

## Corporate Legal Environment

### SHORT QUESTIONS:-

**Ques1:-**What do you understand by capacity of parties?

**Ans1:-** For a valid Contract the parties to a contract must have capacity that is competence to enter into a contract.

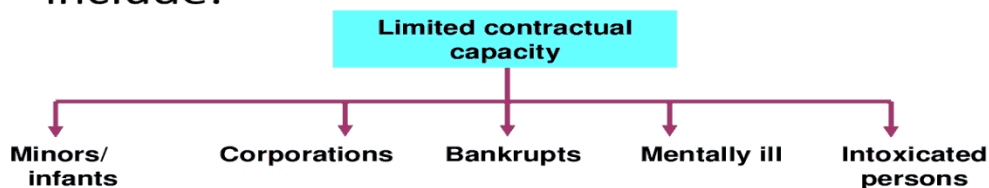
It follows that the following persons are incompetent to contract :

1. Minor
2. Person of unsound mind, and
3. Persons disqualified by any law to which they are subject .

**MINOR:-** A minor is one who has not completed his or her 18th year of age . A minor has a immature mind and cannot think what is good or bad for him .minors are often exploited. So he must be protected by law from any exploitation but at the same time, the law must not cause unnecessary hardship to the persons who deal with minors.

### Limited contractual capacity

- Parties with limited contractual capacity include:



**PERSON OF UNSOUND MIND:-** For a valid contract each party to the contract must have a sound mind . Contracts made by persons of unsound mind are void . The reason is that a contract requires assent of two minds but a person of unsound mind has nothing which the law recognizes as a mind . Unsoundness of mind does not mean weakness of mind or loss of memory . It means not only lack of capacity to understand the terms of the contract but also lack of understanding to realize the effect of the terms of the contract.

**PERSON DISQUALIFIED BY LAW:-**For a valid contract the person of both the parties should not be disqualified by the law.

**Ques2:-**Define the term offer and invitation of a offer.

**Ans2:-OFFER:-** When one person expresses his will to another person to do or not to do something, to take his approval, is known as an offer.

The main objective is to enter into a contract. It is essential to make an contract. The offer becomes a agreement if it is accepted.

Eg:- A tells to B,"I want to sell my motorcycle to you at Rs. 30,000, Will you purchase it?"

X says to Y,"I want to purchase your car for Rs. 2,00,000, Will you sell it to me?"

**INVITATION OF OFFER:-** When a person expresses something to another person, to invite him to make an offer, it is known as invitation to offer.The main objective is To receive offers from people and negotiate the terms on which the contract will be created. An Invitation to offer, becomes an offer when responded by the party to whom it is made.

Eg:-During festive there is an invitation to the customers to buy product of that particular brand as they are giving discounts and this act as an invitation to the customer.

**QUES3:-**Define consideration.

Ans3:- Consideration is the price for which the promise of other is bought and the promise thus given for the value is enforceable. Consideration May be :

- An act - means doing of something.
- An abstinence – promising not to do something .
- A promise – the promise of each party is the consideration for each other.

Section 2(d) of the Indian Contract Act...

- a. When at the desire of the promisor,
- b. The promisee or any other person.
- c. Has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing.
- d. Something, such act or abstinence or promise is called consideration for the promise.

**Ques4:-**Define contract of agency.

Ans4:- An agent is a person employed to do any act for another or to represent another in dealings with third person. The person who acts on behalf of another or who has been delegated the authority is called an *agent* . The person who authorizes another to act is called a *principal*.

The contract which creates the relationship of principal and agent is called an *agency*.

The agent may be expressly or impliedly authorized to do an act on behalf of the principal.

Agent: An agent is a person employed to do any act for another or to represent another in dealings with third persons. Thus, an agent establishes a contract between such another person and third party.

Principal: The person for whom act is done by an agent or who is represented in dealing with third person by an agent is called the principal

**QUES5:-**Define the term breach of contract.

**Ans5:-** When any party to a contract, whether oral or written, fails to perform any of the contract's terms, they may be found in breach of contract. While there are many ways to breach a contract, common failures include failure to deliver goods or services, failure to fully complete the job, failure to pay on time, or providing inferior goods or services.

**Eg:-** Courts in the United States are virtually inundated with breach of contract cases. Small and large, the decisions in such cases shape the way American's do business every day.

**QUES6:-** What are the legal formalities related with winding up by the court?

**ANS6:-** If the company has, by a Special Resolution, resolved that the company be wound up by the Tribunal.

2. If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting. A petition on this ground may be filed by the Registrar or a contributory before the expiry of 14 days after the last day on which the meeting ought to have been held. The Tribunal may instead of winding up, order the holding of statutory meeting or the delivery of statutory report.

3. If the company fails to commence its business within one year of its incorporation, or suspends its business for a whole year. The winding up on this ground is ordered only if there is no intention to carry on the business and the Tribunal's power in this situation is discretionary.

4. If the number of members is reduced below the statutory minimum i.e. below seven in case of a public company and two in the case of a private company.

5. If the company is unable to pay its debts.

6. If the tribunal is of the opinion that it is just and equitable that the company should be wound up.

7. Tribunal may inquire into the revival and rehabilitation of sick units. If its revival is unlikely, the tribunal can order its winding up.

8. If the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years.

9. If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

**QUES7:-** Explain the concept of value added tax.

**ANS7:-** VAT is a form of sales tax collected at each point of sale of goods in the production and distribution chain with a provision to set off or credit the tax paid on purchase of such goods against the tax payable on its sales. Thus, tax is essentially collected, on the value addition at each point of such sale.

VAT is payable, when there is sale of taxable goods;

- by a registered dealer assigned with TIN,
- within the State,
- in course of business of the dealer

**QUES8:-** What do you mean by promissory notes?

**ANS8:-** A **promissory note**, sometimes referred to as a **note payable**, is a legal instrument in which one party . promises in writing to pay a determinate sum of money to the other (the *payee*), either at a fixed or determinable future time or on demand of the payee, under specific terms. If the promissory note is unconditional and readily saleable, it is called a negotiable instrument.

**QUES9:-** Explain company and partnership firm

**Ans9:-** PARTNERSHIP FIRM

1. When two or more persons agree to carry on a business and share the profits & losses mutually, it is known as a Partnership firm.
2. Partnership firm is created by mutual agreement between the partners.
3. Registration is VOLUNTARY.
4. Minimum persons required is 2.
5. Maximum no of persons required is 100.
6. A partnership firm cannot enter into contracts in its own name

### **COMPANY:-**

1. A company is an association of persons who invests money towards a common stock, for carrying on a business and shares the profits & losses of the business.
2. The company is created by incorporation under the Companies Act
3. Minimum 2 no of persons required in case of private company and Seven in case of public company.
4. Maximum no of persons 50 in case of a private company and a public company can have unlimited number of members.
5. A company can sue and be sued in its own name

### **QUES10:-Explain Direct and Indirect taxes.**

**Ans10:-DIRECT TAXES:-** Direct tax is referred to as the tax, levied on person's income and wealth and is paid directly to the government.

2. It is Progressive in nature.
3. Incidence and impact falls on same person.
4. Types are Wealth Tax, Income Tax, Property Tax, Corporate Tax, Import and Export Duties.
5. Tax evasion is possible.

**INDIRECT TAXES:-** Indirect Tax is referred to as the tax, levied on a person who consumes the goods and services and is paid indirectly to the government.

2.It is Regressive in nature.

3.The incidence and impact falls on different persons.

4.Types are as follows Central Sales tax, VAT (Value Added Tax), Service Tax, STT (Security Transaction Tax), Excise Duty, Custom Duty.

5. Tax evasion is hardly possible because it is included in the price of the goods and services.

### LONG QUESTIONS:

**QUES11:-** What do you mean by contract? Explain in detail.

**ANS11:-** A Contract is an agreement, creating and defining the obligation between parties.”

2. According to section 2(h) of the Indian Contract Act,1872,

“An agreement enforceable by law is a contract.”

Contract = Agreement +Enforceability by law

### ESSENTIALS ELEMENTS:-



- **Offer and Acceptance:** In order to create a valid contract there must be a lawful offer by one party and lawful acceptance of the same by the other party. Example- Ranbir proposes to sell his car to Deepika for Rs. 30,00,000 and Deepika accepts this proposal, it is a valid agreement between the two.
- **Intention to create legal relationship:** If there is no intention to create legal relationship then there will be no contract.

**Example:** Tata Ltd agreed with Bentley that when existing contract expires, it would favorably consider an application of Bentley for renewal of his contract. Held the agreement was not intended to bind the company to renew its contract with Bentley and imposed no obligation on it to renew it.

- **Lawful consideration:**

Consideration is the price for which promise of other one is bought. The law enforces only those promises which are made for the consideration.

Consideration may take any form of goods money, service.

Consideration is also called quid pro-quo or something in return .

- **Capacity to party :**

The parties to an agreement must be competent to contract. If either of the parties does not have the capacity to contract, the contract is not valid.

The following persons according to law are incompetent to contract.

- a) Minors
- b) persons of unsound mind
- c) Persons disqualified by law

- **Free Consent:**



Consent means the parties must have agreed upon the same thing in the same sense

According to section 14 Consent is said to be free when it is not caused by

- 1) Coercion.
- 2) Undue influence.
- 3) Fraud.

An agreement should be made by free consent of the parties

- **Lawful Object :**

The object of an agreement must be lawful

The object is said to be unlawful if

- It is forbidden by law .
- It involves an injury to the person or property of any other
- The court regards it as immoral or opposed to public policy

**Example –**

Mr Karan takes on hire a house from Mr. Y for use as a gambling place. Gambling being an illegal act, the contract of hiring is void.

- **Certainty of meaning :**

According to Section 29 Agreement the meaning of which is not certain are void .The terms of the contract must be precise and certain. It cannot be left vague. A contract may be void on the ground of uncertainty.

**Example –**

Mr X agrees to sell Mr. Y 10 tons of some cereal . There is nothing to show what kind of cereal is intended, hence agreement is void.

- **Possibility of performance :**

The term of the agreement must be capable of performance. This is based on the Maxim “Lex non cogit ad impossibilia” i.e. Law does not compel to do what is impossible.

**Example** –Mr. X agrees with Mr. Y to discover treasure by magic. Such agreement is not enforceable.

- **Legal Formalities:**

The agreement must comply with the necessary formalities as to writing, registration, stamping etc. if any required in order to make it enforceable by law.

- **Consensus ad idem:**

Two parties must have agreed about the subject matter of contract at the same time and in the same sense.

**Example-**

If A who owns two cars, one Fiat and the other Fiat Polio, offers to sell B one car, A intending it to be Fiat, B accepts the offer thinking that it is the Fiat Polio, there is no consensus and hence no contract

**QUES12:-**Explain the discharge of contract.

**ANS12:-** A contract is said to be discharged when Both the parties to a contract have performed or extinguish from their respective obligations under the law of contract.

Consequently, the contractual relations between the parties to a contract come to an end.

A contract can be discharged by performance in any or the following two ways.

1. By actual performance: -

A contract is said to be discharged by actual performance when the parties to the contract perform their promises in accordance with the terms of the contract.

## 2. By attempted performance or tender: -

so far as the renderer of performance is concerned , a contract is said to be discharged by attempted performance when the promisor has made an offer of performance to the promisee but it has not been accepted by the promisee.

## **DISCHARGE BY MUTUAL AGREEMENT**

A Contract is created by an agreement between the parties. Similarly , it can also come to an end by their mutual agreement. The rights and obligations created by an agreement can be discharged without their performance by means of another agreement between the parties.

1. Novation
2. Rescission
3. Alteration
4. Remission

## 5. Waiver

**NOVATION:-** It means the substitution of a new contract for the original contract. Such a new contract may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the original contract.

Example: - A owes Rs 500 to B. Now A says to B that C will make you payment on behalf of him. B agrees to it. So now contracts have been made between B and C.

**RESCISSION:-** It means cancellation of the contract by any party or all the parties to a contract.

Example- X promises Y sell and deliver 100 Bales of cotton on 1 Oct at his godown and y promises to pay for goods on 1 Nov X does not supply the goods. Y may rescind the contract.

**ALTERATION:-** It means a change in the terms of a contract with mutual consent of the parties. Alteration discharges the original contract and creates a new contract. However, the parties to the new contract must not change.

Example- A has to make a payment of Rs 500 to B on April 25, but now A said I will pay the amount of 30 April, and B accepted it.

**REMISSION:-** It means acceptance by the promisee of a lesser amount in fulfillment of the promise made.

Example- A owes B Rs 5000. Now at the time of payment A pays to B Rs 2000, and he accept it.

**WAIVER:-** It means intentional relinquishment of a right under the contract. Thus, it amounts to releasing a person of certain legal obligation under a contract.

Example: - A owe to B Rs 100. Before the payment B relieves A from the liabilities of payment. Now A is not bound to perform his obligation.

**A contract may be discharged by operation of law in the following cases:-**

1. By Death of Promisor: - In that case when contract is depend on the personal skill of promisor, so if the promisor is not alive than it will be discharged.
2. By Insolvency: -When a person is declared insolvent, then he will be discharged.
3. By Unauthorized Material Alteration: - when one party makes any material alteration in the terms of the contract without the approval of the other party, the contract comes to an end.

**DISCHARGE BY IMPOSSIBILITY:-** When the parties enter into a contract for an act which is possible earlier, but latter on that becomes impossible, then it is known as subsequent impossible.

Following list are some examples of this way :-

1. By destructions of subject matter( Taylor V. Caldwell 1863)
2. By death / personal incapacity

3. By change of law
4. By declaration of war

**DISCHARGE BY LAPSE OF TIME:-** A contract is discharged if it is not performed within specified period. Here times means the period of limitation. The limitation act 1963 has prescribed the different period for different contract, e.g. period of limitation for recover a debt is 3 years, and to recover an immovable property is 12 years. The contractual parties cannot exercise their rights after the expiry of period of limitation.

### **Discharge by Breach of Contract**

A contract is said to be discharged by breach of contract if any party to the contract refuses or fails to perform his part of the contract or by his act, makes it impossible to perform his obligation under the contract.

It may be occurring in the following two ways: -

- Anticipatory breach :it occurs when the parties declares his intention of not performing the contract before the performance is due.

**QUES13:-** Explain the REMEDIES OF BREACH A CONTRACT.

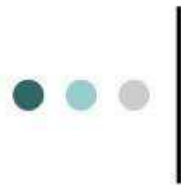
Ans:- RESCISSION OF THE CONTRACT: - If one party has broken his part of the promise under a contract, the aggrieved party may also rescind the contract. The aggrieved party need not perform his part of promise under the contract. He is further entitled to compensation for the damages sustained by him trough the non-fulfillment of the promise.

SUIT FOR DAMAGES: - The aggrieved party is entitled to file a suit for compensation of damages caused to him by the breach of the contract. Damages are the monetary award granted to an aggrieved party for the breach of contract. Damages may be ordinary, special, or normal.

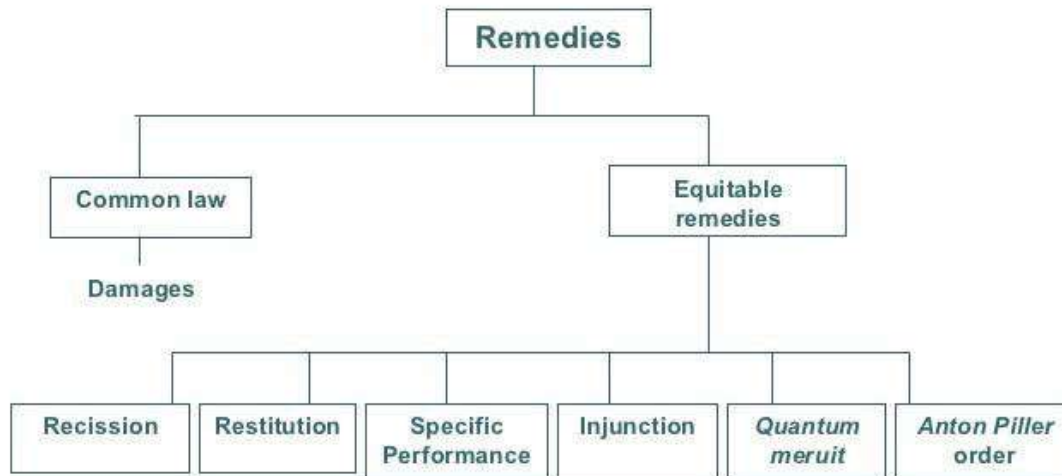
SUIT ON QUANTUM MERIT: -

When an aggrieved party has partly performed a contract, he can sue for the value of such part of performance. In case of breach of contract this suit is known as suit on quantum merit i.e. for as mush as earned by the party. This remedy is only

available only under some specific circumstances. This right is available in addition to the right to damages.



## Remedies for Breach



### SUIT FOR SPECIFIC PERFORMANCE: -

Where for the Breach of contract, damages are inadequate remedy, the court may order the party for specific performance of the contract. However, the specific performance will not be granted in every case.

### SUIT FOR INJUNCTION:

An aggrieved party can sue for injunction and court may issue an injunction against the party to a contract/ Injunction prohibits a party from doing or continuing to do something which amounts to breach of contract. It is generally issued to secure specific performance of negative terms of a contract.( Warner boys V. Nelson)

**QUES14:-** Explain OWNERSHIP and POSSESSION in detail.

**ANS14:- OWNERSHIP**

- The idea of ownership follows the idea of possession.
- The ownership is the de jure recognition of the right over the property.
- Ownership is the subjective and objective. It signifies the externally and internally.
- The right of alienation is an essential characteristic feature of ownership.
- The concept of ownership is used in widest meaning. The owner has the right to consume, destroy and alienate with his free will.
- The residuary power is vested in the owner.
- Ownership is the guarantee of the law.
- Ownership without possession is right, unaccompanied by that environment of fact in which it normally realizes itself.
- Ownership strives to realize itself in possession.
- The ownership is left to seek “proprietary remedies”.
- The law of prescription determines the process by which, through the influence of time, ownership without possession withers away and dies.
- Transfer: the ownership generally can be transferred by the way of convincing and registration in case of immovable properties and by way of delivery in case of movable properties.
- A right in rem can be owned and possessed. But a right in personam can only be owned.
- “Ownership is a matter of multiple rights”.
- Salmond says: “Whereas ownership is strictly a legal concept

**POSSESSION**

- First the idea of possession came into existence in the human civilization.
- Possession is the de facto exercise of a claim over the property.
- Possession is the objective realization of ownership. It is the external significance of ownership.
- This right is not seen in possession.
- The concept of possession is narrower in this sense. The possession has limited rights to consume, destroy and alienate.
- The residuary power is not given to possessor.
- Possession is the guarantee of the facts.

- Possession without ownership is the body of fact, uniformed by the spirit of right which usually accompanies it.
- Possession to Endeavour's to justify itself as ownership.
- The possessor is left with "possessory remedies".
- The law of prescription determines the process by which, through the influence of time, possession without title ripens into ownership.
- Transfer: the possession, comparatively, can easily be transferred. It does not require conveyancing.
- A right in personam can only be owned, and it cannot be possessed.
- "Whereas possession in singular, but stronger".
- "Possession is both a legal and a non-legal or pre-legal concept".

**QUES15:-** What are the rules for preparing an article of association?

**ANS15:-** The articles of association is a document that specifies the regulations for a company's operations, and they define the company's purpose and lay out how tasks are to be accomplished within the organization, including the process for appointing directors and how financial records will be handled.

Company Name

As a legal entity, the company must have a name and it is found in the articles of association. All jurisdictions will have rules concerning company names. Usually, a suffix such as "Inc." or "Ltd" must be used to show that the entity is a company. Also, some words that could confuse the public, such "government" or "church" cannot be used or must be used only for specific types of entities. Words that are offensive or heinous are also usually prohibited.

Purpose of the Company

The reason for the creation of the company must also be stated in the articles of association. Some jurisdictions accept very broad purposes, for example "management" while others require greater detail ("the operation of a wholesale bakery").

Share Capital

The number and type of shares that comprise the company's capital are listed in the articles of association. There will always be at least one form of common shares



and there may be several types of preferred shares as well. The company may or may not issue the shares, but if they are found in the articles of association, they can be issued if and when the need presents itself.

### Organization of the Company

The legal organization of the company, including its address, the number of directors and officers, the identity of the founders and original shareholders is found in this section. Depending on the jurisdiction and type of business, auditors and legal advisors of the company may also be in this section.

### Shareholder Meetings

The provisions for the first general meeting of shareholders and the rules that will govern subsequent annual shareholder meetings, such as notices, resolutions and votes are laid out in detail in this section.

**QUES16:-** What are provisions with respect to appointment and removal of a director of a company?

**ANS16:-** Section 152 of the New Act governs the appointment of directors. Certain specific requirements for appointment of director as laid down in the New Act are-

- If there is no provision for appointment of Director in the Articles (AoA), the subscribers to the memorandum, i.e. the shareholders, who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed;
- Director to be appointed in a general meeting. If it is so done, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfills the conditions specified in this Act for such an appointment;
- The proposed Director has to furnish his DIN (Director Identification Number) mandatorily. DIN is allotted by the Central Government on application by a person intending to be the Director of a company. DIN can be obtained in pursuance of section 153 and 154;
- The proposed Director has to also furnish a declaration stating that he is not disqualified to be a director.

- Furthermore, such appointment should be with his consent. Earlier such consent was not mandatory for private companies. Consent implies that being appointed a director and taking the charge of the office are two different things;
- Consent has to be filed with the Registrar of Companies within 30 days of appointment.

## **REMOVAL**

Any one member irrespective for his/her shareholding can give notice for removal of Director pursuant to Section 169 of the Companies Act, 2013.

2. After receiving Special Notice from the member to remove Director, it is duty of the Company to give immediate information of the same to the concerned Director and notice of the resolution to its members.

3. If is not possible for the Company to give notice to all the members, company should publish the same notice advertisement in the newspaper having an appropriate circulation before the meeting.

4. Due intimation must be given to the director regarding the removal notice. Right of such director to be heard on the resolution should be taken care of.

5. As per Section 169(4), director also possess the right to make a representation in writing against his removal and request the Company to notify it to the Company's members.

6. If the representation could not be sent to the members because it was received too late or because of company's default in sending it, the Company must read out the representation at the general meeting.

7. Now it is duty of the Company to hold a General Meeting to discuss the matters and pass a ordinary resolution to remove the director.

8. File Form DIR 12 with the ROC within 30 days of passing the resolution.

**QUES17:-** Explain the term “WINDING UP”and methods of winding up.

**ANS17:-** Winding up of a company is the process whereby its life is ended and its Property is administered for the benefit of its members & creditors. An Administrator, called a liquidator is appointed and he takes control of the

company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.”

**METHODS:**

**Compulsory Winding-Up:**

It takes place when a company is directed to be wound-up by an order of the Court.

***Grounds for Compulsory Winding-up (Sec. 433):***

**A company may be wound-up by the Court under the following cases:**

**(i) Special Resolution of the Company:**

If the company has, by special resolution, resolved that the Company be wound-up by the Court;

**(ii) Default:**

If a default is made in delivering the statutory report of the Registrar of Companies or in holding the statutory meeting of the company, the court may make a winding-up order;

**(iii) Not commencing or suspending the Company:**

If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

**(iv) Reduction of Members:**

If the number of members falls below seven in case of a public company or below two in case of a private company;

**(v) Inability to pay Debts:**

If the company is unable to pay its debts;

**A petition for the winding-up of a company may be presented by any one of the following entities:**

- (a) By the Company [Sec. 439(1) (a)];
- (b) By any Creditor [Sec. 439(1) (b)];
- (c) By any Contributory [Sec. 439(1) (c)];
- (d) By a Registrar [Sec. 439(1)(e)]; and
- (e) By any person authorized by the Central Government [Sec. 439(1) (f)].

***Commencement of Winding-Up:***

The winding-up of a company by the Court is deemed to commence from the time of the presentation of the petition for winding-up (Sec. 441). Where there is a resolution for voluntary winding-up, before the presentation of the petition to Court, the winding-up is deemed to commence from the date of the resolution. But the Court may direct otherwise in cases of fraud and mistake.

***Powers of Court on Hearing Petition (Sec. 443):***

**The court may, on hearing a petition:**

- (a) Dismiss it with or without costs; or
- (b) Adjourn the hearing conditionally or unconditionally; or
- (c) Make any interim order that it thinks fit; or
- (d) Make an order for winding-up of the company with or without costs or any other order as it thinks fit.

**QUES18:-** Critically examine the concept of Dishonor of the cheques.

**ANS18:- Post dated cheque and its dishonor:** Every cheque shall be presumed to be drawn on the date mentioned on the face of the cheque. A post dated cheque is a bill of exchange when it is written or drawn and it is not payable on demand until the date shown on the cheque. If post dated cheque is dishonored because of its presentation before it became payable on demand, no offence u/s 138 can be alleged. The controversy is settled by the decision of the supreme court in Anil Kumar Sawhney Vs Gulshan Rai(1993) 4 SCC 424. In this case Supreme Court held that a post dated cheque is a bill of exchange and it becomes a cheque under the NI act only on the date which is written on the said cheque and period of six months has to be reckoned from the date of the cheque.

**2. Jurisdiction:** Most often people are confused about the place where criminal complaint can be filed under the NI Act, as the Act is silent on this matter. Since the Criminal courts are approached, the issue needs to be examined from the point of view of the Criminal Procedure Code. Section 177 of CrPC provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 178 provides that offence may be tried at by a court having jurisdiction over any of the local areas where offence is committed. It is possible that an offence may be committed in several local areas or partly in one area and partly in another area. It is also possible that some times offence may consist of several acts done in different areas In all the above situations, the court having jurisdiction over any of such local areas may try the offence. Judgments on Jurisdiction: The judgment of supreme court In K Bhaskaran V sankaran Vaidyaa Balan and Anr(1999) 7 SCC 510 dealt with this issue elaborately. The Hon'ble Supreme court opined that offence can be completed only with concatenation of a number of acts, namely, drawing of cheque, presentation of cheque, returning of the cheque by the bank, notice by payee and failure of drawer of cheque within 15

days of receipt of notice. Any one of the courts under whose jurisdiction the above acts have taken place can try the offence. In other words complainant can file complaint in any one of the courts where the cause of arises or acts have been committed. In Harman Electronics(P) Ltd and Anr Vs National Panasonic India Ltd(2009)1 comp LJ 29 (SC) the Hon'ble supreme court had the occasion to examine the issue of jurisdiction again. In this case the appellant is a resident of Chandigarh issued a cheque which was dishonored. The cheque was issued at Chandigarh where the complainant had a branch and was presented at Chandigarh. Notice demanding payment however was issued by the complainant from its Head office at Delhi to the accused's office at Chandigarh. On failure to respond to the notice, a complaint was filed in Delhi. Both lower court and High court have placed reliance on K Bhaskaran V sankaran Vaidyaa Balan and Anr case and held that Delhi court also has jurisdiction. The Appellant/Respondent in appeal contended that Chandigarh court had jurisdiction to try the offence but his appeal was dismissed. But in appeal, the Supreme court held that a court derives jurisdiction when a cause of action arises. Jurisdiction can not be conferred for any act of omission or commission on the part of the accused. Issuance of notice would not give rise to cause of action but communication of the notice would and therefore Delhi High court would not have jurisdiction and it directed for transfer of the case pending in Delhi to Chandigarh court.

**3. Successive presentation of cheque and Cause of action:** Usually when a cheque is dishonored, the drawer is informed and some times he advises to present the cheque again as in the mean time he must have arranged for funds or some credits have come into his accounts just after dishonour or made arrangement with his bankers. What is the risk in such cases? In *Sadanandan Bhadrant Vs. Madhavan Sunil Kumar* AIR 1998 SC 3043 Supreme court ruled that a cheque can

be presented any number of times during its validity period by the payee. However on each presentation of the cheque and its dishonour, a fresh right accrues in his favour and not cause of action to file complaint. Once he chooses to give a notice u/s138(b) and the drawer fails to pay within the stipulated time, the cause of action for filing the complaint will arise immediately on the following day of expiry of 15 days notice period and remains alive till 30 days. Complaint has to be filed before expiry of 30 days from the date of expiry of notice period. If a complaint is filed before expiry of 15 days notice period, it becomes a premature complaint and it will be dismissed. If complaint is filed after expiry of 30 days complaint will be dismissed on the ground of limitation. So one has to be clear about cause of action and filing of complaint before the limitation period runs out

**4. Presumption as to Legally enforceable debt.** Section 139 says that it shall be presumed, unless the Contrary is proved, that the holder of a cheque, received the Cheque for discharge, in whole or in part, or any debt or other liability. Supreme court reiterated the contents of section 139 in the case of KN Bena V Muniyappan & Another, AIR 2001 SC 2895 that the onus is on the accused to prove by cogent evidence that there was no debt or liability. 5. Instructions in Bank's memo: The payee bank while returning the cheque gives reason for dishonour. Most often it mentions reasons such as "exceeds the arrangement" or "refer to drawer". Some times "stop payment" instruction is also ticked. All these reasons of dishonour will lead to a presumption of dishonour of cheque. The supreme court in the case of Modi Cements Ltd Vs M/s V Kuchikumar Nandi AIR SC 1998 1057 ruled that once the cheque is issued by the drawer, a presumption under S. 139 in favour of holder must follow and merely because the drawer issues a notice to the drawee or to the Bank for stoppage of the payment, it will not preclude an action under Section 138 by the drawee or the holder of a cheque in due course. This judgment

overruled its previous Judgment in *M/s. Electronics Trade and Technology Development Corpn. Ltd., Secunderabad Vs M/s. Indian Technologists and Engineers (Electronics) Pvt. Ltd.* and another. Supreme court reiterated the same views in *MMTC Ltd & Anr Vs. Ms. Medchal Chemicals & pharma(P) Ltd.* AIR 2002 SC 182.

**6. Notice and its requirements:** The NI Act is silent about the manner of service of notice. However, sending by notice by registered post is desirable as it will be easier to prove service of notice. In *SIL Import, M/s. USA v. M/s. Exim Aides Silk Exporters*" AIR 1999 SUPREME COURT 1609, the Supreme court ruled that if notice envisaged in cl. (b) of the proviso to S. 138 was transmitted by Fax, it would be a compliance with the legal requirement therefore notice demanding payment can be sent by Fax is also equally acceptable. If notice is sent by the payee at the correct address of the drawer, it would be deemed to be a proper service of notice. Some times notice issued is refused or unclaimed by the addressee. In situations such as this, it is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him. The decided cases are *Harcharan Singh Vs Shivrani* AIR 1981 SC 1284 *Jagdish Singh v. Natthu Singh* AIR 1992 SC 1604. Supreme court held that presumption of issuance of notice and receipt can be inferred in such cases. Courts should not adopt an interpretation which will help the dishonest evader and thereby defeats the very purpose of the Act. If Acknowledgment card is not received, how the period for filing complaint will be decided? In cases such as this, on expiry of 45 days period from the date of notice, action can be taken for filing a complaint. It must be remembered that the notice issued must demand payment of cheque amount in categorical terms and demand should not be vague. Notice can not be an omnibus demand. The supreme court in the case of *Suman Sethi Vs Ajay K Churiwala & Anr* AIR 2000 SC 828 ruled that



the said amount of money occurring in clause (b) and (c) of section 138 refers to the words 'payment of any amount of money' stated in the main section 138. It implies that the demand has to be made for the amount of the cheque dishonored. The object of the notice is to give another chance to the drawer of the cheque to make up for his default.

**7. Presumption as to consideration:** In the case of AV Murthy V B S Nagabasavanna 2002 Cr LJ 1449 SC held that dismissal of a complaint at the threshold on the ground that the debt is time barred is erroneous and not proper as consideration is presumed u/s 118 of NI act. **8. Dishonor of cheques by companies under SICA:** Supreme court in the case of Kusum Ingots & alloys Ltd Vs Pennar patterson securities Ltd & ors AIR 2000 SC 954 held that criminal prosecution for dishonour cheques is neither a proceeding for recovery of money nor for enforcement of a security. Prosecution against the Directors of Sick companies would not be suspended merely on the ground that proceedings against sick companies are suspended u/s 22 of SICA.

**9. Cheque dishnour and Directors liability:** Many cases have been filed by Directors u/s 482 of Code of Criminal procedure, for quashing of complaints. If a complaint is filed against a company and its directors, presumption will be drawn as per Section 141 of the NI Act against them unless they rebut this presumption. Normally it is the Managing Director who looks after the day to day affairs is supposed to be in the knowledge of the affairs of the company on day to day basis. Once a notice is served on all directors, the burden is on them to show that they are not liable to be convicted or it will be a good defense, if they can show that at the relevant time they were not in-charge of the affairs of the company. Same is the case with the partnership firm. Keeping in view the risk, Nominee Directors of

Central or State government or a Financial Corporation owned or controlled by the Central Government or the State Government, as the case may be, are exempted from prosecution under NI Act. 10. Compounding of offence: Section 147 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974.) every offence punishable under NI Act shall be compoundable. Before introduction of section 147 divergent views were expressed by various high courts including Supreme Court. Critical analysis of judgment of Supreme court in Rajneesh Aggarwal Vs Amit J Bhalla (2001)1SCJ 13 leads one to conclude that once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability. However, a joint compromise petition filed may be considered as a mitigating factor while awarding punishment for offence. Criminal proceedings can not be quashed simply because accused made a deposit of cheque amount in the court. When offence u/s 307 is compounded u/s 320, why an offence u/s 138 can not be compounded especially when both the parties file a compromise petition. In Anil Kumar Haritwal and another Vs Alka Gupta and another, AIR 2004 SC 3978, Supreme court considered the prayer of the parties allowed the appeal and set aside the conviction and sentence imposed on the appellants in the interest of justice and also in view of the fact that Section 147 of the Negotiable Instruments Act permits compounding of the offence.

### **The Just and Equitable Clause:**

If the Court is of opinion that it is just and equitable that the company should be wound-up.

## Reference :

- 1) K.C Garg, V.K Sareen et all, “Mercantile Law”, Kalyani Publisher, 15<sup>th</sup> edition.
- 2) P C Tulsian, “Business Laws”, McGraw Hill Education, 2<sup>nd</sup> Edition
- 3) N D Kapoor, “ Legal & Regulatory Framework of Business”, Sultan Chand & Sons, 1<sup>st</sup> edition
- 4) Priyanka Gupta, “Corporate Legal Environment”, Kalyani Publisher 3<sup>rd</sup> edition.
- 5) [www.slideshare.net/Azas92/lecture-10-remedies-for-breach](http://www.slideshare.net/Azas92/lecture-10-remedies-for-breach)
- 6) [taxguru.in/corporate-law/essentials-valid-contract-part.html/](http://taxguru.in/corporate-law/essentials-valid-contract-part.html/)
- 7) [www.docsity.com/en/capacity-of-the-parties-business-law-lecture-slides/229891/](http://www.docsity.com/en/capacity-of-the-parties-business-law-lecture-slides/229891/)
- 8) [www.slideshare.net/apurvaagarwal/dishonor-of-cheques](http://www.slideshare.net/apurvaagarwal/dishonor-of-cheques)
- 9) [www.caclubindia.com/articles/winding-up-of-the-company-a-quick-summary-18812.asp](http://www.caclubindia.com/articles/winding-up-of-the-company-a-quick-summary-18812.asp)