

ALL THE VERY BEST FOR YOUR EXAMS

SHORT NOTES FOR JAIIB LEGAL & REGULATORY ASPECTS OF BANKING

Though we had taken enough care to go through the notes provided here, we shall not be responsible for any loss or damage, resulting from any action taken on the basis of the contents. Creation of these short notes is the efforts of so many persons. First of all we thank all of them for their valuable contribution. We request everyone to go through the Macmillan book and update yourself with the latest information through RBI website and other authenticated sources. In case you find any incorrect/doubtful information, kindly update us also (along with the source link/reference for the correct information).

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JAIIB / DBF – GENERAL INFORMATION

- **Consists of 3 papers :**
 1. Principles & Practices of Banking
 2. Accounting & Finance for Bankers
 3. Legal & Regulatory Aspects of Banking.
- Only existing employees of banks can appear for JAIIB Exam.
- People other than Bank Employees can appear for Diploma in Banking and Finance Exam. If Passed, JAIIB Examination certificate will be issued after joining the bank.
- Syllabus & exam pattern for both JAIIB and DBF exams are mostly same.
- Both JAIIB and DBF exams are conducted in on-line mode only.
- The examination will be conducted normally twice a year in May / June and November / December on Sundays.
- The duration of the examination will be of 2 hours.
- **Examination Pattern :** Each Paper will contain approx. 120 objective type MCQs, carrying 100 marks including questions based on case studies. The Institute may, however, vary the number of questions to be asked for a subject. There is no negative marking for wrong answers.
- **Passing Criteria** - Minimum 150 in total and minimum 45 in each subject in any single attempt (not required to be the 1st attempt) is considered as pass. Else 50 in each subject. Passed subject gets carried forward to 4 continuous attempts (whether you appear for the exam or not) from the 1st attempt. If not passed in 4 continuous attempts, you need to appear in all 3 papers.
 - ❖ **First Class** : 60% or more marks in aggregate and pass in all the subjects in the FIRST PHYSICAL ATTEMPT.
 - ❖ **First Class with Distinction** : 70% or more marks in aggregate and 60% or more marks in each subject in the FIRST PHYSICAL ATTEMPT.
 - ❖ Candidates who have been granted exemption in the subject/s will be given "Pass Class" only.
- **Cut-off Date of Guidelines /Important Developments for Examinations** - The Institute has a practice of asking some questions in each exam about the recent developments/ guidelines issued by the regulator(s) in order to test if the candidates keep themselves abreast of the current developments. But, there could be changes in the developments / guidelines from the date the question papers are prepared and the dates of the actual examinations. In order to address these issues effectively, it has been decided that:

- ❖ In respect of the exams to be conducted by the Institute for the Period from February 2018 to July 2018, instructions/guidelines issued by the regulator(s) and important developments in banking and finance up to 31st December, 2017 will only be considered for the purpose of inclusion in the question papers.
- ❖ (ii) In respect of the exams to be conducted by the Institute for the period from August 2018 to January 2019, instructions/guidelines issued by the regulator(s) and important developments in banking and finance up to 30th June, 2018 will only be considered for the purpose of inclusion in the question papers.

➤ **Exam Fees**

JAIIB

First attempt fee - 2,400*
Second attempt fee - 1,000*
Third attempt fee - 1,000*
Fourth attempt fee - 1,000*

DBF

First attempt fee - 3,200*
Second attempt fee - 1,000*
Third attempt fee - 1,000*
Fourth attempt fee - 1,000*

CAIIB

First attempt fee - 2,700*
Second attempt fee - 1,000*
Third attempt fee - 1,000*
Fourth attempt fee - 1,000*

* Plus convenience charges and Taxes as applicable

SYLLABUS

The details of the prescribed syllabus which is indicative are furnished below. However, keeping in view the professional nature of examinations, all matters falling within the realm of the subject concerned will have to be studied by the candidate as questions can be asked on all relevant matters under the subject. Candidates should particularly prepare themselves for answering questions that may be asked on the latest developments taking place under the various subject/s although those topics may not have been specifically included in the syllabus. Any alterations made will be notified from time to time. Further, questions based on current developments in banking and finance may be asked.

Candidates are advised to refer to financial news papers / periodicals more particularly "IIBF VISION" and "BANK QUEST" published by IIBF.

MODULE A – REGULATIONS AND COMPLIANCE

Legal Framework of Regulation of Banks

Business of Banking; Constitution of Banks; RBI Act, 1934; Banking Regulation Act, 1949; Role of RBI; Govt. as a Regulator of Banks; Control over Co-operative Banks; Regulation by other Authorities.

Control over Organization of Banks

Licensing of Banking Companies; Branch Licensing; Paid up Capital and Reserves; Shareholding in Banking Companies; Subsidiaries of Banking Companies; Board of Directors; Chairman of Banking Company; Appointment of Additional Directors; Restrictions on Employment; Control over Management; Corporate Governance; Directors and Corporate Governance.

Regulation of Banking Business

Power of RBI to Issue Directions; Acceptance of Deposits; Nomination; Loans and Advances; Regulation of Interest Rate; Regulation of Payment Systems; Internet Banking Guidelines; Regulation of Money Market Instruments; Banking Ombudsman; Reserve Funds; Maintenance of CRR, SLR; Assets in India.

Returns Inspection, Winding up, Mergers & Acquisitions

Annual Accounts & Balance Sheet; Audit & Auditors; Submission of Returns; Preservation of Records and Return of Paid Instruments; Inspection and Scrutiny; Board for Financial Supervision; Acquisition of Undertakings; Amalgamation of Banks; Winding up of Banks; Penalties for offences.

Public Sector Banks and Co-operative Banks

SBI and its Subsidiaries; Regional Rural Banks; Nationalized Banks; Application of BR Act to Public Sector Banks; Disinvestment of Shares by Govt.; Co-operative Banks

Financial Sector Legislative Reforms

Need, Approach for Financial Sector Legislative Reforms; Important Reforms

Recent Legislative Changes in RBI Act - Recent Legislative Changes in RBI Act, Need thereof

Financial Sector Development Council

Role and Functions of Financial Sector Development Council

MODULE B – LEGAL ASPECTS OF BANKING OPERATIONS

Different Types of Borrowers - Types of Borrowers; Limited Liability Partnership

Types of Credit Facilities - Cash Credit, Overdraft, Demand Loans, Term Loans, Bill Finance

Secured and Unsecured Loans, Registration of Firms and Incorporation of Companies

Definition of Secured and Unsecured loans; Need for Secured Loans; Registration of Firms; Consequences of Non-registration of Firms; Incorporation of a Company

Indemnities

Definition of Contract of Indemnity; Features of Indemnity Contract & Guarantee; Scope and Application of Indemnity Contracts to Banks; Obligations of a Banker; Precaution & Rights of an Indemnity Holder

Bank Guarantees

Definition and Types of Bank Guarantees; Banker's Duty to Honour Guarantee; Precautions to be taken for Issuance of Bank Guarantee; Precautions to be taken for Payment under Bank Guarantee; Invocation & Enforcement.

Letters of Credit

General Considerations of Letters of credit; Parties to a Letter of credit; Types of Letters of credit; Documents under a Letter of credit; UCPDC 600; Banks obligation for payment of Letter of credit.

Deferred Payment Guarantees

Purpose of DPGs; Methods of Payment

Laws Relating to Bill Finance

Class of Bills and Laws Governing Bills; Classification of Bills; Categories of Bill Finance; Bill Finance and Legal Position of Banker

Various Types of Securities

Types of Securities; Escrow Arrangements; Trust and Retention Arrangements.

Laws Relating to Securities and Modes of Charging – I

Mortgage; Types of Mortgage; Enforcement of Mortgages

Laws Relating to Securities and Modes of Charging – II

Lien; Pledge; Hypothecation; etc.

Registration and Satisfaction of Charges

Definition of Charge; Procedure for Registration of Charge; Effect of Non-registration of Charges; Provisions of Law relating to Registration of Charges

Case Laws on Responsibility of Paying Bank

Negotiable Instruments Act and Paying Banks; Liability of Paying Banker; Payment in due course; Payment in Good Faith; Whether Payment under Mistake Recoverable

Case Laws on Responsibility of Collecting Bank

Statutory protection to Collecting Bank; Duties of Collecting Bank

MODULE C – BANKING RELATED LAWS

Recovery of Debts due to Banks and Financial Institutions Act, 1993(DRT Act)

Objective of the Act, Constitution of Tribunal, Procedure to be followed, Enforcement process
Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act (SARFAESI)

Constitutional Validity; Definitions; Regulation & Reconstruction; Enforcement of Security Interest; Central Registry; Offences & Penalties; Miscellaneous Provisions

Banking Ombudsmen Scheme

Purpose; Extent; Definitions; Establishment; Powers; Procedure for Redressal Grievance

Bankers Books Evidence Act, 1891

Applicability; Definition; Important Provisions

The Legal Services Authorities Act, 1987

Lok Adalats- Organisation; Jurisdiction; Disposal of Cases; Awards

The Consumer Protection Act, 1986 and CERSAI

Preamble, Extent & Definitions; Consumer Protection Councils; Consumer Disputes Redressal Agencies; Objectives and important provisions of Central Registry of Securitisation Asset Reconstruction and Security Interest of India

The Law of Limitation

Definition; Computation of Limitation; Important Provisions in schedule to the Limitation Act

Tax Laws

Income Tax; Commodity Transaction Tax; Service Tax

Negotiable Instruments Act, 1881

Applicability; Definition; Important Provisions

Payment & Settlements Systems Act, 2007

Applicability; Definition; Important Provisions

MODULE D – COMMERCIAL LAWS WITH REFERENCE TO BANKING OPERATIONS

Indian Contract Act, 1872

Meaning and essentials of contract; Contract of Indemnity & Rights of Indemnity Holder; Contract of Guarantee; Contract of Bailment; Contract of Pledge; Contract of Agency

The Sale of Goods Act, 1930

Features; Sale & Agreement to Sell; Conditions and Warranties; Express & Implied; Rights of Unpaid Seller

Indian Partnership Act, 1932

Definition & Types of Partnerships; Relation of partners to one another & to third Parties; Minor admitted to benefits of partnership; Dissolution of a firm; Effect of non registration; Limited liability partnerships formation, registration, rights and liabilities of partners

Definition and features of a company

Definition & Features of a Company; Distinction between Company and Partnership

The Companies Act, 1956 (Now Companies Act, 2013)

Definition, Features & Types of companies; Memorandum and Articles of Association; Doctrine of Ultra Vires, Constructive Notice, Indoor Management; Membership of Company- Acquisition, Cessation, Register, Rights & Duties of Members, Prospectus; Directors; Winding up of Companies

Foreign Exchange Management Act, 1999

Important Terms; Powers of RBI, Regulation and Management; Directorate of Enforcement

Transfer of Property Act, 1882

Sale, Mortgage of Immovable Property; Types of Mortgages; Sale with and without court intervention; Lease of Immovable Property

The Right to Information Act, 2005

Applicability; Definition; Important Provisions

Right to Information and Obligation of Public Authorities

Obligations; Procedure; Disposal; Appeal; Orders; Penalties.

The Prevention of Money Laundering Act, 2002

Obligations; Records to be Maintained; Procedure for Maintaining & Furnishing Information; Maintenance & Verifications of Records of Identity of Clients.

Information Technology Act, 2000

Definitions; Electronic Governance; Certifying Authorities; Digital Signature Certificates; Penalties; Appeal.

Legal & Regulatory Aspects of Banking

Unit - 1 : Legal Framework of Regulation of Banks

Banking means acceptance of deposits of money from the public for lending or investment. Such deposits may be repayable on demand or may be for a period of time as agreed to, by the banker and the customer, and may be repayable by cheque, draft or otherwise.

Apart from banking, banks are authorised to carry on other business as specified in Section 6 of the Banking Regulation Act.

Banks are, however, prohibited from undertaking any trading activities.

Banks are constituted as companies registered under the Companies Act, 1956, statutory corporations constituted under Special Statutes or Co-operative societies registered under the Central or State Co-operative Societies Acts. The extent of applicability of the regulatory provisions under the Banking Regulation Act and the Reserve Bank of India Act to a bank depends on the constitution of the bank.

Reserve Bank of India is the central bank of the country and the primary regulator for the banking sector.

The government has direct and indirect control over banks. It can exercise indirect control through the Reserve Bank and also act directly in appeals arising from decisions of the Reserve Bank under the various provisions of the Banking Regulation Act.

In public sector banks like the State Bank of India and its subsidiaries, nationalised banks and the regional rural banks, 50% or more of their shares are held by the Central Government. Central Government has substantial control over the management of these banks. Only certain provisions of the BR Act are applicable to these banks as indicated in that Act.

Co-operative banks operating in one state only are registered under the State Co-operative Societies Act and are subject to the control of the State Government as also the Reserve Bank.

In the case of non-banking business of the banks, they are subject to control by other regulatory agencies.

Constitution Of Bank

Banks in India fall under one of the following categories:

1. Body corporate constituted under a special statute;
2. Company registered under Companies Act, 1956 / foreign company
3. Cooperative Society registered under a central and state enactment on cooperative societies.

Reserve Bank as Central Bank

The Reserve Bank was constituted under Section 3 of RBI Act. The Central Govt holds the whole

capital of RBI.

1. Regulating the issue of bank notes
2. Keeping of reserves for ensuring monetary stability
3. Generally to operate the currency and credit system of the country to its advantage.

RBI: Regulator and Supervisor

1. Power to License
2. Power to appointment and removal of banking boards/personnel
3. Power to regulate the business of banks
4. Power to give directions
5. Power to inspect and supervise banks
6. Power regarding audit of banks

Government as a Regulator of Banks

The Reserve Bank is primary regulator of banks. But Central govt. has also been conferred extensive powers under the RBI Act and the BR Act either directly or indirectly over the banks.

Unit - 2 : Control Over Organisation Of Banks

A company wanting to commence banking business requires prior licence from the Reserve Bank.

The Reserve Bank has the discretion to reject licence or approve the licence on such conditions as it thinks fit. Before granting licence, Reserve Bank has to be satisfied by inspection or otherwise of the suitability of the company for licence.

A licence once given may also be cancelled after giving the bank an opportunity to be heard. Further, for opening new branches or shifting branches outside a city, town or village, permission of the Reserve Bank is required.

Banking companies have to have minimum capital and reserves as specified in the Banking Regulation Act. The shareholders of a banking company are entitled to dividends only after all the capitalised expenses are written off.

The commission or brokerage payable on selling shares is restricted to two and half per cent of the paid-up value of the shares.

The board of directors of a bank has to be constituted with persons having special knowledge or experience in accountancy, banking, economics, law, etc., as stipulated. The directors should not have substantial interest in other companies or firms.

The maximum period of office is limited to eight years continuously.

Authorized Capital the maximum limits of share capital which a company is authorised to have under its Memorandum.

Paid-up Capital The amount of share capital of a company is subscribed and paid-up.

Subscribed Capital The amount of share capital of a company, which is issued and subscribed.

The Reserve Bank is empowered to reconstitute the board, if the board is not properly constituted. Every banking company should have a full-time chairman (or a full-time managing director, if there is no fulltime chairman) with the specified qualifications.

The Reserve Bank has powers to remove the chairman and appoint a suitable person in his place in certain cases. The Reserve Bank also has powers to remove the directors or managerial personnel or other employees of banking companies.

The principles of corporate governance including the 'fit and proper' criteria for directors apply to banking companies as well as public sector banks.

A Temporary branch for less than 30 days in a town where a bank has an existing branch does not require permission from RBI.

Unit - 3 : Regulation Of Banking Business

The Banking Regulation Act empowers the Reserve Bank to issue directions to banking companies in public interest, in the interest of banking policy and in the interest of depositors.

Section 21 provides for the issue of directions to regulate loans and advances by banking companies. This may be done by regulating the purposes of lending, margins in respect of secured loans, rate of interest and terms and conditions of lending.

Section 35A gives wide general powers to issue directions. The Reserve Bank issues directions from time to time under Section 21 (read with Section 35 A) regulating acceptance of deposits and lending.

Under **Section 21A** of the Act, the rate of interest on loans and advances contracted between a bank and its customer is not liable to be reopened by a court of law.

Section 20 of the Act imposes restrictions on loans and advances to directors, and companies and firms in which directors are interested as director, partner, etc.

A banking company which is a scheduled bank has to maintain a certain percentage of the time and demand liabilities as cash reserve with the Reserve Bank under Section 42 of the Reserve Bank of India Act, as notified by the Reserve Bank from time to time.

Failure to do so renders the banking company liable to penalty. For non-scheduled banking companies, Section 18 of the BR Act provides for cash reserve.

Banking companies have also to maintain a certain percentage of their demand and time liabilities in liquid assets as stipulated under **Section 24** of the BR Act. These assets may be maintained to the extent and in the form and manner as notified by the Reserve Bank. Apart from this, banking companies are required to maintain such assets in India at not less than

seventy five per cent of demand and time liabilities as at the close of business of the last Friday of every quarter.

Banking companies also have to transfer to the reserve fund twenty per cent of their annual profits as disclosed in the profit and loss account.

Regulation of credit to different sectors of the economy is known as Selective Credit Control. While General Credit Controls operate on the cost and volume of credit, Selective credit controls aim at regulating the distribution or direction of bank resources to particular sectors of the economy.

Selective Credit Control seeks to influence the demand for credit by

- i. Making borrowing costly for certain purposes, which are relatively inessential
- ii. By imposing stringent conditions on lending for such purposes
- iii. By giving concessions for certain desired types of activities

The tools employed for exercising selective credit control are

- i. Minimum margins for lending against selected commodities
 - ii. Ceiling on the levels of credit
 - iii. Charging minimum rate of interest on advances against specified commodities
- Scheduled Banks

A scheduled bank is a bank included in the second schedule of the RBI Act. **Section 42(6)** of the Act. RBI may include any bank in the second schedule if it satisfies the following requirements.

- a. It has paid-up capital and reserves of an aggregate value of not less than Rs. 5 Lakhs.
- b. It satisfies the Reserve Bank that its affairs are not conducted in a manner detrimental to the interests of depositors; and

c. It is

- (1) State cooperative Bank
- (2) A company defined in section 3 of the companies act
- (3) An institution notified by central govt.

Cash Reserve : The penalty which is payable by a banking company which is scheduled bank for failure to maintain cash reserve in any week for the first time is 3% of over bank rate. For 2nd time 5% over bank rate.

Unit - 4 : Returns, Inspection, Winding Up, Mergers & Acquisitions

Every banking company has to prepare its balance sheet and profit and loss account annually as at the end of the calendar year or at the end of twelve months as on a date notified by the Central Government.

The accounts have to be audited by auditors duly qualified to be auditors of companies.

Three copies of the balance sheet, profit and loss account and the auditor's report have to be submitted as returns to the Reserve Bank and to the Registrar of Companies.

Banking companies have also to furnish other returns like return on maintenance of cash reserve, maintenance of liquid assets, etc.

The Reserve Bank is authorised to inspect or conduct, scrutiny of banking companies, their books and accounts.

The Board for Financial Supervision set up by the Reserve Bank by statutory regulations framed under the Reserve Bank of India Act supervises the affairs of banking companies.

The Government may acquire the undertakings of banking companies in certain circumstances based on a report from the Reserve Bank.

The Central Government may also order moratorium on banking companies on the application of the Reserve Bank. During moratorium, the Reserve Bank may prepare a scheme for amalgamation, which may be sanctioned by the Central Government. Such an amalgamation scheme will have overriding effect on any laws, agreements, etc.

The Reserve Bank may also apply to the High Court for winding up of a banking company when it is not able to pay its debts and also in certain other circumstances.

The Reserve Bank of India Act and the Banking Regulation Act impose certain penalties for contravention or default committed by banking companies or other persons.

Board for Financial Supervision

It is constituted by RBI. The board consists of Chairman (Governor of RBI), Vice Chairman (one of the Dy. Governor of RBI), Four directors from the Central Board. The board performs functions and exercises the powers of supervision and inspection under the RBI Act and the BR Act.

The board meets at least once in a month. Three members of whom one Chairman / vice-chairman shall form a quorum for the meeting.

Unit - 5 : Public Sector Banks and Cooperative Banks

The public sector banks, namely, State Bank and its subsidiaries, the Nationalised banks and the regional rural banks are statutory corporations (or body corporate) established under special statutes.

State Bank and its subsidiaries

State Bank and its subsidiaries, as Nationalised banks, are commercial banks engaged in the business of banking and other forms of business permissible for banking companies.

State Bank Of India was established under Section 3 of the State Bank Of India Act, 1955 for taking over the undertaking of the Imperial Bank Of India. The majority of shares are held by

Reserve Bank. Although shares are freely transferable, the Reserve Bank cannot transfer the shares if such transfer would result in reducing its holding below 50% of the issued capital. No shareholder other than Reserve Bank can exercise voting rights above 10%.

The chairman and Managing Director are appointed for a period not exceeding 5 years and are eligible for reappointment. Their services can be terminated by the Central Govt. by giving 3 months notice or notice pay in lieu thereof after consultation with the Reserve Bank.

The State Bank and its subsidiaries and the Nationalised banks also act as agents of the Reserve Bank to transact the banking business of the Central Government.

Subsidiary Banks

SBH State Bank of Hyderabad Act, 1956

SBS Saurashtra State banks(amalgamation) Ordinance, 1950

All other banks State Bank Of India (Subsidiary Banks) Act, 1959

The majority of shares are held by State Bank Of India. Shares are freely transferable as provided in Section 18 of the Act, However State Bank is not entitled to transfer the shares if such transfer would result in reducing its shareholding to less than 50%.

Management of Subsidiary Bank

The Board consists of Chairman of the State Bank (ex-officio chairman), Managing Director and other directors. The state bank appoints Managing Director after consulting the board of subsidiary bank and with the approval of Reserve Bank.

Business of Subsidiary Bank

A subsidiary bank has to act as a agent of State Bank under Section 36 of the SBI Subsidiary Act.

Regional Rural Banks

They were first set up in 1975 under the RRB Ordinance 1975. The ordinance was later replaced by RRB Act, 1976. Section 3 of the RRB Act authorised Central Govt. to establish RRB by notification in the official gazette at the request of Sponsor Bank.

Issued Capital ratio (50:35:15) (Central Govt:SponsorBank:state govt.)

The regional rural banks are also commercial banks but operating in limited local areas to cater to rural industries, trade, farmers, artisans, etc.

Nationalised Banks

The Bank Nationalisation Act 1970 and Banking companies (Acquisition and Transfer of Undertaking) Act 1980. Transferred the undertaking of existing private banks to the corresponding new banks popularly knows as Nationalised banks.

Paid-up Capital – Originally entire Paidup Capital was held by Central govt., some of these banks have recently made public issue of shares, but the Central Govt. still holds majority of shares in all these banks. The Shares other than those held by the Central Govt. are freely transferrable.

SBI Act 4 Divide capital into shares of Rs.10 each instead of Rs.100

Restriction on voting rights (being 200 shares only) was modified upto 10 % of the Issued Capital and restriction on dividend deleted BC(A&T) 3 Authorised Capital of Rs.1,500 crore divided into shares of Rs.10 each.

The Banking Companies (Acquisition and Transfer of Undertakings)

All public sector banks are governed by their respective, statutes and the rules, regulations or schemes made under these statutes. In addition to this, these banks are also governed by certain provisions of the Banking Regulation Act as stipulated in Section 51 of that Act. The provisions of the Reserve Bank of India Act are also applicable to them.

Cooperative Banks

A Cooperative Bank is a cooperative society engaged in the business of banking.

The co-operative banks, functioning in one state only are registered under the state laws on co-operative societies.

The co-operative banks operating in more than one state, are registered under the multi-state Co-operative Societies Act. The Banking Regulation Act is applicable to co-operative banks as provided in Section 56 of that Act with certain modifications. For this purpose, a co-operative bank means a state co-operative bank, Central co-operative bank and a primary co-operative bank.

While, the constitution of the bank is governed by the co-operative laws, the business of banking undertaken by them is regulated by the Reserve Bank under the BR Act.

a. If a cooperative bank operates in only one state the state law applies and in case cooperative banks operates in more than one state then the Central Act applies.

b. A cooperative bank means a state cooperative bank, central cooperative bank and a primary cooperative bank.

A cooperative bank shall not grant any loans and advances as under :

a. Loans and advances against its own shares.

b. Unsecured loans or advances to any of its directors

c. Directors interest

d. Unsecured loans and advances in which the Chairman managing agent etc.

Unit – 6 : Case Laws on Responsibility of Paying Bank

Negotiable Instruments Act, 1881

Section	Description
31	The banker is bound to pay the cheques drawn by customer i,e, to honor his customer's mandate
10,85,89,128	Grants protection to paying banker
6	Cheque is defined as bill of exchange. Protection to Paying Banker if payment is in due course
10	Payment In Due Course
85	Grants protection to a Paying banker, but it is not absolute Banker can seek protection under section 85 only where payment has been made to the holder, his servant or his agent, i.e. payment must be made in due course. Payment to a person who had nothing to do with the firm or a payment to an agent of the bank would not be payment in due course.
89	Payment of instrument on which alteration is not apparent The material alteration on both the cheques are visible and since they were not authenticated by the drawers initials, the payment made by the bank was not according to apparent tenor of the instrument and as such bank cannot claim protection under section 89 When the customers Signature on the cheque is forged there is no mandate to the bank to pay. As such banker is not entitled to debit the customers account on such forged cheque In a Joint account if one of the signature is forged then there is no mandate and banker cannot make payment.
244A	Indian companies Act : An official liquidator was required to open an account with a bank and pay therein moneys received by him in the course of the liquidation Paying bank was bound to keep an ultraviolet ray lamp and to scrutinize the cheque under the said lamp.

Unit – 7 : Case Laws on Responsibility of Collecting Bank

Statutory Protection to Collecting Bank

Section 131 of the NI Act grants protection to a collecting banker

1. Non-liability of a banker receiving payment of cheque
2. Conditions for protection

Duties of Collecting Bank

1. Duty to open account with references
2. Duty to follow up the reference where the referee is not known
3. Duty to Ensure Crossing : It is duty of the banker to ensure that the cheque is crossed specifically to himself and if the cheque is crossed to some other banker they should refuse to collect it. Similarly where the cheque is crossed to a specific account then crediting the same to another account without necessary enquiry's would make him liable on the grounds of negligence.
4. Duty to verify the instruments / any apparent defect in the Instruments
5. Duty to take into account the state of customers account
6. Negligence of Collecting Bank in Collecting Cheques Payable to Third parties.

Unit – 8 : Different Types of Borrowers

Minor

A minor is a person who has not attained the age of 18 years. A person will become major at the age of 18 whether guardian is natural or appointed by a court of law.

Guardians: There can be three types of guardians.

- Natural guardians like father, mother.
- Testamentary Guardian: A Guardian appointed by Will (Vasiyat). Natural guardian may appoint somebody to act as guardian after his or her death through will. But such guardian will come into picture only on the death of natural guardian (in case of Hindus on the death of father as well as mother).
- Legal guardians: A Guardian appointed by Court. If neither natural or testamentary guardian then appointed by court.

When guardian of a Hindu minor ceases to be a Hindu or he becomes a hermit or sanyasi he ceases to be natural guardian.

As per section 11 of the Indian Contract Act, 1872 a minor is not competent to enter into a contract and *the* contract entered into by him is void ab-initio.

Types of Borrowers

- Individual
- Partnership Firm
- Hindu Undivided Family : Joint Hindu Family is governed basically by two schools of thought. They are Dayabhag and Mitakshara schools
- Companies
- Statutory Corporations
- Trusts and Cooperative Societies

Accounts of Visually Challenged (Blind) Persons

- A visually challenged person is competent to the contract like any other person.
- Signature or thumb impression of the blind person should be attested by an independent witness to the effect that all terms and conditions were properly explained to the blind person in his presence.
- Cash deposit and withdrawal by blind person should be handled by the officer of the bank.
- RBI has advised banks to ensure that all the banking facilities such as cheque book facility including third party cheques, ATM facility, Net banking facility, locker facility, retail loans, credit cards etc. are invariably offered to the visually challenged without any discrimination.

Accounts of Illiterate Persons

- An illiterate person is competent to contract like any other person.
- Cheque book is not issued to illiterate depositor for cash payments.
- Cheque book can be issued for making statutory payments, post dated cheques for repayment of instalments of loan. In such cases, the cheques will be crossed account payee and thumb impression of the illiterate depositor will be verified on such cheques at the time of issue of cheque book by competent authority of the bank.

Joint accounts

- Either or Survivor (E or S): It means anyone can operate the account till both are alive. After the death of either of them, the bank can pay the balance to the survivor without any formality.
- To be operated jointly: Account will be operated by both jointly till both are alive and, if one of the two expires, the bank would pay the final balance to the survivor, along with all the legal heirs of the deceased.
- Jointly or by Survivors: Account can be operated by both / all the person jointly during their lifetime and, in the event of death of any one, the balance is payable to the surviving persons jointly

- Former or Survivor: in such accounts, till the first named person is alive, the second named person has no right to withdraw/operate the account. After the death of the first named person, the payment will be made to second named person.

Partnership Firms

- Partnership is governed by Indian Partnership Act 1932.
- Partnership is created by agreement.
- Partnership is created to run a business for profit.
- Minimum number of partners is 2 and maximum can be 10 for banking business and 20 for other business.
- Who can become a partner: An individual, partnership firm, limited company.
- Who cannot become a partner: Minor, insolvent, insane cannot become partner because they are not competent to contract.
- Though a minor cannot become partner, he can be admitted for sharing the benefits.
- As per Supreme Court Judgement, HUF cannot become partner as HUF cannot be liable for action of others.
- Trust cannot become partner because partnership is established for business.
- A partnership firm is registered with registrar of firms.
- Registration of a partnership firm is optional. It is not necessary that the firm be registered. But an unregistered firm can not file suit against others for recovery of its debt whereas others can file suit against the firm.
- Liability of a partner: Every partner is liable, jointly with all other partners and also personally, for all acts of the firm while he is a partner. His liability is unlimited.
- Operational Authority: In Partnership accounts operation authority is given by all partners.
- Any change in the operational authority is also with the consent of all partners.
- Partner cannot delegate authority.
- Every partner including a sleeping partner has authority to stop payment of a cheque issued by another partner of the firm but revocation can be done only as per operational authority.
- Death of a partner: On the death of a partner, the partnership is dissolved.
- The cheques signed by the deceased, insane or insolvent partner will be paid after obtaining consent of surviving partners.
- If the account is in credit, operations are allowed for winding up of the firm.
- If the account is in debit, operations in the account should be stopped to retain liability of the deceased /insolvent partner or his/her estate and to avoid operations of the Clayton's rule.

Limited Companies

- A limited company is an artificial person with perpetual succession incorporated under the Companies Act.
- Company is a legal person, created through process of incorporation for which Registrar of Companies issues Certificate of Incorporation.
- Shareholders are owners of the Company and directors are agents of the company to manage company.
- A limited company may be private limited or public limited.
- Members in a private limited company: minimum 2; maximum excluding employees can be 50.
- Members in a public limited company: minimum 7 and there is no ceiling on maximum number.
- Number of Directors: A private limited company should have minimum 2 directors whereas a public limited company should have minimum 3 directors. No limit on maximum number of directors. In a public limited company, if directors are more than 12, permission from central govt required.
- Public company: When minimum 51% shares with government.
- Documents for opening the account: Memorandum of Association, Articles of Association, Certificate of Incorporation, Certificate of Commencement of Business (only for public limited companies) and Board Resolution. No introduction is required as Certificate of Incorporation is enough introduction. However, KYC norms to be applied on all persons authorized to operate the account.
- Memorandum of Association: It contains name of the Company, its authorised capital, registered office and liability of shareholders, objects of the company etc.
- Ultra Vires: Anything done by the directors beyond the objects stated in the memorandum of association is called *ultravires*
- The directors can not delegate their authority to any other person.
- In case a director dies, the cheques signed by him presented for payment can be paid if these are dated prior to his death.
- If a director stops authority of other director it is of no use. Bank will allow operations as per Board Resolution.
- Common Seal of the Company is to be affixed on documents as per Articles of Association or Board Resolution.
- Cheque favouring company should not be credited to the personal account of the director. Such cheques should not be paid in cash. These should be credited to the account of company only.

Hindu Undivided Family (HUF) : HUF is neither a legal person nor a natural person. It is not created by agreement_ It is not incorporated under any Act. It is from a common ancestor and membership is by birth or adoption.

- The eldest member of family is the Karta and others are co parceners. Daughter can also be Karta.
- Senioremost member continues to be Karta even when he/she lives outside India.
- Operational authority to operate the account is with Karta
- Karts can appoint any other coparcener or third party to conduct business of HUF and/or operate the account.
- Co parcener can not stop payment of the cheque unless he is authorized to operate the account.
- Karta is personally liable.
- The liability of a co parcener is limited up to his share in the firm. He is not liable personally.
- HUF can not be partner as per Supreme Court Judgement.

Trusts :

- Trusts can be of two types - private trusts where beneficiaries are certain specified individuals or groups and public trusts where beneficiary is public at large.
- Private trusts are governed by Indian Trust Act, 1882, public trusts are governed by Public Trusts Act of the concerned state.
- The docuinent creating a trust is called 'trust deed'. Public Trusts are registered with the Charity Commissioner.
- The operation and other aspects of the bank account are to be conducted as per the Trust Deed. If trust deed is silent about operational authority, all trustees have to operate the account jointly.
- Stop- payment will be as per operational authority. Revocation of stop payment as per operational authority.
- Trustees can't delegate their powers to an outsider even by mutual consent.
- Loan to a trust Loan can be allowed provided it is permitted by Trust Deed and it is for the purposes of Trust.
- On the death of a trustee, the trust property is passed on to the next trustee while in the event of death of sole trustee or last surviving trustee, the court can appoint a trustee.
- Death or insolvency of a trustee does not affect the trust property and the bank can pay cheques issued by the deceased trustee prior to his death.

Clubs and Societies

- For opening account of Clubs and Societies bank will require Certificate of Registration, Bye laws of the Society, and resolution of Managing Committee or Executive Committee.
- Operational Authority will be as per resolution of Managing Committee.
- Change in Operational authority as per resolution of Managing Committee.
- Stop payment and revocation of stop payment as per Operational Authority.
- Cheque signed by the secretary or treasurer or president of society and presented after his death can be paid if otherwise in order.

Unit – 9 : Types of Credit Facilities

Types of Credit Facilities

Fund Based Credit Facilities

- Cash Credits / Overdrafts – Cash credit /Overdraft is an arrangement by which a banker allows his customer to borrow money up to a certain limit.
- Term Loans -
- Bill Finance

Non-Fund based Credit Facilities

- Bank Guarantee
- Letter of Credit Facility

Rule in Clayton’s Case

Discharge of debit items by subsequent credits was enunciated in a case called Clayton’s case.

Unit – 10 : Indemnities

Indian Contract Act

Section	Description
124	Contract of Indemnity : A contract by which one party promises to save the other from loss caused by him by the conduct of the promisor himself, or by the conduct

	of any other person. Person giving the promise is called the Indemnifier and the person whom the promise is made is called the Indemnified or Indemnity Holder .
125	Rights of an Indemnity Holder when sued : The promisee in a contract of Indemnity, acting within the scope of his authority, is entitled to recover from the promisor – All damages which he may be compelled to pay in any suit, all costs, all sums. Above Rights of an Indemnify Holder is subject to: <ul style="list-style-type: none">• His acting within the scope of his authority• He does not contravene the specific directions of the promisor

Unit – 11 : Bank Guarantees

Guarantee is defined in section 126 of Indian Contract Act.

- There are three parties to a contract of guarantee namely principal debtor, creditor and surety.
- The liability under guarantee is a contingent liability and surety is liable on default by the principal debtor.
- Once there is a default, the liability of the surety is co extensive with the principal debtor. That is he is equally liable as principal debtor.
- When a guarantor makes payment on being called by the creditor, he becomes entitled to all rights and remedies which creditor had against the principal debtor. This right of the surety is called Right of Subrogation.
- When guarantee is issued for a single transaction it is called specific guarantee and when it is issued for series of transactions it is called continuing guarantee.
- Deferred payment guarantee is issued when the applicant purchases machine etc on instalment basis.
- Deferred payment Guarantee is just like financial guarantee.
- The difference between Deferred payment guarantee and term loan is due to outlay of funds.

Various Types of Bank Guarantees

☑ **Financial Guarantee:** These are guarantees issued by banks on behalf of the customers, in lieu of the customer being required to deposit cash security or earnest money.

- **Performance Guarantee:** These are guarantees issued by banks on behalf of its customers whereby the bank assures a third party that the customer will perform the

contract entered into by the customer as per the conditions stipulated in the contract, failing which bank will compensate the third party up to which the amount specified in the guarantee.

- **Deferred Payment Guarantee:** Under this type of the guarantee, the banker guarantees payment of installments over a period of time. This type of the guarantee is required when the customer on credit purchases goods/machinery and payment is to be made in installments on specified dates. A deferred payment guarantee constitutes an undertaking on the part of the bank to make payment of deferred installments to the seller (beneficiary) on due dates in the event of default by the customer (buyer).
- **Statutory Guarantee:** These are guarantees issued by banks favoring Courts and other statutory authorities guaranteeing that the customer will honor his commitments imposed on under law, failing which bank will compensate to the extent of the amount guaranteed.

Issuance of Bank Guarantee – Precautions to be taken

The liability of the bank under a guarantee depends on two fundamental criteria's, the amount guaranteed and the period of the guarantee.

- Amount Guaranteed
- Period of Guaranteed
- Claim period in a guarantee: The claim period is usually few months more than the validity period of the guarantee. *If a validity period, then the beneficiary can at least of invoke the same on the next day.*

Difference between Indemnity and Guarantee

Contract of Indemnity	Contract of Guarantee
There are 2 parties (Indemnifier and Indemnified)	There are 3 parties (Debtor, Creditor/Beneficiary, Surety)
Risk is contingent	Liability is subsisting
The Indemnifier is required to make good the loss as soon as it occurs	The Surety's liability is secondary and the principal debtor is primarily liable
There are only two parties to a contract of indemnity	There are at least three parties in the contract of Guarantee
An indemnity is for the reimbursement of a loss	Guarantee is only security to the creditor

Unit – 12 : Letter Of Credit

A Letter of credit is a form of guarantee given by banks on behalf of its customer.

Parties to a Letter Of Credit

- **Applicant-Buyer-Importer-Opener** : He is the person who applies to bank for Letter of Credit
- **Issuing Bank** : The bank which opens the Letter Of Credit on the request of applicant/Buyer.
- **Beneficiary-Exporter-Seller** : The person who is entitled to receive the benefit under Letter of Credit.
- **Advising Bank / Notifying Bank** : The bank in the Beneficiary/Exporters Country through which the letter of credit is advised to the beneficiary.
- **Negotiating Bank** : The bank in the Beneficiary/Exporters Country which negotiate the bills (i.e. make payments on the bills drawn by the seller and accepts the documents.) If the LC specifies a bank then that bank is the Negotiating Bank and is also called the **Nominated Bank / Paying Bank**. If the LC however does not specify the bank, than any bank can be negotiating bank.
- **Confirming Bank** : The advising bank is only required to advise the credit to the beneficiary. If however in addition to advising the credit the advising bank were to confirm it, then the advising bank will also become confirming Bank.
- **Reimbursing Bank** : It is the bank which is appointed by the Issuing Bank to make reimbursement to the Negotiating, Paying or confirming Bank.

Types of Letter of Credit (175)

- **Acceptance Credit** : Ordinary Letters of Credits are usually sight credits, i.e. immediate payment should be made of the bills drawn by the beneficiary. Such letters of credit under which usance bills can be drawn is an Acceptance Credit or Time Credit.
- **Revocable Credit** : A revocable LC is a credit that can be amended / cancelled by the issuing bank without prior notice to the beneficiary. However, if any negotiating bank has acted on the credit prior to receipt of the notice of amendment/cancellation then the issuing bank is bound to reimburse the negotiating bank.
- **Irrevocable Credit** : is a credit that can neither be amended nor cancelled without the consent of the beneficiary.
- **Confirmed Credit** : If a bank advising the credit to beneficiary adds its own confirmation to the credit, then the credit would be called a confirmed credit. Only irrevocable credit can be confirmed

- **With Recourse and without Recourse Credits** : when beneficiary draws a bill under a LC he is liable if the drawee fails to make payment. These kind of bills are called recourse LCs. The beneficiary can exclude liability by adding to the bill following words “without recourse”
- **Transferable Credits** : As such the rights under an LC cannot be transferred and is vested in the beneficiary. A transferable credit is one under which the beneficiary can transfer his rights to third parties. Unless specifically stated an LC is not transferable.
- **Back-To-Back Credits** : The beneficiary in whose favour an LC is issued uses the same to obtain another credit from his (beneficiary's) bank in favor of the supplier. There are three banks involved in this type of LC. (Issuing Bank, Advising Bank, Third bank which issued an ancillary credit against the security of the original credit.
- **Anticipatory Letter of Credit**
- **Red Clause Letter of credit** - In a usual LC transaction the beneficiary will be entitled to receive payment only on his handing over the documents and bills drawn under the LC to the negotiating bank. However in certain credits the beneficiary will be entitled to get and advance of the price. These credits contains a “Red Clause” which authorises an intermediary bank to make an advance to the beneficiary before shipment.
- **Green Clause Letter Of Credits** –This is refinement of the “Red Clause”. This type of LC not only permits preshipment advance but also permits advances to the exporter to cover storage at the port of shipment. The Red Clause and Green Clause credit are called Anticipatory Credits.
- **Revolving Letter of Credit** : In this type of credit though amount is fixed, it can be renewed as soon as the earlier bills have been paid.

Documents Under a Letter Of Credit

1. **Bill of Exchange** : In a LC transaction the rights to draw a bill is conferred only on the beneficiary. The bill amount should be within the limit fixed in the Letter of credit.
2. **Invoice** : All the details mentioned in the invoice must tally with those mentioned in the Letter of credit.

Revocable Credit

Where the credit terms can be unilaterally altered or cancelled by the issuing bank.

Revolving Credit

Where the amount is fixed but can be utilised again and again as and when the earlier bills drawn are paid.

Transferable Credit

Where rights under an LC can be transferred to third parties.

Red Clause Credit

Where the beneficiary is entitled to advance payment before production of documents

Green Clause Credit

Credits where in addition to advance payment, the beneficiary is entitled to payment of storage / warehousing charges.

Unit – 13 : Deferred Payment Guarantee

Deferred Payment: Payment by installments of the price of goods or service without interest.

Deferred Payment Guarantee: A is an unconditional and irrevocable guarantee issued by the bank assuring payment in installments and interest on due dates. DPGs are usually insisted upon when capital goods are imported and seller/exporter requires an additional assurance that the instalment payment allowed by him to the buyer/importer is met.

Unit – 14 : Laws Relating to Bill Finance

Classification of Bills

- **Inland Bills** : Bills drawn or made in India and made payable in, or drawn upon any person resident in India. It may be made payable in a foreign country.
 - **Foreign Bills**: *Bills drawn outside India* and made payable in or drawn upon any person resident in any country outside India / resident in India
 - **Demand Bills**: Section 19 : It is an instrument payable on demand and no time for payment is specified therein. Demand Bill is otherwise called sight bill.
 - **Usance Bills**: Bill Payable after sight : a bill payable otherwise than on demand. It specifies normally a time for payment of the value it represents.
 - **Clean Bills**: is a bill of exchange drawn as per requirements of NI Act and is not supported by documents of title of goods.
 - **Documentary Bills**: A bill of exchange accompanying documents of title of goods. These bills are drawn to claim price of goods supplied.
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- *Bills drawn with an instruction to deliver against payment/D.P. Bills - In a transaction of supply of goods, a seller draws a bill on the buyer and sends the same to his banker along with document of title of goods like bill of lading etc. The seller instructs the banker to deliver the bill and documents of title of goods only when buyer pays the price of goods.*
- *Bills drawn with instruction to deliver against acceptance / D.A.Bills – An usance bill supported by document of title of goods bearing an instruction that the documents can be delivered, if the buyer accept the bill of exchange*

Various Categories Of Bill Finance

- Bill Purchase facility is granted in the case of demand bills
- Bill Discount is granted in the case of usance bills
- Advance against Bills for Collection: When the bank advances against the bills, which are in course of collection, the facility is known as advance against bills for collection.

NI Act 1881

Section	Description
5	Bill of exchange is defined as “ instrument in writing containing an unconditional order signed by maker directing a certain person to pay certain sum of money only to, or to the order of a certain person or to the bearer thereof
7	Drawer, Drawee and Payee
8	Holder of Bill of exchange means a person entitled in his name to possess the bill and recover the amount presented by Bill.
9	Holder in Due Course means any person who for consideration become the possessor of the bill
10	Payment in Due Course means payment in accordance with tenor of the bill of exchange to the holder or holder in due course in good faith and without negligence
11	Inland bills
12	Foreign Bills
14	Negotiation : When a bill is transferred to any person so as to entitle him to claim the amount represented by bill, then such transfer is called Negotiation
15	Endorsement: If the holder of instrument signs the bill of exchange for the purpose of transferring it, such signing is called Endorsement.
19	Demand Bills
30	Liability of Drawer
32	Liability of Acceptor/Drawee of Bill
35	Liability of Endorser

79	Interest rate specified
80	Interest when no rate is specified

Unit – 15 : Various Types Of Securities

The requisites of a good and acceptable security are as follows:

- The borrower should have a good title to the security.
- It should be easily and freely transferable.
- It should not have any encumbrance or liability for, e.g., partly paid shares.
- It should be easily marketable.
- It should not be liable to wide price fluctuations.
- Its value should be easily ascertainable.
- Its storing should not be difficult.
- It should be durable.
- It should be easily transportable.

Various Kinds of Securities

- Land/Real Estate
- Stocks and Shares
- Debentures
- Goods
- Trust Receipts
- Life Policies
- Gold Loan
- Book Debts
- Fixed Deposits
- Supply Bills
- Vehicle Financing

Unit – 16 : Law Relating to Securities and Modes of Charge-I

Mortgage

Section 58 of the Transfer of Property Act, 1882 defines “ A mortgage is the transfer of interest in specific immoveable property, for the purpose of securing the payment of money advanced or to be advanced by way of loan, on existing of future debt or the performance of an engagement which may give rise to a pecuniary liability”

1. Simple Mortgage: Section 58(B)

- The mortgagee has no power to sale without Court Intervention
- No right to get any payments out of the rents
- Not in possession of the property
- Registration is mandatory.

2. Mortgage by conditional sale : 58 (c)

- The sale is ostensible and not real
- If the money is not paid on the agreed date, the ostensible sale will become absolute upon the mortgagor applying to the court and getting a decree in his favour.
- The mortgagee can sue for foreclosure, but not for sale of the property.
- There is no personal covenant for repayment of the debt and therefore bankers do not prefer this type of the mortgage.

3. Usufructuary Mortgage: 58(d)

- The mortgagee is put in possession of the mortgaged property. Here by possession means legal possession not a physical possession.
- The mortgagee has the right to received rents and profits accruing from the property.
- He mortgagee cannot sue the mortgagor for repayment of the debt., sale or foreclosure of the mortgaged property.
- If the mortgagor fails to bring a suit for redemption within 30 years, the mortgagee becomes absolute owner of the property.
- Banker do not prefer this form of mortgage for the following reasons
- There is no personal covenant to repay the debt.
- It will take very long time to recovery money through this process

4. English Mortgage : 58(e)

- It provides personal covenant
- There is an absolute transfer of the property in favour of the mortgagee. Property shall be reconveyed to the mortgagor in the event of repayment of mortgage money.
- The mortgagee can sue the mortgagor for the recovery of the money.

5. Mortgage by deposit of title deeds / Equitable Mortgage 58(f)

- Where a person in any of the towns notified by the govt. concerned may, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds.

6. Anomalous Mortgage – 58(g)

It is combination of two mortgages:

- Simple and usufructuary mortgage
- usufructuary mortgage accompanied by conditional sale

Unit – 17 : Law Relating to Securities and Modes of Charge-II

Pledge
Mortgage
Hypothecation
Banker's Lien
Set-Off

Pledge	Mortgage
Pledge required only a limited interest in the property and ownership remains with the right of pledger.	Here the legal ownership passes to mortgagee. Of course subject to the mortgagor to redeem the property
The Pawnee has "special property" in the goods decree of pledged	The mortgage as a rule, takes decree of a Court of Law before having recourse against the property mortgaged.
Pawnee has no right to foreclosure	In certain cases, the mortgagee can foreclose the property.

- Pawnor – The person whose goods are bailed
- Pawnee – The person who takes the goods for security
- Pledge means bailment of goods for the purpose of securing a payment of debt or an obligation.
- A valid pledge can be created by owner of goods or a mercantile agent
- A constructive pledge involves only delivery of keys of the warehouse.
- Under the Contract of pledge the Pawnee can sell the goods pledged after notice or retain the goods and file a suit for recovery of debt.

Hypothecation	Mortgage
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The mortgage of moveable property is called Hypothecation	Mortgage relates to immoveable property
There is only obligation to repay the money and no transfer of interest	There is transfer of interest.

Unit – 18 : Registration And Satisfaction Of Charges

Charge is used to mean any form of security for debt.

Types of Charges

- i. Fixed Charge – is also called Specific Charge. It extends over a specific property.
- ii. Floating Charge – means a charge
 - that floats over the present and future property of the company
 - that does not restrict the company from assigning the property subject to third persons, whether by way of sale or security.
 - that on happening of an event or contingency crystallises as a fixed charge.

Procedure for Registration Of Charge

Effect of Non-Registration Of Charges

Section 125 of the Companies Act provides that the charge created by the company over the properties, if not registered would not be valid against the liquidator and any creditor of the company.

Unit – 19 : Introduction to SARFAESI Act, 2002

1. Banks and Financial institutions lend money by obtaining security, except for the category of clean loans. The security obtained is to act as a protection for the money advanced and in the case of need, the money can be realised by the sale of securities.
2. The lender's rights over the securities, both moveable and immoveable, for realisation of the amount advanced, were limited and less effective since they were required to take help of the legal system which was taking unduly long time to complete prior to the passing of the

SARFAESI Act, 2002. This Act introduced major changes in the legal framework for the recovery of dues by laying hands on the securities.

3. The Act is a major step in financial sector reforms. It has brought a legal framework for the following important activities in the credit market:

(a) Securitisation of financial assets.

(b) Reconstruction of financial assets.

(c) Recognition of any 'interest' created in the security for due repayment of a loan as a 'security interest', irrespective of its form and nature but when it is not in the possession of the creditor.

(d) Power to enforce such a security for the realisation of money due to banks and the financial institutes in the event of a default, without the intervention of the Courts.

(e) Enabling provisions for the setting up a central registry for the purpose of registration of transactions of securitisation, reconstruction and the creation of the security interest.

4. The Act extends to whole of India including the State of Jammu & Kashmir. It is effective from 21 June, 2002. The Act is applicable also to housing finance companies whose names are notified by the Central Government for such applicability.

5. The provisions of the Act, relating to enforcement of the security interest, applies to cases in which the security interests are created for due repayment of financial assistance. The Act has presupposed a simple thing, that there is an obligation on the part of the borrowers to repay loans and if they are unable to repay, then the securities for the loans are liable to be sold for the recovery of loans. The Act has retrospective application, i.e., it applies for loans and securities created prior to the Act coming into operation of the Act.

Unit – 20 : Definitions at SARFAESI ACT, 2002

1. Preamble – An act to regulate Securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto

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2. Appellate Tribunal – Any person aggrieved by the order passed by DRT can file an appeal to the authority called as Appellate Tribunal.
 3. Asset Reconstruction -
 4. Bank – All the banking companies, Nationalised banks, Cooperative banks and RRBs.
 5. Board – SEBI under SEBI Act 1992.
 6. Borrower – granted financial assistance, given guarantee, has
 7. Central Registry – All the transactions of asset Securitisation, reconstruction as well as transactions of creating security interest will have to be registered with this authority.
 8. Debt Recovery Tribunal – these tribunals deal with the cases of recovery of debts. Above Rs. 10 Lakh due to banks and financial institutions.
 9. Default
 10. Financial Assistance
 11. Financial Asset - a claim to any debt or receivables and includes :
 - a. A claim to any debt or receivables or part thereof whether secured or unsecured, or
 - b. Any debt or receivable secured by mortgage of or charge on immovable property or
 - c. A mortgage, charge, hypothecation or pledge of moveable property, or
 - d. Any right of interest in the security, whether full or part, securing debt, or
 12. Financial Institution
 13. Hypothecation
 14. Non-Performing Asset
 15. Originator
 16. Obligor – Borrower or any other person liable to pay to the bank
 17. Property
 18. Qualified Institutional Buyer
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19. Reconstruction Company

20. Scheme

21. Securitisation

22. Securitisation Company : The minimum capital requirement is Rs.200 Crore at the time of registration, and these companies are required to maintain minimum capital adequacy ratio of 15% of total asset acquired or Rs.100 crore whichever is less. It is company registered under companies act 1956 for the purpose of securitisation. The company also needs registration with RBI.

23. Security Agreement means an agreement, instrument or any other document under which security interest is created.

24. Secured Asset means property on which security interest is created. The powers given by SARFAESI Act for enforcement of securities are against secured assets only.

25. Secured Creditor

26. Secured Debt means a debt which is secured by any security interest.

27. Secured Interest – Any right, title and interest of any kind whatsoever upon the property created in favour of any secured creditor is called as secured Interest.

28. Security Receipt

29. **Sponsor** is a person holding not less than 10% of the paid up equity capital of securitisation company.

1. When any bank or financial institutions creates a charge against property, with which authority the transaction will have to be registered under the SARFAESI Act, 2002 – With the Central Registry

2. When the provisions of SARFAESI Act, 2002 can be invoked for proceeding against the charged property – When there is default in repayment and the bank declares the account as NPA.

3. Acquisition of financial asset from the originator is the main function of securitisation company.
4. If the borrower does not pay within 60 days after notice by the secured creditor the creditor can take possession of the security.
5. Enforcement of SARFAESI Act only if security is not in possession of the bank and financial institution.

Unit – 21 : Regulation of Securitisation and Reconstruction of Financial Assets of Banks and Financial Institutions

Registration of Securitisation Company Or Reconstruction Company

- can commence or carry business if

1. Obtain certification of registration from RBI
2. It has the owned funds not less than 2 Crores

Cancellation of Certificate of Incorporation

1. The company ceases to carry on the business
2. The company ceases to receive or hold any investment from a qualified institutional buyer.
3. The company fails to comply with any of the conditions subject to which the certificate of registration was granted
4. Fails to comply with RBI directions.
5. Fails to maintain accounts in accordance with directions issued by RBI.
6. Fails to give accounts and documents to RBI for inspection.

Asset Reconstruction means acquisition of any right or interest of any bank of financial institution in any financial asset for the purpose of realisation.

Securitisation Company needs registration from RBI for commencement of business.

Right of acquisition of financial asset by Securitisation Company/RC is subject to the prior agreements or contracts about the asset. (False)

Acquisition of financial asset by Securitisation Company/RC is with the liability also over such asset. (False)

The four documents involved in the Securitisation Transaction

Offer Document – Full details of financial asset, loan details of bank etc.

Debenture – A debenture for payment of consideration to be paid to the bank or financial institution for acquisition asset from it.

Agreement – It is with originator to continue to service the assets.

Security Receipt – It is in favour of investors.

Any direction issued by the RBI under SARFAESI Act has Statutory effect and is binding on the parties concerned.

After application of SARFAESI Act existing companies have to get registered within six months from commencement of the Act

Unit – 22 : Enforcement of Security Interest

When Immoveable property is obtained as security by way of **Mortgage**, for its sale and realization of money **court intervention is required**. Similarly in case of moveable property , except the pledged security, court intervention is required.

The **SARFAESI Act** empowers bank and financial institutions to enforce securities in the event of default of borrower without intervention of either civil court or the DRT. Manner and Effect of Takeover of Management

No Compensation to the directors for loss of office

Right to Prefer Application to DRT

Any person, including borrower, aggrieved by the any of the measures taken by the SC or his authorised officer for taking possession of the security may apply to the DRT with prescribed fees within **45 Days**.

If application by borrower, he has to deposit 50% of the amount claimed in the notice under Section 13(2) of the SARFAESI Act.

The DRT has to dispose of the application within **60 Days**. If not possible, then DRT has to record reasons for delay but such delay should not be beyond 4 Months. If any such application is not disposed within 4 Months, the aggrieved party can prefer an application to the Appellate Tribunal for seeking early disposal of the application.

Appeal to Appellate Authority

Any person aggrieved by any order by the DRT under can prefer appeal along with the prescribed fees to the Appellate Tribunal **within 30 Days** from the date of the receipt of the order of the DRT. Different fees for borrower's appeal and appeal by any other than borrower. The borrower has to deposit 50% of the debt claimed by the SC. The Tribunal has power to reduce this amount up to 25%.

Right of Borrower for Compensation and Costs

1. If the DRT /AT as the case may be, on the appeal holds that

The possession of secured asset by the SC is not in accordance with the provisions of the Acts or Rules

The SC should return such secured asset to the concerned borrower, with compensation and cost as may be determined by DRT/AT.

2. No pecuniary limit is fixed by the Act for the Appellate Jurisdiction.

If any Person contravenes or attempts to contravenes provisions of the SARFAESI Act or rules there under he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

Section 12 : RBI is statutorily empowered to issue directions to the SC/RC. If any such company fails to comply with any of the directions issued by the RBI then such company is punishable with fine not exceeding 5 Lakh rupees for the default. In case of further continuation of the offence additional fine is up to Rs. 10 thousand per day of default can be imposed.

Section 31 : Exclusions of possessory securities to which act is NOT APPLICABLE

1. A Lien on any goods, money or security given by or under the Indian Contract Act, 1872.
2. A pledge of moveable within meaning of Section 172 of the Indian Contract Act, 1872.
3. Any conditional sale, hire-purchase or lease or any other contract in which security interest has been created.

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4. Any rights of unpaid seller.
 5. Any security interest for securing repayment of any financial asset not exceeding Rs. 1 Lakh rupees.
 6. Any security interest created on agricultural land.

Section 20, 21 to 27 that provide for registration of security interest created, satisfaction of charge created.

Unit – 23 : Central Registry

Besides the **SARFAESI Act** following other laws require registration of charge created in the property.

1. Registration Act, 1908
2. Companies Act, 1956
3. Merchant Shipping Act, 1958
4. Patents Act, 1970
5. Designs Act, 2000

A record shall be maintained at the central register at the head office of the central register in which transactions relating to

1. Securitisation of Financial Assets
2. Reconstruction of Financial Assets
3. Creation of security interests shall be maintained.

Under the SARFAESI act filing of details of transactions of securitisation, reconstruction and creation of security interest is required to be filed with the Central Register is 30 days after the date after the date of transaction or creation of security.

Modification also have to be filled within 30 days

Satisfaction of Charge 30 days

Unit – 24 : Offences and Penalties

OFFENCES

If any person:

1. contravenes, or
2. attempts to contravene, or
3. abets the contravention of the provisions of the SARFAESI Act or rules made thereunder, he shall be punishable with imprisonment for a term, which may extend to one year or with a fine or both.

COGNISANCE OF OFFENCES

Section 30 provides that cognisance of the offence under the SARFAESI Act shall be taken by the Metropolitan Magistrate or the Judicial Magistrate of First Class only. No Court below rank than this can take cognisance of such offences.

PENALTIES

Section 23 of the Act provides for filing of the particulars of charge created. Section 24 has provides for modification of the charge filed and the Section 25 has provides that the satisfaction of the charge has to be intimated to the central registrar. If the securitisation or reconstruction company or the secured creditor fails to perform any of the duties as stated above, the company and the officers concerned for the default, as per provisions of this section, are punishable with a fine that may extend to five thousand rupees for each day during which the default continues.

PENALTIES FOR NON-COMPLIANCE OF DIRECTIONS OF RESERVE BANK OF INDIA

Under the Section 12 of the SARFAESI Act, the Reserve Bank of India is statutorily empowered to issue directions to the securitisation or reconstruction company. If any such company fails to comply with any of the directions issued by the Reserve Bank of India, then such company is punishable with a fine not exceeding Rs. 5 lakh for the default. In case of further continuation of the offence, an additional fine up to Rs. 10,000 per day of the default can be imposed.

Unit – 25 : Miscellaneous Provisions

Non-applicability of SARFAESI Act

- (i) A lien, on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force.
- (ii) A pledge of movable, within the meaning of Section 172 of the Indian Contract Act, 1872.
- (iii) Creation of security interest in any vessel as defined within the meaning of Section 3(55) of the Merchant Shipping Act, 1958.
- (iv) Creation of security in any aircraft as defined in Section 2 of Aircraft Act 1934.
- (v) Any conditional sale, hire-purchase or lease or any other contract in which no security Interest has been created.
- (vi) Any rights of unpaid seller under Section 47 of the Sale of Goods Act, 1930.
- (vii) Any properties not liable for attachment or sale under the first proviso to Section 60(1) of the Civil Procedure Code, 1908.
- (viii) Any security interest for securing repayment of any financial asset not exceeding one lakh rupees
- (ix) Any security interest created in agricultural land
- (x) Any case, in which the amount due is less than twenty per cent of the principal amount and interest thereunder.

1. Securities not in possession of the bank or financial institutions are only covered by this act.
2. Civil courts not to have jurisdiction, jurisdiction has conferred to DRT and AT.
3. **Section 36 SARFAESI Act** :The action has to be taken within 3 years from date on which a cause of action arose.

Unit – 26 : Purpose, Extent, Definitions, Establishment and Powers

Award means an award passed by the **Banking Ombudsman** in accordance with this scheme.

Authorised Representative means a person duly appointed and authorised by a complainant or a party to an arbitration proceeding, as the case may be, to act on his behalf and represent him, before Banking Ombudsman.

Banking Ombudsman means any person appointed under the scheme.

Review Authority is the Dy. Governor in charge of Rural Planning and Credit Department of the RBI, who shall review the award of the Banking Ombudsman and shall be responsible for implementing any such award as per the scheme.

Settlement means an agreement reached by the parties either by conciliation or mediation by the Banking Ombudsman

Banking Ombudsman

1. Minimum age of the person 65 years.
2. Appointment may be made for period of 3 years but the same is extendable for 2 years.
3. May be removed by giving three months notice/by paying three months emoluments.
4. Banking Ombudsman is appointed by a committee of 3 Dy. Governors of RBI and the additional secretary, Finance.
5. The object of introducing the Banking Ombudsman Scheme, 2002 to enable resolution of complaints relating to banking services.
6. Banking ombudsman resolve the dispute between banks or between bank and its customer by arbitration reference if both the parties to the complaint agree for such reference for arbitration and if *value of the claim does not exceed Rs. 10 lakhs*.

Unit – 27 : Procedure For Redressal Of Grievance

Grounds of Complaint

A Complaint on any of the following grounds alleging deficiency in banking service may be filed with the Banking Ombudsman having the jurisdiction:

1. non-payment/inordinate delay in the payment/collection of cheques
 2. non-acceptance, without sufficient cause, of small denomination notes
 3. non-issue of drafts
 4. non-adherence to prescribed working hours
 5. failure to honour guarantee/LC commitments by banks.
 6. claims in respect of unauthorized/fraudulent withdrawals.
 7. complaints from exporters in India.
 8. Complaints from NRI having account in India.
- Loans and Advances
9. non-observance of RBI directives on interest rates
 10. delay in sanction. disbursement of Loan
 11. non-acceptance of application for loans without giving valid reasons.

Procedure For Filing Complaint

1. before making complaint to the BO, must be made written representation to the bank and either the bank rejected the complaint or the complainant had not received any reply within one month after the bank recd. the complaint.
2. The complaint should be made before one year after the cause of action has arisen.

Power To Call For Information

Settlement Of Complaint By Agreement Award by the Banking Ombudsman

1. If the complaint is not settled by agreement within one month from the date of the receipt of the complaint or such further period, He may pass an award after giving the parties reasonable opportunity to present their case.
2. A copy of the award shall be sent to the complainant and the bank named in the complaint. An award shall not be binding on bank unless complainant gives its letter of acceptance within 15 days from the date of the receipt of the award. If the complainant does not accept the award and fails to furnish the letter of acceptance within such time without making any request for extension of time to comply with m the Banking Ombudsman shall reject such requests.
3. The bank shall within one month from the date of receipt by it, of the acceptance in writing of the award by the complainant comply with award and intimate the compliance to the BO.
4. If the bank disagree, bank must intimate BO within one month from the date of the receipt of copy of the Award to file the review petition.
5. The BO shall report to the RBI, review authority, about the non-compliance by any bank of an Award. On receipt of such reports Review Authority will pass necessary orders.
6. The maximum amount BO can award for comepensation is Rs.10 lakhs.

Rejection Of the Complaint

1. The banking ombudsman may reject the complaint at any stage if it appears to him that the complaint made is:
 - (i) frivolous, vexatious, mala-fide; or
 - (ii) without any sufficient cause; or
 - (iii) that it is not pursued by the complainant with reasonable diligence; or
 - (iv) prima facie, there is no loss or damage or inconvenience caused to the complainant; or
 - (v) beyond the pecuniary jurisdiction of the banking ombudsman under the scheme
2. The banking ombudsman may reject a complaint at any stage, if after consideration of the complaint and evidence produced before him the banking ombudsman is of the opinion that the complicated nature of the complaint requires consideration of elaborate documentary and

oral evidence and the proceedings before the banking ombudsman are not appropriate for adjudication of such a complaint.

The decision of the banking ombudsman in this regard shall be final and binding on the complainant of the bank.

Review Authority

1. Any person aggrieved by the award has the right to prefer an appeal against the award before the appellate authority within forty-five days from the date of receipt of the award. The appellate authority is empowered to allow a further period not exceeding thirty days on his being satisfied that the appellant had sufficient cause for not preferring the appeal in time. In case the appeal is by the bank, the filing of appeal should have been with the previous sanction of the Chairman or in his absence the Managing Director or Executive Director or the Chief Executive Officer or any other officer of equal rank.

2. The appellate authority after giving the parties a reasonable opportunity of being heard, may pass the following orders:

- (a) dismiss the appeal; or
- (b) allow the appeal and set aside the award; or
- (c) remand the matter to the banking ombudsman for fresh disposal in accordance with such directions as the appellate authority may consider necessary or proper; or
- (d) modify the award and pass such directions as may be necessary to give effect to the award so modified; or
- (e) pass any other order as it may deem fit.

The order of the appellate authority has also the same effect as that of the award of the banking ombudsman.

Unit – 28 : Preliminary

1. The **Preamble** to the DRT act describes the act as, 'An act to provide the establishment of tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith .

2. The act is applicable to whole of India except J&K

3. Appellate Tribunal *is established for the purpose of preferring appeal against the order passed by the Tribunal.*

4. Application

5. Appointed Day

6. Chairperson

7. Debt

8. Financial Institution

9. Presiding Officer means the presiding officer of the DRT appointed under subsection(1) of Section 4

10. Recovery Officer appointed by the Government

Unit – 29 : Establishment of Tribunal and Appellate Tribunal

The central government is empowered to establish one or more tribunal to be known as **Debt Recovery Tribunal**.

Composition of Tribunal

The tribunal consists of one person called as **Presiding Officer** and the appointment is done by the central govt. by issuing notification.

Debt Recovery Tribunal	Appellate Tribunal
Presiding Officer : District Judge	Chairperson : High Court Judge, Presiding officer of a DRT for at least 3 years.
Presiding officer holds officer for a term of 5 years or until he attains the age of 62 years whichever is earlier.	Chairperson holds officer for a term of 5 years or until he attains age of 65 whichever is earlier.
Recovery Officer	
The staff so appointed shall work under the general superintendence of the presiding	

officer.

Unit – 30 : Jurisdiction, Powers and Authority of Tribunals

1. Whenever the Tribunal or the Appellate Tribunal is established from its appointed day, i.e., date from which they function is declared in the notification, they exercise jurisdiction, powers and authority to entertain and decide applications or appeals, as the case may be, from the banks and financial institutions for and about recovery of debts due to them.

2. Chairperson of Appellate Tribunal is given general power of superintendence and control over the Tribunals under his jurisdiction. The chairperson can transfer any application from any Presiding Officer within his jurisdiction to any other Presiding Officer within his jurisdiction, on Receiving application for transfer of case or even on his own motion. However before such transfer, he has to give notice to the parties and hear them. He also has power of appraising work of presiding officers, under his control.

BAR OF JURISDICTION OF CIVIL COURTS

1. From the date of establishing the Tribunal, i.e., the appointed day, no court or other authority shall have any jurisdiction, powers or authority to deal within any way in recovery cases above Rupees ten lakh. Thus the Civil Courts or any other authority will loose and will not have the jurisdiction for cases where due amount recoverable is above Rupees ten lakh by banks and financial institutions.

However, this is not applicable to High Courts and Supreme Courts exercising jurisdiction under Articles 226 and 227 of the Constitution.

2. The relevant date of bar of jurisdiction by the court or other authority is not the date when this Act came into application. The date is since when the Tribunal is established having jurisdiction in that particular area. In *Bhanu Construction Company Ltd. vs Andhra Bank* [2002] 37 SCL 769, a question came whether the order passed by a Civil Court after coming into force of the DRT Act but before establishing the Tribunal is valid on jurisdiction point or not. The Supreme Court held that order passed by the Civil Court prior to establishment of a Tribunal but after commencement of DRT Act was well within the jurisdiction of the Civil Court.

Unit – 31 : Procedure Of Tribunals

A person who has to file appeal before the Appellate Tribunal has to pay 75% of the debt ordered by the DRT.

Bank has to file application for recovery of loan taking into consideration jurisdiction and cause of action.

DRT Act	Description
19(1)	Application for recovery to Tribunal within local limits of whose jurisdiction
19(2)	Recovery of the debt is from same person, any other bank also has to recover debt, they may join.
19(3)	No need to pay the fee, if Case is transferred from Civil Court to Tribunal
19(4)	On receipt of application under sub-section(1) or (2) the Tribunal has to issue summons to the defendant requiring him to show cause within 30 days of the service of summons as to why the relief prayed for should not be granted
19(5)	The Defendant has to present written statement at or before first hearing or within such time as the Tribunal may permit.
19(6)	defendant has to claims any amount on first hearing from the applicant and to have setoff against the applicant's demand with ascertained sum of money
19(7)	When written statement contains claim and set off, the written statement has the same effect as a plaint in a cross-suit.
19(8)	Counter claim
19(9)	Counter claim has the same effect as a plaint in cross-suit so as to enable the Tribunal to pass a final order in respect of both the original and Counter Claim.
19(10)	The applicant is at liberty to file a written statement to the counter claim of the defendant within such period may be fixed by the Tribunal
19(11)	Counter Claim to be disposed as an Independent action.
19(12)	The Tribunal may pass interim order against the defendant to debar him from transferring, alienating, or otherwise dealing with or disposing of any property/asset without the permission of the Tribunal
19(13 A and B)	Tribunal Dispose of the property, Damage to the property, remove/whole any part of the property
19(14)	When the applicant wants that the properties of the defendant should be attached.
19(15)	The Tribunal can pass conditional attachment order.
19(16)	If any attachment order is passed without complying the requirements of Subsection (13), then such order is void.

19(17)	The Tribunal has power to pass interim orders, attachment orders etc. If there is any breach of the orders, the Tribunal may order that the properties of the person guilty of the breach of the order be attached and person be detained in civil prison for a term not exceeding 3 months.
19(18)	appoint a receiver of any property - remove any person from the custody/possession of property - confer powers to receiver. - appoint a commissioner for preparation of an inventory of the property of the defendant or for sale thereof
19(19)	If the recovery certificate is granted against a company, the Tribunal may order that the sale proceeds of such company be distributed among the Secured Creditors as provided in Section 529A of the Companies Act.
19(20)	Pass interim or final order for payment of amount including interest thereon
19(21)	The tribunal is required to send copy of every order by it to the applicant and the defendant.
19(22)	Issue a Certificate of Recovery to the recovery officer for recovery of the amount of debts.
19(23)	Sending Certificate of Recovery to other tribunals if it is local limits of other jurisdiction
19(24)	Application received by the tribunal for recovery of debt shall be disposed of finally within 180 days
19(25)	The tribunal may make such orders and give such directions as may be necessary

Appeal to the Appellate Tribunal

1. Any person aggrieved by the order passed by DRT, may appeal to an Appellate Tribunal.
2. The appeal is required to be filed within 45 days from the date on which copy of the order is received. At the time of filing appeal Section 21 of the DRT Act 75% of the amount shown as due in the order required to be deposited by the appellant.
3. Appellate Tribunal should disposed off the appeal within 6 months.

Unit – 32 : Recovery Of Debts Determined By Tribunal and Miscellaneous Provisions

Review of the Order/Recovery Certificate – within 60 days of passing the order or issuing the certificate.

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A company is under winding up process. Whether High Court permission is required to a Bank to proceed against it before DRT - No, as the DRT Act being a special Law having overriding effect over other laws.

Recovery Officers appointed under DRT Act can attach and sale movable as well as immovable property of the person against whom order is passed even it the property is not charged to the creditor.

If the recovery certificate has clerical / arithmetical mistake Presiding Officer of the Tribunal can correct the same.

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Unit – 33 : The Bankers’ Books Evidence Act 1891

Certified Copy means when the books of the bank

Maintained in Written Form, a copy of any entry in such books together with a certificate written at the foot of such copy mentioning that

1. it is true copy of such entry
2. that such entry made in ordinary course of business
 - a. maintained in Electronic Form
 - b. maintained in Mechanical Form

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Unit – 34 : Lok Adalats

LOK ADALATS

Lok Adalt is similar to a civil court which can be organized by the State Authority, the Distt. Authority, the Supreme Court Legal Service Committee or High Court Legal Services Committee, at such intervals and places as deemed appropriate. The Lok Adalts are created under Legal Services Authority Act 1987.

Jurisdiction and types of case : A Lok Adalt has jurisdiction to determine and arrive at a compromise or settlement between the parties to the dispute. It deals with the cases where (a) the parties to the dispute agree to refer the issue to Lok Adalt; (b) one of the parties approaches the Lok Adalt and Lok Adalt is satisfied that there are chances of settlement. In such case, the Adalt issues notice to the other party; (c) in the opinion of the Lok Adalt, the cognizance of the dispute can be taken. Cases that cannot be taken up: The offences, which are compoundable under any Law, cannot be brought within the purview of the Lok Adalt.

This means that the Lok Adalt has no authority of its own to pass judgements.

Awards of Lok Adalt: Their awards are in the form of consent decrees. NO appeal lies against such Awards which is binding on all parties.

Procedure and powers: Civil Procedure Code is applicable which means the Lok Adalt can send summons, take evidence on oath, initiate ex parte proceedings, and determine court procedures. Where compromise is not reached: The case shall be returned back to the court from which the reference was received for continuing with the case, there.

1. RBI GUIDELINES ON LOK ADALTS With a view to making increasing use ;of the forum of Lok Adalats to settle banking disputes involving smaller amounts, RBI during April 2001 advised banks and financial institutions to follow the following guidelines for implementation: Amount - Cases involving an amount up to Rs.20 lakh (RBI enhanced it from Rs.5 lac, Aug 03, 2004) may be referred to Lok Adalats.

2. Borrowers : All NPA accounts (other than time barred), both suit filed and non-suit filed, which are in "doubtful" and "loss" category. No cut off date is suggested since Lok Adalat is an on-going process.

3. Settlement Formula : The settlement formula would be flexible. Certain essential parameters, as under, should be kept in view:

a. A decree should be sought from the Lok Adalat for the principal amount and interest claimed in the suit, and after full payment of decree amount, a discharge certificate should be issued by the bank / financial institution.

b. The repayment period should be within one to three years.

c. The negotiated agreement with the borrower should contain a default clause in terms of which if borrower does not pay installments due regularly, within the repayment period, entire debt will fall due for payment & bank may initiate legal proceedings.

d. The Officers representing the institutions should have sufficient powers to accept the compromises worked out within the policy framework laid down by the Board of Directors of each institution, while attending Lok Adalat and should respond pro-actively to the suggestion of the Presiding Officer of the Lok Adalat.

DRT LOKADALATS

Banks can take up matters where outstanding exceed the ceiling of Rs.20 lac, with Lok Adalats organised by the Debt Recovery Tribunals / Debt Recovery Appellate Tribunals.

Supreme Court has suggested that personal loan cases up to Rs.10 lac should preferably settled through Lok Adalats.

Organisational arrangements

The individual banks and financial institutions should be more pro-active and should take the responsibility of organising Lok Adalats. The institutions should get in touch with State / District / Taluk level Legal Services Authorities for organising Lok Adalats. The banks should report the progress to RBI, at quarterly intervals within one month from the quarters ending March, June, September and December. Reserve Bank of India monitors the progress made by the institutions in effecting recovery under the scheme.

Unit – 35 : Preamble, Extent and Definitions

The agencies appointed under Consumer Protection Act are quasi-judicial in nature

Consumer Protection Act is not enacted to protect the manufacturing conditions of the Industries.

Voluntary Consumer association can file a complaint on behalf of consumer.

A consumer who has purchased goods for resale, cannot file complaint.

'A' has purchased a draft from a bank favoring 'B'. The draft is last in transit and for duplicate draft in lieu for first bank need some formalities to be completed by 'A'. Can 'B' file a consumer case against the formalities as at is delaying payment to him.

No, as he is not consumer of the bank and is not taking any service from the bank.

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“Complainant “ means

- i. a consumer
- ii. any voluntary consumer association
- iii. the Central Govt / state Govt.
- iv. one or more consumers
- v. in case of death of parnter, his legal hair or representative.

Complaint means

1. an unfair trade practice or a restrictive trade practice.
2. the goods brought are defective
3. the services availed, hired suffer from deficiency
4. over priced

“Consumer” means any person who,

1. buys any goods for a consideration which has been paid or promised to be paid
2. under any system of deferred payment
3. includes any user of such goods
4. hires or avails any service

Consumer Dispute means a dispute where the person against whom complaint has been made, denies or disputes the allegations contained in the complaint

Defect means any fault, imperfection, shortcoming or inadequacy in the quality, quantity, potency, purity or standard.

Deficiency = Defect

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Unit – 36 : Consumer Protection Councils

District CPC

Chairman – Collector of the district.

Meeting at least once in a year

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State CPC

Chairman – Minister in charge of the consumer affairs in state govt.

Members – not exceeding 10 appointed by centre govt.

Meeting at least Twice in a year

National CPC

Chairman – Minister in charge of the consumer affairs in central govt.

Meeting at least Twice in a year

Unit – 37 : Consumer Disputes Redressal Agencies

	District	State	National
Established by	State Govt	State Govt	Central Govt
President (Qualified to be)	District Judge	High Court	Supreme Court
Other Members (One Woman)	2	2	2
Member Qualification	35 years of age Bachelor's Degree		
Term	For a term of 5 years or up to the age of 65 years	For a term of 5 years or up to the age of 67 years	For a term of 5 years or up to the age of 70 years
Jurisdiction	Does not exceed Rs. 20 Lakhs.	Rs.20 Lakhs - Rs.1 Crore Appeal against the order of District Forum	Exceeds Rs. 1 Crore Appeal against the order of the State Commission
Admissibility	within 21 days from the date of receipt Once the complaint admitted to District forum, cannot be transferred to any		

	other court or tribunal		
Appeal (50% amount or whichever is less)	Appeal to state commission: Payment of amount : 20,000	Appeal to National Commission : Payment of amount: Rs. 35,0000	Appeal to Supreme Court : Payment : Rs. 50,000
Dismissal of Frivolous complaints	If the district forum, state commission, national commission finds that complaint instituted before it is frivolous, it shall dismiss the complaint. And order the complainant to pay Rs. 10,000		
Penalties	Where trader or a person against the whom the complaint is made fails or omits to comply with any order made by the commissions, he shall be punishable with imprisonment for a term 1 month to 3 years or with fine Rs. 10,000 or with both		

Unit – 38 : Limitations of Suits, Appeals and Applications

It is absolutely necessary that every suit or application or appeal shall have to be made within the period of limitation. Section 3 of the Limitation Act declares that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. A suit is instituted when the plaint is presented to the proper officer in the court. In the case of set off or counterclaim, they shall be treated as a separate suit and shall be deemed to have been instituted:

- (a) in the case of a set off, on the same date as the suit in which the set off is pleaded;
- (b) in the case of a counterclaim, on the date on which the counter-claim is made in court.

Computation of the period of limitation

- (a) When the period of limitation expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.
- (b) Any appeal or any application other than execution petitions may be admitted after the prescribed period, if the appellant or applicant makes out sufficient cause for not preferring the appeal or application within the period of limitation.
- (c) In computing the period of limitation, the day from which such period is to be reckoned, shall be excluded. The computation of the period of limitation for filing appeal shall exclude the

day on which the judgment complained was pronounced and the time taken for obtaining a copy of the decree, sentence or order appealed. Time required for obtaining a copy of the order or award shall be excluded while computing the time limit for filing revision or review application or an application to set aside the award.

(d) For an application for execution of decree, the period during which the institution or execution has been stayed by injunction or order, the day on which the order was issued or made and the day on which it was withdrawn shall be excluded.

(e) For filing any suit of which notice has to be given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice, or the time required for obtaining such consent or sanction shall be excluded.

(f) In computing the period of limitation for any suit, the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government shall be excluded.

ACTS GIVING RISE TO FRESH PERIOD OF LIMITATION

There are two instances which will give rise to fresh period of limitation. In these cases the period of limitation will be computed as if the starting point is the happening of the instances.

1. Where before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

2. Where payment on account of a debt or of interest on a legacy is made before expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. In this case 'debt' does not include money payable under a decree or order of a court.

Unit – 39 : Income Tax, Commodity Transaction Tax, Service Tax

INCOME TAX

The law relating to taxation of income is governed by Income Tax Act 1961. This Act envisages taxation of income of an assessee on the basis of his

- (a) Residence;
- (b) Place of source of income.

Meaning of Income

The definition of 'income' is inclusive and not exhaustive in nature. Thus no precise definition as to what constitutes income.

Assessee and Assessment year

The income accruing, or arising, to a person (called 'Assessee') is taxed on the basis of 'Assessment Year'. The term Assessment Year represents the period of 12 months beginning from 1st April every year. The income arising in the 'previous year' is taxed in the assessment year. Previous year is the financial year immediately preceding the assessment year of an assessee.

Under IT Act - Other applications are:

- (a) Quoting PAN for opening a/c, purchase of DD, Term Deposit above Rs. 20,000.
- (b) Declaration in Form 60 and 61.
- (c) Repayment of T. Deposit above Rs. 20,000 by pay-order
- (d) Reporting high value transactions - above Rs. 1 lakh

Income Tax Act, 1961 envisages taxation of income under following heads:

1. Salaries
2. Income from house property
3. Profits and gains from business or profession
4. Capital gains
5. Income from other sources

SERVICE TAX

1. Service Tax was introduced by Finance Act, 1994.
2. Initially it covered just 3 services, viz., telephone, general insurance and stock broking.

3. No Separate Act exists for Service Tax.
4. Over the years, amendments have been made to the Finance Act and various other services were brought within the ambit of service tax.
5. There will be no service tax if the turnover does not exceed Rs. 8 lakh. If the turnover exceeds this limit, the person providing the services covered will have to pay service tax.

Unit – 40 : Meaning and Essentials of A Contract

MEANING OF CONTRACT

Contract means an agreement enforceable by law. It has two major constituents:

1. An agreement between two persons or more.
2. The agreement must be enforceable by law (i.e. the rights and obligations arising out of it).

KEY COMPONENTS TO FORM A CONTRACT

When one person signifies to another person, his willingness to do or not to do something, with a view to obtaining the consent of that other person, he is said to make a proposal.

When a person to whom the proposal is made, signifies his assent (consent), the proposal is said to be accepted.

A proposal becomes a promise when it is accepted. The person making the proposal is called the 'promisor'. The person accepting the proposal is called 'promisee'.

ESSENTIALS OF A VALID CONTRACT

Proposal and Acceptance

There must be a lawful proposal by one party and the other party must accept the proposal.

An Agreement may be Oral or Written

While an agreement may be Oral or Written, under certain laws an agreement is required to be in writing only and is also required to be registered and attested. If such formalities are not complied with, then the agreement cannot be enforced before a court of law.

The Contract Act defines consideration as under.

When, at the desire of the promisor, the promisee or any other person

- has done or abstained from doing, or
- does or abstains from doing, or
- promises to do or to abstain from doing something.

Unit – 41 : Contracts of Indemnity

A Contract of Indemnity is a contract by which one party promises to save the other from loss likely to be caused to him. This loss can be, either by the conduct of the promisor himself or by the conduct of any other person.

RIGHTS OF INDEMNITY HOLDER

The indemnity holder (i.e. the promisee or the person who is indemnified) has the following rights when sued (i.e. when a legal action is taken against the person who has indemnified).

The promisee is entitled to recover from the promisor, in respect of the matter to which the promise to indemnify applies:

1. All damages which he may be compelled to pay in any suit.
2. All costs which he may be compelled to pay in any suit.
3. All sums paid in compromise, not contrary to indemnity.

Unit – 42 : Contracts Of Guarantee

A 'Contract of Guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of latter's default. A guarantee may be either oral or written. The question whether a particular contract is a contract of indemnity or guarantee has to be decided by examining the language of the documents entered into between the parties and the nature of transaction.

PARTIES TO THE CONTRACT

The person who gives the guarantee is called the 'surety'.

The person in respect of whose default the guarantee is given is called the 'principal debtor'.

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The person to whom the guarantee is given is called the 'creditor/beneficiary'.

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Unit – 43 : Contracts Of Bailment

A 'bailment' is the delivery of goods by one person to another for some purpose. When the purpose is accomplished, the goods are to be returned or otherwise disposed of according to the direction of the person delivering them.

The person delivering the goods is called the 'bailor'.
The person to whom they are delivered is called the 'bailee'.

MEANING OF BAILMENT

When one person delivers to another, certain goods to be used for a certain purpose, the contract is known as a contract of bailment. Here, the contract will specify the time for which the goods will remain with the person taking them. Also, the person who gives the goods can direct the other either to return the goods after the requisite time has expired or, direct him to dispose off the goods in a particular manner.

BAILOR BOUND TO DISCLOSE TO BAILEE

The bailor is bound to disclose to the bailee faults in the goods bailed

- (a) of which the bailor is aware,
- (b) and which materially interfere with the use of them,
- (c) or expose the bailee to extraordinary risk;

and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults. If the goods are bailed for hire, the bailor is responsible for any damage whether he was aware of the existence of such faults in the goods bailed or not.

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Unit – 44 : Contracts of Pledge

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The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The bailor is in this case called 'pawnor'. The bailee is called 'pawnee'.

NATURE OF PLEDGE

(a) If the pawnor makes default in payment of the debt in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor and retain the goods pledged as a security (or) he may sell the goods pledged, after giving notice of the sale to the pawnor.

(b) If the proceeds of such sale are less than the amount due, in respect of the debt, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

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Unit – 45 : Contracts Of Agency

An agent, is a person employed to do any act for another person or to represent another person in dealings with some third person.

The person for whom such act is done (or who is represented) is called the principal.

MEANING OF AGENCY

The person should be authorised to do an act for a person in such a manner, as to bind that person, i.e. to make him answerable for such acts done on his behalf. The agent creates contractual relations between two separate persons when he enters into a contract on behalf of one of the parties.

NORMAL RULES OF CONTRACT

The contract between the principal and his agent is a contract in itself and that is also governed by the normal rules of contract.

PERSONS TO BE MAJORS AND OF SOUND MIND

Any person who is a major according to the law of which he is subject, and who is of sound mind, may employ an agent. Any person can become an agent, if he is a major and of sound mind.

CONSIDERATION

No consideration is necessary to create an agency.

AUTHORITY OF AN AGENT

The authority of an agent may be expressed or implied. An authority is said to be expressed, when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case.

Unit – 46 : Meaning and Essentials Of a Contract Of Sale

MEANING OF CONTRACT OF SALE OF GOODS

A contract of sale of goods is a contract under which the seller transfers or agrees to transfer the property in goods to the buyer for a price. When the property in the goods is transferred from the seller to the buyer, the contract is called a sale.

FEATURES OF CONTRACT OF SALE OF GOODS

- (a) Bilateral: contract: A sale involves two persons - The buyer and the seller.
- (b) Money consideration: The consideration for a sale of goods must be money, called the price payable for the transfer of goods. It cannot be a barter, where goods are exchanged for goods.
- (c) Moveable property: The Sale of Goods Act covers only the sale of moveable goods and not immovable property like land and building. The contracts relating to transfer of immovable property are governed by the Transfer of Property Act and not Sale of Goods Act.
- (d) No particular form: The Sale of Goods Act does not make it mandatory to enter into written contracts for the sale of goods. However, if any particular law provides for sale of certain types of goods to be done by a contract in writing, then that law has to be complied and the contract has to be in writing.

The contract may be oral or written or can be implied by the conduct of the parties. A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer.

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The contract may provide for:

- Immediate delivery of the goods immediate payment of the price.
- For the delivery or payment by instalments.
- Postponement of delivery or payment.

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Unit – 47 : Conditions and Warranties

CONDITION

If the stipulation agreed to between the parties is essential to the main purpose of the contract and is of such a nature that if the stipulation is breached (i.e. violated/not complied) then a party to the agreement would have a right to treat the contract as repudiated (cancelled) then such a stipulation is known as a condition.

WARRANTY

On the other hand, a warranty is a stipulation collateral to the main purpose of the contract. The breach of such a stipulation gives rise to a claim for damages only. The parties cannot reject the goods and treat the contract as repudiated.

1. In a contract of sale of goods conditions and warranties may be either expressed or implied.
2. Expressed conditions and warranties are those, which are expressly stated in the contract.
3. Implied conditions and warranties are those, which the law implies into every contract of sale of goods.
4. However, such implied conditions and warranties can be excluded by the parties to the contract if they agree expressly on these issues.

Caveat Emptor (Buyer beware)

Caveat means a warning, a caution. According to the doctrine of caveat emptor, the person who buys goods must keep his eyes open, his mind active and be cautious while buying the goods. In other words, the buyer must examine the goods thoroughly. Later on, if the goods do not serve his purpose or he depends upon his own judgement and he makes a bad choice, he

cannot blame the seller for selling him such goods. The Sale of Goods Act also enshrines doctrine by stating that 'There is - (implied warranty or condition as to the quality or fitness of goods for any particular purpose' except in cases specifically explained above.

Unit – 48 : Unpaid Seller

The seller of goods is deemed to be an 'unpaid seller',

- (a) When the whole of the price has not been paid or tendered;
- (b) When the payment for the goods is received in the form of a cheque or other negotiable instrument and the same is dishonoured for financial or other reasons

Unpaid seller's rights against the goods

- (a) a lien on the goods for the price while he is in possession of them;
- (b) in case of insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;
- (c) a right of resale.

If the property in goods has not passed to the buyer, the unpaid seller also has a right of withholding delivery of the goods.

Unpaid seller's lien

The unpaid seller of goods (who is in possession of them), is entitled to retain possession of them until payment of the price is made in the following cases:

- (a) if the goods have been sold without any stipulation as to credit;
- (b) if the goods have been sold on credit, but the term of credit has expired;
- (c) if the buyer becomes insolvent.

The unpaid seller of goods loses his lien thereon:

- (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver of lien.

Unit – 49 : Definition, Meaning and Nature Of Partnership

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons, who have entered into partnership with one another are called individually 'partners' and collectively a 'firm' and the name under which their business is carried on is called the firm's name.

The contract between the partners may be oral or written.

- The partnership must be formed to carry on some lawful business.
- The business must be carried on to earn and share the profits and returns of the business.
- There must be a mutual relation of 'agency' between the partners.

TYPES OF PARTNERSHIP

1. Partnership at will

Where no provision is made by a contract between the partners for the duration of their partnership or for the determination (i.e. the termination or end) of the partnership – the partnership is known as 'partnership at will'

2. Partnership for a fixed period

When two or more persons enter into a partnership agreement for a fixed period of time, it is known as a partnership for a fixed term

3. Particular partnership

Such partnership is entered into, for completing a particular job or assignment taken up by two or more persons jointly and to share the profits arising there from.

Unit – 50 : Relations of Partners to One Another

The partners should not make secret profits. They have to be just and faithful to each other.

They must render true accounts of the business and full information of all things affecting the firm to all the partners or their legal representatives.

Every partner is bound to indemnify the firm for any loss caused to the partnership firm by his fraud, in the conduct of the business of the firm.

The partners of a firm can decide their mutual rights and duties and change them from time to time with the consent of all the partners. This may be implied (i.e. understood by the dealings between them/ with outsiders) or may be expressed (i.e. specifically discussed and made clear).

THE CONDUCT OF THE BUSINESS

Subject to a contract between the partners (i.e. the agreement and understanding arrived between themselves)

- (a) every partner has a right to take part in the conduct of the business;
- (b) every partner is bound to attend diligently to his duties in the conduct of the business;
- (c) any difference arising as to ordinary matters connected with the business can be decided by a majority of the partners and every partner has a right to express his opinion before the matter is decided. However, no change can be made in the nature of the business without the consent of all the partners.
- (d) every partner has a right to have access to and to inspect and copy any of the books of the firm.

MUTUAL RIGHTS AND LIABILITIES

Subject to a contract between the partners (i.e., the agreement and understanding arrived between themselves),

- (a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- (b) the partners are entitled to share equally in the profits earned and liable to contribute equally to the losses made by the firm;
- (c) where a partner is entitled to interest on the capital subscribed by him such interest is to be paid only out of profits of the firm;
- (d) Interest at 6 per cent on extra amount paid by the partner;

(e) the firm has to indemnify a partner in respect of payments made and liabilities incurred by him:

- (i) in the ordinary and proper conduct of the business, and
 - (ii) in doing such act in an emergency, for the purpose of protecting the firm from loss;
- (f) similarly, a partner has to indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

Unit – 51 : Relations of Partners to Third Parties

An act done by a partner to carry on the kind of business done by the firm (in the usual way) binds the firm. This authority of a partner to bind the firm is called his 'implied authority'.

A partner is the agent of the firm for the purpose of the business of the firm.

- An act done by a partner to carry on the kind of business done by the firm (in the usual way) binds the firm. This authority of a partner to bind the firm is called his Implied Authority. The partners in a firm may by mutual agreement amongst themselves, extend / restrict the implied authority of any partner.
- Every partner is liable jointly with all other partners and also severally for all acts of the firm while he is a partner.
- **Holding Out** when a person who is not at all partner in a firm, either represents himself, or knowingly permit himself to be represented, as a partner in a firm and as a result of this, he induces others to give credits to the firm, he is known as a **partner holding out**.
- A transfer by a partner of his interest in the firm does not entitle the person to whom the interest is transferred (transferee) to interfere in the conduct of the business but entitles the transferee only to receive the share of profits of the transferring partner and the transferee has to accept the account of profits agreed by the partners.

The implied authority of a partner does not empower him to

- (a) submit a dispute relating to the business of the firm to arbitration (i.e. for settlement by an independent person other than the parties to the dispute);
- (b) open a banking account on behalf of the firm in his own name;
- (c) compromise or relinquish (give up) any claim by the firm;
- (d) withdraw a suit or proceeding filed on behalf of the firm;

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- (e) admit (accept) any liability in a suit or proceeding against the firm;
 - (f) acquire immoveable property on behalf of the firm;
 - (g) transfer immoveable property belonging to the firm; or
 - (h) enter into partnership on behalf of the firm.
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Unit – 52 : Minor Admitted to the Benefits of Partnership

The minor has a right to share the property and profits of the firm as may be agreed upon by the partners and the minor can have access to the accounts of the firm.

Only the minor's share is liable for the acts of the firm but the minor is not personally liable for the acts of the firm and the liabilities arising there from.

The minor may or may not take legal action (by filing suit) against the partners for payment of his share of the property or profits of the firm except when severing (ending) his connection with the firm.

At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership (whichever date is later) the person may give public notice to the effect whether he has elected to become a partner or not.

This notice determines his position as regards the firm.

However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

Where such a person becomes a partner (either because he elected to do so or because he failed to take a decision and six months have elapsed since he attained majority):

- (a) his rights and liabilities as a minor continue up to the date on which he becomes a partner but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

If such person elects not to become a partner:

(a) his rights and liabilities shall continue to be those of a minor up to the date on which he given public notice that he does not want to become a partner;

(b) his share shall not be liable for any acts of the firm done after the date of the notice; and

(c) he shall be entitled to sue the partners for his share of the property and profits.

Unit – 53 : Dissolution Of Firm

A firm can be dissolved with the consent of all the partners or in accordance with a contract between the partners.

COMPULSORY DISSOLUTION

A firm is dissolved:

(a) if all the partners (except one) are adjudicated insolvent; or

(b) by the happening of any event which makes it unlawful for the business itself to be carried on or the event makes the business unlawful if it carried on in partnership.

However, if the partnership firm is carrying on more than one separate businesses, the illegality of one or more does not cause the dissolution of the firm. The firm can continue to carry on its lawful adventures and undertakings.

54.4 DISSOLUTION ON THE HAPPENING OF CERTAIN CONTINGENCIES

A firm is dissolved in the following circumstances. To avoid dissolution in these cases, the partners should expressly agree that the firm shall not be dissolved in these circumstances:

(a) if the partnership is constituted for a fixed term, then by the expiry of that term;

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- (b) if the partnership is constituted to carry out one or more adventures or undertaking, then by the completion thereof;
 - (c) by the death of a partner; and
 - (d) by the adjudication of a partner as an insolvent.

54.5 DISSOLUTION BY THE COURT

At the suit of a partner the court may dissolve a firm on any of the following grounds:

- (a) that a partner has become of unsound mind;
- (b) that a partner (other than the partner suing for dissolution) has become permanently incapable of performing his duties as partner;
- (c) that a partner (other than the partner suing) is guilty of conduct which is likely to affect prejudicially the carrying on of the business;
- (d) that a partner (other than the partner suing) wilfully or persistently commits breach of agreements in relation to the management of the affairs of the firm or the conduct of its business or it is not reasonably practicable for the other partners to carry on the business in partnership with him, because of his conduct with respect to the business;
- (e) that a partner (other than the partner suing) has transferred the whole of his interest in the firm to a third party;
- (f) that the business of the firm cannot be carried on except at a loss; or
- (g) on any other ground which renders it just and equitable that the firm should be dissolved.

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Unit – 54 : Effect of Non-Registration

The partner's may or may not enter into a partnership deed and may decide to have an oral partnership if they have a strong understanding amongst themselves.

Even if a partnership deed is entered into by the partners they may not opt for registration of the partnership firm.

The provisions of the Section 69 are briefly stated hereunder:

A partner of an unregistered firm cannot enforce by way of a suit, any right available to him under the Partnership Act or a right conferred by a contract amongst the partners against the partnership firm or any partner thereof.

Similarly an unregistered firm cannot enforce by way of a suit, any right arising by a contract against any third party.

Due to the provision which is stated in the Section 69, a majority of the partnership firms decide to register the firm to avoid future hassles and complexities on solving issues amongst the partners as well as with third parties.

Unit – 55 : Definition and Features of Company

A company formed and registered under this Act, or an existing company'. An existing company means a company formed and registered under any of the former Companies Acts.

FEATURES OF A COMPANY

(a) Registration

A company has to be compulsorily registered under the Companies Act, 1956.

(b) Artificial Legal Person

A company is an artificial legal person which is created by law and can be dissolved by the law alone. It is invisible, intangible and exists only in the eyes of the law. It enjoys many rights of a natural person. A company may enter into contracts in its own name, and it can acquire and dispose property and can be fined under the provisions of the law for violation of law

(c) Independent corporate personality

A company, after incorporation is in law a single person, it has a distinct legal personality. By incorporation under the Companies Act, 1956 the company is vested with a corporate personality which is independent of and different from the members who compose it.

(d) Limited liability

Limitation of liability is an advantage of incorporation of a company. Since under company law, the existence of a company is different from its own members and directors and a company leads its own business existence and since it is itself the owner of its assets and has its own liabilities, the members of the company are not bound to contribute anything more than the nominal value of the shares held by them and their liability ends there even though there may be creditors who may be claiming crore of rupees from the company.

(e) Perpetual succession

An incorporated company never dies. It is a legal entity with perpetual succession. The insolvency or death of members does not affect the continued existence of the company. In spite of a total change in the members of the company, the company will remain the same entity. Members may come and members may go but the company goes on forever.

(f) Separate property

On incorporation the company becomes the owner of its capital and assets. The company is capable of holding property in its own name.

(g) Transfer of shares

The Companies Act, 1956 states that shares or other interest of any member in a company shall be moveable property, transferable in the manner provided by the articles of association. A shareholder may sell his shares in the open market and get back his money without changing the capital of the company.

(h) Common Seal

As a company is an artificial legal person, it is not capable of signing documents for itself. Law provides for a common seal with the name of the company engraved on it as a substitute for its signature. Any document bearing the common seal of the company is legally binding on the company. However a common seal cannot be affixed by any director.

(i) Corporate veil

Although a company is a separate legal entity distinct from shareholders in reality it is an association of persons who are the beneficial owners of all the corporate property.

DISTINCTION BETWEEN A COMPANY AND PARTNERSHIP

(a) Registration

Registration of a company is compulsory under the Companies Act, 1956. Registration of a partnership is not compulsory under the Indian Partnership Act, 1932.

(b) Number of members/partners

Minimum of two and maximum of fifty in case of a private company and a minimum of seven and no limit on maximum number of members in case of public company. Minimum number of two persons is required to form a partnership. The maximum number is ten for banking business and twenty for any other business.

(c) Legal status

A company has a legal existence separate from its own members and is viewed as a separate legal person from its members. A firm does not have, a separate legal existence different from its own partners.

(d) Ownership of property

The property of the company is owned by the company itself and not its members as the company has a separate legal existence. The property of the firm is owned by the partners themselves and not by the firm as a firm does not have a separate legal existence different from its own partners.

(e) Management

The company is managed by a board of directors elected by the shareholders. A partnership is managed by the partners except the dormant and sleeping partners.

(f) Perpetual existence

A company has a perpetual existence.
A partnership does not have a perpetual existence.

(g) Contracts

A member of the company can contract with the company. A partner cannot contract with the partnership firm.

(h) Liability

Except in case of a company with unlimited liability, the liability of the members of the company is limited. The liability of partners in a partnership is unlimited.

(i) Transfer

A transferee of shares in a company becomes a member of the company and the consent of all members is not required to become a member. A person can become a partner in a partnership firm with the consent of all the partners.

(j) Death

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The death of any or all members of the company does not determine (end) the existence of the company. Death of a partner dissolves the partnership unless the partnership deed provides otherwise.

(k) Agency

The members of a company are not the agents of each other or of the company. Every partner of a firm is an agent of the other.

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Unit – 56 : Types Of Companies

CLASSIFICATIONS OF COMPANIES THE BASIS MODE OF INCORPORATION

1. Statutory Company
2. Registered under the Companies Act, 1956

CLASSIFICATIONS OF COMPANIES ON THE BASIS OF LIABILITY

1. Company limited by shares
2. Company with unlimited liability
3. Company limited by guarantee

CLASSIFICATIONS OF COMPANIES ON THE BASIS OF PUBLIC INTEREST

1. Private company
 2. Public company
 3. Government company
 4. Foreign company
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Unit – 57 : Memorandum Of Association & Articles Of Association

Memorandum of Association

The first step in the formation of a company is the preparation of the memorandum of association. It is a document of great significance as it embodies the fundamental rules regarding the constitution and scope of activities of a company. The purpose of memorandum

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of association among others is to enable the member's creditors and those who deal with the company to know the permitted scope of its activities.

Various clauses of the memorandum of association :

- a. Name clause
- b. Registered office clause
- c. Objectives Clause
- d. Liability clause
- e. Capital clause
- f. Association or subscription clause

ARTICLES OF ASSOCIATION

Articles of Association is the second important document of a company. It consists of a set of rules/ regulations and bye laws made by the company for internal management of the company and for carrying out the objects of the company embodied in its memorandum of association.

The Companies Act, 1956 requires that the articles of association must be filed together with the memorandum of association by the following kind of companies:

- Unlimited company
- Company limited by guarantee
- Private company limited by shares

Unit – 58 : Doctrines of Ultra vires/Constructive Notice/Indoor Management

Doctrines of Ultra vires

When a company exercises its powers to promote and/or realise any of its objectives stated in the memorandum of association, it is intra;vires (i.e. within the powers of) the company. However, any other act of the company which is outside the scope of the objects clause of the memorandum of association is known as ultra vires (i.e. beyond the powers of) the company.

Constructive Notice

It is the duty of every person who deals with a company to inspect its public documents, i.e. its memorandum of association and articles of association and make sure that his contract is in accordance with their provisions.

However, whether a person has actually read them or not he shall be in the same position as if he had read them.

In other words, he will be presumed to have knowledge of the contents of these documents and to have understood them according to their proper meaning. This kind of presumed notice is known as constructive notice. This is known as the doctrine of constructive notice.

Indoor Management

A person who deals with the company is deemed to have read and understood the registered public documents such as the memorandum of association and articles of association, etc., to see that his contract with the company is not inconsistent with them.

But he is not bound to inquire into the regularity of the company's internal functioning or the internal management of the company. Hence if his contract is consistent with the public documents, the company is bound. He will not be affected by any irregularity in the internal management of the company. This is known as the doctrine of indoor management.

Unit – 59 : Membership of Company

According to the Companies Act, 1956 the term member of a company means:

- The subscribers of the memorandum of association.
- Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members.
- Every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.

VARIOUS MODES OF BECOMING A MEMBER OF A COMPANY

(a) By Subscribing to Memorandum of Association

(b) Membership by Allotment of Shares

- (c) Transfer of Shares
- (d) Transmission of Shares
- (e) Membership by Acquiescence
- (f) Joint Membership

Who can be Members of a Company

- 1. Any person competent to Contract** - Every person who is competent to contract can become member of company
- 2. Minor and persons of Unsound Mind** – cannot be member, as they are incompetent to contract
- 3. Company as Member** – As a company is a legal person it can become a member of another company.
- 4. Partnership Firm** – Since a partnership is not a legal person, it cannot buy shares in its own name and thus become member of the company.
- 5. Registered Society** – can hold shares in a company
- 6. Non-Residents** – A NRI cannot become a member without complying with the requirements of the FEMA 1999 and without permission of RBI.
- 7. Fictitious Persons** – Any person whom makes an fictitious name an application to a company, induces a company to allot or register any transfer of shares to him or any other person in a fictitious name, shall be punishable with imprisonment for a term which may extend to 5 years.

CESSATION OF MEMBERSHIP IN A COMPANY

The membership in a company ceases in case of any of the following:

1. If a member transfers his shares to another person.
2. If a member's shares are forfeited.
3. If the shares are sold pursuant to a decree of a Court.
4. If the member surrenders his shares to the company where such surrender is permitted.
5. If he rescinds the contract to take the shares, e.g. on the ground of misrepresentation in the prospectus.
6. If a member is adjudicated insolvent (shares and other properties of an insolvent vest in the Official Receiver or Assignee).

7. On the death of a member: However, the estate of the deceased member, remains liable until the shares are registered in the name of his legal representative.
8. If redeemable preference shares are redeemed.
9. If the company is being wound up. In such a case a member remains liable as a contributor and is also entitled to share in the surplus assets, if any.

Unit – 60 : Prospectus

PROSPECTUS

The Companies Act, 1956 defines a prospectus as any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of a body corporate.

Prospectus means a document by which a company solicits funds from the public for its capital either by way of shares, debentures or deposits.

It is very clear that private companies cannot issue a prospectus to raise funds from the public. It is prohibited under the articles of association of the company. It is necessarily the public companies who issue the prospectus.

In the following cases even though shares are offered to the public, issue of prospectus is not required:

- (a) When a person is invited to enter into an underwriting agreement/arrangement to purchase/subscribe the shares.
- (b) When the shares are offered only to the existing shareholders or debenture holders of the company.
- (c) When the shares or debentures offered are in all respect uniform with the shares or debentures previously issued and listed on a recognised stock exchange.

COMPLIANCE WITH RESPECT TO PROSPECTUS

- (a) Time of issue of Prospectus: A prospectus can be issued only after the incorporation of the

company.

(b) Contents of the Prospectus: Section 56 read with Schedule II of the Companies Act, 1956 stipulates the mandatory provisions that are to be stated in the prospectus.

(c) Date of publication: Section 55 states that a prospectus must be dated and this ensures a prima facie evidence of the date of its publication.

(d) Signature of every director on the Prospectus: A prospectus must be signed by every person

(d) Application form with a Prospectus: Every application form for shares must be accompanied by a copy of the prospectus except for the application forms issued to underwriters and existing shareholders and debenture holders.

(f) Statements by expert in Prospectus: A prospectus including a statement purporting to be made by an expert cannot be issued unless he has given his written consent to the issue thereof and he has not withdrawn such consent before the delivery of a copy of the prospectus for registration to the Registrar of Companies and a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(g) Registration of the Prospectus: Before the issue of a prospectus the same must be delivered to the Registrar of Companies for registration with the documents which are stipulated under the Companies Act, 1956, e.g. the consent of the expert, copy of contracts relating to appointment and remuneration of the managerial personnel, etc.

Unit – 61 : Directors

The management of the company needs to be entrusted with a professional body, i.e., the board of directors.

The ownership and management of the company is thus bifurcated.

The board of directors control the day-to-day working and management of the company as well the long-term strategic planning of the company.

Every public company must have at least three directors.

A public company having

- (a) a paid-up capital of Rs. 5 crore or more;
- (b) one thousand or more small shareholders can elect a director from small shareholders.

Unless the articles provide for the retirement of all directors at every annual general meeting, at least two-thirds of the total number of directors of a public company, or of a private company which is a subsidiary of a public company, have to be

- (a) Persons whose period of office is liable to determination by retirement by rotation;
- (b) Appointment by the company in general meeting.

A company can have a maximum number of twelve directors and to increase this number, the approval of Central Government is required.

The board of directors can appoint directors by passing a resolution if such a power exists in the articles. Such directors are known as additional directors and they hold office only up to the date of the next annual general meeting of the company.

Every public company, or a private company which is a subsidiary of a public company, having a paid-up share capital of Rupees five crore must have a Managing or Whole time Director or a Manager

Vacation Of Office By Directors

The office of a Director becomes automatically vacant if

- he fails to obtain qualification Shares
- he is found to be unsound mind by the Court
- he is adjudged an insolvent
- he is convicted by Court
- he fails to pay any call in respect of Shares
- he is removed by shareholders by passing resolution.

Unit – 62 : Foreign Exchange Management Act, 1999

FERA: The main objective of the Foreign Exchange Regulation Act, 1973 (FERA) was to:

- *consolidate and amend the law,*
- *regulate certain payments,*
- *dealing in foreign exchange,*
- *the import and export of currency, for the conservation of the foreign exchange resources of the country,*
- *and finally the proper utilization of this foreign exchange so as to promote economic development of the Company.*

FEMA: The object of enacting Foreign Exchange Management Act, 1999(FEMA) is to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

Regulation and Management of Foreign Exchange

1. Deal transfer any foreign exchange / foreign security to any person other than an authorised person
2. makes any payment to any person resident outside India.
3. Receive any payment on behalf of any person resident outside India
4. Enter into any financial transaction in India in relation to a right to acquire any asset outside India by any person.

Powers of RBI with Respect to Authorised Persons

1. To appoint authorised person deals in foreign exchange.
2. RBI has the power to inspect the authorised persons so appointed to ensure that the said person complies with all the rules and regulations of RBI.

Contravention, Penalties, Adjudication and Appeals(585)

1. An adjudicating Authority can enquire contravention under FEMA only if complaint is filed by Central Government.
2. Adjudicating Authority has to endeavour to dispose off the complaints within one year from the date of receipt of the complaint.

Penalty can be levied up to thrice the sum involved in such contravention where such amount is quantifiable or upto Rs.2 Lakh. Where the amount is not quantifiable and where such contravention is a continuing one, further penalty of Rs.5 thousand per day

Unit – 63 : Transfer Of Property Act, 1882

Mortgage is a transfer of an interest in specific immoveable property as a security for the repayment of a monetary liability.

The transferor is called **Mortgagor**. The transferee is called a **Mortgagee**

Types Of Mortgage

Simple Mortgage	does not deliver possession of the mortgaged property mortgagor himself personally to pay the mortgage money in the event of his failing to pay, the mortgagee shall have right to get the mortgaged property sold and recover his dues
Mortgage By Conditional Sale	The mortgagor apparently sells the mortgaged property to the mortgagee with the condition that on default of payment on a certain date the sale becomes absolute, the sale shall become void, the buyer(mortgagee) shall transfer the property to seller(mortgagor)
Usufructuary Mortgage	Gives possession To retain such possession until payment of mortgage-money To receive rents and profits arising from the property Appropriate the same towards payment of interest or mortgage-money or both
English Mortgage	The Mortgagor binds himself to repay the mortgage-money on a certain date and transfers the mortgaged property absolutely to the mortgagee Subject to the condition that he will re-transfer it to the mortgagor upon payment of the mortgage-money The power of sale without intervention of Court if money not paid
Mortgage by Deposit of Title	The Mortgagor delivers documents of title

Goods	With intent to create a security thereon The delivery of documents of title is done in a town specified by state govt.
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A mortgage other than a mortgage by deposit title deeds can be effected only in terms of a mortgage deed duly signed by the mortgagor and attested by at least two witnesses.

The essentials of valid **Equitable Mortgage** is debt, deposit of title deeds and intention as security.

Leases of Immoveable Property

A lease is a transfer of a right to enjoy the property for a certain time on in perpetuity (that is forever), in consideration of a price paid or promised, to be given periodically to the transferor by the transferee.

A lease for **Agriculture/manufacturing** purpose is deemed to be a year to year lease. This lease can be terminated by the lessor/lessee by giving 6 months notice to one another.

A lease for any other purpose is deemed to be a lease from month to month. It can be terminated by giving 15 days notice to one another.

Unit – 64 : The Right to Information Act, 2005

The Right to Information Act, 2005 was enacted with intent to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

This Act extends to whole of India except the State of Jammu & Kashmir.

Central Government is the appropriate authority if the concerned public authority is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by that Government or the Union Territory Administration.

It is the State Government, if the concerned public authority is established, constituted, owned,

controlled or substantially financed by funds provided directly or indirectly by that Government.

'Central Information Commission' means the Central Information Commission constituted by the Central Government.

'Central Public Information Officer' means the Central Public Information Officer designated by the public authority and includes a Central Assistant Public Information Officer.

'Information' means any material in any form, including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any law for the time being in force.

'Public authority' means any authority or body or institution of self Government established:

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by the State Legislature;
- (d) by notification issued or order made by the appropriate Government and includes any
 - (i) body owned, controlled or substantially financed;
 - (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

'Right to information' has been defined in an inclusive manner. It means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to:

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in computers or in other device.

'State Information Commission' means the State Information Commission constituted by the State Government under this Act.

Unit – 65 : Right to Information and Obligations of Public Authorities

OBLIGATIONS OF PUBLIC AUTHORITIES

PIOs (Public Information Officers) are officers designated by the public authorities in all administrative units or offices under it to provide information to the citizens that request for information under the Act. Any officer, whose assistance has been sought by the PIO for the proper discharge of his or her duties, shall render all assistance, whenever demanded.

PROCEDURE FOR OBTAINING INFORMATION

PIO shall deal with requests from persons seeking information and where the request cannot be made in writing, to render reasonable assistance to the person to reduce the same in writing.

If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer, within five days, the request to that other public authority and inform the applicant immediately.

PIO may seek the assistance of any other officer for the proper discharge of his/her duties.

PIO, on receipt of a request, shall as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in 8.8 or 8.9 of the Act.

Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

DISPOSAL OF REQUEST

(a) If the PIO fails to give a decision on the request within the period specified, he shall be deemed to have refused the request.

Where a request has been rejected, the PIO shall communicate to the requester -

- (i) the reasons for such rejection,
- (ii) the period within which an appeal against such rejection may be preferred,

(iii) the particulars of the appellate authority.

PIO shall provide the information in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

If allowing partial access, the PIO shall give a notice to the applicant, informing:

- (a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
- (b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;
- (c) the name and designation of the person giving the decision;
- (d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and
- (e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided.

If information sought has been supplied by a third party or is treated as confidential by that third party, the PIO shall give a written notice to the third party within five days from the receipt of the request and take its representation into consideration.

Third party must be given a chance to make a representation before the PIO within ten days from the date of receipt of such notice.

(b) Payment of fees

As per the Right to Information (Regulation of Fee and Cost) Rules, 2005, the application shall be accompanied by a fee of rupees ten. It may be paid in cash against proper receipt or by demand draft or a banker's cheque or by Indian Postal Order. The instrument is payable to the accounts officer of the public authority.

(c) Disposal of the request

Where the application is received by another public authority or the information is more closely connected with the functions of another public authority, the application shall be transferred to that other public authority within five days from the date of the receipt of the application and inform the applicant about the transfer.

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If the application relates to the public authority receiving it, the information shall be provided as expeditiously as possible but within thirty days.

If the information sought concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

The applicant is required to pay the charges for providing the information. The rules prescribe the charges for computing the cost. The charges are computed at the following rates:

- (a) rupees two for each page in A-4 or A-3 size paper created or copied;
- (b) actual charge or cost price of a copy in larger size paper;
- (c) actual cost or price for samples or models; and
- (d) for inspection of records, no fee for the first hour and a fee of rupees five for each fifteen minutes or fraction thereof thereafter.

(d) Third Party information

Third party means a person other than the citizen making a request for information and includes a public authority. Where a Central Public Information Officer intends to disclose any information or record or part thereof which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer shall within five days from the date of receipt of the request give a written notice to such third party that he intends to disclose the information.

(e) Rejection of the request

The request for Information may be rejected where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

Where a request has been rejected, the Central Public Information Officer shall communicate to the person making the request the reasons for such rejection, the particulars of the appellate authority and the period within which an appeal against such rejection may be preferred.

(f) Information exempt from disclosure

The Act lists certain categories of information that is exempt from disclosure. These include:

- (a) information, the disclosure of which would prejudicially affect the sovereignty and integrity of India;
 - (b) disclosure of information expressly forbidden by law or may constitute contempt of court;
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- (c) disclosure of which would cause a breach of privilege of Parliament or of the State Legislature;
 - (d) information relating to commercial confidence, trade secrets or intellectual property;
 - (e) information available to a person in his fiduciary relationship;
 - (f) information received in confidence from foreign government;
 - (g) information, the disclosure of which would endanger the life or physical safety of any person;
 - (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
 - (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers.

APPEAL

The Central Government has the powers to constitute a body known as the Central information commission. The State Governments have the power to constitute for the State a body known as the State Information Commission to administer the provisions of the Act where the State Government is the appropriate authority.

The Central Information Commission (also the State Information Commission wherever it has the jurisdiction) has been empowered to receive and inquire into a complaint from any person

- (a) who has been unable to Central Public Information Officer; or his application for information or appeal was refused to be received by the Central Assistant Public Information Officer;
- (b) who has been refused access to any information requested under this Act;
- (c) who has not been given a response to a request for information;
- (d) who has been required to pay a fee which he considers unreasonable;
- (e) who believes he has been given incomplete, misleading or false information;
- (f) in respect of any other matter under this Act.

Any person who does not receive a decision within the time specified (normally thirty days) or is aggrieved by a decision of the Central Public Information Officer may within thirty days from the expiry of such period or from the receipt of such decision.

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Unit – 66 : The Prevention of Money Laundering Act, 2002

Under the Prevention of Money Laundering Act (PMLA), 2002, Section 12 there are certain obligations on banks to preserve and report customer account information, for which RBI has issued directives (during Jan 2006) u/s 35A of Banking Regulation Act 1949 & Rule 7 of Prevention of Money laundering Rules as under:

Maintenance of records of transactions : cash transactions of above Rs.10 lac or its equivalent in foreign currency; series of cash transactions connected to each other, of- below Rs.10 lakh or its equivalent in foreign currency within a month and the aggregate value of such transactions exceeds rupees ten lakh; cash transactions in forged or counterfeit currency notes or bank notes and where any forgery of a valuable security has taken place; suspicious transactions in cash or otherwise.

Preservation of records : Banks should maintain, for at least 5 years from the date of cessation of transactions between the bank and the client, all necessary records of transactions, both domestic or international, which will permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of persons involved in criminal activity. As regards, the documents these are to be preserved for 10 years.

Reporting to Financial Intelligence Unit-India Banks are to report information relating to cash and suspicious transactions to the Director, Financial Intelligence Unit-India (FIU-IND), New Delhi (details of reports given above). KNOW YOUR CUSTOMER (KYC) KYC guidelines issued by RBI u/s 35(A) of B R Act (and Rule 7 of Prevention 1 Money Laundering Rules) keeping in view the recommendation of Financial Action Task Force.

Objective: Preventing use of banks by criminals for money laundering purposes. Accordingly the banks are required to verify the identity and address of the customers and do proper verification. Accordingly:

- Banks to obtain introduction, identity of the customer and do proper verification before opening the account.
- Small depositors: Simplified criteria of identification and introduction to followed where the balance shall not exceed Rs.50000 and transactions in a year does not exceed Rs.1 lac and withdrawal not more than Rs.10000 per month. In these cases the certification of address and photograph by the introducer enough. However, if the amount of total credit exceed Rs.80000 or balance exceeds Rs.40000, notice to be sent to the customer.

PERIODICAL UPDATION OF KYC SIMPLIFIED: The Reserve Bank has revised its earlier instructions on periodical updation of 'Know Your Customer' (KYC) and has advised banks as follows:

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- a) They should continue to carry out on-going due diligence with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the client, his business and risk profile and, wherever necessary, the source of funds.
- b) Full KYC exercise should be done at least every two years for high risk individuals and entities.
- c) Full KYC exercise should be done at least every ten years for low risk and at least every eight years for medium risk individuals and entities.
- d) Positive confirmation (obtaining KYC related updates through email/letter/telephonic conversation / forms / interviews / visits, etc.), should be completed at least every two years for medium risk and at least every three years for low risk individuals and entities.
- e) Fresh photographs should be obtained from minor customers on their becoming major.
- Risk review of customers: Risk review should be done periodically not less than once in 6 months (15th of May / Nov).
 - Banks to keep a record of cash transactions above Rs.10 lac.
 - Banks to send report of these transactions to Financial Intelligence Unit of India. Cash transaction report: CTR (covering amount above Rs.10 lac of single transaction of total of all transactions within a month) for each month to be sent by 15th of the next month. Individual transactions below Rs.50000 not to be reported. Suspicious transaction report (STR). to be submitted within 7 working days of occurrences.
 - Banks to maintain records of transactions for a period of min 10 years from date of transaction. Record of documents to be kept for min 10 years from date of termination of relationship.
 - Banks to issue TCs, DDs, MTs and TTs for Rs.50000 and above only by debit to customers' account.
 - Due diligence to be ensured for transactions of Rs.50000 and above in case non-customer transactions.
 - Banks are to appoint a Sr. Mgmt. Officer, to be designated as Principal Office responsible for monitoring and reporting.
 - Unique Customer Identification Code to be allotted to all new customers.

Features of Basic Saving Bank account (RBI Aug 10, 2012):

- (1) it is subject to normal KYC compliance. Account opened as a small account, attracts conditions applicable to small a/c
- (2) it is normal banking service available to all.
- (3) No min balance
- (4) No max no. of deposits but max no. of withdrawals 4 in a month including ATM

(5) No other account is allowed to be opened along with such account. If already opened, it is to be closed within 30 days.

Customer Identity Document: Passport, PAN card, Voter I-Card, driving license, Identity card to bank's satisfaction, UIDAI letter, and letter of recognized public authority. (NAREGA job card for opening Small Accounts only)

Address Documents: Telephone bill, bank a/c statement, electricity bill (even in name of relative with whom living), letter of recognized public authority, ration card, letter from employer, UIDAI letter, rent agreement is registered with Govt. / Registration Authority

Imp: If identity document contains address, separate document not to be taken.

Introduction: It is not to be insisted upon (RBI - Dec 10, 2012)

Unit – 67 : Information Technology Act, 2000

Cyber Law in India is based on Information Technology Act 2000 which extends to whole of India. The Act has been drawn on the lines of Model Law on Electronic Commerce adopted in 1996 by UN Commission on International Trade Law (UNCITRAL). The Act has been amended wef Oct 27, 2009.

The **major provisions** of the Act are:

Electronic records or contracts - The law of evidence is traditionally based on paper based records and oral testimony. The Act provides legal treatment to users of electronic communication similar to other paper based or oral testimony means. In other words, the Act has legalised the electronic contracts to make them legally enforceable. Records can be kept in an electronic form.

Electronic form means information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film etc. In the eyes of law, written records also mean electronic records.

Digital signature - Digital signature is defined as 'authentication of an electronic record by a subscriber, by means of an electronic method or procedure, in accordance with the provisions of the Act'. The Act has provided legal recognition to digital signatures. Where any information

or any other matter is required to be authenticated by affixing signature, such requirement shall be deemed to be satisfied if the information is authenticated by Digital signatures. (The term Digital Signatures has been substituted by Electronic Signatures)

Submission of information in electronic form: Customers can now furnish information to banks through electronic means for opening of accounts or for other transactions. Such applications or information, if authenticated by way of digital signatures, shall be deemed to have been properly submitted.

Receipt or payment of charges through electronic means : Banks can make payment or receive payments or other charges by way of electronic means.

Publication of rules in electronic form: Rules, regulations, orders, bye-laws or notifications can now be issued or published in electronic form or in paper form. The date of publication of such documents shall be deemed to be the date of first publication of such matter.

Keys for digital signature – For the purpose of creating a digital signature and also for the purpose of verification of the digital signature by the Certifying Authority, there is a pair of keys called private key and public key respectively, under a system known as Asymmetric Crypto system.

Authentication of electronic records – A person (called subscriber) can authenticate an electronic record by affixing his digital signature with the help of a 'private key'.

Issue of digital certificate: Where a person wants a digital certificate, it may make an application to a Certifying authority (CA) for issue of the certificate. The CA shall issue the certificate after satisfying itself that

- (a) the applicant holds the private key corresponding to the public key to be listed in the digital signature certificate
- (b) applicant holds the private key capable of generating a digital signature and
- (c) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the applicant.

Retention of electronic records – The requirement of any law prescribing retention of records for a particular period, shall be considered to have been met, when the records are kept in electronic form.

Computer crimes or Cyber crimes: A person is deemed to have committed a cyber crime where: he secures access to a computer system

(a) where he downloads or copies data base or information from a computer system where he introduces computer virus into a computer system

(b) where he damages a computer system **where** he disrupts a computer system **(I) where** he causes denial to a computer system **to any authorized person) where** a person intentionally conceals, destroys or alter any computer source document for a computer program or source.

Computer virus – means any instruction, information, data or program that destroys, damages, degrades or spoils the performance of a computer system.

Confiscation – Where. any computer system, floppies, CDs, tape drives etc. causes contravention of any provisions of the Act, these are liable to be confiscated.

Penalties – The Act provides for penalties for violation of the provisions of the Act as under:

Sec 43: (a) Unauthorised access –damages by way of compensation to the person so affected.

(b) Introduction of virus and malicious code damages by way of compensation to the person so affected.

(c) Denial of access - damages by way of compensation to the person so affected.

Data theft – Fine up to Rs.2 lac and/or imprisonment up to 3 years (Sec 65).

Section 66 - If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to 3 years or with fine which may extend to Rs.5 lac or with both.

Section - 66A. Any person who sends, by means of a computer resource or a communication device,

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment_ for a term which may extend to 3 years and with **fine**.

Hacking - Hacking is an offence and one will have to pay a fine of up to Rs.2 lac or undergo imprisonment up to three years for hacking.

Hacking means knowingly or intentionally concealing, destroying or altering or causing another, to destroy or alter any computer code used for a computer programmer or computer system or computer network.

ALL THE VERY BEST FOR YOUR EXAMS

SHORT NOTES FOR JAIIB LEGAL & REGULATORY ASPECTS OF BANKING

Though we had taken enough care to go through the notes provided here, we shall not be responsible for any loss or damage, resulting from any action taken on the basis of the contents. Creation of these short notes is the efforts of so many persons. First of all we thank all of them for their valuable contribution. We request everyone to go through the Macmillan book and update yourself with the latest information through RBI website and other authenticated sources. In case you find any incorrect/doubtful information, kindly update us also (along with the source link/reference for the correct information).

K Murugan, MCA MBA CAIIB