EDU SERUMX COLLEGE OF COMMERCE and MANAGMENT

SYLLABUS

B.Com. I YEAR

Subject – Business Regulatory Framework

Unit	Topic	Key Points
Unit I	**Historical Background of Business Laws in India**	- Overview of the evolution of business laws in India.
		- **Indian Contract Act, 1872**: Governs contracts in India, including rules for making and enforcing contracts.
Unit II	**Contracts Relating to Indemnity and Guarantee**	- **Indemnity**: A contract to compensate for a loss.
		- **Guarantee**: A promise to pay the debt of another if they default.
Unit III	**Negotiable Instruments Act, 1881 & Amendments (2002)**	- Governs negotiable instruments like promissory notes, bills of exchange, and cheques.
		- **Amendment Act 2002**: Updates provisions related to dishonour of cheques and penalties.
Unit IV	**Consumer Protection Act, 1986 & 2018, FEMA**	- **Consumer Protection Act 1986**: Protects consumer rights, provides mechanisms for redressal of grievances.
		- **Consumer Protection Act 2018**: Strengthens consumer protection with online dispute resolution and more.
		- **FEMA (Foreign Exchange Management Act)**: Regulates foreign exchange and cross-border transactions in India.
Unit V	**Indian Partnership Act, 1932 & Limited Liability Partnership Act, 2008**	- **Indian Partnership Act 1932**: Defines rules for partnerships and the rights of partners.
		- **Limited Liability Partnership (LLP) Act, 2008**: Introduces LLP, combining elements of partnerships and corporations, with limited liability for partners.

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UNIT – 1

Indian Contract Act

The Indian Contract Act 1872

Introduction

- **Indian Contract Act, 1872:** Governs contracts in India, based on English law.
- Effective from **1st September 1872**, except in Jammu & Kashmir.
- Focuses on **general principles of contracts** and some specific types.

Two Main Parts of the Act

1. **General Principles of Contracts:** Rules that apply to all contracts.
2. **Specific Contracts:** Special rules for:
    - **Indemnity & Guarantee** (e.g., insurance).
    - **Bailment & Pledge** (e.g., loans with collateral).
    - **Agency** (e.g., acting on someone's behalf).

What is an Agreement?

- Agreement = **Offer** (proposal) + **Acceptance** (agreeing to it).
- **Example:** A offers to sell a phone; B accepts.

Legal Definition (Section 2(e)):

- "Every promise or set of promises that involves consideration (something given in return)."

What is a Contract?

- **Contract = Agreement + Legal Obligation.**
- A contract creates duties that the law enforces.
- **Example:** A agrees to pay rent; B provides a house.

Legal Definition (Section 2(h)):

- "An agreement enforceable by law is a contract."

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Essential Elements of a Valid Contract

For a contract to be valid, it must meet these conditions:

1. **Offer and Acceptance:**
    - There should be a valid **offer** and **acceptance** of that offer.
2. **Intention to Create Legal Relationship:**
    - Both parties must intend to make the agreement legally binding.
    - Social or casual agreements (e.g., dinner plans) are not contracts.
3. **Lawful Consideration:**
    - Both parties must exchange something of value (**consideration**).
    - The consideration must be legal.
4. **Capacity of Parties:**
    - Parties must be:
        - Adults (18+).
        - Mentally sound.
        - Not disqualified by law (e.g., bankrupt people).
5. **Free Consent:**
    - Consent should be given freely, without:
        - Coercion (force).
        - Undue influence (pressure).
        - Fraud or misrepresentation.
        - Mistake.
6. **Lawful Object:**
    - The contract's purpose must be legal and not immoral or harmful.
7. **Writing and Registration:**
    - Contracts can be oral or written, but some (e.g., property deals) must be written and registered.
8. **Certainty:**
    - Terms should be clear and understandable.
    - Vague agreements are invalid.
9. **Possibility of Performance:**
    - It must be physically and legally possible to carry out the contract.
10. **Not Void:**

- The agreement must not fall into the category of contracts that are void by law.
- **Example:** Gambling agreements are void.

Kinds of Contracts and Capacity to Contract

1. Classification of Contracts

A. Based on Enforceability

1. **Valid Contract:**
   - Enforceable by law.
   - Example: A agrees to sell a bike to B for ₹50,000, and B agrees.
2. **Voidable Contract:**
   - Valid until one party cancels it due to issues like fraud or coercion.
   - Example: A forced B to sign a contract. B can cancel it.
3. **Void Contract:**
   - Not legally enforceable.
   - Example: A hires B for illegal work.
4. **Unenforceable Contract:**
   - Cannot be enforced due to technical issues like missing stamp or registration.
5. **Illegal Contract:**
   - Prohibited by law.
   - Example: A agrees to smuggle goods for B.

B. Based on Creation

1. **Express Contract:**
   - Written or spoken terms.
   - Example: A agrees in writing to sell goods to B.
2. **Implied Contract:**
   - Formed by actions or behavior.
   - Example: Taking a bus ride implies agreeing to pay fare.
3. **Quasi (Constructive) Contract:**
   - Imposed by law to prevent unfair benefit.
   - Example: A mistakenly pays B's debt. Law allows A to recover money.

C. Based on Execution

1. **Executed Contract:**
   - Both parties have fulfilled their promises.
   - Example: A sells a car, and B pays for it.
2. **Executory Contract:**
   - Promises are still to be performed.
   - Example: A agrees to deliver goods next week, and B will pay later.

D. Based on Performance by Parties

1. **Unilateral Contract:**
   - One party performs their promise, and the other party's performance depends on a future action.
   - Example: A promises to pay ₹1,000 if B finds A's lost phone.
2. **Bilateral Contract:**
   - Both parties have obligations to fulfill.
   - Example: A agrees to sell goods to B, and B agrees to pay ₹10,000.

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2. Capacity to Contract

Who Can Enter Into a Contract?

1. Must be **18+ years old.**
2. Must be **of sound mind.**
3. Must not be **disqualified by law** (e.g., bankrupt people).

Who Cannot Enter Into a Contract?

1. **Minors (Below 18 Years):**
   - Contracts with minors are void from the start.
   - Example: A minor cannot sign a lease.
2. **Unsound Mind:**
   - Includes:
     - **Idiots** (mental incapacity).
     - **Lunatics** (temporary insanity).
     - **Drunken/Intoxicated Persons.**
     - **Hypnotized Individuals.**
   - Such persons cannot understand or judge the contract.
3. **Disqualified Persons:**
   - **Alien Enemies:** Citizens of countries at war with India.
   - **Convicts:** Persons serving a prison sentence.
   - **Corporations:** Limited by law for certain contracts.
   - **Insolvents:** Declared bankrupt.

Special Rules for Minors' Agreements

1. **Void from the Start (Void Ab Initio):**
   - Contracts with minors are never enforceable.
2. **Minor as a Beneficiary:**
   - Minors can accept benefits like gifts or scholarships.
3. **No Ratification:**
   - Minors cannot validate their contract after turning 18.
4. **Liability for Necessaries:**
   - Suppliers of essentials (e.g., food, medicine) can recover costs from a minor's property.
5. **Parent/Guardian Contracts:**
   - Parents or guardians can make contracts on behalf of minors for their benefit.
6. **Minor as a Partner:**
   - Minors cannot form partnerships but may be admitted to benefits in a firm.
7. **No Estoppel:**
   - If a minor lies about their age, they can still claim minority later.

Consideration and Free Consent

1. Definition of Consideration

- **Consideration** means **"something in return"** (quid pro quo).
- It refers to a benefit for one party or a loss/detriment for the other.
- **Without consideration, a contract is void** (nude contract).

Legal Definition (Section 2(d)):

- "An act, abstinence, or promise given at the desire of the promisor is called consideration."

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2. Essentials of a Valid Consideration

1. **At the Desire of the Promisor:**
   - Consideration must be done only when the promisor desires it.
   - Example: A cleans B's garden because B requested it.
2. **By the Promisee or Any Other Person:**
   - Consideration can be given by the promise or someone else.
   - Example: A pays on behalf of B for goods.

3. **Can Be Past, Present, or Future:**
    - **Past:** Done before the contract. (e.g., Helping someone earlier, now they promise to pay).
    - **Present:** Happens at the time of the agreement.
    - **Future:** To be done later (e.g., Delivery of goods next month).
4. **Must Have Some Value:**
    - It doesn't need to be equal but should have some legal value.
5. **Must Be Real:**
    - Impossible acts (e.g., bringing someone back to life) cannot be consideration.
6. **Must Be Beyond Existing Obligations:**
    - The promisor must offer something new, not something already required by law or duty.
7. **Must Not Be Illegal or Immoral:**
    - It should not involve illegal activities or harm public interest.

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3. Exceptions: Contracts Without Consideration

Some contracts are valid even without consideration:

1. **Natural Love and Affection:**
    - A written and registered promise between close relatives.
    - Example: A father promises to gift money to his son.
2. **Compensation for Voluntary Services:**
    - When someone voluntarily helps another and is later promised compensation.
    - Example: A finds and returns B's wallet. B promises to reward A.
3. **Promise to Pay Time-Barred Debts:**
    - If a debtor promises in writing to repay a debt after the time limit has expired.
4. **Completed Gifts:**
    - No consideration is needed for gifts already given.
5. **Agency:**
    - Creating an agency doesn't require consideration.
6. **Charity Contributions:**
    - If someone promises to donate to charity, it can be enforceable.

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4. Free Consent

What is Consent?

- Consent means agreeing to the same thing in the same sense.

What is Free Consent?

- Consent is **free** if not caused by:
  - **Coercion**
  - **Undue Influence**
  - **Fraud**
  - **Misrepresentation**
  - **Mistake**

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5. Causes That Make Consent Invalid

1. **Coercion:**
   - Forcing someone to agree using threats or illegal acts (as per the Indian Penal Code).
   - Example: Forcing someone to sell their property at gunpoint.
2. **Undue Influence:**
   - Using one's position of power to dominate and gain an unfair advantage.
   - Example: A guardian pressuring a minor to sign a contract.
3. **Misrepresentation:**
   - Giving false information unintentionally to make someone agree.
   - Example: Selling defective goods while claiming they are of high quality.
4. **Fraud:**
   - Intentionally hiding or falsifying facts to deceive.
   - Examples:
     - Selling land with fake ownership papers.
     - Making a promise you never intend to keep.
5. **Mistake:**
   - **Mistake of Law:** Misunderstanding laws.
   - **Mistake of Fact:** Errors about the contract's subject matter.
     - **Bilateral Mistake:** Both parties misunderstand.
     - **Unilateral Mistake:** Only one party misunderstands.

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Distinction between Agreement and Contract

Basis of Distinction	Agreement	Contract
Definition	Every promise or set of promises forming consideration for each other is an agreement.	An agreement enforceable by law is a contract.
Creation	Created by the acceptance of an offer.	Created when an agreement becomes enforceable by law.
Legal Rights and Obligations	May not create legal rights or obligations.	Creates legal rights and obligations between the parties.
Necessity	No contract is required to form an agreement.	A valid agreement is essential to form a contract.
Legally Binding	Not legally binding.	Legally binding and enforceable by law.
Concept	A broader concept, including all understandings between parties.	A narrower concept, limited to enforceable agreements.

Distinction between Void Agreement and Void Contract

Basis of Distinction	Void Agreement	Void Contract
Definition	An agreement not enforceable by law is said to be void. [Sec. 2(g)]	A contract that ceases to be enforceable by law becomes void. [Sec. 2(j)]
Time When Becomes Void	Void from the very beginning (void ab initio).	Becomes void later due to changes in law or circumstances.
Restitution	Generally, no restitution is granted. Courts may grant it in cases like fraud or misrepresentation by minors.	Restitution may be granted if the contract is discovered to be void or becomes void.
Description in the Act	Void agreements are explicitly mentioned in the Act (e.g., agreements without consideration).	Void contracts are not explicitly mentioned; they arise from circumstances, as determined by courts.

Distinction between Void Agreement and Voidable Contract

Basis of Distinction	Void Agreement	Voidable Contract
Definition	An agreement not enforceable by law.	A contract enforceable by law at the option of the aggrieved party.
Period of Validity	Void from the beginning (void ab initio).	Valid until avoided by the aggrieved party.
Legal Existence	Does not exist in the eyes of law (nullity).	Exists in law until it is repudiated.
Change in Status	Status does not change with circumstances.	Status changes if the aggrieved party avoids it within a reasonable time.
Causes	Made with incompetent parties, unlawful objects, or without consideration.	Caused by coercion, undue influence, fraud, or misrepresentation.
Transfer of Title	No valid title transfer is possible.	Valid title can be transferred if the third party acts in good faith and for consideration.
Restitution	Generally not available unless exceptions apply.	Restitution is usually available if the contract is avoided.
Damages	No right to compensation for damages.	Aggrieved party can claim damages for losses caused by the breach.

Distinction between Void Agreement and Illegal Agreement

Basis of Distinction	Void Agreement	Illegal Agreement
Definition	An agreement not enforceable by law is void.	An agreement expressly or impliedly prohibited by law is illegal.
Effect on Collateral Agreement	Collateral agreements are not necessarily void.	Collateral agreements are always void.
Scope	All void agreements are not illegal; the scope is broader.	All illegal agreements are void, making the scope narrower.
Restitution	Restitution (refund) may be granted in some cases (e.g., minor or unawareness of impossibility).	Restitution of money is not granted.

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Difference between Coercion and Undue Influence

Basis of Distinction	Coercion	Undue Influence
Definition	Committing or threatening to commit any act forbidden by the IPC, or unlawfully detaining property to force someone into an agreement.	Influence exerted by a person who is in a position to dominate the will of another to gain an unfair advantage.
Relations	Relationship between the parties is immaterial.	Requires a relationship where one party can dominate the will of the other.
Intention	Applied to force someone to enter into an agreement.	Used to gain an unfair advantage over the other party.
Nature of Force	Involves physical force.	Involves moral or mental pressure.
Kind of Act	Involves a criminal act.	Does not involve a criminal act.
Direction	Can be directed against any person, including strangers.	Used only against the weaker party in the relationship.
Who Can Exercise	Can be exercised by anyone, even a stranger to the contract.	Only exercised by someone in a position of power over the other party.
Remedies	The aggrieved party may avoid the contract. [Sec. 19]	The aggrieved party may avoid the contract or the court may modify it. [Sec. 19A]

Distinction between Fraud and Misrepresentation

Basis of Distinction	Fraud	Misrepresentation
Meaning	Intentional misrepresentation or concealment of material facts to deceive the other party into a contract.	Innocent or unintentional misrepresentation of material facts to induce the other party into a contract.
Intention	Committed with the intention to deceive.	No intention to deceive.
Belief in Facts	The person committing fraud does not believe the facts to be true.	The person making the misrepresentation believes the facts to be true.
Suit for Damages	The aggrieved party has the right to sue for damages.	The aggrieved party cannot sue for damages.
Defense	No defense allowed if the aggrieved party had the means of discovering the truth (except for concealment or silence).	Defense allowed if the aggrieved party had the means of discovering the truth.

DISTINCTION BETWEEN COTANGENT TRACT AND WAGERING AGREEMENT

Basis of Distinction	Contingent Contract	Wagering Agreement
1. Meaning	A contingent contract is one in which the promisor undertakes to perform the contract upon the happening or non-happening of an event, which is collateral to the contract.	A wagering agreement is one where a person agrees to pay a certain amount of money to another based on the happening or non-happening of a specific event.
2. Nature of Event	The event is collateral to the contract, i.e., not a part of the promise or consideration of the contract.	The event is the sole determining factor in the agreement.
3. Reciprocal Promise	There is no reciprocal promise in a contingent contract.	A wagering agreement consists of reciprocal promises between the parties.
4. Interest in Subject Matter	The parties are interested in the subject matter of the contract, as the event's happening or non-happening affects them.	The parties have no interest in the subject matter, except for winning or losing money at stake.
5. Validity	A contingent contract is a valid contract.	A wagering agreement is a void agreement. In states like Maharashtra and Gujarat, it is illegal.
6. Nature of Contract	All contingent contracts are not wagering agreements because not all are void.	All wagering agreements are contingent contracts because their performance depends on uncertain future events.

Business Law

- **Old Laws Still in Force**:

  - Some business laws in India were made before the country's independence in 1947. For example, the Indian Contract Act (1872) is still in use, though some areas like partnerships and sales are covered by newer laws, such as the Partnership Act of 1932.

- **Banking Laws**:

  - The **Banking Regulation Act** (1949) still controls banking activities. In 2012, it was updated to give the **Reserve Bank of India (RBI)** more power, including controlling voting rights in banks. The RBI also established a fund to educate depositors.

- **Corporate and Business Regulations**:

  - In 2002, India passed the **Competition Act** to promote fair competition in the market. The **Companies Act of 2013** deals with company regulations, mergers, acquisitions, and social responsibility. This was updated in 2015 to simplify procedures and limit certain corporate decisions.

- **Labor Laws**:

  - India has several laws protecting workers, such as the **Payment of Wages Act** (1936) and the **Industrial Disputes Act** (1947). These laws ensure fair wages, bonuses, and worker rights. They also protect workers in construction and other industries.

- **Consumer Protection**:

  - The **Consumer Protection Act** (1986) ensures consumers can file complaints in case of disputes. Other laws ensure that products are accurately labeled and fairly priced, like the **Standards of Weights and Measures Act** (1956).

- **Foreign Trade Laws**:

  - The **Foreign Trade (Development and Regulation) Act** (1992) helps regulate imports and exports. India also has special schemes to promote exports, like the **SEIS** for service providers. The **Foreign Exchange Management Act** (1999) manages foreign investments.

- **Intellectual Property (IP) Laws**:

  - India updated its laws to follow the **World Trade Organization**'s rules on patents, copyrights, and trademarks. Despite this, there are still issues with digital piracy, especially in the music and entertainment industry.

- **Cyber Law**:

  - As e-commerce grew, India passed the **Information Technology Act** (2000) to regulate online businesses and digital transactions. It was later updated in 2008 to provide clear legal recognition for digital transactions.

Discharge of contract

What is Discharge of Contract?

A contract is discharged or terminated when the rights and obligations created by it are extinguished. This means that the contract is no longer valid and the parties are no longer bound by it.

Ways a Contract Can Be Discharged:

1. **Discharge by Performance**:
   - **Actual Performance**: When both parties complete their obligations as promised, the contract ends. For example, if you pay for a product and the seller delivers it, the contract is discharged.
   - **Attempted Performance (Tender)**: If one party offers to perform their part but the other party refuses to accept, it's called "tender" or attempted performance. If the offer is made correctly, the contract is considered discharged, even if the other party doesn't accept it.

   For a tender to be valid, these conditions must be met:

   - It must be **unconditional**.
   - It must be made at the **right time and place**.
   - The whole **obligation must be offered**, not just part of it.
   - If goods are involved, there must be an **opportunity to inspect them**.
   - It must be made by someone who is able and willing to perform.
2. **Discharge by Mutual Consent**:
   The parties may agree to end the contract by:
   - **Novation**: Replacing the old contract with a new one.
   - **Alteration**: Changing the terms of the contract, but both parties must agree.
   - **Rescission**: Canceling the contract by mutual agreement before it's performed.
   - **Remission**: Accepting less than what was originally agreed (e.g., accepting a smaller payment).

- **Waiver**: One party voluntarily gives up their rights under the contract, releasing the other party from obligations.

3. **Discharge by Subsequent Impossibility**:
   If, after the contract is made, the performance becomes impossible (e.g., due to natural disasters or legal changes), the contract is void. The key points for this are:
   - The act must become **impossible**.
   - The impossibility must be **beyond the control** of the promisor.
   - It should not be caused by the **promisor's own actions**.
4. **Discharge by Lapse of Time**:
   If a contract is not performed within a specific time, and the time limit (known as the "limitation period") expires, the contract is discharged. For example, if a debtor doesn't repay a loan within 3 years, the debt can no longer be legally claimed.
5. **Discharge by Operation of Law**:
   A contract can be discharged automatically in these cases:
   - **Death**: If the contract involves personal services, it ends upon the death of the promisor.
   - **Insolvency**: If a person is declared bankrupt, they are released from their liabilities.
   - **Merger of Rights**: If a lower right merges into a higher right (e.g., a debt becoming part of ownership rights), the lower right is discharged.
   - **Loss of Evidence**: If the contract's evidence (like a document) is lost or destroyed, the contract is discharged.
6. **Discharge by Breach of Contract**:
   If one party fails to perform their part of the contract, it can be discharged due to a **breach**. A breach can happen if:
   - One party **fails to perform** their obligation.
   - One party makes it **impossible** for the other to perform.
   - One party disables themselves from performing.

Unit – 2

Indemnity Contract

An indemnity contract is an agreement where one party promises to compensate the other party for any loss or damage caused. The goal is to **make someone safe** or **pay them back** for their loss.

Key points:

- **Definition**: As per Section 124 of the Indian Contract Act, an indemnity contract is one where a party promises to save the other from loss caused by the actions of the first party or by someone else.
- **Parties**:
    - The **Indemnifier** is the person who promises to compensate for the loss.
    - The **Indemnity Holder** is the person who is protected or whose loss is compensated.

Rights of the Indemnity Holder:

- The holder has the right to claim compensation for **all damages or losses** they face due to the contract.
- They can also claim **costs** related to the contract.

Important Features:

- There are **two parties**: one promises to pay for the other's loss.
- It involves **compensation for actual loss** or damage, which can be due to events, accidents, or disasters.
- It can be either **express** (written) or **implied** (understood from the situation).

Guarantee Contract:

A guarantee contract is an agreement where one person promises to pay someone else's debt or fulfill their obligations if they fail to do so. This is typically used when someone needs a **loan, employment, or credit** but may need a guarantee.

Key points:

- **Definition**: As per Section 126 of the Indian Contract Act, a guarantee contract is one where a person promises to perform the promise or pay the debt of another if they fail to do so.
- **Parties**:

- The **Surety** (or **Guarantor**) is the person who gives the guarantee.
- The **Principal Debtor** is the person who owes the debt or is responsible for the obligation.
- The **Creditor** is the person to whom the guarantee is given (e.g., the lender).

Essential Features:

- A guarantee contract involves **three parties** (surety, debtor, and creditor).
- The **liability of the surety** (guarantor) is **secondary**, meaning the surety is responsible only if the debtor fails to perform.
- The guarantee should be known to the **debtor** and **not be obtained by misrepresentation**.
- The contract may be either **oral** or **written**, and it is based on the agreement of all three parties.

Differences Between Indemnity and Guarantee:

- **Indemnity**: Involves two parties (indemnifier and indemnity holder) where one promises to compensate for any loss.
- **Guarantee**: Involves three parties (surety, principal debtor, and creditor) where the surety promises to pay if the debtor defaults.

DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND GUARANTEE

S.No.	Different Basis	Indemnity Contract	Guarantee Contract
1	**Nature of Contract**	Promises to save the other from loss.	One party promises to discharge the liability of a third party in case of their default.
2	**No. of Parties**	Only two parties: Indemnifier and Indemnity holder.	Three parties: Surety, Principal Debtor, and Creditor.
3	**No. of Contracts**	There is only one contract between the indemnifier and indemnity holder.	There are three contracts: between the debtor, creditor, and surety.
4	**Nature of Liability**	The liability of the indemnifier is primary and independent.	The liability of the surety is secondary and dependent on the principal debtor's default.
5	**Arising of Liability**	The indemnifier's liability arises only on the happening of a contingency.	The liability arises only after the default of the debtor in payment.
6	**Existence of Debt or Duty**	There is no existing debt or duty in this contract.	There is always an existing debt or duty in this contract.
7	**Request by the Debtor**	It is not necessary for the indemnifier to act at the request of the indemnified.	The surety generally gives the guarantee at the request of the debtor.
8	**Right to Sue**	The indemnifier cannot sue the third party for loss in his own name.	The surety, after discharging the debt, has the right to sue the debtor in his own name.

Kinds of Guarantee

1. **Specific or Simple Guarantee**:
   A **specific guarantee** is given for a single debt or a specific transaction. Once the debt is paid or the promise is fulfilled, the guarantee ends.
2. **Continuing Guarantee**:
   A **continuing guarantee** applies to a series of transactions over time. It continues until revoked, covering multiple debts or obligations.

Revocation of Guarantee

Revocation refers to the cancellation of a guarantee.

- **Specific guarantee**: It cannot be revoked if the debt has already been incurred.
- **Continuing guarantee**: It can be revoked, but the surety remains liable for past transactions up until the time of revocation.

Ways to revoke a continuing guarantee:

1. By giving a **notice of revocation**.
2. By the **death** of the surety.
3. By the **discharge of surety** due to various circumstances:
   - **Novation** (Section 62)
   - **Variance in terms** (Section 133)
   - **Release/discharge of the principal debtor** (Section 134)
   - **Creditor's agreement with the principal debtor** (Section 13)
   - **Creditor’s act impairing surety's remedy** (Section 139)
   - **Loss of security** (Section 141)
   - **Invalidation of contract** (Sections 142, 143, 144)

Nature and Extent of Surety’s Liability

1. The surety’s liability is **co-extensive** with that of the principal debtor.
2. The surety’s liability arises the moment the **debtor defaults**.
3. The surety can **limit** their liability.
4. In some cases, the surety is liable even if the principal debtor is not.
5. If there is a **condition precedent**, the surety is liable only when the condition is fulfilled.
6. In a **continuing guarantee**, the liability of the surety extends over multiple transactions.
7. The surety is not liable if the creditor **misrepresents** facts or **conceals** material information.
8. **Discharge of the principal debtor by law** does not discharge the surety.

Discharge of Surety from Liability

The surety can be discharged from their liability in the following ways:

1. **By Revocation**:
    - Notice by the surety.
    - Death of the surety.
    - Novation (change in the agreement).
2. **By the Conduct of the Creditor**:
    - Changing the terms of the contract.
    - Releasing or discharging the principal debtor.
    - Making arrangements with the debtor without the surety's consent.
    - Acts or omissions of the creditor that harm the surety's rights.
    - Loss of security.
3. **By Invalidation of the Guarantee**:
    - Guarantee obtained by **misrepresentation**.
    - Guarantee obtained by **concealment** of material facts.
    - Failure of a co-surety to join in the guarantee.

Rights of Surety

1. **Right Against the Principal Debtor**:
    - **Right of subrogation**: The surety can step into the shoes of the creditor to recover the amount from the principal debtor.
    - **Right of indemnity**: The surety can claim compensation from the principal debtor for any loss incurred while paying the debt.
2. **Right Against the Creditor**:
    - **Right to security**: The surety has the right to claim any security held by the creditor.
    - **Right to set-off**: The surety can use any amount owed to them by the creditor to offset their liabilities.
3. **Right Against Co-Sureties**:
    - **Equal contribution**: If multiple sureties are involved, they must share the liability equally unless agreed otherwise.
    - **Liability of co-sureties in different sums**: The contribution among co-sureties may differ if agreed upon.
    - **Right to share benefits of securities**: Co-sureties can share any benefits that come from the security or assets held.

UNIT – 3

Negotiable Instruments Act, 1881

The **Negotiable Instruments Act, 1881** governs negotiable instruments in India and includes three key types: **promissory notes**, **bills of exchange**, and **cheques**. Here's a simplified explanation of the act's key points:

1. Negotiable Instruments:

- A **negotiable instrument** is a written document that represents a promise or order to pay a certain amount of money, and can be transferred from one person to another.
- Common examples: **Promissory notes**, **Bills of exchange**, and **Cheques**.
- These instruments are "negotiable," meaning they can be transferred to someone else who can then enforce the right to payment.

2. Characteristics of Negotiable Instruments:

- **Free transferability**: These instruments can be easily transferred from one person to another.
- **Title is free from defects**: The person who holds a negotiable instrument in good faith (called the "holder in due course") gets the right to the money, even if the person who originally owned it had problems with it.
- **Transferee can sue**: If the instrument is dishonored (not paid when due), the new holder can take legal action in their own name.
- **Presumptions**: The law presumes certain facts about negotiable instruments, such as:
  - They were made for consideration (value).
  - They were transferred before maturity.
  - They were accepted in a reasonable time.
  - They were stamped properly.

3. Types of Negotiable Instruments:

1. **Promissory Note**:
   - A written promise to pay a certain sum of money to a person or their order.
   - Example: "I promise to pay Rs. 500 to Mr. A."
   - **Parties involved**: Maker (who promises to pay) and Payee (the person to be paid).
   - **Characteristics**: Must be in writing, contain an unconditional promise to pay, be signed by the maker, and the amount must be certain.
2. **Bill of Exchange**:
   - A written order directing someone (the drawee) to pay a certain sum of money to the payee or their order.
   - Example: "Pay Rs. 1000 to Mr. B from Mr. C."

   - **Parties involved**: Drawer (who makes the order), Drawee (who must pay), and Payee (to whom the payment is made).
   - **Characteristics**: Must contain an unconditional order to pay, be signed by the drawer, and have a certain sum.
3. **Cheque**:
   - A type of bill of exchange used specifically for payments from a bank account.
   - It's a written order from the account holder to their bank to pay a specific sum to the person named on the cheque.

4. Key Points:

- **Promissory Notes**: Unconditional promise to pay.
- **Bills of Exchange**: Order to pay.
- **Cheques**: A form of bill of exchange used for bank payments.

Cheque

A **cheque** is a written order directing a bank to pay a specific amount of money from the drawer's account to the person named on the cheque. It includes electronic versions of the cheque and those that have been truncated (cut short) during processing.

Key Terms:

- **Drawer**: The person who writes the cheque.
- **Drawee**: The bank where the cheque is drawn.
- **Payee**: The person to whom the cheque is payable.

Types of Cheques:

1. **Crossed Cheque**: A cheque with two parallel lines drawn across it, which means it can only be deposited into a bank account and not cashed at the bank counter. There are two types:
   - **General Crossing**: No specific bank is mentioned.
   - **Special Crossing**: A specific bank is mentioned.

Parties to a Negotiable Instrument:

- **Holder**: A person who legally owns a negotiable instrument (cheque, promissory note, etc.) and can claim payment. To be a holder, you must:
  1. Possess the instrument.
  2. Have the right to claim the amount from the party involved.
- **Holder in Due Course**: A person who acquires a negotiable instrument for value (money or something else), in good faith, and without knowing about any problems with the instrument. This person has special rights:

1. They can claim payment even if the instrument was originally incomplete or involved in fraud.
2. They can hold anyone who signed the instrument responsible, even if it was given to them without consideration.

Rights of a Holder in Due Course:

1. **Claims for Incomplete Instruments**: They can fill in missing details (like the amount) on an incomplete instrument if the original holder had given permission.
2. **Claims for Fictitious Bills**: If a bill has fake details (e.g., fake names), they can still claim payment from the person who signed it.
3. **Claims from Previous Parties**: They can claim the amount from any previous signers, even if the instrument wasn't originally for consideration.
4. **Transfer Rights**: They can transfer the instrument to someone else, and that person inherits all the rights.

DISTINCTION BETWEEN HOLDER AND HOLDER IN DUE COURSE

Basis of Distinction	Holder	Holder in Due Course
1. Definition	A person entitled to the possession of the instrument and to receive the amount due on it.	A person who becomes the possessor of the instrument for consideration before maturity and in good faith.
2. Consideration	A holder need not acquire the instrument for consideration; it can be received as a gift.	A holder in due course must acquire the instrument for consideration (e.g., payment).
3. Before Maturity	A holder may possess the instrument before or after its maturity.	A holder in due course must possess the instrument before its maturity.
4. Good Faith	A holder may not acquire the instrument in good faith.	A holder in due course must acquire the instrument in good faith.
5. Inchoate Instrument	A holder can claim only the amount the signer intended to pay on an incomplete (inchoate) instrument.	A holder in due course can claim any amount filled in an inchoate instrument, as long as it's covered by the stamp.
6. Right Against Prior Parties	A holder has rights against the original parties and immediate indorsers.	A holder in due course has rights against every prior party to the instrument.
7. Title Better Than Transferor	A holder cannot acquire a better title than the transferor.	A holder in due course acquires a better title than the transferor, free from prior defects.

Negotiation

- **Definition**: Transfer of a negotiable instrument (like a cheque, bill, or promissory note) from one person to another in a way that the transferee (the person receiving it) becomes the new holder and can claim the money.

Types of Negotiation:

1. **Negotiation by Delivery** (Section 47)
   - If the instrument is **payable to bearer** (no specific person named to receive it), it can be transferred just by **handing it over** to someone else.
   - Example: If A gives a cheque payable to bearer to B, the cheque is now negotiated to B.
2. **Negotiation by Endorsement** (Section 48)
   - If the instrument is **payable to order** (specific person named), it must be transferred by **signing** on the back of the instrument (endorsement) and delivering it to the transferee.
   - Example: A transfers a cheque payable to ‘Anta or order’ to B by signing on the back and handing it over.

Negotiation vs. Assignment

- **Assignment**: A more formal transfer, usually needing a **written document** (like a transfer deed), and requires **consideration** (proof of payment).
- **Negotiation**: Can be done by simple **delivery** or **endorsement** without extra documents, and does not require a separate agreement.

Endorsement

- **Endorsement** is when the holder signs the back of the instrument (or attaches a paper to it) to transfer it.
  - **Indorser**: The person who signs the instrument.
  - **Indorsee**: The person to whom it is transferred.

Essentials of a Valid Endorsement:

1. **Indorser Must Be the Holder**: The person signing must be the rightful holder.
2. **On the Instrument**: The endorsement must be on the instrument itself or on an attached paper.
3. **Signature**: The indorser must sign it to transfer ownership.
4. **Delivery**: The instrument must be handed over to the person receiving it.
5. **Must Be Complete**: The endorsement must be for the entire instrument, not part of it.

Types of Endorsements:

1. **Blank/General Endorsement**: Just the indorser's name is signed. Example: A simple signature without any further instructions.
2. **Full/Special Endorsement**: The indorser writes a specific instruction, such as "Pay to Banta" along with the signature.
3. **Restrictive Endorsement**: Limits how the instrument can be used, like "Pay Banta only."
4. **Conditional/Qualified Endorsement**: Adds a condition for payment, such as "Pay Banta if he completes a task."
5. **Partial Endorsement**: Not valid for negotiation as it transfers only part of the amount.

Discharge of a Negotiable Instrument

- **Discharge** means the instrument is no longer valid, and no further payment is due.

1. **By Payment**: If the amount is paid as agreed, the instrument is discharged.
2. **By Holder Becoming the Maker**: If the person who owes the money (like the maker of a note) becomes the holder of the instrument, it's discharged.
3. **By Waiver**: If the holder gives up the right to claim the amount.
4. **By Cancellation**: If the instrument is canceled (e.g., marked void) by the holder.
5. **By Expiry**: When the period for which the instrument is valid expires.

Dishonour of a Negotiable Instrument

A negotiable instrument (like a cheque, bill, or promissory note) is said to be **dishonoured** when it is not accepted or paid as expected. Dishonour can happen in two main ways:

1. **Dishonour by Non-Acceptance** (only applies to **bills**):
   - The bill is refused for acceptance, meaning the person who is supposed to pay it does not agree to accept it.
   - This could happen if:
     - The bill is not signed by the required persons.
     - The bill is not accepted within **48 hours** of being presented.
     - The drawee (the person supposed to pay) cannot be found.
2. **Dishonour by Non-Payment**:
   - The payment for the instrument is not made.
   - This can happen if the person fails to pay on the due date, or in some cases, they might be excused from presenting it for payment.

Notice of Dishonour

When a negotiable instrument is dishonoured (either by non-acceptance or non-payment), the holder **must give notice** to the person who is responsible for payment. This **notice** is important because:

1. It warns the person of their liability (they are still responsible for paying).
2. It protects the holder's rights.

Who Can Give the Notice?

- **Holder**: The person holding the instrument can give the notice.
- **Agent of the Holder**: A person acting on behalf of the holder can also give notice.
- **Other Parties**: Anyone who receives the notice and wants to hold another party liable can give the notice.

Who Receives the Notice?

- The notice should be given to **all parties** who are responsible for paying.
- If a party is dead or has become insolvent, the notice can be sent to their legal representative or official assignee.

Time and Place of Notice:

- The notice must be given **within a reasonable time** after the dishonour.
- The notice should be given at the business or residence address of the person.

Dishonour of Cheques for Insufficient Funds

If a cheque bounces (dishonoured) due to insufficient funds in the drawer's bank account, there is a **legal process** to follow:

1. The cheque must be presented within **3 months** of the date it was issued.
2. The payee or holder must send a **written demand** to the drawer within **30 days** of learning that the cheque was dishonoured.
3. If the drawer does not pay within **15 days** of receiving the demand, they can be sued.

Offence under Section 138 of the Negotiable Instruments Act

For dishonoured cheques, **Section 138** of the Negotiable Instruments Act defines the **offence** and requires the following:

1. The person must have written a cheque for a debt or liability.
2. The cheque is returned due to **insufficient funds** or exceeding the agreed amount.
3. The payee or holder sends a **notice** to the drawer within 30 days of the dishonour.
4. If the drawer does not make payment within 15 days of receiving the notice, they can be prosecuted.

Presumption in Favour of Holder (Section 139)

- The law assumes that when the holder of a cheque receives it, it was given to pay a debt or liability, unless the contrary is proven.
- This means that in court, the accused (the person who issued the cheque) must prove that the cheque was not for a valid debt.

Noting

- In case of dishonour, **"noting"** refers to the bank officially recording the reason for dishonour (like insufficient funds). This is important because it serves as evidence if legal action is taken.

Noting and Protest in Negotiable Instruments

1. **Noting**:
   - **Meaning**: Noting is the process where a **notary public** (a legal officer) records the dishonor of a negotiable instrument, such as a cheque, bill, or promissory note. The notary authenticates and records the fact and reasons for dishonor (non-acceptance or non-payment).
   - **Purpose**: Noting is not mandatory for inland bills or notes, but it serves as **official proof** that the instrument was dishonoured. This proof can be used in court if needed.
   - **Procedure**:
     - When an instrument is dishonoured, the holder can request a notary public to note it.
     - The notary public then makes a formal demand for payment or acceptance. If the payment is not made, the notary records the dishonor on the instrument or a paper attached to it.
     - The notary must specify:
       - **The fact of dishonour**.
       - **The date of dishonour**.
       - **Reasons for dishonour** (if provided).
       - **Why the holder considers it dishonoured** (if not explicitly rejected).
       - **The notary's charges**.
2. **Protest**:
   - **Meaning**: A protest is a formal certificate from the notary public that records the dishonor of an instrument and the steps taken (like demands for payment).
   - **Contents**:
     1. The instrument (or a copy of it).
     2. The names of the people involved (for and against).
     3. A statement that the notary demanded payment or acceptance, and the response (if any).

4. If there was no response or the person couldn't be found, the protest will note that.
5. Date, place, and time of dishonour, and refusal of better security if applicable.

3. **Differences Between Noting and Protest**:
   - **Nature**:
     - **Noting**: A record of dishonour.
     - **Protest**: A certificate issued by the notary confirming the dishonour.
   - **Contents**:
     - **Noting**: Only includes the date and reasons for dishonour.
     - **Protest**: More detailed, including demands made and responses received.
   - **Scope**:
     - **Noting**: Can happen without protest.
     - **Protest**: Can only happen after noting.
   - **Requirement**:
     - **Noting**: Optional for inland bills or notes.
     - **Protest**: Mandatory for foreign bills in certain situations.

Conclusion:

- **Noting** and **Protest** are processes used to officially record the dishonour of negotiable instruments.
- **Noting** is simpler and optional for domestic transactions, while **Protest** is a formal step that comes after noting, and is mandatory for certain foreign transactions.
- Both play an important role in **trade** and **legal proceedings**, ensuring that dishonoured instruments are officially documented.

Unit – 4

Introduction to the Consumer Protection Act, 1986

The **Consumer Protection Act, 1986** was established to protect consumer rights by providing a system for addressing consumer grievances, ensuring the settlement of disputes, and promoting the welfare of consumers. The main purpose of this law is to provide consumers, who are generally in a weaker position compared to well-organized traders, with **cheaper, faster, and effective remedies**.

The Act is applicable throughout India, excluding Jammu and Kashmir, and covers all goods and services unless stated otherwise by the central government. It came into effect on **April 15, 1987**.

Objectives of the Act

The key goals of the Act are:

1. **Protection of Consumer Rights**: Ensuring consumers' rights are safeguarded, such as the right to be protected against unsafe products, the right to be informed about goods and services, and the right to fair treatment.
2. **Consumer Protection Councils**: Establishing councils at the central and state levels to promote consumer welfare.
3. **Better Protection of Consumers' Interests**: Ensuring consumers are better protected against unfair trade practices.
4. **Quasi-Judicial Machinery**: Setting up a system at district, state, and national levels to resolve consumer disputes quickly.

Key Definitions

1. **Complainant**: A consumer, a consumer association, the government, or legal representatives of a deceased consumer can file a complaint.
2. **Complaint**: A written allegation made by a complainant against a trader or service provider regarding unfair trade practices, defective goods, deficient services, overcharging, or hazardous goods/services.
3. **Consumer**: A person who buys goods or services for personal use and not for resale or commercial purposes.
4. **Consumer Dispute**: A dispute where the person accused of a complaint denies or disputes the allegations made.

Consumer Disputes Redressal Agencies

The Act establishes a **three-tier system** to resolve consumer disputes:

1. **District Forum** (for complaints up to ₹20 lakhs)
2. **State Commission**
3. **National Commission**

District Forum

1. **Composition**: The District Forum consists of a President (a District Judge) and two other members, one of whom must be a woman. They must have at least 10 years of experience in law, commerce, or public affairs.
2. **Jurisdiction**: The District Forum handles complaints where the value of goods or services and compensation is less than ₹20 lakhs.
3. **Procedure**:
   - A complaint is referred to the opposite party (trader or service provider).
   - If the opposite party disputes the complaint, the Forum may refer it to a laboratory or seek other forms of evidence.
4. **Power of District Forum**: The District Forum has the same powers as a civil court, such as summoning witnesses, collecting documents, and issuing commissions for witness examination.

Findings and Remedies

If the District Forum finds the complaint valid, it can issue orders to the opposite party, such as:

- Fixing or replacing the defective goods.
- Returning the payment made by the consumer.

Key Points from the Business Regulatory Framework on Consumer Protection and MRTP Act

State Commission

- **Pecuniary Jurisdiction**: The State Commission can handle consumer complaints where the value of the goods or services and compensation exceeds ₹20 lakhs but does not exceed ₹1 crore.
- **Appellate Jurisdiction**: If someone is dissatisfied with a decision from the District Forum, they can appeal to the State Commission within 30 days of the order.

National Commission

- **Composition**: The National Commission consists of a President (who must be a retired Supreme Court judge) and at least four members, including one woman. Members must be at least 35 years old, have a bachelor's degree, and have at least 10 years of experience in areas like law, economics, or administration.
- **Jurisdiction**:
  - **Pecuniary**: Handles complaints where the value exceeds ₹1 crore.
  - **Appellate**: Can hear appeals from State Commission orders.

Consumer Protection Councils

- **Central Consumer Protection Council**: Established by the central government, with 150 members, and led by the Union Minister for Food and Civil Supplies. It aims to protect consumer rights, such as:
  - Protection against misleading advertisements and unfair trade practices.
  - Right to compensation and consumer education.
  - Three mandatory meetings per year.
- **State Consumer Protection Council**: Similar to the central council but at the state level, with the state's Minister for Food and Civil Supplies as the chairperson.

Monopolistic & Restrictive Trade Practices (MRTP Act)

- **Purpose**: The MRTP Act of 1969 aims to prevent monopolistic, unfair, and restrictive trade practices in the economy. It seeks to ensure fair competition and restrict the concentration of economic power.
- **Key Provisions**:
  - **Monopolistic Practices**: Defines dominant undertakings as those controlling 25% or more of the market for goods or services.
  - **Unfair Trade Practices**: Includes deceptive practices like false representation of goods/services.
  - **Restrictive Trade Practices**: Includes practices like price-fixing, exclusive dealing, and discrimination in trade.

MRTP Commission

- **Composition**: The MRTP Commission is a quasi-judicial body with a chairman (who must be qualified as a judge) and members with expertise in law, economics, and commerce.
- **Powers**: The Commission can:
  - Investigate monopolistic and restrictive trade practices.
  - Issue orders to stop unfair practices and enforce compliance.
  - Impose penalties for contempt.

Financial Institutions: Defined under the MRTP Act as institutions like nationalized banks, financial corporations, and insurance companies.

Exemptions: Certain undertakings, such as those owned by the government, cooperative societies, or financial institutions, may be exempt from the MRTP Act.

Key Objectives of the MRTP Act:

1. Control the concentration of economic power.
2. Promote healthy competition.
3. Prevent monopolies and unfair practices in the market.

Monopolies and Restrictive Trade Practices Act (MRTP), 1969

The MRTP Act was initially introduced to prevent monopolistic and restrictive trade practices. Over time, various sections under this act were categorized for investigating inquiries into restrictive, monopolistic, and unfair trade practices.

Key Sections and Investigations (2005):

- **Restrictive Trade Practices (Section 10(a))**:
  - Pending and fresh inquiries were handled across multiple subsections, with several carried forward and concluded by the end of 2005.
- **Unfair Trade Practices (Section 36B)**:
  - Inquiries included misleading advertisements, bargain sales, and other consumer-related grievances.
  - 491 inquiries were considered under Section 36B(a), with 437 pending by the year's end.

Temporary Injunctions & Compensation:

- Applications under Section 12A (injunctions) and Section 12B (compensation) were actively handled, showing a focus on interim relief and redressal of grievances.

MRTP Act Repeal and Replacement:

- The act was repealed by the **Competition Act, 2002**, aimed at promoting competition instead of merely curing monopolies. The MRTP Commission was dissolved as per Section 66 of the Competition Act.

Competition Act, 2002

The act introduced significant reforms to create a competitive market in India. Key highlights:

- **Objectives**:
  - Promote competition, prevent anti-competitive practices, and ensure consumer protection.
- **Enforcement Mechanisms**:
  - Establishment of the **Competition Appellate Tribunal** to handle appeals and compensation claims.
  - Provision for penalties and investigative powers to curb negative aspects of competition.
- **Significance**:
  - Encouraged market liberalization and positioned India to compete globally.

Foreign Exchange Management Act (FEMA), 1999

Enacted to replace the outdated Foreign Exchange Regulation Act (FERA), FEMA was designed to manage foreign exchange in a liberalized economy.

Key Features:

1. **Applicability**:
   - Covers all individuals, entities, and their foreign branches linked to India.
2. **Terminology**:
   - **Capital Account Transactions (CAT)**: Impact foreign asset-liability positions.
   - **Current Account Transactions (CAT)**: Day-to-day transactions like foreign trade, travel, and education.
   - **Foreign Exchange & Security**: Includes foreign currencies, deposits, and securities.
3. **Provisions**:
   - Restrictions on dealing, holding, and transferring foreign exchange or securities without authorization.
   - Specific rules for current and capital account transactions.

Objectives:

- Facilitate external trade.
- Develop orderly foreign exchange markets.
- Promote integration with global economies.

Relevance

These acts provide a foundation for understanding India's economic and regulatory evolution, focusing on trade practices, competition law, and foreign exchange management. They reflect how legal frameworks adapt to globalization and market needs.

Would you like a detailed explanation of any specific section or a comparative analysis between MRTP and Competition Act?

FEMA (Foreign Exchange Management Act)

1. **Permissible Capital Transactions**:
   - Certain capital transactions are allowed under FEMA, with limits set by RBI.
   - No restrictions on foreign exchange payments for loan repayments or depreciation of investments.
2. **Export Obligations**:
   - Exporters must declare correct details about exports.
   - Provide necessary information to RBI to ensure realization of export payments.
3. **Repatriation of Foreign Exchange**:
   - Any foreign exchange earned by Indian residents must be brought back within the period specified by RBI.
   - Exceptions include: foreign currency received as gifts, inheritance, or acquired before July 1947, among others.
4. **Authorized Person**:
   - Refers to entities like banks or money changers authorized by RBI to deal with foreign exchange.

Intellectual Property Rights (IPR)

Copyright:

1. **Definition**:
   - Copyright protects original creative works (e.g., literary, artistic, music, films, etc.).
2. **Rights of the Owner**:
   - Exclusive rights to reproduce, distribute, perform, or adapt the work.
   - For software, rights also include commercial rental and sale.
3. **Term of Copyright**:
   - Lasts 60 years after the author's death (for literary/artistic works).
   - For films and recordings, 60 years from release/publication.
4. **Registration**:
   - Registration is optional but provides evidence of ownership.

Trade Marks:

1. **Definition**:
   - A trade mark identifies the origin of goods or services and distinguishes them from others.
2. **Registration Process**:
   - Apply to the Registrar of Trade Marks.
   - The application is advertised.
   - If no opposition or opposition is resolved, the mark is registered, and a certificate is issued.
3. **Infringement**:
   - Using a registered trade mark without permission is an offense.

Patents:

1. Protects inventions or processes that are new, useful, and non-obvious.
2. Grants the inventor exclusive rights to use, sell, or license the invention for a specific period (typically 20 years).

Patents Act in India

Introduction to Patents

- **Definition**: A patent is a government-granted right to an inventor, giving exclusive control over their invention for a limited time.
- **Purpose**: Protects inventions, processes, or developments from being used without authorization.
- **Duration**: Typically valid for 20 years from the filing date, depending on the type of patent.

Key Highlights of the Patents Act

1. **Amendments**:
   - The **Patents Act, 1970**, became effective in 1972.
   - Major amendments were made in **2005**, introducing:
     - Product patents for food, drugs, chemicals, and microorganisms.
     - Section 3(d), which prevents patenting of minor modifications to existing knowledge.
2. **What Can Be Patented**:
   - New and useful processes, methods, machines, or substances.
   - Must be **novel**, **non-obvious**, and **industrially applicable**.
   - Discoveries or natural phenomena cannot be patented.

4. **Types of Patents**:
   - **Ordinary Patents**: Basic inventions.
   - **Patents of Addition**: Improvements to existing patents.
   - **Convention Patents**: Filed under international agreements.

Who Can Apply for a Patent?

- Inventors.
- Legal representatives (if the inventor is deceased).
- Companies or individuals assigned the invention.

Documents Required for Patent Filing:

- Application form.
- Specification (provisional or complete).
- Drawings (if applicable).
- Declaration of inventorship.
- Priority documents (if claiming earlier filings abroad).
- Fees.

Patent Process

1. **Filing**:
   - Submit the application based on the inventor's location or place of origin of the invention.
2. **Examination**:
   - Patent Office examines the application for compliance.
   - Objections, if any, must be resolved within 15 months.
3. **Publication**:
   - Once accepted, the patent is published in the **Gazette of India**.
4. **Opposition**:
   - Anyone can oppose within four months of publication.
5. **Grant of Patent**:
   - If no opposition or resolved, the patent is granted.

Rights of the Patentee

- Exclusive rights to make, use, or sell the invention.
- Ability to license or sell the patent.
- Right to take legal action for infringement.

Duration and Renewal

- **Standard Patents**: 20 years from filing.
- **Renewal Fees**:
  - Payable yearly starting from the third year.
  - Grace period of six months available with a late fee.

Special Provisions

1. **Compulsory Licenses**:
   - Granted if the invention is not used commercially within three years.
2. **Licenses of Right**:
   - For food, drugs, and chemical-related patents, licenses are mandatory after three years of grant.
3. **Restoration**:
   - A lapsed patent due to non-payment of fees can be restored within one year.

Infringement

- Using or copying a patented invention without permission is considered an infringement.
- Exceptions include:
  - Government use.
  - Research purposes.
  - Use on foreign vessels temporarily in India.

Appeals

- Appeals against Patent Office decisions must be filed in the **High Court** within three months.

This Act ensures a fair balance between encouraging innovation and protecting public interest.

UNIT – 5

Indian Partnership Act, 1932

What is a Partnership?

A partnership is an agreement between two or more persons to run a business together and share its profits. It is governed by the **Indian Partnership Act, 1932**.

Essential Elements of a Partnership

1. **Number of Partners**:
    - Minimum: 2 people.
    - Partners must be capable of entering into a contract (e.g., adults of sound mind).
2. **Agreement**:
    - There must be an agreement between the partners.
    - It can be **oral** or **written**, express or implied.
3. **Profit Sharing**:
    - Partners agree to share profits (but sharing profits alone doesn't automatically make someone a partner).
4. **Mutual Agency**:
    - The business is run by all the partners or one partner acting on behalf of all.

Key Points

- Members of a **Hindu Undivided Family (HUF)** or a **Burmese Buddhist husband and wife** running a business are not considered partners.
- Co-ownership of property or sharing profits without an agreement does not make people partners.

Examples:

1. Joint property owners sharing rent are not partners.
2. Creditors receiving money from a business's profits are not partners.

Minors as Partners (Section 30)

- **Rights**:
  - Share in profits and property.
  - Inspect accounts and take copies.
- **Liabilities**:
  - Not personally liable for debts, but their share in the firm can be used to settle liabilities.

When a Minor Becomes an Adult:

- They can choose to:
  1. **Become a partner**: Then they will be personally liable for all firm activities, even those from when they were a minor.
  2. **Not become a partner**: They must give public notice and their rights/liabilities remain limited to their minor status.

Types of Partnerships

1. **Partnership at Will**:
   - No fixed duration or purpose.
   - Can be dissolved by any partner giving notice.
2. **Particular Partnership**:
   - Formed for a specific time or purpose.
   - Ends when time or purpose is complete.

Types of Partners

1. **Active/Working Partner**:
   - Invests capital and manages the business.
   - Known to outsiders.
   - Shares profits and losses.
2. **Sleeping Partner**:
   - Invests capital but doesn't participate in business activities.
   - Not known to outsiders.
3. **Secret Partner**:
   - Actively participates in business but keeps their connection with the firm hidden from outsiders.
4. **Limited Partner**:
   - Liability is limited to their capital investment.
   - Doesn't actively manage the firm.

5. **Partner in Profits Only**:
    - Shares only profits, not losses.
    - Cannot manage the firm.
6. **Nominal Partner**:
    - Lends their name or reputation to the firm.
    - Does not invest or participate but is liable to outsiders.

Partnership Deed

A **Partnership Deed** is a written agreement outlining the mutual rights and duties of partners. It is not mandatory but highly recommended.

Contents:

- Name of the firm.
- Names and addresses of partners.
- Business details and profit-sharing ratio.
- Capital contribution by each partner.
- Salaries and responsibilities.
- Rules for partner retirement or expulsion.
- Settlement of disputes.

Difference between Partnership firm and other forms of business

BASIS FOR COMPARISON	PARTNERSHIP FIRM	COMPANY
Meaning	Agreement between two or more persons to carry on a business and share profits and losses.	An association of persons investing in a common stock for business and profit sharing.
Governing Act	Indian Partnership Act, 1932	Indian Companies Act, 2013
Creation	By mutual agreement between partners.	By incorporation under the Companies Act.
Registration	Voluntary	Compulsory
Management	Managed by partners themselves.	Managed by directors.
Liability	Unlimited	Limited
Contractual Capacity	Cannot enter into contracts in its own name.	Can sue and be sued in its own name.
Use of the word 'Limited'	No requirement.	Must use 'Limited' or 'Private Limited' as applicable.
Legal Formalities for Dissolution	Minimal legal formalities.	Extensive legal formalities for winding up.
Separate Legal Entity	No	Yes
Mutual Agency	Yes	No
Audit	Not compulsory	Various types of audits are mandatory.
Number of Members	Minimum: 2; Maximum: 100 (with some exceptions).	Private Company: Minimum 2, Maximum 200; Public Company: Minimum 7, No maximum limit.

BASIS FOR COMPARISON	PARTNERSHIP	LIMITED LIABILITY PARTNERSHIP (LLP)
Meaning	An arrangement where two or more persons agree to carry on a business and share profits and losses.	A business operation combining features of a partnership and a body corporate.
Governed By	Indian Partnership Act, 1932	Limited Liability Partnership Act, 2008
Registration	Optional	Mandatory
Charter Document	Partnership deed	LLP Agreement
Liability	Unlimited	Limited to capital contribution, except in case of fraud.
Contractual Capacity	Cannot enter into contracts in its own name.	Can sue and be sued in its own name.
Legal Status	No separate legal entity; partners collectively represent the firm.	Separate legal entity distinct from its partners.
Maximum Partners	100 partners	No limit
Property Ownership	Cannot hold property in the firm's name.	Can hold property in the LLP's name.
Perpetual Succession	No	Yes
Relationship	Partners are agents of the firm and other partners.	Partners are agents of the LLP only.

BASIS FOR COMPARISON	PARTNERSHIP	HINDU UNDIVIDED FAMILY (HUF)
Relationship	Relation exists between the partners.	HUF is treated as a single entity, and it cannot form a partnership by itself.
Management	All partners may participate in the management.	The Karta (head of the family) manages the business.
Share of Profit	Profit is shared as per the agreement between the partners.	No such sharing of profits; profits belong to the joint family.
Property	Property belongs to all partners collectively, even if held in the firm's name.	Business is a part of ancestral joint property, shared by all family members.

Rights and Duties of Partners:

Duties (Section 9):

1. Carry on the firm's business to the best common advantage.
2. Be honest, just, and fair to one another.
3. Provide full and accurate accounts of all firm-related matters to other partners.
4. Compensate the firm for losses caused by personal fraud or negligence.

Rights of Partners:

1. Participate in managing the business.
2. Access all records, books, and accounts of the firm.
3. Share equally in profits and losses (unless agreed otherwise).
4. Retire from the partnership by giving proper notice (if it's a partnership at will).
5. Act in emergencies to protect the firm.
6. Continue in the partnership and not be expelled without valid grounds.

Authority of a Partner (Section 18):

Implied Authority:

- A partner can act on behalf of the firm for regular business activities (e.g., signing contracts).
- Exceptions (acts that require special permission):
  - Admitting liability in court cases.
  - Buying or selling immovable property.
  - Opening a bank account in personal names.

Express Authority:

- When a partner is specifically granted authority through written or spoken agreements.

Dissolution of Partnership Firm:

Modes of Dissolution:

1. **By Agreement (Section 40):** All partners agree to dissolve the firm.
2. **Compulsory Dissolution (Section 41):**
   - All partners (except one) become insolvent.
   - Business becomes illegal.
3. **On Specific Events (Section 42):**
   - Death or insolvency of a partner.
   - Completion of the business goal.
4. **By Notice (Section 43):** A partner gives notice to dissolve the firm.
5. **By Court (Section 44):**

   - Partner becomes incapable or acts unlawfully.
   - Business is carried on at a loss.

Effect of Dissolution:

- Partners continue their authority for winding up activities.
- Settling debts follows this order:
   1. Pay outside creditors.
   2. Pay partners' loans.
   3. Return partners' capital.
   4. Distribute any remaining profits.

Limited Liability Partnership (LLP) Act, 2008:

Salient Features:

1. LLP has a **separate legal identity** from its partners.
2. Partner liability is limited to the capital they agree to contribute.
3. Partners are not responsible for others’ misconduct or unauthorized actions.
4. Must have at least **two partners** (one must reside in India).
5. Firms or companies can convert into an LLP.
6. LLP can be **voluntarily dissolved** or wound up by a High Court.

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Partnership, Private Company, and Limited Liability Partnership (LLP)

S. No.	Basis	Partnership	Private Company	LLP
1	Prevailing Law	Indian Partnership Act, 1932	Companies Act, 2013	Limited Liability Partnership Act, 2008
2	Capital Required	No minimum amount	Minimum ₹1 lakh	No minimum amount
3	Time of Registration	5-7 days	7-10 days	7-10 days
4	Name of Entity	Any name	Must include ‘Private Limited’	Must include ‘LLP’
5	Registration	Optional	Mandatory	Mandatory
6	Creation	By contract	By law	By law
7	Distinct Entity	Not separate legal entity	Separate legal entity	Separate legal entity
8	Cost of Formation	Negligible	High	Moderate
9	Perpetual Succession	No	Yes	Yes
10	Charter Document	Partnership Deed	Memorandum and Articles of Association	LLP Agreement
11	Common Seal	No	Required	Not mandatory
12	Incorporation Formalities	Simple with Registrar of Firms	Complex, multiple filings with ROC	Filing LLP Agreement with ROC
13	Foreign Participation	Not allowed	Allowed	Allowed
14	Number of Members	Feb-20	2-200	Minimum 2
15	Ownership of Assets	Joint ownership by partners	Company owns assets	LLP owns assets
16	Legal Proceedings	Only registered firms can sue	Can sue and be sued	Can sue and be sued
17	Liability	Unlimited	Limited to unpaid share value	Limited to capital contribution
18	Tax Liability	Flat 30% + cess	Flat 30% + cess	Flat 30% + cess
19	Principal-Agent Relationship	Partners are agents of firm and each other	Directors are agents of the company	Partners are agents of LLP, not each other
20	Transfer of Rights	Not transferable	Easily transferable	Governed by LLP Agreement

21	Succession Rights	Legal heirs receive financial share only	Shares transferred to legal heirs	Legal heirs receive financial share only
22	Identification Number	Not required	DIN for directors	DPIN for designated partners
23	Digital Signature	Not required	Mandatory for at least one director	Mandatory for at least one designated partner
24	Dissolution	By agreement, insolvency, or court order	By voluntary or NCLT order	By voluntary or NCLT order
25	Admission of Partner	As per Partnership Agreement	By purchasing shares	As per LLP Agreement
26	Cessation of Partner	As per Partnership Agreement	By selling shares	As per LLP Agreement or notice
27	Managerial Personnel	Partners manage	Directors appointed	Designated Partners manage
28	Statutory Meetings	Not required	Mandatory	Not required
29	Statutory Records	Maintain books for tax purposes	Maintain books, statutory registers, minutes	Maintain books of accounts
30	Annual Filing	Not mandatory	File Annual Financial Statement and Return	File Statement of Accounts and Solvency, and Return
31	Share Certificate	Not applicable	Proof of shareholding	LLP Agreement evidences ownership
32	Audit of Accounts	Only for tax purposes	Mandatory annually	Mandatory unless turnover < ₹40L or contribution < ₹25L
33	Accounting Standards	Not applicable	Mandatory	Not fully applicable yet
34	Merger/Amalgamation	Not possible	Allowed	Allowed
35	Oppression/ Mismanagement	No remedy available	Remedy available	No provisions
36	Creditworthiness	Depends on partners' goodwill	High due to regulatory framework	Moderate due to hybrid nature

The **Limited Liability Partnership Act, 2008** outlines the structure and rules for Limited Liability Partnerships (LLPs) in India. Here's a simplified version:

1. **Short Title, Extent, and Commencement**:
   - The law is called the **Limited Liability Partnership Act, 2008**.
   - It applies throughout **India**.
   - It comes into effect on a date set by the **Central Government**.
2. **Definitions**:
   - **Partner**: A person involved in the LLP.
   - **Advocate**: A lawyer as defined in the **Advocates Act, 1961**.
   - **Appellate Tribunal**: A body for handling appeals in corporate matters.
   - **Business**: Any trade or profession.
   - Other technical terms are defined in the Act for clarity.
3. **LLP as a Body Corporate**:
   - An LLP is considered a **legal entity** separate from its partners, meaning it can own property and enter into contracts.
   - LLPs have **perpetual succession**, meaning they continue to exist even if partners change.
4. **Indian Partnership Act Does Not Apply**:
   - The **Indian Partnership Act, 1932**, does not apply to LLPs, unless specifically mentioned in the LLP Act.
5. **Partners**:
   - An LLP can have individuals or companies as partners.
   - Some individuals (e.g., mentally unsound, undischarged insolvents) cannot become LLP partners.
6. **Minimum Number of Partners**:
   - An LLP must have at least **two partners**.
   - If there is only **one partner** for more than six months, that partner becomes personally liable for the LLP's debts during that time.
7. **Designated Partners**:
   - Every LLP must have at least **two designated partners**, who are individuals, and at least one must be a **resident in India**.
   - Designated partners are responsible for compliance with the law.
8. **Liabilities of Designated Partners**:
   - Designated partners are responsible for ensuring the LLP complies with legal requirements (like filing documents).
   - They can be penalized if the LLP violates any rules.
9. **Changes in Designated Partners**:
   - If a designated partner leaves, the LLP must appoint a new one within **30 days**.
10. **Punishment for Violations**:

- If an LLP doesn't follow the rules regarding designated partners, it can face fines, ranging from **₹10,000 to ₹5 lakh** depending on the violation.

Incorporation of LLP:

1. **Who Can Form an LLP?**
   - Two or more individuals must come together to start a business for profit.
2. **Incorporation Documents:**
   - The individuals (founders) must sign an incorporation document.
   - This document is filed with the Registrar of the State where the business will be located.
   - Along with the document, a certificate (signed by a professional like an advocate or company secretary) must be submitted to confirm that all legal requirements are met.
3. **What the Incorporation Document Must Include:**
   - Name of the LLP.
   - Proposed business activities.
   - Address of the registered office.
   - Names and addresses of partners and designated partners.
   - Other details as prescribed by the law.
4. **Registration:**
   - Once the documents are filed correctly, the Registrar registers the LLP within 14 days and issues a certificate of incorporation. This certificate is conclusive evidence that the LLP exists.

Registered Office and Notices:

- Every LLP must have a registered office.
- Documents can be served to the LLP at its registered office or any other address provided by the LLP.
- An LLP can change its registered office by filing a notice with the Registrar.

LLP's Name and Legal Identity:

1. **LLP Name:**
   - Every LLP must have "Limited Liability Partnership" or "LLP" in its name.
   - The name cannot be similar to any existing partnership, company, or trademark.
2. **Name Reservation:**
   - Before registration, a name can be reserved for an LLP for a period of 3 months by applying to the Registrar.
3. **Changing the Name:**
   - An LLP can change its name by filing a notice with the Registrar.

Partners and Their Relationship:

1. **Eligibility:**
    - The individuals who sign the incorporation document are the initial partners.
2. **Partnership Agreement:**
    - The rights and duties of partners are defined by the LLP agreement.
    - If no agreement exists, the default rules apply (as specified in the LLP Act).
3. **Cessation of Partnership:**
    - A partner can leave the LLP by giving a 30-day notice or as per the LLP agreement.
    - A partner also ceases to be a partner upon death, insolvency, or being declared of unsound mind.
    - A former partner may still be liable for obligations incurred while they were part of the LLP.
4. **Changes in Partners:**
    - If a partner joins or leaves the LLP, the LLP must file a notice with the Registrar.

Liability of LLP and Partners:

1. **LLP Liability:**
    - The LLP itself is responsible for its obligations.
    - Partners are not personally liable for the LLP's debts unless there's fraud or wrongful acts.
2. **Partner Liability:**
    - Partners are only liable for their own wrongful actions, not for the actions of other partners.
3. **Fraud and Unlimited Liability:**
    - If the LLP or its partners act fraudulently, they can be held personally liable for debts.
    - Fraudulent actions can lead to criminal penalties and compensation requirements.

Taxation of LLP:

1. **Tax Treatment:**
    - An LLP is taxed in the same way as a partnership firm under the Income Tax Act, 1961.
    - The LLP's income is taxed at 30%, and if income exceeds ₹1 crore, a surcharge of 12% applies.
    - Additionally, there is a 4% health and education cess.
2. **Alternate Minimum Tax (AMT):**
    - AMT applies to LLPs, similar to Minimum Alternate Tax (MAT) for companies. This ensures that an LLP pays a minimum tax amount if its income is below a certain threshold.

Particulars	MAT (Section 115JB)	AMT (Section 115JC to 115JF)
Relevant Section	Section 115JB	Section 115JC to Section 115JF
Applicability	Company	Taxable person other than a company, claiming deduction under section 80H to 80RRB (except section 80P), or section 10AA or section 35AD
Taxability	MAT is payable on book profit	AMT is payable on adjusted total income
Reporting Requirement	Form 29B	Form 29C

Applicability of AMT to LLPs:

- **AMT applies to an LLP** if it has claimed any of the following deductions:
    1. **Section 80H to 80RRB** (except Section 80P): Deductions for various incomes like export profits, royalty income, etc.
    2. **Section 35AD**: Deductions for investment in specified businesses like cold chain, warehousing, etc.
    3. **Section 10AA**: Deductions for units in Special Economic Zones (SEZ).

Threshold Exemption for AMT:

- The AMT provisions only apply to the following if their "adjusted total income" exceeds INR 20 Lakhs:
    - **Individuals**
    - **Hindu Undivided Families (HUF)**
    - **Association of Persons (AOP)**
    - **Body of Individuals (BOI)**
    - **Artificial Juridical Person**
- **Important**: LLPs and partnership firms **do not** qualify for this exemption, meaning AMT will apply regardless of income level for them.

Rate of AMT:

- **Standard AMT**: 18.5% on the adjusted total income, plus applicable surcharge and cess.
- **For units in an IFSC (International Financial Services Centre)**:
    - The AMT rate is **9%** (plus surcharge and cess), but only if the unit is earning income in convertible foreign exchange.
    - This lower rate is effective from the **Assessment Year 2019-2020**.

Calculation of Adjusted Total Income:

- AMT is applied to the "adjusted total income," which is essentially the total income after adjustments for deductions claimed under sections like 80H to 80RRB, 35AD, and 10AA.

To calculate AMT, the **adjusted total income** must be calculated first, and then the applicable AMT rate is applied to that income.

Particulars	Amount (INR)
Total taxable income of the LLP	XXX
Add: Amount of deduction claimed under Section 80H to Section 80RRB (except Section 80P)	XXX
Add: Amount of deduction claimed under Section 35AD (reduced by the depreciation allowable as per Section 32)	XXX
Add: Amount under Section 10AA	XXX
Adjusted Total Income	XXX

Computation of tax liability If AMT provisions apply to the LLP, in that case, the LLP tax liability would be calculated as –

Particulars	**Amount (INR)**
Tax liability computed as per the normal provisions of the Income Tax Act (A)	XXX
Tax liability computed as per AMT provisions (B)	XXX
Tax payable by the LLP	Higher of (A) or (B)

AMT Credit

- **What is AMT Credit?**
  - If an LLP pays tax based on AMT (Alternative Minimum Tax), it can claim AMT credit.
  - AMT credit is the difference between the tax paid under AMT and the tax that would have been paid under normal tax provisions.

- **Formula for AMT Credit**:
  AMT Credit = Tax paid under AMT - Tax computed under normal provisions.

- **How is AMT Credit Used?**
  - AMT credit can be used in future years when the normal tax payable is higher than the AMT.
  - **Formula for utilization of AMT credit**:
    AMT credit utilization = Tax payable under normal provisions - Tax payable under AMT.
- **How Long Can AMT Credit Be Used?**
  - AMT credit can be carried forward for up to **15 years**.
  - If not used within 15 years, the AMT credit expires (laps).

Reporting Requirement

- If AMT applies, the LLP needs to get a report from a **Chartered Accountant** in **FORM 29C**. This report certifies that the calculation of adjusted total income and AMT is correct as per the rules.

Conversion of LLP

LLPs can be formed by converting different types of entities:

1. **Conversion from Firm to LLP**: A firm can convert to an LLP by following the rules in the Second Schedule.
2. **Conversion from Private Company to LLP**: A private company can convert to an LLP by following the rules in the Third Schedule.
3. **Conversion from Unlisted Public Company to LLP**: An unlisted public company can convert to an LLP following the rules in the Fourth Schedule.

Registration and Effect of Conversion

1. **Process for Registration**:
   - Once the required conditions are met, the Registrar will register the conversion documents and issue a certificate confirming the LLP's registration.
   - The LLP must inform the original registrar (from where the firm or company was registered) about the conversion within **15 days**.
2. **Effects of Conversion**:
   - After the conversion, the LLP is legally bound by the rules mentioned in the applicable schedule (Second, Third, or Fourth).
   - All property, rights, liabilities, and obligations of the previous entity (firm or company) automatically transfer to the new LLP.
   - The original firm or company is dissolved and removed from the relevant records.