

CSEET

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BY CA MAYUR AGARWAL

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CHAPTER 1

INDIAN CONSTITUTION

❖ PREAMBLE

WE, THE PEOPLE OF INDIA, Having solemnly resolved to constitute India into SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC

And to secure to All its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote Among them All

FRATERNITY Assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

❖ BROAD FRAMEWORK OF CONSTITUTION

- 1) The Constitution of India came into force on January 26, 1950.
- 2) It is a comprehensive document.
- 3) All public authorities – legislative, administrative and judicial derive their powers directly or indirectly from the Constitution which in turn derive its authority from the people
- 4) The preamble to the Constitution sets out the aims and aspirations of the people of India.
- 5) The preamble declares India to be a
 - a) **Sovereign**
Possessing superior and extreme power

- b) **Socialist**
It aims to secure to its people “justice—social, economic and political
 - c) **Secular**
 - d) **Democratic Republic**
“Democratic Republic” signifies that our government is of the people, by the people and for the people.
- 6) It secures to all its citizens Justice, Liberty, Equality and Fraternity.

❖ **FEDERAL OR UNITARY**

Constitution of India is basically federal but with certain unitary features.

1) Federal System

- a) Dual Government,
- b) Distribution of powers
- c) Supremacy of the Constitution
- d) Independence of Judiciary
- e) Written Constitution, and a rigid procedure for the amendment of the Constitution.

(Kesavananda Bharati v. State of Kerala)

There is a division of legislative and executive powers between the Union and the State Governments.

The Supreme Court stands at the head of our judiciary to guard against the violation of the constitutional provisions.

The Supreme Court decides disputes between the Union and the States, or the States inter se and interprets finally the provisions of the Constitution.

2) Unitary

- a) President is the constitutional head executive of union and appoints the governor
- b) President appoints and transfers Chief Justice and Judges of High Court
- c) Parliament has supreme rights in legislative matter
- d) Parliament can make law on State List under special circumstances
- e) Central Government can issue directions to State Government
- f) State Government of State is dependant on Centre or central government for their financial assistance

❖ STATE

- 1) With a few exceptions, all the fundamental rights are available against the State.
- 2) Under Article 12, unless the context otherwise requires, “the State” includes—
 - a) the Government and Parliament of India;
 - b) the Government and the Legislature of each of the States; and
 - c) all local or other authorities:
 - i) within the territory of India; or
 - ii) under the control of the Government of India.
- 3) The expression ‘local authorities’ refers to authorities like Municipalities, District Boards, Panchayats, Improvement Trusts, Port Trusts and Mining Settlement Boards

4) Ajay Hasia v. Khalid Mujib

The Supreme Court has enunciated the following test for determining whether an entity is an instrumentality or agency of the State:

- 1) **Share Capital**
If the entire share capital of the Corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government.
- 2) **Financial Assistance**
Where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation it would afford some indication of the corporation being impregnated with government character.
- 3) **Monopoly Status**
Whether the corporation enjoys a monopoly status which is conferred or protected by the State.
- 4) **State Control**
Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or an instrumentality.
- 5) **Government Functions**
If the functions of the corporation are of public importance and closely

related to government functions, it would be a relevant factor in classifying a corporation as an instrumentality or agency of government.

6) Department transferred to a Corporation

If a department of government is transferred to a corporation, it would be a strong factor supporting an inference of the corporation being an instrumentality or agency of government.

❖ **Justifiability of Fundamental Rights- ARTICLE 13**

1) Existing Laws-Article 13(1)

- a) Existing law means laws which were in force before the commencement of the Constitution.
- b) Pre-constitution laws are void to the extent to which they are inconsistent with the fundamental rights

2) Future Laws-Article 13(2)

- a) Future laws means the laws made after the commencement of the Constitution
- b) After the Constitution comes into force the State shall not make any law which takes away or abridges the rights conferred by Part III
- c) If such a law is made, it shall be void to the extent to which it curtails any such right.

3) Doctrines relating to Article 13

The Courts have evolved doctrines like

- a) Doctrine of eclipse,
- b) Doctrine of severability,
- c) Doctrine of prospective overruling
- d) Doctrine of acquiescence etc.

for interpreting the provisions of Article 13.

❖ **EQUALITY BEFORE LAW AND EQUALY PROTECTION OF THE LAWS-ARTICLE 14**

- 1) Article 14 of the Constitution says that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory

of India”.

2) Equality before the Law

a) Every person, whatever be his rank or position is subject to the jurisdiction of the ordinary courts.

b) The absence of any special privilege in favour of any individual

c) It is equality of all persons within the territory of India

3) Equal Protection of the Law

It directs that equal protection shall be secured to all persons within the territorial jurisdiction of the Union in the enjoyment of their rights and privileges without favouritism or discrimination

4) All persons

Article 14 applies to all persons and is not limited to citizens.

5) Corporation

A corporation, which is a juristic person, is also entitled to the benefit of this Article

(Chiranjit Lal Chowdhury v. Union of India)

❖ **PROHIBITION OF DISCRIMINATION-ARTICLE 15**

1) ARTICLE 15(1)

Article 15(1) prohibits the State from discriminating against any citizen on grounds only of:

- Religion
- Race
- Caste
- Sex
- Place of birth or
- Any of them

2) ARTICLE 15(2)

Article 15(2) lays down that no citizen shall be subjected to any disability, restriction or condition with regard to—

- (a) Access to shops, public restaurants, hotels and places of public entertainment; or
- (b) The use of wells, tanks, bathing ghats, roads and places of public resort, maintained wholly or partially out of State funds or dedicated to the use of the general public.

3) Article 15(3)

- a) The State can make special provision for women and children.
- b) **Union of India v. Prabhakaran**
It is under Article 15(3) that courts have upheld the validity of legislation or executive orders discriminating in favor of women

4) Article 15(4)

It permits the State to make special provision for the advancement of—

- (a) Socially and educationally backward classes of citizens;
- (b) Scheduled castes; and
- (c) Scheduled tribes.

5) Article 15(5)

It permits the State to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30

6) Article 15(6)

It provides that nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

- (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and
- (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to

the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.—

For the purposes of Article 15 and Article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

❖ EQUALITY OF OPPORTUNITY IN MATTER OF PUBLIC EMPLOYMENT-ARTICLE 16

Article 16(1) guarantees to all citizens' equality of opportunity in matters relating to employment or appointment of office under the State.

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

However, there are certain exceptions provided in Article 16(3), 16(4) and 16(5). These are as under:

(1) Parliament can make a law that in regard to a class or classes of employment or appointment to an office under the Government of a State or a Union Territory, under any local or other authority within the State or Union Territory, residence within that State or Union Territory prior to such employment or appointment shall be an essential qualification. [Article 16(3)]

(2) A provision can be made for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. [Article 16(4)]

(3) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. [Article 16(4A)]

(4) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.[Article 16(4B)]

(5) A law shall not be invalid if it provides that the incumbent of an office in connection with the affair of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination. [Article 16(5)]

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category. [Article 16(6)]

❖ **ABOLITION OF UNTOUCHABILITY-ARTICLE 17**

- 1) Article 17 says that “Untouchability” is abolished and its practice in any form is forbidden.
- 2) The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law
- 3) Untouchability does not include an instigation to social boycott
(Davarajiah v. Padamanna, AIR 1961 Mad. 35, 39)
- 4) Punishment for violation of Article 17 is to be provided by Parliament under Article 35(a) (ii)

❖ **ABOLITION OF TITLES- ARTICLE 18**

- 1) Article 18 is more a prohibition rather than a fundamental right.
- 2) British Government used to confer titles upon persons who showed special allegiance to them.
- 3) Many persons were made Sir, Raj Bahadur, Rai Saheb, Knight, etc.
- 4) These titles had the effect of creating a class of certain persons which was regarded superior to others and thus had the effect of perpetuating inequality.
- 5) To do away with that practice, Article 18 provides as under:
 - (i) No title, not being a military or academic distinction, shall be conferred by the State
 - (ii) No citizen of India shall accept any title from any foreign State.
 - (iii) No person, who is not a citizen of India shall, while he holds any office or trust under the State, accept without the consent of the President, any title from any foreign State
 - (iv) No person, holding any office of profit or trust under State shall without the consent of the President, accept any present, emolument or office of any kind from or under a foreign State.

❖ SIX FREEDOMS OF CITIZEN

Guaranteed rights to citizen- Article 19(1),

- (a) Freedom of speech and expression;
- (b) Assemble peaceably and without arms;
- (c) Form associations or unions
- (d) Move freely, throughout the territory of India;
- (e) Reside and settle in any part of the territory of India;
- (f) Practice any profession, or to carry on any occupation, trade or business

Restriction on Freedom of speech and expression- Article 19(2)

It enables the Legislature to impose by law reasonable restrictions on the freedom of speech and expression under the following heads

Permissible Restrictions

- (1) Sovereignty and integrity of India
- (2) Security of the State
- (3) Friendly relations with foreign States
- (4) Public Order
- (5) Decency or morality
- (6) Contempt of court
- (7) Defamation
- (8) Incitement to an offence

Reasonable restrictions under these heads can be imposed only by a duly enacted law and not by the executive action

(Express News Papers Pvt. Ltd. v. Union of India, (1986))

❖ PROTECTION OF LIFE AND PERSONAL LIBERTY

1) Life and Personal Liberty

It says that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

2) Human Dignity

The right to life enshrined in Article 21 guarantees right to live with human dignity.

3) Noise Pollution

Right to live in freedom from noise pollution is a fundamental right protected by Article 21 and noise pollution beyond permissible limits is an inroad into that right

4) Satwant Singh Sawhney v. A.P.O, Delhi

- a) It was held that right to travel is included within the expression 'personal liberty' and, therefore, no person can be deprived of his right to travel, except according to the procedure established by law.
- b) Since a passport is essential for the enjoyment of that right, the denial of a passport amounts to deprivation of personal liberty.
- c) In the absence of any procedure prescribed by the law of land sustaining the refusal of a passport to a person, its refusal amounts to an unauthorised deprivation of personal liberty guaranteed by Article 21

5) Procedure established by law :

- a) The expression 'procedure established by law' means procedure laid down by statute or procedure prescribed by the law of the State.
- b) Accordingly, first, there must be a law justifying interference with the person's life or personal liberty, and secondly, the law should be a valid law, and thirdly, the procedure laid down by the law should have been strictly followed.
- c) The procedure must be fair, just and reasonable. It must not be arbitrary, fanciful or oppressive

❖ Right of Education-Article 21A

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

❖ Right against Exploitation-

Article 23 -Traffic in human beings and begar and other similar forms of forced labour are prohibited

Article 24- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

❖ RIGHT TO FREEDOM OF RELIGION(ARTICLE 25-28)**1) ARTICLE 25**

Freedom of conscience and free profession, practice and propagation of religion

2) ARTICLE 26

Freedom to manage religious affairs

3) ARTICLE 27

Freedom as to payment of taxes for promotion of any particular religion

4) ARTICLE 28

Freedom as to attendance at religious instruction or religious worship in certain educational institutions

❖ ARTICLE 32:- CONSTITUTIONAL REMEDIES

1) If rights are given without there being a remedy for their enforcement, they are of no use.

2) Article 32 guarantees the enforcement of Fundamental Rights

Article 32 makes it a fundamental right that a person whose guaranteed fundamental right is violated has the right to move the Supreme Court

3) He can directly raise the matter before highest Court of the land

4) Supreme Court is empowered to issue directions or orders or writs in the nature of

a) **Writ of Habeas Corpus**

b) **Writ of mandamus**

c) **Writ of Prohibition**

d) **Writ of Quo Warranto**

e) **Writ of certiorari(wrong jurisdiction)= means to be certified**

❖ DIRECTIVE PRINCIPLES OF STATE POLICY

The Sub-committee on Fundamental Rights constituted by the Constituent Assembly suggested two types of Fundamental Rights — one which can be enforced in the Courts of law and the other which because of their different nature cannot be enforced in the law Courts. Later on however, the former were put under the head 'Fundamental Rights' as Part III which we have already discussed and the latter were put separately in Part IV of the Constitution under the heading 'Directive Principles of State Policy' which are discussed in the following pages.

The Articles included in Part IV of the Constitution (Articles 36 to 51) contain certain Directives which are the guidelines for the Government to lead the country. Article 37 provides that the 'provisions contained in this part (i) shall not be enforceable by any Court, but the principles therein laid down are nevertheless (ii) fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. The Directives, however, differ from the fundamental rights contained in Part-III of the Constitution or the ordinary laws of the land in the following respects:

- (i) The Directives are not enforceable in the courts and do not create any justiciable rights in favour of individuals.
- (ii) The Directives require to be implemented by legislation and so long as there is no law carrying out the policy laid down in a Directive, neither the state nor an individual can violate any existing law.
- (iii) The Directives per-se do not confer upon or take away any legislative power from the appropriate legislature.
- (iv) The courts cannot declare any law as void on the ground that it contravenes any of the Directive Principles.
- (v) The courts are not competent to compel the Government to carry out any Directives or to make any law for that purpose.
- (vi) Though it is the duty of the state to implement the Directives, it can do so only subject to the limitations imposed by the different provisions of the Constitution upon the exercise of the legislative and executive power by the state.

❖ IMPORTANT DIRECTIVE PRINCIPLES

To be specific, the important Directive Principles are enumerated below:

- (a) State to secure a social order for the promotion of welfare of the people:
 - (1) The State must strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political should inform all the institutions of the national life.
 - (2) The State shall, in particular, strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities, and opportunities, not only amongst individuals but also among groups of people residing in different areas or engaged in different vocations. (Article 38).
- (b) Certain principles of policy to be followed by the State. The State, particularly, must direct its policy towards securing:
 - (i) that the citizens, men and women equally, have the right to an adequate means of livelihood;

- (ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common goods;
- (iii) that the operation of the economic systems does not result in the concentration of wealth and means of production to the common detriment;
- (iv) equal pay for equal work for both men and women;
- (v) that the health and strength of workers and children is not abused and citizens are not forced by the economic necessity to enter avocation unsuited to their age or strength;
- (vi) that childhood, and youth are protected against exploitation and against moral and material abandonment (Article 39).

(bb) The State shall secure that the operation of legal system promotes justice on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39A).

(c) The State must take steps to organise the Village Panchayats and enable them to function as units of self-government (Article 40).

(d) Within the limits of economic capacity and development the State must make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, etc. (Article 41).

(e) Provision must be made for just and humane conditions of work and for maternity relief (Article 42).

(f) The State must endeavour to secure living wage and good standard of life to all types of workers and must endeavour to promote cottage industries on an individual or co-operative basis in rural areas (Article 43).

(ff) The State take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry (Article 43A).

(g) The State must endeavour to provide a uniform civil code for all Indian citizens (Article 44).

(h) Provision for free and compulsory education for all children upto the age of fourteen years (Article 45).

(i) The State must promote the educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections (Article 46).

(j) The State must regard it one of its primary duties to raise the level of nutritional and the standard of living and to improve public health and in particular it must endeavour to bring about prohibition of the consumption, except for medicinal purposes, in intoxicating drinks and of drugs which are injurious to health (Article 47).

(k) The State must organise agriculture and animal husbandry on modern and scientific

lines and improve the breeds and prohibit the slaughter of cows and calves and other milch and draught cattle (Article 48).

(kk) The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country (Article 48A).

(l) Protection of monuments and places and objects of national importance is obligatory upon the State (Article 49).

(m) The State must separate executive from judiciary in the public services of the State (Article 50).

(n) In international matters the State must endeavour to promote peace and security, maintain just and honourable relations in respect of international law between nations, treaty obligations and encourage settlement of international disputes by arbitration (Article 51).

❖ **FUNDAMENTAL DUTIES- ARTICLE 51 A**

These Fundamental Duties are:

1. to abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem;
2. To cherish and follow the noble ideals which inspired our national struggle for freedom;
3. to uphold and protect the sovereignty, unity and integrity of India;
4. to defend the country and render national service when called upon to do so;
5. to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
6. to value and preserve the rich heritage of our composite culture;
7. to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
8. to develop the scientific temper, humanism and the spirit of inquiry and reform;
9. to safeguard public property and to abjure violence;
10. to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

Since the duties are imposed upon the citizens and not upon the States, legislation

is necessary for their implementation. Fundamental duties can't be enforced by writs

❖ **ARTICLE 5: CITIZENSHIP AT THE COMMENCEMENT OF THE CONSTITUTION**

Article 5 provides that at the commencement of the Constitution, every person who has his domicile in the territory of India and—

- a) Who was born in the territory of India; or
 - b) Either of whose parents was born in the territory of India; or
 - c) Who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,
- shall be a citizen of India

❖ **PARLIAMENT**

There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

❖ **PRESIDENT**

The President shall be elected by the members of an electoral college consisting of—

- a) the elected members of both Houses of Parliament; and
- b) the elected members of the Legislative Assemblies of the States.

❖ **POWERS OF PRESIDENT**

- 1) In its Article 53 the Constitution lays down that the executive power of the union shall be vested in the President.
- 2) The President of India shall, thus, be the head of the 'executive power' of the union.
- 3) The executive power may be defined as the power of "carrying on the business of Government" or "the administration of the affairs of the state" excepting functions which are vested in any other authority by the Constitution.
- 4) Various powers that are included within the comprehensive expression 'executive power' in a modern state have been classified under following heads :
 - (i) **Administrative power**
i.e., the execution of the laws and the administration of the departments of

Government.

- (ii) **Military power**
i.e., the command of the armed forces and the conduct of war.
- (iii) **Legislative power**
i.e., the summoning prorogation, etc. of the legislature.
- (iv) **Judicial power**
i.e., granting of pardons, reprieves etc. to persons convicted of crime.

These powers vest in the President under each of these heads, subject to the limitations made under the Constitution.

❖ **POWER TO PROMULGATE ORDINANCE – ARTICLE 123**

- 1) The President shall have the power to legislate by Ordinances at any time when it is not possible to have a parliamentary enactment on the subject, immediately.
- 2) This is a special feature of the Constitution of India.
- 3) The ambit of this Ordinance-making power of the President is co-extensive with the legislative powers of Parliament, that is to say it may relate to any subject in respect of which Parliament has the right to legislate and is subject to the same constitutional limitations as legislation by Parliament.

❖ **RAJYA SABHA (Council of States)**

- 1) **Total Members**
The Council of States shall consist of
 - a) 12 members - to be nominated by the President and
 - b) not more than 238 representatives of the States and of the Union territories.
- 2) **Members Nominated by President**
Shall consist of persons having special knowledge or practical experience in respect of literature, science, art and social service.
- 3) **Representative of Each State**
They shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

❖ **LOK SABHA (HOUSE OF THE PEOPLE)**

- 1) Lok Sabha is composed of representatives of the people chosen by direct election on the basis of the adult suffrage.

- 2) The maximum strength of the House envisaged by the Constitution is 552
 - 530 Members- Elected by State
 - 20 Members- Elected by Union Territories
 - 2 Members- Anglo Indian Community to be nominated by the Hon'ble President
- 3) The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States.

❖ COUNCIL OF MINISTERS

1) **Function of Council of Ministers**

There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.

2) **Appointed by President**

The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

3) **Total Number**

The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.

4) **Pleasure of President**

The Ministers shall hold office at the pleasure of the President.

5) **Collective Responsibility**

The Council of Ministers shall be collectively responsible to the House of the People.

6) **Oath of office and secrecy**

Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy.

7) **Salaries and allowances**

The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule

❖ CONSTITUTION OF LEGISLATURES IN STATES

- 1) Every State shall have a Legislature which shall consist of Governor
- 2) Following States have two houses i.e, Legislative Council and Legislative Assembly
 - a) Andhra Pradesh,

- b) Bihar,
 - c) Madhya Pradesh,
 - d) Maharashtra,
 - e) Karnataka,
 - f) Tamil Nadu,
 - g) Telangana and
 - h) Uttar Pradesh
- 3) Other States shall have one house i.e, Legislative Assembly

4) Term of Legislative Assembly

- a) Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer
- b) The expiration of the said period of five years shall operate as a dissolution of the Assembly

5) Composition of Legislative Assembly

Maximum-500

Minimum- 60

Members are chosen by direct election in territorial constituency of the State

6) Composition of Legislative Council

Minimum - 40

Maximum - One third of the total number of members in the Legislative Assembly of that State

❖ **GOVERNOR**

1) Appointment

Governor is *appointed by the President*

2) Term

He holds his office at the pleasure of the President

3) One State-One Governor

- a) There shall be a Governor for each State

- b) The same person can be appointed as Governor for two or more states

4) Head of State

The head of the executive power to a State is the Governor just as the President for the Union.

5) Powers of Governor

The Governor possesses executive, legislation and judicial powers as the Presidents except that he has no diplomatic or military powers like the President

6) Power to Make ordinance- Article 213

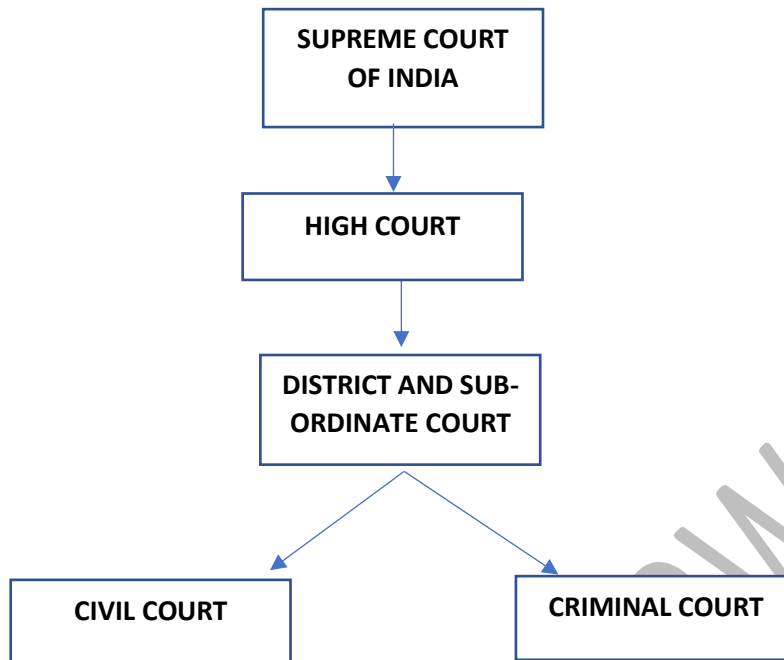
- a) The Governor's power to make Ordinances is similar to the Ordinance making power of the President and have the force of an Act of the State Legislature
- b) He can make Ordinance only when the state Legislature or either of the two Houses (where it is bicameral) is not in session
- c) He must be satisfied that circumstances exist which render it necessary to take immediate action.
- d) The Governor must act with the aid and advise of the Council of Ministers.
- e) The Ordinance must be laid before the state legislature (when it re-assembles)
- f) It shall automatically cease to have effect at the expiration of six weeks from the date of the re-assembly

7) Instruction from President for Ordinance

The Governor cannot promulgate any Ordinance without instructions from the President:

- a) if a Bill containing the same provisions would under this constitution have required the previous sanction of the President.
- b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President.
- c) an Act of the state legislature containing the same provisions would under this constitution have been invalid under having been reserved for the consideration of the President, it had received the assent of the President.

❖ THE JUDICIARY



❖ THE SUPREME COURT

1) Before Independence

- a) The Privy Council was the highest appellate authority for British India
- b) Appeals from High Courts in constitutional matters lay to the Federal Court and then hence to the Privy Council
- c) The Supreme Court of India, in this sense, has inherited the jurisdiction of both the Privy Council and the Federal Court.
- d) The jurisdiction of the Supreme Court under the present Constitution is much more extensive than that of its two predecessors mentioned above.

2) Powers of Supreme Court

a) Highest Court

The Supreme Court, which is the highest Court in the country (both for matters of ordinary law and for interpreting the Constitution) is an institution created by the Constitution

b) Appeals

The Supreme Court, entertains appeals (in civil and criminal and other cases from High Courts and certain Tribunals.

c) Writ

It has also writ jurisdiction for enforcing Fundamental Rights.

d) Advise President

It can advise the President on a reference made by the President on

questions of fact and law. It has a variety of other special jurisdictions.

❖ HIGH COURT

BEFORE CONSTITUTION

- 1) Some High Courts existed before the Constitution
- 2) The High Courts in (British) India were established first under the Indian High Courts Act, 1861

AFTER CONSTITUTION

1) After Constitution

Some new High Courts have been created after 1950

2) Provision establishing High Court

High Courts were established or continued under the Constitution or under special Acts.

3) High Courts for each State (or Group of States) have appellate, civil and criminal jurisdiction over lower Courts

4) Income Tax Authorities

High Courts can also hear references made by the Income Tax Appellate Tribunal under the Income Tax Act and other tribunals

5) Regular Suit

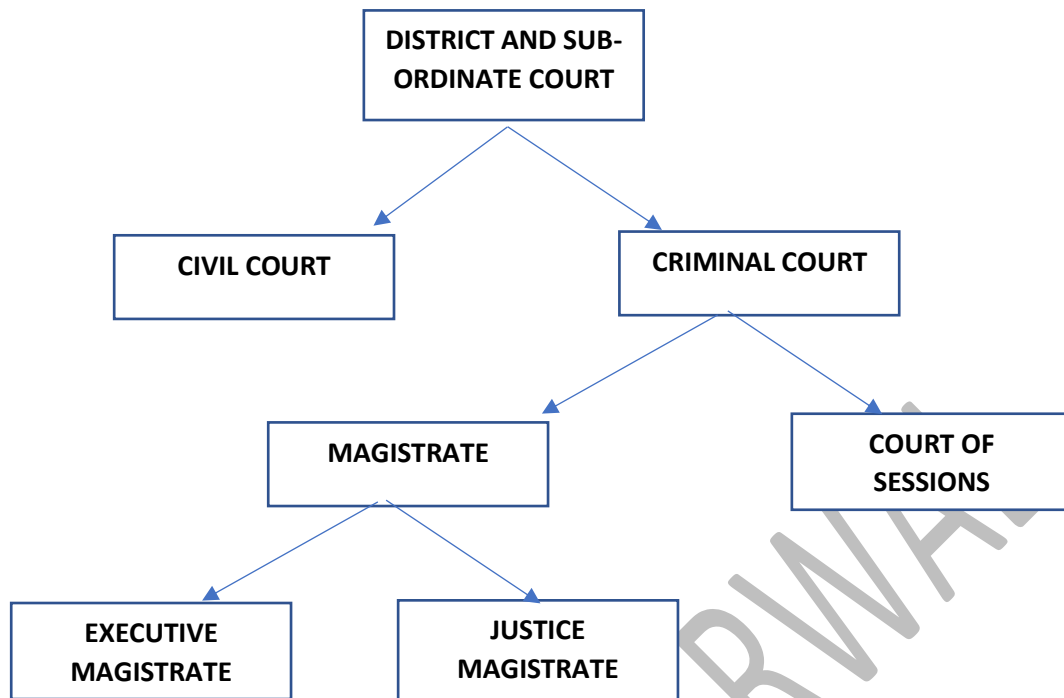
Some High Courts (notably) Bombay, Calcutta and Delhi, have ordinary original civil jurisdiction (i.e. jurisdiction to try regular civil suits) for their respective cities.

6) Writ Jurisdiction

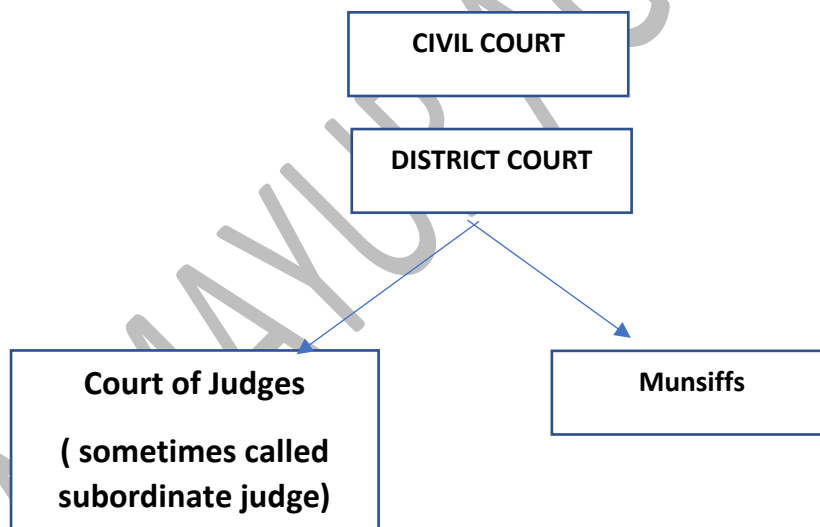
High Courts have writ jurisdiction to enforce fundamental rights and for certain other purposes.

❖ SUBORDINATE COURT

- 1) There are various subordinate civil and criminal courts (original and appellate), functioning under ordinary law
- 2) Civil Courts are created mostly under the Civil Courts Act of each State.
- 3) Criminal courts are created mainly under the Code of Criminal Procedure



❖ CIVIL COURTS



In each district, there is a District Court presided over by the District Judge, with a number of Additional District Judges attached to the court.

Below that Court are Courts of Judges (sometimes called subordinate Judges) and in, some States, Munsiffs.

These Courts are created under State Laws.

❖ CRIMINAL COURTS

Criminal courts in India primarily consist of the Magistrate and the Courts of Session.

Magistrates themselves have been divided by the Code of Criminal Procedure into 'Judicial' and 'Executive' Magistrates

❖ EXECUTIVE MAJISTRATE

- 1) Jurisdiction is confined to certain miscellaneous cases, which are of importance for public tranquillity and the like
- 2) The Executive Magistrate do not try criminal prosecutions
- 3) Proceedings do not end in conviction or acquittal, but in certain other types of restrictive orders

❖ JUSTICE MAGISTRATE

Judicial Magistrates, are of two classes:

- 1) Second Class and
- 2) First Class.

Judicial Magistrates are subject to the control of the Court of Session, which also in itself a Court of original jurisdiction.

The powers of Magistrates of the two classes, vary according to their grade.

The Court of Session can try all offences, and has power to award any sentence, prescribed by law for the offence, but a sentence of death requires confirmation by the High Court.

In some big cities (including the three Presidency towns and Ahmedabad and Delhi), the Magistrates are called Metropolitan Magistrates.

There is no gradation inter se.

Further, in some big cities (including the three Presidency towns and Ahmedabad and Hyderabad), the Sessions Court is called the "City Sessions Court", its powers being the same as those of the Courts of Session in the districts.

❖ SPECIAL TRIBUNAL

Besides these Courts, which form part of the general judicial set up, there are hosts of specialised Tribunals dealing with Direct Taxes, Labour, Customs, Claims for accidents caused by motor vehicles, Copyright and Environment, Anti- Competitive Agreement etc.

❖ WRIT JURISDICTION OF HIGH COURTS AND SUPREME COURT

1) Article 226

Under the Constitution by virtue of Article 226, every High Court has the power to issue directions or orders or writs including writs

2) Jurisdiction

This power is exercisable by each High Court throughout the territory in relation to which it exercises

3) Article 32

The Supreme Court could be moved by appropriate proceedings for the issue of directions or orders or writs

4) Fundamental Rights

Article 32 itself being a fundamental right, the Constitutional remedy of writ is available to anyone whose fundamental rights are infringed by state action

❖ TYPES OF WRIT

1) HABEAS CORPUS

- a) The writ of Habeas corpus - an effective bulwark of personal liberty – is a remedy available to a person who is confined without legal justification.
- b) The words 'Habeas Corpus' literally mean "to have the body".
- c) When a prima facie case for the issue of writ has been made then the Court issues a rule nisi upon the relevant authority to show cause why the writ should not be issued.
- d) This is in national order to let the Court know on what grounds he has been confined and to set him free if there is no justification for his detention.
- e) This writ has to be obeyed by the detaining authority by producing the person before the Court.
- f) The applicant may be the prisoner or any person acting on his behalf to safeguard his liberty for the issuance of the writ of Habeas Corpus as no man can be punished or deprived of his personal liberty except for violation of law and in the ordinary legal manner.
- g) An appeal to the Supreme Court of India may lie against an order granting or

rejecting the application (Articles 132, 134 or 136).

- h) The disobedience to this writ is met with by punishment for contempt of Court under the Contempt of Courts Act.

2) MANDAMUS

- a) The word 'Mandamus' literally means we command.
- b) The writ of mandamus is, a command issued to direct any person, corporation, inferior court, or Government requiring him or it do a particular thing specified therein which pertains to his or its office and is further in the nature of a public duty.
- c) This writ is used when the inferior tribunal has declined to exercise jurisdiction while resort to certiorari and prohibition arises when the tribunal has wrongly exercised jurisdiction or exceeded its jurisdiction and are available only against judicial and quasi-judicial bodies.
- d) Mandamus can be issued against any public authority. It commands activity.
- e) The writ is used for securing judicial enforcement of public duties.
- f) In a fit case, Court can direct executives to carry out Directive Principles of the Constitution through this writ (State of Maharashtra v. MP Vashi)
- g) The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed for.
- h) It is not issued if the authority has a discretion.

3) PROHIBITION

- a) A writ of prohibition is issued to an Inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it.
- b) When a tribunal acts without or in excess of jurisdiction, or in violation of rules or law, a writ of prohibition can be asked for.
- c) It is generally issued before the trial of the case.
- d) While mandamus commands activity, prohibition commands inactivity, it is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested with judicial functions.
- e) If abuse of power is apparent this writ may be of right and not a matter of discretion.

4) CERTIORARI

- a) It is available to any person, wherever anybody of persons having legal

authority to determine questions affecting the rights of subjects and having the duty to act judicially in excess of their legal authority” (See *The King v. Electricity Commissioners*, (1924) I.K.B. 171, P. 204-5).

- b) The writ removes the proceedings from such body to the High Court, to quash a decision that goes beyond its jurisdiction.
- c) Under the Constitution of India, all High Courts can issue the writ of certiorari throughout their territorial jurisdiction when the subordinate judicial authority acts
 - (i) without or in excess of jurisdiction or
 - (ii) in contravention of the rules of natural justice or
 - (iii) commits an error apparent on the face of the record.
- d) The jurisdiction of the Supreme Court to issue such writs arises under Article 32.
- e) Although the object of both the writs of prohibition and of certiorari is the same, prohibition is available at an earlier stage whereas certiorari is available at a later stage but on similar grounds i.e. Certiorari is issued after authority has exercised its powers.

5) QUO WARRANTO

- a) The writ of quo warranto enables enquiry into the legality of the claim which a person asserts, to an office or franchise and to oust him from such position if he is an usurper.
- b) The holder of the office has to show to the court under what authority he holds the office.
- c) It is issued when:
 - (i) the office is of public and of a substantive nature,
 - (ii) created by statute or by the Constitution itself, and
 - (iii) the respondent has asserted his claim to the office. It can be issued even though he has not assumed the charge of the office.
- d) The fundamental basis of the proceeding of Quo warranto is that the public has an interest to see that a lawful claimant does not usurp a public office.
- e) It is a discretionary remedy which the court may grant or refuse

❖ MAJOR CONSTITUTIONAL AMENDMENTS 1951 - 2019

1) The Constitution (First Amendment) Act, 1951

- Added Ninth Schedule to protect the land reform and other laws included in it from the judicial review.
- Added three more grounds of restrictions on freedom of speech and expression, viz., public order, friendly relations with foreign states and incitement to an offence. Also, made the restrictions 'reasonable' and thus, justiciable in nature.
- Empowered the state to make special provisions for the advancement of socially and economically backward classes.

2) The Constitution (Second Amendment) Act, 1952

The scale of representation in the Lok Sabha by providing that one member could represent even more than 7, 50,000 persons.

3) Constitution (Forty – Second Amendment) Act, 1976

- It is also known as Mini-Constitution. It was enacted to give effect to the recommendations of Swaran Singh Committee).
- Added three new words (i.e., socialist, secular and integrity) in the Preamble.
- Added Fundamental Duties by the citizens (new Part IV A).
- Made the president bound by the advice of the cabinet.
- Added three new Directive Principles viz., equal justice and free legal aid, participation of workers in the management of industries.
- Shifted five subjects from the state list to the concurrent list, viz, education, forests, protection of wild animals and birds, weights and measures and administration of justice, constitution and organisation of all courts except the Supreme Court and the high courts.
- Empowered the Centre to deploy its armed forces in any state to deal with a grave situation of law and order.

4) Constitution (Fifty – Second Amendment) Act, 1985

- This amendment popularly known as Anti-Defection Law
- Provided for disqualification of members of Parliament and state legislatures on the ground of defection and added a new Tenth Schedule containing the details in this regard.

5) Constitution (Sixty – First Amendment) Act, 1989

Reduced the voting age from 21 years to 18 years for the Lok Sabha and state legislative assembly elections.

6) Constitution (Sixty – Ninth Amendment) Act, 1991

Accorded a special status to the Union Territory of Delhi by designing it as the National Capital Territory of Delhi.

7) Constitution (Seventieth Amendment) Act, 1989

Provided for the inclusion of the members of the Legislative Assemblies of National Capital Territory of Delhi and the Union Territory of Puducherry in the Electoral College for the election of the president.

8) Constitution (Eighty-Fourth Amendment) Act, 2001

The number of seats in the Lok Sabha and the assemblies are to remain same till 2026.

9) Constitution (Eighty-Sixth Amendment) Act, 2002

- Made elementary education a fundamental right. Added Article 21-A which declares that “the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may determine”.
- Changed the subject matter of Article 45 in Directive Principles. It now reads—“The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”.
- Added a new fundamental duty under Article 51-A which reads—“It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen years”.

10) Constitution (Ninety-First Amendment) Act, 2003

- The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha [Article 75(1A)].
- The total number of ministers, including the Chief Minister, in the Council of Ministers in a state shall not exceed 15% of the total strength of the legislative Assembly of that state. But, the number of ministers, including the Chief Minister, in a state shall not be less than 12 [Article 164(1A)].
- The provision of the Tenth Schedule (anti-defection law) pertaining to exemption from disqualification in case of split by one-third members of legislature party has been deleted. It means that the defectors have no more protection on grounds of splits.

11) Constitution (One Hundred-One Amendment) Act, 2016

- Goods and Services Tax (GST) has commenced with the enactment of the 101st Constitution Amendment Act, 2016.

- Articles 246A, 269A and 279A were added in the constitution. The amendment made changes in the 7th schedule of the constitution.

12) Constitution (One Hundred-Second Amendment) Act, 2018

- Constitutional status to the National Commission for Backward Classes.
- Inserted a new Article 342-A which empowers President to notify the list of socially and educationally backward classes of that state/union territory.

13) Constitution (One Hundred-Third Amendment) Act, 2019

It changed two fundamental rights, Article 15 and 16. It provides for the advancement of the economically weaker sections of society. Ten (10%) of all government jobs and college seats will be reserved for people outside the high-income bracket.

CHAPTER 2A:- LAW OF CONTRACT

❖ **CONTRACT -Section 2(h)**

“an agreement enforceable by law”.

A contract therefore, is a combination of the two elements:

- a) An agreement, and
- b) An obligation.

❖ **AGREEMENT-Section 2(e)**

An agreement gives birth to a contract.

"Every promise and every set of promises, forming the consideration for each other, is An Agreement "

❖ **Agreements which are not Contracts**

Agreements in which the idea of bargain is absent and there is no intention to create legal relations are not contracts.

These are:

(a) **Agreements relating to social matters**

- i) An agreement between two persons to go together to the cinema, or for a walk, does not create a legal obligation on their part to abide by it.
- ii) Similarly, if I promise to take you for dinner and break that promise, I do not expect to be liable to legal penalties.
- iii) There cannot be any offer and acceptance to hospitality.

(b) **Domestic Arrangements between husband And wife :**

Balfour v. Balfour (1919)

- i) A husband working in Ceylone, had agreed in writing to pay a housekeeping allowance to his wife living in England.
- ii) On receiving information that she was unfaithful to him, he stopped the allowance. He was held to be entitled to do so.
- iii) This was a mere domestic arrangement with no intention to create legally binding relations.
- iv) Therefore, there was no contract.

❖ Essential Elements of a Valid Contract

Section 10 of the Indian Contract Act, 1872 provides that “all agreements are contracts 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”.

The essential elements of a valid contract are:

1. Offer or Proposal

An offer or proposal by one party and acceptance of that offer by another party resulting in an Agreement — consensus-ad-idem.

2. Legal Relations

An intention to create legal relations or an intent to have legal consequences.

3. Lawful Consideration

The agreement is supported by a lawful consideration.

4. Capacity of Parties

The parties to the contract are legally capable of contracting.

5. Consent

Genuine consent between the parties.

6. Lawful Object and Consideration

The object and consideration of the contract is legal and is not opposed to public policy.

7. Certainty

The terms of the contract are certain.

8. The agreement is capable of being performed i.e., it is not impossible of being performed.

❖ OFFER

1) Definition- Section 2(a)

“When one person signifies to another his willingness to do or 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”

2) Offeror

One who makes offer

3) Offeree

One to whom offer is made

4) Offer and Proposal

A proposal is also termed as an offer.

The word 'proposal' is synonymous with the English word "offer".

❖ RULES OF OFFER

A valid offer must comply with the following rules:

(a) Certain, Definite and not vague

An offer must be clear, definite, complete and final. It must not be vague.

For example, a promise to pay an increased price for a horse if it proves lucky to promisor, is too vague and is not binding.

(b) Must be Communicated

An offer must be communicated to the offeree. An offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the same.

(c) Express or Implied

The communication of an offer may be made by express words-oral or written-or it may be implied by conduct.

(d) General or Specific

The communication of the offer may be general or specific.

Specific Offer:-

Where an offer is made to a specific person it is called specific offer and it can be accepted only by that person.

General Offer:-

When an offer is addressed to an uncertain body of individuals i.e. the world at large, it is a general offer and can be accepted by any member of the general public by fulfilling the condition laid down in the offer'

❖ LAPSE OF OFFER

- 1) Not accepted within specified time or reasonable time

- 2) Not accepted in Prescribed mode
- 3) Offeree rejects the offer
- 4) Offeree or Offeror Dies before acceptance
- 5) The acceptor fails to fulfil a condition precedent to an acceptance
- 6) Offeree makes a counter offer

❖ **ACCEPTANCE**

- 1) A contract emerges from the acceptance of an offer

- 2) **Definition -Section 2(b)**

When a 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.

❖ **RULES GOVERNING ACCEPTANCE**

- 1) **Express or Implied**

- a) Acceptance may be express i.e. by words spoken or written or implied from the conduct of the parties.
- b) If the offer is one which is to be accepted by being acted upon, no communication of acceptance to the offeror is necessary, unless communication is stipulated for in the offer itself.
- c) Thus, if a reward is offered for finding a lost dog, the offer is accepted by finding the dog after reading about the offer, and it is unnecessary before beginning to search for the dog to give notice of acceptance to the offeror.

- 2) **Method Prescribed**

If a particular method of acceptance is prescribed, the offer must be accepted in the prescribed manner.

- 3) **Absolute and Unqualified**

- a) Acceptance must be unqualified and absolute and must correspond with all the terms of the offer.
- b) A counter offer or conditional acceptance operates as a rejection of the offer and causes it to lapse
- c) e.g., where a horse is offered for Rs.1,000 and the offeree counter-offers Rs.990, the offer lapses by rejection.

- 4) **Acceptance must be communicated**

- a) Acceptance must be communicated to the offeror, for acceptance is complete the moment it is communicated.

- b) Where the offeree merely intended to accept but does not communicate his intention to the offeror, there is no contract.
- c) Mere mental acceptance is not enough.

5) Within Reasonable Time

- a) Acceptance must be given within a reasonable time and before the offer lapses or is revoked.
- b) An offer becomes irrevocable by acceptance.

6) Offer precedes Acceptance

- a) An acceptance never precedes an offer.
- c) There can be no acceptance of an offer which is not communicated.

❖ **Contracts over the Telephone**

- 1) Contracts over the telephone are regarded the same in principle as those negotiated by the parties in the actual presence of each other.

2) Oral Offer and Acceptance

In both cases an oral offer is made and an oral acceptance is expected.

3) Audible, Heard and Understood

It is important that the acceptance must be audible, heard and understood by the offeror.

4) Telephone go Dead

If during the conversation the telephone lines go "dead" and the offeror does not hear the offeree's word of acceptance, there is no contract at the moment.

- 5) If the whole conversation is repeated and the offeror hears and understands the words of acceptance, the contract is complete
(Kanhaiyalal v. Dineshwarchandra (1959) AIR, M.P. 234).

❖ **Privity of Contract**

- 1) A stranger to a contract cannot sue both under the English and Indian law for want of privity of contract.
- 2) The following illustration explains this point.

Dunlop Pneumatic Tyre Co. v. Selfridge Ltd. (1915)

Facts of Case

- 1) D supplied tyres to a wholesaler X, on condition that any retailer to whom X re-supplied the tyres should promise X, not to sell them to the public below Ds list price.
- 2) X supplied tyres to S upon this condition, but nevertheless S sold the tyres below the list price.

Decision

- 1) There was a contract between D and X and a contract between X and S.
- 2) Therefore, D could not obtain damages from S, as D had not given any consideration for Ss promise to X nor was he party to the contract between D and X.

Eg:- A, who is indebted to B, sells his property to C, and C the purchaser of the property, promises to pay off the debt to B. In case C fails to pay B, B has no right to sue C for there is no privity of contract between B and C.

❖ Kinds of Consideration

Consideration may be:

- 1) **Executory or future** - Promise to be performed in the future
e.g., an engagement to marry someone
- 2) **Executed or present**
The act constituting consideration is wholly or completely performed

Eg:- If the price is paid by the buyer and the goods are delivered by the seller at the same time, consideration is executed by both the parties.

- 3) **Past Consideration**
A past act or forbearance, that is to say, an act constituting consideration which took place and is complete (wholly executed) before the promise is made.

❖ Rules Governing Consideration

- 1) **No Consideration No Contract**
Every simple contract must be supported by valuable consideration otherwise it is formally void subject to some exceptions.
- 2) **Positive or Negative**
Consideration may be an act or abstinence or promise.
- 3) **Mutuality**
There must be mutuality i.e., each party must do or agree to do something. A gratuitous promise as in the case of subscription for charity, is not enforceable.

4) Real and not Illusory

Consideration must be real, and not vague, indefinite, or illusory, e.g., a son's promise to "stop being a nuisance" to his father, being vague, is no consideration.

5) Consideration need not be Adequate

Although consideration must have some value, it need not be adequate i.e., a full return for the promise.

6) Consideration must be lawful

E.g., it must not be some illegal act such as paying someone to commit a crime. If the consideration is unlawful, the agreement is void.

7) Consideration must be something more than the promisee is already bound to do for the promisor.

Thus, an agreement to perform an existing obligation made with the person to whom the obligation is already owed, is not made for consideration

❖ When Consideration not Necessary

- 1) The general rule is that an agreement made without consideration is void
- 2) Indian Contract Act lays down certain exceptions which make a promise without consideration valid and binding

a) Contract made out of natural love and affection

If it is expressed in writing and registered and made out of natural love and affection between the parties standing in near relation to each other

b) Compensation for past voluntary service

If it is made to compensate a person who has already done something voluntarily for promisor

c) Promise to pay Time Barred Debt

If it is promise in writing or signed by the person to pay debt barred by the law of limitation

d) Agency

Consideration is Not required for Agency

e) Gift

In case of gift, consideration is actually not needed.

❖ FLAWS IN CONTRACT**1) Void Agreement- Section 2 (j)**

- a) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
- b) It cannot be enforced and confers no rights on either party.
- c) It is really not a contract at all, it is non-existent.

2) Voidable Contract

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 or others, is a voidable contract

A voidable contract is one which a party can put to an end. He can exercise his option, if his consent was not free.

3) Illegal Agreement

- a) An illegal agreement is one which, like the void agreement has no legal effects as between the immediate parties
- b) Transactions collateral to it also become tainted with illegality and are, therefore, not enforceable

❖ FLAW IN CAPACITY

1) The general rule is that all natural persons have full capacity to make binding contracts.

2) But the Indian Contract Act, 1872 admits an exception in the case of:

- (i) minors,
- (ii) lunatics, and
- (iii) persons disqualified from contracting by any law to which they are subject.

3) Section 11 of the Act provides that

“Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject”

❖ LUNATIC AGREEMENT

1) Meaning of Unsound Mind

A person is of unsound mind if at the time when he makes the contract,

- a) he is incapable of understanding it and
- b) Incapable of forming rational judgment as to its effect upon his interests.

2) Contractual Capacity

A person of unsound mind cannot enter into a contract

A lunatic's agreement is therefore void.

3) Valid

- a) If he makes a contract when he is of sound mind, i.e., during lucid intervals, he will be bound by it.
- b) If a contract entered into by a lunatic or person of unsound mind is for his benefit, it can be enforced (for the benefit) against the other party but not vice-versa

❖ WILLFUL MISREPRESENTATION OR FRAUD

1) Types of Fraud

Following are various types of Fraud

- a) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- b) The active concealment of a fact by one having knowledge or belief of the fact;
- c) A promise made without any intention of performing it;
- d) Any other act fitted to deceive;
- e) Any such act or omission as the law specially declares to be fraudulent

2) Elements of Fraud

- a) a false representation or assertion;
- b) of fact (and not a mere opinion),
- c) made with the intention that it should be acted upon,
- d) the representation must have actually induced the other party to enter into the contract and so deceived him
- e) the party deceived must thereby be indemnified, for there is no fraud without damages, and
- f) the statement must have been made either with the knowledge that it was false or without belief in its truth or recklessly without caring whether it was true or false

3) Voidable Contract

The party defrauded can avoid the contract and also claim damages.

4) Silence does amounts to Fraud

- a) Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud
- b) Exceptions
 - i) Silence is in itself equivalent to speech
 - ii) Where it is the duty of the person keeping silent to speak as in the cases of contracts uberrimae fidei

❖ CONTRACTS UBERRIMAE FIDEI

- a) There are contracts in which the law imposes a special duty to act with utmost good faith i.e., to disclose all material information.
- b) Failure to disclose such information will render the contract voidable at the option of other party.

Contracts Uberrimae Fidei are:

1) Contract of Insurance of All kinds :

The assured must disclose to the insurer all material facts and whatever he states must be correct and truthful.

2. Company Prospectus:

When a company invites the public to subscribe for its shares, it is under statutory obligation to disclose truthfully the various matters set out in the Companies Act.

Any person responsible for non-disclosure of any of these matters is liable to damages.

Also, the contract to buy shares is voidable where there is a material false statement or non-disclosure in the prospectus.

3. Contract for the Sale of Land:

The vendor is under a duty to the purchaser to show good title to the land he has contracted to sell.

4. Contracts of family Arrangements :

When the members of a family make agreements or arrangements for the settlement of family property, each member of the family must make full disclosure of every material fact within his knowledge.

❖ COERCION- SECTION 15**1) Meaning**

Coercion means “the committing or threatening to commit any act forbidden by the Indian Penal Code, or 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”.

2) Indian Penal Code

Simply stated, the doing of any act forbidden by the Indian Penal Code is coercion even though such an act is done in a place where the Indian Penal Code is not in force.

3) Example

- a) If A at the point of a pistol asks B to execute a promissory note in his favour and B to save his life does so he can avoid this agreement as his consent was not free.
- b) Even a threat to third-party,
e.g., where A compels B to sign a document threatening to harm C, in case B does not sign would also amount to coercion.

4) Coercion can be against Stranger or Goods

It may be pointed out that coercion may proceed from any person and may be directed against any person, even a stranger and also against goods, e.g., by unlawful detention of goods.

❖ UNDUE INFLUENCE- SECTION 16

- 1) A contract is said to be produced by undue influence

“where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other”.

- 2) The elements of undue influence are:
 - a) A dominant position, and
 - b) The use of it to obtain an unfair advantage.

❖ LEGALITY OF OBJECT -Sec 23

Every agreement of which the object or consideration is unlawful is void

The consideration or object of an agreement is lawful unless it is

- (i) forbidden by law; or
- (ii) it is of such nature that if permitted it would defeat the provisions of law; or
- (iii) is fraudulent; or
- (iv) involves or implies injury to the person or property of another; or
- (v) the Court regards it as immoral or opposed to public policy

❖ AGREEMENTS VOID AS BEING OPPOSED TO PUBLIC POLICY

The following agreements are void as being against public policy but they are not illegal:

- (a) **Agreement in restraint of parental rights :**
An agreement by which a party deprives himself of the custody of his child is void.
- (b) **Agreement in restraint of marriage :**
An agreement not to marry at all or not to marry any particular person or class of persons is void as it is in restraint of marriage.

(c) Marriage brokerage or brokerage Agreements

An agreement to procure marriage for reward is void.

Eg: Where a purohit (priest) was promised Rs.200 in consideration of procuring a wife for the defendant, the promise was held void as opposed to public policy, and the purohit could not recover the promised sum.

(d) Agreements in restraint of personal freedom Are void :

Where a man agreed with his money lender not to change his residence, or his employment or to part with any of his property or to incur any obligation on credit without the consent of the money lender, it was held that the agreement was void.

(e) Agreement in restraint of trade :

An agreement in restraint of trade is one which seeks to restrict a person from freely exercising his trade or profession.

❖ WAGERING AGREEMENTS

- 1) The literal meaning of the word "wager" is a "bet".
- 2) Wagering agreements are nothing but ordinary betting agreements.
- 3) For example, A and B enter into an agreement that if England's Cricket Team wins the test match, A will pay B Rs.100 and if it loses B will pay Rs.100 to A.
- 4) This is a wagering agreement and nothing can be recovered by winning party under the agreement

❖ WAGERING AGREEMENTS VOID**1) Wagering Agreement in Mumbai**

- a) In Mumbai, wagering agreements have been declared illegal by the Avoiding Wagers (Amendment) Act, 1865.
- b) Therefore, in Mumbai a wagering agreement being illegal, is void not only between the immediate parties, but taints and renders void all collateral agreements to it.
- c) Thus, A bets with B and losses, applies to C for a loan, who pays B in settlement of A's losses. C cannot recover from A because this is money paid "under" or "in respect of" a wagering transaction which is illegal in Mumbai.

2) Wagering Agreement Other than Mumbai

- a) In India except Mumbai, wagering agreements are void

- b) But in respect of India such a transaction (i.e., betting) being only void, C could recover from A. Of course, if A refused to pay B the amount of the bet that he has lost, B could not sue A anywhere.
- c) Again, where an agent bets on behalf of his principal and loses and pays over the money to the winner, he cannot recover the money from his principal, if the transactions took place in Mumbai, but elsewhere he could recover.
- d) But if the agent wins, he must pay the winnings to the principal, as this money was received on behalf of the principal.

3) Commercial Transaction

- a) Sometimes, commercial transactions assume the form of wagering contracts.
- b) The sample test to find out whether a particular transaction is a wager or a genuine commercial transaction is:
“Where delivery of the goods sold is intended to be given and taken, it is valid contract, where only the differences are intended to be paid, it will be a wagering contract and unenforceable”.
- c) In a wagering contract there must be mutuality in the sense that the gain of one party should be loss to the other on the happening of an uncertain event which is the subject matter of the contract.

❖ VOID AGREEMENTS

The following types of agreements are void under Indian Contract Act

1. Contract with Incapacity Person

Agreement by or with a minor or a person of unsound mind or a person disqualified to enter into a contract - Section 11;

2. Mutual Mistake of Fact

Agreement made under a mistake of fact, material to the agreement on the part of the both the parties - Section 20.

3. Unlawful Consideration or Object

a) An agreement of which the consideration or object is unlawful - Section 23.

b) If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void - Section

4. Contract without Consideration

An agreement made without consideration subject to three exceptions provided to Section 25.

5. An agreement in restraint of marriage - Section 26.
6. An agreement in restraint of trade - Section 27.
7. An agreement in restraint of legal proceedings - Section 28.
8. **Uncertain**
Agreements, the meaning of which is not certain, or capable of being made certain - Section 29.
9. **Wagering Agreement**
Agreement by way of wager- Section 30.
10. An agreement to enter into an agreement in the future.
11. **Impossible**
An agreement to do an act impossible in itself - Section 56(1)

❖ **CONTINGENT CONTRACT-** Section 31

A contingent contract is a contract to do or not to do something, if some event collateral to such contract, does or does not happen.

For example, A contracts to sell B 10 bales of cotton for Rs. 20,000, if the ship by which they are coming returns safely. This is a contingent contract.

Contract of insurance and contracts of indemnity and guarantee are popular instances of contingent contracts.

❖ **QUASI CONTRACT**

1) **Normal Contract**

A valid contract must contain certain essential elements, such as offer and acceptance, capacity to contract, consideration and free consent.

2) **Obligation by Law**

Law implies a promise imposing obligations on one party and conferring right in favour of the other even when there is no offer, no acceptance, no consensus ad idem, and in fact, there is neither agreement nor promise.

3) Court recognises them as relations resembling those of contracts and enforces them as if they were contracts, hence the term quasi- contracts (i.e., resembling a contract).

4) **Equitable Principle**

A quasi-contract rests on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another.

In truth, it is not a contract at all.

5) **Duty**

It is the duty and not an agreement or intention which defines it

6) **Example**

Eg: - Money paid under mistake. Equity demands that such money must be paid back.

❖ **DISCHARGE OR TERMINATION OF CONTRACT**

1) **Meaning**

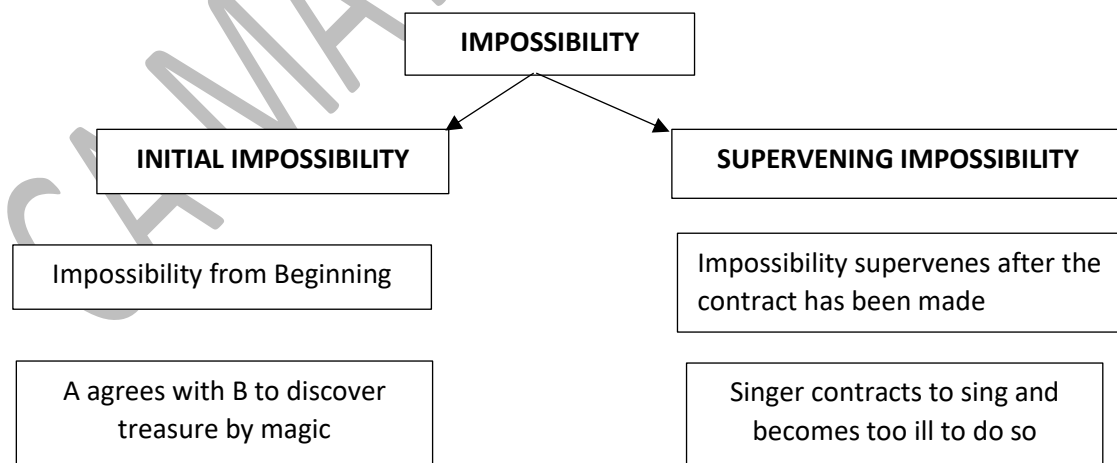
A contract is said to be discharged or terminated when the rights and obligations arising out of a contract are extinguished.

2) **Modes of Discharge**

Contracts may be discharged or terminated by any of the following modes:

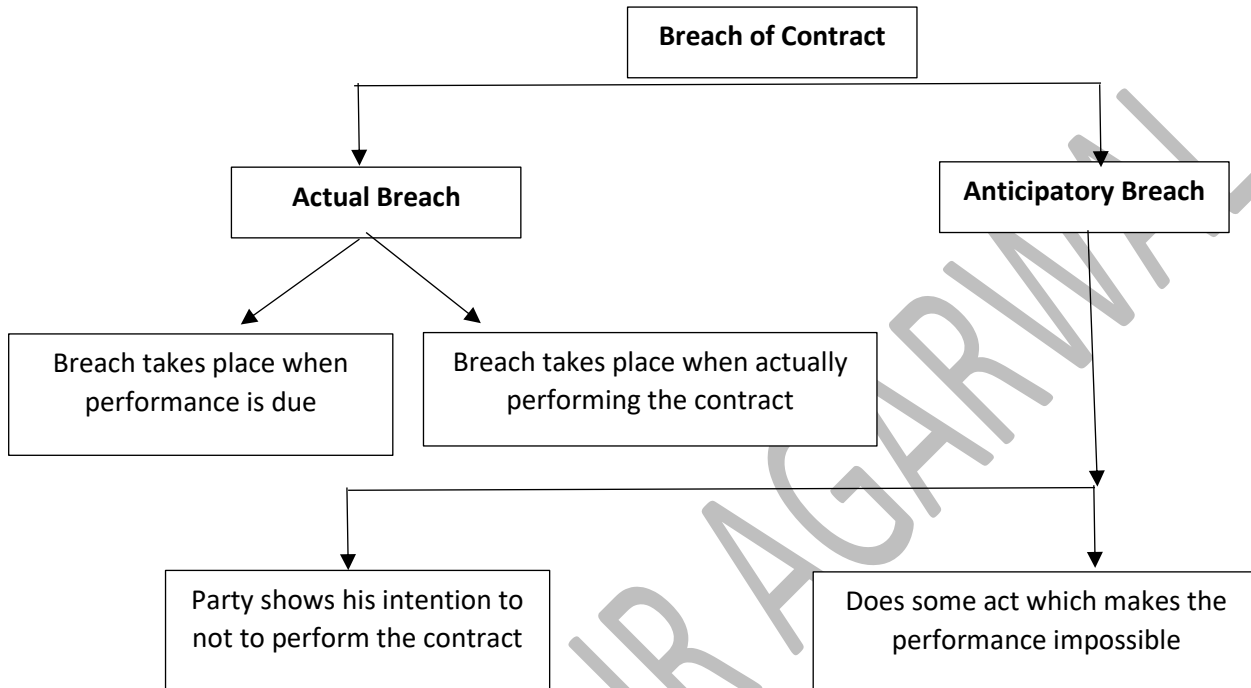
- a) Performance of Contract
- b) Mutual Agreement
- c) Lapse of Time
- d) Operation of Law
- e) Impossibility of Performance or Frustration
- f) Breach of Contract

❖ **DISCHARGE BY IMPOSSIBILITY OR FRUSTRATION**



❖ **BREACH OF CONTRACT**

- 1) There is breach of contract when the promisor
 - a) Does not perform the contract or
 - b) Does not tender performance or
 - c) Performance is defective



- 2) Course of action in case of Anticipatory breach
 - a) Repudiate the contract immediately
 - b) Wait till the due date of performance
- 3) Promisor may take advantage of any supervening circumstances which would justify him in declining to complete it

4) **Hochester v. De LA Tour (1853)**

A hired B in April to act as a courier commencing employment from 1st June, but wrote to B in May repudiating the agreement, B sued A for breach of contract immediately after repudiation.

A contended that there could not be breach of contract before June 1.

Held, B was immediately entitled to sue and need not wait till 1st June, for his right of action to accrue.

5) **Avery v. Bowden (1856) 116**

A hired B's ship to carry a cargo from Russia. Later on B repudiated the contract. A delayed taking action hoping B would change his mind before the performance date. War broke out between Russia and Britain before the performance date frustrating the contract. Held, A lost his right to sue B for damages by his delay

❖ **REMEDIES FOR BREACH OF CONTRACT**

- 1) Where a contract is broken, the injured party has several courses of action open to him.
- 2) The appropriate remedy in any case will depend upon the subject-matter of the contract and the nature of the breach.
- 3) In case of Breach of contract, the injured party may
 - a) Rescind the contract and refuse further performance of contract
 - b) Suit for Damages
 - c) Sue for Specific Performance
 - d) Sue for an Injunction
 - e) Sue for Quantum Meruit

❖ **CONTRACT OF INDEMNITY**

1) Meaning of Indemnity

A contract of indemnity is a contract by which one party promises to save the other party from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person

2) Example

- a) A contracts to indemnify B against the consequence of any proceedings which C may take against B in respect of a certain sum of 300 rupees. This is a contract of indemnity.
- b) The contract of indemnity may be express or implied. The later may be inferred from the circumstances of a particular case,
- c) e.g., An act done by A at the request of B. If A incurs any expenses, he can recover the same from B.

3) Indemnifier and Indemnity Holder

Indemnifier:- The person who promises to indemnify or make good the loss is called the indemnifier

Indemnity Holder:- the person whose loss is made good is called the indemnified or the indemnity holder

4) Insurance Contract

- a) A contract of insurance is an example of a contract of indemnity according to English Law.

- b) In consideration of premium, the insurer promises to make good the loss suffered by the assured on account of the destruction by fire of his property insured against fire.

❖ CONTRACT OF GUARANTEE

1) Meaning

A contract of guarantee is a contract to perform the promise, or discharge the liability of a third person in case of his default

2) Parties Involved

a) Surety

The person who gives the guarantee is called the Surety

b) Principal Debtor

The person for whom the guarantee is given is called the Principal Debtor

c) Creditor

The person to whom the guarantee is given is called the Creditor

3) Oral or Written

A guarantee may be either oral or written, although in the English law, it must be in writing.

4) Example

A advances a loan of Rs.5, 000 to B and C promises to A that if B does not repay the loan, C will do so. This is a contract of guarantee. Here B is the principal debtor, A is the creditor and C is the surety or guarantor.

Distinction between Contract of Indemnity and Contract of Guarantee

<i>Contract of Indemnity</i>	<i>Contract of Guarantee</i>
1) Number of Parties	
In a contract of indemnity there are only two parties: the indemnifier and the indemnified. the	1) In a contract of guarantee, there are three parties; the surety, the principal debtor and creditor.
2. Liability	
In a contract of indemnity, the liability of the indemnifier is primary.	In a contract of guarantee, the liability of the surety is secondary. The surety is liable only if the principal debtor makes a default, the primary liability being that of the principal debtor.
3. Act at request of Debtor	

The indemnifier need not necessarily act at request of the debtor.

The surety gives guarantee only at the Request of the principal debtor.

4. Objective

In the case of indemnity, the possibility of any existing loss happening is the only contingency against which the indemnifier undertakes to indemnify.

In the case of a guarantee, there is an debt or duty, the performance of which is guaranteed by the surety,

5. Sue on Third Party

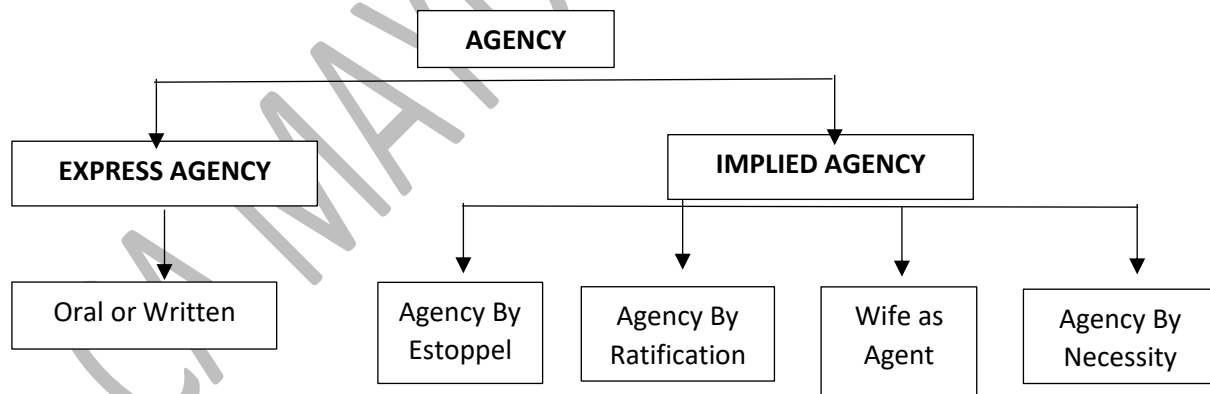
The indemnifier cannot sue third-parties in his own name, unless there be assignment. entitled to must sue in the name of the indemnified.

The surety, on payment of the debt when the He principal debtor has failed to pay is proceed against the principal debtor in his own right.

❖ LAW OF AGENCY

- a) An agent is a person who is employed to bring his principal into contractual relations with third- parties.
- b) An agent is a mere connecting link between the principal and a third-party.
- c) But during the period that an agent is acting for his principal, he is clothed with the capacity of his principal.

❖ CREATION OF AGENCY



1) Express Agency

- a) A contract of agency may be made orally or in writing.
- b) The usual form of written contract of agency is the Power of Attorney, which gives him the authority to act on behalf of his principal in accordance with the terms and conditions therein.

In an agency created to transfer immovable property, the power of attorney must be registered.

- c) A power of attorney may be general, giving several powers to the agent, or special, giving authority to the agent for transacting a single act.

2) Implied Agency

Implied agency may arise by conduct, situation of parties or necessity of the case.

Types of Implied Agency

1) Agency by Estoppel (Section 237)

Estoppel arises when you are precluded from denying the truth of anything which you have represented as a fact, although it is not a fact.

Eg:- Where P allows third-parties to believe that A is acting as his authorised agent, he will be estopped from denying the agency if such third-parties relying on it make a contract with A even when A had no authority at all.

2) Wife as Agent :

1) Husband Wife Live together

Where a husband and wife are living together, the wife is presumed to have her husband's authority to pledge his credit for the purchase of necessaries of life suitable to their standard of living.

2) Husband Not liable

- (i) he had expressly warned the tradesman not to supply goods on credit to his wife; or
- (ii) he had expressly forbidden the wife to pledge his credit; or
- (iii) his wife was already sufficiently supplied with the articles in question; or
- (iv) she was supplied with a sufficient allowance.

3) Wife Forced to Live Separately

She can pledge her husband's credit to buy all necessaries of life according to the position of the husband even against his wishes

3) Agency of Necessity (Sections 188 And 189)

- a) In certain circumstances, a person who has been entrusted with another's property, may have to incur unauthorised expenses to protect or preserve it. Such an agency is called an agency of necessity.
- b) For example, A sent a horse by railway and on its arrival at the destination there was no one to receive it. The railway company, being bound to take

reasonable steps to keep the horse alive, was an agent of necessity of A.

4) Agency by ratification (Sections 169-200)

- a) Where a person having no authority purports to act as agent, or a duly appointed agent exceeds his authority, the principal is not bound by the contract supposedly based on his behalf.
- b) But the principal may ratify the agent's transaction and so accept liability. In this way an agency by ratification arises.
- c) This is also known as ex post facto agency— agency arising after the event.
- d) The effect of ratification is to render the contract binding on the principal as if the agent had been authorised beforehand.
- e) Also ratification relates back to the original making of the contract so that the agency is taken to have come into existence from the moment the agent first acted

❖ DUTIES OF AGENT

An agent's duties towards his principal are as follows (which give corresponding rights to the principal who may sue for damages in the event of a breach of duty by the agent):

1) Within Scope

An agent must act within the scope of the authority conferred upon him and carry out strictly the instructions of the principal (Section 211).

2) Follow Customs

In the absence of express instructions, he must follow the custom prevailing in the same kind of business at the place where the agent conducts the business (Section 211).

3) Reasonable Skill and Diligence

He must do the work with reasonable skill and diligence whereby the nature of his profession, the agent purports to have special skill, he must exercise the skill which is expected from the members of the profession (Section 212).

4) Disclose Material Information

He must disclose promptly any material information coming to his knowledge which is likely to influence the principal in the making of the contract.

5) Maintain Confidentiality

He must not disclose confidential information entrusted to him by his principal (Section 213).

6) Personal Interest should not be Supercede

He must not allow his interest to conflict with his duty, e.g., he must not compete with his principal (Section 215).

7) True Accounts

The agent must keep true accounts and must be prepared on reasonable notice to render an account.

8) No Hidden Profit

He must not make any secret profit; he must disclose any extra profit that he may make.

9) No Secret Bribe

Where an agent is discovered taking secret bribe, etc., the principal is entitled to

- (i) dismiss the agent without notice,
- (ii) recover the amount of secret profit, and
- (iii) refuse to pay the agent his remuneration.

10) Not Delegate to Sub-agent

a) An agent must not delegate his authority to sub-agent.

b) A sub-agent is a person employed by and acting under the control of the original agent in the business of agency (Section 191). This rule is based on the principle: Delegatus non-potest delegare — a delegate cannot further delegate (Section 190).

c) Can delegate in Exception Cases

But there are exceptions to this rule and the agent may delegate

- (i) where delegation is allowed by the principal,
- (ii) where the trade custom or usage sanctions delegation,
- (iii) where delegation is essential for proper performance,
- (iv) where an emergency renders it imperative,
- (v) where nature of the work is purely ministerial, and
- (vi) where the principal knows that the agent intends to delegate.

❖ RIGHTS OF AGENT

1) Right to Remuneration

- a) The agent is entitled to receive the agreed remuneration, or if none was agreed, a reasonable remuneration.
- b) The agent becomes entitled to receive remuneration as soon as he has done what he had undertaken to do

2) Right of Lien and Stoppage in Transit

- a) Certain classes of agents, e.g., factors who have goods and property of their principal in their possession, have a lien on the goods or property in respect of their remuneration and expense and liabilities incurred.
- b) He has a right to stop the goods in transit where he is an unpaid seller

3) Right to Indemnify

The agent has a right to be indemnified by the principal against all charges, expenses and liabilities properly incurred by him in the course of the agency

4) Authority to do act

- a) Real Authority- Contractual Authority
- b) Implied Authority- to do any act incidental to carry out real authority

❖ CLASSES OF AGENTS

Agents may be special or general or, they may be mercantile agents:

1) Special Agent :

- a) A special agent is one who is appointed to do a specified act, or to perform a specified function. He has no authority outside this special task.
- b) The third-party has no right to assume that the agent has unlimited authority.
- c) Any act of the agent beyond that authority will not bind the principal.

2) General Agent

- a) A general agent is appointed to do anything within the authority given to him by the principal in all transactions, or in all transactions relating to a specified trade or matter.
- b) The third- party may assume that such an agent has power to do all that is usual for a general agent to do in the business involved.
- c) The third party is not affected by any private restrictions on the agent's authority.

❖ SUB-AGENT

1) Meaning

- a) A person who is appointed by the agent and to whom the principal's work is delegated to known as sub- agent.
- b) "a sub-agent is a person employed by, and acting under the control of the original agent in the business of the agency."
- c) So, the sub-agent is the agent of the original agent.

2) Relations

- a) As between themselves, the relation of sub-agent and original agent is that of agent and the principal.
- b) A sub- agent is bound by all the duties of the original agent.
- c) Sub-Agent is directly responsible to Original Agent

3) Sub-Agent and Principal

The sub-agent is not directly responsible to the principal except for fraud and wilful wrong.

4) Original Agent and Principal

The original agent is responsible to the principal for the acts of the sub-agent.

❖ Mercantile Agents- Section 2(9)

A mercantile agent as “a mercantile agent having in the customary course of business as such agent authority either to sell goods or consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods”.

This definition covers factors, brokers, auctioneers, commission agents etc.

1) Factors

- a) A factor is a mercantile agent employed to sell goods which have been placed in his possession or contract to buy goods for his principal.
- b) He is the apparent owner of the goods in his custody and can sell them in his own name and receive payment for goods.
- c) He has an insurable interest in goods and also a general lien in respect of any claim he may have arising out of the agency.

2) Brokers

- a) A broker is a mercantile agent whose ordinary course of business is to make contracts with other parties for the sale and purchase of goods and securities of which he is not entrusted with the possession for a commission called brokerage.
- b) He acts in the name of principal.
- c) He has no lien over the goods as he is not in possession of them.

3) Del Credere Agent

- a) A del credere agent is a mercantile agent, who is in consideration of an extra remuneration guarantees to his principal that the purchasers who buy on credit will pay for the goods they take.
- b) In the event of a third-party failing to pay, the del credere agent is bound to pay his principal the sum owned by third- party.

4) Auctioneers

- a) An auctioneer is an agent who sells goods by auction, i.e., to the highest bidder in public competition. He has no authority to warrant his principal's title to the goods.
- b) He is an agent for the seller but after the goods have been knocked down he is agent for the buyer also for the purpose of evidence that the sale has taken place.

5) Partners

In a partnership firm, every partner is an agent of the firm and of his co-partners for the purpose of the business of the firm.

6) Bankers

- a) The relationship between a banker and his customer is primarily that of debtor and creditor.
- b) In addition, a banker is an agent of his customer when he buys or sells securities, collects cheques, dividends, bills or promissory notes on behalf of his customer.
- c) He has a general lien on all securities and goods in his possession in respect of the

general balance due to him by the customer.

❖ **TERMINATION OF AGENCY**

1. By the performance of the contract of agency; (Section 201)
2. By an agreement between the principal and the agent;
3. By expiration of the period fixed for the contract of agency;
4. By the death of the principal or the agency; (Section 201)
5. By the insanity of either the principal or the agent; (Section 201)
6. By the insolvency of the principal, and in some cases that of the agent; (Section 201)
7. Where the principal or agent is an incorporated company, by its dissolution;
8. By the destruction of the subject-matter; (Section 56)
9. By the renunciation of his authority by the agent; (Section 201)
10. By the revocation of authority by the principal. (Section 201)

❖ **E-CONTRACT**

- 1) Electronic contracts are not paper based but rather in electronic form are born out of the need for speed, convenience and efficiency.
- 2) In the electronic age, the whole transaction can be completed in seconds, with both parties simply affixing their digital signatures to an electronic copy of the contract.
- 3) There was initially an apprehension amongst the legislatures to recognize this modern technology, but now many countries have enacted laws to recognize electronic contracts.
- 4) The conventional law relating to contracts is not sufficient to address all the issues that arise in electronic contracts.
- 5) The Information Technology Act, 2000 solves some of the peculiar issues that arise in the formation and authentication of electronic contracts.

❖ **NECESSARY INGREDIENTS FOR E-CONTRACT**

- 1) Offer need to be made
- 2) Offer need to be accepted
- 3) There has to be lawful consideration
- 4) There has to be intention to create legal relations
- 5) There must be free and genuine consent
- 6) The object of the contract must be lawful
- 7) There must be certainty and possibility of performance

CHAPTER 2B

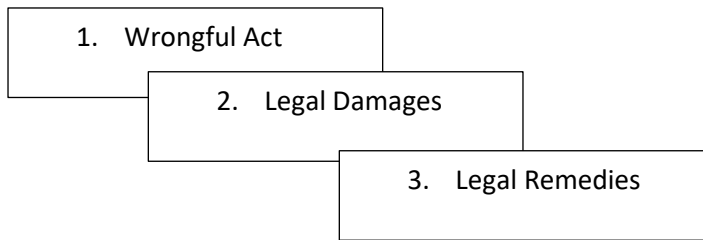
LAW RELATING TO TORTS

❖ MEANING OF TORT

- 1) The word 'tort' is a French equivalent of English word 'wrong'.
- 2) The word tort is derived from Latin word Tortum. Thus, simply stated 'tort' means wrong. But every wrong or wrongful act is not a tort.
- 3) Tort is really a kind of civil wrong as opposed to criminal wrong.
- 4) Wrongs, in law, are either public or private.
- 5) Public wrongs are the violations of 'public law and hence amount to be offences against the State, while private wrongs are the breaches of private law, i.e., wrongs against individuals.
- 6) Public wrongs or crimes are those wrongs which are made punishable under the penal law belonging to the public law group.
- 7) "Tort" means a civil wrong which is not exclusively the breach of a contract or the breach of trust. The distinction between civil and criminal wrongs depends on the nature of the appropriate remedy provided by law.
- 8) Section 2(m) of the Limitation Act, 1963, states: "Tort means a civil wrong which is not exclusively a breach of contract or breach of trust."
- 9) **Salmond** defines it as "a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation."
- 10) **Fraser** describes it as "an infringement of a right in rem of a private individual giving a right of compensation at the suit of the injured party."

❖ ELEMENTS OF TORTS

Every wrongful act is not a tort. To constitute a tort three things must concur



❖ Wrongful Act

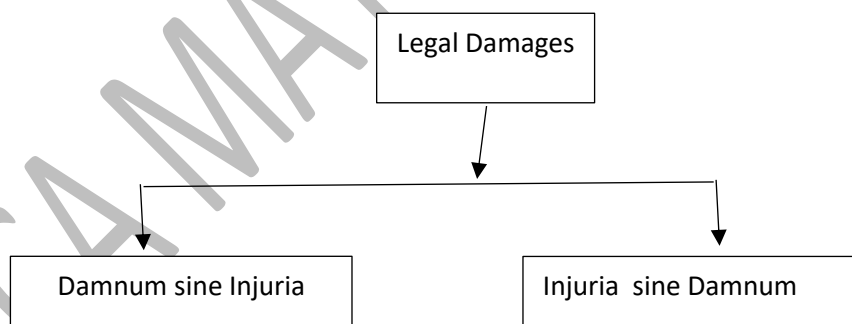
Every Person who has legal rights (Private Rights) like as

- i) Right of Reputation (Defamation)
- ii) Right of Bodily safety and freedom (Assault or Battery)
- iii) Right to Property (Trespassing)

If above rights are violated without legal excuse , has right of action against the person who violate them.

It is irrelevant whether loss has occurred or not

❖ Legal Damages



1) Damnum sine Injuria

- a) Damnum means harm, loss or damage in respect of money, comfort, health etc
- b) Injuria means infringement of a right conferred by law on plaintiff
- c) Causing Damage substantial to another person is not actionable in law unless there is also a violation of a legal right

d) Gloucester Grammer School Case

I own a shop and you open a shop in neighbourhood, as a result of which I lose some customers and my profits fall off, I cannot sue you for the loss in profits, because you are exercising your legal right

2) Injuria Sine Damnum

- a) It means injury without damage i.e, where there is no damage resulted yet it is an injury or wrong in tort i.e, where there is infringement of a legal right not resulting in harm but plaintiff can still sue in tort
- b) Injuria sine damnum covers such cases and action lies when the legal right is violated even though no damage has occurred.
- c) The act of trespassing upon another's land is actionable even though it has not caused the plaintiff even the slightest harm

❖ Legal Remedy

The main remedy for a tort is an

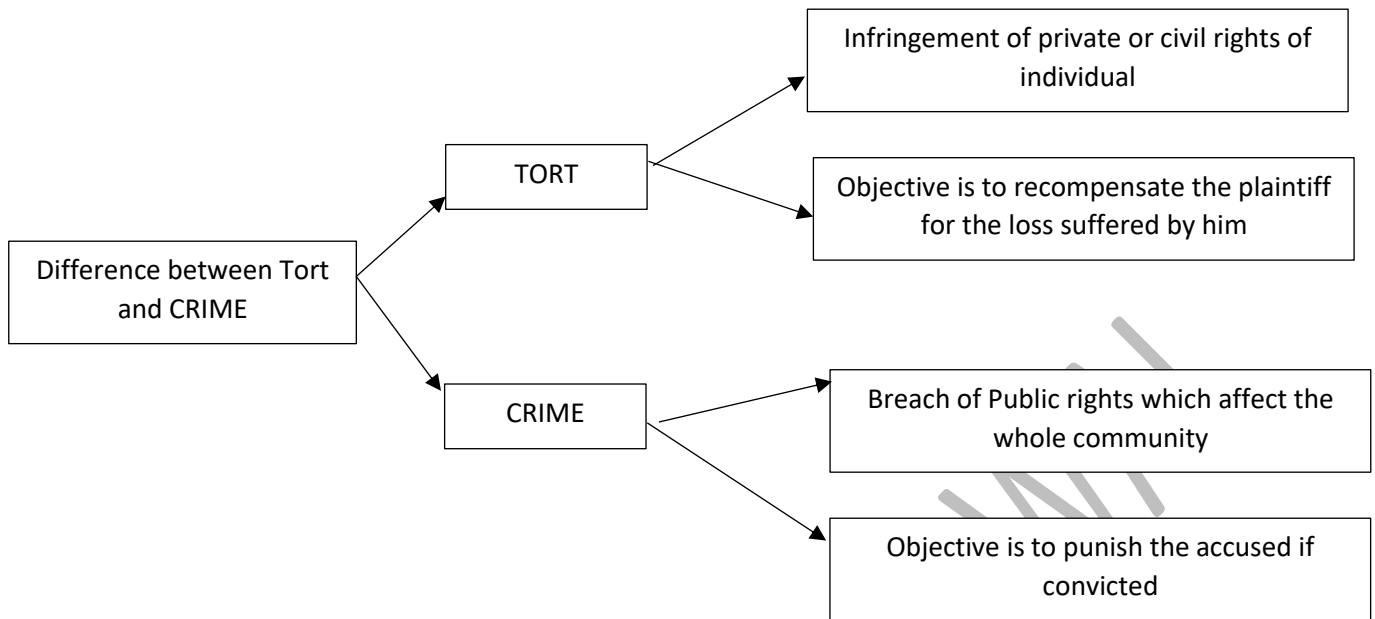
- i) Action for unliquidated Damages
- ii) Injunction in specific case in addition to damage
- iii) Self help is the remedy of which the injured party can avail himself without going to a law court

Eg: - Self Help

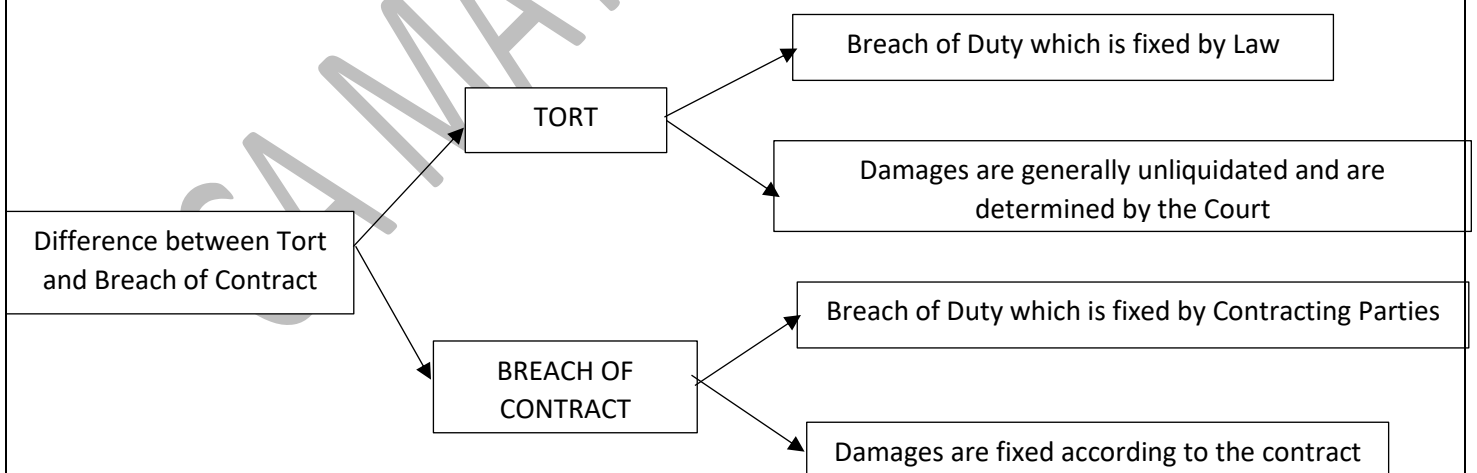
"A" finds a drunken stranger in his room who has no business to be there, and is thus a trespass, he (A) is entitled to get rid of him, if possible without force but if that be not possible with such force as the circumstances of the case may warrant.

❖ Mens Rea

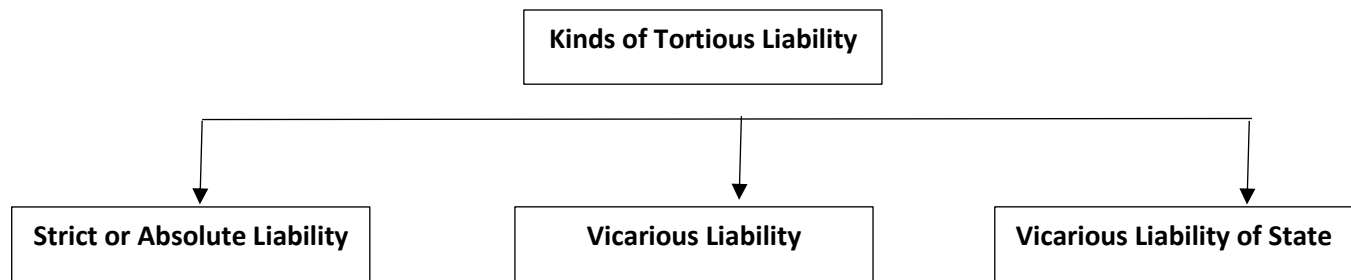
- 1) "Actus non facit reum nisi mens sit rea" i.e. an act to be illegal, the person should do it with guilty mind
- 2) It does not mean that for the law or Torts, the act must be done with an evil motive, but simply means that mind must concur in the Act, the act must be done either with wrongful intention or negligence.
- 3) However, the cases of absolute or strict liability are exceptions to this principle



Sr.No	Tort	Crime
1	Civil wrong	Criminal Prosecution
2	Private Wrong	Public Wrong
3	Compensation	Punishment
4	Plaintiff	Prosecution



Sr.No	Tort	Contract
1	Unliquidated Damages	Liquidated Damages
2	No Such Concept	Privity of Contract
3	Duties imposed by Law	Duties imposed by Parties



1) Strict or Absolute Liability

- a) In some torts, defendant is liable even though the harm to the plaintiff without intention or negligence on the part of defendant.
- b) In simple words, the defendant is held liable without the fault
- c) These cases fall under the following categories
 - i) **Liability for inevitable accident:-**
Damage is done by escape of dangerous substances or kept by anyone upon his land
 - ii) **Liability for Inevitable Mistake**
Such cases are where a person interferes with the property or reputation of another
 - iii) **Vicarious Liability for wrongs committed by others**
These involve liability of master for the acts of his servant

Landmark Case:- Rylands v. Fletcher

Facts of the Case:-

- 1) B, a mill owner employed independent contractors, who were apparently competent to construct a reservoir on his land to provide water for his mill.

- 2) There were old disused mining shafts under the site of the reservoir which the contractors failed to observe because they were filled with earth.
- 3) The contractors therefore, did not block them.
- 4) When the water was filled in the reservoir, it bursts through the shafts and flooded the plaintiff's coal mines on the adjoining land

Question:-

Whether B still liable even though he was not at fault as he appointed independent contractors

Conclusion :-

The true rule of law is that the person, who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and if, he does not do so is, prima facie answerable for all the damage which is the natural consequence of its escape.

Conditions for applying Ryland v. Fletcher Rule

The following two conditions are necessary in order to apply the rule in Ryland v/s Fletcher

- 1) **Escape from a place**
Escape from a place of which the defendant has occupation or over which he has a control to a place which is outside his occupation or control or something likely to do mischief if it escapes; and
- 2) **Non-natural use of Land :**
The defendant is liable if he makes a non-natural use of land.

❖ EXCEPTION TO THE RULE OF STRICT LIABILITY**1) Damage where there is natural use of land****2) Consent of Plaintiff**

- i) It is for the common benefit of both the plaintiff and defendant
- ii) Plaintiff has consented to the accumulation of dangerous thing on the defendant's land

3) Statutory Authority

Sometimes, public bodies storing water, gas, electricity and the like are by statute, exempted from liability so long as they have taken reasonable care.

Green v. Chelsea Water Works Co.

- a) The defendant company had a statutory duty to maintain continuous supply of water.
- b) A main belonging to the company burst without any fault on its part as a consequence of which plaintiff's premises were flooded with water.
- c) It was held that the company was not liable as the company was engaged in performing a statutory duty.

4) Act of God

If an escape is caused, through natural causes and without human intervention circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility, there is then said to exist the defence of Act of God.

5) Escape due to plaintiff's own Default

Damage by escape due to the plaintiff's own default was considered to be good defence in Rylands v. Fletcher itself.

If the plaintiff suffers damage by his own intrusion into the defendant's property, he cannot complain for the damage so caused.

6) Act of Third Party

- a) If the harm has been caused due to the act of a stranger, who is neither defendant's servant nor agent nor the defendant has any control over him, the defendant will not be liable.

b) Box v. Jubh

- i) The overflow from the defendant's reservoir was caused by blocking of a drain by stranger, the defendant was held not liable.
- ii) But if the act of the stranger, is or can be foreseen by the defendant and the damage can be prevented, the defendant must, by due care prevent the damage.
- iii) Failure on his part to avoid such damage will make him liable.

❖ **APPLICABILITY OF RULE IN CASE OF ENTERPRISES ENGAGED IN A HAZARDOUS OR INHERENTLY DANGEROUS INDUSTRY**

M.C.MEHTA v/s UNION OF INDIA AND OTHERS

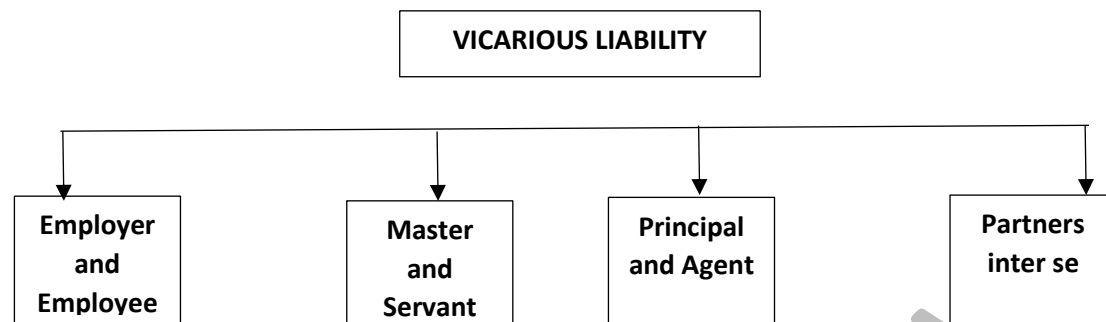
“We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken.

The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged, must be conducted with the highest standards of safety; and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm; and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without negligence on its part.”

Thus, while imposing absolute liability for manufacture of hazardous substances, the Supreme Court intended that the requirement of non-natural use or the aspect of escape of a dangerous substance, commonly regarded as essential for liability under Rylands v. Fletcher, need not be proved in India.

❖ **VICARIOUS LIABILITY**

- 1) Normally, the tortfeasor is liable for his tort.
- 2) In some cases a person may be held liable for the tort committed by another.
- 3) A master is vicariously liable for the tort of his servant, principal for the tort of his agent and partners for the tort of a partner.
- 4) This is known as vicarious liability in tort



Qui facit per alium facit per se –

He who acts through another is acting himself

The common examples of such a liability are:-

a) Principal and Agent (Specific Authority)

When an agent commits a tort in the ordinary course of his duties as an agent, the principal is liable for the same

Lloyd v. Grace, Smith & Co.

- i) The managing clerk of a firm of solicitors, while acting in the ordinary course of business committed fraud, against a lady client by fraudulently inducing her to sign documents transferring her property to him.
- ii) He had done so without the knowledge of his principal who was liable because the fraud was committed in the course of employment.

b) Master and Servant

- i) A master is liable for the tort committed by his servant while acting in the course of his employment.
- ii) The servant, of course, is also liable; their liability is joint and several
- iii) A master is liable not only for the acts which have been committed by the servant, but also for acts done by him which are not specifically authorized, in the course of his employment

Century Insurance Co. Ltd. v. Northern Ireland Road Transport Board (1942)

- 1) The director of a petrol lorry, while transferring petrol from the lorry to an underground tank at a garage, struck a match in order to light a cigarette and then threw it, still alight on the floor.
- 2) An explosion and a fire ensued.
- 3) The House of Lords held his employers liable for the damage caused, for he did the act in the course of carrying out his task of delivering petrol
- 4) It was an unauthorized way of doing what he was employed to do.

Bayley v. Manchester, Sheffield And Lincolnshire Rly. Co.

Erroneously thinking that the plaintiff was in the wrong train, a porter of the defendants forcibly removed him.

The defendants were held liable.

3) Employer and Independent Contractor

- a) Employer is vicariously liable for the torts of his servants committed in the course of their employment
- b) But he is not liable for the torts of those who are his independent contractors.
- c) An independent contractor is one who works for another but who is not controlled by that other in his conduct in the performance of that work
- d) These definitions show that a person is a servant where the employer “retains the control of the actual performance” of the work.

Situation 1

Case law:- Philips v/c Britania Hygienic Laundry & Co

The owner of lorry was held not liable when a third-party's vehicle was damaged, in consequence of the negligent repair of his lorry by a garage proprietor.

Situation 2

Employers of independent contractors are liable for the “collateral negligence” of their contractors in the course of his employment.

Where A employed B to fit casement windows into certain premises. B's servant negligently put a tool on the sill of the window on which he was working at the time.

The wind blew the casement open and the tool was knocked off the sill on to a passer-by.

The employer was held to be liable, because the harm was caused by the work on a highway and duty lies upon the employer to avoid harm.

4) Employer liable for the torts committed by Independent Contractor

In the Following cases Employer is liable for the torts committed by Independent Contractor

- (i) When employer authorizes him to commit a tort.
- (ii) In torts of strict liability.
- (iii) Negligence of independent contractor.

Case Law- **Rylands v. Fletcher**

VICARIOUS LIABILITY OF THE STATE

1) Position in England

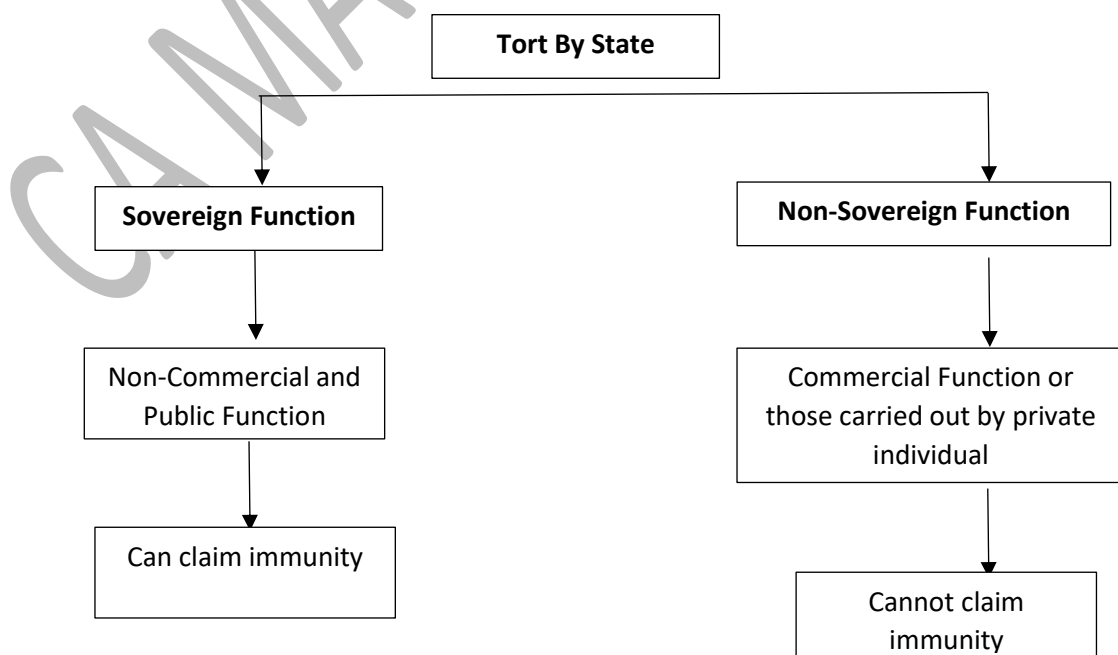
At Common Law the Crown could not be sued in tort, either for wrongs actually authorized by it or committed by its servants, in the course of their employment.

With the passing of the Crown Proceeding Act, 1947, the Crown is liable for the torts committed by its servants just like a private individual.

Thus, in England, the Crown is now vicariously liable for the torts of its servants.

2) Position in India

No statutory provision as in Crown Proceedings Act, 1947



Article 300 of the Constitution

Rule 1:-

- a) Government of India may sue or be sued - By the name of the Union of India
- b) Government of a State may sue or be sued- By the name of the State

Rule 2:-

The GOI or the Government of a State may sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or be sued, "if this Constitution had not been enacted",

Rule 3: -

The second mentioned rule shall be subject to any provisions which may be made by an Act of Parliament or of the Legislature of such State, enacted by virtue of powers conferred by the Constitution

❖ TORTS OR WRONG TO PERSONAL SAFETY AND FREEDOM

a) Battery

- 1) Any direct application of force to the person of another individual without his consent or lawful justification is a wrong of battery.
- 2) To constitute a tort of battery, therefore, two things are necessary:
 - (i) use of force, however, trivial it may be without the plaintiff's consent, and
 - (ii) without any lawful justification
- 3) Even though the force used is very trivial and does not cause any harm, the wrong is committed.
Thus, even to touch a person in anger or without any lawful justification is battery.

b) Assault

- 1) The defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery against him, the tort of assault is committed.
- 2) The law of assault is substantially the same as that of battery except that it is apprehension of contact, not the contact itself has to be established.
- 3) Usually when there is a battery, there will also be assault
- 4) Examples:- To point a loaded gun at the plaintiff, or to shake fist under his nose, or to curse him in a threatening manner, or to aim a blow at him which is intercepted, or to

surround him with a display of force is to assault him clearly if the defendant by his act intends to commit a battery and the plaintiff apprehends it, is an assault.

c) False Imprisonment

- 1) It means unauthorized restraint on a person's body.
- 2) A person is confined within certain limits so that he cannot move about and so his personal liberty is infringed.
- 3) It is a serious violation of a person's right and liberty whether being confined within the four walls or by being prevented from leaving place where he is.
- 4) If a man is restrained, by a threat of force from leaving his own house or an open field there is false imprisonment

c) Malicious Prosecution

Malicious prosecution consists in instigating judicial proceedings (usually criminal) against another, maliciously and without reasonable and probable cause, which terminate in favour of that other and which results in damage to his reputation, personal freedom or property.

The following are the essential elements of this tort:

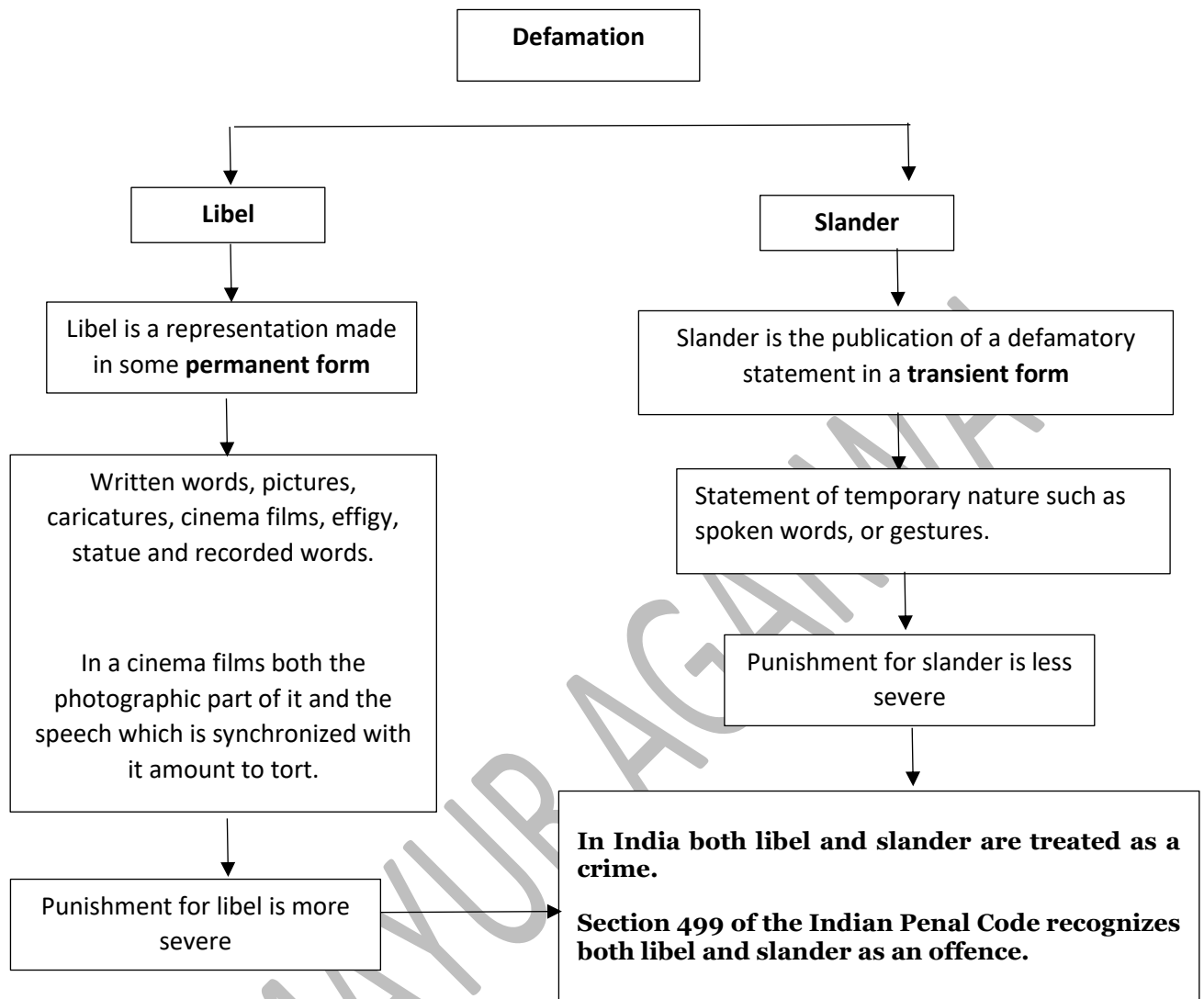
- 1) There must have been a prosecution of the plaintiff by the defendant.
- 2) There must have been want of reasonable and probable cause for that prosecution.
- 3) The defendant must have acted maliciously (i.e. with an improper motive and not to further the end of justice).
- 4) The plaintiff must have suffered damages as a result of the prosecution.
- 5) The prosecution must have terminated in favour of the plaintiff.

d) Nervous Shock

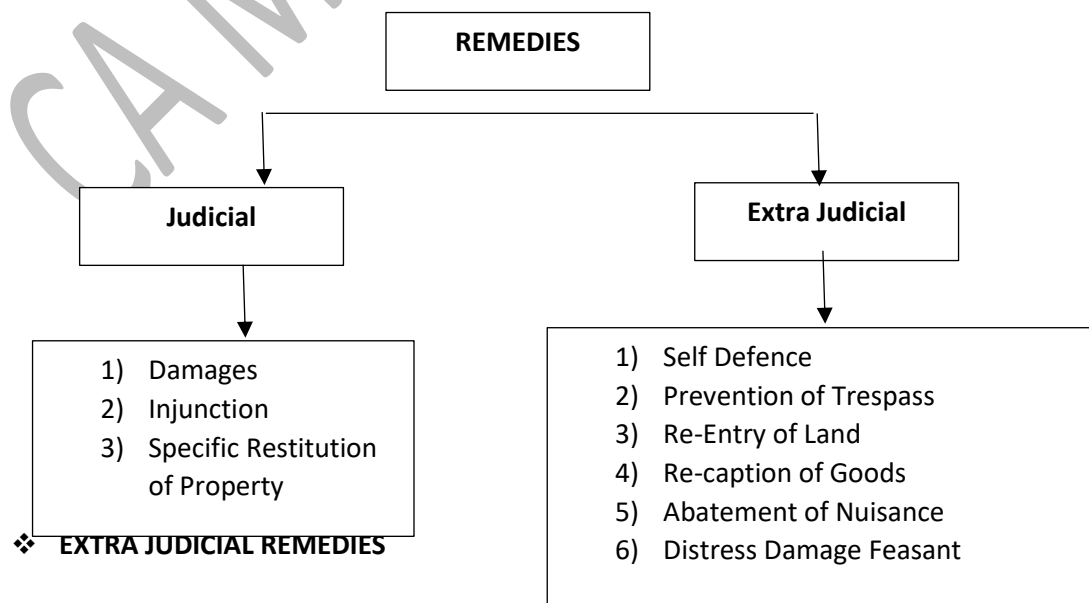
- 1) It provides relief when a person may get physical injury not by an impact, e.g., by stick, bullet or sword but merely by the nervous shock through what he has seen or heard.
- 2) Causing of nervous shock itself is not enough to make it an actionable tort, some injury or illness must take place as a result of the emotional disturbance, fear or sorrow.

e) Defamation

- 1) Defamation is an attack on the reputation of a person.
- 2) It means that something is said or done by a person which affects the reputation of another



❖ REMEDIES IN TORTS



❖ EXTRA JUDICIAL REMEDIES

1) Self Defence

It is lawful for any person to use reasonable forces to protect himself, or any other person against any unlawful use of force.

2) Prevention of Trespass

An occupier of land or any person with his authority may use reasonable force to prevent trespassers entering or to eject them but the force should be reasonable for the purpose.

3) Re-entry on Land

A person wrongfully disposed of land may retake possession of land if he can do so in a peaceful and reasonable manner.

4) Re-capture of Good

It is neither a crime nor a tort for a person entitled to possession of a chattel to take it either peacefully or by the use of a reasonable force from one who has wrongly taken it or wrongfully detained it.

5) Abatement of Nuisance

The occupier of land may lawfully abate (i.e. terminate by his own act), any nuisance injuriously affecting it. Thus, he may cut overhanging branches as spreading roots from his neighbour's trees, but

- (i) upon giving notice;
- (ii) by choosing the least mischievous method;
- (iii) avoiding unnecessary damage.

6) Distress Damage Feasant

An occupier may lawfully seize any cattle or any chattel which are unlawfully on his land doing damage there and detain them until compensation is paid for the damage.

The right is known as that of distress damage feasant-to distrain things which are doing damage.

CHAPTER 3:- ELEMENTS OF COMPANY SECRETARIES LEGISLATION

❖ THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

1) Objective

The ICSI is the only recognized professional body in India to develop and regulate the profession of Company Secretaries in India.

2) Statutory Body- National professional body set up under an act of Parliament, the Company Secretaries Act, 1980.

3) Jurisdiction- Ministry of Corporate Affairs, Government of India.

4) Education to Student

The Institute provides top-quality education to the students of Company Secretaries (CS) Course and best quality set standards to CS Members.

5) Members and Student- 50,000 members
4,00,000 students on the roll of ICSI.

6) Headquarters, Regional Office, Chapters

Headquarters - New Delhi,

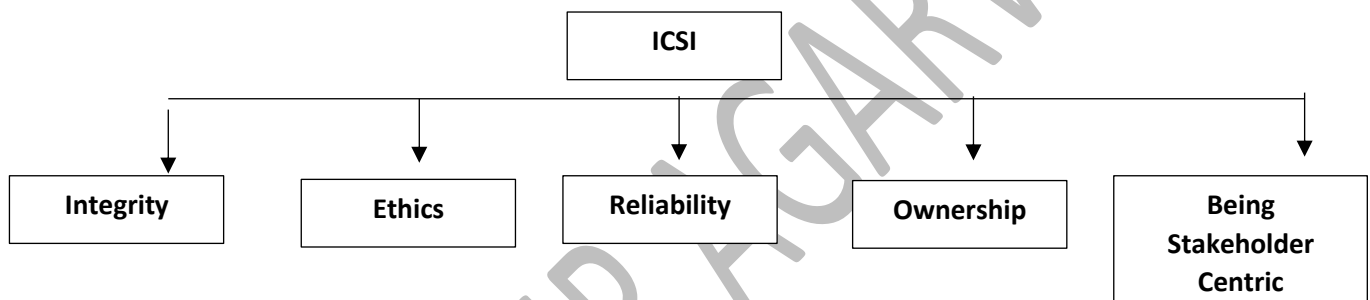
Regional Offices - Four regional office at New Delhi, Chennai, Kolkata, Mumbai and

Chapters - 70 Chapters across India.

❖ THE VISION, MOTTO, MISSION AND CORE VALUE OF THE INSTITUTE



❖ CORE VALUES

**1) Integrity**

- a) The word 'integrity' derives from the Latin word 'integer' which means "Whole or Complete. "
- b) Integrity may comprise the personal inner sense of wholeness deriving from character, courage and consistency.
- c) Members shall be guided by a set of core principles that will empower them to remain consistent with high standards, viz compassion, dependability, generosity, honesty, openness, transparency, loyalty, maturity, objectivity, trust, and wisdom.

2) Ethics

'Ethics' in its simplest form means possessing a sense of right and wrong. Whatever is conscientiously right is ethical; whatever is not, is unethical.

In other words, ethics is the sense of right and wrong, coupled with a desire to do good in some measure for someone

3) Being 'stakeholder-centric'

We believe in constant stakeholder consultation and in translating their aspirations into achievable goals.

We take pride in having a transparent and stakeholder focused approach in having a trustworthy and collaborative relationship with them..

4) Reliability

Reliability is an assurance of quality of service and commitment.

We shall continuously build on reliability as our core value for it is the sum total of quality service to our stakeholders.

5) Ownership

Ownership is synonymous with responsibility, accountability and empowerment.

The idea of ownership is much more than simply a willingness to accept own criticism, deficiency or oversight

It is about commitment to keep a promise or make right some unintentional wrong, even when it is inconvenient to do so.

❖ COMPANY SECRETARY

1) Definition Company Secretaries Act, 1980 - Section 2(1)(c)

"Company Secretary" means a person who is a member of the Institute of Company Secretaries of India

2) Definition under Companies Act, 2013- Section 2(24)

'Company Secretary' or 'Secretary' means a Company Secretary as defined in Section 2(1)(c) of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of the Company Secretary under the Companies Act, 2013

3) Company Secretary under Key Managerial Personnel

a) Company Secretary is recognized as one of the Key Managerial Personnel

b) Whole -Time Key Managerial Personel need to be appointed by

- Listed company and
- Public company - Paid-up share capital of ten crore rupees or more

❖ **Functions of a Company Secretary**

1) **Report Board About Compliance**

To report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

2) **Secretarial Standards**

To ensure that the company complies with the applicable secretarial standards;

3) **Other Prescribed Duties**

To discharge such other prescribed duties .

❖ **DUTIES OF COMPANY SECRETARY**

The duties of Company Secretary shall also discharge, the following duties, namely:-

• **Guidance**

To provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;

• **Meeting and Minutes**

To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;

• **Approvals and Permission**

To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;

• **Representations**

To represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;

• **Assist Board**

To assist the Board in the conduct of the affairs of the company;

• **Compliance**

To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and\

• **Duties as per Act and Rules**

To discharge such other duties as have been specified under the Act or rules; and

- **Other Duties**

Such other duties as may be assigned by the Board from time to time.

- ❖ **COMPANY SECRETARY IN PRACTISE**

- 1) **Definition-Companies Act**

As per Section 2(25) the Companies Act, 2013

"Company Secretary in Practice" means a company secretary who is deemed to be in practice under section 2(2) of the Company Secretaries Act, 1980.

- 2) **Institute and Practise**

A member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognised professions as may be prescribed, he, in consideration of remuneration received or to be received,—

- (a) Engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or
- (b) offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganisation or winding up of companies;
- c) offers to perform or performs such services as may be performed by—
 - (i) An authorised representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company
 - (ii) a share transfer agent,
 - (iii) an issue house,
 - (iv) a share and stock broker,
 - (v) a secretarial auditor or consultant
 - (vi) an adviser to a company on management, including any legal or procedural matters
 - (vii) issuing certificates on behalf of, or for the purposes of, a company; or
- d) holds himself out to the public as a Company Secretary in practice; or
- e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or

(f) renders such other services as, in the opinion of the Council, are or may be rendered by a Company

❖ CORPORATE GOVERNANCE AND SECRETARIAL SERVICES

❖ Corporate Governance Services

Advising on good governance practices and compliance of Corporate Governance norms as prescribed under various Corporate, Securities and Other Business Laws and regulations and guidelines made thereunder.

Corporate Secretarial Services

1. Incorporation

Promotion, formation and incorporation of companies and matters related therewith

2. Filing

Filing, registering any document including forms, returns and applications by and on behalf of the company as an authorized representative

3. Records

Maintenance of secretarial records, statutory books and registers

4. Meetings

Arranging board/general meetings and preparing minutes thereof

5. Shares

All work relating to shares and their transfer and transmission

❖ SECRETARIAL AUDIT

1) Criteria for Secretarial Audit

According to Section 204 of the Companies Act, 2013 every

- Listed company and
- Public company having
 - a) Paid-up share capital of fifty crore rupees or more or
 - b) Turnover of two hundred fifty crore rupees or more or
- Every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more

shall annex with its Board's report made in terms of section 134(3), a secretarial audit report, given by a company secretary in practice, in prescribed form .

2) Assistance and Facilities

It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

3) Explanation for Qualification

The Board of Directors in their report, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report.

4) Penalty

If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees

❖ CORPORATE LAW ADVISORY AND REPRESENTATIO

Advising companies on Compliance of legal and procedural aspects, particularly under

1. SEBI Act, SCRA and Rules and Regulations made thereunder
2. Insolvency and Bankruptcy Code
3. Foreign Exchange Management Act
4. Consumer Protection Act
5. Depositories Act
6. Environment and Pollution Control Laws
7. Labour and Industrial Laws
8. Co-operative Societies Act
9. Mergers and Amalgamations and Strategic Alliances
10. Foreign Collaborations and Joint Ventures
11. Setting up subsidiaries abroad

12. Competition Laws
13. IPR Protection, Management, Valuation and Audit
14. Real Estate(Regulation and Development) Act
15. Arbitration and Conciliation Act
16. Drafting of Legal documents.

Representing on behalf of a company and other persons before-

1. Registrar of Companies(RoC)/Regional Director(RD)
2. National Company Law Tribunal(NCLT)
3. Competition Commission of India(CCI)
4. Securities Appellate Tribunal(SAT)
5. National Company Law Appellate Tribunal(NCALT)
6. Consumer Forums
7. Telecom Disputes Settlement and Appellate Tribunal
8. Trade Marks Authority
9. Special Economic Zones Authorities(SEZ)
10. Tax Authorities
11. Other quasi-judicial bodies and Tribunals

❖ **ARBITRATION AND CONCILIATION SERVICES**

- 1) Acting as Arbitrator/Conciliator in domestic and international commercial disputes.
- 2) Advising on arbitration, negotiation and conciliation in commercial disputes between the parties and
- 3) Drafting Arbitration/Conciliation Agreement/Clause.

❖ **FINANCIAL MARKETSSERVICES**

❖ ***Public Issue, Listing and Securities Management***

1. Advisor/consultant in issue of shares and other securities
2. Preparation of Projects Reports and Feasibility Studies
3. Syndication of Loans from banks & financial institutions
4. Drafting of prospectus/offer for sale/letter of offer/other documents related to issue of securities and obtaining various approvals in association with lead managers

5. Loan Documentation, registration of charges, status and search reports
6. Listing of securities/delisting of securities with recognized stock exchange
7. Private placement of shares and other securities
8. Buy-back of shares and other securities
9. Raising of funds from international markets ADR/GDR/ECB

❖ **Takeover Code and Insider Trading**

1. Ensuring compliance of the Takeover Regulations and any other laws or rules as may be applicable in this regard.
2. Acting as Compliance Officer and ensuring compliance with SEBI (Prohibition of insider Trading) Regulations including maintenance of various documents.

❖ **Securities Compliance and Certification Services**

Compliance with rules and regulations in the securities market particularly:

1. Internal Audit of Depository Participants
2. Certification under SEBI LODR/ICDR Regulations.
3. Audit in relation to Reconciliation of shares
4. Certificate in respect of compliance of Private Limited and Unlisted Public Company (Buy Back Securities) Rules

❖ **FINANCE AND ACCOUNTING SERVICES**

1. Internal Audit
2. Secretary to Audit Committee
3. Working capital and liquidity management
4. Determination of an appropriate capital structure
5. Analysis of capital investment proposals
6. Business valuations prior to mergers and/or acquisitions
7. Loan syndication
8. Budgetary controls
9. Accounting and compilation of financial statements

❖ **TAXATION SERVICES**

1. Advisory services to companies on tax management and tax planning under Income Tax, GST and Customs Laws

2. Preparing/reviewing various returns and reports required for compliance with the tax laws and regulations
3. Representing companies and other persons before the tax authorities and tribunals

❖ INTERNATIONAL TRADE AND WTO SERVICES

1. Advising on all matters related to IPRs and TRIPs Agreement of WTO
2. Advising on matters relating to antidumping, subsidies and countervailing duties
3. International Commercial Arbitration
4. Advising on and issuing certificates on Foreign Trade Policy and Procedures
5. Advising on Intellectual Property licensing and drafting of Agreement
6. Acting as registered Trade Mark Agent

❖ MANAGEMENT SERVICES

❖ *General Strategic Management*

1. Advising on Legal Structure of the organization
2. Business policy strategy and planning
3. Formulation of the organizational structure
4. Acting as management representative to obtain ISO Certification

❖ *Corporate Communications and Public Relations*

1. Communication with shareholders, stakeholders, Government and Regulators, Authorities, etc
2. Advisory services for Brand equity and image building

❖ *Human Resources Management*

1. Manpower planning and development
2. Audit of the HR function
3. Performance appraisal
4. Motivation and remuneration strategies
5. Industrial relations
6. Office management, work studies and performance standards
7. Advising on industrial and labour laws

❖ Information Technology

1. Compliance with cyber laws
2. Conducting Board Meetings through video-conferencing and teleconferencing
3. Advising on software copyright and licensing
4. Development of management reports and controls
5. Maintenance of statutory records in electronic form
6. Sending notices to shareholders by electronic mode

Filing of forms/documents in electronic form with Registrar of Companies and other statutory authorities

CA MAYUR AGARWAL

CHAPTER 4:

ELEMENTS OF COMPANY LAW

❖ MEANING OF COMPANY

1) Latin Word

The word 'company' is derived from the Latin word (Com=with or together; panis =bread), and it originally referred to an association of persons who took their meals together

2) Festive Gathering

In the leisurely past, merchants took advantage of festive gatherings, to discuss business matters. Now a days, the business matters have become more complicated and cannot be discussed at length at festive gatherings. Therefore, the word company has assumed greater importance

3) Association

- It denotes a joint stock enterprise in which the capital is contributed by a large number of people.
- A company denotes an association of like-minded persons formed for the purpose of carrying on some business or undertaking

4) Features

A company is a corporate body and a legal person having status and personality distinct and separate from that of the members constituting it

5) Definition-Section 2(20)

Company means a company incorporated under this Act or under any previous company law

6) Legal Meaning

In the legal sense, a company is an association of both natural and artificial persons incorporated under the existing law of a country

❖ APPLICABILITY OF COMPANIES ACT,2013-SECTION 1

1) Title - Companies Act,2013

2) **Extent** – Whole of India

3) Applicability

(a) Companies incorporated under this Act or under any previous company law;
(b) Insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (4 of 1938) or the Insurance Regulatory and Development Authority Act, 1999;

(c) Banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;

(d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;

(e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and

(f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification

❖ **SECTION 464:- PROHIBITION OF ASSOCIATION OR PARTNERSHIP EXCEEDING CERTAIN NUMBERS**

- No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act
- The maximum number of persons which may be prescribed under this section shall not exceed 100.
- Rule 10 of Companies (Miscellaneous) Rules, 2014 prescribes 50 persons in this regard.
- Section 464 of the Act does not apply to
 - a) Hindu Undivided Family
 - b) Association formed by special Acts by professional

❖ **TYPES OF COMPANIES**

A) Classification on the Basis of Incorporation

- 1) Chartered Companies
- 2) Statutory Companies
- 3) Registered Companies

B) Classification on the Basis of Liability

- 1) Company Limited by Shares/ Guarantee
- 2) Unlimited Company

C) Classification on the basis of Number of Members

- 1) One Person Company(OPC)
- 2) Private Company
- 3) Public Company

D) Classification on the basis of Size

- 1) Small Company
- 2) Other Company

E) Classification on the basis of Control

- 1) Holding Company
- 2) Subsidiary Company
- 3) Associate Company

F) Classification on the basis of Functions

- 1) Section 8
- 2) Producer Company
- 3) Investment Company

G) General Other Classification

- 1) Government Company
- 2) Foreign Company

1) Private Company-Section 2(68)

Private company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

- i) restricts the right to transfer its shares;
- ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- A) persons who are in the employment of the company; and
 - B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- iii) prohibits any invitation to the public to subscribe for any securities of the company

2) Public Company-Section 2(71)

Public company means a company which—

- (a) is not a private company and;
- (b) has a minimum paid-up share capital as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

3) One Person Company-Section 2(62)

One Person Company means a company which has only one person as a member (to be formed as Private Limited Company).

4) Companies with Charitable Objects-Section 8

A person or an association of persons registered and licensed under Section 8 of the Companies Act, 2013 as a limited company—

- (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) intends to apply its profits, if any, or other income in promoting its objects; and
- (c) intends to prohibit the payment of any dividend to its members

5) Government Company-Section 2(45)

Government company means

Any company in which not less than fifty-one per cent of the paid-up share capital is held by

- the Central Government, or
- by any State Government or Governments, or
- partly by the Central Government and partly by one or more State Governments, and

Includes a company which is a subsidiary company of such a Government company.

6) Foreign Company-Section 2(42)

Foreign company means any company or body corporate incorporated outside India which,—

- (a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) Conducts any business activity in India in any other manner.

7) Associate Company-Section 2(6)

Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation:

- a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;
- b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

8) Holding Company-Section 2(46)

Holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. It may be noted that here "company" includes anybody corporate.

9) Subsidiary Company or Subsidiary-Section 2(87)

Subsidiary company or "subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- i) Controls the composition of the Board of Directors; or
- ii) Exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

10) Small Company-Section 2(85)

Small company means a company, other than a public company,—

- i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

11) Dormant Company-Section 455

- Where a company is formed and registered for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.

- “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

- In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies

- A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company
- Provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies.
- The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements.

12) Nidhi Company

- Nidhi means a company which has been incorporated as a Nidhi
- with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only,
- for their mutual benefit, and
- which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

13) Producer Companies

According to the Section 581A(I) of the Companies Act, 1956, a producer company is a body corporate having objects or activities specified in Section 581B and which is registered as such under the provisions of the Act. The membership of producer companies is open to such people who themselves are the primary producers, which is an activity by which some agricultural produce is produced by such primary producers.

In terms of Section 581B (1) of the Companies Act, 1956, the objects of a producer company registered under this Act may be all or any of the following matters:

- (a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the members or import of goods or services for their benefit.
- (b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of the produce of its members.
- (c) manufacturing, sale or supply of machinery, equipment or consumables mainly to its members.
- (d) providing education on the mutual assistance principles to its members and others.
- (e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its members.

- (f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relating to primary produce.
- (g) insurance of producers or their primary produce.
- (h) promoting techniques of mutuality and mutual assistance.
- (i) welfare measures or facilities for the benefit of the members as may be decided by the Board.
- (j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) above or other activities which may promote the principles of mutuality and mutual assistance amongst the members in any other manner.
- (k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) above, which include extending of credit facilities or any other financial services to its members.

❖ FORMATION OF COMPANY -SECTION 3

1) Section 3(1)

According to Companies Act 2013, a company may be formed for any lawful purpose by—

- (a) Seven or more persons, where the company to be formed is a public company;
- (b) Two or more persons, where the company to be formed is a private company; or
- (c) one person, where the company to be formed is a One Person Company that is to say, a private company.

2) Section 3(2)

A company formed above may be either—

- (a) a company limited by shares; or
- (b) a company limited by guarantee; or
- (c) an unlimited company.

❖ NATURE AND CHARACTERISTICS OF A COMPANY

1) Corporate Personality

Case law-1 Salomon Vs Salomon & CO Limited**1) FACTS OF CASE**

Mr. Salomon was carrying on a boot manufacturing business as Sole proprietor
He sold his business in Pound 38,872 to a company formed by him along with his wife, daughter and four sons

Fully paid shares of pound 1 issued to Salomon	20,000
Secured Debentures issued to Salomon (secured by a floating charge on companies assets)	10000
Cash	8782
Total	38782

One Share each of Pound 1 was issued to Salomon's wife , his daughter and his four sons and remaining shares to Mr. Salomon

Mr.Salomon was the Managing Director of Company and two of his sons were the other directors of company

Company almost immediately run into difficulties and eventually became insolvent and the winding up commenced

Total Assets	Pound 6050
Total Liabilities:-	
Secured Debentures (Held by Salomon)	Pound 10,000
Unsecured Trade Creditors	Pound 8000

Claim:-

The unsecured creditors claimed the whole of Company's asset on ground that Salomon was carrying on business in the name of Salomon & Co Ltd and company was mere agent of Salomon

Decision:-

As the Salomon & CO Ltd is different from its members i.e, Salomon family, the debentures held by them shall be paid in priority to unsecured creditors

CASE LAW 2: -Lee Vs Lee Air Farming Ltd**FACTS OF CASE**

- a. Company was formed to manufacture aerial topdressing
- b. Lee was a qualified pilot and held all the shares except 1 share & was appointed as chief director and Chief pilot
- c. Lee was killed while piloting company's aircraft and widow of Lee claimed compensation under Workmen's Compensation Act
- d. The Company opposed the claim stating that same person cannot be an employer and an employee at same time

QUESTION OF FACT:-

Whether wife of Lee can receive the compensation from the company

DECISION OF COURT

It was held that there is valid contract between the company and Lee of service as worker

Therefore contention of Mrs Lee is right of Law

CASE LAW 3:- KONDALI TEA CO. LTD.(1886)

The decision of the Calcutta High Court recognised the principle of separate legal entity even much earlier than the decision in Salomon v. Salomon & Co. Ltd. case.

FACTS OF CASE

Certain persons transferred a Tea Estate to a company and claimed exemptions from ad valorem duty on the ground that since they themselves were also the shareholders in the company and, therefore, it was nothing but a transfer from them in one name to themselves under another name.

QUESTION

Whether ad valorem duty is exempt as Transferor are shareholder of the company

DECISION

While rejecting this Calcutta High Court observed: "The company was a separate person, a separate body altogether from the shareholders and the transfer was as

much a conveyance, a transfer of the property, as if the shareholders had been totally different persons.

2) Limited Liability

Case Law:- London And Globe Finance Corporation, (1903)

It has observed:

‘The statutes relating to limited liability have probably done more than any legislation of the last fifty years to further the commercial prosperity of the country.

They have, to the advantage of the investor as well as of the public, allowed and encouraged aggregation of small sums into large capitals which have been employed in undertakings of “great public utility largely increasing the wealth of the country”.

3) Perpetual Succession

- a) Professor L.C.B. Gower rightly mentions, “Members may come and go, but the company can go on for ever
- b) During the war all the members of one private company, while in general meeting, were killed by a bomb, but the company survived — not even a hydrogen bomb could have destroyed it.
- c) An incorporated company never dies except when it is wound up as per law.
- d) A company’s life is determined by the terms of its Memorandum of Association

4) Separate Property

- a) Company is capable of owning, enjoying and disposing of property in its own name.
- b) The company is the real person in which all its property is vested, and by which it is controlled, managed and disposed off
- c) **R.F. Perumal v. H. John Deavin**
 - No member can claim himself to be the owner of the company’s property during its existence or in its winding-up
 - A member does not even have an insurable interest in the property of the company

5) Transferability of Shares

- A member may sell his shares in the open market and realise the money invested by him.
- This provides liquidity to a member (as he can freely sell his shares) and ensures stability to the company (as the member is not withdrawing his money from the company).
- The Stock Exchanges provide adequate facilities for the sale and purchase of shares.

- Further, as of now, in most of the listed companies, the shares are also transferable through Electronic mode i.e. through Depository Participants instead of physical transfers

6) Capacity to sue and be sued

- A company being a body corporate, can sue and be sued in its own name.
- The company is entitled to sue for damages in libel or slander
-

Case law:- TVS Employees Federation v. TVS And Sons Ltd., (1996)

A company has a right to seek damages where a defamatory material published about it, affects its business.

Where video cassettes were prepared by the workmen of a company showing, their struggle against the company's management, it was held to be not actionable unless shown that the cassette would be defamatory.

The court did not restrain the exhibition of the cassette

7) Contractual Rights

- Company can enter into contracts for the conduct of the business in its own name.

8) Limitation of Action

A company cannot go beyond the power stated in the Memorandum of Association.

The Memorandum of Association of the company regulates the powers and fixes the objects of the company and provides the edifice upon which the entire structure of the company rests.

9) Separate Management

- Members do not have effective and intimate control over its working
- Members elect their representatives to conduct corporate functioning.
- In other words, the company is administered and managed by its managerial personnel

10) Voluntary Association for Profit

- Whatsoever profit is gained is divided among its shareholders or restored for the future expansion of the company
- Only a Section 8 company can be formed with no profit motive.

11) Termination of Existence

- A company, being an abstract and artificial person, does not die a natural death.
- The existence of a company is terminated by means of winding up

❖ NATIONALITY AND RESIDENCE OF COMPANY**1) Gasque v. Inland Revenue Commissioners**

- A limited company is capable of having a domicile and its domicile is the place of its registration and that domicile clings to it throughout its existence
- It is quite true that a body corporate cannot have a domicile in the same sense as an individual.
- But by analogy with a natural person the attributes of residence, domicile and nationality can be given to a body corporate

2) Tulika v. Parry And Co.

A joint stock company resides where its place of incorporation is, where the meetings of the whole company or those who represent it are held and where its governing body meets in bodily presence for the purposes of the company and exercises the powers conferred upon it by statute and by the Articles of Association

3) Citizenship Act, 1955

The company, though a legal person, is not a citizen under the Citizenship Act, 1955 or the Constitution of India

4) State Trading Corporation of India Ltd. v. C.T.O

-The Supreme Court held that the State Trading Corporation though a legal person, was not a citizen and can act only through natural persons.

-Nevertheless, it is to be noted that certain fundamental rights enshrined in the Constitution for protection of "person", e.g., right to equality (Article 14) etc. are available to company.

❖ DIFFERENCE BETWEEN COMPANY AND PARTNERSHIP

COMPANY	PARTNERSHIP
	1) Separate Legal Entity
A company is a distinct legal person	A partnership firm is not distinct from the several persons who compose it
	2) Property

The property of the firm is the property of the individuals comprising it

In a company, it belongs to the company and not to the individuals comprising it.

3) Contract

A partner cannot contract with his firm

A member of a company can contract with Company

4) Liability

Partners liability is always unlimited

Shareholders liability is limited either by share or guarantee

5) Perpetual Succession

A company has perpetual succession, i.e. the death or insolvency of a shareholder or all does not affect the life of the company.

The death or insolvency of a partner dissolves the firm, unless otherwise of them provided

6) Audit

A company is legally required to have its accounts audited annually by a chartered accountant

The accounts of a firm are audited at the discretion of the partners

7) Dissolution

Dissolution by Law

Dissolution by Agreement

8) Transfer of Share

Partner cannot transfer his share and make transferee a member of the firm without the consent of the other partners

Company's share can ordinarily be the transferred

9) Agents

Partners are the agents of the firm

Members of a company are not its agents.

❖ DIFFERENCE BETWEEN COMPANY AND HUF

COMPANY	HUF
1) Members	
Consist of heterogeneous i.e, varied or diverse members	Consist of homogenous members i.e unvarying member
2) Management	
The Karta has the sole authority to contract debts and for management	Management is by the Board of for Directors

3) Membership

The person become member by birth

No such provision in case of company

4) Registration

No registration is compulsory for carrying on business for gain by a Hindu Joint Family

Registration of a company is compulsory

❖ DIFFERENCE BETWEEN COMPANY AND LLP

COMPANY	LLP
	1) FLEXIBILITY
Less Flexibility	More Flexibility
	2) Compliance
Company have more compliance	LLP have less compliance
	3) Management
Management if by Board of Directors	Management is by Designated Partner
	4) Internal Governance
Internal Governance structure is regulated by Statute(i.e, Companies Act)	In case of LLP it is governed by contractual agreement between parties

❖ DISADVANTAGES OF CORPORATE FORM OF ENTERPRISE**1) Expenses of Incorporation and Floation**

- Incorporation of a company is coupled with complex, cumbersome and detailed legal formalities and procedures, involving considerable amount of time and money
- Certain books and registers are compulsorily required to be maintained by a company.
- Approval and sanction of the Company Law Board, the Government, the Court, the Registrar of Companies or other appropriate authority, as the case may be, is necessarily required to be obtained for certain corporate activities

2) Corporate Disclosures

3) Separation of control from ownership

- Members of a company do not have an effective and intimate control over its working
- In big companies in which the number of members is too large to exercise any effective control over its day-to-day affairs

4) Greater tax burden in certain cases

In certain circumstances, the tax burden on a company is more than that on other forms of business organization

5) Detailed winding-up procedure:

The Act provides elaborate and detailed procedure for winding-up of companies which is more expensive and time consuming than that which is applicable to other forms of business organisation.

6) Greater social responsibility

The companies are called upon to show greater social responsibility in their working and, for that purpose, are subject to greater control and regulation than that by which other forms of business organisation are governed and regulated.

❖ INCORPORATION OF COMPANY-SECTION 7**1) SECTION 7(1) DOCUMENTS FOR INCORPORATION**

An application for registration of a company shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No.INC- 32 (SPICe) along with the fee as provided under the Companies (Registration offices and fees) Rules, 2014 and the following documents and information required to be attached with the application namely:

- The memorandum and articles of the company duly signed by all the subscribers to the memorandum in;
 - Declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of the Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;
 - Directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of

duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

- Address for correspondence till its registered office is established;
- Particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity;
- Particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity; and
- Particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner.

2) SECTION 7(2) CERTIFICATE OF INCORPORATION

The Registrar on the basis of documents and information filed above shall register all the documents and information referred to in that sub-section in the register and issue a certificate of incorporation in to the effect that the proposed company is incorporated under the Act.

3) SECTION 7(3) CORPORATE IDENTITY NUMBER

On and from the date mentioned in the certificate of incorporation issued, the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

4) SECTION 7(4) PRESERVE DOCUMENTS AT REGISTERED OFFICE

The company shall maintain and preserve at its registered office copies of all documents and information as originally filed in point no. (1) above till its dissolution under the Act.

5) PENALTY-SECTION 7(5)

If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action Punishment for Fraud under section 447.

❖ CONCEPT OF CORPORATE PERSONALITY

By the provision of law, a corporation is clothed with a distinct personality, yet in reality it is an association of persons who are in fact, in a way, the beneficial owners of the property of the body corporate.

A company, being an artificial person, cannot act on its own, it can only act through natural persons

Lifting of or piercing through the corporate veil

- 1) Company has a separate legal entity from the persons constituting its members
- 2) But as the separate personality of the company is a statutory privilege, it must be used for legitimate business purposes only
- 3) Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality
- 4) The Court will break through the corporate shell and apply the principle of what is known as "lifting of or piercing through the corporate veil"
- 5) The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company
- 6) Courts have found it necessary to disregard the separate personality of a company in the following situations

- a) **Fraud or Improper Conduct**

Where the corporate veil has been used for commission of fraud or improper conduct.

Case Law:- Gilford Motor Co. v. Horne

Former employee of a company made a covenant not to solicit its customers. He formed a company which undertook solicitation. The company was restrained by the Court

- b) **Agent**

Where a corporate facade is really only an agency instrumentality.

Case Law:- R.G. Films Ltd

An American company produced a film in India technically in the name of a British Company, 90% of whose capital was held by the President of the American Company which financed the production of the film. Board of Trade

refused to register the film as a British film on the ground that English company acted merely as the nominee of the American corporation.

c) **Against Public Policy**

Where the doctrine conflicts with public policy, courts lifted the corporate veil for protecting the public policy.

Case Law:- Connors Bros. v. Connors

The principle was applied against the managing director who made use of his position contrary to public policy. In this case, the House of Lords determined the character of the company as “enemy” company, since the persons who were de facto in control of its affairs, were residents of Germany, which was at war with England at that time. The alien company was not allowed to proceed with the action, as that would have meant giving money to the enemy, which was considered as monstrous and against “public policy”.

d) **Determine the True Character and Status of Company**

Case Law:- Daimler Co. Ltd. v. Continental Tyre & Rubber Co., (1916)

It was held that a company will be regarded as having enemy character, if the persons having de facto control of its affairs are resident in an enemy country or, wherever they may be, are acting under instructions from or on behalf of the enemy.

e) **Tax Evasion**

Where it was found that the sole purpose for which the company was formed was to evade taxes the Court will ignore the concept of separate entity, and make the individuals liable to pay the taxes which they would have paid but for the formation of the company.

Case law:- Sir Dinshaw Manakjee Petit

f) **Avoidance of Welfare Legislation**

Avoidance of welfare legislation is as common as avoidance of taxation and the approach in considering problems arising out of such avoidance has necessarily to be the same

Case Law: The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar v. The Associated Rubber Industries Ltd., Bhavnagar and another

Where it was found that the sole purpose for the formation of the new company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction.

Thus, in appropriate cases, the Courts disregard the separate corporate personality and look behind the legal person or lift the corporate veil.

❖ JOURNEY OF INDIAN COMPANY LAW**1850**

- 1) The first Companies Act was passed in India
- 2) It is based on Companies Act, 1844 in England
- 3) It provided for the registration of the companies and transferability of shares

1856

The Companies Act of 1856 repealed all the previous Act

Act provided inter alia for incorporation, regulation and winding up of companies and other associations

1857

The Amending Act of 1857 conferred the right of registration with or without limited liability.

1860

Right was granted to banking and insurance companies by an Act of 1860 following the similar principle in Britain

1882

This Act was recast embodying the amendments which were made in the Company Law in England upto that time

1913

In 1913 a consolidating Act was passed

1936

Major amendments were made to the consolidated Act

1951

The Indian Government promulgated the Indian Companies (Amendment) Ordinance under which the Central Government and the Court assumed extensive powers to intervene directly in the affairs of the company and to take necessary action in the interest of the company

1956

The Companies Act, 1956 was enacted with a view to consolidate and amend the earlier laws relating to companies and certain other associations

After 1956

The Companies Act, 1956 has undergone changes by amendments in 1960, 1962, 1963, 1964, 1965, 1966, 1967, 1969, 1971, 1977, 1985, 1988, 1996, 1999, 2000, 2002 (Amendment), 2002 (Second Amendment), and 2006

❖ OVERVIEW of COMPANIES ACT 1956

- 1) The Companies Act, 1956 was enacted with a view to consolidate and amend the earlier laws relating to companies and certain other associations.
- 2) The Act came into force on 1st April, 1956.
- 3) The present Companies Act is based largely on the recommendations of the
- 4) Company Law Committee (Bhabha Committee) which submitted its report in March, 1952.
- 5) This Act is the longest piece of legislation ever passed by our Parliament.
- 6) Amendments have been made in this Act periodically.
- 7) The Companies Act consists of 658 Sections and 15 Schedules.

❖ CONCEPT PAPER ON COMPANY LAW, 2004 & J.J. IRANI REPORT**1) Public Viewing of Concept Paper**

- a) A Concept Paper on Company Law drawn up in the legislative format was exposed for public viewing on the electronic media
- b) All interested parties may not only express their opinions on the concepts involved but may also suggest formulations on various aspects of Company Law
- c) The response to the concept paper on Company Law was tremendous

2) Committee was Constituted

A Committee was constituted on 2nd December, 2004 under the Chairmanship of Dr. J J Irani, the then Director, Tata Sons

3) Report Submitted

The Committee submitted its report to the Government

Dr. J J Irani Expert Committee on Company Law had submitted its report charting out the road map for a flexible, dynamic and user-friendly new company law.

The Expert Committee had recommended that private and small companies need to be given flexibilities and freedom of operations and compliance at a low cost

Further, Government companies and public financial institutions should be subject to similar parameters with respect to disclosures and Corporate Governance as other companies are subjected to.

❖ COMPANIES BILL 2012**3RD August 2009**

- 1) The Companies Bill, 2009 was introduced in the Lok Sabha
- 2) The Bill laid greater emphasis on self-regulation and minimization of regulatory approvals in managing the affairs of the company
- 3) The Bill promised greater shareholder democracy, vesting the shareholders with greater powers, containing stricter corporate governance norms and requiring greater disclosure

31st August 2010

Parliamentary Standing Committee submitted its report to Parliament

Certain amendments were introduced in the Bill in the light of the report of the Committee and a revised Companies Bill, 2011 was introduced

18th December 2012

The amended Bill was passed by the Lok Sabha

8th August, 2013

Amended Bill was passed by Rajya Sabha

The Bill was retitled as Companies Bill, 2012

❖ COMPANIES ACT, 2013

- 1) The Companies Bill, 2012 finally became the Companies Act, 2013.
- 2) The Companies Bill, 2012 finally became the Companies Act, 2013. It received the assent of the President on August 29, 2013 and was notified in the Gazette of India on 30.08.2013.
- 3) Companies Act, 2013 has undergone amendments four times so far
- 4) Companies (Amendment) Act, 2015 and Companies (Amendment) Act, 2017 aimed at enhancing efficiency and promoting ease of doing business.
- 5) The Insolvency and Bankruptcy Code, 2016 led to omission of various sections i.e. section 253 to section 269, section 289, section 304 to section 323 and section 325
- 6) The Finance Act, 2017 amended section 182 with regard to prohibitions and restrictions regarding political contributions.
- 7) So far Ministry has come out with several circulars, notifications, Orders and various amendment rules to facilitate better and smooth implementation of the Act.

8) New Concepts Introduced by Company Act 2013

Introduced new concepts supporting enhanced disclosure, accountability, better board governance, and better facilitation of business and so on. It includes associate company, one Person Company, small company, dormant company, independent director, women director, resident director, special court, secretarial standards, secretarial audit, class action, registered valuers, rotation of auditors, vigil mechanism, corporate social responsibility, E-voting etc.

❖ SHARE CAPITAL

1) Capital

- The term 'Capital' has a variety of meanings.
- It may mean one thing to an economist, another to an accountant, while another to a businessman or a lawyer.
- A layman views capital as the money, which a company has raised by issue of its shares. It uses this money to meet its requirements by way of acquiring business premises and stock-in-trade, which are called the fixed capital and the circulating capital respectively.

2) Definition of Share

Share is a share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied.

- 3) Share capital refers to the funds that a company raises in exchange for issuing an ownership interest in the company in the form of shares.
- 4) Share capital may also describe the number and types of shares that compose a company's share structure.

❖ CLASSIFICATION OF SHARE CAPITAL

In Company Law, Capital is the share capital of a company, which is classified as:

1) Nominal, Authorized or Registered Capital :

Such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.

2) Issued Capital :

Such capital as the company issues from time to time for subscription. It is that part of the authorised or nominal capital which the company issues for the time being for public subscription and allotment. This is computed at the face or nominal value.

3) Subscribed Capital:

Such part of the capital which is for the time being subscribed by the members of a company. It is that portion of the issued capital at face value which has been subscribed for or taken up by the subscribers of shares in the company. It is clear that the entire issued capital may or may not be subscribed.

4) Called-up Capital :

Such part of the capital, which has been called for payment. It is that portion of the subscribed capital which has been called up or demanded on the shares by the company.

5) Paid-up Share Capital:

Such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.

6) Equity Share Capital:

Equity share capital with reference to any company limited by shares, means all share capital which is not preference share capital.

7) Preference Share Capital :

Preference share capital with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

- a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
- b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company

❖ BOARD OF DIRECTORS**1) Introduction**

- a) The company is an artificial person and is managed by the human beings.
- b) The people who run it are known as Board of Directors.
- c) Directors acting collectively are known as Board.
- d) The directors play a very important role in the day to day functioning of the company.

e) It is the board, who is responsible for the company's overall performance

2) Definition [Section 2(10)]

Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company

3) Natural Person (Section 149)

The Board of Directors of every company shall consist of individual only.
Thus, no body corporate, association or firm shall be appointed as director

4) Minimum and Maximum Director

a) **Minimum number of Directors**

3 directors - public company,
2 directors - private company, and
1 director -One Person Company.

b) **Maximum-** 15 directors

c) **More than 15**

A company may appoint more than fifteen directors after passing a special resolution in general meeting

d) **Section 8 Companies**

The restriction of maximum number of directors shall not apply to section 8 companies

5) Resident in India

Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year

❖ **MEETING OF THE BOARD**

1) First Board Meeting

The first Board meeting should be held within thirty days of the date of incorporation

2) Minimum Board Meeting

Minimum of 4 Board meetings every year

3) Maximum gap between two Board Meeting

Not more one hundred and twenty days shall intervene between two consecutive Board meetings

4) One Person Company (OPC), Small company, Dormant company

Company at least one Board meeting should be conducted in each half of the calendar year and

The gap between two meetings should not be less than Ninety days

5) Mode of Meeting

Directors may participate in the meeting either in person or through video conferencing or other audio visual means.

6) Quorum for a meeting.

One third of total strength or two directors, whichever is higher

❖ **APPOINTMENT OF DIRECTOR- SECTION 152**

1) First Director

- a) Named in Articles of Association
- b) If no, then subscribers shall be deemed to be directors
- c) Continue to be director until appointment takes place in General Meeting

2) Appointment of Director

Every director shall be appointed by the company in general meeting.

3) DIN

A person shall not be appointed as a director of a company unless he has been allotted the Director Identification Number or any other number

4) Furnish on Appointment

Shall furnish his

- a) Director Identification Number and
- b) A declaration that he is not disqualified to become a director under this Act

5) Consent to be filed

A person appointed as a director shall not act as a director unless

- a) He gives his consent to hold the office as director and
- b) Consent has been filed with the Registrar within thirty days of his appointment

6) Rotational Auditor

Not less than two-thirds of the total number of directors of a public company shall—

- (i) be persons whose period of office is liable to determination by retirement of directors by rotation; and
- (ii) be appointed by the company in general meeting.

The above is subject to articles which may provide retirement of all directors

7) Retire by Rotation

One-third of such of the directors for the time being as are liable to retire by rotation

If their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office

8) Who will Retire**a) Longest in Office**

The directors to retire by rotation shall be those who have been **longest in office** since their last appointment

b) Determined by Lot

But as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, **be determined by lot**

9) Filing the Vacancy

The company may fill up the vacancy by appointing the retiring director or some other person thereto.

❖ REMOVAL OF DIRECTOR**1) Ordinary Resolution**

A company may, by ordinary resolution, remove a director, not being a director appointed by the National Company Law Tribunal, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.

2) Special Resolution

An independent director re-appointed for second term shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.

3) Special Notice

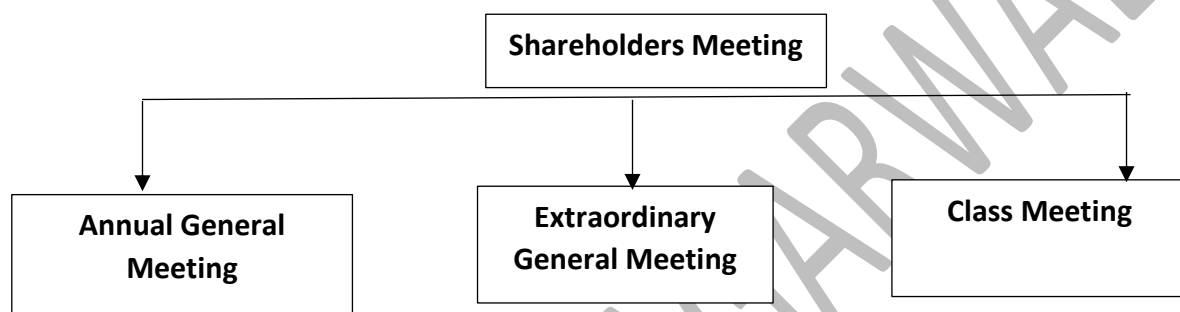
A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

A vacancy created by the removal of a director may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed.

A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

❖ SHAREHOLDERS MEETING

- 1) A General Meeting is the meeting of the members of the company
- 2) The decision-making powers of the company are vested in the members and the directors
- 3) General meetings of the members provide a platform to express their will in regard to the management of the affairs of the company.



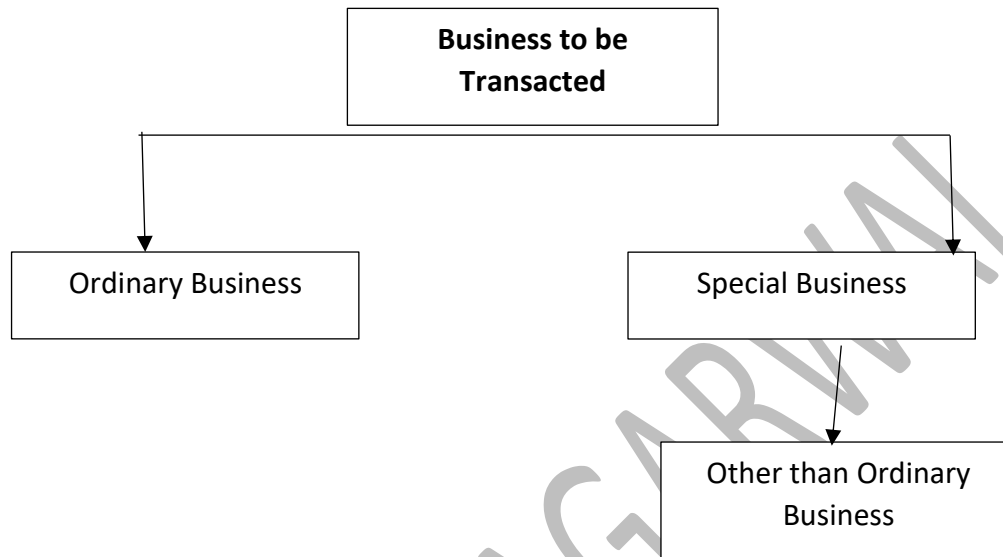
❖ ANNUAL GENERAL MEETING

- 1) Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company.
- 2) **Once in a year**
Convening of one such meeting every year is compulsory.
Annual general meeting should be held once in each calendar year.
- 3) **Deadline for Meeting**
Subsequent annual general meeting of the company should be held within 6 months from the date of closing of the relevant financial year.
- 4) **Gap between Two Meetings**
The gap between two annual general meetings shall not exceed 15 months.
- 5) **Timing of Meeting**
An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday.
- 6) **Place of Meeting**
It should be held either at the registered office of the company or at some other

place within the city, town or village in which the registered office of the company is situated.

7) Exemption to certain company

The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose.



Sec 102(2)(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—

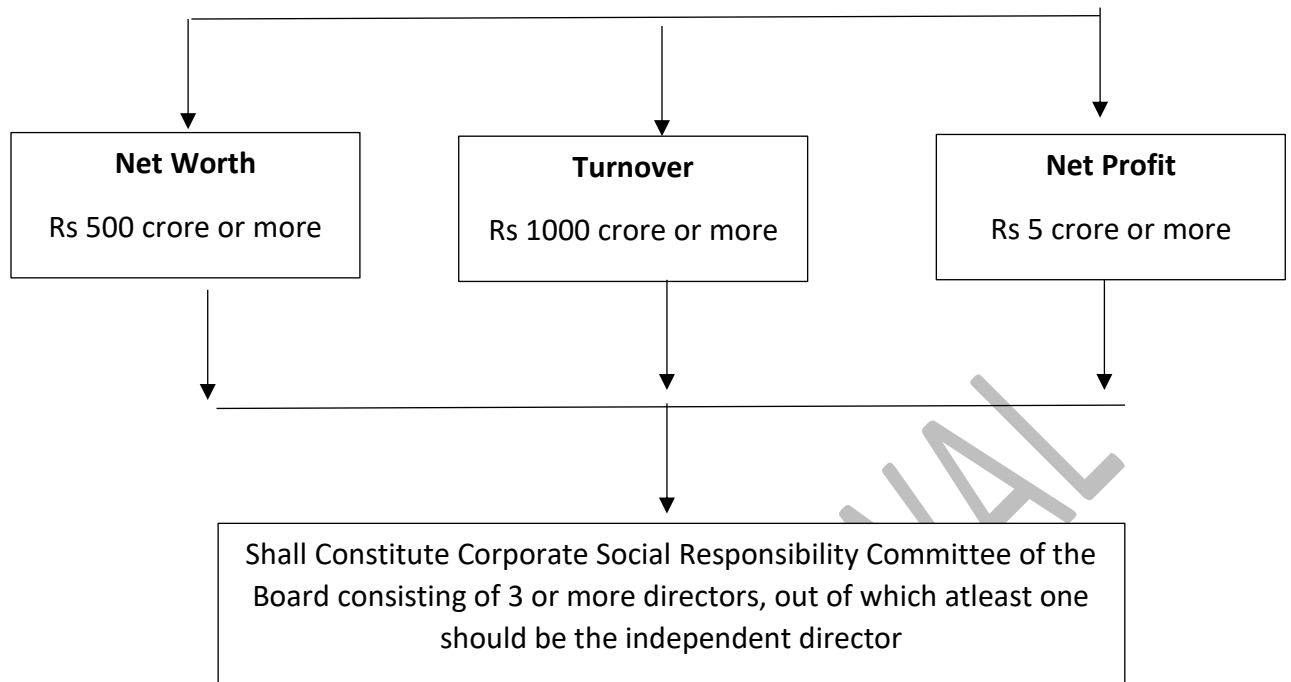
- (i) The consideration of financial statements and the reports of the Board of Directors and auditors;
- (ii) The declaration of any dividend;
- (iii) The appointment of directors in place of those retiring;
- (iv) The appointment of, and the fixing of the remuneration of, the auditors

Section 99 Penalty for Non Compliance

Section 99 of the Companies Act provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in case of continuing default, with a further fine which may extend to five thousand rupees for each day during which such default continues.

❖ CORPORATE SOCIAL RESPONSIBILITY

Every Company



1) Board's Report

Disclose the composition of the Corporate Social Responsibility Committee.\

2) Functions of Committee

- (a) Formulate and Recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;
- (b) Recommend the amount of expenditure to be incurred on the activities; and
- (b) Monitor the Corporate Social Responsibility Policy of the company from time to time.

3) Amount to be Spend

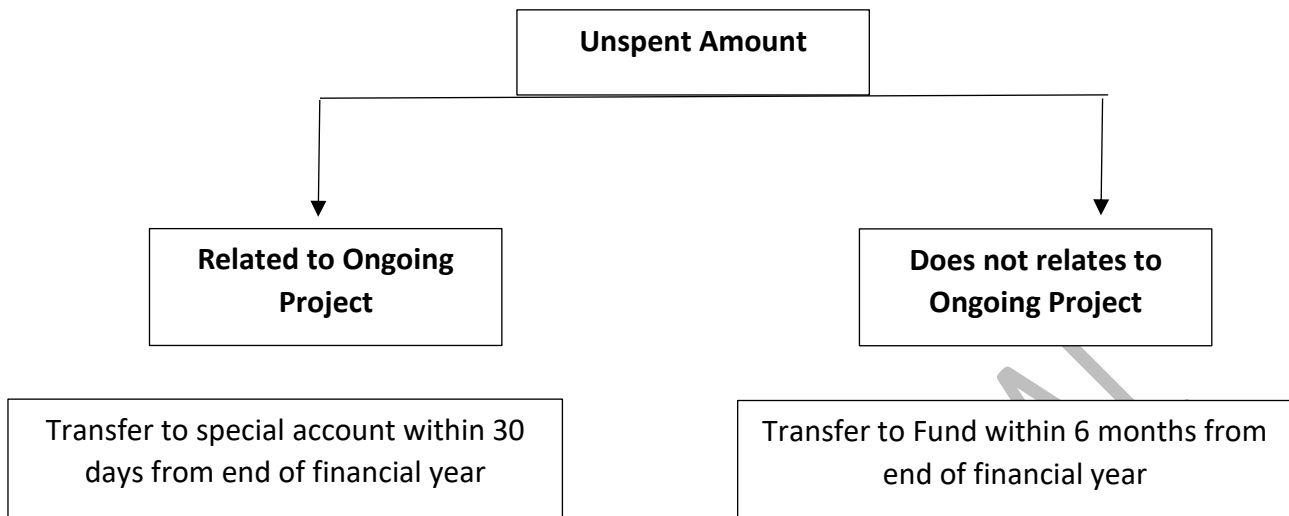
a) Company existed for more than 3 years

In every financial year,
at least two per cent. of the average net profits of the company made during the three immediately preceding financial years

b) Company did not exist for more than 3 years

At least two per cent. of the average net profits of the company made during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

4) Status of Unspent Amount



5) Penalty

- a) Company- Rs 50,000 to Rs 25,00,000
- b) Every Officer in default
 - Fine- Rs 50,000 to Rs 5,00,000
 - Imprisonment-Upto 3 years
 - Both

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:—

- (i) Eradicating hunger, poverty and malnutrition, 2["promoting health care including preventive health care and sanitation including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.
- (ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- (iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

- (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.
- (v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;
- (vi) measures for the benefit of armed forces veterans, war widows and their dependents;
- (vii) training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports
- (viii) contribution to the prime minister's national relief fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;
- (ix) contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs);
- (x) rural development projects;
- (xi) slum area development;
- (xii) disaster management, including relief, rehabilitation and reconstruction activities.

❖ BUSINESS ETHICS

1) Ethics

Business ethics is nothing but the application of ethics in business.

2) What is right or wrong

It's coming to know what is right or wrong in the workplace and doing what's right - this is in regard to effects of products/ services and in relationships with stakeholders.

3) Behaviour of Businessman

Business ethics is concerned with the behaviour of a businessman in doing a business.

4) Customs

Business ethics are developed over the passage of time and custom. A custom differs from one business to another.

If a custom is adopted and accepted by businessman and public, that custom will become an ethic

❖ PRINCIPLES OF BUSINESS ETHICS**1) Sacredness of means And ends**

a) The first and most important principle of business ethics emphasizes that the means and techniques adopted to serve the business ends must be sacred and pure.

b) It means that a good end cannot be attained with wrong means, even if it is beneficial to the society.

2) Not to do any evil

It is unethical to do a major evil to another or to oneself, whether this evil is a means or an end.

3) Principle of proportionality

This principle suggests that one should make proper judgment before doing anything so that there is a fair view taken & others do not suffer from any loss or risk of evils by the conduct of business.

4) Non-co-operation in evils

It clearly pints out that a business should not co-operate with any one for doing any evil acts.

5) Co-operation with others

This principles state that business should help others only in that condition when others deserve help.

6) Publicity :

According to W. Wilson, anything that is being done or to be done, should be brought to the knowledge of everyone. If everyone knows, none gets opportunity to do an unethical act.

7) **Equivalent price :**

According to W. Wilson, the people are entitled to get goods equivalent to the value of money that they will pay.

8) **Universal value :**

According to this principle the conduct of business should be done on the basis of universal values.

9) **Human dignity :**

As per this principle, man should not be treated as a factor of production and human dignity should be maintained.

10) **Non-violence :**

If businessman hurts the interests and rights of the society and exploits the consumer by overlooking their interests this is equivalent to violence and unethical act.

❖ **ETHICAL DILEMMA**

- 1) Dilemma is a situation that requires a choice between options that are or seem equally unfavorable or mutually exclusive
- 2) A dilemma could be a right vs. wrong situation in which the right would be more difficult to pursue and wrong would be more convenient
- 3) A right versus wrong dilemma is not so easy to resolve.
- 4) Easier dilemmas involve a 'right' versus 'wrong' answer; whereas, complex ethical dilemmas involve a decision between a right and another right choice.
- 5) However, any dilemma needs to be resolved.

❖ **ADDRESSING ETHICAL DILEMMAS**

A business dilemma exists when an organizational decision maker faces a choice between two or more options that will have various impacts on:

- a) The organization's profitability and competitiveness; and
- b) Its stakeholders.

In situations of this kind, one must act out of prudence to take a better decision.

CHAPTER 5

LEGAL REASONING

LEGAL TERMINOLOGY AND MAXIMS

A priori : From the antecedent to the consequent.

Ab initio : From the beginning.

Absolute sententia expositore non-indigent : Plain words require no explanation.

Actio mixta : Mixed action.

Actio personalis moritur cum persona : A personal right of action dies with the person.

Actionable per se : The very act is punishable and no proof of damage is required.

Actus CuriAe Neminem Gravabit : Act of the Court shall prejudice no one.

Actus non facit reumnisi mens sit rea : An act does not make a man guilty unless there be guilty intention.

Actus reus : Wrongful act.

Ad hoc : For the particular end or case at hand.

Ad idem : At the same point.

Ad valorem : According to value.

Aliunde : From another source.

Amicus Curiae : A friend of court member of the bar who is appointed to assist the Court.

Animus possidendi : Intention to possess Audi

Alteram partem : Hear the other side.

Benami : Nameless.

Bona fide : Good faith; genuine.

Caveat : A caution registered with the public court to indicate to the officials that they are not to act in the matter mentioned in the caveat without first giving notice to the caveator.

Caveat emptor : Let the buyer beware.

Caveat Actor : Let the doer beware.

Caveat venditor : Let the seller beware.

Certiorari : A writ by which records of proceeding are removed from inferior courts to High Court and to quash decision that goes beyond its jurisdiction.

Cestui que trust : The person who has the equitable right to property in India he is known as beneficiaries.

Consensus Ad idem: Common consent necessary for a binding contract.

Contemporanea expositio est optima et fortissima lege : A contemporaneous exposition or language is the best and strongest in Law.

Corpus delicti : Body/gist of the offence.

Cy pres : As nearly as may be practicable.

Damnum sine injuria: Damage without injury.

De facto: In fact.

De jure: By right (opposed to de facto) in Law

Dehors: Outside; foreign to (French term).

De novo: To make something new; To alter.

Dies non: Day on which work is not performed.

Deceit: Anything intended to mislead another.

Del credere Agent: is a mercantile agent who in consideration of extra remuneration called a del credere commission undertakes to indemnify his employer against loss arising from the failure of persons with whom he contracts to carry out their contracts.

Delegate potestas non-potest delegari: A delegated power cannot be delegated further.

Delegatus non potest delegare: A delegate cannot delegate.

Dictum: Statement of law made by judge in the course of the decision but not necessary to the decision itself.

Dispono: Convey legally.

Ejusdem generis: Where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified.

Estoppel: Stopped from denying.

Ex parte: Proceedings in the absence of the other party.

Expressio unius est exclusio Alterius : Express mention of one thing implies the exclusion of another or which is shortly put.

Ex turpi causa non oritur Actio : No action arises from an illegal or immoral cause.

Fatum : Beyond human foresight.

Fait Accompli : Things done and no longer worth arguing against; an accomplished act.

Factum probandum : Fact in issue which is to be proved.

Factum probans : Relevant fact.

Ferae natureae : Dangerous by nature.

Force majeure : Circumstance beyond one's control, irresistible force or compulsion

Generalia Specialibus non derogant : General things do not derogate from special.

Habeas corpus : A writ to have the body to be brought up before the judge.

Ignorantia legis neminem excusat : Ignorance of law excuses no one.

Injuria Sine damno : Injury without damage.

Interest reipublicae ut sit finis litium : State or public interest requires that there should be a limit to litigation.

Ispo facto : By the very nature of the case.

In promptu : In readiness.

In posse : In a state of possibility.

In limine : Initial stage; at the outset.

In lieu of : Instead of.

Inter Alia : Among other things.

Inter se : Among themselves.

In specie : In kind.

Inter vivos : Between living persons.

Intra vires : Within the powers.

In personam : A proceeding in which relief is sought against a specific person.

Indicia : A symbol; token; mark.

Innuendo: Allusive remark.

Jus in personam : Right against a person.

Jus in rem : Right against the world at large.

Jus non scriptum: Unwritten law; Customary Law.

Jus scriptum : Written Law.

Lex Mercatoria : The law merchant, is a body of legal principles founded on the customs of merchants in their dealings with each other, and though at first distinct from the common law, afterwards became incorporated into it.

Lex fori : The law of the forum of court.

Lis : A suit cause of action.

Lis pendens : A pending suit.

Locus standi : Right of a party to an action to appear and be heard on the question before any tribunal.

Mala fide : In bad faith.

Mandamus : A writ of command issued by a Higher Court to a Lower Court/Government/Public Authority.

Mens rea : Guilty mind.

Manesuetae natureae : Harmless by nature.

Mesne profits : The rents and profits which a trespasser has received/made during his occupation of premises.

Misnomer : A wrong name.

Mutatis-mutandis : With necessary changes in points of detail.

Noscitur A Sociis : A word is known by its associated, one is known by his companions.

Obiter dictum : An incidental opinion by a judge which is not binding.

Onus Probandi : Burden of proof.

Pari passu: On equal footing or proportionately.

Per se: By itself taken alone.

Persona non-grata : Person not wanted.

Per incuriam: Through want of care; through inadvertance.

Prima facie: At first sight; on the face of it.

Profit A prendre : A right for a man in respect of his tenement.

Pro bono publico : For the public good.

Pro forma : As a matter of form.

Pro rata : In proportion.

Posteriori : From the consequences to the antecedent.

Puisne mortgage : Second mortgage.

Pari causa : Similar circumstances, with equal right.

Pari materia : Relating to same person or thing.

Qui facit per Alium facit per se : He who acts through another is acting by himself.

Quo warranto : A writ calling upon one to show under what authority he holds or claims an office.

Quia timet: Protective justice for fear. It is an action brought to prevent a wrong that is apprehended. **Quid pro quo** : Something for something.

Ratio decidendi : Principle or reason underlying a decision.

Res judicata : A decision once rendered by a competent court on a matter in issue between the parties after a full enquiry should not be permitted to be agitated again.

Res ipsa loquitur : The things speak for itself. **Respondent superior** : Let the principal be liable. **Res sub judice** : Matter under consideration.

Res gestae : Facts relevant to a case and admissible in evidence.

Rule nisi : A rule which will become imperative and final unless cause to be shown against it.

Vis major : Act of God.

Vigilantibus, non dormientibus, jura Subveniunt : The laws help those who are vigilant and not those who are slumber or lazy.

Vice versa : The order being reversed; other way round.

Volenti non-fit injuria: Damage suffered by consent gives no cause of action.

❖ LEGAL REASONING

- 1) Legal reasoning is used to answer legal question
- 2) It requires good logical reasoning
- 3) Meaning and application of legal rule is subject to multiple interpretations

Questions in the Legal Reasoning may be asked mainly from the following areas:—

- (A) Indian Constitution
- (B) Indian Contract Act
- (C) Law of Torts
- (D) Element of Company Law

INDIAN CONTRACT ACT

SITUATION 1

Legal Principle :

A contract is an agreement which the law will enforce. all agreements are contracts if they are made with free consent by parties competent to contract for a lawful consideration and with a lawful object.

Factual Situation :

Mr. Raja offered to buy Mr. Ram's Car for Rs. 5 lakhs but Mr. Ram refused. Subsequently, Mr. Raja threatened to kill Mr. Ram and Mr. Ram agreed to the sale. Mr. Ram subsequently rescinded from the contract.

Mr. Raja suit to enforce the contract—

Decide

- (a) Will succeed because Mr. Raja was offering lawful consideration for the car
- (b) Will succeed because buying and selling of car is lawful
- (c) Will succeed because both parties have capacity to contract
- (d) Will fail because Mr. Ram was forced to agree to the contract.

SITUATION 2

Legal Principle :

A contract is an agreement which the law will enforce. All agreements are contracts if they are made with free consent by parties competent to contract for a lawful consideration and with a lawful object.

Factual Situation :

Mr. Joy a young boy of 27 years without any consideration agrees to give Ms. Jooly Rs. 10,000/-. Mr. Joy fails to fulfil his promise. Ms. Jooly sues Mr. Joy for the amount.

Decide

- (a) Ms. Jooly will succeed as Mr. Joy made the promise of his own free will
- (b) Ms. Jooly will fail as the agreement is without consideration
- (c) Ms. Jooly will succeed as Mr. Joy has the capacity to make the contract

- (d) Ms. Jooly will succeed as the money is not being paid for any illegal object.

SITUATION 3

Legal Principle:

An agreement enforceable by law is a contract.

Factual Situation:

Mr. A and Mr. B, father of a minor boy P and minor girl Q respectively enter into an agreement that they would marry their children P and Q to each other. Mr. B, later refused to honour this agreement. Aggrieved by this, Mr. A decided to sue Mr. B and Ms. Q for breach. Mr. A will:

Decide:

- (a) Succeed because Mr. B has refused to fulfil his obligation under the agreement.
- (b) Fail because the agreement between them is not a contract.
- (c) Succeed because the agreement between them is a contract.
- (d) Fail because Mr. A should have sued Mr. B and Ms. Q together with Mr. P and not alone as Mr. P has also suffered because of the breach.

SITUATION 4

Legal Principle:

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object.

Factual Situation:

A was planning to sell his property to B but B was not aware of it. Since B was interested in the property, he threatened to harm the only child of A if A did not enter into an agreement to sell the property to B. The price at which the agreement to sell was agreed upon was much more than the expectation of A or the prevailing market price of the property. Once the agreement was signed, B got to know that A was anyway interested in selling the property to B and at a lower price. A later refused to execute the sale deed and claimed that the contract between the parties was not valid. A will:

Decide:

- (a) Fail because there was a valid contract between him and B.
- (b) Succeed because the consent of A for the agreement to sell was not a free consent.
- (c) Fail because in the given facts and circumstances even with the free consent the same transaction would have taken place. A is even better placed because he is receiving a higher price.

- (d) Succeed because there is no lawful object in the contract.

SITUATION 5

Legal Principle:

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

Factual Situation:

Mr. Jamal is a patient in a lunatic asylum who experiences intervals of sound mind. Jamal entered into a contract during such interval of sound mind. On having suffered losses, he challenged the validity of the contract on the ground that he not only was mentally unsound but also lived in lunatic asylum.

Decide

- (a) The contract is valid.
- (b) The contract is invalid.
- (c) The contract is voidable at the option of Mr. Jamal.
- (d) The contract is voidable at the option of the opposite party.

SITUATION 6

Legal Principle:

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Factual Situation:

One of the purposes of the business party was to strike business deals and Mr. Animesh was well aware of it. Still, Mr. Animesh drank so much at the party that he could not understand the terms of a contract, or form a rational judgment as to its effect on his interests. He still went ahead and entered into a few contracts at the party. One of such agreements had very oppressive terms and conditions for Mr. Animesh and therefore he challenges the validity of the contract. He will:

Decide

- (a) Fail because he knew the purpose of the business party and should have behaved more responsibly.
- (b) Succeed because he was temporarily of unsound mind because of his drunk state.

- (c) Fail because being drunk even to the extent of not being able to understand the terms of the contract cannot be considered as 'unsound mind'
- (d) Succeed because oppressive terms and conditions in the contract show that it could have been agreed to only by a person of unsound mind.

SITUATION 7

Legal Principle:

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 a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

Factual Situation:

Mr. Ashwini having advanced money to his son, Bhuvan, during his minority, upon Bhuvan's coming of age obtains, by misuse of parental influence, a bond from Bhuvan for a greater amount than the sum due in respect of the advance.

Decide

- (a) Ashwini employed undue influence.
- (b) Ashwini did not employ undue influence.
- (c) Father and son cannot ever enter into a valid contract.
- (d) Ashwini employed coercion.

SITUATION 8

Legal Principle:

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.

Factual Situation:

Mr. Arun, intending to deceive Mr. Prakash, falsely represented that five hundred tonnes of fertilizer are made annually at his factory, and thereby induced Mr. Prakash to buy the factory.

Decide:

- (a) The contract is voidable at the option of Mr. Prakash.
- (b) The contract is voidable at the option of Mr. Arun.
- (c) The contract is void.
- (d) The contract is valid.

SITUATION 9**Legal Principle:**

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Factual Situation:

Mr. Rupesh agrees to buy from Mr. Jalaj a certain car. It turns out that the car was scraped at the time of bargain, though neither party was aware of the fact.

Decide

- (a) The agreement is valid.
- (b) The agreement is void.
- (c) The agreement is voidable at the instance of either parties.
- (d) The agreement is void because Mr. Jalaj played a fraud upon Mr. Rupesh.

SITUATION 10**Legal Principle:**

Every agreement of which the object or consideration is unlawful is void.

Factual Situation:

Mr. Thomas promises Mr. Jhonson to drop a prosecution which he has instituted against Mr. Jhonson for robbery, and Mr. Jhonson promises to restore the value of the things taken.

Decide:

- (a) The agreement is void, as its object is unlawful.
- (b) The agreement is valid.
- (c) The agreement is voidable at the instance of Mr. Thomas.
- (d) The agreement is voidable at the instance of Mr. Jhonson.

SITUATION 11**Legal Principle:**

A stranger to a contract cannot sue for want of privity of contract.

Factual situation:

A, who is indebted to B, sells his property to C, and C the purchaser of the property, promises to pay off the debt to B. C fails to pay B.

Decide

- (a) B has no right to sue C for there is no privity of contract between B and C.
- (b) B has the right to sue C as there is privity of contract between B and C.
- (c) C has no legal obligation to A to pay B off.
- (d) Once the property is sold to C, B can only sue C and not A.

SITUATION 12**Legal Principle:**

All illegal agreements are void but all void agreements are not necessarily illegal.

Factual Situation:

A had borrowed Rs. 1,000 from B to buy a pistol to shoot C which he did. He, however, failed to repay B and B decides to recover this money from A by filing a suit.

Decide

- (a) The contract between A and B is illegal.
- (b) The contract between A and B will be illegal only if it is established that B was aware of the purpose at the time of the borrowing.
- (c) The contract between A and B is void but not illegal.
- (d) The contract between A and B is valid even if B was aware of the purpose at the time of borrowing.

LAW OF TORT

Situation 1

Legal Principle:

A violation of a legal Right, with or without damage, gives rise to a tort.

Factual Situation:

Mr. Ketan establishes a coaching class for Company Secretary Students of Executive Programme and charges Rs.10, 000/- per year as tuition fees. Mr. Ketan's neighbor Mr. Kalia establishes another coaching class for Company Secretary Students of Executive Programme thereby creating a competition between them. This forces Mr. Ketan to reduce his tuition fees to Rs. 7000/- per year.

Decide

Can Mr. Ketan claim damages from Mr. Kalia for the loss caused to him?

- (a) Yes, he can as Mr. Kalia has violated his Legal Right
- (b) No, Mr. Ketan has reduced the fees on his own
- (c) No, because though, there was damage there was no legal injury
- (d) None of the above.

SITUATION 2

Legal Principle:

Tort is a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation.

Factual Situation:

Mr. Sunil has six pet dogs which are very ferocious and bark a lot. Mr. Surendra is his next door neighbor and feels that he is not able to enjoy his property due to the presence of a large number of dogs in the adjacent house. He is contemplating initiating a legal action against Mr. Sunil. Mr. Surendra can:

Decide

- (a) Initiate action for breach of contract against Mr. Sunil as there is an implied contract between the neighbours.
- (b) Initiate action for unliquidated damages under torts because there is no contract between the neighbours.

- (c) Initiate criminal action against Mr. Sunil because having a large number of ferocious dogs is a criminal act.
- (d) Not be successful as Mr. Sunil has an unrestricted right to enjoy his personal property and has no duty towards Mr. Surendra.

SITUATION 3

Legal Principle :

Causing damage, however substantial to another person is not actionable in law unless there is also a violation of a legal right of the plaintiff.

Factual Situation :

Mr. Nandan opened a petrol pump next to earlier existing petrol pump of Mr. Chandan as a result of which Mr. Chandan suffered huge losses. Mr. Chandan wants to initiate action against Mr. Nandan for the losses suffered. He will

Decide

- (a) Succeed because he has suffered losses because of Mr. Nandan.
- (b) Fail because no legal right of Mr. Chandan was infringed.
- (c) Succeed because Mr. Nandan was wrong in opening a petrol pump next to already existing one.
- (d) Succeed because Mr. Chandan is entitled to earn reasonable profit on his investments.

SITUATION 4

Legal Principle:

Even where there is infringement of a legal right which does not result in harm, plaintiff can still sue in tort.

Factual Situation:

Cattle owned by Mr. Vinay entered the fields of Mr. Vipin and roamed about freely for considerable time without causing any kind of loss to Mr. Vinay. Mr. Vinay did not like Mr. Vipin and thought of initiating legal action against him using this opportunity. Mr. Vinay will:

Decide

- (a) Fail because he did not suffer any monetary loss.
- (b) Fail because he did not suffer any infringement of his legal right.
- (c) Succeed because his legal right was infringed.
- (d) Fail because he initiated the legal action because of his dislike for the defendant.

SITUATION 5**Legal Principle:**

Normally, the tort-feasor is liable for his tort but in some cases a person may be held liable for the tort committed by another.

Factual situation:

Mr. Rahul's car was being driven by his driver when it hit a pedestrian as a result of which the pedestrian suffered heavy injuries. He brought a legal action against Mr. Rahul because the car belonged to him and the driver was employed by him. The legal action of the pedestrian against Mr. Rahul will:

Decide

- (a) Fail because Mr. Rahul had nothing to do with the accident.
- (b) Succeed because responsibility in such cases is imputed by law on grounds of social policy or expediency.
- (c) Succeed because a master is always liable for the acts of his or her servant.
- (d) Fail because it was the duty of the driver to be careful while driving.

SITUATION 6**Legal Principle:**

The defendant is liable if he makes a non-natural use of land.

Factual Situation:

Mr. Kundan had stored chemicals on his land which escaped and caused damaged to the adjacent properties one of which belonged to Mr. Ankit. Mr. Ankit is

Decide

- (a) Fail because Mr. Kundan had stored chemicals on his own property.
- (b) Succeed because storing chemicals is a non-natural use of land.
- (c) Fail because storing chemicals is a natural use of land.
- (d) Fail because Mr. Ankit should have taken adequate precautions against the chemicals.

SITUATION 7**Legal Principle:**

Absolute or strict liability are exceptions to the requirement of mens rea.

Factual Situation:

B, a mill owner employed independent contractors, who were apparently competent to construct a reservoir on his land to provide water for his mill. There were old disused mining shafts under the site of the reservoir which the contractors failed to observe because they were filled with earth. The contractors therefore, did not block them. When the water was filled in the reservoir, it bursts through the shafts and flooded the plaintiff's coal mines on the adjoining land. It was found as a fact that B did not know of the shafts and had not been negligent.

Decide

- (a) Even though the independent contractors had been negligent, B will be held liable for the losses suffered by the plaintiff.
- (b) B will be held liable for the losses suffered by the plaintiff only if B was negligent and not otherwise.
- (c) Independent contractors would be liable to the plaintiff as there is privity of contract between them.
- (d) Neither B nor the independent contractors would be held liable as there was no guilty mind at work.

SITUATION 8**Legal Principle :**

Consent of the Plaintiff is an exception to the rule of Strict liability.

Factual Situation:

Mr. Jagdish was subjected to a risk owing to a defect in the machinery at the factory at which he was employed. He complained of this to the person who had the general management of the business, but was told nevertheless to go on with his work. He did so and sustained the injury for which he brought his action against the factory.

Decide

- (a) The suit will fail because it must be assumed Mr. Jagdish had assented to take upon himself the risk.
- (b) The suit will succeed because Mr. Jagdish had highlighted the risk to the Factory management and his refusal to work might have led to his termination.
- (c) The suit will fail because Mr. Jagdish should have stopped working at the factory if the management had refused to address his concerns regarding safety.
- (d) The suit will succeed because in a suit between an employer and an employee, the employee is favoured because he/ she is generally poor.

SITUATION 9

Legal Principle:

For the tort committed by a partner in the ordinary course of the business of the firm, all the other partners are liable to the same extent as the guilty partner.

Factual Situation:

A, B and C ran a Chartered Accountancy firm in partnership. In order to solicit work from a big bank, A, one of the three partners bribed the Bank's senior manager and induced him to hand over the audit work to their firm.

Decide

- (a) All the partners are liable for the tort committed by only one of them.
- (b) Only the partner who paid the bribe is liable.
- (c) Whether or not all partners are liable would depend on the fact whether B and C had knowledge of bribe or not.
- (d) The liability of B and C would be established only if they had given their written consent to A to bribe the bank official.

SITUATION 10

Legal Principle:

The State can claim immunity from the tortious liability only in the cases of sovereign function, otherwise not.

Factual Position:

Chandra and his father Gopal were lodged in a jail, wherein one day bombs were hurled at them by their rivals, causing the death of Gopal and injuries Chandra. The victims were

having previous knowledge of the impending attack, which they conveyed to the authorities, but no additional security was provided to them. On the contrary, there was gross negligence since there was a great relaxation in the number of police men who were to guard the jail on that fateful day. Thus, on the grounds of negligence a suit was filed Chandra against the Government. The suit will

Decide

- (a) Succeed because there was gross negligence on part of the State.
- (b) Fail because maintain jail facilities is part of the sovereign function of the State.
- (c) Succeed because securing law and order is not a sovereign function of the State.
- (d) Fail because the State cannot be held responsible in any way if people lose life because of their personal rivalries even in facilities maintained and operated by the State.

SITUATION 10**Legal Principle:**

No person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

Factual Situation:

A person was accused of cheating and before he was arrested and committed to trial for it, the law relating to cheating was changed and the punishment for it was increased to life imprisonment. The person was found guilty and sentenced to life imprisonment. He decides to challenge his sentence of life imprisonment. He will

Decide

- (a) Fail because the punishment for cheating was increased to life imprisonment before his trial began.
- (b) Succeed because the punishment for cheating was not life imprisonment when he committed it.
- (c) Fail because the law does not provide for such leniency to guilty persons.
- (d) Succeed only if he is able to prove his innocence.

COMPANIES ACT,2013**SITUATION 1****Legal Principle :**

Company means a company incorporated under the Companies Act, 2013, or under any previous company law.

Factual Situation :

- (i) ABC Limited is incorporated under the Companies Act, 1956;
- (ii) ABC LLP incorporated under Limited Liability Partnership Act, 2008;
- (iii) ABC & Co registered under Partnership Act, 1832 and
- (iv) ABC Charitable Trust established under Trust Act, 1882.

Decide

Which of the above entity as mentioned in factual situation is a company?

- (a) ABC Limited
- (b) ABC LLP
- (c) ABC & Co
- (d) ABC Charitable Trust

SITUATION 2**Legal Principle:**

A master shall be responsible for the wrongful acts of his servants in the course of his employment.

Factual Situation:

ABC Limited is a Non-Banking Financial Company (NBFC) is registered with Reserve Bank of India to accept deposit from public. Mr. Shyam appointed as authorised agent by ABC Limited to collect deposit money from several people on daily basis. Mr. Shyam, collecting deposits from people on daily basis. One day he disappeared. One Ms. Shyamlee , who had been handing over her deposit money to Mr. Shyam found that nearly for a month before his disappearance, he was not depositing her money at all. Ms. Shyamlee when approached the ABC Limited, the NBFC took the stand that Mr. Shyam was not its employee, he is his agent and therefore, ABC Limited is not responsible for his misconduct. Ms. Shyamlee files a suit against the ABC Limited.

Decide

Who is liable?

- (a) ABC Limited
- (b) Mr. Shyam
- (c) Ms. Shyamlee
- (d) None of the above.

CONSTITUTION OF INDIA

SITUATION 1

Legal Principle:

All citizens shall have the right to freedom of speech and expression under Article 19 of the Constitution of India and it is a Fundamental Right.

Factual Situation:

Mr. Sinha a famous english writer and orator criticized another novelist, Mr. Rahul stating that: "The novel of Mr. Rahul is irrational and indecent, his mind is impure, he is a loose character, he should write decent and good novel."

Decide

Can Mr. Rahul be sued for defamation?

- (a) He is not liable because he has just expressed his personal views
- (b) He is liable to be sued for defamation if his statement, was not true or said in mala fide intention
- (c) He cannot be liable because he has fundamental right to freedom of speech and expression
- (d) He cannot be sued, because both are writer and novelists and both can criticize each other.

SITUATION 2

Legal Principle :

Every citizen of India has a fundamental right to carry on any trade or business or profession of his choice subject to the imposition of reasonable restrictions by the State.

Factual Situation:

In pursuance of an order passed by the Institute of Company Secretary of India (ICSI), prohibit a person from Practice the profession of Company Secretary unless such person

passed the Company Secretaryship Course and hold a certificate of practice from the ICSI. Mr. Manoj, a Executive Programme passed student of Company Secretaryship Course challenges the ban as it violates his right to carry his profession.

Decide

- (a) Institute of Company Secretary of India (ICSI) has a superior right to ban.
- (b) The ban is justified, as the right of Mr. Manoj to carry his profession is not absolute
- (c) The ban is not justified, as the Institute of Company Secretary of India (ICSI) cannot deprive any person of his right to carry on his profession
- (d) None of the above.

SITUATION 3**Legal Principle:**

Constitution of India empowers the President of India to appoint the Judge of the High Courts and Supreme Court.

Factual Situation:

There is a deadlock between the Council of Minister including Prime Minister of India and the President of India. President of India appointed Mr. Adarsh as the Justice of Supreme Court of India and Mr. Garg appointed as Judge of Delhi High Court by the Prime Minister of India.

Decide

- (a) Appointment of Mr. Garg is valid in the eyes of law
- (b) Appointment of Mr. Adarsh is valid as per the Constitution of India
- (c) Appointment of Mr. Adarsh and Mr. Garg void abinitio
- (d) None of the above.

SITUATION 4**Legal Principle:**

The members of both Lok Sabha and Rajya Sabha are eligible to be Ministers of the Union Government.

Factual Situation:

Mr. Ram Sing is sitting member of Upper House of Parliament and as Recommendations of Prime Minister of India, President of India appointed Mr. Ram Singh as Minister for the Ministry of Education.

Decide

Appointment of Mr. Ram Singh as Minister for the Ministry of Education is valid?

- (a) Yes
- (b) No
- (c) President of India cannot be appointed
- (d) Prime Minister of India cannot be recommended

SITUATION 5**Legal Principle:**

Under Article 12, unless the context otherwise requires, "the State" includes—

- (a) the Government and Parliament of India;
- (b) the Government and Legislature of each of the States; and
- (c) all local or other authorities: (i) within the territory of India; or (ii) under the control of the Government of India.

Factual Situation:

Mr. Arvind is employed with Oil and Natural Gas Corporation (ONGC). He faces discrimination at work at the hands of the Management and thinks that his right to equality is violated. He contemplates moving a writ petition against ONGC but his colleague suggests that Mr. Arvind will not succeed because ONGC is not 'State'.

Decide

- (a) ONGC is 'State' as per Article 12 of the Constitution.
- (b) ONGC is not 'State' as per Article 12 of the Constitution.
- (c) Mr. Arvind will not succeed because a writ cannot be brought against a Company.
- (d) ONGC is not 'State' because its shares are listed in the stock market.

SITUATION 6**Legal Principle:**

No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence.

Factual Situation:

Ms. Chandni had an altercation with her classmate in her college and in the heat of the moment she hurled a racist abuse at her classmate and her classmate was deeply offended by it. Ms. Chandni had later apologized for it. In the next few months, a law was passed which made racist abuse punishable. Aware of the fact that the law of limitation does not apply to criminal acts, she moved an application to the court to initiate criminal action against Ms. Chandni for the racist abuse. The classmate's application will:

Decide

- (a) Fail because racist abuse was not punishable when it was hurled.
- (b) Succeed because the law made racist abuse punishable with imprisonment and it is undeniable that Ms. Chandni has hurled that abuse.
- (c) Succeed because law of limitation does not apply to criminal acts.
- (d) Fail because it was not a serious offence and Ms. Chandni had already apologized for it.

SITUATION 7**Legal Principle:**

Parliament can amend any part of the Constitution including the Fundamental Rights but the Parliament cannot alter the basic structure or framework of the Constitution.

Factual Situation:

The Government of India has passed a Constitutional amendment Act which has the effect of curbing the independence of the judiciary. The Act has been challenged in the Supreme Court of India by a group of NGOs and public spirited individuals as being violative of the Constitution. The challenge will:

Decide

- (a) Succeed because any amendment that compromises the independence of the judiciary is unconstitutional.
- (b) Fail because the Parliament has unlimited power to amend the Constitution as per the Kesavananda Bharati judgment.
- (c) Succeed because the amendment was not brought to the Parliament with the consent of the Supreme Court of India.
- (d) Fail because the Supreme Court cannot sit in judgment over a matter that affects its own independence.

SITUATION 8**Legal Principle:**

Directive Principles of State Policy (DPSP) are non-justiciable in nature.

Factual Situation:

Mr. Sumit works for the protection of cows. He has come to know that in some states slaughtering of cows is permissible under law. He also knows that one of the Directive Principles of State Policy calls upon the State to prohibit cow slaughter. Based on this, Mr. Sumit approaches the Supreme Court of India for getting direction to the states to enact anti-cow slaughtering law. His petition will:

Decide

- (a) Succeed because DPSP clearly says that states should take steps to prevent cow slaughter.
- (b) Fail because DPSP cannot be enforced by the Courts.
- (c) Succeed because laws in contravention of DPSP are unconstitutional.
- (d) Fail because only a section of Indian population holds cow as sacred and its views cannot be forced on others.

SITUATION 9**Legal Principle:**

The right of all citizens to practise any profession or to carry on any occupation, trade or business is a Fundamental Right.

Factual Situation:

Due to a law passed by the Government, even a person with good knowledge of law cannot appear in the Court as lawyer unless he has a law degree from a recognized university and fulfils other mandatory conditions. Due to this Mr. Dinesh is not able to appear in courts and believes that government is denying him of his Fundamental Right to practice any profession or to carry on any occupation, trade or business. He decides to challenge this as a violation of his Fundamental Right. He will

Decide

- (a) Succeed because the requirements to be eligible to appear before the Court deny him the opportunity to earn his livelihood.

- (b) Succeed because government cannot abridge Fundamental Rights in any manner under any condition.
- (c) Fail because the Government is well within its rights to prescribe eligibility and other conditions for profession, trade or business.
- (d) Fail because Government has the power to abrogate the Fundamental Rights.

SITUATION 10

Legal Principle:

Article 14 of the Constitution says that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

Factual Situation:

Due to the growing menace of terrorism in the country, the Government of India decided to have a new substantive criminal laws for terrorists from other countries. A foreign terrorist captured by the police and subjected to the new law claimed that his rights under Article 14 of the Indian constitution were violated. His claim will:

Decide

- (a) Fail because the rights under Article 14 are available only to the citizens of India.
- (b) Fail because the rights under the Article cannot be made available to people who engage in terrorist activities in India.
- (c) Succeed because he is entitled to be subjected to the same laws as any other person charged with the same offence.
- (d) Succeed because once he is captured by the Indian authorities, he acquired all the Fundamental Rights that are enjoyed by the citizens of India.

SITUATION 11

Legal Principle:

The ambit of this Ordinance-making power of the President is co-extensive with the legislative powers of Parliament.

Factual Situation:

During a time when the Lok Sabha was not in session the President of India promulgated an ordinance on a matter which was not very urgent. A non-governmental organization decided to challenge the ordinance as ultra vires the Constitution. His challenge will:

Decide

- (a) Succeed because the ordinance is to be promulgated only in urgent matters.
- (b) Fail because the use of the power to promulgate ordinance is left to the discretion of the President.
- (c) Fail because the use of the power to promulgate ordinance is left to the discretion of the Government.
- (d) Succeed because an ordinance can be issued only when both the houses of the Parliament are not in session.

SITUATION 12

Legal Principle:

The State shall not make any law which takes away or abridges the rights conferred by Part III and if such a law is made, it shall be void to the extent to which it curtails any such right.

Factual Situation:

Right to Property was a Fundamental Right but was abolished as such by a Constitutional amendment. Mr. Gautam decides to challenge the constitutional validity of the amendment. He will

Decide

- (a) Succeed because the State cannot make any law which takes away or abridges the rights conferred by Part III.
- (b) Fail because 'law' referred to in the above statement does not apply to Constitutional amendment Acts.
- (c) Succeed because even constitutional amendments cannot take away Part III rights.
- (d) Fail because Right to Property was not conferred by Part III.

SITUATION 13

Legal Principle:

There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.

Factual Situation:

The Lok Sabha general elections in 1996 did not give any party a clear majority and various political parties in their individual capacity and in association with other parties staked claim

with the President to form government. The President had to invite one such party or a group to form the government. He was:

Decide

- (a) Bound to follow the advice of the outgoing Prime Minister on who should be first called to form the government.
- (b) Free to exercise his discretion in such a situation.
- (c) Bound to consult the Chief Justice of India in a situation of no clear majority in favour of a party or an alliance.
- (d) Bound to invite the single largest party to form the government

SITUATION 14

Legal Principle:

An agreement enforceable by law is a contract.

Factual Situation:

Mr. A and Mr. B, father of a minor boy P and minor girl Q respectively enter into an agreement that they would marry their children P and Q to each other. Mr. B, later refused to honour this agreement. Aggrieved by this, Mr. A decided to sue Mr. B and Ms. Q for breach. Mr. A will:

Decide:

- (a) Succeed because Mr. B has refused to fulfil his obligation under the agreement.
- (b) Fail because the agreement between them is not a contract.
- (c) Succeed because the agreement between them is a contract.
- (d) Fail because Mr. A should have sued Mr. B and Ms. Q together with Mr. P and not alone as Mr. P has also suffered because of the breach.