97 entries in list	There are 66 entries in list	There are 47 entries in list

* Power of parliament to make laws on state list.

State legislatures have the exclusive powers to make laws with respect to the subjects included in state List and Parliament has no power to encroach upon them. However, there are some exceptions -

1) In the National Interest
2) During a proclamation of emergency
3) Breakdown of Constitutional Machinery in state
4) On request of two or more states
5) Legislation for enforcing international agreement.

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* Rules applied to interpret Legislative Lists

i) Rule of Harmonious Construction
- Different entries in different lists are to be interpreted in such a way that conflict between them is avoided & each of them is given effect.
- It must be accepted that constitution does not want to create conflict & make any entry worthless.

ii) Rule of Pith and Substance
- Doctrine of Pith & substance is applied when a particular law deals with a subject in one list touches also upon a subject in another list. Then the true object of legislation is to be determinative.

iii) Rule of Colourable Legislation
- This doctrine states "whatever legislature can't do directly it can't do indirectly, When a legislature seeks to do something in an indirect manner what it cannot do directly, the court struck such law.

* DELEGATED LEGISLATION
- Delegated legislation means law making by authorities other than legislature on basis of power given to legislature

Classification of Subordinate Legislation
1) Executive
2) Judicial

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3) Municiple
4) Autonomous
5) Colonial

* FREEDOM OF TRADE, COMMERCE & INTERCOURSE

- Article 301 :- The Constitution lays down that trade, commerce and intercourse throughout the territory of India is free. Restriction in the form of taxes can imposed.

- Article 302 :- Parliament may impose such restrictions on freedom of trade, commerce & intercourse as may be required in public interest.

- Article 303 :- Parliament cannot ~~by~~ make any law giving preference to one state over the other except in case of scarcity of goods.

- Article 304 :- State legislature can impose taxes on goods which comes into their state from other state if those goods are subject to taxation in their respective state.

- Article 305 :- The law which was already in force at the commencement of constitution shall not be affected by provisions of Article 305 unless President may order.

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* PARLIAMENTARY COMMITTEES

• Parliamentary committees plays a vital role in parliamentary system.

• The need for committees arise out of two factors - The first one being need for vigilance on the part of legislature over actions of executive.

- Second one is that modern legislature these days is over - burdened with heavy volume of work with limited time at its disposal

* Ad hoc & standing Committees

• Ad hoc committees are appointed for specific purpose & they cease to exist when they finish the task assigned to them & submit a report.

• Apart from the Ad hoc committees, each house of Parliament has standing committees like the Business Advisory committee, the committee on Petitions, the committee of privileges & Rules committee.

* WRITS

Indian Constitution empowers Supreme Courts to issue writ enforcement of fundamental Rights under Article 12.

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1) Habeas Corpus

- The term 'Habeas Corpus' means 'to have a body".
- The writ of Habeas Corpus is a remedy available to person who is confined without legal justification.

2) Mandamus

- It means 'we command'.
- The writ of mandamus is a command issued to direct any person, corporation, inferior court or govt. requiring him or it do a particular thing specified therein which pertains to his or its office and is further in nature of a public duty.
- The function of mandamus is to keep public authorities in their limit.
- Mandamus does not lie against president or governor.
- It is discretionary remedy.

3) Prohibition

- A writ of prohibition is issued to inferior court preventing latter from usurping jurisdiction which is not legally vested in it.
- When a court takes a matter which is not in its jurisdiction then a writ of prohibition can be issued to court.
- While mandamus commands activity, prohibition commands inactivity.
- It is available only against judicial or quasi judicial authorities

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4) Certiorari

- It is available to any person, wherever any body of persons having legal authority to determine questions affecting the rights of subjects & having the duty to act judicially in excess of their legal authority.
- Under constitution of India all High Courts can issue writ certiorari through out their territorial jurisdiction when subordinate judicial authority acts
  - without jurisdiction or excess of jurisdiction
  - contravention of the rule of natural justice
  - commits an error apparent on the face of the record.
- The objective of both prohibition & certiorari is same. Certiorari is issued after authority has exercised its powers.

5) Quo warranto

- The writ of quo warranto enables enquiry of holder of officer under what authority he holds the office.
- It is issued when -
  - the office is of public & of substantive nature
  - created by statue / by constitution
  - the respondent has asserted his claim to office
- It is a discretionary remedy which the court may grant.

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*CH. 3 :- Interpretation of Statue. *

- A statue has defined as 'will of legislature'
- A statue is in always written form and it is a will of legislature expressed according to for state of law / law of state.
- Accoreding to Bouvier's Law dictionery, a statue is a law established by act of the legislative power i.e. Act of legislature.
- The term 'statue' generally applied to laws & regeulations of every sort law which permits or prohibits anything ~~which~~ that is designated as statue.

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* Statues are commonly divided into following cases -

1) Codifying : When they codify or arrange the unwritten law.

2) Declaratory : Wheng they do not make any alteration in existing law, but merely explains what it is.

3) Remedial : When they alter the common law or any judge make any law which is not statutory.

4) Amending : When they amend / alter the law which is already existed

5) Consolidating : When they consolidate or amalgamate some ~~provisions~~ previous statues related to some subject matter and with / without alteration to it

6) Enabling : When they remove a restriction or disability.

7) Disabling : When they restrain alienation of property

8) Penal : When there is penalty imposed or forfeiture.

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* Need for Interpretation of Statue

1) To discover the intention ~~for~~ of author. The written declaration that is in whose mind document should be always considered to be.

2) Consequently, construction must be near to minds & apparent intention of parties as possible & as the law will permit.

3) The ~~purpose~~ function of court is to determine what this the meaning of part by the words used by them and to declare meaning of what is written in instrument and to give affect to intention that is expressed for interpretation.

4) It is usually not possible to guess the exact intention of parties & substitute presumption for expressed intention.

5) ~~Ordn~~ Ordinary rules of construction should be applied by doing it the real intention of parties in some instances may be defeated.

6) Such course tends to establish greater degree of certainity in administration of law.

* Meaning of Interpretation of statue.

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- It implies the judicial process of determining the actual and true meaning of Acts of parliament.

- It would mean the process that conveys one's understanding of ideas or understaing as having a specific meaning & importance for a particular statue or law.

- The purpose of interpretation of statue is to ascertain the intention of legislation.

* Casus Omissus Rule

- It is a tool of statutory interpretation.
- It is a situation which is omitted from / not provided by any statue and ~~th~~ hence governed by common law.

- There are two basic rules

1) Every word in statue must given meaning of it

2) The court cannot read anything into statue or rewrite provisions.

Interpretation is done by using two principles

Primary Principles & Secondary principles

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* Primary Principles / Rules of Interpretation

1] Rule of Literal Construction / Interpretation

- According to this rule, the words, phrases and sentences of statue should be understood in their natural, ordinary, popular & grammatical meaning unless it leads to absurdity.
- Interpretation should not be made in such a way which would make other provisions redundant.
- Every word used in statue should be given meaning and no word is used unnecessarily in statue
- One Should not ~~made~~ presume any omission & if any word is not is statue it should not be given any meaning.
- Interpretation of any statue should be made according to plain, literal & grammatical meaning of words

2] Mischeif Rule / Heydon's Rule.

- It is a rule of Interpretation which prevents the misuse of provisions of statue.

- It is framed to avoid any mischeif provided/ added by statue

- The rules states that the court shall adopt that construction which suppress the mischeif and which shall advance remedy.

- four things should be considered –

1) What was the comman law
2) What is mischeif & defect
3) Which remedy parliament has re-solved
4) True reason of remedy

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3] Rule of Reasonable Construction / Doctrine of Ut Res magis valent Quam Pareat

- According to this Rule statue should be constructed sensible and reasonable.

- Every word expressed in Act should have /receive natural and fair meaning.

- It follows the principle of "Ut Res Magis Valent Quam Pareat" it means when the interpre-

tation of statue is ~~md~~ made, it should be done in meaningful & sensible manner.

- As far As possible all words used in statue must be given meaning as legislature is not expected to use unneccessary words

- If letter of law is not clear then interpretation should made according to purpose of spirit of law.

4] Harmonious Construction

- Whenever there is conflict between two or more provisions interpretation should be done in such a way as to avoid contradiction & to provide / give effect to both of them.

- A Statue must be read as a whole & one provision of act should be constructed with reference to another provision of the Act to make consistent ~~ea~~ enactment of whole statue.

- Where in enactment, if there are two provisions and whenever ~~it is~~ which cannot be reconciled with each other then it should be interpreted that effect may be given to both. This is what is known as "rule of harmonious Construction."

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5] Rule of Ejusdem Generis

- The meaning of ejusdem generis is 'of the same kind or species'.

- The Rule of 'Ejusdem Generis' is the one of the primary rules for interpretation.

- It helps Courts to find out the true intention of legislature.

- When general words follows specific words of a distinct category, the general word may be given a restricted ~~category~~ meaning of same catagory. General words takes its meaning from preceding expressions.

- The rule of Ejusdem Generis applies only when following conditions are satisfied. –

1) The statue contains enumeration of specific words

2) The members of enumeration constitue class.

3) Class / category not exhausted by enumeration.

4) General term follows enumeration

5) There is distinct genus which comprises more than one species

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5) There is no clearly manifested intention that general term be given broader meaning than doctrine requires.

* Other principles / Rules of interpretation.

1] Expression Unis Est Alterius

- It means that express mentioned of one thing implies the exclusion of another.
- If a particular thing is specifically mentioned then all others are excluded
- The method of construction according to this maxim must be carefully watched.
- This rule will not apply if, it would be lead to injustice & it would be simple & plain meaning

2] Contemporanea Expositio Est Optium Et fortissima in lege.

- Thee maxim says that contemporanea Expositia is best & strongest in law.
- Meaning of words can change over a period of time while interpreting law we will give same meaning to words which they have when law was passed.

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3] Noscitur A Sociis

- "Noscitur A sociis" i.e. "it is known by its associates"

- It means meaning of words should be known from its associating words.

- Two words having analogous meaning are coupled together then one will derive from another.

4] Strict & liberal construction.

- While reading law & interpreting law we shall not include such meaning which is not in their letter of spirit. This is known as strict construction.

- Everything is to be done in advancement of remedy that can be consistently with any construction of statue.

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* PRESUMPTIONS

1) Words used in statue are used precisely not loosely.

2) The statue is not intended to be inconsistent with principles of international law.

3) Legislature confers powers necessary to carry out duties imposed by it.

4) That vested rights at the time statue was passed cannot be taken away without express words or necessary implication.

5) Legislature knows the statue of law.

6) Legislature does not makes any mistakes.

7) Means rea is required i.e guilty mind is required for criminal act.

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8) Legislature cannot make any alteration in existing law unless by express enactment.

9) The law compels no man to do which is fruitless

10) State is not affected by statue unless it is expressly mentioned.

11) Legislature knows practice of executive & ~~juri~~ judiciary.

* INTERNAL AIDS OF INTERPRETATION

i] Title : The long title of Act is part of Act. The long title of acts sets purpose of act in general terms. The long title is a legitimate aid to the construction.

ii] Preamble :- Preamble may useful to know what Statue intends to reach out. If any enactment is itself clear & unambigous, then no preamble can cut down ~~ee~~enactment.

iii] Heading : According to one view 'heading' is to be regarded as giving key to interpretation of clauses ranged under it. Heading might be treated "as preambles to the provisions following them."

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iv] Marginal notes : In Sarbajit Rick Singh Vs. Union of India, supreme court held that the marginal note although may not be relevant for rendition of decisions in all types of cases but where the main provision is sought to be interpreted differently, reference to marginal notes would be permissible in law.

v] Interpretation clause : In statues it is common to find 'definitions' of words & expressed elsewhere in body of statue. The object of such definations is to avoid necessity of frequent repetitions. When a word has been defined in interpretation clause, prima facie defination governs whenever that word used in body of statue.

vii) Provisos : The proper function of proviso is to exept & to deal with case which would otherwise fall within the general language of the main enactment & its effect is confined to case.

viii) Illustrations & Explanation : If Illustration attach to statue sections are part of statue. They are useful to furnish some indication of presumable intention of legislature. The explanation is used to explain the meaning of words contained in section.

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viii) Schedules : Schedules form part of statue and it should be read together with it. If there is any inconsistency with between schedule & ~~ea~~ enactment, then enactment shall prevail.

* EXTERNAL AIDS OF INTERPRETATION

i) Parliamentory History : Suprem Court enunciated rule of exclusion of parliamentory history in the way it is enunciated by English Courts, but on some occasions court used this aid in resolving questions of constructions.

ii) Reference to report of committees : The report of Selected committees on whose report an enactment is based can be referred for interpretation.

iii) Reference to other statues : To cure mischeif Parliament may also refer to other statues for interpretation of statue.

iv) Dictioneries : When word is not defined in any Act itself then dictionery can be referred to find out general sense of word in which it should be understood.

v) Use of foreign decision : Use of foreign decisions of countries that follows the same system of jurisprudence as ours. The assistance of such decisions is subject to qualification that prime importance always given to Indian statue.

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* LEGAL TERMINOLOGIES & LEGAL MAXIMS.
READING BARE ACT & CITATION OF CASES.

- Reading bare Act.
  - It is a text of legislation passed by parliament or state legislature. To understand bare Act professionals are working with regulatory framework.
  - Important rules :-
    1) Bare Act should be read according to context.
    2) Definations of Act & pari materia statues & general clauses Act may be reffered
    3) Literal interpretation should be given initially.
    4) ~~Bu~~ Break the sentence but understand provision as whole.

5) Read - understand - apply rule would be beneficial
6) Read the updated version of bare Act.

• Citation of Cases
- Citation refers to statue, reported case, regulation ect.
- The decisions of H. court are having binding force on subordinate courts.
- This will result into the need of citation of cases in pleadings to made before authorities and courts.
- It is also used by authors to refer the case in books & publications.
- Equivalent citation is also important. It is use to refer cases which means parallel citations. It is also use to refer citation of some cases published in other journal.

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* PERSPECTIVE & RETROSPECTIVE OPERATION.

• Statutory provisions which creates substantive rights or takes away rights are PROSPECTIVE.

• They are RETROSPECTIVE only if by express words or necessary implication legislature has made them retrospective.

• Generally, amendment of substentive law is NOT RETROSPECTIVE ~~ule~~ unless it is laid down.

- Whether law is declaratory & therefore RETROSPECTIVE / not depends upon language of statue.

- It may be noted that declaration about existing law is not an amendment.

* USE OF 'MAY' & 'SHALL'

- Standard rule is that 'shall' is mandatory & may either permissive / discretionary.

- This rule cannot be applied in all situations while interpreting statue. In many cases 'shall' can be used even the nature of provision is permissive.

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* USE OF 'AND' & 'OR'

AND : It connect two or more items & makes cumulative group.

OR : It separates two or more item & makes them alternative to one another.

* INTERPRITATION OF PROVISO

- Any clause, document / statue begins with word 'proviso'.
- Term 'proviso' defined as clause making some condition.
- A clause in statue, deed / other legal document

introducing a qualification or condition to some another provision.

- Sometimes it mean to be exeption to something within main enactment to qualify something therein
- The proper function of proviso is to except & deal with a case, which would otherwise fall within general language of main enactment.

* DEEMING PROVISIONS.

- The provision in statue which contains the word 'deemed' is called as deeming provision.

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- The term 'deem' means to regard or to consider something in specific way.

- It means to treat something as if it were something else, assuming a fact which does not really exist.

- The legislature is quite competent to ~~eanct~~ enact deeming provision for purpose of assuming existence of fact which does not really exist.

* REPUGNANCY WITH OHTER STATUES.

To ascertain meaning of section whole section should be read other & attempt should be made to reconcile all the part but if reconciliation is not possible regard should be made to leading

provision if this method is also not possible & if two sections are repugnant then then last one will prevail.

* ~~CONFLI~~ CONFLICT BETWEEN GENERAL PROVISION AND SPECIAL PROVISION.

• Whenever there is dispute between special & general provisions the rule is that general provision should obey special provisions.

• It is generally duty of court to avoid conflict and harmonize provisions.

• Provision of one section cannot be used to defeat another, unless it is impossible to reconcine.

• There is maxim 'Generalia specialibus non-derogant' which means general things do not derogate from special things.

• Special provision will always prevail over the general provision.

* SOCIALLY BENEFICIAL CONSTRUCTION.

• In interpretaing social welfare legislation court should give construction which advances the beneficial purpose underlined enactment.

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• MCA has been entrusted with responsibility of administrating companies Act. MCA from time to time issues circulars, clarifications to clarify provisions of act.

• Whenever words 'as may be prescribed' are used in Companies Act, 2013, it indicates legislature has given powers to executive on such particular point to make law.

• four things should be considered. -

1) What was common law before making Act.

2) What was mischief & defect for which common law did not provide.

3) What remedy the Parliament had resolved & appointed to cure the disease.

4) The true reason of remedy.

* INTERPRETATION OF PROCEDURAL LAW.

Code of Criminal Procedure, 1973, by its very designation it is compedium i.e set of law relating to criminal procedure. The provisions contained in it are required to be interpreted ~~kepp~~ keeping in view that procedual prescription are meant for doing substantial justice. If violation of procedural provision does not

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result into fair hearing, then the same has to be treated as directory notwithstanding the use of word 'shall'.

* INTERPRETATION OF FISCAL & TAXING STATUES.

- While dealing with taxing provision 'strict interpretation' ~~so~~ should be applied.

- The court should not interpret statutory provision in such manner which would create additional fiscal burden on person.

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- It would never be done by invoking the provision of another Act, which are not attracted.

* DELEGATED ~~LA~~ LEGISLATION.

- Delegated legislation is legislation made under powers conferred by an Act of Parliament.

- The bulk of delegated legislation is governmental.

- It consists of orders, regulations, rules, directions and schemes mainly & made by ministers.

- Its primary use to supplement Acts of Parliament

- It can be made or amend without taking up parliamentary time.

- Delegated is also be made by variety of bodies outside C. Govt.

* CONFLICT BETWEEN STATUE, RULE & REGULATIONS

- Rules have statutory force.
- But before rule can give effect of statutory provision two conditions should be satisfied, i.e,

1) It must conform to the provisions of statue under which it is framed.

2) It must also come within scope & purview of the rule.

- If these conditions are not satisfied, then rules so framed would be void.

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* DOCTRINE OF SUBSTAINTIAL COMPLIANCE

- If attempt to perform does not meet terms of agreement and it is done in good faith, then the performance will still considered complete if essential purpose is accomplished ~~but~~, subject to claim for dameges for shorfall

- Some rules are vital & go to root of the matter they cannot be broken others are directory & breach of them can be overlooked provided there is substaintial compliance with rules ~~&~~ read as whole & provided no ~~predu~~ prejudice ensures.

* DOCTRINE OF IMPOSSIBILITY OF PERFORMANCE.

It is reflected in following legal maxims.

i] A l'impossible nul n'est tenu : No one is bound to to do the impossible

ii] Impossibilium nulla obligatio est : There is no obligation to perform impossible things.

iii] Lex non cogit ad impossibilia : The law does not compeal a man to do that which he cannot possible to perform.

iv] Impotentia excusat legem : Impossibility excuses the law. The law excuses someone from doing the impossible. Impossibility is an excuse in the law.

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* STRICT CONSTRUCTION OF PENAL STATUES.

- Generally, penal provisions should be constructed strictly.

- But it is one of settled provisions should be constructed strictly that when two interpretations are possible of penal provision that which is less burdensome should be prefferred.

- The rule of strict interpretation of penal statutes in favour of accused may not be rigid / universal application.

* Brief of General Clauses Act

- The General clauses Act was enacted on March 11, 1897.

- When there is no difination in Act ~~act~~ is not provided, then general definations provided under General clauses Act will be applicable.

- It does not confine to particular branch of law rather extends to various enactments & branches of law.

- It applies to Central legislation. It does not apply to state enactments as every state has their own General Clauses Act.

- It belongs to class of Act which may be called as interpretation Acts.

- It provides standard ~~of~~ ~~stat~~ set of definations or extend definations of words & expressions commanly used in legislation.

- It also provides set of rules & regulations of certain aspects of enactments.

- In addition there are other provisions which are not merely defination or rules of constructions but substain substantive ~~of~~ rules of law.

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• Object / Purpose / Importance -

1) To shorten the language of central legislation.

2) To provide uniformity by defining common legal terminology.

3) To provide various definations which would help to interprete law.

4) To avoid unnecessary repetition of certain words in various enactments

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5) To provide general definations of words which are not specifically defined under any given law.

6) It also helps to resolve any conflict between 2 or more central legislations.

* Effect of Repeal

If any central act / regulation repeals any enactment then, unless different intention appears repeal shall not -

1) Receive anything not in enforce at the time of repeal.

2) Affect the previous operation of any enactment repeal.

3) Affect any right privilege obligation / liability acquired under repealed enactment.

4) Affect any penalty or punishment in repealed inactment.

5) Affect any investigation under repealed ~~ean~~ enactment.

- Repeal of Act making textual amendment in Act / regulation - If any central act / regulation repeal any enactment then unless different intention appears repeal shall not affect continuance of such amendment made by enactment so repealed.

AIR - All India Report
SCC - Supreme Court cases
SCJ - Supreme court journal
SCR - Supreme court report.
DLT - Delhi law times.

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* Revival of repealed enactment
It is necessary for purpose of reviving either wholly / partly any enactment that wholly or partly repealed expressly state purpose for that.

* Computation of time
If any Central Act / regulation made after the commencement of this Act and any proceeding is need to be done or taken in Court or office within prescribed time or on particular day & court/office is closed on that day, then Act/proceeding shall be considered to be done / taken in court / office on next day afterwards on which court is reopened

* Gender & Number :

In all Central Acts & regulations, unless there is anything repugnant in subject,
- words imparting the masculine gender shall be taken to include females.
- words in singular shall include plural & vice versa.

* Power to issue, to include power to add to, amend vary / rescind :

If any Central Act / Regulation is given power to issue notifications, orders, rules / bye laws, then that power includes power, exercisable in like manner & subject to sanction & conditions if any, to add to amend vary/ rescind any notification, orders, rules & bye-laws so issued.

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* Recovery of offences.

As per section 63 to 70 of IPC & provisions of Code of Criminal procedure for time being in force in relation to issue & execution of warrants for levy of fines shall apply to all fines imposed under Act, ~~rule~~ regulation, rule / bye law unless the Act / regulation contains provision to contrary.

* Provisions as to offences punishable under two / more enactments.

If one act / ommission constitutes offence under two or more enactments then offender shall be liable to prosecuted & punished any of those enactments. Offender shall not be liable to ~~to~~ be

punished for same offence twice.

According to Supreme Court under Baliah V Rangachari states that there is no bar to trial or conviction of offence under two enactments, but there is only one bar for punishment to offender twice for the same offence.

* Meaning of Service by Post

If any Central Act / regulation made after the commencement of this Act, requires any document to be served by post & if there the "serve" or either "give" or "send" is used, then unless different intention appears the service shall be deemed to be effected properly addressing, pre-paying & positing by registered post.

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* READING METHODOLOGY OF THE COMPANIES ACT, 2013 & ITS LEGAL AURA.

- The Companies Act, 2013 is not stand alone piece of legislature but is a whole ecosystem.
- It contains Orders, Rules, Notifications & Circulars.
- We should read each section of the Act with relevant Rule, Notification & circular.
- It is a superior authority in law passed by legislature.

The principal legislature /statue.

Statue law : It is body of law contained in Acts of Parliament. The Companies Act 2013 is principal legislature.

Schedules : It is appended to Act i.e. added in Act to form part of it. They are generally added to avoid encumbering statues with matter of excessive details

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* CH.4th : Administrative Law *

- Administrative law is branch of law which deals with powers, functions & responsibilities of various organs of state.

- Mainly there are 3 organs of a state

Legislative	Executive	Judiciary
Law making body	Law executing authority which fill up gap of execut legislature & Judiciary	Courts responsible for reviewing laws, justice & settlement of disputes.
→ Parliament → State legislative assembly	[ex. RBI, SEBI, ICSI, ministers, govt. Departments]	

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- The ambit of administration is wide & holds following elements :-

  - It makes policies
  - It executes, administers & adjudicates law
  - It exercises executive powers & issues rules, bye-laws & orders of general nature.

* Sources of Administrative law -
1) Constitution of India
2) Acts / statutes

3) Ordinances, Administrative directions, notifications & circulars.
4). Judicial decisions.

* PRINCIPLES OF NATURAL JUSTICE

i] Rules against bias [nemojudex in causa sua]
• According to this rule, no person should be made judge in its own cause.

a) Pecuniary :- When a person acting as a judge has pecuniary interest in matter, then he will disqualify as a acting as a judge.

b) Personal :- There may be many situations which will create personal bias in Judge's mind. He may be friend of party or family member of party. Hence, he will disqualify as acting as Judge.

c) Subject matter :- A judge may have bias in subject matter, which means that he himself is a party or has some directer connection with matter. Hence, such judge will be disqualified as acting as judge.

ii] Rule of fair hearing [audi alteram partem]
• The 2nd principle of natural justice is audi alteram partem it means hear the other side.
• Which simply means no one should be condemned unheard.

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- Both the parties should be heard, before passing order
- following are ingredients of this rule -

1) Right to notice :- Hearing starts with notice by authority concerned to affected person. The person cannot defend himself, unless the person knows the case against him. Therefore, authority concerned is required to give notice to person of case against him before proceedings.

2) Right to present case & evidence :- The party against whom proceedings have been initiated must be given full opportunity to present his/her case & evidence in support of the case.

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3) Right to rebut adverse evidence :- for fair hearing the adjudicating authority must disclose to person concerned the evidence or material to be taken against him and shall give opportunity to rebut evidence or material.

4) Cross - examination :- Examination of a witness by adverse party is called as cross examination.

5) Legal Representation :- Normally representation through a Lawyer in any administrative proceeding is not considered as indispensable part of the rule of natural justice as oral hearing is not included in meaning of fair hearing.

6) Disclosure of evidence :- A party must be given full opportunity to explain every material that is sought to be relied upon against him.

7) Speaking orders :- It is also known as reasoned decisions. The court should give reason behind its decision. Party also has right to know the reason behind that decision as principle of natural justice.

- Exeptions - Statutory exclusion
  - Emergency
  - Interim disciplinary action
  - Academic evaluation
  - Impraticability
    - ↳ case law :- P. Radhakrisha V. Osmania University.

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* RULE OF LAW

- Rule of law was developed by british Jurist A.V. Dicey.
- He derived this term from french Principle 'La principle de legalite' it means the principle of legality.
- It states that the govt. should be governed by Rule of Law instead of Rule of individual.
- Each country should follow legality of law.
- Principles given by Dicey in his book "Rule of Law" are - supremacy of law
  - Equality before the law

- Law courts
- The predominance of a legal spirit

• Rule of law is embedded in Constitution under multiple parts, important aspects are as under:-
- Preamble
- PART III Fundamental Right
- PART IV Directive Principles of State Policy.

* ADMINISTRATIVE DISCRETION

• It is nearly impossible for govt. to function without giving some discretions its officials the different ~~sol~~ situations.

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• Administrative Discretion means the freedom of an administrative authority to choose from amongst various alternative but with reference to rules of reasons & justice and not according to personal likes.

• The exercise of discretion should not arbitrary, vague & fanciful, but legal & regular

* Judicial Control over Administrative Actions

• Public administratioen exercise a large volume of power to meet citizens need, due to this there is high chances of them becoming arbitrary in modern democratic welfare state.

• Therefore, it is very necessary to control them through judicial control

• Judicial control is to ensure that authority does not abuse its power & the individual receives just and fair treatment.

• In India modes of Judicial control of administrative action can be conveniently grouped into 3 heads.

1) Constitutional

If judiciary finds out that any law violates the Constitutional requirements, the court has to declare it unconditional it means it will be void.

• Judicial Review
- Judicial review is authority of Courts to declare void the acts of legislature and executive, if they are found in violation of provisions of constitution.
- The judicial review is concerned not with the decision but with the decision making process
- Concerns during judicial Review
1) Whether a decision making authority exceeding its power?
2) Committed an error of law
3) Committed a breach of rules of natural justice?
4) Reached a decision which no reasonable tribunal would have reached
5) Abused its power?

- Judicial review is exercised at two stages
1) At stage of delegation of discretion - If the law confers vague & wide discretionary power on any administrative authority, it may be declared ultra virus Article 14 & Article 19 & other provisions of constitution.

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Administrative discretion & Article 14 :- Classification can be made on reasonable basis. Hence, court keeps eye on govt. administration bodies that they do not classify without reasonable basis.

Article 19 :- Article 19 guarantees certain freedoms to the citizens of India. Reasonable restrictions can be imposed on these freedoms under the authority of law. The reasonableness of restrictions is open to judicial review.

2) At stage of exercise of discretion - Courts in India have developed various formulations to control exercise of administrative discretion which are :-
- Abuse of discretion
- Non - applicability of mind.

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IMP

- ABUSE OF DISCRETION
  - Mala fides
  - Irrelevant consideration
  - Leaving out of relevant consideration
  - Arbitrary orders
  - Improper purpose
  - Colourable exercise of powers
  - Non compliance with principal of natural justice
  - Exceeding jurisdiction.

- NON APPICATION OF MIND
  - Acting under dictation,
  - Self restriction, and - Acting machanically without due care

5th Sep.

* Now a days Courts are becoming ~~consious~~ conscious on increasing cases of negligence on part of executive bodies & held govt. liable for damages even in sovereign cases

* Rudal Shah Vs. state of Bihar, where petitioner was detained illegally in prison for 14 years court awarded ₹30,000 as damages to petitioner

* In C. Ramakonda Reddy Vs. State, state was held liable even in case of sovereign functions

* In Saheli a womens resource centre Vs. Commissioner of police delhi, where a death of 9 years old boy took place due to beating & assault by police officer, state govt. was directed to pay court ₹ 75,000 as compensation to the mother of victim

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2] Statutory

The method of statutory review can be divided into 2 parts :

- Statutory appeals : There are some Acts, which provides appeal from statutory tribunal to high Court.

- Reference to high court : There are some statues, which provides for reference of case by administrative tribunal to high Court

3] Ordinary / Equitable

The ordinary courts in exercise of the power provide the ordinary remedies under ordinary law against the administrative authorities. It is also called equitable remedies & it includes :-

- Injuction - It is a preventive remedy.
  - It issued for restraining a person to act contrary to law or in excess of its statutory powers.
  - It is a highly useful remedy to prevent a statutory body from doing an ultra virus act.
  - Prohibitory injuction forbids defendant to do a wrongful act which infringe right of plaintiff.
  - Temporary injuctions are such as to countinue until a specified time or until the further order of the court.
  - Mandatory injuction prohibits the defendant from countinuing with a wrongful act

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and also imposes duty on him to do a positive act

- Declaratory Action - In cases where any wrong ~~done~~ has been done to a person by administrative act, declaratory judgements can be appropriate remedy. It can be taken as judicial order issued by Court which declares rights of parties without giving any further relief.

- Action for damages - If any injury is caused to individual by ~~act~~ wrongful or negligent act of Govt. servant, then that person can file suit for recovery of damages from Govt. concerned.

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* LIABILITY OF THE GOVT., PUBLIC CORPORATION.

- Liability of state / govt. in Contract.
  * A contract with Govt. of Union or state can be valid only if -
    - The contract must be made in name of President or Governor
    - The contract must be in writing.
    - A person authorised by President or Governor must execute the contract.

- Quasi - Contractual Liability
  When a person does anything for another person and if such person enjoys the benefits thereof, then the latter is bound to make compensation to former, to restore the thing so done or delivered.

- Suit against state in torts
  - When responsibility of act of one person falls on another person, it is called as vicarious liability.
  - ~~for~~ for. ex, When servant of a person harms another person through his act, we held servant as well as his master liable for the act done by servant.
  - Similarly, sometimes the state is held vicariously liable for the torts committed by servants in exercise of their duty.

- Liability of public servants
  - If the govt. officers have acted outside the scope of their powers or have acted illegally, they are liable personally.

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* STATUTORY CORPORATIONS.

1) The term statutory Corporations refers to such organisations which are incorporated under Special Acts.
2) State electricity boards & state financial Corporation fall in this category.
3) features of statutory corporations
   - Incorporated under Special Act.
   - Autonomous body.
   - Separate legal existence.
   - Managed by Board of Directors.
   - Self-sufficient in financial matters
   - Employees recruited as per their own requirements by terms & conditions decided by board.

* Chapter 5th *
* Law of Torts *

* Introduction :-

- 'Tort' is a french word which means 'wrong'.
- It is derived from Latin language from the word 'Tortum.'
- Law of tort is a common law.
- It can be defined as civil wrong where unliquidated damages are claimed.

- Section 2 (m) of Limitation Act, 1963

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"Tort means a civil wrong which is not exclusively a breach of contract or breach of trust."

1) Salmond :- "A civil wrong in which the remedy is common law, action for unliquidated damages and which is not exclusively breach of contract or breach of trust or not equitable obligation."

2) Fraser :- "It is an infringement of right of rem of a individual giving a right of compensation at the suit of the injured party."

3) Winfield :- "Tortious liability arises from breach of ~~trust~~ duty, this duty is towards persons generally & its breach is redressable by action for unliquidated damages.

* Elements of tort

- A civil wrong
- It is not breach of contract or breach of trust.
- redressible by an action for unliquidated damages

* Damages.

Damages

- Liquidated
  - It means pre - determined or fixed compensation on some loss.
- Unliquidated.
  - It refers to the damages which are not pre - determined or decided by parties

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* kinds of tortious liability.

1] Liability against civil wrong -

Civil wrong refers to those, which satisfies the condition of liabilities and which have remedy by law.

- General conditions of liability for a Tort :-

1) Wrongful act :-

- The complaint must be legally wrong as a matter of law as far as complaining party is concerned.

- It should prejudicially affect any of above mentioned interests, and protected by law.

- Thus, every person whose rights has been violated has right to take action against the person who violated them.

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- Legal rights are as follows -
  - Right of reputation,
  - Right of bodily safety and freedom.
  - Right to property. etc.

If this rights are violated without any legal excuse, then person can take action.

2) Legal damages :-

- In eyes of law, every damage is not a damage. It should be the damage which the law ~~reo~~ recognizes as damage.

- There should be injury or invation of legal rights.

- The legal damages can be understood by two doctrines.

i) Damnum sine injuria :-

- 'Damnum' means any loss, harm or damage with respect to money, comfort, health .etc.

- 'injuria' means infringement of a right conferred by law on plaintiff.

- Damnum sine injuria means damages without injury.

- It means causing damage to another person is not actionable in eyes of law, unless there is also violation of his legal rights.

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Case law :- Gloucester Grammar school case.

In this case, defendant started his own school, and started working as teacher. Many students from plaintiff's school left and enrolled themselves into defendant's school. Plaintiff filed suit against defendant for monetary damages. Court held that defendant is not liable because defendant has not violated any legal rights of plaintiff even though monetary loss is caused.

ii) Injuria Sine damnum. :-

- It means injury without damages.

- Where there is no damage but injury or wrong in tort.

- It means if there is infringement of a legal right and not any harm or damage to plaintiff but still plaintiff can sue in tort.

Case law :- Ashby Vs. White.

In this case, the plaintiff was prevented from voting at election. Plaintiff sued defendant for damages even there is no monetary loss incurred by him. The court held that defendant is liable to pay compensation because he violated the legal rights of the plaintiff and he has committed a tort.

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3) Legal remedy :-

- Legal remedy is the third condition for liability of tort.

- Constitute a tort and wrongful act must come under the law.

- The main remedy of tort is to claim for unliquidated damages or self help is a remedy of which the injured party can avail without going to court.

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* Mens rea

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- maxim "actus non facit reum nisi means sit rea," it means act itself create no guilt unless done with a guilty mind.

- It does not mean that in tort the act must be done with a evil motive, in eyes of law.

- It does not matter if you have bad intention or ~~tort~~. not in tort for the law.

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2] Strict or Absolute liability.

i) Liability for inevitable accident arises where damage is cause by escape of dangerous or hazardeous substance. The person who kept hazardeous substance in his land is absolutely liable, and there is no exeption in this case.

ii) Liability for inevitable mistake arises where someone interferes with property or reputation of another.

iii) Vicarious liability for wrongs committed by others such cases imputed by law on basis of social policy or expediency. It involves liability of master for the act of servant.

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Imp * Rylands Vs. Fletcher.

If you bring something in your land and if it escape and cause damage to another then you are liable for it, irrespective of fact whether you have taken care or not.

Imp • Exeptions to the rule of Rylands Vs. fletcher.

i) Damage due to natural use of land.

ii) Act of God i.e, extraordinary rain, storm.etc.

iii) Plaintiff's own default

iv) Consent of plaintiff.

v) Act done under authority of a statue.

vi) Act of third party.

3] Vicarious liability :-

i) Master and Servant -

A master is liable for the tort committed by his servant, while acting in course of employment. The servant is also liable, their liability is joint and several.

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Case law - Century Insurance company Ltd. Vs. Northern Ireland Road transport board.

The director of petrol lorry, struck a match to light a cigarette while transferring petrol to under-ground tank, and later he threw the match. An explosion and a fire ensued. It was held that employer is liable for damage caused.

ii) Principal and Agent.

'Qui facit per alium facit per se' it means one who acts through other is acting himself.

If agent committed a tort in his duties as agent then principal is liable for same.

Case law :- Lloyd Vs. Grace, Smith and company.

The managing clerk of firm committed fraud, against a lady client while acting in course of business by inducing her to sign on documents transferring her property to him. It was held that he had done without knowledge of his principal who was liable, because fraud was committed in course of employment.

iii) Partners for the tort committed by a partner in the ordinary course.

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If a partner has committed a tort while acting in course of business then all other partners are also liable for it.

The liability of partners are joint and several.

Case law :- Hamlyn Vs. Houston and company.

One of two partners bribed the plaintiff's clerk and induced him secrets of employer's business. It was held that both the partners are liable for the tort committed by only one of them.

iii) Employer and independent contractor

Generally, independent contractor is liable for the tort committed by him or his servant while acting in course of employment.

Independent contractor is the one who works for another but not controlled by that other.

But in following cases employer is liable for tort committed by independent contractor.

- When there is strict liability
- When employer authorize him to commit tort.
- Negligence of independent contractor.

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4) Vicarious liability of state :-

In England by passing crown proceeding Act, 1947, the crown is liable for the tort committed by its servants. Crown i.e. government is vicariously liable for the torts of its servants.

When case of government liability in tort comes before the courts, the question arises whether the particular government activity is sovereign or non-sovereign function. If it is sovereign function then government is not liable. If it is non-sovereign function then government is liable.

* Types of torts.

1) **Battery.**

- Battery is use of force on someone without lawful justification and consent of plaintiff.

- To constitute battery two things are necessary
  1) using of force without concent of plaintiff.
  2) use of force without any lawful justification.

  To touch any person in ~~ago~~ anger or without lawful justification is battery.

2) **Assault.**

- Assualt is apprehension in mind of plaintiff that someone is going to committe battery.
- Usually where there is battery there can be also the assualt.
- If defendant intends to commit battery and it is in mind of plaintiff then it is an assault.

3) **False imprisonment.**

- It is confining the liberty of a persoman within 4 walls.
- It consist in imposition of restraint upon the liberty of person without any lawful justification.
- It is infringement of right to life and personal liberty of a person.

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4) Malicious Prosecution :-

- Consists in instigating judicial proceedings against another which results in damage to his reputation, personal freedom or property.
- There must have been a prosecution of the plaintiff by the defendant.
- There must be want of reasonable cause.
- The defendant must be acted maliciously and plaintiff have suffered damages.
- Prosecution must have terminated in favour of plaintiff.

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5) Defamation :-

- Defamation is the attack on reputation of a person.
- Something is said or done by a person which affects on reputation of another person.
- Defamation is classified into two heads.

Libel → representation made in permanant form.

Slander → Publication of defamatory statement in ~~to~~temporary form.

* Nervous shock :- Here, doesnot gets physical injury by stick, bullet or sword but get a nervous shock through what he has seen or heard, and some injury or illness take place as a result of emotional disturbance fear or sorrow.

* Bodily harm

A wrongful act of defendent which causes physically harm to the plaintiff is a bodily harm.

* Liability of a corporate entity / Company in torts.

- Company is liable for the tort committed by its employees.

- The companies are exposed to risk under law of torts.

- The liabilities of company is bounded on the basis of maxim "Qui facet alium facet per se," which means one who act through another is acting himself.

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* Consumer protection Act and liabilities of torts.

Unfair contracts which includes those contracts where terms and conditions are in favour of service provider and are against the interest of the consumer.

If company neglects the interest of consumer or makes any unfair trade practice then company is liable for it.

Case law :- Branch manager indigo airlines Vs. Kalpana rani debbarma.

Complained were family members and were returning from kolkata to Agartala through indigo airlines boarding passes were issued but air-line left all complainents of kolkata airport without informing them and even they were at airport premises.

Complaint was made at kolkata airport and airport staff snatched away their boarding passes and didn't heard them.

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Complainent approched distric forum and was avoided compensation indigo airlines made appeal to state forum state forum even enhanced compensation finally made to national forum (NCDRC) they also dismiss the petition and asked airlines to pay 20 to complainents as there were inconvinience.

* Remedies in Torts.

Remedies in Tort

- Judicial
- Extra Judicial

- **Judicial remedies :-**

1) Damages or compensation - When the person's right is violated by another person then he can claim the damages. The court will grant him compensation or damages.

2) Injunction - It is an order of a court to redirect commission or amendments to an act. The court orders the person to do an act or not to do or correct his wrongful act.

3) Specific restitution of property - Specific restitution of property means returning property to its rightful owner.

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- **Extra Judicial remedies :-**

1) Self defense - Any person can use reasonable forces to protect himself.

2) Prevention of Trespass - The owner of land may use reasonable force to prevent trespasser entering, but for the reasonable purpose.

3) Re-entry on land - A person can retake possession of land if he can do in peaceful & reasonable manner.

4) Re-caption of goods - A person can take possession of goods by use of reasonable force from ~~wh~~ the one who has taken them wrongfully.

5) Abatment of nuisance - The owner of the land may lawfully abate i.e terminate any nuisance which is affecting injuriously. He can cut overhanging branches as spear spreading roots from neighbour's trees.

6) Distrect damage feasant - The owner may lawfully seize any private property which are unlawfully on his land and causing damage to him until the compensation is paid.

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* Chapter 6 :- Civil Procedure Code *

* Scope of Law :-

This Civil procedure code consolidates & amends laws related to procedure of ~~court~~ Civil court jurisdiction

The Code does not affects any special or local laws.

The Code is general law therefore if there is any conflict between Code and special law, the special law will prevail.

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If on a particular matter special law is silent then this Code applies.

* Scheme of code :-

2 Parts

1st Part
↓
Contains Sections 158.
Substantial law
↓
Body that tells rights & duties

2nd Part
↓
includes 51 orders
Procedure law
↓
Rules

* Cause of Action.
  - It is defined in Order 2, Rule 2 of CPC
  - It means reason for action.
  - Why case is filed is a cause of action
  - It means every fact which is necessary for plaintiff to prove in order to support his right of judgement of court.
  - It is based on right & infringement for which relief is claimed.

* Decree
  - It defined in Section 2(2) of CPC.
  - It is formal expression of adjudication which court determines conclusively the right of parties in respect to matter or all matters.
  - There are two types of decree

1) Preliminary decree	2) final decree
• It means some rights are determined by court and some rights are yet to be decided.	• It is determined by court at the end of case

- Decree - holder : It means any person in whose favour decree has been passed.
- Judgement debtor : It means any person against whom the decree has been passed.

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- Decree is always appealable unless it is prohibited or forbidden by law specifically.

* Order
  - It is defined in section 2(14) of CPC.
  - Every decision of court is a order, which is not a decree.
  - If it is a formal expression of decision of court which is not a decree.
  - It is not generally appealable unless it is specifically provided by law.

* Judgement
  - It is defined in Section 2(9)
  - It is a statement given by court on ground of decree & order.
  - Order deciding primary issue is a judgement

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* Jurisdiction of Civil Court.

1) Jurisdiction over subject matter.
   Jurisdiction try to certain matters in some court which is limited by statue or law. Where the suject matter is the case will go to the same court.

2) Jurisdiction over persons.
   Any person of our country is are subject to jurisdiction of Civil courts of country except foreign state.

3) Pecuniary jurisdiction depending upon pecuniary ~~caus~~ values of suit :- Pecuniary jurisdiction & lays down that save so for as otherwise expressly provided courts shall only have jurisdiction over suits the amt / value of which does not exceed pecuniary limits of any of its ordinary jurisdiction.

4) Place of suing /territorial jurisdiction :- Territorial limits of jurisdiction for each court is limited & decided by statue.

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* Requirements of Res judicata.

1) Matter directly & substantially in issue in former suit shall also be directly & substantially in issue in later suit.

2) former suit has been heard & finally decided.

3) Parties are same under both the suits

- Res judicata does not apply to consent or compromise decree, But if court comes to conclusion the parties intended that consent decree should have binding effect conclusively, then resdicata applies

* Jurisdiction may further classified into following categories.

i] Original Jurisdiction :- A court tries and decides suits filed before it.

ii] Appeallate Authority :- Court hears appeals against decisions or decree passed by sub-ordinate court.

iii] Criminal & appellate Jurisdiction :- The Supreme Court, the High Court & District Courts have both original and appellate jurisdiction in various matters.

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* STAY OF SUIT [DOCTRINE OF RES SUB JUDICE]

Section 8 :-
- It means same matter, case same but pending in another court.
- No court shall proceed with trial of any suit in which the matter in issue is also directly or substantially in issue in previously instituted suit between same parties under same title & matter, where such suit is pending in same / any other court.
- The main object of this doctrine is to avoid conflict between courts.
- The previous suit shall pending in compeatent jurisdiction.

- The following are essentials -

1) There must be two suits instituted in different courts.

2) The matter in issue in previous suit shall be similar to matter in issue in latter suit / subsequent suit

3) The suit must be between the same parties

4) The earlier instituted suit shall be pending in courts of competent jurisdiction.

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* Case law :- Wings Pharmaceuticals Vs. Swan Pharmaceuticals.

Facts : Suit was filed by plaintiff company ~~statin~~ stating that there is infringement by defendant company is using trade name of medicine & selling it in same wrapper with same design with same colour. A subsequent suit was institute in different court by defendant company against plaintiff with the same subject matter

Decision : The court held that subsequent suit should be stayed as simultaneous trial of suits in different court might result in conflicting decisions as issue involved ~~was~~ in two suits was totally indentical.

* DOCTRINE OF RES JUDICATA / BAR ON SUITS

- Section 11, deals with res judicata.
- According to provisions of this section, No court shall try any suit in which matter in issue in former suit ~~either~~ between same parties under same title with same matter in Court competent to try such subsequent suit in which such issue has been subsequently raised finally decided by court.
- It says that once there is res is judicata, then it shall not be adjudicated again.
- It is based on a maxim which is 'no one shall be twice vexed for the same cause'.
- following are conditions of Res judicata —

1) The matter in former suit shall be in matter in subsequent suit.

2) The prior suit must be between same parties

3) The parties should have intigated under the same title.

4) The court which determines the earlier suit must have competent jurisdiction.

5) The former suit has been decided.

- It is based on following public policy.
  1) There should be end to litigation.

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2) The parties to suit must be harrassed for the same matters.

3) The time of court should not be wasted over the matters.

4) It is rule of convenience not a rule of justice.

Res subjudice	Res judicata
1) It restricts trail of suit.	1) It restricts trail of decided suit.
2) It restricts court to accept similar matter during pendancy of suit.	2) It restricts court to accept similar matter which has been already decided by court

Unique academy

* SUITS BY / AGAINST MINOR

1) A minor is person below the age of 18 years, and a person whose ~~minor~~ guardian has been appointed by Court is below age of 21 years.

2) If a minor institutes a suit then it shall be instituted in his ~~ma~~ name by person who in such suit shall be called next friend of minor.

3) If suit is instituted without friend then defendent may apply for dismissal of suit.

4) If there is case against a minor, then the court shall appoint a guardian for it.

5) If in a case a minor turns or becomes major then he shall decide whether to continue suit or abandon the suit. If he ~~minor~~ wants to continue suit then on his name suit will file and next friend's name will discharge. If he abandon then case will dismiss by court & court can ask to repayment of cost incurred by defendend.

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* PLACE OF SUING.

- If suit is regarding wrong to immovable property, suit may be instituted in court in whose jurisdiction such immovable property is situated.

- If two or more than two courts have jurisdiction then suit may be instituted in any of such court.

- If Jurisdiction is uncertain then suit may be instituted in any of such court after recording the statement to that effect.

- If suit is for compensation for wrong done or ~~immovable~~ property, then suit may be instituted in such court in whose jurisdiction wrong was done or in whose jurisdiction defendent resides.

- If there are more than one defendent, then suit may be instituted in court in whose jurisdiction wrong was done or whose jurisdiction any of such defendant resides. After taking approval from court or ~~to~~ from other defendents who do not reside.

- If defendent is Body corporate or company, then suit may be instituted in court in whose jurisdiction principle office of company is situated, or in whose jurisdiction cause of action arose, provided company has subordinate office at such place.

- Parties can agree and decide to vest jurisdiction in any court provided such court have competent jurisdiction.

- According to Sec. 16 subject to pecuniary or any other limitations prescribed by any law following suits should be instituted in Court within the local limits of whose jurisdiction the property is situated. -

1) for recovery of immovable property with/without rent or profit.

2) for partition of immovable property.

3) for forclosure or ~~redemt~~ ~~of~~ redemption of immovable property in case of mortgage.

4) For ~~det~~ determination of rights or interest in immovable property.

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5) for compensation for wrong to immovable property.

6) for recovery of moveable property actually distraint or attachment.

* Injunction

TEMPORARY INJUNCTION - Court may grant temporary injunction to prevent any waste, damage, sale or removable or dispossession of property or dispossee-plaintiff or disposition of property or injury to plaintiff or his property.

Court will issue temporary injunction only if court satisfy that there could be substaintial or irreparable harm or injury if such temporary injuction is not granted.

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* IMPORTANT STAGES IN PROCEEDING OF SUIT

1) Presentation of plaint : According to ~~rule~~ order 4 of CPC every suit shall be instituted by presentation of Plaint.

2) Service of Summons : (Order 5) When suit has been instituted then summon is to be issued to defendant by Court.

3) filing of written statement : (Order 8) Defendant shall within 30 days of summon shall ~~pe~~ present a written statement to his defence. The maximum period to present written statement is 120 days.

4) Appearance of parties : (Order 9) Parties should be appear on date fixed by summon.

5) Examination of Parties : (Order 10) Court examines the both parties to the court.

6) Framing of issues : (Order 14) The court frames the issues according to order 14.

7) Hearings : The Court hears the both parties according to order 18.

8) Judgement : The court pronounces decree according to Order 20.

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* DELIVERY OF SUMMON BY COURT

- When a suit is instituted, the court issues order to ~~den~~ defendant to appear and to file written statement of his defence within period of 30 days from date of service of summon.

- If defendant has appeared at presentation of plaint & admits ~~his~~ the plaintiff's claim, then there is no need to issue summon.

- Every summon must be signed by Judge / anutho-rised officer of Court & should contain seal of court & to be go along with a Copy of plaint.

* DEFENCE

- The defendant should file written statement of his defence within 30 days from service of summon.

- If he fails to file written statement within specified time, he is allowed to file written statement on other day as ~~p~~ specified by court for reasons to be recorded in writting.

- The period for filing written statement should not exceed 90 days.

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* APPEARANCE OF PARTIES & CONSEQUENCES OF OFFENCE.

- When a suit is filed by plaintiff, a summon is to be issued by court to denfendant and defendant shall file a written statement of his defence within 30 days to Court.

- ~~Afe~~ After the service of summon if defendant does not appears & only plaintiff appears then Court may proceed such defendant 'ex-parte'. It means a suit will continue & the court will decide suit on basis of facts & evidence & documents of plaintiff, in absence of defendant.

- If plaintiff does not appears, defendant appears then court will dismiss the suit.

- If defendant / plaintiff gives sufficient reason for his non-appearance on previous date of hearing, the Court may set aside ex-parte order / order of dismissal of suit.

- If defendant is not served with summon, then the Court shall order second summon to be issued.

- If summon is served to defendant without sufficient time to appear, then Court will postpone hearing to further date.

- If summon was not served to defendant due to plaintiff's default, then Court shall order plaintiff to pay cost of adjournment.

- The period of limitation for file application to set aside ex-parte decree is 30 days from date of passing decree.

- The defendand has 4 remedies in case of ex-parte
  - 1) He may file appeal against ex-parte decree
  - 2) He can file application to review judgement
  - 3) He can apply for set aside ex-parte decree.
  - 4) In case of fraud a suit can be filed but no suit should be file for non-service of summon.

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* INTERLOCUTORY ORDER

Power to order interim sale

If any movable ~~propel~~ property being subject-matter of suit which subject to speedy & natural decay or which any other just & sufficient cause it may be desirable to be sold at once. The court may order suit to sale any movable property on application of any party to suit.

* DETENTION, PRESERVATION, INSPECTION OF SUBJECT MATTER OF SUIT.

- The Court may on application of any parties to suit may make order for detention, preservation / inspection of any property which is subject-matter of suit.

- The Court may authorise any person to enter upon / into any land / building in possession of any other party to suit.

- The Court may authorise any sample to be taken, or any observation to be made / experient to be try for obtaining full information.

* APPLICATION FOR SUCH ORDER TO BE AFTER NOTICE.

1) Application by plaintiff ⟶ After institution of the suit.

2) Application by defendant ⟶ After appearance.

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* DEPOSIT OF MONEY.

IMP
* APPEALS. (Can be asked for 8 marks in exam)

- Right of appeal is not a natural / inherent attached to litigation
- It is a legal right given by statue or by rules having force of statue.

- There are 4 kinds of Appeal under Civil procedure Code. -

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1) Appeal from Original decree :
- It may be preferred to Court Superior to Court passing the decree.
- Appeal may be lie from original decree passed ex-partie.
- If decree is passed with consent of part parties then no appeal lies.
- Appeal from original decree lies on question of law

2) Second Appeals
- It is lies to High Court.
- According to sec. 100 of CPC, appeal lies to High Court from every decree passed by subordinate court
- If High Court satisfies that case involves substantial question of law.

3) Appeal against order.
- Generally appeal for order is not allowed.

- But appeal against orders can be allowed on ground of defect / irregularity of law.
- Appeal from order can be lie on following orders.

→ 1) An order refusing leave to institue a suit.

→ 2) Order for compensation for obtaining attachment or injuction on insufficient ground.

→ 3) An order imposing fine or directing the detention or arrest of any person except in execution of decree.

→ 4) Appealable order as set out in Order 43, rule 1.

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4) Appeal to Supreme Court.

- An Appeal can be filed to supreme court on those decrees which have been passed by High Court in original jurisdiction.
- Appeal to supreme court lies on following cases -

1) When any decree / order of Civil Court is certifyied by court that the case can be fit for appeal to Supreme Court, or when special leave is granted by S.C.

2) Any decree / order, judgement passed on appeal by High Court / by any other court, of final appeallate jurisdiction.

3) Any order / decree, judgement passed by High court in exercise of original civil jurisdiction.

- It is general rule that no party to appeal shall be entitled to produce additional evidence whether order / documentary. But it is allowed in following cases:-

1) If lower court refuses to admit evidence which ought to have been admitted.

2) If appeallate court requires any document to be produced or any witness to be examined to pronounce judgement.

3) For any substantial cause, but in all such cases appellate court shall record reasons for ~~at~~ admission of additional suit.

- Essential factors to be stated in appeallate judgement
→ Point for determination
→ the decisions therein
→ reasons for such decisions
→ Where the decree appealed from is reversed / varied, the relief to which appellantis entitled

* Judgement
- The court shall pronounce judgement within 30 days from date on which hearing of case was concluded.
- However, if it is not practicable, then shall fix future day which should not be more than 60 days.

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IMP * SET OFF :- Order 8, Rule 6.

Set off is reciprocal acquital of debt. Plaintiffs claim is reduced to the extent of amount claimed by defendant. There is always ascertained sum of money in set off.

Ex. A filed suit against B for recovery of loan of ₹ 1,00,000/- B asked to deduct ₹ 20,000/- on account of goods supplied by B to A. This is set off.

IMP * EQUITABLE SET OFF

- Defendant is allowed to claim set off arising out of same transaction is equitable set off.
- Claim by defendant is always of unascertained sum of money.
- By equitable set off defendant is prevented to take separate action.
- Ex - Ravi purchased sofa amounting ₹ 2,00,000/- from Mr. Raja which turned out to be defective, Raja filed a suit for recovery of ₹ 2,00,000/- & Ravi asked Court to reduce amount as sofa was defective. Now whatever sum Court will deduct is equitable set off.

IMP * COUNTER CLAIM

- Defendant claims same or more than of what plaintiff claims it is known as counter claim.
- It is allowed by law & it is not necessary that counter claim should arise out of same transaction.
- Ex - Mr. Ashish files suit against Mr. sharma of defamation, Mr. Sharma alleged same against Mr. Ashish

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* REFERENCE (Sec.113)

A Court before judgement in which suit has been instituted may state a case & refer same for opinion of High Court & High Court may make order as it thinks fits.

* ~~REVE~~ REVIEW (Sec.114)

- The right of review has been conferred by Sec.114.
- It provides that any person considering himself aggrieved by decree /order can apply for review of judgement to the court which passed decree /order any time on ground ~~mel~~ mentioned below. -

1) If applicant discover any new & important matter or evidence after decree was passed /order made.

2) If there is any mistake /error apparent on face of the record.

3) for any other sufficient reason.

* REVISION (Sec.115)

- Section 115 deals with revision
- High Court can call for any case which has been decided by any subordinate Court & in which no ~~a~~ appeal lies thereto & if such subordinate court appears -

1) to have exercised jurisdiction vested in by law, or,

2) failed to exercise jurisdiction so vested, or,

3) Acted in exercise its jurisdiction illegally / with material irregularity, the High Court can make such orders as it thinks fit.

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* DISCOVERY & INTEROGATORIES and PRODUCTION OF DOCUMENTS.

- Discovery :- It means finding out material facts & documents from adversary in order to
  - to know nature of case, or
  - to support his own case, or
  - to narrow points of issue, or
  - to avoid providing admitted facts.

- There are two types of discovery

1) Discovery by interrogations

Any party to suit can delivery interrogatories in writting for examination of opposite party to Court.

and

2) Discovery by documents.

Party can refuse to produce suit document for inspection in following cases -

- where the documents discloses the party's evidence
- Where it enjoys a legal professional privilege
- When it is injurious to public interest.
- denial of possesion of document.

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* ADMISSION BY PARTIES.

- ADMISSION means one party accepts the case / claim of another party either wholly / partly to be true.

- Admission can be either in
  - pleadings, or
  - by answers to interrogatories, or
  - by agreement of parties, or
  - by notice.

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* ISSUES.

- Issues arise when material proposition of fact is affirmed by one party & denied by other party.

- Issues can be either of fact or law.

- Issues are to be framed on material ~~pe~~ proportion of fact / law & to be gathered from following points -

  1) Allegations made in plaint & written statement.

  2) Allegations made by parties or persons on their behalf or their pleaders on oath.

  3) Allegations in answer to interrogatories.

  4) Contents of document produced by parties.

5) Statements made by parties or by their representatives.

6) from examination of any witness or any document to be produced.

* HEARING OF SUIT

- Generally, the plaintiff has right to begin the hearing of suit.

- But in following cases defendant has right to begin hearing of suit -
  - If defendant admits facts alleged by plaintiff
  - When some other additional facts alleged by defendant.
  - If plaintiff is not entitled to get any part of relief sought by him.

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* AFFIDAVIT

- An Affidavit is a written statement of deponent on oath duly affirmed before any Court / Magistrate / any other oath commissioner appointed by Court or before Notary public.

- Affidavit can be used in following cases -

1) The Court may at any time of order that any fact may be proved by affidavit on its own / application

of any party.

2) The Court may at any time order that affidavit of any witness can be read at hearing unless either party bona - fide desires to cross - examine him.

3) It is also used when evidence of witness given on affidavit & upon application by a party, but the Court at the instance of either party, order the deponent to attend court for cross - examination unless he is exempted from personal appearance.

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* SUMMERY PROCEDURE (XXVII)

- Order 37 provides summery procedure in respect of certain suits.

- A procedure by way of summer suit applies to suit upon bills of exchange or promissory note or to suits in which plaintiff seeks only to recover debt, with or without interest, arising -

1) On a written contract, or
2) On an enactment, where sum of money sought to be recovered is fixed or nature of debt is other than penalty, or
3) On guarantee, when claim is against the principal is respect to debt / liquidated demand only.

- Rules for summery procedure applicable in following Courts – 1) High Courts, City Civil Court & Small Court.
  2) Other Courts

- The defendant is not entitled to defend the suit unless he enters an appearance within 10 days from service of summon.

- However, such leave shall not be granted where,
  – If Court satisfied that facts disclosed by defendant do not indicate sustantial defence.

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  – The part of amt. claimed by planitiff & admitted by defendant to due from is deposited by him in the Court.

- The summary suit must be brought within 1 year from date on which debt becomes payable.

- The period of limitation is case of negotiable instrument is 3 years.

- Case law : In BL kashyap & sons ltd Vs JMS Steels and power corporation it was held that leave to defend shall be granted only in exeptional cases and it will be denied if there is no fair or reasonable defence.

* Section 151
• object of inherent power of court is to do justice and to undo wrong done in process of court, fraud by party upon court.

* SAVING OF INHERENT POWERS OF COURT

• Sec. 151 says that 'Nothing in this section shall be deemed to limit or otherwise affect the inherent power of court to make such orders as may be necessary for end of justice & to prevent abuse of process of court'.

• It is one of the most used section of the court in litigations

• Case law :- Scope of sec 151 was explained by Supreme court in case of K.K Velusamy Vs. V.N. Palanisamy,
1) It only gives discretionery power to every court to do what is right & undo what is wrong & to do all things to secure end of justice.

2) Inherent power can be used to deal with such situation or aspect which end of justice demands

3) Court has no power to do what is prohibited by law

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4) Inherent power can be used for any such matter which is not covered by any specific provision in the code

5) Inherent power of court should not be treated as carte blanche to grant any relief
complete freedom

6) These powers should be exercise with prudence & care.

* MISJOINDER OF PARTIES

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• When there are more than one person as a plaintiff or defendent and there is no common question of law or fact, then it is called misjoinder of parties.

• To avoid such misjoinder there should be :-
1) Common question of law or fact
2) Relief must arise out of same transaction.

* POWERS OF CIVIL Courts & their EXERCISE BY TRIBUNALS

• Tribunals are quasi - judicial authorities established by law.
• Generally, they are established for speedy disposal of case and has expertise in some subject matter.
• These tribunals are empowered with some powers of Civil procedure.

• Few enactments empowering tribunals with power of Civil Court are :

1) The Companies Act, 2013
2) Income-tax Act, 1961
3) SEBI
4) The Information Technology Act, 2000
5) The Prevention of Money-Laundering Act 2002.

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* COMMERCIAL COURTS

• Commercial Courts Act, 2015

1) Govt. of India introduced commercial courts and Commercial Appeallate Division of High Court to reduce the burden of judiciary in commercial matters.

2) It also helps to gain more trust of foreign investors over their investments in Indian Market.

3) The main emphasis of Commercial dispute are special in nature because they affect economy of nation.

• State Government with consultation of respective high Court may constitute Commercial Courts at district level.

• State Government after consultation with high Court may –

- may specify pecuniary value which shall not be less than 3 lakh rupees.

- may extend, alter & reduce jurisdiction.

- may appoint one / more persons to be Judge / Judges of such court who has experience in commercial dispute.

• According to sec. 6 of the Act, Commercial courts shall have jurisdiction to try all suits & applications related to commercial dispute.

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* DETERMINATION OF SPECIFIED VALUE

• In case of recovery of money	⟶	Value should include interest upto date of filing of suit.
• In case of Movable Property	⟶	Market value of movable property.
• In case of Immovable property	⟶	Market value of immovable property.
• In case of other Intangible right	⟶	Market value of such right by plaintiff as on date of filing of suit.

MEDIATION

* PRE - INSTITUTION & SETTLEMENT

- The act requires that parties attempt to settle their issues through mediation.

- Time : Pre - intigation process shall be completed within period of 3 moths from date of application made.
  It can be also extend for 2 months with consent of parties.

- Award / settlement : The award / settlement of pre-litigation must be in written & signed by both the parties & mediator.

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* APPEALS

- Any person aggrieved by judgement / order of commercial court can file appeal within 60 days from such judgement.

- If a person aggreived by judgement of Commercial Court below district judge, then he may appeal to Commercial Appeallate Court.

- If person aggrieved by judgement of Commercial Court of district level judge / Commercial division of High Court, can appeal to Commercial Appeallate Division of High Court.

- All appeals should be disposed of within period of 6 months from date of filing.

* SUMMERY JUDGEMENT

- Commercial disputes can be disposed off by the commercial court established under the Act without complete trial.

- Summery judgment is similar to summery suits provided in CPC, but there is primary difference is that applications for summary judgement is related to commercial dispute & applications for summery suit is related to liquidated demand or fixed sum of debt.

- The application for summery judgement made by party after service of summon to defendant & before framing of issues.

- Summery judgement may be given upon consideration that the plaintiff / defendant has so claim / defence.

- And there is not any reason to why claim should not be disposed before recording of oral evidence.

Unique academy

walage Mini - 8 to 12

* Chapter . 7 *
* Law relating to Crime and procedure *

* Indian Penal Code.

• APPICABLITY

2 - Jurisdictions

Intra toretorial — Extra toretorial.

1] Intra toretorial.

→ If crime is committed in India then it does not matter who cammitted it is foreigner or Indian, IPC is applicable.

→ If crime is committed in Indian oceans then IPC applicable.

→ If any Aircraft / ship is registered or owned in India and if crime committed in it then also IPC is applicable.

2] Extra terotorial.

→ If Indian citizen commits crime in other country then IPC is applicable.

→ If foreign citizen commits crime against the Indian in another country then IPC not applicable.

• If any dispute arises between foreign & Indian law or court then matter shall be forward to International Court.

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* forms of Mens rea.

1) Intention :- Intention means purpose or design with which an act is done it indicates position of mind also will of acused.
For ex - A poisons the food which B was supposed to eat with the intention of killing B. C eats that food instead of B and is killed. A is liable for killing C although A never intended it.

2) Negligence :- Negligence is second form of mens rea It means not taking care when there is duty to take care. Negligent amounts to mens rea. As per law there is a duty to care by a reson-able man
For ex - Doctor negligence can be tried under IPC.

3) Recklessness :- Recklessness occurs when acter does not desire the consequence but forecease possibity and takes the risk. It is the form of mens rea.
For ex - drink & drive

* Elements of Crime.

Crime means that act or omission is ecommitted by anyone which is forbidden by the code.
If anyone committed a crime then he or she shall be liable to punishment as may be prescribed under IPC.

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Acts done by human being
↓
Mens rea
↓
Actus rea
↓
Injury to another
↓
Crime.

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① Human being - It is the first requirement of crime. The crime must be committed by a human being. Only human being is subject to IPC.

② Mens rea - It is a latin word which means guilty mind. It is a fundamental principal for crime. It is based on maxim 'actus non facit reum nisi mens sit rea' i.e. act itself creats no guilt unless done with ~~guilty~~ guilty mind.

Exeptions to means rea :-

- Liability imposed by statue - When liability is imposed by statue / law the guilty mind i.e mens rea should not be considered.

- Petty cases - When the proving of mens rea is not easy and penalties are petty fines then accused should be punishable with fine without any proof of mens rea. In petty cases speedily disposal is needed.

- Public Interest - In case of public interest, when a person causes public nuisance with a or without a guilty mind he shall be punishable.

- Ignorance of Law - If a person violates law because he was not aware of law so, he did not intend to violate it is then no defence is liable. This follows maxim 'ingnorance of law is no execuse'.

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③ Actus rea - Actus rea it is a latin word. It means criminal act. It is the actual physical act of committing a crime. If actual wrongful or criminal act has not take place, there should not be crime.

* Punishment :-

1] Death :- A death is a harshest punishment in IPC. It includs judicial killing & taking life of accused person as punishment.

Supreme Court held that death ought to be imposed only in 'rarest of rate cases'.

Capital Punishment of IPC for following cases :-

- Murder
- Dacoity with murder
- Waging war against Govt. of India.
- Abetting mutiny actually committed.
- Giving or fabricating false evidence upon which innocent person suffers death.
- Abetment of suicide by insane or minor person.
- Attempted murder by life convict.

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2] Life imprisonment :- Imprisonment for life means harsh or rigorous imprisonment till the last breath of convict.

3] Imprisonment :- Imprisonment is of two descriptions which are

- Rigorous imprisonment i.e. hard labour
- &
- Simple imprisonment

4] Forfeiture of Property :- It is the forfeiting the specific property without compensation in consequence of default or act which is forbidden by law. The court may order for forfeiture of property of accused person in some cases.

5] Fines :- fine is forfeiture of money as a punishment. fine should be imposed individually not collectively. If a court orders for punishment of fine to a accused person and he does not paid fine then he have to suffer imprisonment for a period as prescribed by court.

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* Certain measures to be followed in exercise of power

1) Police officer should do accurate & clear identification of his name

2) Should prepare a memorandum of arrest which should be attested by one witness & counter singed by person arrested

3) Inform the person arrest that he can inform his relative or freiend about the arrest

* Punishment for theft

Punishment for theft is imprisonment which may extend to 3 years or fine or both

Situation	Punishment
1) Theft in dwelling house	Imprisonment may extend to 7 years and fine
2) Theft by clerk or servant	Imprisonment may extend to 7 years & fine

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* Punishment for Extortion.

Punishment for extortion - imprisonment which may extented to 3 years or fine or both

Situation	Punishment
1) Putting person in fear of injury to commit extortion	Imprisonment which may extend to 2 years or fine or both
2) Extortion by putting a person in fear of death or aggrievanc heart (grievous)	Imprisonment which may extented to 10 years & fine

* Robbery.

When theft is robbery ?
If during committing of theft offender voluntary causes or attempt to cause

When extortion is robbery?
If during committing of extortion offender commites extortion by putting fear of instant death or instant heart or instant wrongful restraint he commits robbery

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PUNISHMENT FOR ROBBERY

Punishment for robbery is rigious imprisonment which may extent to 10 year and fine

If robbery is committed on highway between sunset & sunrise imprisonment may extent to 14 years

PUNISHMENT FOR ATTEMPT FOR ROBBERY. → Imprisoment may extend to 7 year and fine

* PUNISHMENT FOR DACOITY
Imprisonment for life or regress imprisonment which may extend to 10 year & fine.

* Dishonestly receiving stolen property.
Who so ever dishonestly receives or retains any stolen property with knowing the same to be stolen

shall be punishable with imprisonment which may extend to 3 year or fine or both.

* COGNIZABLE AND NON-COGNIZABLE OFFENCES.

- Cognizable : It means a case in which a police officer may arrest without warrant, under according to first schedule or under any other law.
  Cognizable offence means an offence having cognizable case.

- Non-Cognizable : Non-cognizable means an offence having non-cognizable case.
  It means a case in which a policy officer can arrest with warrant. The police officer has no authority to arrest without warrant.

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* CLASSES OF CRIMINAL COURTS
  Section 6 :- It is mandatory following courts in every state -
  1) Executive magistrate
  2) Judicial magistrate of 2nd class
  3) Judicial magistrate of 1st class
  4) Court of session
  5) High Court.

* POWERS OF COURT

- Supreme Court → Any sentence authorised by law.
- High Court → Any sentence authorised by law under sec. 28(1) of (CRPC)
- Session Judge, Additional session Judge → It shall need confirmation by High court if any sentence of death passed by such judge.
- Assistant session Judge → Any sentence authorised by law except sentence of death / imprisonment for life / imprisonment upto 10 years.
- Cheif Judicial magistrate, cheif metro-politan magi-strate → Any sentence authorised by law except sentence of death / imprisonment for life / imprisonment upto 7 years.

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* ARREST OF PERSONS.

The word "arrest" consists of taking into custody of another person under authority enpowered by law, for purpose of holding him to answer a criminal charge & to prevent the commission of criminal offence.

* Non - Preventive Arrest / Arrest without warrant

following person can be arrested by Police officer without warrant -

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1) Who commits a cognizable offence in prensence of police officer.

2) Who has been proclaimed as offender under this code or by any order of state Govt.

3) Who has committed any act at any place outside India. If it is committed in India then it is punishable as an offence & for which he is liable to be apprehented / detained in custody in India.

4) If any release convict commits any breach of rule.

5) In whose possesion anything is found which may reasonably or suspected to be stolen property.

6) Who obstructs a police officer while in the execution of his duty, or who has escaped or try i.e attempts to escapes from lawful custody.

7) Who is suspected of being deserted from armed forces of Union.

8) for whose arrest any requisition whether written or oral has been received from another police officer, provided that requisition specifies person to be arrested and the offence or other causes for which arrest is to be made arrested & made it appears there from that the person might lawfully be arrested without warrant.

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* Arrest on Refusal to Give Name & Residence.

Section 42 : If any person who is accused of committing a non-cognizable offence does not give his name, residence or gives a name & residence which the police officer ~~fel~~ feels to be false, he may be taken into custody for not more than 24 hrs, then he shall be forwarded to the nearest Magistrate having jurisdiction.

* Arrest by Private Person

A private person may arrest / cause to be arrested any person who in his presence commits a non-bailable / or cognizable offence or who is proclaimed offender.

* Arrest by a Magistrate.

Section 44 (1) : The Magistrate has been given power to arrest a person who has committed an offence in his presence & also commit him custody.

Section 44 (2) : The Magistrate has power to arrest a person for which he is competent & has also been authorised to issue a warrant.

* Arrest of Personl of Armed forces.

Sec. 45 ~~protets~~ protect members of Armed forces from arrest where they do something in discharged of their official duties. They can be only arrested only after obtaining consent of Central. Govt.

* Arrest how made. (Sec. 46)

1) The section authorises a police officer or other person making an arrest to actually touch / confine the body of the person to be arrested.

2) The section does not give a right to cause the death of a person who is not accused of an offence punishable with death sentence / life imprisonment. Some special safe guards have been made for women who are to be arrested.

3) ~~Exept~~ Except in exceptional ~~circum~~ circumstances

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no women shall be arrested after sunset & before sunrise by women police officer.

4) When a person is arrested under a warrant & arrest without warrant, he can be kept into custody for period not exceeding 24 hrs. & before expiry of that period Magistrate order his detention for term not exceeding 15 days. Magistrate can remand him custody for term which may exceed 15 days but not more than 60 days.

* SUMMONS. [section 61]

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A summons is issued either for appearance or for producing a document or thing which may be issued to an accused person or witness.

• Essentials – 1) It should be in writing
2) It should be in duplicate.
3) It should be signed by presiding officer of such Court or by such officer as authorised by High Court.
4) It contains seal of Court.
5) The summons should be clear and specific in terms as to title of Court, the place at which, the day & time of day when attendance of the person summoned is required.

• Service of summons

1) Summon to be served to a person → Sec.62 summon to be served by police officer/ an officer of court / other public servant if practicable to served personally

2) Summon on Corporations → sec.63 summon can be served on secretary / local manager / other principal officer of corporations

3) Summons if the Concerned person not found → Sec.65 summon can be ~~made~~ served to the male adult of family

4) If noone is found at home / household → Sec.65 If noone is found at home then affix the duplicate copy of summon to conspicous part of home or household where the summed person ordinarily resides

5) Summon in case of Govt. employee → Summon shall ordinarily be sent to Head of office in which such person is employed

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* WARRANTS

A warrant is described as legal document issued by judge / magistrate which empowers police officer to make arrest, search / seize premise.

Requisites of Warrant

1) It must be in writing.

2) It must bear the name & designation of person who is to execute it.

3) It must give full name & description of the person to be arrested.

4) It must state offence charged.

5) It must be signed by preceeding officer.

6) It must be sealed.

Section 76 : The police officer / person executing warrant of arrest shall bring the person arrested without unnecessary delay & such delay shall not exceed 24 hours.

* SEARCH WARRANT.

The search warrant can be issued in following cases —

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1) When court has reason to believe that person summoned to produce any document / other thing will not produce it.

2) When such document / other thing is not known to Court to be in possesion of any person.

3) When general inspection & search is necessary. However, search warrant may be general / restricted in its scope as to any place / part thereof.

* Security for keeping the peace & for good behaviour

When Court of session / Court of Magistrate is of opinion that it is important to take security from such person to keep peace, can order him to execute bond for period not exceeding 3 years.

The offences specified as follows :-

1) Any offence punishable under IPC, 1980.

2) Any offence which is consists of assault / using criminal force / committing mischeif.

3) Any offence of criminal intimidation.

4) Any offence which is likely to cause breach of peace.

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* INFORMATION IN COGNIZABLE CASES.

- Every information related to commission of cognizable offence, if given orally to an officer in charge of police station, shall be reduced to writting by him.

- The information given to police officer reduced in writing is called as First Information Report (FIR).

- In case of cognizable offence police may conduct investigation without order of Magistrate.

* INFORMATION IN NON-COGNIZABLE CASES.

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- When information of commission is given to in-charge of police station within limits of such station of non-cognizable offence then he shall enter substance of offence information in book in such form as S. Govt may prescribe.

- The Police officer is not authorised to investigate a non-cognizable case without order of Magistrate.

* When Executive Magistrate receives information that any person is likely to
  - commit breach of peace, or
  - disturb the public tranquillity, or
  - do any wrongful act

  he may require such person to show why he should not be ordered to execute bond for keeping peace for one year.

* SUMMERY TRIALS

- Summery ~~tt~~ trial is speedy trial by dispensing with formalities or delay in proceedings.
- Summery case means a case which can be tried & disposed at once.
- It applies to such offences not punishable with imprisonment for term exceeding two years.

- Cases can undergo summery trials –
  1) Cases which relate to offences punishable with imprisonment upto 2 years
  2) Insult with intention to provoke breach of peace
  3) Cases where value of prosperity does not exceeds Rs. 20,000/-
  4) Abatement of any of foregoing offences
  5) offences under sec 454 & 456 of IPC.
  6) Attempt to commit any of foregoing offences

- No sentence of imprisonment shall be passed in conviction of summery trials for term exceeding 3 months.

- following persons can conduct summery trials –

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- Any cheif judicial magistrate
- Any Metropolitan Magistrate
- Magistrate of 1st class

* COMPOUDING OF OFFENCES.

• Compounding means settlement of offence committed by a person
• The settlement must be done with consent of Court of law.
• In many cases parties to suit do not want to continue proceeding in court & want settlement of matter out of court, then compounding comes into picture.

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* COMPOUNDABLE OFFENCE & ITS AUTHORITY.

Section	Name of offence	who can compound offence
1) Sec. 325, 337, 388 of IPC	→ Voluntarily causing grievous hurt	→ To whom hurt has been caused.
2) Sec. 357 of IPC	→ Assault / criminal in attempting wrongfully confine to person	→ Person who is assaulted.
3) Sec 381 of IPC	→ Theft by clerk / servant of property in possesion of master	→ The owner of property stolen

4) Sec. 406, 408 of IPC → Criminal breach of trust → The owner of property on which breach of trust has occurred.

5) Sec. 418 of IPC → Cheating with knowledge → The person who has been cheated

6) Sec. 420 of IPC → Cheating & dishonestly inducing delivery of property → Person who has been cheated.

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* BAIL

- Bail means the ~~rea~~ release of accused from the custody & entrusting him to private custody of persons who are sureties to produce accused to answer charge at stipulated time / date

- Bail in case of bailable offence. (Sec. 436)

If person accused in offence other than non-bailable offence is arrested without warrant by police officer & brough before court & prepared to give bail such ~~s~~ person shall be released on bail.

If such person is unable to furnish surety then Court may discharge him on his execution bond without sureties for his appearance.

- Bail in case of non-bailable offence

If any person accused of any non-bailable offence is arrested by officer in charge of police station is brough before court, then he may be released bail but subject to –
- such person shall not be released if he has been guilty of offence punishable with death or imprisonment for life.
- Such person shall not be released if offence is cognizable offence
  1) punishable with life imprisonment for 7 years or more
  2) He has convicted 2 or more cognizable offence punishable with imprisonment for 3 years but not less than 7 years.

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- Bail to require accused to appear before next appellate Court

* TYPES OF BAIL

- Regular bail :- A bail which is granted after the offence is committed.
- Interim Bail :- A bail which is given during pendancy of application.
- Acticipatory bail :- A bail which is given when person has apprehension that he may be arrested on accusation of having

committed a non- bailable offence.

When court grants bail it may include following conditions – 1) Person shall make himself available for interrogation whenever required by police officer

2) Person shall not make any inducement to any person familiar with facts of case to dissuade him from disclosing such facts to court or police officer.

3) Person shall not leave India without permission of Court.

4) & other conditions as imposed under Section 437(3).

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* COUNTINUING OFFENCE

- It means a offence which is committed for long period.
- Whether the offence is continuing or not it is not defined in IPC or CRPC, but it clearly depends on its nature
- The offence which is happening & continuing again & again comes under continuing offence.

* OFFENCES AGAINST PROPERTY

I THEFT (Section. 378)

- Theft is intending to take dishonestly any movable property out of possession of any person without

that person's consent.

- The following are elements of theft -
  - There should be intention to take property dishonestly.
  - The property should be movable.
  - Property should be taken out of possesion without that person's consent
  - The property should be moved in order to take that property.

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2) EXTORTION

- It is intentionally putting any person in fear of injury or to any other and dishonestly inducing person put in fear to deliver to any person any property / anything signed / sealed which may be converted into valuable security.

- The following are elements of extortion -
  - There must be intention to put any person in fear of injury.
  - By fear of injury, dishonestly induces person to deliver any property.

3] DACOITY.

- When 5 or more persons commits robbery then it is 'Dacoity'
- followings are essentials of dacoity -
  - There should be atleast 5 persons.
  - They will commit robbery or its attempt.
  - Every person whether committing / aiding is said to commit dacoity.

* Dishonest misappropriation of property possessed by deceased person at time of his death. (Section 404)

- If any person misappropriates his own use property knowingly that it was in possession of a deceased person at his death, & that it has not since been in the possession of any person legally entitled to it, then imprisonmen ⟶ 3 years & fine

- If there is clerk or servant, imprisonment may extend to 7 8 years.

* CRIMINAL BREACH OF TRUST

- It is laid down under sec. 405 of IPC 'dishonest misappropriation' or 'conversion to own use' anothers property.
- In criminal breach of trust, the accused is entrusted with property or with dominion or control over the property.
- The following are essential elements -
  1) The accused must be entrusted with property or dominion over it

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2) The person so entrusted must use that property.
3) The accused must dishonestly use or dispose of that property.

- Punishment -

1) Sec. 406 : Punishment for cases other than following cases → imprisonment 3 years or fine or both.

2) Sec. 407 : Breach of trust by carrier, wharfinger or warehouse keeper
↓
Imprisonment upto 7 years & fine

3) Sec. 408 : Breach of trust by clerk / servant
↓
Imprisonment upto 7 years & fine.

4) Sec. 409 : Breach of trust by public servant, banker, merchant, broker, attorney or agent
↓
Imprisonment for life or imprisonment upto 10 years & fine.

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* CHEATING

- It is defined as dishonest or unfair act done to gain advantage over the other.
- Whoever fradulently or dishonestly deceives a person in order to induce that person to deliver a property to any person or to consent to retain any property.

- Main ingredients -
  1) The accused must deceive another person
  2) The act deceiving was done intentionally.
  3) The person who is deceived should be induced to deliver any property or to do an act.
  4) Such inducement should be fraudulent / dishonest.

- Cheating by personation -
  A person is said to 'cheat by personation' if he cheats by pretending to be some other person or by knowingly substituting one person for or another, or representating that he or any other person is a person other than he or such other person really is.

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- Punishments -

1) Sec. 417 : Cases other than following cases
↓
Imprisonment upto 1 year / fine / both.

2) Sec. 418 : If a person cheats who is bound to protect another persons interest.
↓
Imprisonment upto 3 years / fine / both.

3) Sec. 419 : Cheating by personation
↓
Imprisonment upto 3 years / fine / both

4) Sec. 420 : When cheating leads to dishonestly inducing delivery of property
↓
Imprisonment upto 7 years & fine.

* Sec. 421 :- If someone dishonestly transfers property to another person without adequate consideration, with the intention to prevent its distribution among creditors, they can be punished with imprisonment upto 2 years / fine / both.

* Sec. 422 :- When a person fradulently prevents the payment of debt amount to the creditor, then such person is punishable with - imprisonment upto 2 years / fine / both.

* Sec. 423 :- If someone dishonestly signs or participates in a document that transfers or charges property, & that document contains false ~~statement~~ information about consideration / the intended beneficiaries; they can be punished with imprisonment upto 2 years / fine / both.

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Essentials -

1) The sale / deed subjecting on immovable property to charge must contain false statement.

2) False statement is related to -
- Consideration
- Beneficiary

* Sec. 424 :- If someone dishonestly hides, takes away or helps in hiding property or fraudulently gives up a ~~legitimate~~ reasonable claim, then such person shall be punishable with imprisonment upto 2 years / fine / both.

* FORGERY.

Sec. 463 :- • Whoever makes any false document or false electronic record or part of a document or electronic record, with intention to cause damage / injury.

• In simple words, forgery is committed when someone creates a false document or part of a document with intention to cause harm, deceive others, support claim, acquire property or engage in fraudulent activities.

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• Essentials

1) The accused must have made a false document / electronic record or part of it.

2) The intention of making false document as follows - To cause damage / injury to public or any person.

- To support any claim / title
- To separate a person from his property.
- To enter into express / implied contract
- To commit fraud.

• Punishment :- Imprisonment upto 2 years / fine or both.

* DEFAMATION

Sec. 499 :- • If someone makes / publishes false statement, signs or visible representations with the intention to harm or with knowledge that it will harm the reputation of another person, they are said to defame that person, exept in specific exempted cases.

• Essentials :- 1) An imputation or accusation is made by words, either spoken or written or signs or visible representation.

2) Such imputation should be published to third party.

3) The intention behind such imputation is to harm the reputation of person against whom it is made.

• Exceptions -

1) Imputation of truth which public good requires to be made or published.

2) Publication of reports of proceedings of court.

3) Censure passed in good faith by person having lawful authority over another.

4) Public conduct of public servants.

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5) Merits of case decided in court or conduct of witness & others concerned.

6) Accusation preferred in good faith to authorised person.

7) Caution intended for good of person to whom conveyed or for public good.

8) Conduct of any person touching any public question.

9) Merits of public performance.

10) Imputation made in good faith by person for protection of his or other's interests.

- Punishment :- Imprisonment upto 2 years / fine / both.

- kinds of defamation

i) libel :- defamatory statement is made in visible form such as writing, printing / pictures.

ii) Slander :- If defamatory statement is made in spoken words.

- Sec. 502 :- Whoever sales or offers to sale defamatory matter, knowingly that it contains such matter, shall punished with imprisonment upto 2 years / fine / both.

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10th Aug 2023

Lec. 1

* CH. 8 : Law Relating to Evidence *

* Applicability
→ applicable in all civil & criminal matters
→ Court and martial courts

* Non-applicability
→ Naval discipline Act or air force Act.
→ Affidavits
→ Arbitrator

IMP *

FACT

• Fact means and includes
a) anything, state of things or relation of things capable of being perceived by the senses
b) Any mental condition of which any person is conscious. Fact are classified into physical & psychological fact.
Ex. A man heard or saw something is a fact

* FACT IN ISSUE

• fact in issue means any fact having dispute regarding existence, non-existence of any right, liability or disability.

• Ex. A is acused of murder of B. Whether A caused B's death is fact in issue

* RELEVENT FACT

• Relevent fact are those which help in proving fact in issue

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* MEANING OF EVIDENCE

It includes two types of evidences

1] Oral Evidence

- All statements which the court permits or require to be made before it, by witness of matter of fact under inquiry.

2] Documentary Evidence

- All documents including electronic records produced for inspection of court

TMP * DOCTRINE OF REST GESTATE

- Acts or declarations accompanying the transaction or facts in issue are treated as res gestate and admitted as evidence.

- It means surrouding or accompanying circumstances or situations which are inseparable from the fact in issue and which are necessary to explain nature of main act.

- It includes acts or declaration accompanying or explaining the transaction or fact in issue.

- Ex. A is accused of the murder of B by beating him. Whatever is said / done by A/B or by the by-standers or shortly before /after it as to form part of transaction, is relavent fact & is a Res Gestate.

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• Fact which are not fact in issue, are so connected with a fact in issue as to form part of same transaction

* MOTIVE, PREPERATION & CONDUCT. (Sec.8)

1] MOTIVE -

• Motive means which moves a person to act in a particular way. it is a psychological fact.

• Existence of motive is relevent fact in all criminal cases

2] PREPERATION -

• When question whether a person did a particular Act he had made preperations to do it is relevent fact.

3] CONDUCT -

• Conduct means behaviour.
• Conduct of parties is a relevent fact.

* Illustations

• A is tried for murder of B by poison. The fact that before death of B, A procured poison similar to that what is administer to B is relevent.
~~The question is if what~~
• The question is whether A robbed B.
The fact after B was robbed, C said in A's

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presence – The police is coming to look for men who robbed B and that immediately ~~after~~ afterwards A ran away, are relevent.

- Question is whether A was revished (destroy by sexual harrasment)

Shortly after alleged rape she made a complaint relating to crime is relevent.

Admission	Confession
1) All admission are not confession	1) All confession are admission.
2) Admission can be oral.	2) Confession is recorded in writing & signed by party
3) Admission can be in civil & criminal case.	3) Confession is only in criminal case
4) Admission can be made by any body.	4) Confession is made by accused only.
5) Admission may not be voluntary	5) Confession should be voluntary.
(+) point – To accept anything is admission.	To accept the guilt is confession.

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DATE 8.5

* Facts of which no evidence can be given - Privileged communications

1) Evidence of a Judge or Magistrate in regard to certain matters.

2) Communications during marriage.

3) Affairs of state.

4) Official communications.

5) Source of information of Magistrate / Police officer or Revenue officer as to ~~commition~~ commission of offence / crime

6) In case of professional communication between a client & his professional or attorney.

* STATEMENTS ABOUT THE FACTS TO BE PROVED

- Hearsay evidence is irrelevant.
- The general rule is that hearsay rule is that what is stated about the fact in question is irrelevant.
- There are 3 exceptions :-
  1) Admission & confession
  2) Statements as to some matters under some circumstances by persons who are not witness.
  3) Statements made under some circumstances.

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* PERSON WHO CAN'T BE CALLED AS WITNESS

Following conditions must be fulfilled for the relevancy of statements :

- Statement must relate to fact in issue or relevant fact
- Statement must fall under following categories

1) The statement made by person as to cause of his death or any of circumstances resulting to his death.

2) Statement made in course of business.

3) Statement which is against interest of maker

4) Statement of giving opinion to public right or custom or matters of general interest.

5) Statement of person who has special means of knowledge on subject.

6) Statement in any will, deed or other document related to any transaction by which right was created, claimed etc.

7) Statement made by number of persons expressing their feelings or impression

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* STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

The following statements becomes relevant on account of their having been made under special circumstances

1) Entries made in books of accounts

2) Entries made in public or official records or an electronic record made by public servant.

3) Statements made in published maps or charts which are generally offered for public sale or in maps or plans made under authority of Central or State Govt.

4) Statements as to fact of public nature contained in certain acts or notification.

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* ORAL EVIDENCE

- All facts except contents of documents or electronic records may be proved by oral evidence.
- All cases of oral evidence must be direct.
- The direct evidence means evidence of person who perceived the fact to which he deposes.

- If refers to the fact which could be seen, it must be evidence of witness who saw it.

- If refers to the fact which could be heard, it must be evidence of witness who says he heard it.

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- It must be evidence of a witness who says he perceived it by that sense

- If it refers to an opinion.

IMP *

DOCUMENTARY EVIDENCE

- A "Document" means any matter expressed upon any substance by letters, figures or marks or by more than one of those means.

- Document produced for inspection of court is called as documentary evidence.

- Contents of document must be proved by either primary / secondary evidence.

i] Primary evidence : It means document itself produced for inspection of court. It means the original document. Primary evidence is the best evidence.

ii] Secondary evidence : It is generally in form of compared copies, certified copies or copies made by mechanical processes.
Secondary evidence means & includes -
- Certified copies
- Copies made by mechanical process from original
- Copies made from / compared with original

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- counterparts of document
- oral accounts of contents of a document given by person who has himself seen it.

• A photograph is a secondary evidence.

* ELECTRONIC RECORDS

Any information contained in electronic record which is printed on paper, stored, recorded or copied or produced by computer shall be deemed to be a document.

* ESTOPPEL

• It is based on maxim 'allegas contratia non est audiendus'. It means person alleging contrary facts should not be heard.

• It says that man cannot approbate / reprobate or that man cannot blow hot & cold or a man shall not say one thing at one time & later on say different thing.

- Estoppel by attestation.
- Estoppel by contract.
- Constructive by election.
- Equitable estoppel.
- Estoppel by negliance.
- Estoppel by silence.

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* ELECTRONIC EVIDENCE

1) In case of Arjun Panditrao khotkar Vs. kailash kushanrao Gorantyal Supreme Court held that Court may admit evidence of video recordings even though certificate in accordance with sec.65B(4) had not been produced only if competent officer had testified that video recordings were authentic.

2) In Anvar Vs. Basheer it was held that sec.65 B (electronic evidence) shall supersede other provisions of sec.62.

3) Sec. 65 B is a complete code in itself for admissibility of evidence.

* LOGICAL RELEVANCY & LEGAL RELEVENCY

- Every fact which is legally relevent is logically relevant too, but every fact which are logically relevant are not necessarily legally relevant.

- Judge considers legal relevancy not the logical relevancy so, judge ignores logical relevancy on ground that they are not legally relevant.

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Imp/*

OPINION OF 3rd PARTY

- Opinions of experts are relevant upon
  - foreign law
  - Science
  - Art
  - identity of handwriting
  - finger impression

- Facts that supports experts opinion are also made relevant.

- Opinion as to handwritting of a person : If a person is giving opinion familiar with the handwritting of person in question.

- Opinion as to digital signature : Opinion of the certifying authority which has issued with the Digital Signature Certificate (DSC).

- Opinion as to existence of ~~legal~~ general rights or custom : If the person is giving opinion is likely to be aware of existence of such right / custom

- Opinion as to usages : If the person has special means of knowledge on subject.

- Opinion by existence of any relationship by person who has special means of knowledge on the subject.

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* FACTS NECESSARY TO EXPLAIN / INTRODUCE REVELANT FACT

According to Sec. 9 –

– facts which are necessary to explain fact in issue / relevant fact.

– facts that supports interference suggested by fact in issue / relevant fact.

– Facts that establish identity of a person or thing whose identity is relevant or fix time & place at which relevant fact is happened.

– facts that shows relation of parties by whom any fact was transacted are relevant, because they are necessary for that purpose.

* JUDICIAL PROCEEDINGS

- It is defined in sec (2)(i) of Criminal procedure Code, ' a proceeding in the course of which evidence is or may be legally taken on oath.

- Proceeding under Income Tax are not judicial proceedings

- Act is not applicable to proceedings before arbitrator

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* ADMISSION

- It is defined in Sec. 17
- It means any statement made by any person, that suggests any ~~interfe~~ inference to any fact in issue or relevant fact & under any certain circumstances.
- Admission may be verbal or contained in documents as maps, bills, receipts, letters, books etc.
- Admission can be made by party or agent of party.
- Admission is the best evidence against the party making the same unless it is untrue.
- Admission must be clear, precise.

* CONFESSION

- Confessions are special form of admission.
- To accept the guilt is an confession.
- Every confession must be admission but every admission is not amount to confession.
- Confession is evidence only against its maker and against another person who is being jointly tried with him.
- Confession caused by inducement, threat or promise is irrelavant.
- Confession is classified as-
  - i] Judicial
  - ii] Extra- Judicial
- Extra- Judicial confession are valid.

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* ELECTRONIC EVIDENCE (MEANING)

- Any information contained in electronic record, which has been stored, recorded or copied as computer output is known as 'document' hence, it is a electronic evidence.

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13th Aug

* Writing practice

Q.)→ Extra - Judicial confession was made before a witness who was a close relative of accused and testomony of ~~sale~~ said witness was reliable and truthful. Examine the relevancy of this confession.

→ Confession are of Two types

1) Judicial confession : Confession which are made before a court or magistrate are judicial confession

2) Extra - Judicial confession : Extra- judicial confession are made before any other person other than judges or Magistrate.

Extra - Judicial confession are valid and can be relied along with other evidence if made voluntary

In Ram Khilari Vs. State of Rajastan, Supreme Court held that, where an extra - judicial confession was made before a witness who was a close relative of accused and testomony of said witness was reliable and truthful.

Confession was held relevant.

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Specific Relief Act

Specific Relief Act 1963

Intro:
Specific relief Act 1963 was enacted to define and ammend law relating to certain kinds of specific relief. this law has been ammended it came into-effect from 1st Oct 2018.

★ Recovery of possession of property

Recovery of specific immovable property : Section 5
According to section 5 any person entitled to possession of specific immovable property may recover it in the manner provided by CPC 1908.

Suit by person dispossed of immovable property : Section 6
If any person is dispossed without his consent of immovable property otherwise then in due course of law he may file suit for recovery of possession.
Suit under Section 6 can not be brought
a) after expiry of 6 months from the date of dispossession
b) against the government.

There is no right of appeal and review from any order or decree passed under Section 6

Recovery of specific movable property : Section 7
Any person entitled to possession of specific movable property ~~is~~ may recover it in the manner provided

by CPC 1908.

Liability of Person in possession, not as Owner to deliver to persons entitled to immediate possession : Section 8

Any person who is not the owner but having possession or controll of particular article of movable property, may be compelled to deliver it in following cases

i] when things claimed is held by defendant as agent or trustees or plantif.

ii] when compensation in money is not adequate relief

iii] It is difficult to ascertain actual damage

iv] Thing is wrongfully transfered from the plantif

Defenses respecting Suits for relief based on Contract : Sec. 9

According to Section 9, where any relief is claimed in respect of Contract, the person against whom relief is claimed can have defense on any ground which is available to him under any law relating to Contract.

Cases in which Specific performance of Contract Connected with trust enforceable : Section 11

Section 11 provides that Contract can be enforced Specifically (Specific performance) wholly or partially against trust.

but the Contract made by trustee in access of his power or in breach of his trust can not be Specifically enforced.

Specific performance of part of contract. : Section 12

Speci Court generally does not grant Specific performance / relief for part of contract but Court may direct Specific performance of part of Contract if -

i) part left under perform is a Small portion and Can be Compensated in money.

ii) If unperformed part is Considerably large and plantif reliquishes all claim to the performance of remaining part and all right of Compensation.

Contracts not Specifically enforceable : Section 14

i] Party to the Contract has obtained Substituted performance.

ii] A Contract where Court Can not Supervise.

iii] A Contract which is dependent on personal qualification.

iv] A Contract which is determinable in nature

Contract to Sale or let property by one who has no tit not specifically enforceable : Section 17

A Contract to Sale or let any immovable property Ca not be specifically enforce in favour of vendor or lessor

a) who knowingly himself not to have any title of property Contracted to Sale or let.

b) who believes he had a good title, but can not give free title to purchasor or lessee afterwards.
This provision apply to Contract of sale of hire of movable property.

who may obtain Specific performance : Section 15

1 Parties to the Contract
2 Representative in interest
3 Any person beneficially entitled
4 Reversioner
5 Remainder man - who has remaining interest in property
6 Contract done by LLP but afterwards amalgamated then amalgamated LLP i.e. New LLP arising out of amalgamation can obtain Specific performance.

7 Company - Same as LLP
8 Pre-incorporation Contract

Persons bar to relief : Section 16

Specific performance of Contract can not be enforced against person
a) who has obtained Substituted Performance.
b) who has become incapable of performing
c) who has violated any essential terms of Contract
d) who act in fraudulent manner

e) A person who varies terms and Condition of Contract in wrongful manner.
f) A person who fails to perform his part of Contract.

Note : In Order to obtain specific performance plantif must prove his willingness to perform his part of Contract

Person against whom Contract may be Specifically Performed
Section 19
a) Party
b) any person claiming under him by title arising Subsequently to the Contract
c) Amalgamated LLP
d) Amalgamated Company
e) Pre-incorporated Contract

Substituted Performance of Contract : Section 20

when Contract is broken due to non performance of any party, party who suffers (agrived party) have an option of Substituted performance through a third party or his own agency and recover the expenses from the party Commiting such breach.

party who suffers breach have to give 30 days notice to perform the Contract, before availing Substituted Performance.

Special Provision for Contract relating to Infrastructure project

Section 20 (A) :
No Injuction shall be granted by Court in Suit under this act relating to Infrastructure project.

Section 20 (B) :
State govt in Consultation with chief justice of highcourt shall designate one or more civil Court as special Court in respect of Contract relating to infrastructure project.

Section 20 (C) :
Suit must be disposed within 12 months from the date of Service of Summon to the defendent.
Maximum extention of 6 months can be granted by Court.

Declaratory decree : Section 34
Declaratory decree is a decree which declares right as to any property or the legal character. ~~of a pers~~

declaration is ask for right to property only.
plentif is not able to claim further relief other than declarati

Effect of declaration : Section 35
when a declaration of decree passed it is binding following person :
a) parties to the suit
b) person claiming through them
c) trustees.

Declaration is jus in personem and in not ~~in re~~ jus in rem which means it is not binding on stranger

Preventive Relief / Injunction

Preventive Relief means relief where party to Contract is prevented to doing particular act. it is always descrition of Court. ~~then~~

Injunction is judicial process.

Types of Injunction :

1] Temporary Injunction :

It means an injunction which is to continue until a specific time or until further order of Courts. it may be granted at any stage of Suit and does not Conclude or determine the right. it is known as Intrim injunction

2] Perpetual Injunction :

It is granted by decree made at the hearing and made upon the merits of the Suit. it is granted only after full trial or hearing of the Case. when right is firmly establish.

3] Mendatory Injunction :

Sometime to prevent breach of obligation it is necessary to Compell to performance of certain acts. Court may grant injunction to prevent the breach Complain of also to Compel performance of the requisite act. this is known as Mendatory Injunction.

4) Ex-party Injunction :
when Injunction granted in favour of one party without hearing the other party, it is Ex-party Injunction.

Injunction to perform negative agreement : Section 42
Some time Contract may Comprise of to agreement i.e. affirmative agreement, which means ~~not~~ to do something and negative agreement means not to do Something.
In Such a Case Court is unable to Compell Specific performance of affirmative agreement but it may grant an Injunction to perform negative agreement.

But the Contract must be divisible and negative part must be Capable of being Seperated from the rest of Contract.

Example : Mr Naydu Contracts with Miss Saniya to sing for 12 months at Mr. Naydu's theator and not to sing in public else where. Mr. Naydu Can not obtain Specific performance of Contract to Sing but he is entitled to an injunction restraining Miss Saniya from Singing at any other place of public entertainment place.

30th May.

Chapter 10 :- Limitation Act, 1963.

- This Act applies to all civil cases.
- It also applies to certain criminal cases not all criminal cases.

IMP

* **Section 3 :-** Bar of Limitation.
  - "Any suit, appeal or application if made beyond the prescribed period of limitation, then it is the duty of court not to proceed with such suits irrespective of fact whether the defence has been taken or not."
  - Section 3 is mandatory.
  - If court is allowing a suit after prescribed period of limitation then such decree will be valid.
  - A decree passed in time barred suit in not a nullity.

* Limitation Bars remedy but does not extinguish right (Section 3)
  - If claim is satisfied outside the court of Law after the expiry of period of limitation, that is not illegal.
  - Bombay Dying & mfg. com. Ltd Vs State of Bombay.

* **Section 5** :- Extention of time in certain cases
  - Condonation of delay
  - Sufficient cause.

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- Section 5 states if there is sufficient cause then court might allow a suit and will give you condonation of delay. (Ramlal Vs. Rara coal fields Ltd)

- In Ramlal Coal fields Ltd, The supreme court held that once the period of limitation expires then appellant has to explain the reason of delay day by day.

- If appellant fails to state reason, they are not allowed to have condonation of delay.

• Sufficient cause :- 1) wrong practice of high court.
2) mistake of council.
3) wrong advise by advocate.
4) mistake of law.
5) Imprisonment / illness
6) Time taken for obtaining copy of judgement.
7) Non-availability of file.
8) Ailment of father.
9) Ignorance of law is not sufficient cause.

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Imp

Person under legal disability. [Section 6, 7 & 8]

• Section 6 :- If a minor, insane or idiot wants to institute a suit then his period of limitation will begin from the date of cessasion of legal disability.

If a person is suffering from one legal disability after recovering from another disability then his limitation period will start after end of all legal disability.

- **Section 7** :- If one or more persons wants to constitute a suit if some of them are legally disable then,
  - If Consent of person suffering from legal disability is not necessary then period of limitation continue as original.
  - If consent of person suffering from legal disability is required then limitation period will extend for all persons and will begin ~~cessatio~~ ~~cesssio~~ after cessasion of all the persons

- **Section 8** :-
  - Section 8 controls Sec. 6 and 7.
  - limitation period cannot extend beyond three years from cessassion of legal disability.
  - However, the original period of limitation expires after three years then, ~~org~~ original period will be considered.

- **Section 9** :-
  - Once limitation period began to run then no subsequent disability or inability can stop it
  - this Section only applies to suits and application not to appeals.

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- Section 12 :-
  - In case of suit :- The day on which limitation period began to run.
  - In case of appeal :- i] The day on which limitation period began to run
    ii] The day of judgement
    iii] The day of obtaining copy of decree, order etc.
  - In case of review/revision :-
    i] The day on which limitation period began to run.
    ii] The day of judgement.
    iii] The day of obtaining copy of decree, order etc.
  - In case of set a side award :-
    i] The day on which the limitation period began to run.
    ii] The day of obtaining copy of award.
  - In case of other application :-
    i] The day on which limitation period began to run.

- Section 16 :-
  - In case of death of a person before the right to institute a suit accrues, the period of limitation computed from when there is legal representative.

- Section 17 :- If there is a fraud the limitation period starts when it is discovered.

Unique academy

* Effect of Acknowledgement.

IMP

- Section 18 :-

If there is admission or acknowledgement
↓
in respect of right or property,
↓
before the expiry of period of limitation
↓
in must be in writting or signed by party
↓
against whom such right or property is claimed.
↓
fresh period of limitation shall be computed from the acknowledgement was signed.

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- Section 19 :-

- Whenever the part payment or payment of interest is made before the expiry of period of limitation then first period of limitation shall be computed from the date when payment was made.
- mortgaged land in possession of mortgagee payment of rent to mortgagee shall be deemed to be part payment.
- Debt doesn't include money payable under decree or order of court.

- Section 25 :-
  - applies to easement.
  - It states that if you're enjoying any kind of easement that is air, light, way, water course peacefully for 20 years without interuption then such right is absolute. In case of government property it should be 30 years
  - If right infringe then 2 years period.

Classification of period of Limitation.

- 30 years :- i) mortgage → redemption
  → forclousure
  ii) Central or State government

- 12 years :- i) Immovable property
  ii) Trust.

- 3 years :- i) Breach of contract
  ii) Movable property
  iii) Accounts.

- 1 to 3 years :- i) Tort
  ii) Miscelleneous case

Limitation Act apply to writs ?

- Case 1 :- Tilokchand Motichand Vs. H.P. Munshi
  - no period of limitation for writs.

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- Case 2 :- State of MP v. Bhai lal bhai
  - If delay is more than statutory period of limitation then it should be refused.

Unique academy

7th, Sep.2023

CH.11th :- LAW RELATING TO ARBITRATION, MEDIATION and CONCILIATION

* Arbitration - Method of solving civil dispute
  - Two or more parties
  - With the help of Arbitrator.

* TYPES OF ARBITRATION

i] Ad hoc Arbitration
It is not handled by formal organisation. Number of arbitrators; mode of selection, how arbitration will be conducted, procedural aspect should also be decided by parties.

ii] Domestic Arbitration
The arbitration in which disputes are subject to Indian Law and cause of action based in India is called as domestic Arbitration.

iii] Internation Arbitration
Arbitrational relating to dispute in which atleast one party is either individual, body corporate, association or body of individuals, the Government of the another country.

iv] Institutional Arbitration.
When matter is to be administered by established arbitration institution, then it is called as institutional arbitration.

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* ESSENTIALS OF ARBITRAL PROCESS
  1) Seat of Arbitration
  2) Venue of Arbitration
  3) Arbitral Institution
  4) Law
  5) Language
  6) Number of Arbitrators
  7) Cost

* Arbitrator

1) Person appointing to determine differences.
2) Arbitrator must be appointed by mutual consent of two or more parties.
3) Arbitrator should be impartial & uninterested.
4) Usually parties themselves appoints arbitrator.
5) Courts can also appoint arbitrator.
6) May be arbitrator or panel of arbitrator.

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IMP
* Arbitration Agreement

- Agreement by parties to arbitration all or certain dispute.
- It may be in form of arbitration clause or separate agreement.
- Agreement must be in writing.
- ~~Aggre~~ Agreement must be signed by parties Telex, telegram or other means or exchange of letter or exchange of statement of claim & defence. OR,
- It refers to present or future dispute.

* Application for appointment of arbitrator shall be disposed by supreme court / high court / Arbitral institution within 60 days from date of service of notice

* High Court may frame rules regarding fees of arbitrator

* Challenge
Party may challenge Arbitrator appointed by him after becoming aware of his non-independence or non-qualification

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* Case law :- Jeevankumar ~~ho~~ lohia Vs. Durgadatta lohia.
It was held by High Court that reasonable apprehension or bias or likelyhood of bias in mind of either party is ground for termination of arbitrator

* Case Law :- BCC developers & promoters Ltd Vs. DMRC
In this case it was observed that just because appointed arbitrator is EX employee of one of party he is not ineligible for appointment.

* In Chloro Controls (I) P Ltd. Vs Severn trent water purification INC, court observed the rule of kompetenz kompetenz it means legal body can decide on its own jurisdiction this includes

~~ability to rule on validity of arbi on~~

ability to rule on validity of arbitration agreement. The negative effect to this rule is arbitrator are entitle to 1st determine their jurisdiction which is later reviewed by the court.

* POWER OF COURT TO REFER PARTIES TO ARBITRATION.

- Judicial authority may appoint refer parties to arbitration.

- If party applies to the court before submitting the first statement.

- Application accompanied by original agreement or by certified copy thereof.

- If original agreement / document or certified copy is not available then file copy of agreement.

- Pending issue arbitration may be commenced.

* APPOINTMENT OF ARBITRATOR

- Arbitrator can be any nationality unless agreed by parties
- Parties are free to agree on procedure
- If procedure of appointment is not specified
- Each party shall appoint one Arbitrator
- Then appointed two arbitrator shall appoint another arbitrator

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- If parties failed to appoint arbitrator within 30 days of notice or two appointed arbitrators failed to appoint arbitrator within 30 days of appointment, then apply to Arbitral Institution designated by Supreme Court or High Court.

- If no Arbitral Institution is available, then High Court.

- If request has been made to more than two or ~~two~~ two arbitral institutions, then Arbitral Institution to which request has been made first is relevent.

- Arbitral Institution before appointing Arbitrator shall disclose - qualification
  - Independent
  - Impartial arbitrator.

Uniqao academy

* INTERNATIONAL COMMERCIAL ARBITRATOR

- Dispute between parties where 1 party is from another country.

- If any party fails to appoint arbitrator or appointed 2 arbitrator fails to appoint arbitrator within 30 days, then apply to Arbitral Institution designated by Court.

- In case of International Commercial Arbitration Court shall appoint arbitrator of nationality other than nationalities of parties.

- Any Nationality.
- May be appointed by Supreme Court.

Imp

* GROUND FOR CHALLENGE

- If party find outs that Arbitrator is not independent or he is has past / present relationship with party or interested in party or has interest financial or business interest or Doest not posses qualification which was agreed by parties, then parties can ground for damages.

Imp

- Procedure
  - Parties are free to agree on procedure.
  - Party shall challenge within 15 days from constitution of arbitral tribunal or ~~and~~ becoming aware of circumstances.
  - Parties shall give written statement of reason.

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* FAILURE / IMPOSSIBILITY TO AS AN ARBITRATOR.

- Mandate shall terminate
- When he is unable to perform functions by law or by right.
- failed to act without undue delay.
- Withdrawn from office.
- Pursuant to agreement of parties.

* SUBSTITUTION OF ARBITRATOR.

- It shall be appointed according to the rule of appointment.
- Any hearing previously made can be repeated.
- Any interim award shall not be ~~to~~ invalid.

* COMPETENCE OF ARBITRAL ~~TI~~ TRIBUNAL TO RULE ON ITS JURISDICTION.

- Arbitration clause which forms part of an contract shall be treated as agreement.

- If contract becomes null & void then it shall not entail / ipso jure the invalidity of arbitration clause.

* TYPES OF ARBITRAL AWARDS

1) Interim Award - It is an award made by Tribunal during pendancy of the matter.

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2) Additional Award - Party may request arbitral Tribunal within 30 days from receipt of arbitral award to make additional award & if arbitral tribunal considers justified may make an ~~arbi~~ additional arbitral award within 60 days of such request.

3) Settlement Award - With agreement of parties arbitral tribunal may encourage settlement and if parties settle the dispute arbitral tribunal shall terminate the proceedings and record settlement inform of arbitral award on agreed terms

4) Final award - An award which finally determines all the issues in a dispute.

Time Limit for Arbitral Award.

- In normal procedure award shall be made within 12 months from date of completion of pleadings. Parties may extend this period for not exceeding 6 months
- Award under fast track procedure shall be made within 6 months from the date arbitral tribunal enters upon.
- In internation commercial arbitration award shall be made within 12 months from date of completion of pleadings
- If award is made within period of 6 months from the date arbitral tribunal enters upon, he will be entitled to receive extra fees.
- If award is not made within period specified, authority of arbitrator shall be terminated
- Court may extend the period if required but may order reduction of fees of arbitrator by exceeding 5% for each month of delay.
- Court will extend period of arbitration only when there is sufficient cause.
- While extending period court may substitute arbittator
- Court shall dispose application within 60 day regarding extention

Unique academy

IMP
* Interim measures Ordered by Arbitral Tribunal

1) For appointment of guardian of minor
2) Preservation Interim custody for sale of goods
3) Securing the amount in dispute
4) Detention, preservation and inspection of any property
5) Appointment of receiver
6) Other measures

* STATEMENT OF CLAIM & DEFENCE

Within the period of time agreed upon the claimant shall state the facts supporting his claim and the respondent shall state his defence.

Statement of claim & defence shall be completed within 6 months from the date arbitrator received notice in writing of their appointment.

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IMP
* DEFAULT OF A PARTY

- When claimant fails to communicate → Tribunal shall terminate proceedings
- Respondent fails to communicate his defence → Tribunal shall continue the proceedings.
- Party fails to appear → Tribunal may continue the award on the evidence before it.

* Determination of Rules of Procedure -

- Not bound by CPC 1908, Indian Evidence Act 1872
- Free to agree on procedure
- Power of arbitration includes admissibility, materiality of evidence

* Arbitration proceedings
  - File statement of claim with relevant documents or evidence
  - Respondent submits counter claim within 6 months.

IMP
* Arbitral Award features -

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1) Arbitral award includes interim award
2) Arbitral award should be in writting, it should not be oral. It must be made on stamp paper.
3) Arbitral award shall include sign of each member of Arbitral Tribunal.
4) Arbitral award shall contain reason. However, there are two exception - When arbitration agreement provides that no reason is to be given.
   - When parties settle dispute then tribunal shall record settlement in arbitral award form
5) Arbitral award be dated.
6) place of arbitration
7) Arbitral award include the sum for which award is made.
8) Include decision regarding arbitration cost
9) Signed copy deliver to each party.

* FAST TRACK PROCEDURE

- Written pleadings without oral hearing.
- further clarification.
- Oral hearing on request
- Procedural discretion.

* Regime for cost -

1) Arbitrator shall discretion to determine
2) Whether the cost is payable by one party to another.
3) Amoust of cost.
4) When such cost is to be paid.
5) Cost includes legal expenses related to arbitration & evidence.
6) Generally, unsuccesful party pays to ~~u~~ successful party.

7) However, other party may ordered to pay proportionated or stated amount cost of opposite party.

Imp

* Termination of Proceedings.

1) Terminated by final arbitral award
2) By order of arbitrator - reason
   - when claimant withdraws his claim
   - Parties agree on termination
   - Arbitrator finds continuation is impossible.

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* Correction, interpretation & additional award

1) If there is any mistake or typographical error, then party within 30 days from receipt of arbitral award request arbitrator to correct it.

2) Request arbitrator to provide interpretation within 30 days.

3) Arbitrator shall correct interpretation within 30 days.

4) Party can within 30 days request arbitrator to pass additional award.

5) Arbitrator may pass additional award within 60 days

6) Arbitrator may further extend the time if required.

IMP

* Application for setting aside additional award

1) Party can apply to court within 3 months from receiving arbitral award setting aside.

2) further extention can be made not more than 3 m.

3) Court may pass order of setting aside if party prove that
   - He was incapable
   - Arbitration is ~~invalid~~ agreement is invalid.
   - Not given proper notice of appointment of arbitration
   - Award contain decision beyond scope of arbitration.

Unique academy

- Composition of arbitration is not as per agreement
- Subject matter is not capable of settle by arbitration
- Arbitral award is against public policy.

• Award will be in conflict with public policy only if
1) Award was induced / affected by fraud / corruption
2) Award is in contravention with fundamental policy of indian law
3) Award is in conflict with morality & justice.

* Duties & functions of Council

Unique academy

1) Frame policies regarding grading of Arbitral institution.

2) Review grading of Arbitral Institution & Arbitrators.

3) Hold training, workshops in area of arbitration

4) Promote institutional arbitration by strengthing arbitral institution.

5) Establish & maintain depository of arbitral award in India.

6) Make recommendations to Central government, for easy resolution of commercial disputes

* Sec. 43(e)

Act of council shall not be invalid merely by reason of
→ 1) Any vacancy or defect of inconstitution of council
2) Defect in appointment of person acting as a member of council
3) Irregularity in procedure of council

* Removal of Member

Central govt. may remove a member from council if →
1) He as an undischarged insolvent
2) Engaged during his term of office in any paid employment for full time
3) Has been convicted of any offence which involves moral turbitute
4) He has abused his position
5) He has become physically or mentally incapable
6) He has acquired financial or any other interest

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* General norms applicable to arbitrator

1) Arbitrator shall be person of general reputation of fairness, integrity.

2) Arbitrator must be impartial

3) Arbitrator should not have been convicted of an offence involving moral turbitude

4) Arbitrator must have knowledge in Constitution

of India, principal of natural justice, equity common & customary ~~norm~~ laws, commercial laws, labour laws, Law of torts etc.

5) Arbitrator must posses understanding of domestic & international arbitration.

6) He should be capable of suggesting, recommending reasoned & enforceable arbitral award

* CEO
- CEO of council shall be responsible for day-to-day administration of council.
- His qualification, appointment and other terms & condition are prescribed by C.Govt.
- He can have in his under such numbers of officers & employees as prescribed by C.govt

* APPEALABLE ORDERS
Notwithstanding anything contain in other for the time being in force an appeal shall lie from following orders -

- Refusing refer to parties to arbitration
- Granting or refusing any measure under sec. 9
- Setting aside or refusal to set aside an arbitral award.

An appeal can be also lie to court from an order of arbitral tribunal -

Unique academy

- accepting the plea under sec. 16
- granting or refusing to grant an interim measure

No second appeal shall be lie.

* Deposit

- Arbitral Tribunal can fix amount of deposit which is to be incured in respect of claim
- If counter claim has been submitted then fix separate amt. of deposit of claim & counter claim
- Deposite should be paid by both parties equally
- If any party fails to pay, then another party shall pay on behalf of him
- If both the parties fails to pay then arbitrator may terminate proceedings
- Arbitral Tribunal shall have lien on arbitral award for any unpaid cost of arbitration

* Arbitration agreement shall not be discharged by death of party, it shall be enforceable by legal Representative of decesed. Death of any party will not affect mandate of arbitrator & its operation

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* ARBITRATION COUNCIL OF INDIA (ACI)

1) Established by Central government
2) Head office shall be at Delhi.
3) It is a body Corporate. It is a Separate legal entity
4) Composition of council

- Chairperson : Appointment of by Central goverment who has been Supreme Court Judge, Cheif Justice of High Court, Judge of High Court. Who has special knowledge in administration of arbitration.

- Member :- Nominated by C.govt
  - who has experience & knowledge in domestic, institutional, internation arbitration

- Member :- appointed by C.govt
  - after consultation with chairperson
  - experience in teaching in arbitration and alternative dispute resolution

- Secretary - to GOI in Department of legal affairs, Ministry of law & Justice

- Secretary - to GOI In Department of Expenditure, Ministry of finance

- One - part time member - representative of body of commerce & industry

- CEO

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* Resignation of members
  - Chairman or member may resign by giving notice
  - When his successor enter upon his office
  - Expiry of his term.
  - whichever is earlier.

* Term :- Chairperson ⟶ 70 years of age
  Members ⟶ 67 years of age

Imp
* Conditions of enforcement of foreign Award.

1) Award is made in pursuance of submission to arbitration, agreement should be valid under law applicable.

2) Subject-matter of award must be capable of settlement by arbitration under Indian law.

3) Award made by arbitral tribunal which is constituted in → ~~by~~ manner agreed by parties

4) Award must become final.

5) Enforcement of award must not be contrary to public policy ~~to~~ & India law.

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Arbitration	Conciliation
1) A person appointed for process of arbitration is called arbitrator	1) Person appointed for process of conciliation is called conciliator
2) Arbitrator has power to enforce his decision	2) Conciliator only settle the dispute & has no power of enforcement.
3) For arbitration prior agreement is needed.	3) For concialiation no prior agreement is ~~it~~ needed
4) Arbitrator can ~~at~~ only be in odd number.	4) Conciliator can be in even number also
5) Arbitration agreement can be done for existing & future disputes.	5) Conciliation can be done only for existing disputes

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* There are various laws which provides for mediation as dispute redressal mechanism.

1) Companies Act, 2013
2) Industrial Dispute Act, 1947
3) Code of civil procedure, 1908
4) Legal services authority Act
5) MSME Development Act, 2006
6) Hindu Marriage Act, 1955
7) RERA Act, 2016
8) Commercial courts Act, 2015

9) Consumer protection Act, 2019

* Case law :- Salim Advocate bar Association Vs. Union of India

Supreme emphasis the need to promote ADR method in India, due to delays & limited judicial resources. Sec. 89 of CPC was highlighted which allows for ADR methods like arbitration, conciliation, mediation, settlement through lok Adalat. etc. Parties can choose ADR during a law suit and if fails, the case proceeds to trial. The judgement encourages ADR to resolve disputes efficiently while keeping litigation as an option if needed.

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* Supreme Court manual

- Supreme Court has created mediation training mannual to promote mediation as an effective way to resolve disputes. It is desinged for trainers, mediator, Judges & litigants and covers mediation process, practical aspects and ~~toll of~~ role of various parties

- Mediator uses 4 functional stages of mediation namely,

1) Introduction & opening statement
2) Joint session
3) Separate session
4) Closing.

* CONCILIATION

- It means setting up of disputes without litigations
- It is an informal process, conciliator try to bring dispute to agreement
- Conciliator provides better solution & negotiating settlement.
- It can be successful if only parties are ~~readdal~~ ready to re-adjust.
- Conciliation is complimentory to arbitration.

- Commencement
  - Party initiating shall send notice to another party
  - It will commence only if another party accepts invitation in writing.
  - If one party reject the ~~conci~~ invitation the conciliation will not effect.
  - If initiating party did not reply in 30 days then it will be rejected.

- Appointment -
  - There can be 1, 2 or 3 conciliator as per decided by party
  - If 1 conciliator parties have to agree on sole conciliator
  - If 2 concillator → each party have to appoint ~~1~~ one conciliator
  - 3 conciliator → each party will appoint 1 conciliator and 3rd conciliator will be appointed by two conciliators.

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- Role of conciliator
  - Conciliator provides independent & impartial assistance to settlement of dispute.
  - Brings conciliation in such manner as it consider appropriate.
  - His role not confined merely in appropriate assis-~~th~~tance but also extends to making proposals for settlement of dispute.
  - Conciliator invites both parties together for oral or written communication.

- Settlement agreement
  - Conciliator send settlement agreement to both parties.
  - Parties have to sign it, after signing it becomes binding on both parties.
  - Conciliator authenticate settlement agreement & send copy to parties
  - It has same effect like arbitration.

- Termination of conciliation.
  - Settlement by both parties
  - Written declaration by conciliator for termination
  - Written declaration by both the parties for termination
  - Written application by one party to another party to termination.

- Role of conciliator in other proceeding.
  - He can't act as arbitrator
  - He shall not be presented by parties as witness

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* Alternative Dispute Resolution. (ADR)

- It is more common judicial process.
- It includes methods like arbitration, conciliation, mediation negotiations
- ADR process are flexible, time saving & saves money.
- It deals with civil labour, family or commercial dispute
- International centre for ADR is unique centre promoting teaching and reasearch in field of ADR.
- ADR services are not only in India but all over world
- It is independent & non-profit organisation
- The arbitral institution maintain confidentially of all arbitral proceedings.
- No suit shall lie against arbitrator for anything done which is in good faith.

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* MEDIATION

- It is a process where parties request a third person to act as mediator or mediation service provider to assist them in their dispute to reach amicable i.e. settlement of a dispute

Types -

- Court - Referred Mediation
- Statutory / Mandatory mediation
- Online mediation
- Private mediation

- Merits of mediation

- Quick & Responsive
- Economical
- There is no extra cost
- Hormonious settlement
- Creating solutions & remedies
- Condifendial & informal
- Parties can control proceedings

* Mediation bill 2021
  - Increase in case pending times continue to a difficulty in judicial and quasi - judicial forums.
  - The govt. has taken a number of step to address.
  - This bill was passed to promote & facilitate mediation, for resolution of disputes, commerical & to enforce mediated settlement agreements, provide for a body for registration of mediators, to make online mediation as acceptable.
  - This bill when becomes Act shall apply where mediation is conducted in India
    - both parties have business place in India, reside in India.
    - dispute shall be resolved in accordance with the provisions of this Act
    - there is an international mediation.
  - It shall not be applicable where one party is Central or state govt. or agencies, public bodies including entities controlled / owned by govt.

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* Arbitration Vs. Mediation

i) Mediation : When parties aims to assist parties in arriving at mutually agreeable solution
Arbitration : It is like litigation outside ~~India~~ Court where award is like an order.

ii) Mediation : It is more collaborative
Arbitration : It is more adversarial.

iii) Mediation : It is more informal
Arbitration : It is formal.

iv) Mediation : Outcome is controlled by parties
Arbitration : controlled by arbitrator.

v) Mediation : may or may not be ~~is~~ resolved
Arbitration : It is always settled in either party's favour.

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* CH.13th : Law of Registration of document *

* Objectives of registration of document
- To give notice to the world that such a document has been registered.
- To prevent forgery & fraud with purpose of providing good evidence.
- To Secure the interest of person dealing with immovable property.

* Documents for which Registration is Compulsory.
Section. 17 :

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1) Instruments of gift of immovable property

2) Any non-testamentary instruments which, creates, assigns, limits, declares, extinguish any right, title or interest of value of ₹100/- and more in immovable property.

3) Any non-testamentary instruments which creats, limits, assigns, declares acknowledgement of payment or receipt of any consideration of value of ₹100 & more in immovable property.

4) Non-testamentary instruments transferring or assigning any decree of court or award of arbitrator when such decree / award declares, creates, assigns, limits any right, title or interest of value of ₹100/- & above in immovable property.

5) Lease deeds of immovable property.
- Lease from year to year basis
- Lease for the term exceeding 1 year.
- Lease which reserve a yearly rent

* Documents for which Registration is optional Section 18 :

1) Wills.

2) Any non-testamentory instruments which, creates, assigns, limits, declares, extinguish any right, title or interest of value of less than ₹100 in ~~mo~~ immovable property.

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3) Any non-testamentory instruments which creates, limit assigns, declares acknowledgment of payment or receipt of any consideration of value of less than ₹100 in immovable property.

4) Any non-testamentory instruments transferring or assigning any decree of court or award of arbitrator when such decree or award creates, assigns, limits any right, title or interest of value of less than ₹100 in immovable property.

5) Lease of immovable property ~~p~~ for any term not exceeding one year & other lease not covered under Sec. 17.

6) Instrument which creates, assigns, declares, limits or extinguish any right, title or interest in movable property.

* TIME LIMIT FOR PRESENTATION OF DOCUMENT FOR REGISTRATION.

- Documents executed in India -

- Sec. 23 : It states that document must be presented before Registrar within 4 months of its execution. It can be extentend for maxi. 8 months with extra fees

- Sec. 24 : If a document is executed by several persons at different times, then document can be presented for registration & re-registration within 4 months from date of each execution.

- Documents executed outside India
  - According to Section 26, if any document was executed outside India, then it should be presented for registration within four months after its arrival in India.

  - A document executed outside India & which requires compulsory registration, it is not valid unless it is registered in India

* Sec. 27 : Time limit for presentation of will
  A will may be presented at any time for the purpose of registration.

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* PLACE OF REGISTRATION OF DOCUMENTS.

- Section 28 : Documents pertaining to immovable property

It provides that document relating to immovable property shall be presented for registration

1) In the office of sub-Registrar within whose sub-district the property is situated.

OR

2) Any sub-registrar desirable by parties under s.govt.

- Section 29 : This section provides that document is related to other than immovable property

- It can be presented for registration in sub-registrar in whose sub-district the document was executed OR

- In sub-registrar desirable by all persons under s.govt.

- Copy of decree or order

- Registration is not compulsory.
- However, there is need get registered, then it can be registered with sub-registrar within whose district it was made.

Imp

* Section 30 : Who can present document for registration

- persons executing or claiming document
- The representative or assignee of such persons
- Agent duly authorised by special power of attorney.

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Note :- If document is presented for registration by person other than a party not mentioned in sec. 32, then such presentation is inoperative & registration of such a document is void.

* LAW RELATING TO REGISTATION OF GIFT DEED

- If the donor dies before registration of gift deed, then gift deed presented for registration after his death and will have same effect as registration in his life time.

- Case law :- Kalyana Sundaram V. Karuppa

It was held that registration of gift deed of of any immovable property, shall operate from date of execution of gift deed. When instrument of gift has been handed once by donor former has done everything in his power to complete donation & make it effective. If it has been presented for registration then registrar must register it. Neither death nor revocation by doner ~~to refu~~ can refuse registration.

* Inquiry before Registration by Registering officer
Registering officer is free to ask queries with respect to that property in subject.

* Presenting wills & authories to Adopt.

- Who is entitled?

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i] The testator / in case of his death → his executor
ii] In case of adoption → the donor, donee or adoptive son.

- Authorities
  It shall be registered in the same way like any other document.
  Registering officer shall make sure that all the particulars are mentioned, if presented by some other person other than the testator.

* EFFECT OF REGISTRATION / NON-REGISTRATION OF DOCUMENTS

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1] Effect of Registration of documents
Sec. 47 : • Registered document shall operate from when it was intended to operate not from date of registration.
• In case of two registered documents, executed by same person in respect of same property to two different persons at two different times, then the one which is executed 1st gets priority.

Sec. 48 : Registered document relating to property when to take effect against oral agreement

• Registered document relating to property shall be effective against any oral agreement.

• But Registered documents must be followed by delivery of possession of property.

• maxim : qui prior tempore potior est jury (he who is 1st in time is better in law)

* Effect of Non- Registration of Documents

- If any document which requires to be get registered compulsory, and it fails to register, then it is Void & cannot confer any power to adopt

- An unregistered cannot be registered as evidence. However, in two cases it can be received as evidence -
  i) A contract in suit for specific performance.
  ii) Part performance of contract under TOPA act.

* MISCELLANEOUS PROVISIONS
following books shall be kept by Registering officer

- Book 1 : Register of non testamentary documents relating to immovable property
- Book 2 : Record of reasons for refusal to registeration
- Book 3 : Register of wills & authorities to adopt.
- Book 4 : Miscellaneous register
- Book 5 : Register of deposit of will.

* Admission to registration
- Documents admitted to registration
  The following shall be endorsed apart from decree / order :

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i] Name & signature of parties.
ii] Person examined in reference to such documents i.e witness.
iii] Details of payment.

- Registering officer shall endorse on document "registered" along with number & page of book.
- Such certificate is Prima facie evidence

* PROCEDURE AFTER REGISTRATION.

- Sub-registrar shall forward memorandum of document to registrar within whose jurisdiction property is situated.
- It shall also forward copy of map or plan

* Sec. 71 : Reasons for refusal to register the document to be recorded.

Every sub-registrar refusing to register doc. where property to document is not situated within its sub-district, shall make order to refusal & record reasons for such order.

It shall be noted that under-valuation of stamp duty is not valid ground for refusing the registration of document.

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* Reversion

Reversion is future interest that ~~lessor~~ lessor retains in the property after granting a leasehold interest to lessee for a definite period

Ex. Owner of land leases land to B for 5 years. B has right to use & possess the land for 5 years & property will be reverted to lessor after 5 years. Here, lessor is reversion and he has reversionary interest.

* Remainder

Remainder is a future interest that allows for transfer of property to designated individual (remainderman) after expiry of limited interest, without property reverting back to original owner.

Ex. A transfers property to B for life and after B's death property will ~~auto~~ automatically pass to C absolutely. Here, C's interest is called remainder

* Transfer of property Act

- Movable Property : TOPA doesn't define movable property ~~its~~ it is defined under general clauses act as property of every discription except immovable property. Registration act defines movable property as property of every discription excluding immovable property but including standing timber, growing crops & grass.

- Immovable Property : Immovable property described

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in negative sense as immovable property does not include standing timber growing crops & grass general clauses defines immovable property as immovable property shall include land, benefits out of land and things attached to the earth or permanently fastened to anything attached to the earth. Registration act defines immovable property as it will include land benefits arising out of land, heredity allowance, rights of way, lights, fairy & fishary.

Note : standing timberar tress fit for use for building & repairing houses

1) Growing Crops : It includes all vegetables growths which have no existence apart from their produce such as pan leaves, sugarcane, etc.

2) Grass : Grass is movable property but if it is right to cut grass it would be an interest in land hence, forms immovable property.

3) A piece of land in all circumstances is immovable

4) A permanent fixture on land is also immovable property.

* Following have been recognized as immovable property

1) Right to collect rents of immovable property.
2) A Right to way.
3) A Right to collect dues from fair on piece of land.
4) Hereditary offices

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5) The equity of redemption.
6) The interest of mortage.
7) Right to collect lac from trees.
8) Right of ferry.
9) Right of fishery.
10) Right to receive future rents & profits of land
11) Reversion in property leased
12) A factory.

* following have been held not to be immovable property

1) Right to worship.
2) Govt promissory notes.
3) Royalty.
4) Right to recover maintainance allowance
5) Copy right.
6) A decree for sale on a mortgagee deed.
7) A decree for arrears of rent.

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* Absolute Interest

When a person owns a property he has absolute interest. He has bundle of rights such as Right to possession, Right to enjoyment & Right to do anything such as selling, mortagaging or making gift of the property. If 'A' is the owner of land, he has absolute interest in the land. If 'A' sells his land to 'B', then 'B' becomes the owner & he acquires an absolute interest in the land.

* Vested Interest
  - Vested is used in two different senses :-

i) Vested in possession
ii) Vested in Interest.

- When a person has present right of possession of property it is vested in possession & when a person have future right of possession it is vested in interest.

- Vested interest is transferable & heritable

* Contingent Interest
  It is an interest which takes effect after condition is satisfied.
  Ex : Property is given to 'A' for life & then to 'B' if he marries 'C'. 'B' should marry 'C' before A dies. If he does so, his interest is converted to vested interest. 'B' ~~mc~~ Before 'B' marries 'C', his interest is contingent

* Act Attesestation :-
  Attestation is valid & complete when 2 witness signs instrument.
  Each witness must see -
  a) Executant sign, or,
  b) Executants representative's sign or.
  c) Receive from executant a personal acknowledgement of his sign.
  d) Each witness must sign the instrument in presence of executant.

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* Case Law: Imperial bank of India Vs. Rai Gyand.
Where purchaser was informed that title deed were in possession of bank for safe custody and yet failed to make any inquiry in the bank. It was held that he is guilty of negligence and must be deemed to have notice of rights of bank which has custody of title deeds.

* Case law: Rangappa Goundan Vs. Marapa Goundan
When a person did not cause of search to ascertain if there is any ~~over~~ mortagage on property It would be deemed that he has constructive notice of such mortgage.

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* Restraint on Enjoyment
Ex.
1) A sales his house to B and adds a condition that B only should reside in that house, condition is invalid.

2) A has properties Mannat & Jannat. A sales property Jannat to B & puts a condition that B should not construct on property Jannat more than storey so that A's property Mannat should have good light & free air. Here conditions imposed by A is for benefit of another property which he retains such condition is valid.

* Sec. 12 :- Transfer is void if property is transferred to any person by adding a condition that if such person becomes insolvent he ceases to hold that property. It is invalid in law.

But if landlord leases his property he can impose a condition that if lessee becomes insolvent the lease should come to an end.

* Transfer for benefit of unborn person
Sec. 13 :1) Property can be transferred to unborn person but there must be preceeding interest in the property in favour of a person who is already alive.
2) Transferror should not retain any further rights or interest in that property.

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* Rule against Perpatuity
Sec. 14 : • Perpatuity means uncertain ~~conti~~ continuing period of time or indefinite period to retain their property in their own families from generations to generations people use perpatuity as a tool.
• Rather than transferring property absolutely they transfer it to ~~their~~ life of ~~fami~~ their family members. These rule is known as rule against remotness.
• Any no. of successesive states can be created between transferee who are living person.
Ex : A transfer is made to 'x' for life then to 'y' for life & then to 'z' to life, provided x, y & z are all living person at the date of transfer.
• Perpatuity has been described as "exemptions from intermission or ceasing.

• Exeptions -
1) Where transfer is for benefit of public in advancement of religion, knowledge, commerce, health, safety etc

• It contains 2 propositions -
— No transfer is valid after the life time of one or more persons living at the date of such transfer. Transfer can have effect only during the life time of existing person

— It can be transferred to unborn child if child comes into existence before death of person who hold property on behalf of unborn child.

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* Subject matter of transfer
Sec.6 : TOPA says that any kind of property can be transferred except as provided by this Act. Exceptions are made by Hindu law & Mohammedan law.

* formalities of transfer
• Property can be transferred either orally or by writting
• In case of immovable property of value of ₹100 or more, transfer can be made only by ~~transferred~~ registered instrument

* Attestation
• 'Attest' means to testify a factor
• Attestation, in relation to document, signifies the fact of authentication of signature of the executant

- All transfer do not require attestation.

* Registration
  - Registration is an essential legal formality to be done for transfer property.
  - Advantage of registering document is that parties who deals with property would be bound by rights.

* Notice.
  - Notice can be actual or constructive.
  - If person knows about fact, he has actual notice.
  - But in some cases law treats a man who ought to have known a fact even though he did not fact know it, it is called constructive notice.

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* Sec.10 : Restraint on transfers or rule against inalienbility.
  - It states that when property is transferred, the transferee should not be restrained absolutely from alienating property.

  - One can give property to another on condition, but condition should not prevent ~~absolut~~ the transferee from alienating the property.

  - As Absolute restraint is invalid, but partial restraint is valid.

  - Where there are conditions like transferee cannot alienate the property to outside the family, Court

held that it is partial restraint and such conditions are valid.

- But, it is not permissible to restrict the alienation to a particular time.

- But in ~~some~~ two cases absolute restraint is valid.

i) In case of lease, the lessor can impose a condition that the lessee shall not sell his lease-hold interest.

ii) When there is condition, in respect of women who is not Hindu, Buddhist, Muslim ; that she shall not have power during her marriage to transfer the property & it is valid.

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* Who can transfer property? → Every person who is competent to contract.

* Properties which cannot be transferred [sec. 6]

i) The chance of an heir apparent succeeding to an estate.

ii) A mere right of re-entry cannot be transferred to anyone except the owner of the property affected thereby.

iii) An easement cannot be transfered apart from the dominant heritage.

iv) An interest is property restricted in its enjoyment to the owner personally cannot be transferred by him

v) A Right to future maintainance cannot be transferred.

vi) A mere right to sue cannot be transferred.

vii) A public office cannot be transferred.

viii) Stipends allowed to military, naval, air force & civil pensioners of govt. & political pensions cannot be transferred.

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* Transfer
* following are the essential conditions for Doctrine of part performance -

1) There must be contract to transfer immovable property

2) It must be for consideration.

3) Contract should be in writting, & signed by parties

4) Transferee have taken possession of property, but registration was not been effected.

5) Transferee must be ready to fulfill his of part of obligation under the contract.

If above conditions are satisfied then transferor is debarred from ~~excercising~~ exercising any right ~~on~~ in relation to property

* Sec. 17 : Accumulation of Income
  - This section does not allow accumulation of income from the land for unlimited period without income being enjoyed by owner of the property.
  - The period for which such accumulation is valid -
    - is the life of the transferor, or,
    - 18 years from date of the transfer.
  - Any direction to accumulate the income beyond the period mentioned above is void except where it is for : 1) Payment of debt of transferor.
    2) portions for children / any other person taking interest
    3) Maintainance of property transferred.

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* Doctrine of lis pendens (sec. 52)
  - Lis means dispute
  - Lis pendens means pending suit
  - It states that during pendancy of suit property which is related to litigation cannot be transferred.
  - Essentials - There must be suit in court of competent Jurisdiction.
    - Suit must not be collusive.
    - Suit is regarding immovable property.
    - There must be transfer of property in dispute by party to litigation.

- Transfer will effect the rights.

* Doctrine of Part Performance
  - It is a doctrine which allows enforcement of contract to transfer immovable property if some conditions are satisfied.
  - The act of part - performance must be an act done in performance of contract
  - It is based on principle of equity and aims to prevent injustice.

* Gift : It is a transfer of moveable or immoveable property made voluntarily without consideration by one person called donor & another called donee.

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Essentials :
1) There must be transfer of ownership
2) Subject matter must be moveable /immoveable property.
3) Transfer must be made voluntarily.
4) Transfer must be done without consideration.
5) There must be acceptance by donee & such acceptance must be made during lifetime of donor.

* Actionable claims : Unsecured debts

* Non- Actionable claims : Secured debts

* Sale : It is transfer of ownership in exchange for price paid or promised & partly paid or partly promised.

Essentials -

1) Seller must be person competent to transfer
2) Subject matter is transferable property.
3) There shall be transfer of ownership.
4) It must be exchange for price paid or promised & partly paid or partly promised.
5) Money consideration.

* Exchange : When two persons mutually transfer the ownership of one thing for another, neither or both things being money only.

Essentials -

1) Person must be competent to contract.
2) Mutual consent.
3) There is mutual transfer of ownership.
4) Neither party must have paid money only.

It applies to both movable & immovable property.

* Mortgages : It is transfer of interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced.

Essentials -

1) When obligation is performed, then mortgagee's interest in property mortgaged terminates.

2) Mortgagee has right to foreclosure upon mortgagor's failure to perform.

3) Mortgagor has right to redeem property on performance of obligation.

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Kinds of Mortgage :-

i] Simple Mortgage : In simple mortgage we create the interest of a mortgagee in immovable property, the possession of property is not transferred to mortgagee & on failure of repayment mortgagee can enforce his rights.

ii] Mortgage by conditional sale : We take a loan from mortgagee & sale the property to mortgagee on a condition that, on repayment sale will be void but if fails to repay then sale will be valid and enforceable.

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iii] English mortgage : We take a loan from mortgagee we transfer the possession of property to the mortgagee on condition that if we repay the loan possession will be reconveyed to mortgagor, but if we are unable to repay the loan then mortgagee can enforce his rights

iv] Usufructuary Mortgage : We take a loan from mortgagee & deliver the property to mortgagee and property recover its interest & principal amount out of profit & rent receiving from that property. There is no need to repay any kind of monthy, weekly or yearly instalment.

v] Mortgage by deposit of title deed : In this mortgage person delivers documents of title of his immovable property to creditor with intention to

create security & obtains loan.

vii) Anomalous Mortgage : Martgage which is not simple mortgage, mortgage by conditional sale, usufructuary mortgage, english mortgage or mortgage by deposit of title deed, is called as Anomalous mortgage.

* Rights of Mortgagor :-
  1) Right of Redemption
  2) Right against clog on equity of redemption.
  3) Right of partial redemption.

* Implied contract by mortgagor
  In absence of contract to contrary, the mortgagor shall be deemed to have contracted with mortgagee that the : 1) Mortgagor is entitle to transfer interest.
  2) Mortgagor will assist the mortgagee to enjoy quiet possession.
  3) Mortgagor will pay public charges.
  4) Mortgagor convenants as to payment of rent due on lease where property is leased.
  5) There is not encumbrance on property.

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* Rights of mortgagee & his remedy
  If mortgagor does not pay the money, then mortgagee may proceed to recover
  (i) From mortgaged property, or.
  (ii) Sue for recovery personally.
  Thus, mortgagee has two remedies :-
  (I) against property
  (II) against mortgagor personally.

IMP

Mortgage	charge
1) ~~Mol~~ Mortgage is transfer of interest in the property as a security for loan	1) Charge is not transfer of interest in property but it is security for payment of an amount.
2) Mortgage is created by act of parties.	2) It may be created by act of parties or operation by law
3) Mortgage deed must be registered & attestested by two witnesses	3) Charge need not be made in writing and if reduced to writting it need not be attested or registered.
4) In mortgage there can be security as well as personal liability.	4) In charge remedy of chargeholder is against property only
5) In mortgage mortgagor can forclouse the property.	5) ~~charh~~ chargeholder cannot forclouse
6) Mortgage does not include charge	6) But charge includes mortgage.

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* Onerous gift

When several things are transferred as a gift by single transaction. Some of them are beneficial and others have burden some obligations.

Here donee have to accepted fully. This gift is onerous

If gift is made in two or more transactions then donee can accept one of transaction & reject other

Ex : A makes a gift of shares in company's X & Y to B, X is prosperous but for Y heavy calls are expected.

* Charge : Where immovable property of one person is by act of parties or by operation of law made security for the payment of money to another & transaction does not mortgage, the latter person is said to have charge on property.

Charge includes mortgage, ~~pec~~ pledge, hypothication.

(i) charge by act of parties
(ii) charge by operation of law

FLOATING CHARGE : It is charge an class of assets ~~with~~ both present & future.

The class of assets charged is one which in ordinary course of business would be changing from time to time.

Crystallisation of floating charge

A floating charge becomes fixed / crystalises in ~~flo~~ following cases :

1) When company money becomes payable & creditor takes some steps to enforce security.

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2) When company ceases to carry on business.

3) When company wound-up.

* Lease :

- Lease is the right to enjoy immovable property.
- In lease possession is always given to the transferee.
- Lease of immovable property must be made for a certain period.
- Essentials :

1) Transfer of right to enjoy immovable property.
2) Transfer is for certain period.
3) must be made for consideration which is either rent / premium or Both.
4) Transfer must be accepted by transferee.

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- Determination of leases :

- By lapse of time
- By happening of special event
- Merger
- By Surrender
- By forfeiture.

* Easement Right. (Sec. 6(c))

It means right to enjoy a profit out of land of another.

The land owned by passesor of land is dominant tenement.

The land over which right is enjoyed is Servient tenement.

* Ch. 14. Right to Information *

In RP Lilimited V. Indian Express Newspaper supreme court held that right to know is a fundamental right. It is important for democracy.

Right to freedom of speech & expression Article 19(1)(A) includes rights to receive information and it is very essential as without right to know one can't enjoy right to freedom of speech & expression

Article 21 :- Which is right to life & personal liberty includes right to know. Article 21 confers on persons right to know which includes right to receive information

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* Public Authority :- means any authority, or body, or institution of self government established or constituted under
  - By or constitution
  - By law made by parliament
  - By law made by state legislature.
  - By notification issued or order made by the appropriate Government. [Section 2(h)]

And it also includes -
i) Any body owned, controlled or financed,
ii) Non-government organisation financed, directly or indirectly by appropriate government.

Record :- means any - document, manuscript or file
- microfilm, microfiche & facsimile
- images included in microfilm
- material produced by computer.

Information - any material in any form records, documents, email, opinion, advices, press releases, memos, circular, contract, module, data, material held in electronic from etc.

Right to information - means right to accessing information under this act held by or controlled by any public authority and it includes - taking notes, extracts or certified copies, inspection of work,
- certified copy of material,
- obtaining information in form of diskettes, video cassettes
- in electronic mode or through printouts.

Public Information officer (PIO) [Section 5]
- All public authorities needs to appoint a PIO.
- Public information officers are appointed to provide information to the persons who requested ~~to a~~ for information in all central or state administrative units or offices.
- If a person is requesting any information then there is no need to give any reason for that.

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- Request for information. [Section. 6]
  - Any person who is requesting information should make request in written or online form to PIO in english, hindi or any official language.
  - Information should be provided within | 30 days |
  - If request is given to assistance, | 35 days |
  - If interest of third party is involved, | 40 days. |
  - If life or liberty involved, | 48 hours |

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- If information is not received in 30 days
  - → deemed refusal
  - → No fee for delayed response.

* Third party → who is not a citizen.

* Duties of PIO

i) PIO deals with seeking information to render reasonable assistance to the person who have requested information.

ii) If information is made for another public authority then PIO should transfer it to them within 5 days

iii) Information should be provided by PIO within 30 days

iv) If personal life & liberty is involved then PIO should provide information within 48 hours

v) If PIO rejects the information -
- he should give reason for rejection.
- period within appeal against rejection may be preffered
- particulars of Appealate authority.

If allowing partial access -
PIO shall inform the applicant that
- Only part information have been provided after separating the record containing information which is exempted from disclosure,
- Reansons for providing such partial, information.
- The details of the person who decided it,
- The details of amount of fees which the applicant is required to deposit,
- Rights with respect to reveiw of decision for non-disclousure of part information.

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for ICSI

* Obligations of Public Authority.

Every public authority have to publish within 120 days.

i) Officer/ employee's powers.

ii) Particulars of organisation.

iii) The rules of employees.

iv) The documents held by organisation

v) Directory of officers/ employees

vi) Any ~~bed~~ budget allocated by organisation

vii) The monthly remuneration of employees

viii) The details of Public Information officers

ix) Information held in electronic form.

* Information Exempt from disclosure. [Section. 8]

i) Information which is against sovereignty & integrity of India, the security, scientific economic interest or state relation with foreign state.

ii) forbidden by court

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iii) Information which breach the priviledge of state legislature or parliament.

iv) Information regarding commercial confidence.

v) Information received by foreign government.

vi) Which would endanger the life or physical safety.

vii) Information which impede the process of investigation.

viii) Any individual's personal information.

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ix) Cabinet papers including records of deliberation of council of ministers.

* Rejection of request.

PIO should / empowered to reject the request of information where the breach of copyright of person is involved.

* Information Commissions

- Central Information commission
- State information commission

1) Central Information Commission.

- It is constituted by Central commission.
- It is consist of "Cheif Information commissioner" & "Central Information commissioner" not exceeding 10.
- Cheif information commissioner & central information commissioner are appointed by president of India.
- President appoint them on reccomendation of a commitee where, chairperson is PM & one opposition leader & union cabinet minister appointed by PM.
- The appointed persons shall be of eminence in public life, they should have knowledge of law, knowledge of social science & technology, journalism and management.
- They shall not be member of parliament and should not be connected with political party.
- They should not have any business profession.

- Appointment time - The should be appointed for the time as prescribed by Central Government.
  - Maximum period shall not exceed by age of 65 years.

- If information commissioner is appointed as cheif information commissioner then his term shall not be more than 5 years.

- The salary of information commissioner is decided by Central government.

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2) State Information Commissioner.

- They are constituted by state commissioner.
- It includes "State information commissioner" and "State cheif information commissioner" not exceeding 10.
- They are appointed by Governer on recommendation by commitee.
- The commitee includes chairperson who is CM & one opposition leader & cabinet minister nominated by CM
- Appointment time → as priscribed by state government and, maximum period should not be more than age of 65 years.
- If state information commissioner is appointed as State cheif information commissioner his term should not be more than 5 years.

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Power of Information Commissioners

i) Non - appoint of PIO – If person is not able to request information because PIO is not appointed.

ii) Refusal of Information – If PIO refuse the information which is requested.

iii) Breach of priviliage of parliament and state legislation – When PIO disclose the information which is related to priviliage of parliament or state legislature.

iv) No response – If person is not received information within reasonable time.

v) Unreasonable fees – If unreasonable fees is charged by PIO.

vi) Incomplete information – If person who is requesting for information receives incomplete information.

vii) Other – Any other matter related to obtaining information under this act

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* Appeallate authorities :-

first – Appeal

- Made by → Aggrieved person
- Made to → person senior to PIO
- Time → within 30 days
- Extension → If there is sufficient cause

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Date
Page

Second Appeal

Made by	Made to	Time	Exention of time
Aggrieved person	CIC or SIC	within 90 days	If there is sufficient cause.

Third appeal :- If third party is against the decision of PIO shall file within 30 days.

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* Penalties :-

i) Imposed by :- CIC or SIC

ii) Imposed on :- PIO.

iii) Fine :- ₹250/- per day and maximum upto ₹25,000/-.

iv) Reasons :-
- If PIO doesn't accept application.
- If PIO malafiedly deny information.
- If PIO knowingly giving incomplete, information.
- If PIO destroys requested information.
- If PIO obstructs furnishing of information.

* Juridiction of Court

Lower Courts are barred from entertaining any suits or application against any order under this act.

- **Who is excluded?**

1) IB,
2) R&AW,
3) Directorate of Revenue Intelligence,
4) NCB,
5) Aviation research centre,
6) CID,
7) Central economic intelligence bureau,
8) ~~Lakha~~ Lakshadweep police,
9) CRPF etc.

"Information related to human rights violation should be given after approval of Central Information Commission within 45 days"

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CH.15th : Law relating to Information Technology.

* Objective

1) To provide legal recognition for transactions
2) To provide legal recognition & facilitate filing of documents.
3) To amend the some acts so as to provide / bring electronic documentation within purview of respective enactments.
4) To provide legal recognition to digital signature
5) To provide legal recognition for storing data.
6) To give legal recognition for keeping books of accounts in electronic form.
7) facilitating electronic fund transfer.
8) To stop computer crime & protect privacy of internet users.

* Documents / Transaction to which the act shall not apply :-
1) Negotiable instruments
2) Trust
3) Power - of - attorney
4) Will
5) Contract of sale of immovable property

* IMP Definations :-

1) Addressee :- Person who receives electronic record.

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2) Asymmetric Crypto System
↓
means system of secure key pair
↓
it is consists of

Private key ↓ for creating digital signature

&

Public key ↓ to verify digital signature.

3) Electronic signature : It means authentication of any electronic record by subscriber by means of electronic technique specified in 2nd schedule and includes digital signature.

4) Originator : Person who sends electronic document/message.

* DIGITAL SIGNATURE & ELECTRONIC SIGNATURE.

i) Any subscriber can authenticate electronic record by affixing his digital signature. Authentication can be done by using "asymmetric cryposystem & hash function."

ii) Verification of electronic record done by use of public key of subscriber.

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iii] Any change made to the document after it is signed, then signature will be invalid. It helps to protect from forgery & tampering. Hence, digital signature helps to maintain the authenticity & integrity of document.

iv] Digital signature has legal recognition in India. Under Income Tax Act & GST Laws, a person can sign returns & documents electronically by attaching digital signature.

v] Electronic Record can be authenticated by subscriber by such electronic signature which is considered reliable & specified ~~&~~ in 2nd schedule.

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vi] Electronic signature considered reliable if -

- Signature is within the context
- at the time of signing signature is under the control of signatory
- Any alteration to electronic signature made after affixing signature is detectable.
- Any alteration to information made after its signature is detectable
- & if it fulfills conditions as may be prescribed.

* ELECTRONIC GOVERNANCE

- Sec 4 : Any information in writing / in typewritten form or in printed form can be made or rendered in electronic form & can be ~~ass~~ accessable for subsequant reference.

- Section 5 : This section states that instead of physically signing a paper or document, people can use electronic device i.e. it can be signed electronically to confirm or verify the document.

- Sec. 6 :- filing of any form, application or other documents, creation, retention or preservation of records, payment to govt. offices or agencies can done through electronically.

- Sec. 7 : Retention of information
  It states that some information, document or record can be retained for specific period. Certain conditions are need to be followed.
  1) Information shall be made available for subsequent reference.
  2) Electronic record shall be retained in format in which it was originally generated, sent or received.
  3) All the required details available in electronic record.

- Sec. 7A : This section states that, if there is a law that allows for audit of documents, records or information, then this rule will also apply to the information that are stored & maintained ~~managed~~ electronically

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* Difference between Electronic Signature & Digital Signature

Points	Electronic Signature	Digital Signature.
i) Meaning	It is a digital form of weblink signature which is legally binding & secure.	It is a secured signature that works with electronic signature & relies on public key.
ii) Purpose	It is used for ~~vert~~ verifying document	It is used for securing document.
iii) Validation	It does not require validation.	It has validation
iv) Security	It is vulnerable ~~for~~ to tampering as there is fewer security features.	It is highly secured & has more security features.
v) Verification	Electronic signature cannot be verified.	Digital Signature can be verified.
vi) Types	Verbal, electronic ticks & scanned signature.	Types of digital Signature includes Adobe & microsoft.
vii) Utility	It is simple to use but it has lesser level of evidential value.	Generally, it is preffered because of more authenticity

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- Section 8 : Subordinate legislation can also pub- in the official Gazette or electronic Gazette. The date when it is first published in either of these Gazettes will be considered as official date of publication.

- Section 9 : The provisions mentioned above do not give anyone the power to demand that a government agency accept, issue or carry out any document or ~~fina~~ monetary transaction in electronic form.

- Section 10 : If any contract is expressed in electronic form or by means of electronic record, then it cannot be considered invalid just because it was done electronically

- Section 11 : Attribution & Dispatch of Electronic records
  Electronic record is attributed to originator
  1) If it is send by originator himself, OR
  2) Sent by person authorised to act on behalf of originator OR
  3) If it is sent by information system programmed by originator to operate ~~out~~ automatically

* Time & Place dispatch Etc

- Time of dispatch
  Time of dispatch should be as per agreement
  If there is no agreement then when e-record enters a computer resource outside the control of originator

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- Time of Receipt
  When the electronic record enters the computer resource of the addressee.

* SECURE ELECTRONIC RECORDS
  Electronic signature will be considered secure if
  - at time affixing signature it was under the control of signatory.

  - signature creation data was stored & affixed in such manner as prescribed.

  - If signature creation data is in control of two or more person then it cannot be deemed to be secure electronic signature.

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* CERTIFYING AUTHORITIES
  A Certifying Authority is a trusted body whose central responsibility is to issue, revoke, renew & provide directories of Electronic Certificates.

  Certifying Authority means a person who has been granted license to issue Electronic Signature Certificates.

* Procedure of obtaining electronic signature certificate

  - A person can make application to certifying authority to issue electronic signature certificate with fees.

- Then after consideration Certifying Authority after making enquiries will grant electronic signature certificate. And if rejected application then will gives reasons for it.

* APPELLATE TRIBUNAL

~~Sec-57~~

Sec. 57: Any person aggrieved by order of Controller of Certifying authorities, then can appeal to Appellate tribunal within 45 days.

Any person aggrieved by "any decision or order", may appeal to ~~Hight~~ High Court within 60 days.

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* PENALTY

Section 43: Provides that if any person without permission of owner or any other person who is in charge of computer or computer network

1) Accesses or secures access to computer system

2) downloads, copies or extracts any data, computer data base or information from computer system

3) introduces or causes to be introduced computer virus into computer system.

4) damages or causes to be damaged computer system

5) Disrupts or causes to be disruption of computer

6) Denies or causes the denial of access to any person authorised to access any computer system.

7) Provides any assistance to any person to facilitate access to computer system in contravention of provisions of this act & rules made thereunder

8) Tampers or manipulates computer system

9) Destroys or deletes any information residing in computer system

10) Steal, conceal, destroys or causes to steal, conceal, destroy computer system

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* Section 66 : If any person does act referred to Sec. 43, then he shall be punishable with 3 years imprisonment or 5 Lakh Rs fine or both

* Computer related offences
The offences listed in Act, are following -

1) Dishonestly stolen computer resource or device

2) Identity theft

3) Cheating by personation by using computer resource.

4) Violation of privacy

5) Cyber terrorism

6) Publishing or transmitting of material containing sexually explicit.

7) Publishing or transmitting of material containing depicting children in sexually explicit.

8) Misrepresentation

9) Breach of confidentiality & privacy.

10) Disclosure of information in breach of lawful contract.

11) Publishing electronic signature certificate false in certain particulars.

(12) Publication for fraudulent purpose.

* Section 69 :- Central govt. or state govt. can direct any agency to intercept, monitor, decrypt any information generated transmitted, received or stored in any computer resource.

* Section 45 :-

a) If someone fails to file any document, report, or return to certifying authority or controller, then liable to penalty of ₹1,50,000 lakh for each failure

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b) If person fails to file any return or report, book or any information within prescribed time, he shall be liable with penalty of ₹ 5000 for each day during which such failure continues.

c) If fails to maintain books of accounts or records, he shall be liable to pay penalty of Rs. 10,000/- every day during which failure continues.

* Compensation for failure to protect data.
Sec. 43 A :
When a body corporate handling any sensitive personal data in computer resource which it owns, controls is negligent in ~~implemen~~ maintaining resonable security practices & thereby causes wrongful loss to any person, then such Body corporate is liable to pay damages by way of compensation to the person.

* Section 46 : Whoever contravenes any rules & or regulation made under this act & where no penalty is separately provided, then he shall be liable to pay penalty of ₹ 25,000/-.

* Section 65 : Whoever knowingly or intentionally conceals, destroys or alters any computer source, then shall be punishable with imprisonment of 3 years or Rs. 2 lakh fine or both.

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* Exemption from liability of intermidiary in certain cases

- Intermediary shall not be liable for any third party information, data or communication link made available or hosted by him.

- If function of intermediary is limited to providing access to communication system.

- Intermediary observes due deligence while discharging their duties

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* INFORMATION TECHNOLOGY (REASONABLE SECURITY PRACTICES & PROCEDURES & SENSITIVE PERSONAL DATA OR INFORMATION) RULES, 2011

- In KS Puttaswamy V. Union of India it was held by Supreme Court that the Right to Privacy is also fundamental Right

- following are considered as sensitive personal information -
  1) Password
  2) Bank Account Details
  3) Credit card / Debit card details
  4) Past & Present health records
  5) Sexual orientation
  6) Biometric Data

- A person has certain rights over the sensitive

personal information, this information cannot be collected without provider's consent

- Privacy policy
- Consent
- Collection limitation
- Notice
- Retention limitation
- Purpose limitation
- Right to access & correct
- Right to withdraw consent 'opt out'
- Grievance officer
- Disclosure with consent, Prohibition on publishing & further disclosure
- Requirements for transfer of Sensitive personal Data.
- Security of information.

Unique academy

* 16. Indian Contract Act *

* Chapter 16 *
* Contract law *

- Law of contract is governed by Indian contract Act, 1872.

- This law come into force on 1st September, 1872. It has prospective effect.

* Offer. Section 2 (a)

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"A person is said to make proposal when he signifies to another his willingness to do or not to abtain from doing anything with intent of taking assent of other person."

• Elements – There should be atleast two parties are involved.
– Offer may be for positive or negative act.
– Willingness must be expressed to obtain assent of other party.

Imp
• Rules of valid offer.

i] The offer must be clear, definite, complete and final.

ii] Offer must be communicated to offeree.

iii] Offer must be different from invitation to offer.

iv] offer may be made by expressing words or oral or written or it may be implied.

v] offer must be capable to create legal relationship.

vi] offer may be general or specific.

vii] offer may be conditional.

viii] It should not contain term of non-compliance of which would amount to acceptance.

Unique academy

* Case law :- Carlil Vs. Carbolic Smoke Ball Company

Facts -
- A medical company advertised that their new miracle drug, a ~~som~~ somoke ball, would cure peoples flu. It laid down that if anyone who used the drug as per printed directions caught influenza will be paid £ 100.
- Mrs. Carlil used the smoke balls as per ~~director~~ intrustion and cough influenza.
- When sued, Carbolic agrued the advertisement was not to be taken as serious, legally binding offer.
- It was merely an invitation to treat, and a gimmick.

Decision :- • The court held that it would appear to a reasonable man that carbolic had made a serious offer.

• It was further held that she was entitled to recover the reward as she has accepted the offer by complying the terms of the offer.

* Who can accept offer ?

1) Specific offer — Specific offer can be accepted by only such person to whom offer is made.

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2) General offer — General offer can be accepted by any person from the public who have fulfilled the terms of offer.

* Types of offer

1) General offer :-

• General offer means an offer made to the public at large & can accepted by anyone from the general public.

• It is not necessary for offeree to be known to the offeror

2) Specific offer :-

- Specific offer means an offer made to definite persons or group or group of persons.

- It can be accepted only by the person to whom offer is made.

3) Cross offer :-

- When two persons make identical offers to each other, in ignorance of each other's offer, it is called as cross offer.

- A cross offer does not lead to an agreement as both are offers and there is no acceptance.

4) Counter offer :-

- When the offeree instead of accepting the offer made to him straightway, imposes conditions which have the effect of modifying or varying the offer, he is said to have made a counter offer.

- Counter offers amounts to rejection of original offer.

- This types of offer permits a person to decline a previous offer & allows further negotiations.

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5) Standing offer / Open / Countinuing offer :-

- Standing offer, open or continuing offer means an offer is allowed to remain open for acceptance over a period of time is known as a standing offer, open or continuing offer.

* Acceptance

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

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* Modes of Accepting offer -

i) Express Acceptance - Acceptance which is made by oral or written communication.

ii) Implied Acceptance - Acceptance which is made by the conduct of the parties.

MP
* Rules of Valid Acceptance :-

i) Absolute & Unqualified - Acceptance must be absolute and unqualified. Acceptance is valid only when it is absolute and unqualified or unconditional.

ii] Communication :- The offer must be communicated to the offeror. Acceptance is complete only when it is communicated to offeror. A mere mental determination of acceptance is not an acceptance.

iii] Time limit :- Acceptance should be done within prescribed / specified time. If there is no time specified then within reasonable time, or before the offer lapses.

iv] Acceptance before the Lapse of offer :- Acceptance should be communicated before the offer lapses, or terminates, or is revoked by the offeror. There can be no acceptance of a revoked offer.

v] Mere silence is not acceptance :- Mental acceptance, failure to answer or silence is not acceptance, as it is not communicated. Mere silence does not amount to acceptance.

vi] Acceptance to offeror only :- The acceptance should be communicated to the offeror only, in order to be effective.

vii] Acceptance by offeree :- Acceptance should be communicated by the offeree or by an authorised person to make it effective.

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* Agreement [Section 2 (e)]

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

- There must to be two or more persons to make an agreement. One person can't enter into agreement with himself.

- The meeting of the minds is called consensus-ad-idem. It means both the parties must agree about the subject matter of the same sense and at the same time.

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* Contract [Section 2 (h)]

- An agreement enforceable by law is a contract.
- Only those agreements which can be enforced by law becomes a contract.

* Essentials of Valid Contract -

1) Correct and proper offer and acceptance.
2) Intention to creat legal relationship.
3) The agreement must be certain or capable of being certain.
4) There must be lawful object and consideration.
5) There must be legal capacity of parties.

6) There should be free consent.
7) The contract shall not declared void by law.
8) There should be legal formalities between parties

* Classification of Contract

1] On basis of Creation -

- Expressed contract :- It is expressed by words spoken or written.
- Implied contract :- It is done by other than words or written means conduct.
- Tacit Contract :- Contract made by conduct of parties. It is sub-category of Implied contract.
  Eg. obtaining cash from ATM, Sale by fall of hammes in Auction.
- Quasi Contract :- Obligation by law. Ex :- finder of goods.
- E-contract :- It is by mean of internet. There is offer and acceptance.

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2] On basis of Validity :-

- Valid Contract (Sec 11) :- Which is enforceable by law.
- Void Contract . Sec. 2(g) :- Which is not enforceable by from starting.
- Voidable Contract . Sec. 2(j) :- Which enforceable in the option of aggrieved party.
- Illegal agreement :- Which is prohibited by law, and punishable in nature.
- Un-enforceable contract :- Which has technical defects.

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3] On basis of Execution :-

- Executed Contract :- When both parties fulfilled their obligation.
- Executory contract :- When both parties not fulfilled their obligation.
- Partly executed or excutory :- When one party has fulfilled their obligation.

4] On basis of Liability

- Bilateral contract - When both parties agrees to perform contract.
- Unilateral Contract - Where only one party promises to perform contract.

Note
- Void Contract is hybrid of void agreement & Contract.
- The void contract which becomes invalid due to Some changes is called as void contract.
- Every present void contract is valid in past, but every present valid contract is not void in future.
- An un-enforceable contract can be made enforceable after correcting defects.

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* Consideration :- Section 2(d).

When at the desire of promisor, the promisor or any other person
→ has done or abstained from doing something,
→ dose or abstains from doing something.
→ promises to do or to abstain from doing something,

Such act or abstinence is called as consideration for a promise.

* Rules of Valid consideration -

i] Consideration must be at the desire of promisor.

ii] Consideration may move or come from promisee or any other person.

iii] Consideration should be real not illusiary.

iv] Consideration may be present, past or feture.

v] Consideration should be of some value. It may or may not be adequate.

vi] Consideration must be something more than what you are already bound to do.

vii] Consideration must be legal. It should not be oppose to public policy.

viii] Consideration may be positive or negative.

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ix] Consideration should be for every contract

maxim :- Nudo pacto non oritur action, it means "No consideration, No contract."

* Following are ~~rules~~ exeption to rule - No consideration, no contract.

- Natural love and affection.
  Sec. 25 (1) :- Agreement must be result of natural love and affection, it should be in written form. It should be registered. There must be immediate relation between both parties.

- Promise to pay past voluntery service.
  Sec. 25 (2) :- If it is a promise to compensate or pay to a person who has already done something volunterily to promisor, then it is a valid consideration.

- Promise to pay Time Barred Debt.
  Sec. 25 (3) :- Promise to pay whole or part debt which is barred by limitation Act only if → it is in writing
  → Signed by both parties.

- Completed Gifts.
  Sec. 25 :- This rule does not apply to completed gifts which are given & accepted. Promise to gift is not valid.

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- Agency :-

Section. 185 :- There is no consideration is required to create agency.

- Gratuitous Bailment :-

Sec. 148 :- Consideration does not affects valid bailment of goods. It is called as Gratuitous Bailment.

* Doctrine of privity of Contract :-

- Third party between a contract can give consideration but cannot sue.
- It simply means stranger to a contract cannot sue.
- Only those ~~contract~~ parties who involved in contract ~~o~~ can sue.

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Exeptions -

1) Beneficiary of Trust.

2) In case of family settlement - person to whom benefit agreement has made, can file suit.

3) In case of assignment - Assignee can ~~ef~~ enforce contract

4) Estopple by Acknowledgement of liability - The person who becomes agent of third party by acknowledgement

can be sued by such third party.

5) Agency Contract :- Principal may enforce contract enforced into by his agent.

6) Official receiver :- In case of insolvency.

* Capacity to contract :-

Eligible persons	Ineligible persons
- Major	- Minor
- Sound mind	- Unsound mind
- person not disqualified by law.	- person disqualified by law.

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i) Minor.

Indian majority Act - Age of majority.

18 years 21 years

Generally - If property of minor is under supervision of court
- If any guardian is appointed by law

Agreements with Minor –

- Void - ab - initio :- Void from very begining.
- No Ratification :- Act done during minority cannot be ratified by minor on obtaining majority.
- Rule of estoppel :- Not applicable even in false representation.
- No ~~restriction~~ restitution :- Restitution means recovering of Something to it's proper / true owner. Minor can't be directed to return benefit under a void agreement.
- False representation of age by Minor :- In this case, minor will have to restore back the property or money which he has acquired under a void agreement. Property / money traceable in his possesion but minor is not personally liable.
- No specific performance :-
- Minor can be :- Beneficiary - Agent as principle can made liable.
- Partnership of Minor :- Minor can't be partner in a partnership firm. However he can admitted for benefit with consent of all partners.
- Minor Can't be adjudicated as insolvent :- Minor can't be adjudicated as insolvent as he can't enter into contract.

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- Minor can be shareholder :- A minor can be share-holder of fully paid up shares only. Through, trasfer, if he applies for registeration of transfer through guardian.
  Minor can become Shareholder of Company if shares are gifted to him. That shares will be held by guardian until minor becomes major.
- Minor in tort :- If tort arises out of any contract minor will not be liable as it is indirect way of enforcing void agreement.
- Minor is competent to execute negotiable instuments :- Minor is not liable on ~~perimary~~ primary note executed by him.
- Parent's will not liable :- Minor's parents will not be liable for a contract formed by minor When minor as acted as agent of parents then parents are liable.
- If a contract is formed by parents / guardian / manager on behalf of minor for his benefit then contract is valid.
- Minor can always plead minority even in case of frauds.
- Minor's property liable for neccesaries.
  - Minor's property is liable for the supply of neceesaries & not the minor.
  - Loan taken to obtain necessaries is recoverable by lender.

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- What constitutes necessaries it depends on case.
- An item will not be considered as necessary if a person has already sff sufficient supply of things of some kind.
- property → inherited.

ii) Person of unsound mind

- Idiot : person who lost all of his mental power. It is permanant.

- Lunatic : person who suffers from intervals of sanity & insanity its temperory.

- Drunken/Intoxicated : This situation is like lunatic as he can't think emotionally at those time of drunk or toxic.

- Law preassumes that every person is sound mind.
- Idiots can never ever enter into contract, but lunatic or drunken persons can enter into contract.

iii) Person disqualified by law :-

- Alien enemy :- It means any foreign citizen of country at war with India.
→ During war → cannot contract with foreign citizen and can't be sued.
→ Before war → If such contract is against public policy then it will be cancelled

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→ If such contract is not against public policy then it will be suspended during war & then revived after war.

- Convict :- Convict can enter into contract after competition of imprisonment or when on suit is of civil nature.

- Insolvent :- Insolvent person's official receiver can enter into contract or he can himself enter into contract after discharge of insolvency.

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- foreign diplomate, Ambassador & representives of Statues.

- Company :- Company can't enter into regarding object beyond it's MoA & as also for purpose of which only natural persons can enter.

- Married women :- She can't make contract for her husband's property, but she can do it for her property.

* Voidable Contract.

- When contract is enforceable by one party or more party but not by other or others i.e. enforceable by aggrieved party it is a voidable contract.

* Free Consent

- Free
  - (free from)
    - Pressure
      - physical → Coersion
      - mental → undue influence
    - Misconception
      - → Intentional → fraud
      - Innocent → mis-representain
- Consent
  - (Consensus ad idem)
  - Meeting of minds
  - Agree to same thing in same sense.

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Validity

- Free Consent → Valid Contract
- Consent but not free → Voidable contract
- No consent → Void agreement

Note

Coersion
undue influence
fraud
Misrepresentation
} Contract is voidable.

i) Coersion - It means committing or threatening to commit any act which is forbidden by Indian Penal Code.

- Consent is of a party is obtained by use of force or under threat.

- It can be directed any person.

- It is not necessary to that coersion must exercise against the only promisor.

- It is immaterial whether IPC is applicable or not in place at the time of contract.

- Threat to commit suicide / file a suit on false charge will amount to coersion.

ii) Undue Influence - One party in a dominant position to determine will of other.

- It is using superior position to obtain unfair advantage over weak party.

- Actually obtaining unfair advantage over weak party.

- The relation between parties should be near one it should not be strange.

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- Dominating positions, Parent — child,
  Master - Servant,
  Teacher - students,
  Religious Gure - Disciple,
  Doctor - patient,
  Trustee - Beneficiery

iii) <u>Fraud</u> - It means a intentional false statement given with intention to deceive other party.

It simply means - intentional false statement,
- or Active concealment,
- or intentional non-performance,
- or fraudulent act or omission,
- to deceive other party.

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<u>Effect</u> → The contract under fraud is voidable contract at option to aggrieved party.

→ Aggrieved party has right to cancel or rescind the contract.

→ Aggrieved party has right to insist on specific performance.

→ Aggrieved party has right to claim the damages.

→ Whether ~~it~~ Silence is a fraud ?

- It is not fraud
- It is fraud
  - When silence is equivalent to speech
  - When it is duty of a person to speak
    - (insurance, marriage, family arrangements, prospectus)

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→ Silence will amount to fraud in following cases.

- Contract of Utmost good faith.
- Contract of Partnership.
- Contract of Guarantee.
- Parties are in fiduciary relationship.
- Statutory duty.
- Latent Defects.
- Changes in facts.

iv) **Misrepresentation** – Only parties to the contract shall be involved.

- The party thinks that he makes representation but in actual it is false.
- Misrepresentain is done innocently & not to deceive other party.
- Other party acted as per contract unknown of mis-representation.
- Contract becomes voidable at the option to aggrieved party.
- Contract is valid when after mis-repretation where a party make mis-representation, but the other party is not in fact, missed by such mis-representation then contract can't be avoided by other party.

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v) **Mistake** :- Mistake of parties

- Mistake of fact
  - One party → Valid contract
  - both parties → Void contract
- Mistake of law
  - Indian → Valid contract
  - foreign → Void contract.

* Wagering Agreements :-

- Payment of money or its worth
  ↓
  on happening or non-happening of some uncertain event.

- There are equal chances of gain / loss
  → No interest of parties in such event,
  → No control of parties,
  → Each party must stand to win or lose,
  → The intention to bet at the timing of making such agreements,
  → Promise must be conditional on a event of happening or non-happening.

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- Transactions of wagering, but not actual wagering agreement -
  - Contract of Insurance
  - Chit fund.
  - Games of skill & athletic competition based on skill
  - Share market transactions

- Transactions of wagering agreements -
  - Lottery transactions
  - Cross word puzzles & competition based on skill.
  - Horse race transactions if price amount is less than ₹500

- Speculative transactions, where parties have intention to settle the difference between contract price & market price of certain goods or shares on specific day.

• Effects
- Expressily it is void in India.
- It is illegal in Maharashtra & Gujarat
- Money deposited with a person to be paid to wining party, winner can't recover legally.
- And on the other hand, the looser can recover his deposit from stakeholder.
- If stakeholder pay the money to winner, the looser can't recover it from him.

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• Effect on Collateral transaction
- Not void therefore it is valid from & enforceable by law.
- Broken can recover his brokerage.
- In case of authorised lottery it is valid.
- In case of unauthorized lottery it is void.

* Contingent Contract -

- A contract which is depends on happening or non-happening of collectral events.
-
- performance of original contract only if collectral even happen or may not be happen.

• Essentials :-

i) Performance of original contract must be conditional. It should be depend on happening or non-happening of collateral event.

ii) Collateral event must be uncertain.

iii) Independent : Collateral event must not form consideration of contract.

• Rules :-

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1) It should be depend on happening of colleteral event. It should be enforced after happening of event. When event doesn't happens or becomes impossible then contract will become void.

2) It can be depend on non-happening of collateral event. It is enforced when event doesn't happen or becomes impossible. When that event happens it becomes void.

3) It can be depend on happening of collateral event within fixed time. It can be enforced after happening of event within fixed time. When event doesn't happen or becomes impossible with in fixed time it will become void.

4) It should be depend on non-happening of collateral event within fixed time. It can be

enforced when event doesn't happes and becomes impossible within fixed time. When collateral event happens within fixed time, then contract becomes void.

* Quasi Contract -

- It is based on " nemo debet locuplatari ex liena Justua " it means unjust enrichment of one person at the cost of another.

- There is a obligation created by law known as 'Quasi - contractual obligations".

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- It is not a real contract in real sense as essential elements of contract are missing.

- It is not a contract but is alike of contract.

- It gives 'right in personam' & 'right in rem'.

- It doesn't arive from any agreement of parties.

- It is imposed by law to prevent unjust enrichment

• Causes :-

1) Supply of necessaries to person who is incompetent to contract ;

- Supplier is entitled to recover money from property of incompetent person.
- Incompetent person can't be held liable personally.

2) Right to recover money paid to another person :

- Payment is done by a person on behalf of another person.
- Payment shouldn't be voluntary.

3) Non - gratuitous Act :

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Person who has done non-gratuitous act can recover money if following conditions are satisfied -

- Act done or goods delivered must be lawful.
- Person enjoyed benefit.

4) Finder of goods :

The duties of a person who is finder of goods -

- To take care of goods properly.
- To take reasonable steps to find true owner the of goods.
- If goods are of perishing nature, then finder of goods can sell the goods.

- Can get re-imburcment for lawful expressions paid for above duties.

5) Payment of money or delivery of goods by mistake or under coersion.

* Discharge of Contracts :-

Modes of discharge of Contract -

1) ~~Permanc~~

1) Performance of Contract :-

- Actual performance : When promisor has fulfilled his obligation with in time & in prescribed manner.

- Attempted performance : When promisor offer to perform his obligation but promisee refuses to accept.

- Effect of 'refusal promisor to perform promise'
  - promisee may cancel the contract or continue the contract.
  - If promisee decide to continue, he can't end it later.
  - In both cases, promisee can claim damages for breach.
  - Only promisee can demand performance even if promise is made for benefit of 3rd person.

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- Who should perform Contract :

  - Promisor only : Contract involving personal skills or personal consideration.
    Such contract comes to an end at death of party.

  - Agent : Contracts not involving personal skill or consideration.
    Only during lifetime of promisor.

  - Legal Representative : Contract not involving personal skill or consideration.
    Only if party dies before performance of contract.

  - Third party : Only if party accept.

2) <u>Impossibility of performance</u>

i) Initial Impossibility :- Void ab initio
- Impossibility may or may not be known to parties.
- But if at time of contract, only promisor knows about impossibility or should have known with ordinary diligence promisee in is entitled to claim compensation.

ii) <u>Supervening Impossibility</u> :-
- It means performance of promise become

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impossible or illegal by occurance of unexpected event. That event or reasons are given below :

- Accidental destruction of subject matter without of party.
- Non-existence or non-occurance of thing that is responsible for performance.
- Incapacity to perform contract.
- Change of Law.
- Out break of war.

iii) Non-applicability of supervening Impossibility (contrat → void)

- Difficulty in performance because it has become more expensive or less profitable.
- Commercial hardships.
- Impossibility due to conduct of third person.
- Impossibility induced by party himself.
- Strikes, lock-out and civil disturbances.
- Failure of one of the several objects.

3) Lapse of time.

- Contract is voidable at the option of promise in the contract where time is essential.

- Contract can't be avoided when time is not essential.

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4) By Mutual Consent

i] Novation :- It is a substituting of existing con-~~track~~ tract by new contract with 100% consent.
- When terms & conditions of contract changes and parties are same then it is discharge of original contract.
- When term & conditions are same but, parties same then it is also discharge of original contract.

ii] Alteration - It is changing of Term and conditions of original contract with mutual consent of parties.

iii] Recession - It is a canceling of contract with 100% mutual consent of parties.

iv] Remission - It is a lessar acceptance that the terms of contract.

v] Waiver - When parties waives the rights / giving up on rights then contract discharges.

5) By Breach of Contract.

Contract discharges by breach of contract

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There are two types of breach

Anticipatory breach

It is a failure of one party to fulfill its obligation before due date or during due date.

Remedies
- Case & damages
- wait

Actual breach

It is failure of one party to fulfill its obligation on due date

Remedies
- Case
- damages.

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* Remedies

i] Rescission of contract : Aggrieved party may rescind or cancle the contract if obligation of his is absolved, and he is entitled to claim damages.

ii] Suit for specific performance : Aggrieved party can suit for specific performance if damages are not adequate.

iii] Suit for injuction : Stay order or injuction order means negating the term of contract.

iv] Suit for Quantum mercuit :

- Claim for proportionate work done by non-faulty party.
- It is not applicable in case of -
  - Indivisible contract
  - Breach is due fault of person claiming compensation.
  - gratuitous work.

v] Suit for Damages : It is money compensation for loss suffered.

- Ordinary : It is payable for loss arising due to naturally & directly breach.
- Special : It is payable for loss ~~arin~~ arising due to special or uncausal circumstances.
- Nominal : These are damages which are very small in amount. It is awarded to protect right of aggrieved party to claim damage. It is awarded when party has not suffered any loss due to breach.
- Vindictive : It is awarded only in two cases. When breach of promise to marry, it is injury to his / her feelings. When wrongful dishonour of cheque ~~and~~ made by banker.

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- Pre-fixed : The amount decided by the parties as compensation during formation of contract, in case of breach. It may be either -
  - Liquidated damage (Reasonable estimation of likely loss in case of breach)
  - Penalty (The amount fixed as the damages payable)

* Contract of Indemnity & Guarantee

Indemnity

- Defination : A contract of idemnity is a contract where one party saves another party from loss caused to him by conduct of promisor himself, or by conduct of any other person.

- forms : Indemnity Contract
  Indemnity clause in regular contract.

- Essentials :
  - All essentials of valid contract.
  - Loss to one party.
  - Indemnity by promisor.
  - It may be expressed or implied
  - Reasons for loss.

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- Insurance Contract : Insurance contract are also specific category of Indemnity contract. But, all Indemnity contracts are not Insurance contracts.

- Liability occurance point : Liability does not exist at the time of entering into contract. It remains embedded in the contract & is trigged on the occurance of loss.

- Rights of Indemnity holder : Promisee entitled to recover
  - All damage paid regarding suit connected to matter of indemnity.
  - All costs which he may have been compelled to pay in bringing / defending the suit.
  - All sums which he may have paid under the terms of any compromise of suit.
  - Can claim liability incurred if it is absolute.

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Contract of Guarantee

- Defination : It is contract to perform the promise made or discharge the liability of a third person in case of default. It is guarantee is a promise to pay a debt and by a third person in case the debtor does not pays.

- **Essentials :**

  - All the essentials of valid contract.
  - Even if debt is incompetant, the guarantee is valid. But if surety is incompetant to contract the guarantee is void.
  - Principle debt : There shall be someone liable as principle debtor & surety undertakes to be liable on his behalf.
    No principle Debt = No valid guarantee.
  - Contract must be conditional : The liability of surety is secondary & conditional & arises only if the defaulat of principle debtor.
  - No misrepresentation : Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances in invalid.
  - Guarantee can be either oral or written.
  - Joining other co-surety : Guarantee by surety is not valid if condition is imposed by jointly as co-surety. Such other person cannot join as surety.

- **Types**

  → Specific : Guarantee given to specific / single transaction.

  → Continuing : Extended to a series of transactions.

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- **Continuing Guarantee.**

  - The surety may agree to become liable for series of transactions of continuous nature.

  - The surety may fix a limit upon which the guarantee shall remain effective as a time period during which the guarantee shall remain effective.

  - The surety may impose certain conditions upon which the guarantee shall remain effective as a time period during which the guarantee shall remain effective.

  - The surety may impose certain conditions in the contract of guarantee. Until, those conditions are met, the surety shall not be liable.

- **Discharge of Surety.**

  Liability of surety is discharged under following circumstances:

  - By giving revocation notice of continuing guarantee.
  - Revocation of continuing guarantee by death of surety.
  - discharge of principal debtor.
  - By variance in terms of contract.

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- When the creditor compounds with principle debtor by giving time to or agree not to sue principle debtor
- By creditor's act or omission impairing surety's eventual remedy.

• Rights of Surety

I Against Principal Debtor

• Right of subrogation : If debt is paid by surety then he is entitled to all the rights which the creditor could claim against principal debtor.

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• Right of Indemnity : It is implied right that surety is entitled to claim from the principle debt all the sums, which he has rightfully paid. He can't recover such sums, which he has paid wrongfully.

II Against Creditor

• Right to claim securities : The surety can claim all the security which the creditor at the time of giving guarantee. If securities is discharged to the extent of value of the securities so returned.

• Right of set off : Any amount recoverable by principle debtor or surety may be claimed as deduction.

III Against Co- Sureties.

- Right to contribution equally between all co- sureties, unless otherwise provided.

- Right to share benefit of securities between all co- sureties if any security is received by one co- surety

* Contract of Bailment

- Defination : Bailment is a transaction ~~w~~ under which goods are delivered by one person to another person for some purpose, upon a contract that they can be returned or disposed after the purpose is accomplished.

  - There are two parties involved, 'Bailor' who delivers goods 'Bailee' to whom goods are delivered

  - Contract of bailment is expressed or implied.

  - No consideration is necessary to create a valid contract

  - When there is no obligation to return the identicle article, either in its original or in an altered from, there is no contract of bailment.

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- If a person, already in possesion of goods of other contracts to hold them as a bailee, he thereby becomes the bailee & the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

- **Examples of bailment.**

  - Giving a cloth piece to tailor for sniching a shirt.
  - Borrowing a book from liabrary.
  - seifure of goods by customs authorities.

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- **Examples which are not bailment.**

  - Servant of master who is in custody of goods of the master does not become a bailee.

  - Deposited ornaments in a bank locker is not bailment because ornaments are kept in a locker whose keys are still with owner & not with the bank

- **Essentials of valid contract of bailment**

  - Contract,
  - Delivery,
  - Goods,
  - Purpose of delivery
  - Return on disposal of goods.

- **Modes of Delivery :-**

  - Actual delivery : Transfer of physical possession of goods from one person to another

  - Symbolic delivery : It means doing of any act which has the effect of putting goods in possession of another.

  - Constructive delivery : The custody of goods is not transferred but only an acknowledgement is made. Third party will start holding ~~book~~ goods on behalf of bailor.

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- **Classification of goods bailment.**

  - Gratutious : It is bailment where any charge is involved.

  - Non-gratutious : It is bailment for some charge or reward.

- **Types of Bailment.**

  - Voluntary : It is outcome of express contract between parties.

  - Involuntary : found in case of finder of goods.

goods sent to wrong place or excess quantity ordered or bailee dies and the subject of bailment comes into hands of bailee's hires.

* Pledge :

- **Meaning** :- It is a bailment of goods as a security for payment of ~~be~~ debt or performance of promisee

The person who plege → Pledger / Pawner
The person to whom goods are bailed → pledgee / Pawnee.

In case of Pledge no transfer of any interest in property takes place, but a special right to property is covered out in favour of pledge, i.e, he has right to dispose of the property in certain circumstances.

- **Essentials** :-
  - All essentials of bailment.
  - There shall be bailment for securing against payment or performance of promise.
  - Subject matter of pledge goods.
  - Goods pledge for shall be in existence.
  - There shall be delivery of goods from pledger to pledgee.

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- **Rights of Pawnee** -

  - Right to lien for non-payment or non-performance of promise and recovery of interest on debt.

  - To receive extra-ordinary ~~expression~~ expenses. - ~~expression~~ expenses for preservation. However, no right of liean for non payment of extra ordinary ~~expression~~ expenses but can take action.

  - To sell goods, if case of default by pownor

  - Right to sue pownor.

  - Right to recover the defect during sale of goods in case of surplus then it shall paid to pawner.

- **Duties of Pawnee**

  -

  - Not to use goods without pawner's authorization.

  - Return the goods.
  - To take reasonable care of goods.
  - Not to mix goods with another goods.
  - Return increases in goods.

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- **Rights of Pawner :-**
  - Right to redeem the goods pledged.
  - Enforce pawner's duties.
  - Receive increases in goods.
  - To receive notice of sale.

- **Duties of Pawner :-**
  - Pay the debt.
  - Pay deficit in sale.
  - Pay extra-ordinary expenses.
  - Disclose fault in goods.
  - Indemnity of the pawnee.

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- **Pledge by Non-owner**

  - Merchantile agent : Pledge by consent of owner in ordinary causes of business & pawnee good faith.

  - Pledge by seller in possession of goods after sale

  - Pledge by where pawner having limited interest the pledge will be valid to the extent of interest.

  - Pledge by co-owner in posession under needs consent of other co-owner.

  - Pledge by person in posession under a voidable contract. pledge is valid, if pledged is made before the contract is avoided by other party.

* Contract of Agency :

- **Meaning** :- It is the relationship between two persons where one person is employed by another to act on behalf of that later with the third person.

- **features** :-

  - No consideration is necessary to create agency.
  - Capacity to employ an agent. Agent shall be major & sound mind.
  - Capacity to become an agent : Any person even a minor & unsound mind.
  - The basic esence of agency is that the principal is bound by acts of agent & answerable to third person.
  - It is based on maxim " Quit facit per alium facit per se " it means

- **Modes of Creation of Agency**

1) Express Authority :- An authority is said to be express when it is given by words, spoken or written

2) Implied Authority :- An authority is said to be implied when it is to be informed from circumstances of case, conduct of parties & things spoken or written or in the ordinary course of dealing.

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3) Agency by Estoppel :- When an agent has with out authority done acts or incurred obligations to 3rd party on behalf of principal the principal the principal is bound by such acts or obligations if he has by his words or conduct induced such third person to believe that such acts & obligations were with in the scope of the agents authority.

4) Necessity :- Sometime circumstances would compel & a relation of agency would you fall in place, this is often out of necessity. To consitute an agency by necessity, following conditions must be fulfilled - Agent in position of not being able to communicate with the principals.
- There must actual & definite commercial necessity for agent.
- Agent must be acted bonafide & for benefit of principal.
- Agent must have adopted most reasonable and practicable course of action.

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5) Ratification :- If a person act on behalf of another person & the pretended agent acts without knowledge or consent of principal which is afterwards accepted by the principal then agency by ratification comes into existence.

The principal is bound by the act retified by him as if such acts had been performed by his authority. Retification before back to the

actual date of the act that ratified, and not from the date when it is ratified.

- **Rights of Agent :-**

  - To retain money that supposed to handed over to principal against remuneration expense incurred, advances due to him.
  - To receive remuneration.
  - To liean on ~~pricipal~~ principal goods, paper & other property until the remuneration due to him is paid.
  - To claim compensation for injurity caused because of the principal neglect or want of skill

- **Duties of Agent :-**

  - To conduct the business in account with direction of principal.
  - To work with reasonable diligence, care & skill.
  - To reader proper a/c to the principal on demand
  - Not to make several profit out of his authority.
  - To remit the sums received to principal.
  - Not to use information obtained in the course of agency against the principal.

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- When ~~pri~~ agent is personally liable ?
  Generally, principal is liable for the acts of agent.
  Exeption :- When there is on express agreement for so.
  - When there is custom or usage of trade.
  - When agent does not disclose identity of principal.
  - When agent acted for a non-existence principal.
  - When agent acted beyond his authority.
  - When agent acts for sale or purchase of goods for the principal resident abroad.

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- Principle liability for act of Agent.
  - When agent act with in scope of his authority.
  - Principal is not liable where the agent exceeds his authority, but where that means isn't separable from total Act, but if seperable then principle is liable upto the extent authority.
  - Principle is bound by notice given to agent.
  - Liability of principle by estoppel
  - Liability for misrepresentation or fraud by an agent in the course of business, authorized.

- Termination of Agent's Authority.

- Revocation of authority by the principal.
- Renunciation of agency by agent.
- Completion of business of agency.
- Death or insanity of either party.
- Insolvency of principle.

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Demo Lec-1.

* Jurispredence Interpretation & General Laws. *

- Jurispredence → knowledge of law.
  - Law
  - knowledge.
- Interpretation → knowing the intension of Author.
- General Laws.

* Ch. 17 :- Law relating to Sales of Goods *

- Sales of Goods Act, 1930
  - movable property.

Rule = Risk follows ownership.

SOGA, 1930
- follows movable property.
- doesn't follows immovable property.
  - ↓
  - Transfer of property Act, 1882

* Contract of Sale. (sec 4)

- A contract of sale is a contract whereby,

The seller → Transfer or → Agrees to transfer
↓
The property in goods → to buyer → for consideration of money called the price.

- Essentials :-

1) Two parties

Seller
who offers goods for sale, for price

buyer
who purchase goods from seller.

2) Transfer of property :- The ownership of goods transfers from seller to the buyer.

3) Goods. 2(7)
— Goods means every kind of movable property.

It includes
- Stock & shares,
- Growing crops,
- Grass &
- Things attached to or forming part of land which can be agree to served ~~as~~ before sale or agreement to sale.

It doesn't includes
- Actionable claims &
- Money.

4) Price :- Price means monetary consideration. Price important to sale goods without price sale cannot be take place.

5) All essentials of valid contract :- It includes all essentials of valid contract i.e. major, sounded minded and contract which is enforcable by law.

Lec-2.

* Difference betn sale & agreement to sale.

Points	Sale	Agreement to sale.
1) Transfer of ownership.	Transfer of ownership takes place immediately.	Transfer of ownership takes place on future date or after completion of some conditions.
2) Executed/ Executory.	It is an executed contract	It is executory contract
3) Nature	It is absolute in nature.	It may be conditional
4) Risk	Risk of loss of goods is immediately transferred to buyer.	Risk of loss of goods is not immediately transferred to the buyer as the goods yet not in his p- transferred to him.

5) Rights of seller against to buyer	Seller can sue the buyer for price even though the goods are in his possession	Seller can sue the buyer only for damages
6) Right of buyer against the seller	Buyer can sue seller for damages as well as for the third party, who bought those goods i.e. he can claim property remedy as well	Buyer can sue the seller for damages only.

* Difference between Sale & Bailment.

Points	Sale	Bailment
1) Meaning	Sale involves transfer of property in goods from seller to buyer for a buyer.	A 'Bailment' is a transaction under which goods are delivered by one person (bailor) to the another person (bailee) for some purpose, upon a contract that they be returned or disposed of as directed after the purpose is accomplished

2) Ownership	Transfer of ownership is must.	It doesn't involves tranfer of ownership It involves transfer o possession.
3) Possession.	Transfer of possession of goods from seller to buyer is not mandatory.	Possesion is transfer from bailor to bailee
4) Governed by	Sales of Goods, Act, 1930	Indian Contract Act 1872 (section 148)

Difference betn Sale & Hire purchase agreement.

Point	Sale	Hire purchase agreement.
1) Nature	It is contract of sale.	It is a contract of hiring agreement to sale.
2) Possession of goods	Possession of goods need not not necessarily be transferred immediately.	Possesion tranfers immediately.
3) Ownership	Transfer of ownership from seller to buyer is must immediately	Ownership is transferred time of payment of last instalment.

4) Termination of Right	The buyer has no right to terminate the contract of sale.	The hirer has right to terminate the contract before payment of last instalment.
5) Written agreement	Sale agreement may or may not be written.	Hire purchase agreement must be written.

* Types of Goods

1) Existing goods :- Those goods which are exist at the time of contract or at the time of sale are called as existing goods.

Existing goods

- i) Specific → which are identified & agreed upon
- ii) Ascertained → which are not specifically identified
- iii) Unascertained → which are extracted and identified.

2) Future Goods :- Those goods which are yet to be manufactured or produced after making the contract of sale are called "Future goods".

3) Contingent goods :- Those goods which are acquired by the seller on the happening of something which may or may not be happen.

* Destruction of specific goods :-

(Sec. 7) If goods are perishing before making contract
↓
then contract is void.

(Sec. 8) Goods perishing after making agreement
↓
then contract is void.

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* Modes of fixing price :-

- fixed by contract (mostly seller decides)
- fixed by in a agreed manner
- fixed by third party
- fixed by course of dealing between the parties

* Consequences of not determining the price.
If price is not decided then it should determined at 'reasonable price.'

* Consequence if price is not fixed by third party
↓
Void

* Conditions :- Which is essential for main performance of the contract.

1] Condition as to title. Sec 14(a). :-
- who has ownership only he can sale the goods.
- if breach
  - Cancle the contract
  - ~~Co~~ claim the damages

2] Condition as to Description. (Sec. 15) :-
- Goods must be correspond with the description.

3] Condition as to Sample. (Sec. 17) :-
- Buyer should have opportunity to compare the bulk and sample.
- Bulk must correspond with sample.
- Bulk must be at a good quality.

4] Condition as to sale by Sample & description. (Sec.15) :-

- Goods must be correspond with description.
- Buyer should have opportunity to compare the bulk & sample.
- bulk must correspond with sample.
- bulk must be at a good quality.

5] Condition as to merchantable quality, sec. 16 (2) :-

- Goods must be of good quality.
- Goods must be free from defect.

6] Condition as to wholesomeness. :-

- It is applicable to eatable products which are for human consumption.
- 'Wholesomeness' means 'purity'.
- Eatable products must be free from impurity they should be pure.

7] Condition as to Quality or fitness :-

- When buyer is reliable to seller's skill or judgement.
- If buyer buys goods under the brand name then seller is innocent.

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* Implied Warranties :-

- Which is colleteral to the main performance of contract.
- If breach then only claim for damages.

1] Warranty as to quite possession. Section 14 (b) :-

- If ownership is yours then possession is also yours.

2] Warranty as to freedom from encrumbances. Sec 14(c)

- Goods must be free from encrumbances or charges.

3] Warranty as to disclose dangerous nature of goods :-

- If goods are of dangerous nature and seller knows it then seller should disclose it to buyer.
- If breach ⟶ claim damages.

4] Warranty as to quality or fitness by usage of trade. sec. 16(3).

- A particular purpose may be annexed by the usage of trade.

* Doctrine of Coveat Emptor (Sec. 16)

Coveat Emptor
↓
"Let the buyer be aware"

- Sometimes buyer himself have to choose or select the goods.

Exeptions - Seller responsible
1) Seller makes false representation
2) Seller actively conceals a defect.
3) Buyer relies on seller's skill or judgement.
4) Sale by description.

* Difference between Condition & warranty.

Point	Condition	Warranty.
1) Meaning	Which is essential for the main performance of the contract.	Which is colleteral to the main performance of the contract.
2) Significance	It is essential for very performance of contract that it's non-performance may be considered as failure to perform the contract.	It is not treated as failure to perform the contract.

iii) Consequence of breach	The party may cancle i.e. repudia the aggrived contract.	The aggrived party cannot repudiate the contract, can only claim damages.
iv) Treatement visa-vera	A breach of condition may treated as breach of warranty.	A breach of warranty can never be treated as breach of condition.

* When will condition be treated as warranty?

- When buyer waives condition
- when buyer treats breach of condition as breach of warranty.
- when buyer accept the goods.

* Passing of property of transfer of ownership.

It is important to determine the exact point when the ownership transfers from seller to buyer.

General Rule –

- when parties have intention to pass

i) Terms of contract
ii) Conduct of parties
iii) Circumstances of the case.

* If specific goods are in delivery state,

- then ownership transfers
  ↓
  when contract is made.

* When specific goods to be put in deliverable state. (sec. 21).

when (goods) become of deliverable state & Buyer has notice of it

* In case of goods weighting & measuring. (Sec. 22)

When the weighting & measuring of specific goods is done. & Buyer has notice of it.

* <u>Transfer of ownership of unascertained goods.</u>

- When goods becomes ascertained by appropriation of goods.
- Appropriation of goods means when goods identified by seller or buyer by mutual consent of the seller or the buyer.

* Transfer of ownership of goods sent 'on approval basis' or 'sale return basis' (Sec. 24)

- When buyer signifies his approval
- When buyer adopts goods by his act
- When return of goods becomes impossible
- When he retain goods without signifying approval.

* Sale by Non - owner.

• General rule :- nobody can pass a better title than he himself has.

Exeptions —
- → Sale by merchantile agent.
- → Sale by joint owner.
- → Sale by person in possession of goods under voidable contract.
- → Sale by seller in possession after sales.
- → Sale by buyer in possession of goods before the transfer of ownership.
- → Sale by unpaid seller.
- → Estopple
- → Sale by pownee on default of pownor to repay loan.
- → Sale by artificial assignee / receiver.

→ Sale by finder of goods.

- when goods are perishable and owner is not found.
- when lawful charges are not given by owner, but damages should be 2/3rd of price of goods.

* Rules of delivery of acceptance.

- when transfer of possession from one person to another person is called delivery.

Delivery

- **Symbolic** — when delivery of goods takes place symbolically.
- **Actual** — when goods are actually transferred & physically handover.
- **Constructive** — delivery of goods by acknowledgement.

29th May

- Modes of delivery. (Sec. 33)
  - Delivery should have the effect of putting the buyer in possession
  - By doing anything to which parties have agreed
  - possession may give to buyer or his agent

- Payment & ~~dil~~ delivery to be concurrent. (Sec. 32)
  - Payment & delivery should be concurrent.
  - The seller should give possession to buyer and the buyer should repay for it at the same time.

- Buyer should apply for delivery. (Sec. 35)
  - Buyer should apply for delivery of goods
  - The seller is not bound to deliver the goods until the buyer applies for the delivery of the goods.

- Part Delivery.
  - When intension of giving the delivery of goods as whole, will amount to delivery of whole with respect to ownership of goods.
  - When part delivery is not with intension to deliver as whole then it is not amount to whole delivery.

- Time of delivery. [Sec. 36(2)]
  - Delivery should be given at the time when parties have agreed upon.

- If contract cannot specified the time of delivery, then it is considered at reasonable time.

- Delivery when the goods are in possession of third party [Section 36(3)].
  - When the goods are in possession of third person at the time of sale then, that person acknowledge the buyer that he holds goods on be behalf of the seller.

- When demand delivery is treated as ineffectual. [Sec. 36(4)]
  - Demand delivery is treated as ineffectual when it is done at any other time than reasonable business hours.
  - The buyer cannot reject the goods of negligible shortage or excess of goods.
  - The mixing of goods with inferior quality should not be treated as mixing of goods.

- When the seller becomes unpaid? (Sec. 45)
  - Who's whole price has not been paid
  - or tendered
  - and conditional payment made by bills of exchange or any other instrument
  - and instrument has been dishonored.

- **Rights of unpaid seller :-**
  - Rights of unpaid seller against the goods & against the buyer.

- **Right to lien :-** Right to lien means right to retain the possession until whole payment is made.

- **When it is used ?**
  i] When sold the goods without stipulation.
  ii] When goods sold on credit but credit period has expired.
  iii] When buyer becomes insolvent.

- **Termination :-**

Termination

- When the buyer obtain the possession of goods.
- Deemed appropriation of goods
- When seller waives his right

- **Right to Stoppage in Transit.**
  - Right to stoppage & transit means right to regain the possession of goods while transit.

- When it is used?
  - When the possession of goods is not with the seller.
  - When the possession of goods is not with the buyer.
  - When goods are in possession of the middle men who can be courier service, etc.

- Conditions :-
  - The seller is unpaid
  - Seller do not have the possesssion of goods.
  - The goods have not yet reached to the buyer.
  - Goods are in transit.
  - The buyer must have become insolvent.

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Chapter 10 :- Limitation Act, 1963.

- This Act applies to all civil cases.
- It also applies to certain criminal cases not all criminal cases.

IMP

* Section 3 :- Bar of Limitation.

- "Any suit, appeal or application if made beyond the prescribed period of limitation, then it is the duty of court not to proceed with such suits irrespective of fact whether the defence has been taken or not."
- Section 3 is mandatory.
- If court is allowing a suit after prescribed period of limitation then such decree will be valid.
- A decree passed in time barred suit in not a nullity.

* Limitation Bars remedy but does not extinguish right (Section 3)

- If claim is satisfied outside the court of Law after the expiry of period of limitation, that is not illegal.
- Bombay Dying & mfg. com. Ltd Vs State of Bombay.

* Section 5 :- Extention of time in certain cases

- Condonation of delay
- Sufficient cause.

- Section 5 states if there is sufficient cause then court might allow a suit and will give you condonation of delay. (Ramlal Vs. Rewa coal fields Ltd)

- In Ramlal Coal fields Ltd, The supreme court held that once the period of limitation expires then appellant has to explain the reason of delay day by day.

- If appellant fails to state reason, they are not allowed to have condonation of delay.

- Sufficient cause :- 1) wrong practice of high court.
  2) mistake of council
  3) wrong advise by advocate.
  4) mistake of law.
  5) Imprisonment / illness
  6) Time taken for obtaining copy of judgement.
  7) Non-availability of file. X
  8) Ailment of father.
  9) Ignorance of law is not sufficient cause.

IMP

Person under legal disability. [Section 6, 7 & 8]

- Section 6 :- If a minor, insane or idiot wants to institute a suit then his period of limitation will begin from the date of cessasion of legal disability.

If a person is suffering from one legal disability after recovering from another disability then his limitation period will start after end of all legal disability.

- **Section 7** :- If one or more persons wants to constitute a suit if some of them are legally disable then,
  - If Consent of person suffering from legal disability is not necessary then period of limitation continue as original.
  - If consent of person suffering from legal disability is required then limitation period will extend for all persons and will begin ~~cessatio~~ ~~cesssio~~ after cessasion of all the persons

- **Section 8** :-
  - Section 8 controls sec. 6 and 7.
  - limitation period cannot extend beyond three years from cessassion of legal disability.
  - However, the original period of limitation expires after three years then, ~~org~~ original period will be considered.

- **Section 9** :-
  - Once limitation period began to run then no subsequent disability or inability can stop it
  - this Section only applies to suits and application not to appeals.

- Section 12 :-
  - In case of suit :- The day on which limitation period began to run.
  - In case of appeal :- i] The day on which limitation period began to run
    ii] The day of judgement
    iii] The day of obtaining copy of decree, order etc.
  - In case of review/revision :-
    i] The day on which limitation period began to run
    ii] The day of judgement
    iii] The day of obtaining copy of decree, order etc.
  - In case of set a side award :-
    i] The day on which the limitation period began to run.
    ii] The day of obtaining copy of award
  - In case of other application :-
    i] The day on which limitation period began to run.

- Section 16 :-
  - In case of death of a person before the right to institute a suit accrues, the period of limitation computed from when there is legal representative.

- Section 17 :- If there is a fraud the limitation period starts when it is discovered.

* Effect of Acknowledgement.

IMP

- Section 18 :-

If there is admission or acknowledgement
↓
in respect of right or property,
↓
before the expiry of period of limitation
↓
in must be in writting or signed by party
↓
against whom such right or property is claimed.
↓
fresh period of limitation shall be computed from the acknowledgement was signed.

- Section 19 :-

- Whenever the part payment or payment of interest is made before the expiry of period of limitation then first period of limitation shall be computed from the date when payment was made.

- mortgaged land in possession of mortgagee payment of rent to mortgagee shall be deemed to be part payment.

- Debt doesn't include money payable under decree or order of court.

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- Section 25 :-
  - applies to easement.
  - It states that if you're enjoying any kind of easement that is air, light, way, water course peacefully for 20 years without interuption then such right is absolute. In case of government property it should be 30 years
  - If right infringe then 2 years period.

Classification of period of Limitation.

- 30 years :- i) mortgage → redemption
  by or on behalf of → forclousure
  ii) Central or State government

- 12 years :- i) Immovable property
  ii) Trust.

- 3 years :- i) Breach of contract
  ii) Movable property
  iii) Accounts.

- 1 to 3 years :- i) Tort
  ii) Miscelleneous case

Limitation Act apply to writs ?

- Case 1 :- Tilokchand Motichand Vs. H.P. Munshi
  - no period of limitation for writs.

- Case 2 :- State of MP v. Bhai lal bhai
  - If delay is more than statutory period of limitation then it should be refused.

* Ch. 14. Right to Information. *

In RP Lilimited V. Indian Express Newspaper supreme court held that right to know is a fundamental right. It is important for democracy.

Right to freedom of speech & expression Article 19(1)(A) includes rights to receive information and it is very essential as without right to know one can't enjoy right to freedom of speech & expression

Article 21 :- Which is right to life & personal liberty includes right to know. Article 21 confers on persons right to know which includes right to receive information

* Public Authority :- means any authority, or body, or institution of self government established or constituted under
  - By or constitution
  - By law made by parliament
  - By law made by state legislature.
  - By notification issued or order made by the appropriate Government. [Section 2(h)]

And it also includes -
i) Any body owned, controlled or financed,
ii) Non-government organisation financed, directly or indirectly by appropriate government.

Record :- means any - document, manuscript or file
- microfilm, microfiche & facsimile
- images included in microfilm
- material produced by computer.

Information - any material in any form records, documents, email, opinion, advices, press releases, memos, circular, contract, module, data, material held in electronic from etc

Right to information - means right to accessing information under this act held by or controlled by any public authority and it includes - taking notes, extracts or certified copies, inspection of work,
- certified copy of material,
- obtaining information in form of diskettes, video cassettes
- in electronic mode or through printouts.

Public Information officer (PIO) [Section 5]
- All public authorities needs to appoint a PIO.
- Public information officers are appointed to provide information to the persons who requested ~~to a~~ for information in all central or state administrative units or offices.
- If a person is requesting any information then there is no need to give any reason for that.

- Request for information. [Section. 6]
  - Any person who is requesting information should make request in written or online form to PIO in english, hindi or any official language.
  - Information should be provided within | 30 days |
  - If request is given to assistance, | 35 days |
  - If interest of third party is involved, | 40 days |
  - If life or liberty involved, | 48 hours |
- If information is not received in 30 days
  - → deemed refusal
  - → No fee for delayed response.

* Third party → who is not a citizen.

* Duties of PIO

i) PIO deals with seeking information to render reasonable assistance to the person who have requested information.

ii) If information is made for another public authority then PIO should transfer it to them within 5 days.

iii) Information should be provided by PIO within 30 days

iv) If personal life & liberty is involved then PIO should provide information within 48 hours

v) If PIO rejects the information -
- he should give reason for rejection.
- period within appeal against rejection may be preffered
- particulars of Appealate authority.

If allowing partial access -
PIO shall inform the applicant that
- Only part information have been provided after separating the record containing information which is exempted from disclosure,
- Reansons for providing such partial, information.
- The details of the person who decided it,
- The details of amount of fees which the applicant is required to deposit,
- Rights with respect to reveiw of decision for non-disclousure of part information.

for ICSI

* Obligations of Public Authority.

Every public authority have to publish within 120 days.

i] Officer/ employee's powers.

ii] Particulars of organisation.

iii] The rules of employees.

iv] The documents held by organisation.

v] Directory of officers/ employees

vi] Any ~~bed~~ budget allocated by organisation

vii] The monthly remuneration of employees

viii] The details of Public Information officers.

ix] Information held in electronic form.

* Information Exempt from disclosure. [Section. 8]

i) Information which is against sovereignty & integrity of India, the security, scientific economic interest or state relation with foreign state.

ii) forbidden by court

iii) Information which breach the priviledge of state legislature or parliament.

iv) Information regarding commercial confidence.

v) Information received by foreign government.

vi) Which would endanger the life or physical safety.

vii) Information which impede the process of investigation.

viii) Any individual's personal information.

ix) Cabinet papers including records of deliberation of council of ministers.

* Rejection of request.

PIO should / empowered to reject the request of information where the breach of copyright of person is involved.

* Information Commissions

- Central Information commission
- State information commission

1) Central Information Commission.

- It is constituted by Central commission.
- It is consist of "Cheif Information commissioner" & "central Information commissioner" not exceeding 10.
- Cheif information commissioner & central information commissioner are appointed by president of India.
- President appoint them on reccomendation of a commitee where, chairperson is PM & one opposition leader & union cabinet minister appointed by PM.
- The appointed persons shall be of eminence in public life, they should have knowledge of law, knowledge of social science & technology, journalism and management.
- They shall not be member of parliament and should not be connected with political party.
- They should not have any business profession.

- Appointment time - The should be appointed for the time as prescribed by Central Government.
  - Maximum period shall not exceed by age of 65 years.

- If information commissioner is appointed as cheif information commissioner then his term shall not be more than 5 years.

- The salary of information commissioner is decided by central, goverment.

2) State Information Commissioner.

- They are constituted by state commissioner.
- It includes "State information commissioner" and "State cheif information commissioner" not exceeding 10.
- They are appointed by Governer on recommendation by commitee.
- The commitee includes chairperson who is CM & one opposition leader & cabinet minister nominated by CM
- Appointment time → as priscribed by ~~ee~~ state government and, maximum period should not be more than age of 65 years.
- If state information commissioner is appointed as State cheif information commissioner his term should not be more than 5 years.

Power of Information Commissioners

i) Non - appoint of PIO – If person is not able to request information because PIO is not appointed.

ii) Refusal of Information – If PIO refuse the information which is requested.

iii) Breach of priviliage of parliament and state legislation – When PIO disclose the information which is related to priviliage of parliament or state legislature.

iv) No response – If person is not received information within reasonable time.

v) Unreasonable fees – If unreasonable fees is charged by PIO.

vi) Incomplete information – If person who is requesting for information receives incomplete information.

vii) Other – Any other matter related to obtaining information under this act

* Appeallate authorities :-

first – Appeal

- Made by → Aggrieved person
- Made to → person senior to PIO
- Time → within 30 days
- Extension → If there is sufficient cause

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Date
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Second Appeal

Made by	Made to	Time	Exention of time
↓	↓	↓	↓
Aggrieved person	CIC or SIC	within 90 days	If there is sufficient cause.

Third appeal :- If third party is against the decision of PIO shall file within 30 days.

* Penalties :-

i) Imposed by :- CIC or SIC

ii) Imposed on :- PIO.

iii) fine :- ₹250/- per day and maximum upto ₹25,000/-.

iv) Reasons :-
- If PIO doesn't accept application.
- If PIO malafiedly deny information.
- If PIO knowingly giving incomplete, information.
- If PIO destroys requested information.
- If PIO abstructs furnishing of information.

* Juridiction of Court

Lower Courts are barred from entertaining any suits or application against any order under this act.

- Who is excluded ?

1) IB,
2) R&AW,
3) Directorate of Revenue Intelligence,
4) NCB,
5) Aviation research centre,
6) CID,
7) Central economic intelligence ~~bea~~ bureu,
8) ~~Lakha~~ Lakshadweep police,
9) CRPF etc.

"Information related to human rights violation should be given after approval of Central Information Commission within 45 days"

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* Ch. 18. Law relating to Negotiable Instruments *

- We make some transaction of money for every kind of business activity in form of cash, instruments & online payment trasfer.

- We all do money transactions even on daily basis with different modes of payment.

- When we do cash transactions we use currency of country for deffered payment, we use negotiable instruments like promissory notes, bills of exchange, cheque, Demand draft.

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- The Negotiable Instruments Act was passed in 1881 to issue legal recognition to negotiable instruments.

* Negotiable Instruments Act, 1881

- Negotiable ~~instrument~~ means transferable, open for discussion & modification & passable.
- Instrument means a written document accepted by two parties.
- Negotiable instrument is document accepted by two parties to making outstanding payments of business activity.
- The three most common types of negotiable instrument are Promisory notes, Bills of exchange & cheque.
- This Act applies to all over India.
- Treasury bills, bearer debentures are also considered as negotiable instruments.

* Conditions of Negotiability :-

1) Freely Transferable :- The instrument should be freely transferable.

2) No defects in title :- There should not be any defect in title.

3) Right to sue :- The holder of negotiable instrument can sue upon the instrument in his own name.

Note :- A negotiable instrument can be freely trasferred till its maturity & shall not be transferred ~~off~~ after its maturity.

Unique academy

* Characteristics / Features of Negotiable Instrument.

1) Written document - Negotiable instrument is treated complemente & effective when it is in written form, & signed by its maker.

2) Holder / ownership - The holder of the instrument is presumed to be the owner of the property.

3) Freely Transferable - A negotiable instrument is freely & easily transferable for delivering and endorsement of certificate from one person to another.

4) Absolute & Good title :- The transferee of a negotiable instrument who receives it in good faith & for value gets the instrument free from all defects.

5) Presumption - Some equal presumption including consideration, date, time of acceptance & transfer, endoresement are applicable to all negotiable instruments.

6) Right to recover / sue - The transferee has a right to recovery and he can also sue on the instrument in his own name to enforce his rights.

Unique academy

* Capacity of a person to be party to a Negotiable instrument (Section 26) - A person shall be liable on a negotiable instrument only if he is capable of contracting.

- A minor may draw, endorse, deliver and negotiate a negotiable instrument to bind all parties expect himself.

* Classification of Negotiable Instruments

1) Bearer & Order Instrument -
- A negotiable instrument is payable to bearer or a specified person or to his order.
- Negotiable instrument which can be paid to a person who holds such instrument at the time of maturity.

- A bearer instrument does not contain the name of a person in whose favour, payment to be made for purpose of easy endorsement.
- Order instrument is negotiable instrument which is payable to a specific person or to his order.
- It carries the name of person in whose favour money is payable.
- It is not a blank instrument.

2) Demand and time instruments -
- An instrument which is payable on demand is demand instrument.
- It means a promissory note or bill of exchange in which no time is specified are payable on demand
- A negotiable instrumen in which no time for payment is specified is instrument payable on demand.

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- An negotiable instrument in which specified time is given is Time instrument.
- A instrument which is payable on completion of certain time period or happening of something.
- Hence, a instrument payable after fixed period or on specified day or happening of something is called as "Time instrument."

3) Inland & foreign Instruments -
- An instrument which is made payable subject to
  - drawn & payable in India or
  - drawn in India upon some resident therein, even though made payable in foreign country.

- An instrument which is not an inland instrument is deemed to be a foreign instrument
  - drawn outside India & payable outside or inside India.
  - drawn in India & payable outside India
  - drawn on person resident outside India.

4) Other -

i) Ambiguous Instrument.

An instrument which may either be treated as bill of exchange or as a promissory note is called as Ambiguous Instrument.

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ii) Inchoate (Incomplete) Stamped Instruments.

When a person signs a negotiable instrument and delivers it to another paper stamped in accordance with law either wholly blank or having written thereon is incomplete negotiable instrument.

iii) Accomodation Bill.

When bills are drawn for accomodating a party, they are not genuine trade bills.

A bill in which a person lends or gives his name to oblige a friend or some person whom he knows is accomodation bill.

It is accepted & endorsed without consideration.

* Types of Negotiable Instruments.

- Promisory Note.

i) Section 4 : Promisory note is a instrument in writing which contains unconditional undertaking and signed by maker to pay certain sum of money to person or only to bearer of instrument.

ii) Parties of Promisory note.

Maker : Person who promise to pay amount stated in promisory note.

Payee : Person to whom money is payable.

Holder : Person who holds promissory note at the time of maturity & who is entitled to get payment.

Endorser : Person who transfer promissory note to any other person.

Endorsee : Person to whom bill is endorsed is called as endorsee. He can be also treated as holder.

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iii] Essentials of promissory notes

Writing : A promissory note must be in writing form. An oral promise to pay will not be treated as promissory notes.

Promise to pay : It should contain an express promise or clear undertaking to pay.
following instruments shall not be treated as promissory note.-
a) A promise to pay cannot be contingent.
b) Mere acknowledgement of debt is not sufficient.

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Unconditional promise & undertaking : A promise or undertaking to pay must be unconditional. It should not be depend on condition. A promissory note should not be subject to fulfilment of any condition.

Signed by the Maker : The promissory note must be signed by the maker of undertaking to pay to the payee or his order.

Maker & payee must be a certain person : It means the maker & payee must be a certain person, instrument shall have proper description about maker & payee like name, son of etc.

Note :- Promissory note cannot be made payable to maker himself.

iv] Other essentials of Promisory Notes

a) Payment must be in legal money or currency of the country.

b) Promissory note must be properly stamped.

c) Promissory note must contain name of place, number & date on which it is made.

- Bill of Exchange. (Sec. 5)

A bill of exchange is a written document which contains a order to pay a certain party specific amount of money.

i] Essentials of BOE

Writing : BOE must be in writing.

Unconditional order to pay : It should contain unconditional order to pay only money. It is not a request to pay.

Signed by drawer : A BOE must be signed by drawer otherwise it will be ineffective.

Certain parties : The parties of BOE must be certain, must be specified i.e. drawer, drawee & payee.

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Certain sum : The sum payable / amount payable must be certain

Other : It must comply other facilities likes stamps, date, etc.

ii) Parties of BOE

Drawer : The person who writes / draws or makes BOE including amount, date & name.

Drawee : The person on whom the bill is drawn is a drawee.

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Acceptor : A person who accepts the bill is acceptor. Normally, drawee is a acceptor. But in some cases a stranger can also accept BOE.

Payee : A person to whom bill is payable is the payee.

Endorser : When drawer transfers bill to other person then drawer becomes endorser.

Endorsee : A person to whom instrument is transfered is endorsee.

Holder : A person who holds the bill or who have possession of bill is holder. Holder can either be payee or endorsee.

Points	Bill of Exchange	Promissory note.
Nature of payment	It involves order to pay.	It contains promise to pay.
Parties	3 parties are involved in BoE i.e. drawer, drawe & payee.	Two parties are involved i.e. maker & payee
Liabilities	The liability of drawer is secondary and conditional	The liability of maker is primary & absolute.
Drawn on self	The drawer can order the payment to be made himself. Normally drawer is payee.	Promissory note cannot be made payable to the maker himself.
Payment conditions	It is a unconditional order to pay to the drawee.	It is a unconditional promise to pay to payee by maker.
Acceptance	A bill payable must be accepted by drawee or a person on his behalf.	Note is presented for payment without ~~an~~ prior acceptance of maker.
Notice of dishonour	In case of dishonour of bill notice shall be given.	There is no need to give notice in case of dishonour of promissory note.

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- Cheque (Sec. 6)

Cheque is a bill of exchange which is drawn on specified bank and always payable on demand. It includes electronic image & physical cheque.

i] Features of cheque

following are features of cheque.

- cheque is always drawn on banker and always payable on demand
- There is no need of acceptance in case of cheque.

Note :- cheque is kind of bill of exchange which should satisfy all essentials of BOE but exept the acceptance.

ii] Mirror image of cheque

A cheque in electronic form means mirror picture of cheque. It is written & signed in secure system with the use of digital signature.

Mirror image of cheque used in online payment system or net banking system.

iii] Truncated cheque.

A cheque which is truncated ~~d~~ at the time of course of clearing cycle, either by clearing house or by bank whether paying or receiving payment on generation of electronic form ~~image~~ image. ~~for~~

Unique academy

* Noting and Protesting.

1) Noting - When a promissory note or BOE is dishonoured then holder of instrument presented to it the notary public to make a note of it and it is called as 'noting'.

2) Protest - When promissory note or BOE is dishonoured then holder of instrument gets ~~set~~ it noted and certified by notary ~~b~~ public a certificate issued by Notary public is called protest

3) Notary Public - Notary public is appointed by Central Govt. Persons appointed in Notary public are advocates. They attest deeds, contracts & other instruments to be use abroad and they give a certificate of due execution of such documents.

4) Notice of Protest - When a promissory note or BOE is to be protested by law then notice ~~B~~OF such protest should be given in same manner as notice of dishonour. The notice of protest may be either given by maker or notary who makes such protest.

Unique academy

* i] Essentials of cheque

- Cheque is always drawn on banker, and payable on demand.
- Cheque does not require any acceptance & special kind of crossing over cheque.
- A person can only draw a cheque on a bank only if he has account in that particular bank.
- Cheque is payable to the drawer himself if it is bearer on demand.

Unique academy

- The banker's obligation to honour issued cheque.

↓	↓
The cheque is valid for 3 months, if it is post-dated or anti-dated	No stamp is require to be affix on cheque

ii] Parties of cheque.

Drawer : A person who draws the cheque.
Payee : A person to whom the cheque is payable.
Holder : holder of cheque is a person who is legally entitled to get possession of cheque.

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vi] Types of cheque

Bearer cheque : A cheque which can be converted into cash from bank by the bearer of cheque.

Order cheque : A cheque which is payable to a particular person whose name is written / appear on cheque.

Crossed Cheque : A cheque which is always collected by bank on behalf of its customers.

Unique academy

vii] Liability on cheques

Banker's obligation - 1) The drawee of cheque is always a banker
2) It is duty of banker to make payment against a cheque and the funds should be properly applicable for such payment.

Banker's right - A banker can refuse payments against cheque in following cases.

1) If cheque is without date,
2) If cheque is outdated,
3) If cheque is issued prior to 3 months
4) When fund in account is unsufficient.
5) When drawer has counter - manded.
6) When cheque has defect.

7) When cheque is doubtful validity.
8) When the drawer's signature does not match with records.
9) When drawer has died & notice has been received.
10) When drawer has become solvent
11) When drawer has become person of unsound mind.
12) If cheque contains material alteration and irregular sign or endoresment.
13) When drawer's fund not applicable for payment

viii] Dishonour of Cheque (Sec. 138)

a) Drawer's liability – If cheque is dishonoured due to insufficient fund then person issuing cheque i.e drawer shall be punishable with imprisonment for 2 years or fine of twice amount of cheque or both.

b) Conditions → It should not include gift cheque.
→ cheque should be presented before banker within validity period or 3 moths, whichever is higher.
→ The payee should give notice demanding payment within 30 days of receiving notice of intimation of dishonour.
→ If drawer fails to make payment within 15 days, a person should proceed for ~~po~~ prosecution.
→ Prosecution can be made only by payee within 1 month.

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c) Presumption in favour of holder. (Sec. 139)
It shall be presumed unless contrary proved, that holder of cheque, the cheque for discharge in whole or part of any debt or other liability

d) No defence allowed. (Sec. 140)
There shall not be any defence in prosecution that drawer had no to believe that he has issued cheque that cheque may be dishonoured for reason of insuffiency of funds.

* Offences by Companies. (Sec. 141)

Unique academy

If a person committing is ~~an~~ offence is an Compan every person who is in charge of company is liable to company for conduct of business shall be deemed to be guilty of offence & shall be liable to be proceeds against & punish accordingly.

However, such person will not be liable :-
- If such person proves that offence that was committed without his knowledge.
- If person had excercised all due diligence to prevent offence.
- If a person is a Nominee Director holding office in Govt. or financial institution owned by Govt.

* Cognizance of offences (Sec. 142)

- ~~Co~~ No court shall take cognizance, exept upon a complaint, in writting made by payee.

- Such complaint should be made within one month of date on which dishonor of cheque arises.

- Court of Metropolitan Magistrate or judicial magistrate of 1st class shall try the offence.

* Protection of collecting banker (Sec. 131)

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Bank which receives the payment of crossed cheque on behalf of its customer is known as collecting bank.

There are so many risks are involved in receiving payment of crossed cheques

The person on whose behalf of a cheque is collected may not be person entitled to get cheque.

Requirements are
- Payment should be received for customer or on behalf of customer.
- The banker should receive payment of cross cheque as an agent.
- The cheque should be crossed when it is handed over to bank for collection.
- Payment without negligence & in good faith.

* Holder, Holder for value & holder in due course holder. (Sec. 8)

A person who is entitled
- to get the possession of negotiable instrument in his own name
- to receive the amount due mentioned in instrument from parties.

* Holder for value.

Regard to all parties prior to himself, a holder of an instrument for which value has at any time has been given.

Unique academy

* Holder in due Course

i) Section 9 - In case of instrument payable to bearer means any person for whom consideration becomes its possesor before amount mentioned in it becomes payable.

ii) Conditions - he shall be holder of instrument.
- he shall have obtain instrument for consideration.
- he must have received instrument before maturity.
- Instrument should be complete & regular.
- Holder should take instrument as good faith.

iii] Rights -

• Inchoate (incomplete) instrument :- An incomplete instrument does not affect the right of holder in due course.

• Fictitious bill :- If BOE is drawn on fictitious name & endorsed by same hand as there is drawer's signature then it is valid for holder in due course & has all right to recover amount and acceptor shall not allege that name is fictitious.

• Conditional instrument or Escrow :- If a bill is negotiated to holder in due course then other parties to bill or note can't avoid liability on ground that delivery of instrument was conditional.

• Instrument obtained by unlawful means or for unlawful consideration — The person who is liable in negotiable instrument can't hold payment on fraud / offence / for unlawful consideration.

• Denial of original validity of instrument :- In case of holder in due course, maker of instrument shall not deny the validity of negotiable instrument which is originally made.

• Denial of payee's capacity to endorse :- Holder in due course shall get good title to bill. Maker & acceptor of bill shall not deny payee's capacity, at the date of bill to endorse same.

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* Payment in due course (sec. 10)

Payment in due course means payment made in good faith & without default / negligence accordance with tenure of a instrument to holder / holder in due course.

Payment is required to be made as per terms and conditions of instrument and shall obtain a valid discharge from holder or holder in due course.

• Conditions -

- Payment as per tenor: Payment should be made in accordance with apparent tenor of instrument.

- Possession of instrument: The person to whom payment is made should be in possession of negotiable instrument.

- Payment should be made in good faith without any negligence.

- Payment should be made in money or money term only.

* Negotiation.

Section 14 - When a promissory note, Bill of exchange or cheque is transferred to any person to constitute that person the holder of that, then instrument is said to be negotiable.

Unique academy

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* Endorsement. (Section 15)

- Endorsment is the act of signing, usually on the back of a negotiable instrument, to legally transfer its ownership to another party.

- Person who endorses negotiable instrument such person is called as 'Endorser'. Person to whom endorsment is made is 'Endorsee.'

- After endorsement instrument should be followed by delivery, transfer of all rights in favour of endorsee.

- Endorser of instrument may exclude his own liability by express words in instrument.

- When endorser signs name by adding words 'without recourse' then he has no liability. The holder cannot claim compensation from him.

Unique academy

] Types of Endorsement.

- Endorsement in blank (General endorsement)

Blank endoresment means endorsement without mentioning the name of endorsee. In this instrument no payee is specified then such endorsement essentially turns instrument into bearer security.

- Endorsement in Full (Special endorsement).

Endorsement which is complete in all sense i.e. It contains the name of endorsee, signature of endorsee. etc.

In other words, en ~~d~~ endorsement which specifies the name of person to whom or to whose order the instrument is payable.

- Restrictive Endorsement.

Endorsement which restrict the further negociation & transfer and adds some conditions for negotiation & transfer. It restricts the further negotiation & transfer by expressing words.

- Qualified Endoresment (Conditional endorsement)

Endorment which is totally depend on fulfillment of some conditions. It is combination of order to pay with condition.

ex. A negotiable instrument states pay to Mr. Ram on safe receipt of goods.

- Sans recourse endorsement.

Endorsement where endorser excludes his liability and makes it conditional. In case of dishonour of negotiable instrument when endorser does not want to incur any liability to endorsee then he may exclude his liability by using 'sans recourse' which means without recourse.

- Sans frais (without expense) endorsement

Endorsement which indicates that endorser is not liable for any expenses incurred on account of bill.

Ex. In this endorsement endorser disowns expenses on account of bills i.e. dishonour of negotiable instrument.

Unique academy

- Facultative endorsement

Endorsement where some rights are waived. In other words, it is a endorsement where endorser gives up on his rights by expressing words under The Negotiable Instruments Act during endoresement.

- Partial Endorsement.

Endorsement which present to tranfer only part amount of instrument is valid & endorsee cannot negotiate it. When part amount due has been paid and effect had made in a note on intrument, then instrument can be negotiated ; for p. balance

Unique academy

- Negotiation Back

An instrument which is negotiated back when instrument comes back to again to the party, who is party to the negotiation.

EFFECT OF NEGOTIATION BACK

- Holder cannot enforce payment against all parties to whom he was previously liable.
- Holder can enforce payment against all parties to whom he was not previously liable.
- Holder can enforce payment against all parties if he has signed 'sans recourse' & can sue on any party.

* Negotiation of dishonoured or expired instrument.

The holder of negotiable instrument after dishonour or maturity has only rights of transferor against all other parties. Holder in due course does not loose

rights in case of dishonoured instrument.

* Period of Negotiation.

A negotiable instrument can be negotiated / transferred until the final payment is made & after maturity after such payment or satisfaction. A negotiable instrument is negotiable even after its maturity provided payment has not made.

* Effect of endorsement

The acceptor of BOE knew or had reason to believe that endorsement was forged and even then he accepts the bill, then he shall be liable otherwise not.

Unique academy

* Material Alterations

Section 87 :- Material alteration varies the rights liabilities & legal provisions of parties and varies legal effect of instrument as originally expressed or which may ~~predu~~ prejudice the party bound by deed as originally executed.

• Note - If any alteration of negotiable instrument has been made without consent of parties then it is void.

1] Conditions for Valid material alteration

- Alteration should be made with original intention of ~~of~~ original parties.

- Alteration should be made before maturity of instrument.

- Alteration should be made with consent of parties

iii Permitted Alteration

Alteration which is not material does not makes intrument void. Act permits following alteration in negotiable instrument. -

- filling of blank instrument.
- Conversion of instrument ~~in~~ endorsement in blank to endorsement in full.
- Crossing of cheque, subsequent to issue.
- Alteration made with consent of parties
- Conversion of bearer instrument into an order instrument by deleting word 'bearer'.

iii ~~Exem~~ Exeption -

Principals of material information does not apply in following cases -

- An acceptor or endorser cannot complaint of any alteration made before his acceptance.
- Alteration which are made to carry out common intention of parties.
- When a party cannot complain of alteration to which he has assented.

Unique academy

iv] Effect of material alteration

Any material alteration of negotiable instrument provides void against anyone who is a party to it at the time of making such alteration does not consent to it unless made in order to carry out common intention of original parties.

* Dishonour of Negotiable Instrument

A negotiable instrument treated as dishonoured because of non-acceptance & non-payment, where as a promissory not and cheque can only be dishonoured due to non-payment.

Unique academy

- Dishonour due to Non-acceptance

Section 91 – When drawee either does not accepts or refuse to accept bill within 48 hours of presentment.
- When one of several drawee makes an default.
- When drawee makes qualified acceptance
- When presentment of bill for acceptance is excused & bill remains unaccepted
- When drawee is incomptent to contract

- Dishonour by Non-payment

Section 92 – ~~The bill is dishonoured when~~ The negotiable instrument is dishonoured when the acceptor of bill, maker of note or drawee of cheque makes any default in payment after maturity.

- Instrument is also dishonored for non-payment when presentment for it, is executed & instrument remains unpaid.

• Notice of Dishonour

i) Who will issue notice?

Holder of instrument can issue notice to parties liable for payment but fail to accept & payment.

ii) To whom notice of dishonour is to be issued?

Notice should be issued to drawer & endorsers. In case of his death or insolvency notice should be given to either himself or to his agent or to his legal representative.

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• Mode of Notice

→ Notice shall be in writting or oral.

- Notice should be ~~post~~ served by post or by hand at place of business or at residence of party.

- If holder of instrument & the party to whom notice should be given, carries on or lives, in another different place, then notice of dishonour must be dispatched by next post.

• Requirements of Valid Notice

- Notice shall contain exact description of dishonoured instrument.

- Notice shall contain the name of parties to whom notice is sent.

- Notice shall state that, the instrument has been dishonoured & he is liable on it.

- When no notice of dishonored is required?

  - When parties has been ~~ma~~ waived off by parties.

  - When the drawer has stopped payment no notice is neccesary to charge drawer.

  - When the party who charged could not suffered damage for want of notice.

  - When party who is entitled to notice is unable to find, without any fault of his own.

  - When the drawer himsdf is an acceptor.

  - When party promises to pay amount due on the instrument unconditionally.

* Discharge of Instrument

An instrument is discharged when party who is liable for payment, has made payment & discharged from liability.

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* Modes of discharge of Notice.

1) Payment in due course : If maker or acceptor makes payment of holder or after maturity in good faith & without notice of any defect in title of instrument, then instrument is discharged.

2) Cancellation : If holder of instrument ~~cancl~~ cancels acceptor's or maker's name with intention to discharge him, then instrument is discharged

3) Release : If holder of instrument renounces his rights against all parties to instrument, then instrument is discharged.

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4) Negotiation Back (Section 90) : If the acceptor of a bill of exchange becomes its holder at or after maturity in his own right, then instrument is discharged.

5) By payment (sec. 82) : All parties to instrument are discharged from liability when the amount due on instrument is paid by maker/ acceptor/ endorser.

6) Payment of cheques (sec. 85) : The section lays down two principles relating to payment of cheques.

7) When a cheque is payable to order & it appears to be endorsed by or on behalf of payee, the banker will be discharged from his liability if he pays liability he pays such cheque in good faith.

8) Dissenting parties discharged by qualified acceptance (Sec. 86) : The holder of a bill entitled to a absolute and unqualified acceptance. If holder approves qualified acceptance then all previous parties whose consent is not obtained to such acceptance are discharged from liability.

Points	Discharge of an instrument	Discharge of a party
1) When	When party who is ultimately liable, discharged from liability.	When any party or parties to instrument is or are discharged.
2) Negotiability	The instrument ceases to be negotiable.	The instrument continues to be negotiable.
3) Extinguishment of all rights of actions.	All rights of action under instrument are extinguished completely.	All rights of action under instrument are not completely extinguished
4) Basis	Discharge of an instrument	Discharge of a party
5) Discharge of parties	Discharge of instrument means discharge of all parties.	Discharge of a party does not mean discharge of all parties.

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Points	Negotiation	Assignment.
1) Notice	Notice is not necessary.	Notice is required to give by asignee to his debtor.
2) Consideration	It is preasumed that consideration has been paid	It is to be proved that wel whether the consideration has been paid or not.
3) Mode of transfer	Bearer instrument → delivery. Order instrument → endorsement & delivery.	A separate document is required in writting and signed by trasferor.
4) Rights of transfree	Tranferee acquires all rights of holder in due course.	Asignee has only right & interest of assignor.
5) Title	Title of transfree is better than transferor.	Title of assignee is subject to defects in title of assingnor.
6) Stamp duty	Endorsement doest not require payment of stamp duty	Stam duty is required in case of assignment.
7) Regulations	Regulated by Negotiable instrument, Act, 1881	Regulated by Transfer of property Act, 1882.

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Points	Holder	Holder in due course
1) Basis of consideration	A holder may become payee of instrument even without consideration.	Holder in due course acquires possesion only for consideration
2) Basis of good faith	There is no need of good faith	Holder in due course must become payee in good faith of instrument
3) Basis of better than title than transferor	A holder can never get better title than transferor	Holder in due course acquires better title than transferor.
4) Defect in title	Holder cannot make prior parties liable.	Holder in due course can make prior parties liable.

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Points	cheque	Bills of Exchange.
1) Drawing	A cheque is always drawn on banker.	A bill may be drawn on any person including banker.
2) Payable	A cheque which is drawn only payable on demand.	A bill may be drawn payable on demand or expiry of certain period.
3) Acceptance	Cheque does not require any acceptance.	It is require to be accepted.
4) Grace of days	No grace is given for payment.	3 grace days are given for payment.
5) Discharge of liability	drawer of cheque is discharged only when he suffer any damage in delay of payment.	Drawer of bill discharged is not presented for payment.
6) Revocation	cheque is mandatory being revokcable, authority may revoked by counter-manding payment.	In case of customer's death bill can be revoked.
7) Crossing	Cheque may be crossed.	There not crossing concept in bill.

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* Who can be Acceptors ?

1) Drawee.
2) When bill is addressed to more than one, then all or some of drawees.
3) Acceptor for honour.
4) If no name of drawee is mentioned in bill, but still person accepts it, then he may stopped from denying his liability as acceptor.
5) Agent of any of person is mentioned above.

* Essentials of Valid acceptance.

1) To enter into contract acceptor must be a competent person.

2) Acceptance must be in writting.

3) The acceptor must sign instrument.

4) Acceptance must be on the bill.

5) Acceptance should be complete by delivery.

6) Acceptance can be general or qualified.

* Types of Acceptance.

1) General acceptance - When drawee given his assent without any condition / qualification is general acceptance.

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2) Qualified acceptance - When drawee accepts the bill on some conditions & qualifications is qualified acceptance. liability of drawee always subject to some conditions.

* Effect of Qualified Acceptance.

- May be refused by the holder :- Acceptance should be general acceptance hence, the holder is at liberty to refuse to take qualified acceptance.

- Acceptance by holder :- When holder accepts the qualified acceptance, even then it ~~blinds~~ binds only him & acceptor & not other parties who don't consent to that.

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* Effect of forged Endorsement.

Section 41 — Acceptor of BOE which is already endorsed is not relieved of his liability by reason that endorsement was ~~forged~~ forged if he knew the endorsement was forged.