BBA 3310
Business Law
Study Module

স্কুল অব বিজনেস
SCHOOL OF BUSINESS

বাংলাদেশ উন্মুক্ত বিশ্ববিদ্যালয়
BANGLADESH OPEN UNIVERSITY

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BBA 3310
Business Law

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ESSENTIAL ELEMENT OF CONTACT

1

Unit Highlights

- Lesson – 1: INTRODUCING LAW
- Lesson – 2: CONTRACT ACT AND ELEMENTS OF CONTRACT

Technologies Used for Content Delivery

- BOUTUBE
- BOU LMS
- WebTV
- Web Radio
- Mobile Technology with MicroSD Card
- LP+ Office 365
- BTV Program
- Bangladesh Betar Program

LESSON – 1: INTRODUCING LAW

After completion of this lesson you will be able to –

- *Define law and business law*
- *Explain the relationship between society and law*
- *Define the commercial law*
- *Describe the sources of commercial law*
- *Analyze how societal rules changes the law or vice-versa*

DEFINITION OF LAW

Professor Holland in his book 'Jurisprudence' mentioned that, "Law is the rule of external human action enforce by the sovereign political authority".

Woodrow Wilson in his book mentioned that, "Law is that portion of the established thought and habit which has found a distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government".

According to Ormonds in his book "The Rule of the Calcutta High Court" define business law as " Business suits arising out of the ordinary transactions of merchants, bankers and traders amongst others, those relating to the constructions of mercantile documents, export and import of merchandise, affreightment, carriage of goods by land, insurance, banking and mercantile agency and mercantile usages and debts arising out of such transactions."

SOCIETY AND LAW

The term 'society' is used to mean a community or a group of persons, living in any region, who are united together by some common bond.

A 'common bond' is formed when some uniformity of factors: like nearness, nature of the people, habit, custom, inhibition, beliefs, culture, tradition etc. appears. The 'common bond' lead to forming social rules or rules of social behavior. The rules are made by members of the society. Disobedience of the rules is followed by punishment in the form of social disapproval. There is no positive penalty associated with the violation of social rules except excommunication or ostracism.

But 'law' unlike social rules, is enforced by the State. Law, according to Holland is "a rule of external human action enforced by the sovereign political authority". The objective of law is to bring order in the society with a view to enable its members to progress and develop with some sort of security regarding the future.

From the above discussion it follows that although custom, usages and traditions indicate a particular social conduct, law or definitive rules are made to ensure the peace and progress of a society.

The State makes laws. Disobedience of State laws involves, a penalty which is enforced by the government through the sovereign power of the State. Whatever is not enforceable is not Law. Laws of the State are applicable to all without exception in identical circumstances.

DEFINITION OF COMMERCIAL LAW

The law of a country related to many subjects e.g., inheritance and transfer of property, relationship between persons, crimes and other punishments, as well as matters relating to industry, trade and commerce. The term commercial law or mercantile law is used to include only the last of the aforesaid subjects, viz., rules relating to industry, trade and commerce.

SOURCES OF COMMERCIAL LAW

The main sources of commercial law are as follows:

1. **Parliament:** In every country the main sources of law is the parliament of that particular country. In Bangladesh the highest authority of formulating law is parliament.
2. **English Mercantile law:** Many rules of English Mercantile Law have been incorporated into Bangladeshi Law through statutes or judicial decisions.
3. **Judicial decision:** Judges interpret and explain statutes. Rules of equity and good conscience are incorporated into law through judicial decisions. Whenever the law is silent on a point, the judge has to decide the case according to his idea of what is equitable.
4. **Custom and Usage:** A customary rule is binding where it is ancient, responsible, and not opposed to any statutory rule. A custom becomes legally recognized when it is accepted by a court and is incorporated in a judicial decision.

CHANGE OF LAW AND CHANGE OF SOCIAL RULES

The legal system of a country reflects the rules of society. If there is a change of social rules usually there is a change of law. For example, in the middle ages in Europe, the landlord and the feudal system prevailed. At that time the rights of the peasant was very restricted. In modem times when the feudal system was abolished the rights of the peasant and the citizens were enlarged. Therefore change of social rules leads to change of law.

The converse of the above also applies, i.e., change of law leads to change of the rules of society. Legislation has enlarged 'the rights of Hindu women regarding inheritance, property rights and marital rights. In these cases the change of law has been accepted by the society. Therefore, it can be concluded that there is a dependence between law and social rules and vice versa.

LESSON – 2: CONTRACT ACT AND ELEMENTS OF CONTRACT

After completion of this lesson you will be able to –

- *Define contract*
- *Analyze the element of contract*
- *Analyze the rule of law*

DEFINITION OF CONTRACT AND CONTRACT ACT

According to Contract Act – 1872 [Sec 2 (h)], "An agreement enforceable by law is a contract".
According to Sir Willium Anson, "A contract is an agreement enforceable at law between two or more persons, by which rights are required by one or more by to acts or forbearances on the part of the other or others".

According to Sir Willium Anson, "The Law of Contract is intended to insure that what a man has been led to expect shall come to pass and what has been promised to him shall be performed".

ESSENTIAL ELEMENTS / FEATURES OF CONTRACT OR ALL CONTRACTS ARE AGREEMENT BUT ALL AGREEMENTS ARE NOT CONTRACT

The essential elements of contract are discussed below:

1. **Plurality of member:** There must have two or more parties in a contract. No contract will be taken place without at least two parties.
2. **Offer and acceptance:** There must be a lawful offer by one party and a lawful acceptance of the offer by the other party or parties. Lawful implies that the offer and acceptance must be conforming to the rules laid down in the Contract Act.
3. **Intention to establish legal relationship:** There must be an intention (among the parties) that the agreement shall result in or create legal relations. An agreement to dine at a friend's house is not an agreement but an agreement to buy or sell goods are agreements intended to create some legal relationship.
4. **Lawful consideration:** Subject to certain exceptions, an agreement is legally enforceable only when each of the parties to gives something and gets something. An agreement to do something for nothing is usually not enforceable by law.
5. **Legality of the object:** The object for which the agreement has been entered into must not be illegal, or immoral or opposed to the public policy.
6. **Capacity to contract:** The parties to an agreement must be legally capable of entering into an agreement; otherwise it can not be enforced by a court of law. Want of capacity arises from minority, lunacy, idiocy, drunkenness, and similar other factors.
7. **Free consent:** In order to be enforceable the agreement must be based on the free consent of all the parties. There is absent of genuine consent if the agreement is induced by coercion, undue influence, mistake, misrepresentation, and fraud.
8. **Certainty:** The agreement must not be vague. It must be possible to ascertain the meaning of the agreement, for otherwise it can not be enforced.
9. **Possibility of performance:** The agreement must be capable of being performed. A promise to do an impossible thing cannot be enforced.
10. **Written and registered:** An oral contract is a perfectly good contract, except in those cases where written and/or registration is required by some statute.

The elements above must all be present. If any one of them is absent, the agreement does not become a contract. An agreement which fulfills all the essential elements is enforceable by law and is called a contract. From this, it can be said that “all contract is an agreement but all agreement is not a contract”.

RULE OF LAW

The Rule was summarized by Diceyl as follows:

1. In the first Rule of Law states that, "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts."
2. In the second place, Rule of Law means that, "no man is above law". Every man whatever his rank or condition, is subject to the ordinary law of the State and amenable to the jurisdiction of ordinary tribunals. "What is law-legal right and legal obligation for me--must hold equally as such for all citizens."
3. In the third place, the Rule of Law is the result of statutes and judicial decisions determining the rights of private persons. Thus the constitutional law of the country follows from the ordinary law of the land.

Discussion Questions:

1. What do you understand by law?
2. How society and law are interrelated? Explain.
3. What do you understand by commercial law?
4. Describe the sources of commercial law.
5. How change of law and change of social rules occurred? Discuss.
6. Define contract and contract act.
7. Describe the essential elements / features of contract
8. “All contracts are agreement but all agreements are not contract” – explain the statement.
9. Describe the rule of law

Book Recommended: Commercial Law and Industrial Law, by- Sen and Mitra, 26th Edition.

Reference Book: Commercial and Industrial Law, By- Mohammad Khalekuzzaman, The Jamuna Publishers.

OFFER AND ACCEPTANCE

2

Unit Highlights

- Lesson – 1: RULES OF OFFER
- Lesson – 2: RULES OF ACCEPTANCE

Technologies Used for Content Delivery

- BOUTUBE
- BOU LMS
- WebTV
- Web Radio
- Mobile Technology with MicroSD Card
- LP+ Office 365
- BTV Program
- Bangladesh Betar Program

LESSON – 1: RULES OF OFFER

After completion of this lesson you will be able to –

- *Define offer*
- *Describe the rules regarding offer*
- *Discuss the ways of communicating offer*
- *Analyze the ways of revocation of offer.*

DEFINITION OF OFFER / PROPOSAL, AND PROMISE

According to Contract Act – 1872 [Sec 2 (a)], "When one person is signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."

Contract Act – 1872 [Sec 2 (b)], "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise."

Contract Act – 1872 [Sec 2 (c)], "The person making the proposal is called the 'promisor' and the person accepting the proposal is called the 'promise'."

Example: Mr. X offer to sell his car to Mr. Y at the price of Tk. 2,00,000. This is a proposal. Mr. X is the promisor or the offeror, and Mr. Y is the offeree. If Mr. Y agrees to buy the car at the price stated; Mr. Y becomes the promise or the acceptor.

RULES REGARDING OFFER

The Contract Act contains various rules regarding offer or proposal. They can be summarized up as follows:

1. **Proposal can be both expressed and implied:** When an offer is made by stating so in words or in writing, it is called an express offer. When an offer is implied from the conduct of a person, it is called an implied offer.
2. **Offer can be made for particular person, class or people at large:** An offer made to a definite person or a definite class of person is called a specific offer. An offer send to all persons (or people at large) is called a general offer.
3. **Offer can be conditional:** Offer may be conditional and there may be numerous conditions. The rules regarding conditional offer are:
   a) The condition of the offer must be mentioned clearly.
   b) The offer must be presented or communicated in a reasonable way.
   c) The offer must not breach of fundamental rights.
4. **Terms of offer must be definite:** The offer must be specific. X says to Y, "I will give you *some* money if you marry Z". This is not an offer which can be accepted because the amount of money to be paid is not definite.
5. **Mere declaration of intention or statement is not an offer:** The intention to make a declaration is not an offer. For example, in an auction sale, articles are displayed with an intention that the bidders present may bid for them i.e. may make an offer. Thus in an auction sale a bid is an offer while the fall of the hammer signifies the acceptance of the auctioneer.
6. **Offer must be communicated to the offeree:** A person cannot accept an offer unless he knows of the existence of the offer. For example, P offers a reward to anyone who returns his lost dog. Q finding the dog brings it to P without having heard of the offer. Here Q is

not entitled to the reward because the offer was not communicated to the offeree before finding the dog.

7. **Offer must be intention to establish legal relationship:** The offer must be one which capable of creating a legal relationship. A social party or an invitation to play cards is not a legal relationship.
8. **Offer can be revoked before acceptance:** An offer can be revoked by the offerer before the acceptance of the offeree.
9. **Any offer is not stand for ever:** If the accepted deadline of the offer is mentioned, then after that time or if the deadline is not mentioned, then after a reasonable time the offer will be voided. The reasonable time will be determined by the court.

HOW IS AN OFFER TO BE COMMUNICATED?

An offer may be communicated to the offeree or offerees by word of mouth, by writing or by conduct. A written offer may be contained in a letter or a telegram. A circular or advertisement or a notice may be written in such a language that it amounts to an offer. A tramway car and a bus going along a street and picking up passengers are examples of offers by conduct.
Section 4 states: "The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made."

WAYS OF REVOCATION OF OFFER OR WHEN DOES AN OFFER LAPSE

According to Contract Act – 1872 [Sec 6], An offer comes to an end, and is no longer open to acceptance under the following circumstances:

1. **Notice of revocation:** If the offerer gives notice of revocation to the other party, i.e., expressly withdraws the offer, and the offer comes to an end. An offer may be revoked in any time before acceptance but not afterwards.
2. **After lapse of time:** When the proposer prescribes a time within which the proposal must be accepted, the proposal laps as soon as the time expires.
3. **After lapse of reasonable time:** If no time as been prescribed, the proposal laps after the expiry of a reasonable time. What is reasonable time will depend on the circumstances of the case.
4. **If terms are not fulfilled:** An offer laps by the failure of the acceptor to fulfill a condition precedent to acceptance, where such a condition has been prescribed.
5. **In case of offerer's death or mental upset:** An offer laps by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.
6. **Counter Offer:** When a counter offer is given, the original offer lapse.

LESSON – 2: RULES OF ACCEPTANCE

After completion of this lesson you will be able to –

- *Define acceptance*
- *Describe the rules regarding acceptance.*

DEFINITION OF ACCEPTANCE

According to Contract Act – 1872 [Sec 2 (b)], "When the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted."
According to Professor Anson, "Acceptance is to offer what a lighted match is to a train or gun powder. It produces something which can not be recalled or undone. But the powder may have lain till it has become damp or the man who laid the train may remove it before the match is applied."

RULES REGARDING ACCEPTANCE

The acceptance of an offer to be legally effective must satisfy the following requirements:

1. **Acceptance always must be unconditional and absolute:** "Acceptance must be absolute and unqualified" – Sec. 7(1). If there is any variation, even on an unimportant point, between the terms of the offer and the terms of the acceptance, there is no contract.
2. **Acceptance must be expressed in some usual or reasonable manner:** The offeree may express his acceptance by word of mouth, telephone, telegram or by post. These are the usual methods of communicating acceptance to the offeree. Sec. 7(2)
3. **Acceptance must be made while the given offer is enforced:** If the offer prescribes a time, the acceptance must be done within that time. If no time is prescribed the acceptance must be done within reasonable time. What is reasonable depends on the facts of the case.
4. **Mere a mental or unnoticed acceptance is not acceptance:** No contract is formed if the offeree remains silent and does nothing to show that he has accepted the offer. Acceptance must be communicated to the offeror or shown by conduct.
5. **Acceptance before proposal is not valid:** There cannot be acceptance before the offer is given from any person. Offer must be given before the acceptance. This is the natural sequence.
6. **Acceptance must be made by related actual person:** Acceptance must be made by the person of whom or class of people is related to the offer is given thereof.
7. **Acceptance must be communicated:** According to the sec 4 of Contract Act the communication of an acceptance is complete, - as against the proposor, when it is put in a course of transmission to him, so as to be out of the power of the acceptor, when it comes to the knowledge of the proposor.
8. **Acceptance can be revoked or cancelled before its communication:** According to the sec 5 of Contract Act, as without acceptance a contract cannot take place so acceptance can be revoked before the offer is communicated.

Discussion Questions:

1. Define offer. Describe the rules regarding offer.
2. Discuss the ways of communicating offer.
3. Describe the ways of revocation of offer.
4. Define acceptance. Describe the rules regarding acceptance.

Book Recommended: Commercial Law and Industrial Law, by- Sen and Mitra, 26th Edition.
Reference Book: Commercial and Industrial Law, By- Mohammad Khalekuzzaman, The Jamuna Publishers.

CONSIDERATION 3

Unit Highlights

- Lesson – 1 & 2: LAW OF CONSIDERATION

Technologies Used for Content Delivery

- BOUTUBE
- BOU LMS
- WebTV
- Web Radio
- Mobile Technology with MicroSD Card
- LP+ Office 365
- BTV Program
- Bangladesh Betar Program

LESSON – 1 & 2: LAW OF CONSIDERATION

After completion of this lesson you will be able to –

- *Define consideration*
- *Explain the types of consideration*
- *Discuss the rules regarding consideration*
- *Analyze the exception of the rule 'no consideration no contract'.*

DEFINITION OF CONSIDERATION

According to Contract Act – 1872 [Sec 2 (d)], "When at the desire of the promisor, the promise or any other person has done or abstained from doing or does of to abstain from doing or promises to do or abstains from doing something, such act or abstinence or promise is called a consideration for the promise."

According to Sir F. Pollock, "It as an act or forbearance, of one party or the promise thereof in the price for which the promise of the other is bought and the promise then given for value is enforceable."

In the English case (Currie v. Misa), consideration was defined as, some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."

TYPES OF CONSIDERATION

According to Contract Act – 1872 [Sec 2 (d)], there are three types of consideration, such as:

1. **Past consideration:** When the consideration of one party was given before the date of the promise, it is said to be past consideration. Suppose, X does some work for Y in the month of January without expecting any payment. In February Y promises to pay him some money. Here, the consideration of X is past consideration.
2. **Present consideration:** Consideration which moves simultaneously with the promise is called present consideration or **executed consideration**. Suppose, B buys an article from a shop and pays the price immediately. The consideration moving from B is present consideration.
3. **Future consideration:** When the consideration is to move at a future date, it is called future consideration or **executory consideration**. Thus a promise to pay money at a future date for goods to be delivered at a future date is a valid contract.

RULES REGARDING CONSIDERATION

The rules regarding the consideration are as follows:

1. **Consideration must be paid according to the desire of the promisor:** The act done or loss suffered by the promise must have been done or suffered at the desire of the promisor. An act done without any request is a voluntary act and does not come within the definition of consideration.
2. **Consideration may be come from promise or any other person:** A person granted some properties to his wife C directing her at the same time to pay an annual allowance to his brother R. C also entered into an agreement with R promising to pay the allowance to R. This agreement can be enforced by R even though no part of the consideration received by C moved from R.

3. **Consideration must be realistic:** The consideration must have some value in the eyes of law. It must not be sham or illusory. The impossible acts and illusory or non-existing goods cannot support a contract.
4. **Consideration need not to be adequate:** Section 25 (explanation 2) provides that "An agreement to which the consent of the party is freely given is not valid merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given.
5. **Consideration should be lawful:** Section 23 provides that, If either the consideration of the object of the agreement is illegal, the agreement cannot be enforced. The same principle applies if the consideration is immoral or opposed to the public policy.
6. **Consideration may be past, present or future:** The consideration given by the promise to the promisor for any acts may be past, present or future. – Sec 2 (d)

"NO CONSIDERATION NO CONTRACT" – EXCEPTIONS OF THE RULE

The exception of the rule ''no consideration no contract" are given below:

1. **Contract out of love and affection:** "An agreement made without consideration is void unless it is expressed in writing and registered under the law for the time being enforce for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other." Sec. 25(1)
2. **Compensational promise for voluntary service:** "An agreement made without consideration is void, unless it is a promise to compensate wholly or in part a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do." Sec. 25(2)
3. **Contract for repayment of time barred debt:** "An agreement made without consideration is void, unless it is a promise made in writing and signed by the person to be charged therewith or by this agent generally or specially authorized in that behave, to pay wholly or in part a debt of which the creditor might have enforce payment but for the law of limitation for suits." Sec. 25(3)
4. **Executed gift:** "Nothing in this section shall affect the validity, as between the donor and the donee, of any gift actually made." Sec. 25. (Explanation 1)
5. **Contract of remission or waiver of rights:** "Every promise may dispense with or remit, wholly or in part the performance of the promise made to him or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit." Sec. 63
6. **Contract for appointing agent:** "No consideration is necessary to create an agency." Sec. 185

Discussion Questions:

1. Define consideration.
2. Explain the types of consideration with example.
3. Discuss the rules regarding consideration.
4. Analyze the exception of the rule 'no consideration no contract'.

Book Recommended: Commercial Law and Industrial Law, by- Sen and Mitra, 26th Edition.

Reference Book: Commercial and Industrial Law, By- Mohammad Khalekuzzaman, The Jamuna Publishers.

TYPES AND CAPACITY TO CONTRACT

4

Unit Highlights

- Lesson – 1: TYPES OF AGREEMENTS
- Lesson – 2: CAPACITY TO CONTRACT

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LESSON – 1: TYPES OF AGREEMENTS

After completion of this lesson you will be able to –

- *Define and explain the different types of agreements*
- *Explain the void contracts or agreements*

TYPES OF AGREEMENTS

There are various types of contract. Some of them are discussed below:

1. **Valid contract or agreement:** According to the Contract Act 1872 [Sec 2(h)], "An agreement enforceable by law is contract." It is also mentioned in Sec 10 of same Act that, "All agreements are contact if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void."
2. **Void agreement:** According to the Contract Act 1872 [Sec 2(g)], "An agreement not enforceable by law is said to be void." For example - an agreement made by a minor, agreements without consideration, certain agreements against public policy; etc. These agreements are void *ab initio*. i.e. void from the beginning.
3. **Voidable contract or agreement:** According to the Contract Act 1872 [Sec 2(i)], "An agreement which is enforceable by law at the option of one or more of the parties thereto but not at the option of the other is a voidable contract." For example - X coerces Y entering into a contract for the sale of Y's house to X. This contract can be avoided by Y. X cannot enforce the contract. But if he so desires, can enforce against X.
4. **Unenforceable agreement:** The agreement which is not enforceable by law due to technical defects is an unenforceable contract. For example – non-payment of the requisite stamps for registration.
5. Illegal agreement: An illegal agreement is one which is against a law. Example, an agreement to commit murder, robbery or cheating. Suppose, P engages B to kill C and borrows Tk. 1,00,000/= from D to pay B. Here the agreement with B is illegal. The agreement with D is collateral to it, if D is aware of the purpose of the loan. In this case the loan transaction is void and D cannot recover the money. But if D is not aware of the purpose of the loan, it may be argued that the loan transaction is not collateral to the other illegal agreement and is valid.
6. **Expressed contract:** According to the Contract Act 1872 [Sec 9], "In so far as the proposal or acceptance of any promise is made in words, the promise is said to be expressed."
7. **Implied contract:** According to the Contract Act 1872 [Sec 9], "In so far as the proposal or acceptance is made otherwise than in words, the promise is said to be implied."

VOID CONTRACTS OR AGREEMENTS

According to the Contract Act 1872 enforceable in Bangladesh [Sec 2(g)], "An agreement not enforceable by law is said to be void." The void contracts according to the law are as follows:

1. **Contract by incapable person:** According to the Contract Act 1872 [Sec 11], If any person is minor in the eyes of law, if he is unsound mind or he is not capable of performing contract by law thereof the said can not perform a contract and thus his performed contract will be voided.
2. **Mutual mistake:** Where both the parties to an agreement under a mistake as to matter of fact essential to an agreement, the agreement is void. [Sec 20]

3. **Unlawful consideration and object:** The consideration or object of agreement is lawful unless – it is forbidden by law, or is of such nature that is permitted, it would defeat the provisions of any law; or it is fraudulent; or involves or implies injury to the person or property of another or, the court regards it as immoral or opposed to public policy. In of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. [Sec 23]
4. **Partly unlawful consideration and object:** Agreements whose objects or conditions are partly unlawful are void. [Sec 24]
5. **Agreement without consideration:** Agreement without consideration (except some exceptions); certain agreements against public policy are void ab initio. [Sec 25]
6. **Agreement in restrain of marriage:** "Any agreement restrain of marriage of any person other than a minor is void." [Sec 26]
7. **Agreement in restrain of lawful profession and trade:** "Every agreement by which any one is restrained exercising a lawful profession, trade or business of any kind is to that extent void." [Sec 27]

LESSON – 2: CAPACITY TO CONTRACT

After completion of this lesson you will be able to –

- *Define capacity to contract*
- *Identify who is a minor*
- *Analyze the law related to minor contract*
- *Understand about a person of sound mind*
- *Explain a person of unsound mind.*

DEFINE CAPACITY TO CONTRACT

According to the Contract Act 1872 enforceable in Bangladesh [Sec 11], "Every person is competent to contract who is at the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from conducting by any law to which he is subject." The above definition explains three qualities of a person to conduct a contract as under:

- The person would be at the age of majority according to the law; i.e., the person would not be at the age of minority.
- The person would be mentally sound; and
- The person would not be disqualified from contracting by any law; i.e., he would not be penalized or bankruptcy by the law.

WHO IS A MINOR

According to the Contract Act, a minor is one who has not completed his or her 18th year of age. So a person becomes a major after the completion of 18th year of life. To this rule there are two exceptions: i) when a guardian of the minor's person or property is appointed by a court of law and (ii) when a minor's property is taken over by the Court of Wards for management. [in either cases minority continues up to the completion of the 21 year.

THE LAW RELATING TO MINOR CONTACT

The law relating to minors contract are as follows:

1. **Contract of minors 'void ab initio':** According to the Contract Act 1872 enforceable in Bangladesh [Sec 11], An agreement by a minor is void, is based upon a strict interpretation. The reason underlying the rule is that a minor is supported to be incapable of judging what is good for him. His mental faculties are not mature and therefore the law protects him.
2. **Exemption from the liabilities of estoppels:** A minor who falsely represent himself to be a major, and thereby induces another person to enter into an agreement with him, can nevertheless *plead minority as a defense* in an action of agreement.
3. **Contract may not be made by ratification:** A minor is attaining majority cannot ratify an agreement entered into while he was a minor. The reason is that for a void agreement cannot be validated by any subsequent action and a minor's agreement is void ab initio.
4. **Benefit of the minor is enforceable:** an agreement under which a minor has received a benefit can be enforced as against the other party. A minor in whose favor a mortgage has been executed can get a decree for the enforcement of the mortgage.
5. **Minor not bound to return money:** A minor cannot be compelled to compensate for or refund any benefit which he has received under a valid agreement because section 64 and 65 of the Act do not apply to such cases.

6. **Minors liability as an agent:** A minor can draw, make, endorse, and deliver negotiable instruments so as to bind all parties except himself. When a minor and a major jointly enter into an agreement with another person, the minor has no liability but the contract can be enforced against the major if his liability can be separately ascertained.
7. **Minors liability as a partner:** A minor cannot enter into a contract of partnership. But he can be admitted into the benefits of a partnership with the consent of all the partners.
8. **Minor cannot be declared an insolvent:** A minor cannot be declared insolvent even though there are dues payables from the properties of the minor.
9. **Guardian's contract enforceable:** An agreement entered into by the guardian of a minor on his behalf stands on a different footing from an agreement entered into by the minor himself. An agreement by his guardian on his behalf is valid provide the obligations undertaken are within the power of the guardian.
10. **Liability for supplying necessaries:** The minor's property is liable for the payment of a reasonable price of necessaries supplied to the minor or to anyone whom the minor is bound to support. What is a necessary article is to be determined from the status, and the social position of the minor. The price which the trader will get is reasonable price, not he price 'agreed to' by the minor.
11. **Specific performance of a contract is not applicable:** An agreement by minor being void, the court will never direct specific performance of such an agreement by him.
12. **Minor as a shareholder of a company:** A minor can not apply for or be a member of a company. If a minor has, by mistaken, been recorded as a member, the company can rescind the transaction and remove the name from the register.

DEFINITION OF SOUND MIND

For a valid agreement it is necessary that each party to it should have a sound mind. What is a "sound mind" for the purpose of contracting is laid down in Section 12 of the Contract Act. "A person is said to be of sound mind for the purpose of making a contract if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.

PERSON OF UNSOUND MIND

According to the Contract Act 1872 [Sec 12 (Para – 1)], "A person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest."

According to the Contract Act 1872 [Sec 12 (Para – 2)], "A person who is usually of unsound mind, but occasionally of sound mind may make contract when he is sound mind."

According to the Contract Act 1872 [Sec 12 (Para – 3)], "A person who is usually of sound mind, but occasionally of unsound, may not make a contract when he is of unsound mind."

Discussion Questions:

- Define the different types of agreements with example.
- Explain the contracts or agreements that are considered to be void.
- Define capacity to contract.
- Who is a minor? Describe the laws related to minor contract
- Who is considered as a person of sound mind?
- Who is a person of unsound mind?

Book Recommended: Commercial Law and Industrial Law, by- Sen and Mitra, 26th Edition.

Reference Book: Commercial and Industrial Law, By- Mohammad Khalekuzzaman, The Jamuna Publishers.

FREE CONSENT AND ILLEGAL OBJECT

5

Unit Highlights

- Lesson – 1: CONSENT AND FREE CONSENT
- Lesson – 2: MISREPRESENTATION, MISTAKE AND UNLAWFUL AGREEMENT

Technologies Used for Content Delivery

- BOUTUBE
- BOU LMS
- WebTV
- Web Radio
- Mobile Technology with MicroSD Card
- LP+ Office 365
- BTV Program
- Bangladesh Betar Program

LESSON – 1: CONSENT AND FREE CONSENT

After completion of this lesson you will be able to –

- *Define and explain consent and free consent*
- *Define coercion and explain consequences of coercion*
- *Describe the undue influences and analyze the presumptions of undue influences.*
- *Define fraud*
- *Explain the consequences of fraud*

DEFINITION OF CONSENT AND FREE CONSENT

"All agreements are contract if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void." [Sec 10 (Para 1)]

CONSENT

"Two or more person are said to consent when they agree upon the same thing in the same sense." [Sec 13]. Consent involves a union of the wills and an accord in the minds of the parties. When the parties agree upon the same thing in the same sense, they have consensus *ad idem* (willingness). For a valid contract the parties must be *ad idem*.

FREE CONSENT

"Consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake." [Sec 14]. This section lays down that consent is not free if it is caused by: (1) Coercion, (2) Undue influence, (3) Fraud, (4) Misrepresentation, or (5) Mistake.

COERCION & CONSEQUENCE OF COERCION

"Coercion is the commuting, or threatening to commit, any act forbidden by the Penal Code (VIII of 1973) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement." [Sec. 15]
Example: P threats to shoot Q if R does not let out his house to P and R agrees to do so. The agreement has been brought about by coercion.

CONSEQUENCE OF COERCION

"When consent to an agreement is caused by coercion, fraud or misrepresentation the agreement is a contract voidable at the option of the party whose consent was so caused." [Sec. 19]

UNDUE INFLUENCE AND PRESUMPTION OF UNDUE INFLUENCE

"A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in apposition to dominate the will of the other and uses that position to obtain an unfair advantage over the other." [Sec. 16 (1)]

PRESUMPTIONS OF UNDUE INFLUENCES

Section 16 (2) provides that undue influence may be presumed to exist in the following cases:

- Where one party holds a real or apparent authority over the other or where he stands in a fiduciary relationship to the other. Fiduciary relationship means a relationship of mutual trust and confidence. [Sec. 16 (2 - a)]
- Where any party makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress. [Sec. 16 (2 - b)]

APPLICATION OF UNDUE INFLUENCE IN DIFFERENT SPHERES

From the general perspective the followings are different spheres where the undue influence can be applied:

1. **High rate of interest:** Mr. A applies to a banker for a loan at the time when there is stringency in the money market. The banker decline to make the loan except at a usually high rate of interest. Mr. A accepts the loan on these terms. This is a transaction in the ordinary course of business and the contract is not induced by undue influence.
2. **High price:** As regards high prices the general option is that if a trader puts his prices up during scarcity and a buyer agrees to pay such high prices, it is a transaction in the ordinary course of business and is not a case of undue influence. In certain cases high prices may amount to profiteering and black-marketing. They are criminal offence.
3. **Pardanshin Women:** Women, who observe the custom of Parda, i.e., seclusion from contact with people outside her own family, are peculiarly susceptible to undue influence. Therefore, a contract made by or with a pardanshin lady may be set aside by her unless the other party to the contract satisfies the court that the terms of the contract were fully explained to her and that she understood their implication.
4. **Mental distress:** A poor widow was badly in need of money for her maintenance. A money lender availed of the opportunity of her predicament and persuaded her to make an agreement to pay 100% interest. The court reduces the interest. The In Bangladesh, there are Money Lenders Acts which lay down the maximum rate of interest which can be charged. Also, under the Usurious Loans Act, the court has discretionary power to reduce rate of interest whenever they appears to be unconscionable.

DEFINE FRAUD

According to Contract Act 1872 enforceable in Bangladesh [Sec. 17], “Fraud means and includes any of the following acts committed by a party to a contract or with his connivance, or by his agent with intent to deceive another party thereto or his agent or to induce him to him to enter into the contract.

"Fraud" includes all acts committed by a person with a view to deceive another person. "To deceive" means to "induce a man to believe that a thing is true which is false" Section 17 of the Contract Act states that "Fraud" means and includes any of the following acts:

1. **False Statement:** The suggestion as to a fact of that which is not true by one who does not believe it to be true." A false statement intentionally made is fraud.
2. **Active Concealment:** The active concealment of a fact by one having knowledge or belief of the fact. Mere non-disclosure is not fraud where the party is not under any duty to disclose all facts. But active concealment is fraud.
3. **Intentional non-performance:** A promise made without any intention of performing it. Example- purchase of goods without any intention of paying for them.
4. **Deception:** Any other act fitted to deceive.
5. **Fraudulent act or omission:** Any such act or omission as the law specially declares to be fraudulent. This clause refers to provisions in certain Acts which make it obligatory to disclose relevant facts. Thus, under Section 55 of the Transfer of Property Act, the seller of immovable property is bound to disclose to the buyer all materials defects. Failure to do so amount of fraud.

CONSEQUENCE OF FRAUD

According to Contract Act 1872 enforceable in Bangladesh [Sec. 19], A party who has been induced to enter into an agreement by fraud has the following remedies open to him:

- **Rejection of contract:** He can avoid the performance of the contract
- **Compel to obey contract:** He can insists that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true.
- **Claim of damage:** The aggrieved party can sue damages. Fraud is a civil wrong or tort; hence compensation is payable.

LESSON – 2: MISREPRESENTATION, MISTAKE AND UNLAWFUL AGREEMENT

After completion of this lesson you will be able to –

- *Define misrepresentation*
- *Describe the cases of misrepresentation*
- *Define mistake and analyze the classes of mistakes*
- *Analyze the rules regarding mistakes*
- *Analyze the contract with unlawful agreements*
- *Discuss the agreements opposed to public policy.*

MISREPRESENTATION

According to Contract Act 1872 enforceable in Bangladesh [Sec. 19], "Misrepresentation means and includes -

1. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
2. Any breach of which, without an interest to deceive, gains and advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;
3. Causing, however innocently, a party an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement."

CASES OF MISREPRESENTATION

Section 18 of the Contract Act classifies cases of misrepresentation into three groups as follows:

1. **Unwarranted Assertion:** The positive assertion in a manner not warranted by the information of the person making it, of that which is not true, although he believes it to be true." Example: A says to B who intends to purchase A's land. "My land produces 12 maunds of rice per bigha." A believes the statement to be true although he did not have sufficient grounds for the belief. Later on it transpires that the land does not produce 12 maunds of rice. This is misrepresentation.
2. **Breach of Duty:** Any breach of duty which, without an intent to deceive, gains an advantage to the persons committing it, or anyone claiming under him by misleading another to his prejudice or to the prejudice of anyone claiming under him. Under this heading would fall cases where a party is under a duty to disclose certain facts and does not do $0 and thereby misleads the other party. In English law such cases are known as cases of "constructive fraud".
3. **Innocent Mistake:** Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

DEFINITION OF MISTAKE

Mistake may be defined as an erroneous belief concerning something. Consent cannot be said to be' "free" when an agreement is entered into under a mistake. An agreement is valid as a contract only when the parties agree upon the same thing in the same sense.

CLASSIFICATION OF MISTAKE OR RULES REGARDING MISTAKE

The Contract Act lays down the following rules regarding mistakes:

1. **Mistake of Law:** Mistake on a point of law does not affect the contract. Mistake on a point of law in force in a foreign country is to be treated as mistake of fact. A and B make a contract grounded on the erroneous, belief that a particular debt is barred by the law of limitation. This is a valid contract. The reason is that every man is presumed to know the law of his own country and if he does not he must suffer the consequences of such lack of knowledge. But if in the above case, the mistake is related to the law of limitation of a foreign country, the agreement could have been avoided.-Sec. 21.
2. **Mistake of fact:** An agreement induced by a mistake of fact is void provided the following conditions are fulfilled (Sec. 20): (i) Both the parties to the agreement are mistaken. (ii) The mistake is as to a fact essential to the agreement.
3. **Opinion:** An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake are to a matter of fact (Sec. 20). Example: X buys an article thinking that it is worth Tk. 100 while it is actually worth Tk. 50. The agreement cannot be avoided on the ground of mistake.
4. **Unilateral Mistake:** Section 22 provides that, "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to matter of fact." A mistake by one of the parties (Unilateral Mistake) does not generally affect the validity of a contract.

CONTRACT WITH UNLAWFUL AGREEMENT

The consideration or object of agreement is lawful unless – it is forbidden by law, or is of such nature that is permitted, it would defeat the provisions of any law; or it is fraudulent; or involves or implies injury to the person or property of another or, the court regards it as immoral or opposed to public policy. In of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. [Sec 23]

According to Section 23 of the Act the consideration and the object of an agreement are unlawful in the following cases:

1. **If it is forbidden by law:** An act or an undertaking is forbidden by law when it is punishable by the criminal law of the country or when it is prohibited by special legislation or regulations made by a competent authority under powers delivered from the legislature.
2. **Agreement which defeat the provision of any law:** If the object or the consideration of an agreement is of such a nature that it would indirectly lead to a violation of the law, the agreement is void.
3. **If any contract is fraudulent:** An agreement whose object is to defraud other is void.
4. **If it involves injury to the person or property to another:** If the object of an agreement is to injure the person or property of another, it is void.
5. **If the court regards it as immoral:** An agreement whose object is immoral or where the consideration is immoral is void.
6. **If it is opposed to public policy:** An agreement which is injurious to the public or is against the interests of the society is aid to be opposed to public policy.

CONTRACTS OPPOSED TO PUBLIC POLICY

The agreements which considered opposed to public policy are the following:

1. **Commercial agreement with an alien enemy:** It is a well-settled principle of law that an agreement between citizens of two countries at war with each other is void and inoperative
2. **Agreement for stifling prosecution:** Agreements for stifling or hushing up prosecutions are bad in law. When an offence has been committed, the guilty party must be prosecuted and any agreement which seeks to prevent the prosecution of such a person is opposed to public policy and is void.
3. **Traffic in public offices, honors and titles:** Agreement tending to injure the public services are void as being against public policy.
4. **Agreement creating an interest opposed to duty:** it has been held in several cases that if a person enters into an agreement hereunder he will have to follow a course of action which is against his public or professional duty; the agreement is against public policy and is bad.
5. **Agreement in restrain of personal freedom:** Agreement unduly restraining personal liberty have been held to be void as being against public policy.
6. **Agreement in restrain of parental rights:** The authority of father over children and of a guardian over his ward is to be exercised in the interest of the children and the wards respectively. The authority of a father cannot be alienated irrevocably and any agreement purporting to do so is void.
7. **Agreement in restrain of marriage:** "Any agreement restrain of marriage of any person other than a minor is void." [Sec 26]
8. **Agreement in restrain of lawful profession:** "Every agreement by which any one is restrained exercising a lawful profession, trade or business of any kind is to that extent void." [Sec 27]
9. **Agreement in restrain of marital duties:** Agreements which interfere with the performance if marital duties are void as being against public policy.
10. **Marriage brokerage:** According to English law, an agreement to pay brokerage to a person for negotiating a marriage is void because it is against public policy. The principle underlying this rule is that marriages should take place according to the free choice of parties and such choice should not be interfered with by third parties acting as brokers. In Bangladesh, however, marriages are in most cases negotiated by the parents of the parties and the custom of appointing agents or broker for finding out a suitable match is well-established.
11. **Agreement for paid dowry:** An agreement which have been conducted to take dowry by performing someone getting them married is void.

Discussion Questions:

1. Define and explain concept of consent and free consent.
2. Define coercion and explain the consequences of coercion.
3. Describe the undue influences and analyze the presumptions of undue influences.
4. Define fraud.
5. Explain the consequences of fraud.
6. Define misrepresentation.
7. Describe the cases of misrepresentation.
8. Define mistake and analyze the classes of mistakes.
9. Analyze the rules regarding mistakes.
10. Explain the contract with unlawful agreements
11. Discuss the agreements that are opposed to public policy.

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PERFORMANCE, DISCHARGE AND BREACH OF CONTRACT

6

Unit Highlights

- Lesson – 1: PERFORMANCE OF CONTRACT
- Lesson – 2: TERMINATION OF CONTRACT

Technologies Used for Content Delivery

- BOUTUBE
- BOU LMS
- WebTV
- Web Radio
- Mobile Technology with MicroSD Card
- LP+ Office 365
- BTV Program
- Bangladesh Betar Program

LESSON – 1: PERFORMANCE OF CONTRACT

After completion of this lesson you will be able to –

- *Define the performance of contract*
- *Explain the offer of performance of contract*
- *Describe who is to perform the contract*
- *Analyze the rules of reciprocal promises*
- *Apply the general rules of time and place of performance of contract*
- *Analyze the non-performance of contract within the stipulated time.*

PERFORMANCE OF CONTRACT

According to the Contract Act 1872 enforceable in Bangladesh [Sec 37], "The parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of this act or any other law."
"Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract."

THE OFFER TO PERFORM CONTRACT

According to the Contract Act 1872 enforceable in Bangladesh [Sec 38] stated that the following conditions are to be followed while to perform contract:

1. **The offer must be unconditional:** "It must be unconditional." [Sec 38(1)]
2. **Offer must be made at a proper time and place:** "It must be made at a proper time and place and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do." [Sec 38(2)]
3. **Reasonable time to inspect:** "If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise, to deliver." [Sec 38(3) Para - 1]
4. **Offer in accordance of several promisee:** "An offer to one of several joint promisees has the same legal consequences as an offer to all of them." [Sec 38(3) Para – 2]

WHO IS TO PERFORM THE CONTRACT

Rules of law to perform the contract are as follows:

1. **Performance by the promisor himself:** "If it is appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor." [Sec 40]
2. **Performance by agent:** "In other cases, the promisor or his representatives may employ a competent person to perform it." [Sec 40]
3. **Performance by the third party:** "When a promisee accepts performance of the promise from a third person he cannot afterwards enforce it against the promisor." [Sec 41]
4. **Performance of the promise after the death of the promisor:** Contract involving personal skill or volition; come to an end when the promisor dies. His heirs or legal representatives are not bound to perform such contract. In case of not involving personal skill or volition, the legal representatives of a deceased promisor are bound to perform the contract. Upon failure to do so, they will be liable for breach of contract.
5. **Performance of joint promise:** If the promises are given jointly the promisors individually or jointly bound to perform the contract.

RULES REGARDING THE PERFORMANCE OF RECIPROCAL PROMISE

According to the Contract Act 1872 enforceable in Bangladesh [Sec 2(f)], "Promises which from the consideration or part of the consideration for each other are called reciprocal promises."
The rules regarding the performance of reciprocal promise are as follows:

1. **Liability for performance of reciprocal promise at a time:** "When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise." [Sec 51]
2. **Performance of promise in order:** "When the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, when the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction required." [Sec 52]
3. **Effect of preventing performance:** "When a contract contains reciprocal promises and one party to the contract prevents the other from performing his promise, the contract become voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract." [Sec 53]
4. **Effect of non-performance of the first party:** "When a contract consists of reciprocal promises, such that one of them cannot be performed or that is performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor, cannot claim, the performance of the reciprocal promise and must make compensation to the other party to the contract for any loss which such other party may sustain by non-performance of the contract." [Sec 54]
5. **Promise to perform impossible act:** "An agreement to do an act impossible in itself is void. A contract to do an act which, after the contract is made, become impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful." [Sec 56]
6. **Promise to perform legal and illegal act:** "When persons reciprocally promise, firstly to do certain things which are legal, and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is void contact." [Sec 57]

GENERAL RULES OF TIME AND PLACE OF PERFORMANCE OF CONTRACT

The time and the place of performance of a contract are matters to be determined by agreement between the parties to the contract. In sections 46 to 50 of the Contract Act certain general rules have been laid down regarding the time and place of performance. They are as follows:

1. **Time for performance without application:** Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. Explanation - The question what is a reasonable time, is, in particular case, a question of fact. - Sec. 46.
2. **Time and place, where time is specified:** When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed. -Sec. 47.
3. **Application for performance to be at proper time and place**: When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a

proper place and within the usual hours of business. Explanation -The question 'what is a proper time and place' is, in each particular case, a question of fact. -Sec. 48.

4. **To appoint a reasonable place for the performance:** When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place. -Sec. 49.
5. **Manner and time prescribed or sanctioned by promise**: The performance of any promise may be made in any manner or at any time which the promisee prescribes or sanctions. -Sec. 50. Example- B owes A 2,000 taka. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit and this is done by C. Afterwards and before A knows of the transfer, C fails. There has been a good payment by B.

EFFECTS OF NON-PERFORMANCE OF PROMISE WITHIN STIPULATED TIME

The Contract Act 1872 enforceable in Bangladesh [Sec 55] stated the effects of non-performance of contact within stipulated time. They are:

- "When a party to a contract promises to do a certain thing at or before a specified time, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract." [Sec 55 (Para- 1)]
- "If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure of to do such thing at or before the specified time; but the promisee entitled to compensation from the promisor for any loss occasioned to him by such failure." [Sec 55 (Para- 2)]
- "If, in case a contract voidable on account of the promisors failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless at the time acceptance, he gives notice to the promisor of his intention to do so." [Sec 55 (Para- 3)]

LESSON – 2: TERMINATION OF CONTRACT

After completion of this lesson you will be able to –

- *Analyze the methods of termination of contract*
- *Define doctrine of frustration and analyze its ru*les.

METHODS / WAYS OF TERMINATION OF CONTRACT

When the obligation created by a contract comes to an end, the contract is said to be discharged or terminated. A contract may be terminated in any one of the following ways:

1. **Termination by performance:** The obligations of a party to a contract come to an end when he performs his promise. Performance by all the parties, of the respective obligations, puts an end to the contract completely. This is the normal and natural mode of terminating a contract.
2. **Termination by mutual agreement:** "If the parties to a contract agree to substitute a new contract for it or to rescind or alter it, the original contract need not be performed." [Sec 62]. Termination of contract by mutual agreement may occur in any one of the following ways:
    a) **Novation:** Novation occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties. Novation may occur by two ways: (i) change the parties and (ii) Substitution of new contract in place of the old.
    b) **Alteration:** Alteration of a contract means change in one or more of the terms of a contract. Alteration is valid if it is done with the consent of all parties to the contract. In alteration there is change in the terms of the contract but no change of the parties.
    c) **Remission:** Remission may be defined as the acceptance of less than what was contracted for. According to section 63 "Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he think fit."
    d) **Rescission:** Rescission means cancellation of all or some of the terms or a contract. It may occur in various circumstances: (i) by mutual consent, (ii) where a party to a contract fails to perform his obligation, the other party can rescind the contract without prejudice to his right to receive compensation for breach of contract.
    e) **Waiver:** Waiver means the abandonment of a right. A party to a contract may waiver his rights under the contract. Thereupon the other party is released from his obligation.
    f) **Merger:** When a superior right and an inferior right coincide and meet in one and the same person, the inferior right vanishes into the superior right. This is known as merger.
3. **Subsequent impossibility of performance:** "A contract to do an act which after the contract is made becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act, becomes impossible or unlawful." [Sec 56 (Para – 2)]. This may occur in any one of the following reasons:
    a) **Destruction of an object:** In contract in which the performance depends on the continued existence of a given person or thing, a condition is implied that the impossibility of performance arising from the perishing of the person or thing shall excuse the performance.

b) **Change of law:** The performance of a contract become unlawful by a subsequent change of law. In such cases the original contract becomes void.

c) **Failure of precondition:** When a contract is entered into on the basis of the continued existence of a certain state of things, the contract is discharged if the state of the things changes.

d) **Death or incapacity for personal services:** Where the personal qualification of a party is the basis of the contract the contract is discharged in cases of death or personal incapacity.

e) **Outbreak of war:** A contract entered into during war with an alien enemy is void ab initio. A contract entered into before the war commenced between citizens of countries subsequently at war, remains suspended during the pendency of the war. After the termination of the war, the contract receives and may be enforced.

4. **Termination by operation of law:** This may occur in any one of the following reasons:

   a) **Death:** In contract involving personal skill or ability, death terminates the contract. In other cases, the rights and liabilities pass on to the legal representatives of the death man.

   b) **Insolvency:** Upon insolvency, the rights and liabilities of the insolvent are, with certain exceptions, terminates the contract.

5. **Discharge by laps of time:** Contracts may be terminated by the laps of time.

6. **Termination by materials alteration:** If the document containing the terms of a contract is materially altered by a party to the contract, without the consent of the other parties, the contract is discharged and cannot be enforced any more. Material alteration means a change which affects or alters, in a significant manner, the rights and liabilities of the parties.

7. **Termination by breach of contract:** When a contract is broken by one party, the other parties are freed from the obligation of performing the contract. Breach of contract may arise in two ways:

   a) **Anticipatory breach of contract:** Anticipatory breach of contract occurs when a party repudiates his liability under the contract *before the time for performance is due* or when the party by his own act *disables himself* from performing the contract.

   b) **Actual breach of contract:** Actual breach of contract occurs when during the performance of the contract or at the time when the performance of the contract is due, one party either fails or refuses to perform his obligations under the contract. The refusal of the performance may be express, or implied or abstain from doing something.

DEFINITION OF DOCTRINE OF FRUSTRATION

When the common object of a contract can no longer be carried out, the court may declare the contract to be at an end. This is known as the Doctrine of Frustration.

Anson says, "Most legal systems make provision for the discharge of a contract where subsequent to its formation, a change of circumstances renders the contract legally or physically impossible of performance."

BASES / RULES OF DOCTRINE OF FRUSTRATION

The rues or bases of doctrine of frustration are as follow:

(1) **The implied terms:** In some cases it has been held that every contract contained an implied term that a particular thing or state of things should continue to exist. The continued existence of the same state of things is a condition precedent to performance of the contract.

(2) **Disappearance of the foundation of the contract:** If the goods which are the subject of the contract are destroyed without any fault of the parties, the contract should terminate.

(3) **The just and reasonable solution:** Where the court gathers as a matter of construction that the contract itself contained impliedly or expressly a term, according to which it would stand discharged on the happening of certain circumstances, the dissolution of the contract would take place under the terms of the contract itself.

(4) **Change in the obligation:** Frustration occurs whenever the law recognizes that without default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract.

Discussion Questions:

1. Define the performance of contract.
2. Explain the offer of performance of contract.
3. Describe who is to perform the contract.
4. Describe the rules of reciprocal promises.
5. Explain the general rules of time and place of performance of contract
6. Analyze the consequences of non-performance of contract within the stipulated time.
7. Describe the methods of termination of contract.
8. Define doctrine of frustration and analyze its rules.

Book Recommended: Commercial Law and Industrial Law, by- Sen and Mitra, 26th Edition.

Reference Book: Commercial and Industrial Law, By- Mohammad Khalekuzzaman, The Jamuna Publishers.

AGENCY LAW

7

Unit Highlights

- Lesson – 1: INTRODUCING AGENCY
- Lesson – 2: DUTIES OF AGENTS AND PRINCIPAL

Technologies Used for Content Delivery

- BOUTUBE
- BOU LMS
- WebTV
- Web Radio
- Mobile Technology with MicroSD Card
- LP+ Office 365
- BTV Program
- Bangladesh Betar Program

LESSON – 1: INTRODUCING AGENCY

After completion of this lesson you will be able to –

- *Define agency*
- *Describe the different types of agents*
- *Explain the methods of creating agency*
- *Assess the extent of agent's authority*
- *Assess the consequences when agent exceeds his authority*

AGENCY OR CONTRACT OF AGENCY

According to the Contract Act 1872 enforceable in Bangladesh define agency in the following way–

"An 'agent' is a person employed to do any act for another or to represent to another in dealing with third person. The person for whom such act is done or who is so represented is called the 'principal'." [Sec 182]

"Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent." [Sec 183]

"As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind cab become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained." [Sec 183]

CLASSIFICATION OF AGENT

The different types of agent together with their legal incidents are discussed below:

1. **Broker:** A broker is one who brings buyers and sellers into contract with one another. His duties are at an end when the parties are brought together. The contract of sale and purchase is entered into directly by the parties.
2. **Factor:** A factor is a mercantile agent with whom goods are kept for sale. He has got discretionary power to enter into contracts of sale with third parties. He has a general lien on the goods for money due to him as agent.
3. **Commission agent:** A commission agent is one who secures buyers for a seller of goods and sellers for a buyer of goods in return for a commission on the sale. A commission agent may have possession of the goods or not.
4. **Auctioneer:** An auctioneer is one who is authorized to sell goods of his principal by auction. He has goods in his possession and can sue buyer in his own name for the purchase price. An auctioneer acts as a double capacity. Up to the moment of sale he is the agent of the seller and after the sale he is the agent of the buyer. An auctioneer has implied authority to sell the goods without any restriction.
5. **Del credere agent:** A del credere agent is one who, for extra commission, guarantees the performance of a contract by the other party. If the other party fails to pay the price or otherwise causes damage to the principal, the del credere agent must pay compensation to the principal.
6. **General agent and special agent:** A general agent is one who represents the principal in all matters concerning a particular business. Factors and commission agents are usually general agents. A special agent is one who is appointed for a specific purpose e.g., to sell a particular article.

METHODS OF CREATING AGENCY

Agency can be created in any one of the following ways:

1. **Agency by expressed agreement:** A contract of an agency may be created by express agreement. The agreement may be either oral or written. It is usual in many cases to appoint agents by executing a formal power of attorney on a written and stamped document.
2. **Agency by implied agreement:** An agency agreement may be implied under certain circumstances from the conduct of the parties or the relationship between them.
3. **Agency created by estoppel:** Agency may be created by estoppel. When a man by his conduct or statement induced others to believe that a certain person is the agent, he is precluded from subsequently denying it. Section 237 provides, "When an agent has without authority, done act or incurred obligations to a third person on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conducts, induced such third person to believe that such acts and obligations were within the scope of the agents authority."
4. **Agency of necessity:** Circumstances sometimes force a person to act on behalf of another without any express authority from him. In such cases an agency of necessity is said to be created. Here three conditions must be satisfied: (i) It must be impossible to get the principal's instructions, (ii) There must be an actual necessity for acting on his behalf, and (ii) The agent of necessity must act honestly in the interest of the parties concerned.
5. **Agency by ratification:** Ratification means the subsequent adoption and acceptance of an act originally done without instructions or authority. **Section 196 provides**, "Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them the same effects will follow as if they had been performed by his authority." **Section 197 provides**, "Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done."

EXTENT OF AGENT'S AUTHORITY

The authority of an agent depends on what purposes the agent is contracted to acts for the principal. The extents of the agent's authority are as follows:

1. **General authority:** "An agent having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act. An agent having authority to carry on business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business." [Sec 188]
2. **Limits of authority in an emergency:** "An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances." [Sec 189]

CONSEQUENCE OF AGENT WHEN HE EXCEEDS HIS AUTHORITY

When an agent exceeds his authority the following consequences may be happened:

1. **When the authority is separable:** "When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within the authority, is binding as between him and his." [Sec 227]

2. **When the authority cannot be separated:** "Where an agent does more than he is authorized to do and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction." [Sec 228]
3. **When the principal is bound by unauthorized acts of the agent:** The principal may be bound by unauthorized acts of the agent in two cases: (i) Where by the rule of estoppel the principal is precluded from denying the authority of the agent, and (ii) Where the agency has been terminated, but notice of the termination has not been received by the other parties concerned.
4. **Misrepresentation or fraud by agent:** Misrepresentation made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals. But misrepresentation made, or frauds committed, by agents, in matter which do not fall within their authority, do not affect their principals. [Sec 238]

LESSON – 2: DUTIES OF AGENTS AND PRINCIPAL

After completion of this lesson you will be able to –

- *Describe the agent's duties to his principal*
- *Describe the principal's duties to his agent*
- *Define sub-agent and the consequences of appoint of sub-agent*
- *Assess the termination of agency*

AGENT'S DUTIES TO HIS PRINCIPAL

The duties of agent to his principal are as follows:

1. **Conduct the business according to the direction of the principal:** "An agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions according to the custom which prevail in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal and if any profit accrues, he must account of it." [Sec 211]
2. **To carryout the business with reasonable care and skill:** "An agent is bound to conduct the business of the agency with as much skill, as it generally possessed by person engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses, and to make compensation to his principal, in respect of direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct." [Sec 212]
3. **Render proper account:** "An agent is bound to render proper accounts to his principal on demand." [Sec 213]
4. **Communicate with principal and seeking instruction:** "It is the duty of an agent, in case of difficulty to use all reasonable diligence in communicating with his principal, and seeking to obtain his instruction." [Sec 214]
5. **Take honesty to deal on his own account:** "If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have to come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him." [Sec 215]
6. **Refund the benefit for illegal transaction on his own account:** "If an agent, without the knowledge of his principal deals in the business of the agency on his own account instead of an account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction." [Sec 216]
7. **To pay sums received for principal: "**An agent is bound to pay to his principal all sums received on his account after deducting there from his dues on account of remuneration and expenses." [Sec 218]
8. **Protection of interest at the death or insanity of the principal:** "When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him." [Sec 209]

PRINCIPAL'S DUTIES TO AGENT

Duties of principal to his agent are as follows:

1. **Indemnity for legal activities:** "The employers of an agent is bound to indemnify him against the consequences of all lawful acts, done by such agent in exercise of the authority conferred upon him." [Sec 222]
2. **Indemnify for the performance arises from utmost good faith:** "Where one person employs another to do an act, and the agent does not act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though causes an injury to the right of third persons." [Sec 223].
3. **Liability for criminal acts:** "Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or implied promise, to indemnify him against the consequences of that act." [Sec 224]
4. **Indemnify for the inefficiency or negligence:** "The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill." [Sec 225]

SUB-AGENT AND CONSEQUENCES OF APPOINTMENT OF SUB-AGENT

An agent appointed by an agent is called a sub-agent. "A sub-agent is a person employed by, and acting under the control of, the original agent in the business of the agency."-Sec. 191.

The general rule is that an agent cannot appoint an agent. "An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally." -Sec. 190. But **there are two exceptions to this rule**. An agent can appoint an agent (i) when it is permitted by the custom of the trade with which the agency is concerned; and (ii) when it is necessary because of the nature of the agency.

THE CONSEQUENCES OF THE APPOINTMENT OF A SUB-AGENT ARE STATED BELOW:

1. A sub-agent is appointed by and acts under the control of the original agent.-Sec. 191.
2. The principal is represented by the sub-agent and is bound by and responsible for his acts as if he was an agent appointed by the principal.-Sec. 192.
3. The agent is responsible to the principal for the acts of the sub-agent.-Sec. 192.
4. The sub-agent is responsible for his acts to the agent. The sub-agent is not responsible to the principal except in case of fraud and willful wrong.-Sec. 192. .
5. Where an agent improperly appoints a sub-agent, the agent is responsible for his acts both to the principal and to third parties. The principal in such cases is not represented by the sub-agent nor is he responsible for the acts of the sub-agent.-Sec. 193.

TERMINATION OF AGENCY

The agency may be terminated by acts of the parties or by operation of law. The different possible circumstances leading to the termination of agency are enumerated below:

A. **Termination by the acts of the parties:**

1. **Mutual agreement:** The agency may be terminated by the mutual agreement of both principal and agent.
2. **Revocation of agent's authority by principal:** "An agency is terminated by the principal revoking his authority." [Sec 201]. But in the following cases the authority of the agent cannot be revoked. **Section 202 says**, "Where the agent has himself an interest in the

property which forms the subject-matter of the agency, the agency cannot in the absence of an express contract, be terminated to the prejudice of such interest." **According to section 203**, "The principal may, save as is otherwise provided by the last preceding section, revoke to authority given to his agent at any time before the authority has been exercise so as to bind the principal." **According to section 204**, "The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency."

3. **Renounce of authority by agent:** According to section 201, "An agency is terminated by the agent renouncing the business of the agency." "Reasonable notice must be given of such revocation or renunciation." [**Sec 206**]. **According to section 205**, "Where there is an expressed and implies contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be , for any previous revocation or renunciation of the agency without sufficient cause."

B. **Termination by operation of law:** According to section 201 the agency may be terminated by operation of law in the following way:

   1. **By fulfillment of objective:** "An agency is terminated by the business of agency being completed."
   2. **By lapse of time:** If the agent is employed for a certain period of time the agency will be terminated on the expiry of that time whether the objective is fulfilled or not.
   3. **By the death or insanity of any parties:** An agency is terminated by either the principal or agent's dying or becoming of unsound mind.
   4. **By insolvency of the principal:** An agency is terminated by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.
   5. **Principal becoming an alien enemy:** If the principal and the agent belong to different countries and war breaks out between the two countries, the contract of agency is terminated.
   6. **Termination of the sub-agent's authority:** The sub-agent's authority is comes to an end when the agent's authority terminates.

Discussion Questions:

1. Define agency.
2. Describe the different types of agents.
3. Explain the methods of creating agency.
4. Describe the extent of agent's authority.
5. Assess the consequences when agent exceeds his authority.
6. Describe the agent's duties to his principal.
7. Describe the principal's duties to his agent.
8. Define sub-agent and the consequences of appoint of sub-agent.
9. Explain the termination of agency contract.

Book Recommended: Commercial Law and Industrial Law, by- Sen and Mitra, 26th Edition.

Reference Book: Commercial and Industrial Law, By- Mohammad Khalekuzzaman, The Jamuna Publishers.

SALES OF GOODS ACT

8

Unit Highlights

- Lesson – 1: INTRODUCING SALE OF GOODS ACT
- Lesson – 2: STIPULATION OF SALE
- Lesson – 2: PERFORMANCE OF SALE

Technologies Used for Content Delivery

- BOUTUBE
- BOU LMS
- WebTV
- Web Radio
- Mobile Technology with MicroSD Card
- LP+ Office 365
- BTV Program
- Bangladesh Betar Program

LESSON – 1: INTRODUCING SALE OF GOODS ACT

After completion of this lesson you will be able to –

- *Define some fundamental concepts in the sale of goods*
- *Classify the different types of goods*
- *Ascertain the price of goods for sale*
- *Explain the elements of the contract of sale of goods*

SOME FUNDAMENTAL DEFINITIONS IN THE SALE OF GOODS ACT

1. **Buyer:** "Buyer, means a person who buys or agrees to buy goods." [Section 2(1)]
2. **Seller:** "Seller, means a person who sell or agrees to sell goods." [Section 2(13)]
3. **Price:** "Price means the money consideration for a sell of goods." [Section 2(10)]
4. **Property:** "Property, means the general property in goods, and not merely a special property." [Section 2(11)]
5. **Delivery:** "Delivery, means voluntary transfer of possession from one person to another." [Section 2(2)]
6. **Deliverable State:** "Goods, are said to be in a deliverable state, when they are in such state that the buyer would under the contract be bound to take delivery of them." [Section 2(3)]
7. **Goods:** "Goods, means every kind of movable property other than actionable claims and money, and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be served before sale under the contract of sale." [Section 2(7)]

CLASSIFICATION OF GOODS

Goods may be classified into three types: existing goods, future goods and contingent goods.

A) **Existing Goods:** "Existing goods are those goods which are already in existence and which are physically present in some person's possession and ownership." [Section 6(1)]. Existing goods may be specific or ascertained goods and unascertained goods.

   1. **Specific or Ascertained Goods:** Specific goods identified and agreed upon at the time when a contract of sale is made.
   2. **Unascertained Goods:** Unascertained goods are goods indicated by description and not separately identified. If a merchant agrees to sale one bag of wheat from his godown to a buyer, it is a sale of unascertained goods because it is not known which bag will be delivered.

B) **Future Goods:** "Future goods means goods to be manufactured or produced by the seller after the making of the contract of sale." [Section 2(6)]

C) **Contingent Goods: "**There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen." [Section 6(2)]

ASCERTAINMENT OF PRICE

According to Sale of Goods Act 1930 the price of goods is ascertained in the following way:

1. **Price ascertained by joint agreement:** "The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between parties." [Section 9(1)]
2. **Ascertainment of reasonable price:** "Where the price is not determined in accordance with the foregoing provision, the buyer shall pay the seller a reasonable price, what is

reasonable price is question of the fact depend on the circumstances of each particular case." [Section 9(2)]

3. **Ascertainment of price by third parties:** if the parties tender the responsibility of ascertaining price to the third party, the third party may fix the price.
    a) **When third parties avoid fixing price:** "Where there is an agreement to sale goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided. Provided that, if the goods or any part thereof have been delivered to, and appropriated by the buyer, he shall pay a reasonable price therefore." [Section 10(1)]
    b) **When third parties default fixing price:** "Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault." [Section 10(2)]

ESSENTIAL ELEMENTS OF CONTRACT FOR THE SALE OF GOODS

According to the Sale of Goods Act 1930 [Section 4(1)], "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price." The essential elements of contract for the sale of goods are as follows:

1. **Sale of movable goods:** The Sale of Goods Act deals only with movable goods, excepting with actionable claims and money. [Section 2(7)]
2. **Goods in exchange of money:** There must be a contract for the exchange of movable goods for money. An exchange of goods for goods is not sale. But it has been held that if an exchange is made partly for goods and partly for money, the contract is one of sale.
3. **Two parties:** Since a contract of sale involves a exchange of ownership, it follows that the buyer and the seller must be different persons. A sale is a bilateral contract. [Section 4(1)]
4. **Stipulation of contract of sale:** "A contract of sale may be absolute or conditional." [Section 4(2)]
5. **Offer and acceptance:** "A contract of sale is made by an offer to buy or sale goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or the delivery or payment by installments, or that the delivery or payment or both shall be postponed." [Section 5(1)]
6. **Method of contract:** "Subject to the provision of any law for the time being enforced, a contract may be made in writing, or by word of mouth, the partly in writing and partly by word of mouth or may be implied from the conduct of the parties. [Section 5(2)]
7. **Promise for payment:** "The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties." [Section 9(1)]; "Where the price is not determined in accordance with the forgoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case." [Section 9(2)]

LESSON – 2: STIPULATION OF SALE

After completion of this lesson you will be able to –

- *Define stipulation of sale, condition and warranty*
- *Analyze when and how condition can be treated as warranty*
- *Analyze the implied condition and warranty*
- *Describe how property are transferred from seller to buyer*
- *Judge the exception of the rule 'owner of the goods can sell the goods'.*

STIPULATION OF SALE

"A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or warranty." [Section 12(1)]

"A condition is a stipulation essential to the main purpose of the contract the breach of which gives rise to right to treat the contract as repudiated. "[Section 12(2)]

"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat contract as repudiated." [Section 12(3)]

WHEN AND HOW A CONDITION CAN BE TREATED AS A WARRANTY

There are two ways how a condition can be treated as a warranty. These are:

1. **Voluntary Waiver:** "Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may weave the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground of treating the contract as repudiated." [Section 13(1)]
2. **Compulsory Waiver:** "Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to the effect." [Section 13(2)]

IMPLIED CONDITION AND WARRANTY

Implied Conditions:

1. **Condition as to title:** "There is an implied condition on the part of the seller that, in case of sale, he has a right to sell the goods and that, incase of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass." [Section 14(a)]
2. **Sale by Description:** "Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with description." [Section 15]
3. **Sale by Sample:** "In the case of a contract for sale by sample there is an implied condition–
   a) that the bulk shall correspond with the sample in quality;
   b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
   c) that the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample." [Section 17(2)]
4. **Sale by Sample as well as Description:** "If the sale is by sample as well as by description it is not sufficient the bulk of the goods correspond with the sample if the goods do not also correspond with description." [Section 15]

5. **Condition as to quality or fitness:**
    a) "Where the buyer, expressly or by implication, makes known to the seller the particular purpose by which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose." [Section 16(1)]
    b) 'Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or the producer or not), there is an implied condition that the goods shall be merchantable quality. Provided that, if the buyer has examined the goods there shall be not implied condition as regard defect which such examination ought to have revealed." [Section 16(2)]
    c) "An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. "[Section 16(3)]

IMPLIED WARRANTY:

1. **Quiet Possession:** "There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods." [Section 14(b)]
2. **Free from charges:** "There is an implied warranty that the goods shall be free from any charge or encumbrance in favor of any third party not declared or known to the buyer before or at the time when the contract is made." [Section 14(c)]
3. **Implied Warranty of quality annexed by the usage:** "An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade." [Section 16(c)]

TRANSFER OF PROPERTY FROM SELLER TO BUYER

The rules regarding the transfer of property from seller to buyer are:

A) **Unascertained Goods:** "Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained." [Section 18]. How the property of unascertained goods are transferred as ascertained goods are discussed below:

   1. Unconditional Appropriation: "Where there is a contract for the sale unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made." [Section 23(1)]

   2. Deliver goods to carriers or bailee: "Where in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose transmission to the buyer, does not reserve the right for disposal, he is deemed to have unconditionally appropriated the goods to the contract." [Section 23(2)]

B) **Ascertained Goods:** "Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred." [Section 19]

   1. Unconditional contract for deliverable state: "Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in goods passes

to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed." [Section 20]

2. **When seller has something to do:** "Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof. [Section 21]
3. **When goods are weighted, measured, tested etc:** "Where there is a contract for sale of specific goods in a deliverable state, but he seller is bound to weight, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof. [Section 22]
4. **Goods sale on approval or on 'sale or return':** "When goods are delivered to the buyer on approval or 'sale or return' or other similar terms, the property therein passes to the buyer – (a) when he signifies his approval or accepted to the seller or does any other act adopting the transaction; (b) if does not signifies his approval or acceptance to the seller but retain the goods without giving the notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time." [Section 24]
5. **Reservation of the right of the disposal:** "Where there is a contract for the sale of specific goods or where the goods are subsequently appropriated to the contract, the seller may, by the term of the contract or appropriation reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled." [Section 25(1)]
    a) **"**Where goods are shipped or are dispatched by railway and are by the bill of lading or by railway receipt deliverable to the order of the seller or his agent the seller is 'prima facie' deemed to reserve the right of disposal." [Section 25(2)]
    b) "Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading or railway receipt to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading or railway receipt if he does not honor the bill of exchange and if he wrongfully retains the bill of lading or railway receipt the property in the goods does not pass to him." [Section 25(3)]

"NO SELLER CAN GIVE THE BUYER BETTER TITLE OF GOODS THAN HE HIMSELF HAS" – EXCEPTIONS OF THIS RULE

The general rule is that only the owner of the goods can sell the goods. No one can convey to a transferee a better title than he himself has. If a person transfers articles not belonging to him, the transferee gets no title. The exceptions of this rule are:

EXCEPTIONS OF THIS RULE:

1. **Transfer of title by estoppels:** "Where the goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had; unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell." [Section 27, Para – 1]
2. **Sale by mercantile agent:** "Where a mercantile agent in with the consent of the owner in possession of the goods or of a document of title to the goods any sale made by him acting in

the ordinary courses of business of a mercantile agent, shall be as valid as if he were act in good faith and has not at the time of the contract of sale notice that the seller has not authority to sale." [Section 27, Para – 2]

3. **Sale by a joint owner:** "If one of the several joint owners of goods has the possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner on good faith and has not at the time of the contract of sale notice that the seller has no authority to sell." [Section 28]
4. **Sale by person on possession under voidable agreement:** "Where the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19a of the Contract Act 1872, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title." [Section 29]
5. **Sale by seller in possession after sale:** "Where a person, having sold goods, continues or is in possession of the goods or of documents of title to the goods, the delivery or transfer by that person or by mercantile agent acting for him, of the goods of documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer was expressly authorized by the owner of the goods to make the same." [Section 30(1)]
6. **Sale by buyer in possession subject to same rights of seller:** "Where a person, having bought or agreed to buy goods, obtain, with the consent of the seller, possession of the goods or the documents of the title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist." [Section 30(2)]
7. **Re-sell by unpaid seller:** "An unpaid seller of goods can under certain circumstances, re-sell the goods. The purchaser of such goods gets a valid title of the goods." [Section 54]
8. **Sale under the Contact Act:**
    a) A pawnee may sell the goods of the pawnor if the latter makes a default of his dues. The purchaser under such a sale gets a good title. [Section 176]
    b) A finder of goods can sell the goods under certain circumstances. The purchaser gets a good title. [Section 169]

LESSON – 3: PERFORMANCE OF SALE

After completion of this lesson you will be able to –

- *Define performance of the contract of sale*
- *Describe the ways or types of delivery of goods*
- *Explain the rules regarding delivery of goods*

PERFORMANCE OF THE CONTRACT OF SALE

"It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale." [Section 31]

"Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods." [Section 32]

DELIVERY OF GOODS

Delivery of goods is voluntary disposition on favor of another. Delivery of the goods may be actual, symbolic or constructive. Description of them is given below:

1. **Actual delivery:** Actual delivery occurs when the goods themselves are delivered; the goods are physically handed over from seller to the buyer or to his agents.
2. **Symbolic delivery:** Symbolic delivery occurs when the buyer gets the means of the obtaining possession. Example: certain specific goods were locked in the godown and the seller gives the key of the godown to the buyer.
3. **Constructive delivery:** Constructive delivery occurs when a change in the possession of the goods without any change in the actual and visible custody, e.g., the delivery of the bill of lading with which goods may be obtained.

RULES REGARDING THE DELIVERY OF GOODS

The rules regarding the delivery of goods are as follow:

1. **Possession of buyer:** "Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods on the possession of the buyer or of any person authorized to hold them on his behalf." [Section 33]
2. **Part delivery:** "A delivery of part goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as delivery of the whole: but a delivery of part of the goods with an intention of severing it from the whole, does not operate as a delivery of the remainder." [Section 34]
3. **Application for delivery of goods:** "Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery." [Section 35]
4. **Place of delivery:** "Where it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are the time of sale, and goods agreed to the sold are to be delivered at the place at which they are at the time of the agreement to sell, or if not them in existence, at the place at which they are manufactured or produced." [Section 36(1)]

5. **Time of deliver goods:** "Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time." [Section 36(2)]

   "Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour, what is a reasonable hour is a question of fact." [Section 36(4)]

6. **Possession of third parties:** "where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf." [Section 36(3)]

7. **Expenses of delivery:** "Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be born by the seller." [Section 36(5)]

8. **Delivery of wrong quantity:**

   a) "Where the seller delivers to the buyer a wrong quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accept the goods so delivered he shall pay for them at the contract rate." [Section 37(1)]

   b) "Where the seller delivers to the buyer quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate." [Section 37(2)]

   c) "Where the seller delivers to the buyer the goods he contracted to sell mixed with the goods of a different description not included in the contract, the buyer may accepts the goods which are in accordance with the contract and reject the rest, or may reject the whole." [Section 37(3)]

   d) "The provision of this section is subject to any usage of trade, special agreement of course of dealing between the parties." [Section 37(4)]

9. **Installment delivery:**

   a) "Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installment." [Section 38(1)]

   b) "Where there is a contract for the sale of a gods to be delivered by stated installments which are to be separately paid for and the seller makes no delivery or defective delivery in respect of one or more installments or the buyer neglects or refuges to take delivery of or pay of one or more installments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract in a repudiation of the whole contract, or whether it is a severable breach being rise to a claim for compensation but not to a right to treat the whole contract as repudiated." [Section 38(2)]

10. **Delivery to carrier or wharfinger:**

    a) "Where in pursuance in a contract of sale the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody is prima facie deemed to be a delivery of the goods to the buyer." [Section 39(1)]

    b) "Unless otherwise authorized by buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the other circumstances of the case. If the seller omits to do so, and the goods are lost or damaged on course of transmit or whilst in the custody of the wharfinger

the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages." [Section 39(2)]

c) "Unless otherwise agreed, where the goods are send by the seller to the buyer by a route involving sea transit in circumstances in which it is usual to insure, the seller shall gives such notice to the buyer as may enable him to insure them during their sea transit, and of the fail to do so, the goods shall deemed to be at his risk during such sea transit." [Section 39(3)]

11. **Risk of goods:** "Where the seller of goods agrees to deliver them at his own risk at a place other than that were they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk if deterioration in the goods necessarily incident to the course of transit." [Section 40]

12. **Examining the goods:**

a) "Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity to the contract." [Section 41(1)]

b) "Unless otherwise agreed, when the seller tender delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity, of examining the goods for the purpose of ascertaining whether they are in conformity with the contract." [Section 41(2)]

13. **Acceptance of goods:** "The buyer has deemed to accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistence with the ownership of the seller, or when, after the laps of a reasonable time, he retain the goods without intimating to the seller that he has rejected the same." [Section 42]

14. **Return of rejected goods:** "Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right to do, he is not bound to return them to the seller, but it sufficient if he intimates to the seller that he refuses to accept them." [Section 43]

15. **Liability of buyer:** "When the seller is ready and willing to deliver the goods and request the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. Provided that in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract." [Section 44]

Discussion Questions:

1. Define some fundamental concepts in the sale of goods.
2. Classify the different types of goods.
3. How the price of goods for sale is ascertained?
4. Explain the elements of the contract of sale of goods.
5. Define stipulation of sale, condition and warranty.
6. When and how condition can be treated as warranty.
7. Describe the implied condition and warranty.
8. Describe how property are transferred from seller to buyer.
9. Describe the exception of the rule 'owner of the goods can sell the goods'.
10. Define performance of the contract of sale.
11. Explain ways or types of delivery of goods.
12. Explain the rules regarding delivery of goods.

Book Recommended: Commercial Law and Industrial Law, by- Sen and Mitra, 26th Edition.

Reference Book: Commercial and Industrial Law, By- Mohammad Khalekuzzaman, The Jamuna Publishers.

PARTNERSHIP ACT

9

Unit Highlights

- Lesson – 1: INTRODUCING PARTNERSHIP
- Lesson – 2: RELATIONSHIP AMONG THE PARTNERS AND WITH OTHERS

Technologies Used for Content Delivery

- BOUTUBE
- BOU LMS
- WebTV
- Web Radio
- Mobile Technology with MicroSD Card
- LP+ Office 365
- BTV Program
- Bangladesh Betar Program

LESSON – 1: INTRODUCING PARTNERSHIP

After completion of this lesson you will be able to –

- *Define partnership*
- *Explain the features of partnership*
- *Assess the position of minor in partnership*
- *Describe the process of registration of partnership*

DEFINE PARTNERSHIP

According to The Partnership Act 1932 (Section 4), "Partnership is the relation between persons who have agreed to share the profits of a business carried on by al any of them acting for all. Persons who have entered into partnership with one another are called individually partner and collectively a firm."

According to section 1 of British Partnership Act 1890, "Partnership is the relation which subsists between persons carrying on business on common with a view to profit."

ELEMENTS OR FEATURES OF PARTNERSHIP

The elements or features of partnership according to the sec. 4 of Partnership Act 1932 are given below:

1. **Plurality of member:** There are two or more partners in a partnership otherwise it cannot be formed.
2. **Contractual relation:** The relation of partnership arises from contract and not from status.
3. **Legal business:** Any business which is not lawful cannot be regard as partnership.
4. **Earning and sharing of profits:** The partnership must be run to make profit and distribution of profit on the basis of contact.
5. **Mutual agency:** Every partners of a partnership work as an agency to each other and principal as well.
6. **Capacity of partners:** To be a partner they must have the capacity to make and perform contract.
7. **Mutual confidence and trust:** Partnership is the relation of utmost good faith among partners.

MINOR AS A PARTNER

The Partnership Act 1932 [Section 30(1)] stated that, "A person who is a minor according to law to which he is subject may not be a partner in a firm but, the consent of all the partners for the time being, he may be admitted to the benefits of the partnership."

In this context the rights and liabilities of a minor can be presented in the following way:

A) Rights and Liabilities of a minor before attaining majority:

1. "Such minor has a right to such share of the property and of the profit of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm." [Sec. 30(2)]
2. "Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act." [Sec. 30(3)]
3. "Such minor may not sue partners for an account or payments of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48." [Sec. 30(4)]
4. Such minor cannot declare insolvent. But if the firm becomes bankruptcy, the portion of minor to be transferred to the official receiver.

B) **Position after attaining Majority:** "At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm. Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months." [Sec, 30(5)]

1. **Where such person becomes a partner:**
   a) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of the partnership, and [Sec. 30(7a)]
   b) his share in the property and profit of the firm shall be the share to which he was entitled as a minor. [Sec. 30(7b)]
2. **Where such person elects not to become a partner:**
   a) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice. [Sec. 30(8a)]
   b) his share shall not be liable for any acts of the firm done after the date of the notice, and [Sec. 30(8b)]
   c) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section – 4. [Sec. 30(8c)]

METHODS OF REGISTRATION

The method of registration of partnership has been described in the section of 58 and 59 of Partnership Act 1932.

1. **Collection and submission of application form:** For the purpose of registration of partnership a prescribed application to be collected from the government registration office where the business will be operated and after duly filling up the form to be submitted to the same. Section 58(1).

   The application form should contain the following documents.

   i) Name of the partnership.
   ii) Address of the head office of the partnership.
   iii) Address of the branch(s) of partnership (if any).
   iv) Date of starting of the partnership.
   v) Name, address and profession of partners.
   vi) Date of membership of each partner in the firm.
   vii) Duration of the firm (if any).
2. **Verifying the signature:** Each signatory on the application will verify their signature with due process that produced in the application form. Section 58(2)
3. **Name of partnership:** No firm will be allowed to keep the name of the partnership business with the state or related to state unless there is a written consent of the government. Similarly, the name of partnership in accordance to the United Nations or it subsidiary organization and World Health Organization or its acronyms except the written permission of Secretary General and Director General respectively. Section 58(3)
4. **Registration:** When the registrar is satisfied that the provision of the section 58 have been duly complied with, he shall record on entry of the statement in a register called the Register of Firms and shall file the statement. [Sec. 59]

LESSON – 2: RELATIONSHIP AMONG THE PARTNERS AND WITH OTHERS

After completion of this lesson you will be able to –

- *Assess the relations among the partners*
- *Assess the relations of partners with third parties*
- *Describe the duties of partners*
- *Assess the ways or causes of dissolution of partnership.*

RELATIONS OF PARTNERS TO ONE ANOTHER

There are three basic principles in determining relations among partners. These are:

1. **General duties of partners:** "Partners are bound to carry on the business of the firm to the greatest common advantage to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representatives." [Sec. 9]
2. **Compensation for fraud:** "Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm." [Sec. 10]
3. **Maintenance and use of properties of the organization:** "Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business." [Sec. 15]

THE RELATION OF PARTNERS WITH THIRD PARTIES

The relations of partners with third parties are discussed below:

1. **Mutual agency relationship of the partners:** "Subject to the provisions of this act, a partner is the agent of the firm for the purposes of the business of the firm." [Sec. 18]
2. **Admission of the partner and its effect:** "An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business." [Sec. 23]. Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud in the firm committed by or with the consent of that partner." [Sec. 24]
3. **Liability of the partners:** "Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner." [Sec. 25]
4. **Liability of the firm for wrongful acts of the partner:** "Where by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused any third party, or any penalty is incurred, the firm is liable therefore to the same extent as the partner." [Sec. 26]
5. **Liability of the firm for misapplication by the partner:** Liability of the firm for misapplication by the partner are of two types according to section – 27:
    a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, and
    b) a firm in the course of its business receives money or property from a third party, and the money and property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

DUTIES OF PARTNER

The duties of a partner are discussed below:

1. **General duties:** Partners are bound to carry on the business of the firm to the greatest common advantage to be just and faithful to each other, and to ender true accounts and full information of all things affecting the firm to any partner or his legal representative. [Sec. 9]
2. **Compensation for fraudulent activities:** Every partner shall identify the firm for any loss caused to it by his fraud in the conduct of the business of the firm. [Sec. 10]
3. **Fulfillment of duties with diligence:** Every partner is bound to attend diligently to his duties in the conduct of the business. [Sec. 12(b)]
4. **No claim for remuneration:** A partner is not entitles to receive remuneration for taking part in the conduct of the business. [Sec. 13(a)]
5. **Proportionate bearing of loss:** The partners are all entitles to share equally in the profits earned, shall contribute equally to the losses sustained by the firm. [Sec. 13(b)]
6. **Compensation of loss occurred by willful neglect:** A partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm. [Sec. 13(f)]
7. **Maintenance and use of properties for the business:** Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business. [Sec. 15]
8. **Surrender of profit earned in own name:** If a partner derives any profit for himself from any transaction of the firm , or from the se of the property or business connection of the firm name, he shall account for that profit and pay it to the firm. [Sec. 16(a)]
9. **Surrender of profit earned from the competitive business:** If a partner carries on any business of the same nature as and competing with that of firm, he shall account for and pay to the firm all profit made by him in that business. [Sec. 16(b)]
10. **Bearing unlimited liability:** Every partner is liable, jointly with all other partners and also severally, for all acts of the firm done while he is a partner. [Sec. 25]

METHODS OR CAUSES FOR DISSOLUTION OF FIRM

The any reason in the following may be the cause for dissolution of the firm:

1. **Dissolution by agreement:** A firm may be dissolved with the consent of all the partners or in accordance with a control between the partners. [Sec. 40]
2. **Compulsory dissolution:** Under the following two circumstances a firm can dissolute compulsorily:
   a) by the adjudication of all the partners or of all the partners but one as insolvent, or [Sec. 41(a)]
   b) by the happening of any event which make it unlawful for the business of the firm to be carried on or for the partners to carry it on it partnership. [Sec. 41(b)]

   Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures or undertakings.
3. **Happening of certain contingencies:** Subject to contract between the partners affirm is dissolved-
   a) if constituted for a fixed term, by the expiry of that term;

b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

c) by the death of a partner;

d) by the adjudication of a partner as an insolvent.

4. **Dissolution by notice:** Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm. [Sec. 43(1)]
5. **Dissolution by court:** Court may dissolved the firm for any reason mentioned below:
   a) **Unsound mind of the partner:** That a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner. [Sec. 44(a)]
   b) **Permanent incapability:** That a partner, other than the partner suing, has become in any way permanently in capable of performing his duties as partner. [Sec. 44(b)]
   c) **Misconduct of the partner:** That a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business. [Sec. 44(c)]
   d) **Willful breach of agreement:** That a partner, other than the partner suing, willfully or persistently commits breach of agreement relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him. [Sec. 44(d)]
   e) **Transfer the whole interest of the partner:** That a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provision of the rule, or has allowed to be sold in the recovery of arrears of land-revenue due by the partner. [Sec. 44(e)]
   f) **Continuous loss:** That the business of the firm cannot be carried on save at a loss. [Sec. 44(f)]
   g) **Other reasonable cause:** On any other ground which renders it just and equitable that the firm should be dissolved. [Sec. 44(g)]

Discussion Questions:

1. Define the concept of partnership business.
2. Explain the features of partnership.
3. Assess the position of minor in partnership firm.
4. Describe the process of registration of partnership business.
5. Assess the relations among the partners.
6. Assess the relations of partners with third parties.
7. Describe the duties of partners.
8. Describe the ways or causes of dissolution of partnership.

Book Recommended: Commercial Law and Industrial Law, by- Sen and Mitra, 26th Edition.

Reference Book: Commercial and Industrial Law, By- Mohammad Khalekuzzaman, The Jamuna Publishers.

NEGOTIABLE INSTRUMENTS

10

Unit Highlights

- Lesson – 1: INTRODUCING NEGOTIABLE INSTRUMENT AND PROMISSORY NOTE
- Lesson – 2: BILL OF EXCHANGE
- Lesson – 3: CHEQUE AND ITS ENDORSEMENT
- Lesson – 4: ENDORSEMENT OF NEGOTIABLE INSTRUMENT AND HUNDI

Technologies Used for Content Delivery

- BOUTUBE
- BOU LMS
- WebTV
- Web Radio
- Mobile Technology with MicroSD Card
- LP+ Office 365
- BTV Program
- Bangladesh Betar Program

LESSON – 1: INTRODUCING NEGOTIABLE INSTRUMENT AND PROMISSORY NOTE

After completion of this lesson you will be able to –

- *Define negotiable instrument*
- *Describe the features of negotiable instrument*
- *Comprehend the concept of promissory note*
- *Identify the parties of promissory note*
- *Explain the features of promissory note.*

DEFINITION OF NEGOTIABLE INSTRUMENT

A negotiable instrument is a signed document that promises a payment to a specified person or assignee. In other words, negotiable instruments is transferable, signed document that promises to pay the bearer a sum of money at a future date or on-demand.

"Negotiable" means transferable by delivery and "instrument" means a written document by which a right is created in favor of some person. The term negotiable instrument, literally means "a document transferable by delivery".

Negotiable Instruments Act of 1881 states that, "A Negotiable Instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer".-Sec. 13(1).

A negotiable instrument is a signed document that promises a payment to a specified person or assignee. Negotiable instruments are transferable, which allows the recipient to take the funds as cash, then use them as preferred. Examples of negotiable instruments include bill of exchange, promissory notes, checks, money orders etc.

ESSENTIAL FEATURES OF NEGOTIABLE INSTRUMENTS

1. **Writing and Signature:** Negotiable Instruments must be written and signed by the parties according to the rules relating to Promissory Notes, Bills of Exchange and Cheques.

2. **Money:** Negotiable Instruments are payable by legal tender money of bangladesh. The liabilities of the parties of Negotiable Instruments are fixed and determined in terms of legal tender money.

3. **Negotiability:** Negotiable Instruments can be transferred from one person to another by a simple process. In the case of bearer instruments, delivery to the transferee is sufficient. In the case of order instruments two things are required for a valid transfer: indorsement (i.e., signature of the holder) and delivery. An instrument may be made non-transferable by using suitable words, e.g., "Pay to X only."

4. **Title:** The transferee of a negotiable instrument, when he fulfils certain conditions, is called the holder in due course. The holder in due course gets a good title to the instrument even in cases "here the title of the transferor is defective.

5. **Notice:** It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay. The transferee can sue in his own name.

6. **Presumptions:** Certain presumptions apply to all negotiable instruments. Example: it is presumed that there is consideration. It is not necessary to write in a promissory note the words "for value received" or similar expressions because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.

7. **Special Procedure:** A special procedure is provided for suits on promissory notes and bills of exchange. (The procedure is prescribed in the Civil Procedure Code). A decree can be obtained much more quickly than it can be in ordinary suits.

8. **Popularity:** Negotiable instruments are popular in commercial transactions because of their easy negotiability and quick remedies.

9. **Evidence:** A document which fails to qualify a, a negotiable instrument may nevertheless be used as evidence of the fact of indebtedness. Example: P writes to Q "I. O. U. Tk. 500·'. This is not a promissory note but the document can be used as evidence to show that P is indebted to Q for Tk. 500.

DEFINITION OF PROMISSORY NOTES

A Promissory Note is an instrument in writing. It contains an unconditional undertaking or promise, signed by the maker to pay a certain sum of money to a certain person. Unlike, bill of exchange, there is no need of acceptance of Promissory Notes as here the payer is himself the maker of the note. He, himself promises to make the payment. Hence, only two parties are involved here, one is the maker and another one is the payee.

"A promissory note is an instrument .in writing (not being a bank note or a currency note) containing an unconditional undertaking signed by· the maker, to pay ~ certain sum of money only to, or to order of a certain person, or to the bearer of the instrument."-Sec. 4. The person who makes the promise to pay is called the Maker. He is the debtor and must sign the instrument. The person who will get the money (the creditor) is called Payee.

The promissory note is defined as an instrument in writing (not being a banknote or a 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 the instrument.

PARTIES TO A PROMISSORY NOTE

There Are Two Parties to a Promissory Note:

(1) **Maker:** Maker or drawer is an individual or entity who makes or draws the promissory note with a promise to pay a certain sum as is specified in the promissory note. Maker is also known as promsior.

(2) **Payee:** The payee is the person in whose favour the promissory note is drawn.

The above mentioned is the concept, that is elucidated in detail about 'Bill of Exchange' for the Commerce students.

FEATURES OF PROMISSORY NOTES

- The features of promissory notes are stated below:
- It must be in writing.
- It contains an unconditional promise to pay.
- The sum payable is a certain amount.
- The maker should sign it.
- The sum should be payable to a certain person.
- There are only two parties to a promissory note; one is the maker or the payer and another one is the payee.
- It is not transferable and thus, the amount is not payable to the bearer.
- The liability of the maker is primary and absolute.
- Notice is not required if it is dishonored.
- It needs to be properly stamped.

LESSON – 2: BILL OF EXCHANGE

After completion of this lesson you will be able to –

- *Define bill of exchange*
- *Identify the parties involved in bill of exchange*
- *Explain the features of bill of exchange*
- *Analyze the types of bill of exchange*
- *Differentiate bill of exchange from promissory note*.

MEANING OF BILL OF EXCHANGE

According to the Negotiable Instruments Act 1881, a bill of exchange is defined as "an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument" –Sec. 5.

The maker of a bill of exchange is called the Drawer. The person who is directed (0 pay is called the Drawee. The person who will receive the money is called the Payee. When the payee has custody of the bill. he is called the lIolder. It is the holder's duty to present the bill to the drawee for his acceptance. The drawee signifies his acceptance by sighing on the bill. After such signature the drawee becomes the Acceptor.

PARTIES OF BILL OF EXCHANGE

A bill of exchange has three parties:

(1) **Drawer:**

- The drawer is the maker of a bill of exchange.
- The bill is signed by Drawer.
- A creditor who is entitled to receive payment from the debtor can draw a bill of exchange.

(2) **Drawee:**

- Drawee is the person upon whom the bill of exchange is drawn.
- Drawee is the debtor who has to pay the money to the drawer.
- He is also known as 'Acceptor'.

(3) **Payee:**

- The payee is the person to whom payment has to be made.
- The payee may be the drawer himself or a third party.

FEATURES OF BILL OF EXCHANGE

- It is important to have a bill of exchange in writing
- It must contain a confirm order to make a payment and not just the request
- The order should not have any condition
- The bill of exchange amount should be definite
- Fixed date for the amount to be paid
- The bill must be signed by both the drawee and the drawer
- The amount stated on the bill should be paid on-demand or on the expiry of a fixed time
- The amount is paid to the beneficiary of the bill, specific person, or against a definite order.

TYPES OF BILL OF EXCHANGE

- **Documentary Bill-** In this, the bill of exchange is supported by the relevant documents that confirm the genuineness of sale or transaction that took place between the seller and buyer.

- **Demand Bill-** This bill is payable when it demanded. The bill does not have a fixed date of payment, therefore, the bill has to be cleared whenever presented.
- **Usance Bill-** It is a time-bound bill which means the payment has to be made within the given time period and time.
- **Inland Bill-** An inland bill is payable only in one country and not in any other foreign country. This bill is opposite to the foreign bill.
- **Clean Bill-** This bill does not have any proof of a document, so the interest is comparatively higher than the other bills.
- **Foreign Bill-** A bill that can be paid outside India is termed as a foreign bill. Two examples of a foreign bill are an export bill and import bill.
- **Accommodation Bill-** A bill that is sponsored, drawn, accepted without any condition is known as an accommodation bill.
- **Trade Bill-** This kind of bill is specially related only to trade.
- **Supply Bill-** The bill that is withdrawn by the supplier or contractor from the government department is known as the supply bill.

DIFFERENCE BETWEEN PROMISSORY NOTES AND BILL OF EXCHANGE

The differences between promissory notes and bill of exchange are presented in the following table:

S. No.	Basis of Difference	Promissory Notes	Bills of Exchange
1	Meaning	A Promissory Note is an instrument in writing. It only contains promise signed by the maker to pay a certain sum of money to a certain person.	A bill of exchange is an instrument in writing. It contains an unconditional order requiring a certain person to pay a certain sum of money on a stipulated date.
2	Parties	There are only two parties i.e. Maker or Payer and the Payee.	There are three parties i.e. Drawer, Drawee, and Payee.
3	Drawer	Debtor is the maker or the drawer.	The creditor is the drawer
4	Payee	Drawer cannot be the payee	Drawer and payee can be the same person.
5	Acceptance	It does not require any acceptance because payer is only the maker of the promissory note.	It requires acceptance by the drawee or someone else on his behalf as the drawer is not the payer.
6	Notice	In case of dishonor of promissory note, no notice needs to be given.	In case of dishonor of Bills of Exchange, notice needs to be given to all the parties by the holder of the instrument.
7	Copies	It cannot be drawn in copies.	It can be drawn in copies.

LESSON – 3: CHEQUE AND ITS ENDORSEMENT

After completion of this lesson you will be able to –

- *Define cheque*
- *Identify the features of cheque*
- *Explain the different types of cheques*
- *Analyze the different types of endorsement.*
- *Analyze the situation when bank may refuse to pay the cheque*
- *Differentiate cheques from bill of exchange.*

MEANING OF CHEQUE

A cheque is a bill of exchange in which one party orders the bank to transfer the money to the bank account of another party. It is a negotiable instrument that is covered under the Negotiable Instruments Act, 1881. A cheque is a bill of exchange drawn upon a specified banker and payable on demand.-Sec. 6.

There are three parties involved in the transaction – the drawer is the person who writes the cheque, the drawee is the bank that has to transfer the funds and the payee is the person in whose name the cheque has been issued. A cheque can be issued against a saving account or a current account.

ESSENTIAL FEATURES OF CHEQUE

The essential features of cheque are given below:

1. A cheque must fulfil all the essential requirements of a bill of exchange.
2. A cheque may be payable to bearer or to order but in either case it must be payable on demand.
3. The banker named must pay it when it is presented for p.3Yment to him at his office during the usual office hours; provided the cheque is validly-drawn and the drawer has sufficient funds to his credit.
4. Bill and notes may be written entirely by hand. There is no legal bar to cheques being hand-written. Usually however, banks provide their customers with printed cheque forms which are filled up and signed by the drawer.
5. The signature must tally with the specimen signature of the drawer kept in the bank.
6. A cheque must be dated. A banker is entitled to refuse to pay a cheque which is not dated. A cheque becomes due for payment on the date specified on it.
7. A cheque drawn with a future date is valid but it is payable on and after the date specified. Such cheques are called post-dated cheques.
8. A cheque may be presented for payment after the due date but if here is too much delay the bank is entitled to consider the circumstance suspicious and refuse to honour the cheque. The period after which a cheque is considered too old or stale varies according to custom from place to place. It is usually six months in Indian cities.
9. In some certain circumstances the bank is not bound to pay the cheques.

TYPES OF CHEQUES

The different types of cheques are as floow:

1. **Bearer Cheque:** This type of cheque is payable to the person who presents it to the bank for payment. It does not require any identification, and anyone can cash it.
2. **Order Cheque:** An order cheque is payable only to the person named on the cheque. The payee must endorse the cheque by signing the back of it before depositing or cashing it.

3. **Crossed Cheque:** A crossed cheque has two parallel lines across its face. This provides additional security against fraud and theft.
4. **Post-Dated Cheque:** A post-dated cheque has a future date on it, and it cannot be cashed until that date arrives. This type of cheque is commonly used for payments that are scheduled in the future, such as rent or loan repayments.
5. **Traveller's Cheque:** A traveller's cheque is a type of cheque that can be used as a form of payment when travelling. They are issued by banks or other financial institutions and can be replaced if lost or stolen.
6. **Self Cheque:** A self-cheque is a cheque that is written by the account holder to themselves.

TYPES OF ENDORSEMENTS OF CHEQUE

Endorsing a cheque is as simple as flipping it over and signing your name. Before that one should consider the following five types of check endorsements. There are five basic types of check endorsements:

1. Qualified endorsement

With a qualified endorsement, issuer remove himself from any responsibility should the check get returned. Typically, this endorsement includes language like "Without recourse." Of course, the bank probably won't accept the check with this type of endorsement since issuer basically telling them they can't recoup the funds from your account if the check bounces.

2. Restrictive endorsement

Like a qualified endorsement, a restrictive endorsement also places a condition on the negotiability of the check. The most common restriction is "for deposit only." Unlike qualified endorsements, banks receive this type of endorsement all the time. They'll usually accept it without question.

3. Special endorsement

A special endorsement allows client to make his business check payable to someone else. On the back of the check, issuer would write "Pay to the order of Jane Doe" and then sign it. This effectively turns the check ownership over to that person or entity. However, banks don't usually recommend that you go this route. When Jane Doe attempts to cash the check, the bank will likely require that issuer present for the transaction to confirm the validity of issuer's special endorsement.

4. Conditional endorsement

A conditional endorsement works similarly to a special endorsement, except that issuer adding a caveat to the endorsement. The language specifies that something needs to happen before the check becomes payable. For example, "Payable to Jane Doe upon successful completion of roof replacement." Then issuer sign it. Like the special endorsement, the bank may frown down on this type of endorsement and even outright refuse to pay the check. In the case of our Jane Doe example, she needs to replace a roof before negotiating the check.

5. Blank endorsement

This is the most common type of endorsement. If issuer flip a check payable to him over and sign the back without adding any restrictive language, issuer just blank endorsed it. But don't forget, once issuer sign a check like this, it's immediately negotiable.

WHEN BANKER MAY REFUSE TO PAY A CHEQUE

A banker may refuse to pay a customer's cheque under the following circumstances:

1. If there are insufficient funds of drawer and there is no overdraft arrangement.

2. If the cheque is not properly drawn, e.g., if it is ambiguous or illegible or contains unsigned alterations or if the signature does not tally with the specimen signature of the drawer or if it is undated or post-dated or stale otherwise irregular.
3. If the cheque is not presented at the branch in which the customer has an account and within banking hours.
4. If the bank has a claim for a set off or a lien on the funds of the customer, the bank may refuse to pay any cheque in excess of the balance above the claim or lien.

DISTINCTIONS BETWEEN BILL OF EXCHANGE AND CHEQUE

The differences between bill of exchange and cheque are presented below:

1. A bill of exchange can be drawn upon any person, including a bank. A cheque can be drawn only upon a bank. Thus every cheque is a bill of exchange but every bill of exchange is not a cheque.
2. Except under certain specified circumstances, a bill of exchange requires acceptance. A cheque does not require any acceptance.
3. A cheque is always payable on demand. The acceptor of a bill of exchange is allowed a grace period of three days, after the maturity of the bill, to make the payment.
4. The drawer of a bill is discharged from liability if the bill is not presented to the acceptor for payment at the due time. But the drawer of a cheque is discharged from his liability only if he suffers damage owing to delay in presenting the cheque for payment.
5. If a bank fails to pay a cheque, it is not necessary to give notice of dishonor to the drawer to make him liable to compensate the payee. In the case of bills of exchange, it is necessary to give notice of dishonor, except in certain special cases.
6. A cheque may be crossed; there is no provisio'1 for crossing a bill.
7. The payment of a cheque may be countermanded by the drawer. The payment of a bill cannot be countermanded.
8. A cheque does not require any stamp. A bill of exchange (except in certain cases) must be stamped.

LESSON – 4: ENDORSEMENT OF NEGOTIABLE INSTRUMENT AND HUNDI

After completion of this lesson you will be able to –

- *Define endorsement*
- *Analyze the rules of endorsement*
- *Analyze the ways of payment of negotiable instruments*
- *Analyze the ways of dishonor of negotiable instruments*
- *Evaluate the consequences of dishonor of negotiable instruments.*
- *Define hundi and its types.*

DEFINITION OF ENDORSEMENT

Endorsement means signature of the holder made with the object, of transferring the document. The person who makes the endorsement is called the endorser.

When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the 'endorser'. Sec 15.

RULES OF ENDORSEMENT

The rules of endorsement are as follow:

1. Endorsement may be made on the face of the instrument or on its back. If there is no space on the instrument the endorsement may be made on an attached slip of paper.
2. Mere signature without any words amounts to an indorsement in blank, provided the indorsement was made with the intention of transferring the instrument.
3. For an indorsement in full, no particular words are necessary. Any term indicating an intention to transfer the document to a particular person or to his order, accompanied by signature is sufficient.
4. If the payee's on the endorsee's name is wrongly spelt, he should (when he again endorses it) sign the name as spelt in the instrument and write the correct spelling within brackets after his endorsement.
5. A negotiable instrument indorsed blank is payable to the bearer thereof even although originally payable to order. - Sec. 54. But this rule does not apply to crossed cheques.
6. The endorsement must be signed by the holder or his duly authorized agent.
7. Usually endorsements are not accepted unless it is signed in ink. A rubber stamp is not accepted but the designation of the holder can be done by a rubber stamp.
8. Complimentary prefix, e.g., Mr or Mrs is usually not written in negotiable instruments.
9. An illiterate person may endorse a negotiable instrument by putting a thumb impression of his left hand with witnesses who must also sign.
10. It is presumed that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.-Sec. 118 (e).

PAYMENT OF NEGOTIABLE INSTRUMENT

The payment of negotiable instrument can be made by any of the following ways:

1. Time of Payment

A promissory note or a bill of exchange may be payable on demand or on a specific date or after a specified period of time. The time of payment is usually mentioned in the instrument. If no time of payment is mentioned, the instrument is payable on demand. A cheque is always payable on demand.

In a promissory note or a bill of exchange the expressions, "at sight" or "on presentment" means on demand. The expression "after sight" means in a promissory note, after presentment for sight. In a bill of exchange it means, after acceptance or noting for non-acceptance, or protest for non-acceptance.-Sec .21.

A promissory note or a bill of exchange may be made payable by instalments.

2. Maturity of a Note or Bill

The maturity of a bill or note is the date on which it falls due. A bill or note which is payable on demand becomes due immediately on presentation for payment. A bill or note which is not payable on demand becomes mature on the third day after the day on which it is expressed to be payable. The three days are known as the Days of Grace. The date of maturity of a bill or note is calculated in the following way. Sections 23 to 25.

a) If it is payable a stated number of months after date or after sight, it becomes payable three days after the corresponding date of the month after the stated number of months.

b) If the month in which the stated number of months will terminate has no corresponding date, it becomes mature on the last day of the month.

c) In calculating the maturity of a bill or note payable a certain number of days after date or sight, the day on which it was drawn or presented for acceptance shall be excluded.

d) When the day on which a bill or note is at maturity is a holiday, the instrument shall be deemed to be due on the next preceding business day.

The expression "Public Holiday" includes Sundays, and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday. Examples: A negotiable instrument, dated 30th August 1978, is made payable three months after date. The instrument is at maturity on 3rd December 1978.

3. Payment in Due Course

"Payment in due course means payment in accordance", ith the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. "-Sec.10.

A negotiable instrument is "paid in due course" when the following conditions are satisfied:

i. The payment is according to the apparent tenor of the instrument. [Tenor means the prescribed time of payment.]
ii. The payment is in good faith and without negligence.
iii. The payment is to the possessor of the instrument.
iv. There does not exist any ground for believing that the possessor is not entitled to receive payment.

Payment in due course completely discharges the obligation of the party liable to pay, even though it subsequently transpires that payment has been made to the wrong person.

4. Usance

The time allowed for the payment of bills drawn in one country and payable in another (foreign bills) is called usance. The time varies according to the distance between the countries and is determined by customary rules.

MODE OF DISHONOR OF NEGOTIABLE INSTRUMENTS

A negotiable instrument may be dishonored in two ways: (i) by non-acceptance and (ii) by non-payment. Only bills of exchange can be dishonored by non-acceptance, since only bills require acceptance. Promissory notes, bills of exchange and cheques can' be dishonored by non-payment.

Dishonor by Non-Acceptance

A bill of exchange is dishonored by non-acceptance in the following cases:

1. "When after due presentation, the bill is not accepted by the drawee." When there are several drawees (who are not partners), refusal by anyone of the drawees will amount to dishonor.
2. In cases where presentation for acceptance is excused, the bill is treated as dishonored if it is not accepted without presentation.
3. Where the drawee is incompetent to contract, the bill may be treated as dishonored. -Sec. 91.
4. If the acceptance is qualified, the bill may be treated as dishonored.
5. Drawee in case of need: Where a drawee in case of need is named in a bill, or in any indorsement thereon, the bill is not dishonored until it has been dishonored by such drawee. - Sec. 115.

Dishonor by Non-Payment

A promissory note, bill of exchange or Cheque is dishonored by non-payment when the maker of the note or the acceptor of the bill of exchange or the drawee of the Cheque makes default in payment upon being duly required to pay the same.-Sec. 92.

CONSEQUENCE OF DISHONOUR OF NEGOTIABLE INSTRUMENTS

Steps to be taken by the holder when a negotiable instrument is dishonored, the holder –

a) becomes entitled to file a suit for the recovery of the amount due from the parties liable to pay.
b) He must, subject to certain exception, give notice of dishonor to parties against whom he intends to proceed.
c) He may also have the instrument noted and protested before a notary public.

CONCEPT OF HUNDI

Hundi is a negotiable instrument which is available in various vernacular languages in the country. This word has come out from the Sanskrit word ‘hundi’ which means ‘to collect’. But it is not necessary to be a bill of exchange as given in the Act. Hundis are famous among the traders of Indian sub-continent. Specifically, it is famous amongst those operating in suburban areas. These are under control of the Negotiable Instrument Act 1881, unless there is a local usage to the contrary.

TYPES OF HUNDIS

The different types of hundis are as follow:

1. **Darshani:** Darshani is a hundi which is payable at sight. It is like a demand bill. Moreover, it is negotiable. The party can sell them at par, premium, and discount. The holder has to present the darshani for payment within a reasonable time of its receipt. If the drawer faces any loss due to delay in presentation, the holder shall be responsible for it.
2. **Miadi:** Also called as muddati, miadi is something which is payable after a certain time period like a 'time bill'. Banks generally provide loans for the security of such hundis.
3. **Shahjog:** This is a hundi made payable only to a Shah (a respectable person of financial worth and substance in the market). It is freely transferrable. But it is not payable to bearer. In general, it is similar to a crossed cheque.
4. **Namjog:** Under this hundi, the amount is payable to the party whose name is on it. Such an instrument is similar to a bill of exchange payable on order.
5. **Dhanijog:** 'Dhani' in local terms means owner. It is generally like a bearer cheque as the holder of it becomes a holder in due course if he takes it for value.

Discussion Questions:

1. What do you understand by negotiable instrument?
2. Describe the features of negotiable instrument.
3. What do you understand by promissory note?
4. Identify and describe the parties of promissory note.
5. Explain the features of promissory note.
6. What is bill of exchange?
7. Identify the parties involved in bill of exchange.
8. Explain the features of bill of exchange.
9. Describe the types of bill of exchange.
10. Differentiate bill of exchange from promissory note.
11. Define the concept of cheque.
12. Explain the features of cheque.
13. Explain the different types of cheques.
14. Describe the different types of endorsement of cheque.
15. Analyze the situation when bank may refuse to pay the cheque.
16. Differentiate cheques from bill of exchange.
17. Define endorsement.
18. Describe the rules of endorsement.
19. Discuss the ways of payment of negotiable instruments.
20. Explain the ways of dishonor of negotiable instruments.
21. Evaluate the consequences of dishonor of negotiable instruments.
22. What do you understand by hundi? Describe the different types of hundis.

Book Recommended: Commercial Law and Industrial Law, by- Sen and Mitra, 26th Edition.

Reference Book: Commercial and Industrial Law, By- Mohammad Khalekuzzaman, The Jamuna Publishers.