

# **Business Regulatory Framework**

## **B.Com.-I**

### **IMPORTANT QUESTION FOR 2019-20**

#### **UNIT-1**

- Q-1** “All contracts are agreement but all agreements are not a contract” Discuss this statement in the light of the provision of the ICA-1872
- Q-2** What do you understand by competency to contract? Describe the law relating to incompetent to enter into contract.
- Q-3** What is free consent? In which conditions consent is not free? Describe.

#### **UNIT-2**

- Q-1** Define Bailment and state the rights and duties of bailer and bailee.
- Q-2** Distinguish between a general lien and a particular lien. What are the rights & duties of finder of goods lost.
- Q-3** Define Agency & explain the rights and duties of an agent towards his principal.

#### **UNIT-3**

- Q-1** Who is unpaid seller ? What are his rights against the buyer personally and against the goods.
- Q-2** What do meant by a contract of sale? How is sale distinguish from the agreement to sell? & what are the rights and duties of the Buyers and Sellers.
- Q-3** Distinguish between Conditions and warranty. State the various conditions and warranties in a contract of sale of goods.

#### **UNIT-4**

- Q-1** What do you mean by negotiable instrument. Differentiate between bills of exchange, promissory notes and cheque.
- Q-2** Distinguish between Holder and Holder in due course. Explain the privileges of a Holder in due course.

#### **UNIT-5**

- Q-1** What is consumer protection act, 1986 ? Describe the main provisions.

**Qus.1: “All contracts are agreement, but all agreements are not a contract.” Explain.**

**Synopsis of Answer-**

- \* Meaning of contract & Agreement
- \* Essentials of contract & Agreement
- \* Difference b/w agreement & contract
- \* Conclusion

**Meaning & Definition of Agreement :**

**Agreement:** Agreement= Offer + acceptance

**ICA-1872, Sec 2(e):** “Every promise and every set of promises, forming consideration for each other, is an agreement”

An agreement comes into existence when an offer made by one party is accepted by the other.

**Essential of Agreement:**

1. There must be two parties
2. Offer & acceptance
3. Mutual agreement
4. Consensus-ad-idem (meeting of the mind)
5. Promises or set of promises

**Meaning & Definition Of Contract :**

**Contract:** Contract = Agreement + Enforceability

[Offer + acceptance + Enforceability]

**ICA-1872, Sec 2 (h)** “Every agreement and promise which is enforceable at a court of law is contract”

**Essential of Contract:**

1. Two parties at least.
2. Offer & acceptance
3. Intention to create legal relationship
4. Lawful consideration
5. Capacity to contract
6. Free consent
7. Lawful object
8. Not expressly declared void
9. Possibility of performance
10. Legal formalities

**Reason: Why “All contract are agreements, but All agreements are not a contract.”**

On comparing the meaning of two term i.e. contract and agreement, Its is revealed that agreement is a wider than a term of contract. In order to prove this statement we have to discuss this statement in two parts

- \* All contracts are agreements
- \* All agreement are not contract

### All contracts are agreements-

The first part of the statement state that “All contract are agreement”, So it is required to know the definition of contract as well as agreement. These term have been defined as under-

**Sec. 2 (e)-** “Every promise and set of promises forming consideration for each other, is an agreement”

**Sec. 2 (h)-** “Contract is an agreement. Enforceable by law.

Thus, from above definition we can see that, the term contract includes agreement and its enforceability. The enforceability or validity of an agreement depends upon the presence of certain essential in the contract. These essentials are as follows-

*(Essential of a contract are already explained earlier.)*

### All agreement are not contract-

The term agreements is a wider term than the term contract. It may be of various types for example social agreement, religious agreement, lawful, unlawful. Valid & voidable agreement etc e.g. A social agreement to go a picnic, or picture, is not enforceable by law. So from above example we can see that some of them are enforceable, by law and others are not. Those agreements which are not enforceable by law are definitely not a contract as per Sec. 2 (h)

A few **examples** of such agreements are given to whom that all agreements are not contracts-

1. Certain domestic and family agreements
2. Certain friendly or social agreement
3. Political agreements/ promises
4. Commercial transaction without legal binding
5. Agreement not possessing all essential of a contract
6. Agreements expressly declared to be void

**All in all, it can be safely concluded that...**

“All contract are agreements, but all agreements are not contract”.

We can conclude our ans with the help of following key difference between the contract & agreement.

### Difference b/w agreement & A contract

Basis	Agreements	Contracts
Section	2 (e)	2 (h)
Definition	Every promise or set of promise forming consideration for each other is an agreements	A contract is an agreement enforceable at law
Algebraic expression	Offer +Acceptance	Agreement + enforceable by law
Scope	Wide	Limited
Nature	All type including legal & illegal	Only valid agreements are called contract
Enforceable	May or may not be enforceable	Must be enforceable
Interrelation	An agreement does not include contract	But a contract includes an agreements
Essential	Agreement has only an offer & acceptance, other essentials are not necessary	A contract must have all the essentials of valid contract, like consideration capacity, free consent etc.

**Q-2 What do you understand by competency to contract? Describe the law relating to incompetent to enter into contract.**

Synopsis of the answer:

- \* Introduction
- \* Meaning
- \* Definition
- \* Law regarding the incompetency.

**Introduction:**

A valid contract requires that all **parties** be legally able to enter into the agreement in the eye of law. **Capacity of parties** is one of the requirements for a valid and binding of a contract. It means all parties should be capable of understanding the object of contract, & forming a rational judgment as to its effect upon their interest.

**Meaning:**

**Capacity to contract means** the legal competence of a person to enter into a valid contract. Usually the **capacity to contract** refers to the **capacity** to enter into a legal agreement and the competence to perform some act. The basic element to enter into a valid contract is that she/he must have a sound mind, major person & not disqualified by the law.

**Definition:**

**Sec.-11 of ICA-1872**, provides that “Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject”

Thus this sec. states three classes of persons disqualified from contracting, or we can say the persons incapable of entering into a contract.

with the help of following chart-

**INCAPACITY OF PARTIES**

Minor	Unsound Mind (Deficiency of mind )	Disqualified by law
<ul style="list-style-type: none"><li>• A person of immature mind</li><li>• Below 18</li></ul>	<ul style="list-style-type: none"><li>• Idiot</li><li>• Lunatic</li><li>• Drunkard</li></ul>	<ul style="list-style-type: none"><li>• Alien enemy</li><li>• Foreign sovereign</li><li>• Insolvent</li><li>• Convict</li><li>• Married Women</li></ul>

As from above chart, negatively we can say that “A person is not capable if he is of

- \* Minor
- \* Unsound mind
- \* Disqualified by law

**Q-3 What is free consent? In which conditions consent is not free? Describe.**

Synopsis of the answer :

- \* Introduction
- \* Meaning
- \* Definition
- \* Conditions when consent is not free.

**Introduction:**

An agreement in order to be valid must have been made by free consent of the parties. If the consent is not free, the agreement is voidable at the option of the party whose consent was not free.

**Meaning:**

**Free consent** is one of the essential elements of valid contract. Parties to a contract may agree upon the same thing in the same sense, and along with the same, & **consent** received must be **free** from any compulsion or pressure. Lack of **free consent** would render the contract voidable or Void at the option of the party not at fault.

**Definition :**

**ICA-1872, Sec.13** - "Two or more persons are said to consent when they agrees upon the same things in the same sense at the same time.

**When consent is not free-** Sec.14 describe that consent is not free. If the Consent is caused by -

1. **Coercion**
2. **Undue Influence**
3. **Misrepresentation**
  - i. By positive statement
  - ii. By breach of duty
4. **Fraud**
5. **Mistake**
  - i. Mistake of Law
  - ii. Mistake of fact

## UNIT-II

### **Qus.1- What do you understand by contract of Bailment. Explain the rights and duties of Bailor and Bailee?**

Synopsis of the answer:

- \* Introduction
- \* Meaning
- \* Definition
- \* Kinds of Contract of Bailment
- \* Essential of Bailment
- \* Duties and Rights of Bailor and Bailee

#### **Introduction:**

The word Bailment is origin from a French word “Bailor” which means “to deliver”. It means bailment is the delivery of goods by one person to another for some purpose. “Bailment is one of the special contracts. The law relating to bailment has been discussed Sec. 148 to 181 which deals only with the general Principle of bailment like mortgage, repair delivery, finder of lost goods etc.

#### **Meaning:**

A delivery of goods or personal property by one person (the bailor) to another (the bailee) on an express or implied contract and for a particular purpose related to the goods while in possession of the bailee, who has a duty to redeliver them to the bailor or otherwise dispose of them in accordance with the bailor’s instructions once a purpose has been accomplished.

#### **Definition:**

Special contract of bailment sec 148 “A bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall. When the purpose is over be returned or otherwise disposed of according to the direction of the person delivering them”

The person delivering the goods is called the bailor & the person to whom the goods are delivered is called the bailee and the transactions is called bailment.

#### **Example:**

1. A gives his cycle to a cycle stand contractor for safe keeping.
2. B gives his suit to a drycleaners for dry cleaning

Bailor	Bailee
A	Cycle stand contractor
B	Dry cleaner

#### **Kinds of Bailment:**

On the basis of charge/reward: i. Gratuitous Bailment  
ii. Non-gratuitous Bailment

On the basis of benefit: i. Bailment for the benefit of the bailor alone  
ii. Bailment for the benefit of bailee alone  
iii. Mutual benefit of both

### **Essentials of Bailment:**

1. There should be a contract
2. Delivery of goods by one person to another
3. Goods are delivered for certain purpose
4. The same goods must be returned
5. Transfer of possession of goods
6. Delivery of goods
7. Ownership is not transferred
8. Change in the shape of goods is possible
9. Expressed or Implied
10. Movable property
11. Bailment of existing goods only

### **Duties & Rights of Bailor and Bailee**

#### **Duties of Bailor:**

1. To disclose known faults
2. To bear extraordinary exp. Of bailment
3. To indemnify the bailee for any loss due to defect of title
4. To bear loss for wrongful refusal to take back the goods
5. To bear loss due to destruction or deterioration of the goods bailed in natural course

#### **Rights of Bailor:**

1. To take back the goods
2. To terminate Bailment
3. Right against a wrong doer

#### **Duties of Bailee:**

1. To take reasonable care of the goods bailed
2. Not to make any unauthorized use of goods bailed.
3. Not mix the goods with his own goods
4. Not to set up an adverse title.
5. To return the goods bailed
6. To return any accretion

#### **Rights of Bailee:**

1. Right to return goods to one of the joint owner without the consent of all
2. Right of immunity against delivery of goods to the bailor if he has no title to the goods.
3. Rights to seek direction of the court where a third person claims the goods bailed
4. Right of lien
5. Right of actions against the third party
6. Right to share compensation obtained by such suit

**Q-2 Distinguish between a general lien and a particular lien. What are the rights & duties of finder of goods lost.**

**Particular Lien and General lien:**

**Lien:** Lien signifies the right of a persons, who has possession of the goods, of another, to retain such possession until a debt due to him has been satisfied. It is a right in one person to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied.

In short we can say that A lien is a mere right of one person to retain property or goods which are in possession, Belonging to another person until the promise or the liability is discharged. Once a possession is lost, lien is also lost. This right is also known as “possessory lien” .

**When a right of lien is Exercised:**

1. Right of lien is a possessory right a, As such it can be exercised only when the goods are in possession.
2. If the possession is lost or gone, right of lien is also lost forgone or gone.
3. The right of lien can be exercised against the goods even if the goods are in the possession of the seller in any other capacity such as caretakers, bailee, trustee.
4. The right of lien can be exercised even if the document of goods is delivered.
5. Right of lien cannot be exercised on the goods repossessed after sale.
6. Right of lien can be exercised only when the price is due and not for the other expenses.
7. Right of lien cannot be exercised where the right of lien is expressly excluded.
8. If the seller is made part of delivery, the lien may be exercised on the remaining goods.

**Types of lien:** lien may be of two types:

- A.General lien
- B.Particular lien

**General lien:**

1. This rights can be exercised against any property belonging to the other party in possession of the person exercising the right.
2. This right can be exercised for a general balance i.e. for any amt. due.
3. This right is available only to banker, factors, wharfingers, attorneys of high court.

**Particular lien:**

1. The right is available to bailee in respect of those goods only on which he has expended skill & labour
2. This right can be exercised only to recover charges for skill & labour employed or expenses incurred on those goods
3. This right is available to bailee, finder of the goods. Inn keeper, hoteliers etc.

## Difference between General Lien and Particular Lien :

### Comparison Chart

BASIS FOR COMPARISON	GENERAL LIEN	PARTICULAR LIEN
Meaning	General lien alludes to the right to keep possession of goods belonging to other against general balance of account.	Particular lien implies a right of the bailee to retain specific goods bailed for non-payment of amount.
Availability	Any goods, in respect of which the amount is due to another person.	Only against the goods, in which skill and labor is exercised.
Automatic	No	Yes
Right to sale goods	No right to sale the goods.	In general, there is no right to sell goods, however, the right can be conferred to bailee in special circumstances.
Exercised by	Bankers, Wharfingers, factors, policy brokers, attorneys etc.	Bailee, pledgee, finder of goods, agent, partner, unpaid seller etc.

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### UNIT-3

**Q-1 Who is unpaid seller ? What are his rights against the buyer personally and against the goods.**

**Seller:** In this concept seller means “any person who is the position of a seller (for eg. An agent, middlemen, consigner, bailor etc.) who has himself paid or directly responsible for the price of product.

**Unpaid Seller:** A person who is in the place of seller of goods is deemed to be an unpaid seller if he/she doesn't received consideration price. It should also be noted that a seller who has obtained a decree for the price of the goods will also be an unpaid seller if the decree has not been satisfied.

**Conditions must be satisfied to be an Unpaid seller :**

- Whole of the price has not been paid
- The amount is due
- A negotiable instrument (i.e. cheque, bills of exchange) was received as conditional payment and the same has been dishonoured.

**Rights of a unpaid seller:**

<u>Right against the goods</u>	<u>Right against the buyer personally</u>
<p><b>A. When property in the goods has passed [Sec 46 (1)]</b></p> <ul style="list-style-type: none"> <li>* Right of lien (47-49)</li> <li>* Stoppage in transit (50-52)</li> <li>* Re-sale (54)</li> </ul> <p><b>B. When property in the goods has not been passed [Sec 46 (2)]</b></p> <ul style="list-style-type: none"> <li>* With hold the delivery</li> <li>* Stoppage in transit</li> </ul>	<p>Suit for price (sec. 55)</p> <p>Suit for damage (sec. 56)</p> <p>Rescission (means repudiate contract) (sec.60)</p> <p>Suit for interest (sec.61)</p>

**Q-2 What do meant by a contract of sale? How is sale distinguish from the agreement to sell? & what are the rights and duties of the Buyers and Sellers.**

**Sale of Goods Act: 1930**

**Introduction:** The sale of goods come into force from 1 July 1930.

Law relating to the sale of goods

**Title:** Sale of Goods Act 1930

**Jurisdiction:** The act of law extends to the whale of India except Jammu & Kashmir.

**Meaning:** A ‘**Contract of Sale**’ is a type of contract whereby one party (seller) either transfers the ownership of goods or agrees to transfer it for money to the other party (buyer). A contract of sale can be a sale or an agreement to sell. In a contract of sale, when there is an actual sale of goods, it is known as **Sale** whereas if there is an intention to sell the goods at a certain time in future or some conditions are satisfied, it is called an **Agreement to sell**

**Definition:** Sec:4 “ A contract of sale of goods is a contract where by the seller transfers or agrees to transfer the property in the goods to buyer for a price.

**Types of selling :** A contract of sale means agreement or contract between two person for purchasing/ selling goods. Two types of selling

**Absolute selling :** A contract of sale may be absolute selling if goods is transferred at a time of contract.

**Conditional selling :** A contract of sale may be conditional selling if goods is transferred when condition is fulfilling.

**Essentials of a contract of sale:**

1. There must be contract
2. There must be two parties
3. Subject matter of sale must be good
4. Price must be paid
5. Transfer of property (ownership)
6. Implied & expressed
7. Absolute of conditional
8. Inclusion of sale & future sale both.
9. Payment & delivery may be in installment
10. Goods must be in tangible form.

## Main Differences between Sale and Agreement to Sell

No	Sale	Agreement to Sell
1	<b>Meaning:</b> where the Property immediately transferred from seller to buyer, it is called 'Sale'.	<b>Meaning:</b> where the transfer of property in goods is to take place in future, from seller to buyer is called 'Agreement to Sell'.
2	<b>Definition:</b> Sale can be defined as "transfer of ownership in the goods by the seller to buyer in exchange of price paid or promised or partly paid and partly promised.	<b>Definition:</b> in case where the seller agrees with the buyer to transfer the title of ownership on a future date upon satisfying certain condition is called as 'Agreement to Sale'.
3	<b>Example:</b> 'X' sold 10 bags of Wheat to 'Y' against payment of Rs. 3,000.	<b>Example:</b> 'X' agrees to sell 10 bags of wheat to 'Y' for Rs.3,000 after getting the stock.
4	In contract of sale property in goods transfers from seller to buyer immediately	In agreement to sell, property in goods does not transfer immediately
5	Contract of sale is an executed contract	Agreement to Sell is an executory contract
6	It creates right in rem	It creates rights in personam
7	The seller can sue the buyer for case of breach of contract.	The seller can sue the buyer only for damages but not for the price.
8	Sale is liable for the Sale Tax.	Agreement to sale is not liable for the Sale Tax.
9	Seller has no right of resale.	Seller has right of resale.
10	If the goods are destroyed, the loss is borne by the buyer even though the goods are in the possession of the seller.	The loss fall on the seller even though the goods are in the possession of the buyer.

## Rights and Duties of the Seller

The rights and duties of a seller, under the Act, may be summarized as below:

	<b>Right of Seller</b>		<b>Duties of Seller</b>
1.	To reserve the right of disposal of the goods until certain conditions are fulfilled.	1	To make the arrangement for transfer of property in the goods to the buyer.
2.	To assume that the buyer has accepted the goods , where the buyer (i) Conveys his acceptance; (ii) Does an act adopting the sale; or (iii) Retains the goods without giving a notice of rejection, beyond the specified date (or reasonable time), in a sale on approval.	2.	To ascertain and appropriate the goods to the contract of sale
3.	To deliver the goods only when applied for by the buyer.	3.	To pass an absolute and effective title to the goods, to the buyer.
4.	To make delivery of the goods in installments, when so agreed	4.	To deliver the goods in accordance with the terms of the contract.
5.	To exercise lien and retain possession of the goods, until payment of the price.	5.	To ensure that the goods supplied conform to the implied / express conditions and warranties.
6.	To stop the goods in transit and resume possession of the goods, until payment of the price.	6.	To put the goods in a deliverable state and to deliver the goods as and when applied for by the buyer.
7	To resell the goods under certain circumstances.	7	To deliver the goods within the time specified in the contract or within a reasonable time and a reasonable hour.
8	To withhold delivery of the goods when the property in the goods has not passed to the buyer.	8	To bear all expenses of and incidental to making a delivery ( i.e. upto the stage of putting the goods into a deliverable sate
9	To sue the buyer for price when the property in the goods has passed to the buyer or when the price is payment on a certain day, in terms of the contract, and the buyer fails to make the payment.	9	To deliver the goods in the agreed quantity.
		10	To deliver the goods in installments only when so desired by the buyer.
		11	To arrange for insurance of the goods while they are in transmission or custody of the carrier.
		12	To inform the buyer in time, when the goods are sent by a sea route, so that he may get the goods insured

### **Rights and Duties of The Buyer**

Right of Buyer		Duties of Buyer	
1.	To have delivery of the goods as per contract.	1	To accept the delivery of goods, when the seller is willing to make the delivery as per the contract
2.	To reject the goods when they are not of the description, quality or quantity as specified in the contract .	2.	To pay the price in exchange for possession of the goods
3.	To repudiate the contract when goods are delivered in installments without any agreement to that effects	3.	To apply for delivery of the goods.
4.	To be informed by the seller, when the goods are to be sent by sea route, so that he may arrange for their insurance.	4	To demand delivery of the goods at a reasonable hour.
5	To have a reasonable opportunity to examine the goods for ascertaining whether they are in conformity with the contract.	5	To accept delivery of the goods in installments and pay for them, in accordance with the contract.
6	To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods.	6	To bear the risk of deterioration in the course of transit, when the goods are to be delivered at a place other than where they are sold.
7	To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the gods to the buyer.	7	To inform the seller in case the buyer refuses to accept or rejects the goods.
8	To sue the seller for specific performance	8	To take the delivery of the goods within a reasonable time after the seller tenders the delivery
9	To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty.	9	To pay the price, where the property in the goods are passed to the buyer, in accordance with the terms of the contract
10	To sue the seller the damages for anticipatory breach of contract	10	To pay damages for non-acceptance of goods
11	To sue the seller for interest where there is a breach of contract on the part of the seller and price has to be refunded to the buye		

**Q-3 Distinguish between Conditions and warranty. State the various conditions and warranties in a contract of sale of goods.**

### **Condition and warranties:**

**Sec 12(1)** A Stipulation in a contract of sale with reference to goods may be a condition or a warranty.

Stipulation = condition or warranty

**Types:** There are two types of conditions and warranty

**Implied**

**Expressed**

Before the discussion of type we have to understand the meaning of condition & warranty.

**Condition:** A condition is stipulation which is essential to the main purpose of the contract the breach of which gives rise to right to treat the contract as repudiated. **Sec:12(2)**

**Warranty:** A warranty is a stipulation collateral to main purposes of the contract. The breach of which gives rise to claim for damages but not a right to reject the goods & treat the contract as repudiated. **Sec: 12(3)**

**Implied conditions and warranty:** Implied conditions and warranties are those which are implied by the law in the absence of any agreement these are given sec in 14 to 17.

### **Implied condition:**

Conditions as to title

Conditions as to description

Conditions as to sample

Conditions as to description and sample

Conditions as to quality

Conditions as to merchantability

Conditions as to wholesomeness.

### **Implied warranties:**

Implied warranties as to quiet possession

Implied warranties against encumbrances

**Expressed conditions and warranty:** Express conditions and warranties are those which the parties agree expressly at a time of contract. These expressions are either orally or in writing. There is no limit to express conditions.

A few example are

Cash on delivery

As is where is basis

Foreign invoice (loco invoice, C & F invoice, CIF invoice etc

## **UNIT-4**

**Q-1 What do you mean by negotiable instrument. Differentiate between bills of exchange, promissory notes and cheque.**

Synopsis of the answer :

- \* Introduction
- \* Meaning
- \* Definition
- \* Characteristics
- \* Presumptions of Negotiable Instrument
- \* Types of Negotiable Instrument

## NEGOTIABLE INSTRUMENT ACT

1881

**Introduction:** A **negotiable instrument** is a document guaranteeing the payment of a specific amount of money, either on demand, or at a set time, with the payer usually named on the document. More specifically, it is a document contemplated by or consisting of a contract, which promises the payment of money without condition, which may be paid either on demand or at a future date. The term can have different meanings, depending on what law is being applied and what country and context it is used in.

**Meaning:** Negotiable instrument made up of two syllable i.e. Negotiable which means transferable by delivery & instrument which means a written documents by which a right is created in favor of some person. It means negotiable instrument is a documents which includes a promise to pay a certain amount of money to the bearer or which is transferable by delivery. It is a mode of transferring a debt, from one person to another. Negotiable instrument is always in written form.

### **Definition of Negotiable Instrument:-**

**Acc. To Sec 13-** "Negotiable Instrument" means a promissory note, Bills of exchange, or cheque payable either to bearer or to the order, or payable on demand.

It should be noted that negotiable instrument is payable to the bearer/or to the order (In respect of bills of exchange & promissory note.) & Payable on demand (In respect of cheque).

Note: If BOE or PN is being endorsed in blank then it can be payable only to bearer on demand.

### **CHARACTERISTICS OF NEGOTIABLE INSTRUMENT**

1. Easy transferability
2. Transferee's title is free from all defect
3. Transferee's can save in his own name
4. Notice of transfer is not necessary
5. Presumption of negotiable instrument.

**Presumption : There are some presumption which you have to kept in your mind.**

Date, Consideration, order of endorsement, Time of acceptance, Time of transfer, stamp, Every holder is Holder in due course, Dishonor of instrument.

### **TYPES OF NEGOTIABLE INSTRUMENT**

The negotiable instrument Act, 1881 deals with 3 types of negotiable instrument :

Promissory Note Sec:4

Bills of Exchange Sec:5

Cheque Sec: 6

#### **PROMISSORY NOTE (SEC:4)**

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

**PARTIES TO PROMISSORY NOTE :** There are two main parties in promissory Note -

- Main Party - Maker
- Payee
- Other party - Holder
- Endorser
- Endorsee

#### **ESSENTIALS OF PROMISSORY NOTE:**

- Must be in writing
- An express promise to pay
- Promise must be certain
- Promise must be unconditional
- Must be signed by the maker
- Amount must be certain
- Must be in legal tender money
- Bank/currency note is not a promissory
- Parties must be certain
- Miscellaneous formalities

#### **GIVE SPECIMEN OF PROMISSORY NOTE:**

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#### **BILLS OF EXCHANGE: (SEC:5)**

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

**PARTIES OF BILLS OF EXCHANGE:** There are three main parties in Bills of exchange-

- Main Party - Drawer
- Drawee
- Payee
- Other parties - Acceptor (When drawee accept the bill)
- Holder
- Endorser
- Endorsee
- Drawee in case of need.

#### **ESSENTIALS OF BILLS OF EXCHANGE :**

- Bill must be in writing

- Order to pay
- Unconditional

**BASIS FOR COMPARISON**

**BILL OF EXCHANGE**

**PROMISSORY NOTE**

- Three parties
- Person/ Parties must be certain
- Drawer must sign the bill
- Sum payable must be certain
- Must be in legal tender money
- Must be stamped
- Other formalities

**GIVE SPECIMEN OF BOE:**

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**CHEQUE: (Sec:6)**

“A cheque is a bills of exchange drawn on a specified bankers, expressed to be payable on demand”

**PARTIES OF CHEQUE:** Same as discussed in case of BOE and PN. But in case of cheque, drawee is always a specified bank, in which drawer's has opened a bank a/c.

**ESSENTIALS OF CHEQUE:**

- Order in writing
- Unconditional order
- cheque is always drawn on bank
- amount should be certain
- cheque should bear a date

**GIVE SPECIMEN OF CHEQUE:**

**TYPE'S OF CHEQUE:**

A	Open cheque
B	Crossed cheque

**OPEN CHEQUE** is a type of cheque which is payable at the counter of the bank. This cheque is payable to bearer or payable to order.

**CROSSED CHEQUE** is a type of cheque which cannot be payable at the counter of the bank.

Crossing of cheque may be of four type -

General crossing

Special crossing

Restrictive crossing

Not Negotiable crossing

**Note: Kindly read all the point in brief**

Meaning	Bill of Exchange is an instrument in writing showing the indebtedness of a buyer towards the seller of goods.	A promissory note is a written promise made by the debtor to pay a certain sum of money to the creditor at a future specified date.
Defined in	Section 5 of Negotiable Instrument Act, 1881.	Section 4 of Negotiable Instrument Act, 1881.
Parties	Three parties, i.e. drawer, drawee and payee.	Two parties, i.e. drawer and payee.
Drawn by	Creditor	Debtor
Liability of Maker	Secondary and conditional	Secondary and conditional
Can maker and payee be the same person?	Yes	No
Copies	Bill can be drawn in copies.	Promissory Note cannot be drawn in copies.
Dishonor	Notice is necessary to be given to all the parties involved.	Notice is not necessary to be given to the maker.

**DIFFERENCE BETWEEN BILLS OF EXCHANGE, PROMISSORY NOTE, & CHEQUE :**

SMRITI AGRAS

<b>BASIS FOR COMPARISON</b>	<b>CHEQUE</b>	<b>BILL OF EXCHANGE</b>
Meaning	A document used to make easy payments on demand and can be transferred through hand delivery is known as cheque.	A written document that shows the indebtedness of the debtor towards the creditor.
Defined in	Section 6 of The Negotiable Instrument Act, 1881	Section 5 of The Negotiable Instrument Act, 1881
Validity Period	3 months	Not Applicable
Payable to bearer on demand	Always	Cannot be made payable on demand as per RBI Act, 1934
Grace Days	Not Applicable, as it is always payable at the time of presentment.	3 days of grace are allowed.
Acceptance	A cheque does not require acceptance.	Bill of exchange needs to be accepted.
Stamping	No such requirement.	Must be stamped.
Crossing	Yes	No
Drawee	Bank	Person or Bank
Noting or Protesting	If the cheque is dishonoured it cannot be noted or protested	If a bill of exchange is dishonoured it can be noted or proteste

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**Q-2 Distinguish between Holder and Holder in due course. Explain the privileges of a Holder in due course.**

Synopsis of the answer:

- \* Meaning of Holder
- \* Essential of Holder
- \* Meaning of Holder in due course
- \* Conditions to be Holder in due course
- \* Special privileges of Holder in due course

**Holder:**

**Sec.8** - "The holder of a negotiable instrument means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bills or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destructions."

**Essential of Holder :** Every person in possession of the instrument is not a Holder. Before a person can claim to be a holder of a negotiable instrument, he must be satisfied the following conditions :

- \* He should be entitled in his own name to the possession of the instrument.
- \* Either he has the possession or he is entitled to recover the possession
- \* He should be a de jure (in law) holder and need not be a de facto (in fact) holder except in case of a bearer instrument. Thus a person who is not in a actual possession of an instrument but is entitled to the possession of the instrument is a folder.
- \* In case of payable to order- Holder – Payee or endorsee
- \* In case of payable to bearer- Holder-Possessor

**Rights of a Holder :**

- \* He can hold the instrument in his possession in his own name.
- \* He can receive the amount of the instrument.
- \* He can sue in his own name to recover the amount of the instrument from the parties there to.
- \* He can give valid discharge to the parties liable upon the instruments.
- \* He can convert a blank endorsement to a special endorsement on the instrument.
- \* He can put a simple or special crossing on the instrument.
- \* He can negotiate the instrument to a third party with certain exceptions.

**Holder in due course:** One of the important characteristics of a negotiable instrument is that the transferee acquires a better title however it is possible only when the transferee is a holder in due course.

Sec: "A holder in due course is a person who acquires a promissory note, bill or cheque bonafide, for value and before maturity"

**Conditions:** For valuable consideration

Before maturity

With good faith

**Special Privileges of Holder in due course:** Special rights provided to the holder in due course by which he can acquire a better title, even if the title of the transferor is defective

1. Estoppel against inchoate stamped instrument
2. Every prior party is liable to a holder in due-course
3. Acceptor cannot escape liability on a fictitious bill
4. Not affected by conditional on special purposes delivery
5. Not affected by the fraud of a prior party
6. Not affected even if instrument is obtained by unlawful means
7. Every holder is presumed to be a holder in due course
8. Acceptor for honor cannot deny his liability
9. Maker acceptor cannot deny payees capacity

**DIFFERENCE BETWEEN HOLDER AND HOLDER IN DUE COURSE :**

BASIS FOR COMPARISON	HOLDER	HOLDER IN DUE COURSE (HDC)
Meaning	A holder is a person who legally obtains the negotiable instrument, with his name entitled on it, to receive the payment from the parties liable.	A holder in due course (HDC) is a person who acquires the negotiable instrument bonafide for some consideration, whose payment is still due.
Consideration	Not necessary	Necessary
Right to sue	A holder cannot sue all prior parties.	A holder in due course can sue all prior parties.
Good faith	The instrument may or may not be obtained in good faith.	The instrument must be obtained in good faith.
Privileges	Comparatively less	More
Maturity	A person can become holder, before or after the maturity of the negotiable instrument.	A person can become holder in due course, only before the maturity of negotiable instrument.

## UNIT-V

### Q-1 What is consumer protection act, 1986 ? Describe the main provisions.

Synopsis of the answer :

- \* Introduction
- \* Definition
- \* Object of the Act
- \* Rights of Consumer
- \* who can make a complaint?
- \* Consumer redressal machinery

### Consumer protection Act 1986

#### Introduction:

1. The act came into operation with effect from 15<sup>th</sup> April 1987.
2. The Act extends to whole of India except Jammu & Kashmir.
3. The act covers both goods & services except expressly excluded by the central govt.
4. In theory A consumer is called king of a market but in practice he is being exploited by the unscrupulous trader, so for the protection of consumer parliament passes a long awaited act, called consumer protection Act, 1986.
5. The interest of consumer are sought to be promoted and protected under the act by establishment of consumer protection council at the central, state & District level
6. The Act has been amended number of times:

First	-	in 1991
Second	-	in 1993
& then	-	in 2002

**Definition:** “The Consumer Protection Act, 1986 was enacted to provide for better protection of the interest of the consumers and for the purpose to make provisions for the establishment of Consumer Councils and other authorities in the settlement of consumer disputes and for matters connected therewith.

**Object of the Act:** the main object of consumer protection act is to protect consumer interest and make them aware about their rights & about redressal machinery. The objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State levels. The main object of the act is to protect the following:

- (1) right to be protected against marketing of goods which are hazardous to life and property;
- (2) right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
- (3) right to be assured, wherever possible, access to variety of goods at competitive prices;
- (4) right to be heard and to assured that customers’ interests will receive due consideration at appropriate forum,
- (5) Right to seek redressal against unfair practices or unscrupulous exploitation of consumers;
- (6) Right to consumer education

**Rights of a consumer:** Right to be protected

Right to be Heard

Right to seek redressal

Right to be informed

Right to provide consumer education

Right to be assured

Right to choice

Right to Healthy environment

**Who can make a complaint? :** According to the Consumer Protection Act, 1986, to make a complaint it is required a complaint from the complainant. The term 'complaint' has been defined in section 2(1)(d) of the Act., a complaint can be made by any of the following:

\*a consumer or

\*any voluntary consumer association registered under the Companies Act, 1956 (or under any other law for the time being in force,

\*the Central Government or any State Government, who or which makes a complaint,

\*one or more consumers, where there are numerous consumers having the same interest,

\* In case of death of a consumer, his legal heir or representative.

**Consumer Disputes redressal Machinery:**

There are **three redressal machinery** provided by the act to protect consumer. (sec:9)  
“District Forum”  
“State Forum”  
“National Forum”

**Object of the redressal machinery:** The object of the redressal machinery are to promote and protect the right of consumer such as

- A. The right to be protected against the marketing of goods and services which are harmful to life and properties of consumer
- B. The right to be informed about the quality, quantity potency, purity, standard and price of goods and services as the case may be, so as to protect the consumer against the unfair trade practice.
- C. The right to be assured, wherever possible, access to variety of goods & services at competitive price.
- D. The right to be heard & to be assured that consumer interest will receive due consideration at appropriate forums.
- E. The right to seek redressal against unfair trade practice or restrictive trade practice and provide them education & right of consumer against the unscrupulous exploitations & traders.

### Brief note on Redressal Machinery

Basis	District forum	State Forum	National Forum
Establishment	By the state govt., By notification in district , State govt. may establish more than one	By the State govt. By the Notification at State level	By the central govt. By the notification at national level
Composition	District judge president	High court judge president	Supreme court judge president
Qualification & Eligibility	2 member-1men & 1women	Prescribed in notification. One must be women	Same as state forum
	Not less than 35 years	Not less than 35 year	Not less than 35 year
	Graduated from a recognized university	Graduated From a recognized university	Graduated from a recognized university
	Ability, integrity, adequate knowledge and experience of at least 10 year in dealing with problems of consumer affair	Same as district 50% of The member shall be from a judicial background	Same as district 55% of the member shall be from a judicial background
Disqualification	Not involve in moral turpitude or corrupt	Same as District forum	Same as district forum
	Has been convicted		
	Undischarge insolvent		
	Unsound mind & Minor		
	Disqualification may be prescribed by the forum		
Appointment	Every appointment by the state govt. on the recommendation of selection committee President of state com.-Chairmen Secretary of Law dept.-Member Secretary of consumer aff.-Member	Same as district level	On the recommendation of selection committee Judge of supreme court – Chairmen Secretary of consumer affair- member (in GOI)

Resignation	Any member may be resign his office in writing under his hand addressed to the central & state level	Same district forum	Same as district forum
Tenure	Five year or up to 65 year	Five year or up to 67 year	Five year or upto 70 year
Re appointment	A member shall be eligible for Re appointment for another term of working as mentioned above	Same as district forum	Same district forum
Honorarium & Salary	As may be prescribed by the state govt.	As may be prescribed by the state govt.	As may be prescribed by the central govt.
Jurisdiction	Not exceed to rupees 20 lac.	Exceed rupee 20 lakh but not more than one cr..	More then one crore

Common points for all forums:

- \* Person's entitled to file complaints
- \* Written complaints
- \* Fees
- \* Contains of complaint
- \* Delivery of complaint
- \* Admission or Rejection
- \* Proceeding with the complaint