

Lesson 1

BUSINESS AND ITS ENVIRONMENT

NATURE OF BUSINESS

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

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

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

Hence, it is understood that the role of business is crucial. Society cannot do without business. It needs an emphasis that business needs society as much.

BUSINESS TODAY

Modern business is dynamic. If there is any single word that can best describe today's business, it is change. This change makes the companies spend substantially on Research and development (R & D) to survive in the market.

Mass production and mass marketing are the norms followed by business enterprises. The number of companies with an annual turnover of Rs.100 crore each was only three in 1969-70. The figure has gone up by hundreds these days.

Today's business is characterized by diversification, which may be:

Social and culture Environment

It refers to people's attitude to work and wealth; role of family, marriage, religion and education; ethical issues and social responsiveness of business.

ENVIRONMENT – BUSINESS RELATIONS

Business is the product of the technological, political-legal, economic, social – cultural, global and natural factors amidst which it functions. Three features are common to this web of relationship between business and its environment.

- There is symbolic relationship between business and its environment and among the environmental factors. In other words, business is influenced by its environment and in turn, to certain degree, it will influence the external forces. Similarly, political-legal environment influences economic environment and vice versa. The same relationship between other environment factors too.
- These environmental forces are dynamic. They keep on changing, as years roll by, so does business.
- The third feature is that a particular business firm, by itself, may not be in a position to change its environment. But along with other firms, business will be in a position to mould the environment in its favor.

IMPORTANCE OF ENVIRONMENTAL STUDY

The benefits of environmental study are as follows;

- Development of broad strategies and long-term policies of the firm.
- Development of action plans to deal with technological advancements.
- To foresee the impact of socio-economic changes at the national and international levels on the firm's stability.
- Analysis of competitor's strategies and formulation of effective counter-measures.
- To keep oneself dynamic.

NEED FOR BUSINESS ETHICS

- Ethics corresponds to basic human needs. It is human trait that man desires to be ethical, not only in his private life but also in his business. These basic ethical need compel the organizations to be ethically oriented.
- Values create credibility with public. A company perceived by the public to be ethically and socially responsive will be honored and respected. The management has credibility with its employees precisely because it has credibility with the public.
- An ethical attitude helps the management make better decisions, because ethics will force a management to take various aspects- economic, social, and ethical in making decisions.
- Value driven companies are sure to be successful in the long run, though in the short run, they may lose money.
- Ethics is important because the government, law and lawyers cannot do everything to protect society.

ETHICAL GUIDELINES

- **Obeying the law:** Obedience to the law, preferably both the letter and spirit of the law.
- **Tell the Truth:** To build and maintain long-term, trusting and win-win relationships with relevant stockholders.
- **Uphold human dignity:** Giving due importance to the element of human dignity and treating people with respect.
- **Adhere to the golden rule:** “Do unto others as you would have others do unto you”
- **Premium Non-Nocere: (Above all, do no harm)**

- **Mixed Socialist Economies**

To the category of the Mixed Socialist Economies belong the countries which have adopted “ socialist pattern of society: and economic planning as he means of growth and social justice (e.g. India) and the former communist countries (eg. Russia and china) which have of late carried out drastic economic reforms and liberalized their economies for private entrepreneurship. The government of these countries takes upon themselves to control and regulate the private sector activities in accordance with the plan objectives.

BASIC PROBLEMS OF AN ECONOMY AND THE ROLE OF GOVERNMENT

Whatever the nature of the economic system, all types of economies have been faced with certain common basic problems. The major economic problems faced by an economy may be classified into two broad groups (i) *micro-economic problems* called *basic problems*, which are related to the working of the constituents of the economic system; and (ii) *macro-economic problems* related to the growth, stability, and management of the economy as a whole.

The way the basic problems of an economy are solved depends on the nature of the economy. While in a socialist economy they are solved by the government agencies, like central planning authority, in a free enterprise or mixed capitalist economy this task is performed by the Price Mechanism or Market Mechanism.

Though free enterprise system is capable of bringing economic growth, it does not ensure a stable, sustained, and balanced growth. It becomes therefore inevitable for the government to intervene fair competition, and help the economy in achieving its goals – efficiency, stability, growth and economic justice.

PRIVATISATION ROUTES

The important ways of privatization are:

- Divestiture, or privatization of ownership, through the sales of equity.
- Denationalization or reprivatization.
- Contracting - under which government contracts out services to other organizations that produce and deliver them.
- Franchising- authorizing the delivery of certain services in designated geographical areas- is common in utilities and urban transport.
- Government withdrawing from the provision of certain goods and services leaving them wholly or partly to the private sector.
- Privatization of management, using leases and management contracts
- Liquidation, which can be either formal or informal. Formal liquidation involves the closure of an enterprise and the sale of its assets. Under informal liquidation, a firm retains its legal status even though some or all of its operations may be suspended.

BENEFITS

The benefits of privatization may be listed down as follows:

- It reduces the fiscal burden of the state by relieving it of the losses of the SOEs and reducing the size of the bureaucracy.
- Privatization of SOEs enables the government to mop up funds.
- Privatization helps the state to trim the size of the administrative machinery.
- It enables the government to concentrate more on the essential state functions

New rules and Norms

- Market economic policies spreading around the world, with greater privatization and liberalization than in earlier decades
- Widespread adoption of democracy as the choice of political regime
- Human rights conventions and instruments building up in both coverage and number of signatories – and growing awareness among people around the world
- Consensus goals and action agenda for development
- Conventions and agreements on the global environment – biodiversity, ozone layer, disposal of hazardous wastes, desertification, climate change
- Multilateral agreements in trade, taking on such new agendas as environmental and social conditions
- New multilateral agreements- for services, intellectual property, communications – more binding on national governments than any previous agreements
- The multilateral agreements on investment under debate

New Tools of communication

- Internet and electronic communications linking many people simultaneously
- Cellular phones
- Fax machines
- Faster and cheaper transport by air, rail and road
- Computer-aided design

Exporting

Exporting, the most traditional mode of entering the foreign market is quite a common one even now.

Licensing and Franchising

Under international licensing, a firm in one country (the licensor) permits a firm in another country (the licensee) to use its intellectual property (such as patents, trademarks, copyrights, technology, technical know-how, marketing skill or some other specific skill).

Franchising is “a form of licensing in which a parent company (the franchiser) grants another independent entity (the franchisee) the right to do business in a prescribed manner.

Contract manufacturing

A company doing international marketing, contracts with firms in foreign countries to manufacture or assemble the products while retaining the responsibilities of marketing the products.

Management contracting

In a management contract the supplier brings together a package of skills that will provide an integrated service to the client without incurring the risk and benefit of ownership. The arrangement is especially attractive if the contracting firm is given an option to purchase some shares in the managed company within a stated period.

Turnkey contracts

A turnkey operation is an agreement by the seller to supply a buyer with a facility fully equipped and ready to be operated by the buyer’s personnel, who will be trained by the seller.

- An open economy spurs innovation with fresh ideas from abroad.
- Export jobs often pay more than other jobs.
- Unfettered capital flows give access to foreign investment and keep interest rates low.

DISADVANTAGES

Following are the cases against globalisation:

- Millions have lost jobs due to imports or production shifts abroad. Most find new jobs that pay less.
- Millions of others fear losing their jobs, especially at those companies operating under competitive pressure.
- Workers face pay cut demands from employers, which often threaten to export jobs.
- Services and white-collar jobs are increasingly vulnerable to operations moving offshore.
- Employees can lose their comparative advantage when companies build advanced factories in low-wage countries, making them as productive as those at home.

ESSENTIALS FOR GLOBALISATION

They are some essential conditions to be satisfied on the part of the domestic economy as well as the firm for successful globalization of the business.

- **Business freedom**

There should not be unnecessary government restrictions like import restriction, restrictions on sourcing finance or other factors from abroad, foreign investments etc. the economic liberalization is regarded as a first step towards facilitating globalization.

- **Facilities**

The extent to which an enterprise can develop globally from home country base depends on the facilities available like the infrastructural facilities.

- **Government support**

Government support may take the form of policy and procedural reforms, development of common facilities like infrastructural facilities, R & D support, financial market reforms and so on.

- **Resources**

Resourceful companies may find it easier to thrust ahead in the global market. Resources include finance, technology, R & D capabilities, managerial expertise, company and brand image, human resource etc.

- **Competitiveness**

A firm derives competitive advantage from any one or more of the factors such as low costs and price, product quality, product differentiation, technological superiority, after sale services, marketing strength etc.

- **Orientation**

A global orientation on the part of the business firms and suitable globalization strategies are essential for globalization.

GLOBALISATION IMPACT ON INDIAN ECONOMY

In India, the process of dismantling trade barriers was started in 1991 and subsequently, every year the Government has been announcing reduction in custom duties and removing quantitative restrictions. It is argued that this shall enable free flow of goods, capital and technology and thus globalization becomes a motivating force for nations to develop themselves at a faster rate.

- Empowering the states to grant prospecting licenses/mines leases without prior approval of the central Government (except in a few cases)
- Removing the restrictions on equity holding by foreign nationals in a mining company

The major objectives and the strategies of the new mineral policy are as follows:

- to explore for identification of mineral wealth on land and off-shore
- to develop mineral resources taking into account the national and strategic considerations
- to minimize adverse effects of mineral development on the forests, environment and ecology through appropriate protective measures
- to promote foreign trade in minerals
- to promote research and development in minerals

ECONOMIC DEVELOPMENT AND ENVIRONMENTAL ISSUES

Ecologists and Environmentalists believe that one of the principal reasons for the existence of the environmental problem stems from the emphasis on the growth by the industrialized nations. They point out that economic growth has been made possible only at the expense of the environment.

Ecologists postulate that growth rates were so high, because of the fantastic increase in population and demands of the society. Increased production and consumption had unscrupulously released wastes and pollutants into the environment without consideration of their effects.

STRENGTHS, WEAKNESS AND REMEDIES OF SHIPPING

Strengths

- Long coastline of over 5700 kms and almost the whole of foreign trade passing across the seas.
- Largest merchants shipping fleet among the developing countries and 14th in the world in shipping tonnage
- Skilled and competent managerial and ship board personnel
- Huge potential in the make of India becoming one of the signatories of the WTO. There will be considerable increase in sea-borne trade.

Weaknesses

- Limited cargo handling capacities of ports
- Challenge from containerization which is highly prevalent in advanced countries
- Fund starving
- Undue hardships to ship owners due to conversion of FOB items into CIF, which has been introduced because of decanalisation.

Remedies

- Amend the Major Port Trust Act, 1963, to allow private sector BOT projects at the 11 major ports
- Raise the capital expenditure ceiling of the port trust boards from Rs.5 crore to Rs.200Crore.
- Abolish the need for PIB approvals for private projects that do not need port trust investment

Indian Airlines has also geared itself since June 1993 to the challenging task of adopting itself to a competitive environment. Several measures have been taken, mainly centred on making the organization adopt a marketing approach to decision-making and considerably improve the quality of its product. It has improved its passenger facilities both on board and on the ground, on time performance, flight safety measures and has also increased employee participation to provide better services.

COMMUNICATIONS

The communication system comprises posts and telegraphs, telecommunication systems, broadcasting, television and information services. By providing necessary information about the markets and also supplying necessary motivation, the communication system helps to bring buyers and sellers together effectively and helps to accelerate the growth of the economy. Accordingly, the modern communication system has become an integral part of the development process.

Postal system in India

Since 1950-51, the postal network has been expanded throughout the country, and in recent years, with special emphasis on the rural, hilly and remote tribal areas. The postal department has given a new thrust to its programme of modernization for providing new value added services to customers. This include:

- A programme of computerized services of such postal operations as mail processing, savings bank and material management
- Introduction of Metro channel Service linking 6 metros

SCIENCE AND TECHNOLOGY MANPOWER DEVELOPMENT AND EMPLOYMENT

While a number of steps have been taken by the government to increase employment opportunities the number of scientists would fall far short of the rate at which S&T persons are needed in the country. Some of the strategies for the creation of jobs and for retaining S&T personnel are:

- Motivating S&T personnel to capture the full potential of self-employment
- Creating awareness about entrepreneurship leading to self-employment among the college and school students
- Introducing greater capital investment in the areas where the outlay per work place is minimal
- Restructuring government policies to minimize import of goods
- Creating entrepreneurship development cells in all Science /Engineering/IITs and other academic institutions by the concerned central /state agencies
- Introducing automated techniques selectively from the viewpoint of safety, reduction of drudgery, improvements in productivity /efficiency etc
- Examining export strategy to enable the country to pay for imports through exports and thereby simultaneously generating greater employment
- Encouraging the establishment of sophisticated industries in the emerging areas of technology as also encouraging the service sectors requiring inputs from high technology so that highly trained S&T personnel could be retained and gainfully employed
- Maintaining centers of excellence in various branches of Science and Technology to retain highly trained persons within the country
- Providing proper working atmosphere and adequate amenities (e.g. housing in urban areas) to S&T personnel

ensures one fact; that its customers who were earlier buying Sundaram products in Europe and the US, did not have to go far from home to access the product.

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Rate of Industrial Growth

Industrial growth has not been uniform since 1951. After a steady growth of about 8 % during the initial period of 14 years (1951-1965), there was a fluctuating trend since then. In the sixties (1961-70) the average growth of Industrial output was put at 5.5 % and in the seventies (1971-80) the average growth rate was about 4 % per annum. During the 7th plan (1985-90), the growth rate had picked up to an average of over 8% per annum and in the eight plan, it had declined to 7.3 % per annum.

Strategy of Industrial Development

The development strategy adopted by the Indian planners consisted of accelerated industrialization with a base of heavy industry and to generate expanding foreign exchange earnings.

Growing Importance of Basic and Capital goods

The structure of Indian industries had changed in favor of basic and capital goods sector. On the other hand the share of consumer goods industries such as textiles, sugar, paper, tobacco, etc., declined.

Structure of Effective Demand and Pattern of Industrial Development

An unduly large share of resources is absorbed in production, which relates directly or indirectly to maintaining or improving the living standards of the higher income groups.

Consumer durables like refrigerators, air-conditioners, TVs, cars and scooters, etc., go to satisfy the wants of the richer sections of the community while the consumer non-durables like sugar, tea, coffee, cloth, vanaspati, matches, etc., enter into mass consumption.

Relative Roles of Public and Private

The growth of the public sector in a big way in the heavy and basic industries, the machine goods sector, engineering industries etc., Public sector units accounted for 7 % of the number of factories in the country but they employed 32 % of the productive capital. Only 56% of the productive capital is employed by the private sector units, which account for 91 % of the total number of factories.

Growth of Infrastructure

The rapid pace of industrial growth and the development of productive capacity have been marked by remarkable, though still inadequate, expansion of infrastructural facilities in the country.

Science and Technology

Significant progress has been recorded in the field of science and technology. India now ranks third in the world in respect of technological talent and manpower. Indian scientists and technologists are working on the frontiers of today's knowledge, as in agriculture and industry, in the development of nuclear power and the use of space technology for communication and resource development.

INDIAN INDUSTRIES – STRUCTURAL TRANSFORMATION

The industrial structure has been widely diversified covering broadly the entire range of consumer, intermediate and capital goods. The progress India has made in the field of Industrialization is clearly reflected in the commodity composition of India's foreign-trade in which the share of imports of manufactured goods has steadily declined; on the other hand, industrial products, particularly engineering goods have become a growing component of India's exports.

Finally, the rapid stride in industrialization has been accompanied by a corresponding growth in technological and managerial skills for efficient operation of the most sophisticated industries and also planning, designing and construction of such industries.

TOTAL QUALITY MANAGEMENT

Total Quality Management (TQM), a buzzword phrase of the 1980's, the concept and principles, though simple seem to be creeping back into existence by "bits and pieces" through the evolution of the ISO 9001 Management Quality System Standard.

Companies who have implemented TQM include Ford Motor Company, Philips Semiconductor, SGL Carbon, Motorola and Toyota Motor Company. The latest changes coming up for the ISO 9001:2000 standard's "Process Model" seem to complete the embodiment.

TQM is the concept that quality can be managed and that it is a process. Total Quality Management (TQM) is a participative management style that stresses total staff commitment to "customer" satisfaction. It is a holistic approach to managing complex organizations and replaces top-down management with decentralized customer-driven decision-making.

Total Quality Management is an integrated management system for creating and implementing a continuous improvement process eventually producing results that exceed customer expectations. It is based on the assumption that 90 % of problems are a result of process, not employees.

TQM – CONCEPT & OBJECTIVES

TQM is a process and strategy that in certain situations can improve an organization's effectiveness and efficiency. TQM places responsibilities for

identity, technological change and territoriality, politics of the household and interpersonal relations, and the politics of the environment. With its inherited discourses on place and politics, technological transformations and geopolitical space, nature and the contested politics of human-environment relations, political geographers are well positioned to contribute to the larger social science conversation about the human condition in the 21st century.

QUESTIONS:

1. Outline the present status of infrastructural facilities in our country.
2. Point out the constraints which inhibit the rapid growth of infrastructural facilities.
3. Bring out the role of infrastructure in the growth of a county.
4. Bring out the strengths, problems and remedies for different areas of infrastructure.
5. List out the recent developments in Telecom sector.
6. Evaluate the significance of S & T in economic growth suggest suitable measures to promote S & T.
7. Explain the theory of Demographic Transition.
8. Examine the trend of population growth and its implications on economic growth.
9. State the importance of Human Development. What are the measures to assess human development?
10. 'Gender Related Development is important to achieve overall human development', Comment and highlight the extent of gender equality in India.
11. Evaluate the Human Development across the state in India. Give reasons for the variation among the states.
12. What do you understand by International Relations? Why is IR important in today's environment?
13. Explain the different approaches of International Relations management.
14. Evaluate the role played by MNCs in developing countries.
15. What is Multinational Corporation? Explain its characteristics.
16. Outline the major MNCs in India. Also, the rise of Indian Multinationals at global.
17. Describe the need of foreign capital for economic growth.

18. What are the forms of foreign capital? List the major investing foreign countries in India.
19. Explain the concept Financial and technical collaborations.
20. Why should have collaborations? Explain the various strategies of collaborations.
21. Critically examine the impact of FDI on Indian stock market.
22. Examine the relationship between FDI flows and liquidity and volatility of stock market.
23. Trace out the growing significance and major forms of takeover in India.
24. Outline the trade and pattern of industrialization in India.
25. Examine the concept of leaders in drafting the long term plans to promote industrial growth in our country.
26. What is TQM? Give its objectives and key elements.
27. Explain the principles of TQM. Describe its process improvement and problems solving sequence.
28. Examine the growth and future perspective of Indian industries.
29. What is 'Geo Political Dimension'? Give its relevance in today's global environment.
30. Describe the need and emergence of new dimension of business environment, 'geo political transformation'.

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- (iv) Consent caused by undue influence (Sec. 14, 16 and 19A)
- (v) When one party induces another to enter into an agreement the object of which is unlawful though it is not known to the other party.

(B) By Subsequent Default

- (i) Where offer of performance is not accepted (Sec. 38)
- (ii) When one party prevents performance of reciprocal promise (Sec. 53)
- (iii) When a party fails to perform at the time fixed, if time is the essence of the contract (Sec. 55)

Consequences of Rescission of Voidable Contract

When a voidable contract is rescinded ?

(A) As regards the party at whose option the contract is voidable, if he has received any benefit from another party to such contract, he must restore such benefit so far as may be, to the person from whom it has been received. The benefit must have been received under the contract and not otherwise. Security for performance is not the benefit received under the contract.

(B) As regards the other party, he need not perform his promise.

(3) **Void Contract:** [Sec 2(j)] “A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable” E.g A agrees to sell his car to B for Rs.10,000. All essentials of a contract are fulfilled. If A refuses to sell his car, B can go to the court and the court would enforce A’s promise. But if, before the delivery the car is destroyed by Tsunami, the court cannot enforce anything and hence this contract becomes

unenforceable i.e void. Thus, void contract is one which was a valid contract when it was made but becomes void later on. Those agreements which are *void ab initio* (from the very beginning) are called Void Agreements and those which become void later on are called Void Contracts.

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

- (A) **Contingent contract:** A contingent contract to do or not to do something on the happening of an uncertain future event, becomes void, when the event becomes impossible (Sec 32).
- (B) **Repudiation of a voidable contract:** When a voidable contract is rescinded by the party at whose option it is voidable, the contract becomes void.
- (C) **Subsequent impossibility** (Sec. 55): A contract which becomes impossible to perform, after it is made, becomes void.
- (D) **Subsequent illegality** (Sec. 56): A contract becomes void if it becomes illegal after it is made.

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

(4) **Void Agreement:** An agreement not enforceable by law is called a void agreement. If any of the essentials of obligations

LESSON 2

CONSIDERATION AND COMPETENCE TO CONTRACT

Consideration is one of the elements of obligation. An agreement becomes enforceable only if it is supported by consideration. (Sec. 10) “All agreements are contracts if they are made... for a lawful consideration...” It clearly shows that consideration is an important prerequisite of a valid contract. (Sec.25) “An agreement made without consideration is void...” Hence the rule is “No Consideration, No Contract.

ESSENTIALS OF CONSIDERATION

(A) Based on Definition

An analysis of the above definition reveals the following essentials of consideration.

- (1) **Consideration must move at the desire of the promisor**
- (2) **It may move from promisee or from any other person on behalf of promisee**
- (3) **It is a general rule that a person, who is not a party to a contract, cannot sue on the contract even though the contract is for his benefit i.e. unless there is privity of contract, the relationship is not enforceable.**

(3) **Consideration may be past, present or future**

(4) **Consideration must be real and not illusory**

(5) **Consideration may consist of an act, abstinence or promise**

(B) Based on other provisions

against public policy because it would cause corruption in administration of the State.

- (g) **Agreement creating an interest opposed to duty**
- (h) **Agreements restraining personal freedom**
- (i) **Agreements opposed to parental rights and duties:** Father is supposed to be the guardian of his children and in the absence of the father their mother acquires this right as well as responsibility and this right cannot be bartered away.
- (j) **Marriage Brokerage Agreements:** Agreement to pay reward to a person for negotiating marriage is opposed to public policy.

The following agreements are also opposed to public policy.

- (i) Agreements in restraint of marriage.
- (ii) Agreements in restraint of trade.
- (iii) Agreements in restraint of legal proceedings.

COMPETENCE TO CONTRACT

Competence to contract is one of the essential elements of enforceability of an agreement. According to Sec. 10 'All agreements are contracts if they are made by... the parties competent to Contract....As regards the meaning of competence, Sec.11 of the Contract Act states that "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. The following persons are incapable of entering into a contract:

- (1) A person who has not attained the age of majority i.e. a person who is still a **MINOR**.

- (2) A Person who is not of sound mind i.e. a person of **unsound mind**.
- (3) A Person who is **disqualified by any other law** to which he is subject (i.e., other disqualifications.)

MINOR

A minor is a person who has not completed 18 years of age on the date of the contract. But in the following two cases the minority would continue up to the completion of 21 years of age:

- (a) Where a guardian to the person or property of a minor is appointed by the court.
- (b) When the minor is under the guardianship of the court of Wards, i.e. minor's property is looked after by the Court of Wards.

RULES RELATING TO AN AGREEMENT WITH A MINOR

(1) Agreement is void ab initio : According to Sec. 10, an agreement made by a person incompetent to contract is void. Hence an agreement made by a minor is void. The agreement is *void ab initio* i.e. void from the very beginning.

However, Sec. 68 of the Contract Act lays down "if a person, incapable of entering into a contract or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

(2) Minor can be a promisee: An agreement is void as against a minor but a minor can derive benefit under a contract. The privilege of minority is available to the minor only. Other person cannot avoid the

contract because the promisee is a minor. Thus the minor can enforce the agreement against the other party.

(3) A Minor's Agreement cannot be ratified : Since an agreement with a minor is void ab initio, i.e. it does not exist in the eyes of law, it cannot be ratified by a minor after completing the age of majority.

(4) No Compensation is payable by a minor: Though an agreement with a minor is void, the minor would not be called upon to refund any benefit which he has received, under such an agreement (i.e. Sec. 64 and Sec. 65 would not apply to a minor).

(5) The rule of estoppel does not apply to a minor i.e. a minor can misrepresent his age and enter into an agreement and can still plead infancy to avoid that agreement.

(6) No recovering back the money paid: Where an infant has paid money under a void or voidable contract he cannot recover it unless there has been a total failure of consideration.

(7) A minor can be sued in tort. If what the infant has done lies right outside the terms of the contract, the infant can be made liable.

(8) Agency. A minor acting as an agent cannot be held liable even for those acts for which other agents would incur personal liability.

(9) Negotiable Instrument: A minor can also make and deliver negotiable instruments and can negotiate them making all other persons except himself liable on them.

(10) Partnership: An agreement with a minor is void. But a minor can be admitted into the benefits of partnership with the consent of all the

6. Contracts contingent on impossible event: (Sec. 36-)“Contingent agreement to do or not to do anything if an impossible event happens, are void, whether the impossibility is known or not to the parties to the agreement at the time when it is made.”

Difference between a Contingent Contract and Wagering Agreement

The main points of distinction between the two are as under:

- 1 A contingent contract is a valid contract but wagering agreement is absolutely void.
- 2 Parties have real interest in the occurrence but or non-occurrence of the event e.g., insurable interest in the property insured. Parties are not interested in the occurrence of the event except for the winning or losing the bet amount.
- 3 Future uncertain event is merely collateral; uncertain event is the sole determining factor of the agreement.

QUASI CONTRACTS

A quasi contract is an obligation or a right created by law. A quasi contract is based on the principle that no person can enrich himself unjustly, at the expense of another. If he obtains a benefit which under the circumstances he ought, equitably to pay for it, the law would compel him to make the payment even though there is no contract requiring payment.

Following relations created by law resemble those created by contract:

- (1) **NECESSARIES SUPPLIED TO A PERSON INCAPABLE OF CONTRACTING:** Example: X supplies Y, a lunatic, with necessities

- (iii) **Proper time and place** (Sec. 38): The offer must be made at a proper time and place.
- (iv) **Able and willing** (Sec. 38): “It must be made... 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.”
- (v) **Reasonable opportunity** (Sec. 38): “...If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that thing offered is the thing which the promisor is bound by this promise to deliver. Thus buyer must have reasonable opportunity to ascertain that the goods offered are contracted for.
- (vi) **Tender of money:** A tender of money must be in legal tender money, and not in any foreign currency, promissory note or cheque’
- (vii) **Joint promises:** (Sec. 38) “An offer to one of several joint promises has the same legal consequences as an offer to all of them.”

(B) REFUSAL TO PERFORM (SEC.39)

“When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.”

(5) Declaration of war: A contract entered into with an alien enemy before the war breaks out is either suspended or discharged after the declaration of war if it does not aid the enemy in the pursuit of war, it is suspended and would be performed after the war is over, otherwise it is terminated and the parties to the contract are discharged from their respective obligations.

(IV) EXCEPTIONS TO THE PRINCIPLE OF SUPERVENING IMPOSSIBILITY

Impossibility as a rule is no excuse for non-performance: Following are some of the circumstances in which non-performance of a contract was held not to be excused.

- (i) **Difficulty of performance:** If a contract becomes difficult to perform but not impossible the promisor would not be discharged on that account.
- (ii) **Commercial Impossibility** would not discharge a contract. A contract would not be deemed to be impossible because it does not remain profitable to the promisor or would make the promisor to incur losses.
- (i) **Action of a third party:** If a man chooses to answer for the voluntary act of a third person there is no reason in law or justice why he should not be held for his inability to procure that act.
- (ii) **Strikes, lock-outs, civil disturbances and riots** do not discharge a contract unless there is a clause in the contract to that effect.
- (iii) **Partial impossibility:** Where a contract is entered into for more than one purpose, the contract would not become impossible if one of the objects has become impossible to achieve.

Consequences of Supervening Impossibility

Supervening impossibility makes a contract void. The parties are discharged from their respective obligations under the contract (Sec. 65). The party who has received any advantages under it should restore it to the other party.

V. MUTUAL AGREEMENT

A contract is created by the parties to it, therefore, it can also come to an end by their mutual agreement. Termination by mutual agreement may occur in any one of the following ways.

(1) Novation: When a new contract is substituted for an existing contract, either between the same parties or between different parties, it is called novation.

(2) Alteration: When one or more of the terms of a contract are changed it is called alteration. In case of alteration, parties to the contract do not change. Example: A agrees to supply to B 20 readymade shirts, 10 of the size 32 and 10 of the size 34. Later on B requests A to supply all 20 shirts of the size 32 only. A agrees to it. The old contract comes to an end.

(3) Rescission: When both the parties to a contract agree to put an end to the contract, without performing it, the contract is said to be rescinded by mutual agreement. Example: A promises to supply to B 20 shirts on 15th January and B promises to pay Rs 5000 on the same day after delivery, On 10th January, both the parties agree that the contract would not be performed. Parties are said to have rescinded the contract.

(4) Remission: When a party to a contract accepts, from the other party, a performance lesser than what he had contracted for, he is deemed to have remitted the remaining performance, and the contract is discharged. Example: A

owes B Rs.500 rupees but pays on by Rs. 200, and B accepts at in satisfaction of the whole debt. The whole debt is discharged.

(5) Waiver: When a party to a contract abandons his right under the contract, the other party is released from his obligations. Example: A pays Rs 1000 to B to paint a wall for him. Later on A forbids B to paint the picture. B is no longer bound to perform the promise.

(6) 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. Example: A has taken a house on lease from B for 10 years. After one year A buys the house from B. His rights of a lessee vanish into his rights of ownership and the contract of lease comes to an end.

VI. BY LAPSE OF TIME

The Limitation Act provides the time limit in which certain rights can be enforced. If that time limit expires, the promisee cannot enforce the promisor and promisor is discharged. Example: A owes Rs 10,000 to B. The last date for the repayment of the loan has expired and B does not file a suit against A for two years. B loses the right to recover the money back.

VII. BY OPERATION OF LAW

This covers the following cases: **1. Death:** If a contract involves personal skill or ability, death of the promisor would terminate the contract. **2. Insolvency:** When a person is adjudged insolvent and hands over all his property to the official receiver/assignee, he is supposed to have the right to earn his livelihood in the ordinary way and therefore the courts, under certain circumstances and subject to certain conditions, discharge him from all debts which were payable

when they entered into the contract, that this is likely to result from the breach of it.

(3) Liquidated Damages: (Sec. 74) “When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for”.

Example: A contracts with B to pay B Rs.10000, if he fails to pay B Rs. 9000 on a given day. A fails to pay B Rs.9000 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 10000, as the court considers reasonable.

(4) Vindictive or exemplary Damages: As explained earlier, damages for breach of contract are granted to compensate for the loss suffered by the plaintiff and not with a view to punish or penalize the wrong done by the defendant. Hence the damages granted are not vindictive, exemplary or ‘punitive’. However there are following two exceptions to this general rule

(i) In case of a breach of promise to marry. (ii) In case a banker, wrongfully, dishonouring the cheque of a customer having sufficient funds to his credit. The rule of damages’. “A stipulation for increased interest from the date of default may be a stipulation by way of penalty” [Sec 74].

(5) Nominal Damages: Where the aggrieved party does not suffer any monetary loss, sometimes the court grant a nominal amount like cost etc. just to establish that the plaintiff has won the case against the defendant.

Rights, Duties and Liabilities of Partners

RIGHTS

- (1) Right to take part in the conduct of business
- (2) Right to be consulted
- (3) Right of Access to the books
- (4) Right to share profits
- (5) Right to interest on capital
- (6) Right to interest on advances
- (7) Right to indemnity
- (8) Right to act prudently in emergency
- (9) Right to give consent for admission of a new partner
- (10) Right to retire
- (11) Right to carry on competing business after retirement.

DUTIES

(A) QUALIFYING

- (1) To attend his duties diligently
- (2) To work without remuneration
- (3) To contribute to losses
- (4) To indemnify for willful neglect
- (5) To use firm's property exclusively for the firm
- (6) To account for private profits [Sec.16(a)]

(B) OTHER

- (1) Duty to carry on business for the common advantage
- (2) To indemnify for loss caused by fraud
- (3) To give full information
- (4) To render true accounts
- (5) To be just and faithful

the possession of the seller himself. But in 'an agreement to sell he cannot sue him (buyer) for the price of the goods even if the goods happen to be in the possession of the buyer.

- b. When the seller commits default and refuses to sell the goods or sells the goods to some other person, then if the contract is a sale the buyer can recover his goods, even from a second buyer (except under certain circumstances) and sue the seller for breach of contract as well, but in case the contract is only an 'agreement to sell ' the buyer can only sue the seller for the breach of contract but cannot recover the goods.

(5) **Where the buyer becomes insolvent:** Where the contract is a 'sale' the seller would have to part with the goods and can receive in buyer's insolvency, only ratable dividend for the price due. An agreement to sell, the seller may refuse to deliver the goods to the official receiver/assignee of the buyer's property unless he is paid the full price.

(6) **Insolvency of the seller:** If it is a sale, the buyer can recover it from the official receiver/assignee. But in an agreement to sell buyer cannot recover the goods even if he has paid the price in advance.

SALE DISTINGUISHED FROM OTHER TRANSACTIONS

- (1) **Sale, barter and exchange :** If the goods are exchanged for goods only it is called 'barter' and not sale. If money is exchanged for money (say \$ 10 for Rs.450) it is called '**EXCHANGE**' only. But where goods are exchanged for a money consideration, it is called a sale. If the consideration consists partly of money and partly of goods, it would be a contract of sale.

- (2) **‘Hire purchase’ and ‘Agreement to sell’** : In a contract of sale there is an agreement to buy but in ‘hire purchase’, hirer has the option to buy the goods if he pays all the installments. Hence if he does not exercise his option, the owner cannot sue for breach of contract but can take his goods back. In an agreement to sell, if the buyer refuses to buy the goods the seller can sue him for breach of contract.
- (3) **Sale and contract for work and Labour** : If the essence of the contract is the rendering of service and exercise of skill it is a contract of work and labour, though goods are also delivered under the contract. But if the delivery of goods is the essence of the contract although some labour on the part of the seller may be necessary, it would be a contract of sale.

KINDS OF GOODS

The goods are classified by sec 6, as follows:

- (A) **Existing goods:** Existing goods are those which are owned or possessed by the seller at the time of the contract of sale.

Existing goods may be further classified into (i) specific; (ii) ascertained; and (iii) unascertained. “Specific goods means goods identified and agreed upon at the time a contract of sale is made” [sec.2(14)]. Ascertained goods are those which are identified and agreed upon after a contract of sale is made. The goods which are only defined by description and not specifically identified at the time a contract of sale is made are called unascertained goods.

(B) **Future Goods:** Future goods means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.” [Sec.2(6)], Example: A agrees to sell to B the entire crop of Onion, that his land

PERSONS NOT RELATED: A creditor has an insurable interest in the life of his debtor to the extent of the debt.

POLICIES: Whole Life Policy: which matures only at the death whenever it may occur. **Endowment Policy:** in which the sum insured is payable after the expiration of certain term of years if the policy-holder is alive, or at his death if he dies previously. **Joint Life Policies:** are issued under which the sum assured is payable at the death of the first of the two lives. **Survivorship Policy:** is also granted under which the sum assured is payable at the death of the last or survivor of two lives.

SURRENDER VALUE: The amount which the insurers are prepared to pay in total discharge of the contract, in case the assured wishes to surrender his policy and extinguish his claim upon it.

LOANS ON POLICIES: Where a policy has a surrender value, it also has a loan value, and assurance companies usually lend 75 per cent of the surrender value.

PAID-UP POLICY VALUE: The amount to which the sum assured would be reduced at any time if the assured requested a rearrangement of his contract so that no further premium should be payable.

PRINCIPLE OF GOOD FAITH AND SEC.45 OF INSURANCE ACT: The general rule is that in all kinds of insurance the assured must disclose everything which is likely to affect the judgment of the insurer and what is stated must be truthful.

ACCIDENT INSURANCE: An injury is accidental where it is the natural consequence of an unexpected cause, or the unexpected consequence of a natural cause. Accident insurance consists of three categories:- (a) Personal

LESSON 8

THE NEGOTIABLE INSTRUMENTS ACT, 1881

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

Essentials or Characteristics of a Promissory Note:

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

BILL OF EXCHANGE: A 'bill of exchange' is defined by Section 5 as "an instrument' in writing, containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or the order of, a certain person, or to the bearer of the instrument."

of a cheque may be done at the instance of the **drawer** or at the instance of the **payee** or at the instance of the **collecting banker**. The effect of marking is different in the three cases.

Marking at the Instance of the Drawer: The banker acquires a right to retain money to meet such a cheque. Marking only certifies the genuineness of the drawer's signature and the sufficiency of funds and not the endorsements.

Marking at the Request of the Payee or Holder: It constitutes nothing more than an intimation that at the time of marking, the bank has a sufficient balance to the credit of the drawer.

Marking Between Bankers: This marking is an appropriation of funds in the banker's hands for a specific purpose he is entitled to deduct the amount of such marked cheque when estimating the balance available for meeting other cheques.

Marking of Post-dated Cheques: It has been held anomalous and invalid. Marking of such a cheque amounts to a promise, requiring consideration to support it.

MATERIAL ALTERATIONS: A material alteration was defined as "an alteration which alters the business effect of the instrument if used for any business purpose. Any change made in the instrument that causes it to speak a different language from what is originally intended, or which changes the legal identity of the instrument in its terms or in relation or parties thereto is a material alteration."

Examples of material alteration are:(i) date (ii) the time of payment (iii) the place of payment (iv) the sum payable (v) the number of parties (vi) the

relationship between parties (vii) legal character of the cheque (viii) opening a crossed cheque (ix) converting an order cheque into a bearer cheque.

Effect of Material Alteration (Section 87): It renders the same void as against any one who is party thereto at the time of making such alteration and does not consent thereto unless it was made in order to carry out the common interest of the original parties, and any such alteration, if made by an endorsee, discharges his endorsers from all liability to him in respect of the consideration thereof.”

Examples of Alterations Which are not Material: (i) filling blanks of the instrument (Section 20); (ii) conversion of blank endorsement into endorsement in full (Section 49); (iii) crossing of cheques (Section 125);

FORGERY: No protection is granted to paying banker for making payment of cheques bearing forged signature of the customer. Payment of a cheque bearing forged signature of the customer is deemed to be a payment without the authority of customer and hence constituted breach of the implied contract between banker and the customer.

THE PAYING BANKER: The ‘paying banker’ is a term used to denote the position and duties of the drawee banks in payment the cheques of their customers. Thus, ‘paying banker’ is a banker upon whom a cheque is drawn. The job of a paying banker in regard to the payment of cheques is highly risky. However, this obligation of the paying banker to honour his customer’s cheque is subject to certain conditions:

Statutory Protection Available to a Paying-Banker: Section 31 holds the paying banker liable for payment to a wrong person. But, the banker, despite his efforts, may inadvertently happen to pay a cheque to a wrong person claiming payment under a clever **forgery of endorsement**.

11. Where the cheque is presented after a period of six months from the date it bears, i.e., it has become stale.

WHEN BANKER MAY REFUSE PAYMENT?: In the following cases the banker may dishonour a cheque without incurring any liability thereon:

1. **Where the cheque is post-dated.** Refusal to pay a post-dated cheque before its due date does not make a banker liable for wrongful dishonour.
2. **Where the funds of the customer are insufficient.**
3. **Where a cheque is not duly presented.** (For instance, a cheque presented after business hours).

NEGOTIATION: A negotiable instrument may be transferred by negotiation or assignment. When a negotiable instrument is transferred by negotiation, its transferee, if holder in due course, gets a better title than its transferor.

Negotiation By Mere Delivery: (Section 47) A bill or cheque payable to bearer is negotiated by mere delivery of the instrument. Delivery may be actual or constructive. Actual delivery means change of actual possession. It is a constructive delivery when the possession is given to the transferee's agent, clerk or servant on his behalf.

Payable to bearer: An instrument is payable to bearer (1) where it is made so payable, or (2) where it is originally made payable to order but the only or the last endorsement is in blank. A cheque which is originally drawn payable to bearer remains bearer even though it is subsequently endorsed in full. The rule is **once a bearer cheque always a bearer cheque** or (3) where the payee is a fictitious person.

Negotiation By Endorsement and Delivery: Instruments payable to a specified person or to the order of a specified person can be negotiated only by endorsement and delivery.

3. **Separate Legal Entity:** Unlike partnership, company is distinct from the persons who constitute it. Section 34(2) says that on registration, the association of persons becomes a body corporate by the name contained in the memorandum. [**Saloman v. Saloman & Co.Ltd.** (1877)]
4. **Limited Liability:** The company being a separate person, its members are not as such liable for its debts. Hence, in the case of a company limited by shares, the liability of members is limited to the nominal value of shares held by them. Thus, if the shares are fully paid up, their liability will be nil. However, companies may be formed with unlimited liability of members or members may guarantee a particular amount. In such cases, liability of the members shall not be limited to the nominal or face value of the shares held by them. In case of unlimited liability companies, members shall continue to be liable till each paise has been paid off. In case of companies limited by guarantee, the liability of each member shall be determined by the guarantee amount, i.e., he shall be liable to contribute upto the amount guaranteed by him.
5. **Separate Property:** Shareholders are not, in the eyes of the law, part owners of the undertaking. In India, this principle of separate property was best laid down by the Supreme Court in **Bacha F.Guzdar V. the Commissioner of Income Tax, Bombay (Supara)**. The Supreme Court held that a shareholder is not the part owner of the company or its property, he is only given certain rights by law, e.g., to vote or attend meetings, to receive dividends.
6. **Transferability of Shares:** Since business is separate from its members in a company form of organization, it facilitates the transfer of members' interests. The shares of a company are transferable in the manner provided in the Articles of the company (Sec. 82). However, in a private company, certain restrictions are placed on such transfer of shares but the right to transfer is not taken away absolutely.
7. **Perpetual Existence:** A company being an artificial person cannot be incapacitated by illness and it does not have an allotted span of life. The death, insolvency or retirement of its members leaves the company unaffected. Members may come and go but the company can go for ever.
8. **Common Seal:** A company being an artificial person is not bestowed with a body of natural being. Therefore, it has to work through its directors, officers and other employees. But, it can be held bound by only those documents which bear its signatures. Common seal is the official signature of a company.

5. Within thirty days of the passing of the special resolution, a printed or type-written copy there of should be filed with the Registrar.

Holding and Subsidiary Companies: Where a company has control over another company, it is known as the Holding Company and the company over which control is exercised is called the Subsidiary Company. A Company is deemed to be under the control of another if;

1. That other controls the composition of its Board of Directors; or
2. The other company holds more than half in nominal value of its equity share capital
3. It is subsidiary of a third company which itself is a subsidiary of the controlling company. For example, where company 'B' is a subsidiary of company 'A' and company 'C' is a subsidiary of company 'B' then company 'C' shall be a subsidiary of company 'A'. If Company 'D' is a subsidiary of company 'C', then company 'D' shall also be a subsidiary of company 'B' and consequently also of company 'A'.

One Man Company: A member may hold virtually the entire share capital of a company. Such a company is known as a "one man company". This can happen both in a private company and a public company. The first member/members of the company may be holding just one share each. Such other members may be just nominees for the purpose of fulfilling the requirements of law as regards minimum membership [Salomon v. Salomon & Co.Ltd.].

Non –Trading Company/Non – Profit Association: Such a company must have the objects of promoting of commerce, arts, science, religion, charity or any other useful object and must apply its profit, if any, or other income in promoting its object and must prohibit payment of any dividend to its members. As soon as it obtains a license and is registered accordingly, it will have the same privileges and obligations that a limited company has under the Companies Act, 1956.

LESSON 2

MEMORANDUM AND ARTICLES OF ASSOCIATION

The Memorandum of Association of a company is its charter which contains the fundamental conditions upon which alone the company can be incorporated. It tells us the objects of the company's formation and the utmost possible scope of its operations beyond which its actions cannot go. If anything is done beyond the powers, that will be ultra vires (beyond powers of) of the company and so void. It enables shareholders, creditors and all those who deal with the company to know what its powers are and what is the range of its activities.

Form and Contents: Shall be in such one of the Forms in Tables B,C,D and E in Schedule I to the Companies Act, 1956 as may be applicable in the case of the company, or in Forms as near thereto as circumstances admit. Section 13 requires the memorandum of a limited company to contain: (i) the name of the company, with "limited" and "private limited" in name of the State, the objects of the company, the declaration that the liability of the members is limited; and the amount of the authorized share capital divided into shares of fixed amounts.

The Name Clause (Sec. 13(1)(a)): The last word in the name of the company, if limited by shares or guarantee is 'limited' unless the company is registered under Sec.25 as an 'association not for profit' (Sec. 13(1)(a) and 25)].

The Registered Office Clause (Sec. 13(1)(b)): This clause states the name of the State in which the registered office of the company will be situated. Every company must have registered office which establishes its domicile, and it is also the address at which company's statutory books must normally be kept and to which notices, and all other communication can be sent.

The Objects Clause (Sec. 13(1)(d)): The objects clause defines the objects of the company and indicates the sphere of its activities. A company cannot do anything beyond or outside its objects and any act done beyond them will be ultra vires and void, and cannot be ratified even by the assent of the whole body of shareholders.

Section 13, read along with Tables ‘B’, ‘C’, ‘D’ and ‘E’, requires the company to divide its objects clause into two parts:

- (a) **Main objects** of the company to be pursued by the company on its incorporation and object incidental or ancillary to the attainment of the main objects; and
- (b) **Other objects** of the company not included in (a) above.

Liability Clause [Sec. 13(2)]: This clause states the nature of liability of the members. In case of a company with limited liability, it must state that liability of members is limited, whether it be by shares or by guarantee. In case of companies limited by guarantee, this clause will state the amount which every member undertakes to contribute to the assets of the company in the event of its winding-up. In fact, the absence of this clause in the memorandum means that the liability of its members is unlimited.

The Capital Clause [Sec. 13(4)(c)]: This clause states the amount of share capital with which the company is registered and the mode of its division into shares of fixed value, i.e., the number of shares into which the capital is divided and the amount of each share.

The Association Clause [Sec. 13(4)(c)]: The names, addresses, descriptions, occupations of the subscribers, and the number of shares each subscriber has taken and his signature attested by a witness.

DOCTRINE OF ULTRA VIRES (Beyond Powers)

The company's activities are confined strictly to the objects mentioned in its Memorandum, and if they go beyond these objects, then such acts will be ultra vires. The object of declaring such acts as ultra vires is to protect the interests of shareholders and all others who deal with the company.

1. Ultra vires the directors (Not Void)
2. Ultra vires the Articles of Association (Not Void)
3. Ultra vires the Memorandum of Association/Company (Void)

Effects of Ultra Vires : (1) Injunction against the company: (2) Personal liability of directors to the company (3) Personal liability of directors to third party (4) Ultra vires contracts are void.

Exceptions to Doctrine of Ultra Vires: (1) Acquires some property (2) Property can be recovered, exists and is traceable (3) Ultra vires loan to pay its own debts – can recover the money from the company (4) Any person borrows money from the company – the company has right to sue and recover the money from him (5) The company may compel the director to refund the money (6) The company is held liable for the ultra vires torts (civil wrongs) of its employees when it is proved.

- (i) A company exists only for the objects which are expressly stated in its objects clause
- (ii) Any act done outside the express or implied objects is ultra vires.
- (iii) The ultra vires acts are null and void ab initio.
- (iv) The members of a company (even a single member) can get an order of injunction from the Court restraining the company from going ahead with the ultra vires act.
- (v) If the directors have exceeded their authority such matter can be ratified by the general body of the shareholders, provided the company has the capacity to do by its memorandum of association.
- (vi) Any property acquired by a company under an ultra vires transaction may be protected by the company against damage by third persons.

- (vii) Directors and other officers can be held liable to compensate the company for any loss occasioned to it by an ultra vires act.
- (viii) Directors and other officers shall be personally accountable to the third parties.
- (ix) Money or property gained through an ultra-vires transaction available in specie or capable of being identified shall be restituted (restored) to the other party.
- (x) In case, an ultra-vires loan, taken by a company is used for payment of its intra-vires debts, the lender of the ultra loan is substituted in place of the creditor who has been paid off and as such can recover the money.

ALTERATION OF MEMORANDUM

Section 16 provides that the company can not alter the conditions contained in memorandum except in the cases and in the mode and to the extent express provision has been made in the Act.

Change of Name: The name of a company may be changed at any time by passing a special resolution at a general meeting of the company and with the written approval of the Central Government.

Change of Registered Office: (a) Change of registered office from one premises to another premises in the same city, town or village. A resolution passed by the Board of directors shall be sufficient. (b) Change of registered office from one town or city or village to another town or city or village in the same State Procedure.

- (i) Special Resolution
- (ii) Confirmation of Regional Director
- (iii) Copy of Special Resolution and Confirmation by Regional Directors to be filed with RoC.
- (iv) Notice of new Location. Within 30 days the notice of the new location has to be given to the Registrar who shall record the same. (c) Change of Registered Office from one State to another State.

Can be done by a special resolution which is required to be confirmed by the Company Law Board (CLB).

SUB-UNDERWRITING

The underwriters usually choose to spread their risk by using sub-underwriters who agree to take a certain number of shares for which they accept responsibility and for which they receive a commission out of the commission received by the underwriters. The difference between the commission paid by the company to the principal underwriters and the commission paid by them to the sub-underwriters is known as overriding commission.

BROKERAGE CONTRACTS

There must be authority in the articles to pay brokerage, and the brokerage must be disclosed in the prospectus, or statement in lieu of prospectus, as the case may be, and it should pay a reasonable brokerage. (Sec. 76)

LISTING OF SHARES ON A STOCK EXCHANGE

The eligibility criteria for listing of securities of a company are:

- (i) Minimum issued equity capital of a company should be Rs. 5 crores [Rs. 3 crores where trading is screen-based], and
- (ii) The minimum public offer of equity capital shall be not less than 25 per cent.

Time of Floatation: The Board of Directors will decide about the time of issue of prospectus. It is advisable to consider the condition of the capital market, the investors' mood, fiscal and monetary policies of the Government and the state of business conditions before issuing a prospectus.

Dating of Prospectus: Sec. 55 states that every prospectus must be dated and the date is deemed to be the date of publication of the prospectus. Section 56 of the Companies Act lays down that the matters and reports stated in Schedule II to the Companies Act must be included in a prospectus.

REMEDIES OF DEBENTURE HOLDERS

1. He may sue for his principal and interest.
2. He may, petition under Sec. 439 for the winding up of the company by the Court. But in addition he has also the following courses open to him:
 1. Debenture-holders' action.
 2. Appointment of receiver.
 3. Foreclosure.
 4. Sale.
 5. Proof for the balance

CREATION OF CHARGES: A company like any other person can, when it borrows money, give its-creditors security. Often it mortgages or charges its property to its debenture-holders.

FIXED AND FLOATING CHARGES:

Fixed charge: A fixed or specific charge is one which is created on some specific and definite assets of the company, e.g., a charge on land and building.

Floating charge: A floating charge is an equitable charge which is created on some class of property which is constantly changing, e.g., a charge on stock-in-trade, trade debtors, etc.

New financial instruments: Issuer of capital shall make instruments such as Deep Discount Bonds, Debentures with Warrants, Secured Premium Notes etc., so that an investor can make reasonable determination of the risks, returns, safety and liquidity of the instruments.

Exceptions:

1. Directors acting mala fide.
2. Directors themselves wrong-doers.
3. Incompetency of Board.
4. Deadlock in management.
5. Residuary powers. i.e., powers not expressly conferred on the directors or shareholders, in a general meeting.

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

(Sec. 293):

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

Audit Committee [Sec. 292-A as introduced by the Companies (Amendment) Act, 2000]: The Audit Committee shall act in accordance with terms of reference to be specified in writing by the Board.

DUTIES OF DIRECTORS

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

1. **Fiduciary Duties:** As fiduciaries, the directors must

- (a) Exercise their powers honestly and bona fide for the benefit of the company as a whole ; and
- (b) Not place themselves in a position in which there is a conflict between their duties to the company and their personal interests.

2. **Duties of care, skill and diligence:** Directors should carry out their duties with reasonable care and exercise such degree of skill and

- (d) that material change has taken place in the management or control of the company and that by reason of, it may pass any orders with a view to bringing to an end the matters complained of, or apprehended.

If the Company Law Board is satisfied that the affairs of the company are being conducted as complained of, it may pass any order with a view to bringing to an end the matter complained of, or apprehended. The number of members necessary to make application is (i) in the case of a company having share capital, 100 members or 10 per cent of the total number of member, whichever is less, or members holding 10 per cent of the issued capital; (ii) in the case of a company not having share capital, 20 per cent of its total number of members. The Central Government is also entitled to apply to the Company Law Board for an order as above.

The Company Law Board may in its discretion make any order that it thinks fit, and in particular, it may provide for: (i) the regulation of the company's affairs in future, and may even frame rules, regulation; (ii) the acquisition of the shares or interests of any members by other members or by the company; (iii) the consequent reduction of the share capital in case of (ii) above; (iv) termination, setting aside or modification of any agreement, howsoever entered into, between the company and the managing agent, secretaries and treasurers, managing director, any other director, or manager; (v) termination, setting aside or modification of any agreement between the company and any other person with the latter's consent; (vi) setting aside any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within 3 months of the application which would amount to a fraudulent preference in the case of an individual's insolvency; (vii) any other matter for which in the opinion of the Company Law Board it is just and equitable that provision should be made (Sec. 402). No compensation is payable

UNIT V

Lesson 1

FACTORIES ACT, 1948

INTRODUCTION

In common parlance, invariably factory and industry are understood as interchangeable. This is incorrect. The term industry refers to a steady and systematic activity in which a trade is organised, whereas a factory is the place where such activities are being carried on.

The entire day-to-day administration of the factories is governed by the principal Act of 1948 amended Act, which is an improvement of 1934 Act. This Act extends to the whole of India, including Jammu and Kashmir. Unless otherwise provided, it also applies to factories belonging to the Central and State Governments. (Section 116)

The Bhopal tragedy of 1984 has created an awareness among the public for preventing pollution and this has made the government to take steps in amending the present 1948 Act by incorporating Chapter IV A from Sections 41 to 47, pertaining to provisions as regards hazardous processes.

OBJECT OF THE ACT

The object of the Factories Act of 1948 is

- (a) To improve health, welfare and safety of the workmen.
- (b) To regulate by imposing restriction as to hours of work including rest and provisions for availing of leave.
- (c) To make stringent provisions as regards employment of women and young persons and duration of their work.

government of Chief Inspector of factories. Such permission will be granted to applicant unless he had duly complied with the directions of the government.

Every application must be duly accompanied with a certified plan, showing all the details together with the challan representing the fees payable for such registration, licensing or renewal of licence. If permission is not granted either by the State government or the Chief inspector, within 3 months from the date of submission of such application, permission is presumed to have been granted.

On the refusal of the State government to grant permission, the aggrieved applicant can prefer an appeal within the 30 days from the date of refusal. Every order refusing to grant permission or licence must be a speaking order (a speaking order is an order passed after hearing both the sides and it is passed with reasons stated). Licence or permission cannot be denied merely on the direction by the government without hearing the applicant. [Shibudeen Kunju vs. State of Kerala, (1985) 2L.L.J.106].

Under Section 7, the occupier must give 15 days notice to the State government or chief inspector of factories before he begins to occupy or use any premises as a factory. Such notice should contain the following:

- (a) The name and situation of the factory;
- (b) The name and address of the occupier;
- (c) The name and address of the owner of the premises or building (including the precincts thereof);
- (d) The address to which communications relating to the factory may be sent;
- (e) The nature of the manufacturing process to be carried on in the factory during the next 12 months;
- (f) The total rated horse power installed or to be installed in the factory (not including the rated horse power of any separate stand-by plant);

HOLIDAYS (SECTIONS 52 & 53)

No adult worker shall be required or allowed to work in a factory, on the first day of the week, which is a Sunday. This would mean that a worker, shall have a holiday for every six days of continuous work. However, the manager may call upon a worker to work on a Sunday. In such cases, one day holiday must be given either out of the 3 days preceding the Sunday or out of the 3 days succeeding the Sunday. Before making this arrangement, a manager shall deliver a notice to the office of the inspector expressing his intention to that effect.

Furthermore, notice must also be displayed in the factory, intimating such change. No substitution can however be made, in such a way that it makes a worker to work for more than 10 days consecutively. Sunday, shall for the purpose of calculating weekly hours of work be included in the preceding week, where any worker works on a Sunday.

Compensatory Holidays : It is mandatory that a worker shall be allowed compensatory holidays of equal number to the holidays so lost. This arises on account of the worker being deprived of the weekly holidays under Section 52, made by the State Government exempting the factory from such provisions. The compensatory holidays must be allowed to the workman within 2 months or within a month in which the substitution of such holidays becomes due. The manner in which compensatory holidays has to be allowed, is prescribed by the State Government.

ANNUAL LEAVE WITH WAGES (SECTION 79 TO 82)

Section 78 to 84 of the Factories Act deal with annual leave with wages. If any award or agreement including settlement or contract of service

- Universal health insurance scheme for a worker and his family at the cost of Rs. 548 per annum for a family of 5 members or Rs. 365 per annum for a family of 3 members.

Further, the Ministry took several measures such as labour welfare funds, welfare fund for overseas Indian workers etc.

The Factories (Amendment) Bill, 2003 was introduced on the Lok Sabha on July 29, 2003. The bill proposes to amend Sec. 66 of the Factories Act, 1948 so as to provide flexibility in the matter of employment of women during night with adequate safeguard for their safety, dignity, honour and transportation from the factory premises to the nearest point of their residence.

The Parliamentary Standing Committee on labour and welfare examined the contents and submitted its report on August 27, 2003. The report of the II National Commission on labour was submitted to the Government on June 29, 2002.

SUMMARY

The Factories Act, 1948 was passed with an intention of making the work life of persons employed in factories free from hazards and injuries. The provisions afforded to all workers – men, women, and children. Women and children are given special protection, as they are considered more vulnerable. As the employer prepares the environment, the law seeks to regulate the same in the interests of the workmen. The law provides for scrutiny of the place and approval of plans and specifications before they are registered under the Act for the purpose of ensuring health, safety and welfare of the workers.

personal character and are very much distinguishable from the present-day industrial relations as have gradually developed with the growth of large scale industries.

A study of modern industrial relations in India can be made in *three* distinct phases.

- The first phase can be considered to have commenced from the middle of the nineteenth century and ended by the end of the First World War.
- The second phase comprises the period thereafter till the attainment of independence in 1947, and
- The third phase represents the post-independence era.

OBJECTS AND SCOPE OF THE ACT

The object of the Industrial Disputes Act is to make provision for the investigation and settlement of industrial disputes. The Act is primarily meant for regulating the relations of employers and workmen at present and future. The principal aim of the Act is to encourage collective bargaining and to maintain industrial peace by preventing illegal strikes and lockouts and to provide lay off and retrenchment compensation.

The Act was passed with a view to removing certain shortcomings found in the working of the Trade Disputes Act, 1929. It came into force on the first day of April 1947 [sec. 1(3)].

It extends to the whole of India [Sec.1 (2)]. It extends to all industries whether they are carried on by private owners or by the Government. The Act has been amended from time to time. The latest amendment was made in 1984.

Thus, though the main object of the Act is to provide for investigation and settlement of industrial disputes, the amendment Act seeks to ensure speedier resolution of industrial disputes by removing

Industry [Sec.2 (j)]

In the light of the judgment in Bangalore Water Supply Case, the term 'Industry' has been defined in Sec.2 (j) as amended in 1982 as follows:

'Industry' means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wished (not being wants or wishes which are merely spiritual or religious in nature). It makes no difference whether or not

- (a) Any capital has been invested for the purpose of carrying on such activity; or
- (b) Such activity is carried on with a motive to make any gain or profit.

'Industry' includes-

- Any activity of the Dock. Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948.
- Any activity relating to the promoting of sales or business or both carried on by an establishment.

Industrial Dispute [Sec.2 (k)]

It means any dispute or difference between

- Employers and employers;
- Employers and workmen; or
- Workmen and workmen, which is connected with
 - (a) The employment or non-employment
 - (b) The terms of employment or,
 - (c) The conditions of labour of any reason

The total Mandays lost on account of strikes and lockouts have declined by 4.80 million in 2003.

YEAR	STRIKES		STRIKES & LOCKOUTS		TOTAL	
	Number	Mandays Lost (in million)	Number	Mandays Lost (in million)	Number	Mandays Lost (in million)
1998	665	9.35	432	12.71	1097	22.06
1999	540	10.62	387	16.16	927	26.79
2000	426	11.96	345	16.80	771	28.76
2001	372	5.56	302	18.20	674	23.77
2002	295	9.66	284	16.92	579	26.58
2003	244	2.00	245	20.00	489	22.00

* Source – Labour Bureau, Shimla

LAY-OFF AND RETRENCHMENT

Meaning of lay-off

According to Section 2(kkk) lay-off (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer to give employment to a workman, whose name is borne on the muster roll of his industrial establishment and who has not been retrenched. They lay-off may be due to shortage of coal, power or raw materials or the accumulation of stocks or breakdown of machinery.

A workman shall be deemed to be laid off for the day if he presents himself for work at the appointed time during normal working hours on any day and the employer does not give employment to his within two hours of his so presenting.

Meaning of retrenchment [Sec 2 (oo)]

Retrenchment means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. It, thus, implies this discharge of surplus labour

- (iv) Lock-out is resorted to by the employer as a weapon of collective bargaining while lay-off is due to trade reasons.
- (v) The Act imposes certain penalties on lock-out but there are none in case of lay-off.

2. Lay off and closure

A lay-off is different from closure of business. Lay-off does not mean closing of the business. Lay off means temporary suspension and not discontinuance of the business. Closure, on the other hand, means closing of the business permanently or temporarily for an indefinite period by the management.

In the case of closure there is no question of laying-off workers. The workers are discharged i.e. relationship of employer and workman comes to an end.

3. Lock-out and closure

The distinction between the closure and the lock-out is well settled. In case of a closure, the employer does not merely close down the place of business, but he closes business itself while lock-out indicates the closure of the place of business and not the closure of the business itself. Lock out means suspension of the work and discontinuance of the carrying on the business.

If an employer shuts down his place of business as an instrument of coercion, or as mode of exerting pressure on the employees there would be lock-out. If, on the other hand, he shuts down his work because he cannot, for instance, get the raw materials or because he is unable to sell the goods or because he is losing money, that would not be a lock-out.

4. Lock-out and retrenchment

The points of distinction between lock-out and retrenchment are as follows:

- (i) Lock-out is temporary while retrenchment is permanent

- (iii) The willful removal or disregard by the workman of any safety guard or other device, which he knew to have been provided for the purpose of securing the safety of workman.
3. According to sub-section (4) of Section 3, if the occupational disease is not directly attributable to a specific injury by accident arising out of and in the course of his employment.
4. According to sub-section (5), if the injured workman has instituted a suit in a civil court for damages in respect of the injury, against the employer or any other person, and
5. If the accident causing injury or death did not arise out of and in the course of the workman's employment.

AMOUNT OF COMPENSATION

The amount of compensation payable to a workman depends on

- (i) The nature of the injury caused by accident;
- (ii) The monthly wages of the workman concerned; and
- (iii) The option factor for working out lump-sum equivalent of compensation amount as specified in Schedule IV (as substituted by the Amendment Act of 1984).

There is no distinction between an adult and a minor worker with respect to the amount of compensation.

Now Section 4 (as substituted by the Amendment Act of 1984) provides for compensation for

- Death;
- Permanent total disablement;

SELF-ASSESSMENT QUESTIONS

1. Workmen's Compensation Act is a boon offering social justices to workmen by speedy remedy without much cause and expense for their claims-Discuss.
2. Who are dependants and who can they claim compensation under the act?
3. Workmen's Compensation Act states the loss of earning capacity is not necessarily co-extensive with the loss of physical capacity. Explain.
4. Accident arising out of employment is deemed to have occurred in the course of employment. Discuss.
5. State the three classified types of occupational diseases with illustrations.
6. State the methods and manner by which compensation under the Act is settled in the case of
 - (i) Death
 - (ii) Permanent total disablement
 - (iii) Temporary total and partial disablement
 - (iv) Temporary total and partial disablement
7. State the procedure prescribed under the Act for claiming and disbursing compensation under the Workmen's compensations Act.
8. State the remedies provided under the Act to claim when the amounts settled are not acceptable to them. Is there has been right of appeal for any aggrieved parties?

9. State the powers of the commissioner in the matter settling the claims of the employees under the Workmen's Compensation Act.

KEY WORDS

- **Social Welfare Activities:** Activities which will improve the living conditions of people (especially of manual workers)
- **Social Security Measures:** measures that will ensure protection by society to its members against economic and social distress.
- **Intra-mural:** within the boundaries of the establishment (factory/organisation)
- **Extra-mural:** Outside the establishment
- **Statutory:** required under law
- **Indian Labour Conference:** An apex body at the national level consisting of representatives of employees, employers and the government to discuss and recommend decisions relating to labour.

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