

Unit 1: Legal Framework of Regulation of Banks

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 (20)

Licensing Of Banking Companies

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

Board Of Directors (28)

- **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.

Unit 3: Regulation Of Banking Business

Selective Credit Control (44)

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 (54)

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

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

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.

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 (95)

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 (96)

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.)

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**.

1. **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.

Application of BR Act TO Public Sector Banks

Disinvestment of Shares by Government

Act	Section	Description
SBI Act	4	• Divide capital into shares of Rs.10 each instead of Rs.100
	11	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)

Cooperative Banks (103)

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

- **Applicability of 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.

	Primary Cooperative Bank	State Cooperative Bank	Central Cooperative Bank
Primary objective	Transaction of banking business	Financing other societies	Funding other cooperative society
PaidUp Share Capital	Rs.1 lakh. Under section 11		
Cash Reserve	3% of the total demand and time liabilities in India.		

Restrictions on Loans and Advances

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

- Loans and advances against its own shares.
- Unsecured loans or advances to any of its directors
- Directors interest
- Unsecured loans and advances in which the Chairman managing agent etc.
- Every Cooperative bank requires licence from the RBI.
- Section 24(1)**
- Maintain liquid assets – have to maintain liquid assets – 25% of such other person not exceeding 40% of Reserve Bank.
- Three copies of balance sheet to be submitted to RBI.

Insured Cooperative Banks

- Registration with DICGC – Under Section 13C of the Act, cooperative banks have to be registered with the corporation for this purpose.

Eligible Cooperative Bank

When Reserve Bank may require Winding Up (109)

Section 13D of the DICGC Act mentions circumstances may require for winding up of cooperative bank.

- Failed to comply with the requirements as to minimum paidup capital
- Section 22 : Disentitled to carry on business in India.

Unit 6: Case Laws on Responsibility of Paying Bank (118)

Negotiable Instruments Act, 1881

Section	
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
	<i>Protection to Paying Banker</i> if payment is in due course
10	Payment In Due Course
85	<i>Grants protection to a Paying banker, but it is not absolute</i> <ul style="list-style-type: none"> 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	<i>Payment of instrument on which alteration is not apparent</i> <ul style="list-style-type: none"> 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: Indemnities (142)

(Save from Loss)

Indian Contract Act

124	<p>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.</p> <p>Person giving the promise is called the Indemnifier and the person whom the promise is made is called the Indemnified or Indemnity Holder.</p>
125	<p>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.</p> <p>Above Rights of an Indemnify Holder is subject to:</p> <ul style="list-style-type: none"> • His acting within the scope of his authority • He does not contravene the specific directions of the promisor

Contract of Indemnity	Contract of Guarantee
<ul style="list-style-type: none"> • There are 3 parties (Indemnifier and Indemnified) • Risk is contingent • The Indemnifier is required to make good the loss as soon as it occurs • There are only two parties to a contract of indemnity • An indemnity is for the reimbursement of a loss 	<ul style="list-style-type: none"> • There are 2 parties (Debtor, Creditor/Beneficiary, Surety) • Liability is subsisting • The Surety's liability is secondary and the principal debtor is primarily liable • There are at least three contracts. • Guarantee is only security to the creditor

Unit 9: Bank Guarantees (152)

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 instalments 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 instalments on specified dates. *A deferred payment guarantee constitutes an undertaking on the part of the bank to make payment of deferred instalments 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.

1. Amount Guaranteed
2. Period of Guaranteed
3. 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.**

Unit 10: Letter Of Credit (170)

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

Parties to a Letter Of Credit

1. **Applicant-Buyer-Importer-Opener :** He is the person who applies to bank for Letter of Credit
2. **Issuing Bank :** The bank which opens the Letter Of Credit on the request of applicant/Buyer.
3. **Beneficiary-Exporter-Seller :** The person who is entitled to receive the benefit under Letter of Credit.
4. **Advising Bank / Notifying Bank :** The bank in the Beneficiary/Exporters Country through which the letter of credit is advised to the beneficiary.
5. **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.
6. **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.
7. **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 an advance of the price. These credits contain 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 pre-shipment 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 (178)

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.
3. **Transport Documents** :

Bill of Lading	In case goods are shipped . <u>Bill of lading is a document to title of goods.</u> Bill of lading is issued in sets of 2, 3, 4 and all termed as originals. Bill of lading are of two types 1. Traditional ship bill of lading 2. Combined transport bill
Airway Bill	In case goods are sent by airways . <u>Airway Bill is not a document to title of goods</u>
Post Parcel Receipt/Courier Receipts	By Post/Courier . <u>Not a document to title of goods</u>
Insurance Documents	The goods shipped are required to be insured under the terms of LC
Other Documents	Letter of credit transaction Certificate of origin, quality or analysis, weight

- **Revocable Credit**
Where the credit terms can be unilaterally altered or cancelled by the issuing bank.
- **Revolving Credit (190)**
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.
- **UCP 500**
- **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.

Uniform Customs and Practice for Documentary Credits - UCPDC 500 (181)

Unit 11: Deferred Payment Guarantee

Deferred Payment: Payment by instalments 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 instalments 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 12: Laws Relating to Bill Finance (198)

NI Act 1881

Section	
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.
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.
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
11	Inland bills
12	Foreign Bills
19	Demand Bills

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.
 - Bills drawn with an instruction to deliver against payment/D.P. Bills (202)*
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 (202)

- 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.

Unit 13: Various Types Of Securities

Land/Real Estate

Stocks and Shares

Debentures (212)

A document issued by the company acknowledging its indebtedness to the bearer or registered holder. A fixed rate of interest is payable at stated periods on such debentures.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Ease to Sell • Not subject to violent price fluctuations • They can be transferred at minimum cost • Bearer debentures are fully negotiable • They rank in priority to shares and mostly secured by a charge on the company's property. 	<ul style="list-style-type: none"> • If interest is not paid, it would affect its price and marketability. • If a charge on property of company is not registered, the subsequent charges will get priority. • Debentures may be issued by the company having no power to borrow money.

Goods

Life Policies

Book Debts (218)

Borrowers can take advances by assigning book debts in favour of the bank.

Fixed Deposit

Supply Bills

Supply bills arise in relation to transactions with the government and public sector undertakings. A party might have taken a contract for execution, and he is entitled to progress payments on the basis of work done, for which he has to submit bills in accordance with the terms and conditions of the contract.

Unit 14: Law Relating to Securities and Modes of Charging-I

Mortgage (226)

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©**
 - 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:
 - a) Simple and usufructuary mortgage
 - b) usufructuary mortgage accompanied by conditional sale

UNIT 15 : Law Relating To Securities And Modes Of Charging - II

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 mortgagee as a takes to
Pawnee has no right to foreclosure	

- **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
1. The mortgage of moveable property is called <u>Hypothecation</u>	1. mortgage relates to immoveable property
2. There is only obligation to repay the money and no transfer of interest	2. there is transfer of interest to the creditor

UNIT 16 : Different Types Of Borrowers

Minor : - A person who has not attained the age of 18 years under Indian Majority Act and 21 years if he is ward, under Guardians and Wards Act.

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

UNIT 17 : TYPES OF CREDIT FACILITIES

Types of Credit Facilities

- Fund Based Credit Facilities

1. Cash Credits / Overdrafts – Cash credit /Overdraft is an arrangement by which a banker allows his customer to borrow money up to a certain limit.
 2. Term Loans -
 3. Bill Finance
- Non-Fund based Credit Facilities
 1. Bank Guarantee
 2. 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 18 : Secured & Unsecured Loans, Registration of Firms, Incorporation of Companies

Types of Securities

- Pledge – Section 172 to 176 Indian Contract Act : For constituting valid "pledge" there must be delivery of goods to Pawnee. Delivery of possession can be actual or constructive.
- Hypothecation – as a charge against property of the borrower for an amount of debt, where neither ownership nor possession is passed to creditor.
- Mortgage – is defined as the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing future debt, or the performance of an engagement which may give rise to pecuniary liability.
- Assignment of Debts -

Consequences of Non-Registration of Firm

- i. Suits by Partners Inter-se
- ii. Suits by a firm against third parties
- iii. Exceptions
- iv. Non-Application of Section 69: Certain Suits

Incorporation Of a Company

- A. Type of Company
- B. Name of Company
- C. Memorandum of Association - is the constitution of a company and amongst other things, defines the area within which the company can act.
- D. Articles of Association – contains the rules and regulations relating as to the internal management of a company.
- E. Preparation of other documents
- F. Payment of Registration fees
- G. Certificate of Incorporation – is the conclusive evidence of coming into existence of the company.
- H. Certificate of Commencement of Business – is required for a public company to start business.

Unit 19 : 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
 - A. that floats over the present and future property of the company
 - B. that does not restrict the company from assigning the property subject to third persons, whether by way of sale or security.
 - C. 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.

Provisions of Law Relating to Registration Of Charges(289)

Section	Description
124	Charge meaning
125	Registration Of Charge
126	After registration
127	
128	
129	
130	Register of Companies shall keep register of charges
131	Index of register of charges
132	Certificate or the charge has been created
133	
134	
135	
136	
137	Appointed Receiver/Manager shall give notice to Register of Companies
138	Satisfaction of charge
139	
140	Memorandum of Satisfaction
141	Company law board can order creation/Modification/Satisfaction of Charge
142	Impose penalty on the company
143	Company keeps a register of charges
144	Any member of company can inspect the books relating to charges creating by the company

UNIT 20 : INTRODUCTION TO SARFAESI ACT, 2002 (295)

1. Banks obtain security while lending so that in case of needs the money can be realised by sale of securities.
2. The SARFAESI Act is applicable to the housing finance companies whose names are notified by the Central Government.
True
3. Moveable securities in possession of the bank can be sold by the bank without intervention of the Court – Yes, Bank can sale as provided as provided in the Contract Act, 1872.
4. As per the laws existing today the mortgaged security cannot be sold without Court intervention. – No, SARFAESI Act, 2002 has now made enabling provisions.
5. Provisions of SARFAESI Act, 2002 apply to which securities? – Where security interests are created for repayment of financial assistance given by bank or financial institution.
6. In Mardia Case what the Supreme Court declared as invalid - Condition to pay 75% of the amount as pre-condition while preferring appeal to the DRT.

UNIT 21 : DEFINATIONS 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
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. SARFAESI Act is not applicable to 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 (302)** a claim to any debt or receivables and includes :
 - A claim to any debt or receivables or part thereof whether secured or unsecured, or
 - Any debt or receivable secured by mortgage of or charge on immovable property or
 - A mortgage, charge, hypothecation or pledge of moveable property, or
 - 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**
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 22 : 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 (314)
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 23 : Enforcement of Security Interest (325)

- 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.
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 24 : Central Registry (338)

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 25: Offences and Penalties

Section 12: of the SARFAESI Act the RBI is statutorily empowered to issue directions to 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 Rs.5 lakhs. If any person: Contravenes, attempts to contravenes, abets the contravention of the provisions of the SARFAESI Act or rules made there under, he shall be punishable with imprisonment for a term which may extend to one year or with fine or both.

Unit 26: Miscellaneous Provisions

Securities not in possession of the bank or financial institutions are only covered by this act.

- Civil courts not to have jurisdiction, jurisdiction has conferred to DRT and AT.
- **Section 36 SARFAESI Act :** The action has to be taken within 3 years from date on which a cause of action arose.

Non-applicability of SARFAESI Act (348)

Unit 27: Purpose, Extent, Definitions, Establishment and Powers (356)

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 (357)

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 28 : Procedure For Redressal Of Grievance

Grounds Of Complaint (362)

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 (365)

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 compensation is **Rs.10 lakhs.**

Review Authority

Rejection Of the Complaint

Unit 29 : Arbitration and Conciliation Procedure

- Any dispute between a bank and its constituents or amongst banks may be referred to BO for arbitration if both the parties agree for reference provided that the value of the claim in such dispute does not exceed Rs. 10 Lakhs.

Unit 30 : Preliminary (378)

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 31: 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
<ul style="list-style-type: none"> • Presiding Officer : District Judge • Presiding officer holds office for a term of <u>5 years or until he attains the age of 62 years whichever is earlier.</u> • Recovery Officer • The staff so appointed shall work under the general superintendence of the presiding officer. 	<ul style="list-style-type: none"> • Chairperson : High Court Judge, Presiding officer of a DRT for at least 3 years. • Chairperson holds office for a term of <u>5 years</u> or until he attains age of 65 whichever is earlier. •

Unit 32: Jurisdiction, Powers and Authority of Tribunals

Appellate Tribunal : The claim for recovery of the debt must be above Rs. 10 lakhs.

Unit 33 : 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.
1. Bank has to file application for recovery of loan taking into consideration jurisdiction and cause of action.

DRT Act	
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 <u>within 30 days</u> of the service of summons as to why the relief prayed for should not be granted
19(5)	The Defendant has to present <u>written statement</u> at or before first hearing or within such time as the Tribunal may permit.
19(6)	defendant has to claim any amount <u>on first hearing</u> 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(13A 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 <u>conditional attachment order.</u>
19(16)	If any attachment order is passed without complying the requirements of Sub-section(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 <u>person be detained in civil prison for a term not exceeding 3 months.</u>
19(18)	<ul style="list-style-type: none"> • 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 <u>recovery certificate</u> 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 <u>Certificate of Recovery</u> 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 <u>within 180 days</u>
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 34 : 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.

- 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.

Unit 35: 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
- maintained in Electronic Form
- maintained in Mechanical Form

Unit 36: Preliminary, Extent and Definitions (420)

- 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.
- **"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

Consumer Protection Act, 1986

Section	Description
2(1)(b)	Complainant means
2(1)Ⓒ	Complaint
2(1)Ⓒ(iv)	Excess price
2(1)(d)	Consumer means
2(1)(f)	Defect means
2(1)(g)	Deficiency
2(1)(i)	Goods means
2(1)(j)	Manufacturer means
2(1)(nnn)	Restrictive Trade Practice means manipulation of price, its conditions of delivery to affect flow of supplies in the market relating to goods or services in a such a manner to impose on the consumer unjustified costs or restrictions.
2(1)(o)	Service means
2(1)Ⓔ	Unfair Trade Practice(425) false statements to promote the sale of product / service, mislead the consumers
4(1)	Central Consumer Protection Council (CCPC)
4(2)	Ex-Officio Chairman – The Minister in charge of consumer affairs in the Central Govt.
5(1)	The meeting of CCPC should be held <u>at lease once in a year</u>
6	Objects of the CCPC
7(1)	State Consumer Protection Council (SCPC)
7(2)	Ex-officio Chairman – The minister in charge of consumer affairs in State Govt.
7(3)	The meeting of SCPC should be held <u>twice a year</u>
8	Objects of the SCPC
8A(1)	District Consumer Protection Council(DCPC)
8a(2)	Ex-officio chairman
8B	Objects of the SCPC (protects, assured, informed)
9	District Forum, State Commission, National Commission
10(b)	Disqualified if convicted by court, is of unsound mind
10	National Commission – 4 Members in addition to President (4+1),value exceed Rs. 1 crores State Commission - Chairman (appointed by state)+ 10 members appointed by centre, value Rs.(20 lakhs- 1 Crore) District Redressal Forum – 3 Members, headed by The President(collector of the district), Value upto 20 lakhs.
11(1)	District Consumer Disputes Redressal Forum (DRF) – Jurisdiction to entertain complaints where the value does not exceed Rs. 20 lakhs.
12(4)	If the complaint is admitted to DRF, shall not be transferred to any other : <u>Court, Tribunal, or any authority set up by any law</u>
13(4)	DRA has same powers as are vested in civil court
14(1)	After the proceeding, if DRA is satisfied that the complaint , it shall order – <u>remove the defect , replace the goods, return the complainant the price</u>
15	Any person aggrieved by an order made by District Forum, may appeal to <u>State Commission within 30 days.</u>
17	State Commission got jurisdiction to entertain complaints where value of goods and services <u>above Rs.20 lakhs and does not exceed 1 Crore</u>
19	Any person aggrieved by an order made by State Commission, may appeal to <u>National Commission within 30 days.</u>
23	Any person aggrieved by an order made by National Commission, may appeal to <u>Supreme Court within 30 days.</u>
24A	The District forum, the state commission, or national commission shall not admit a complaint unless it is filed <u>within 2 years from the date on which the cause of action has arisen.</u>
24B	National commission got administrative control over all the <u>state commission in</u>

the matter of : calling for periodical returns, issuance of instructions regarding uniform procedure, overseeing the functioning of state commission, district commission

Unit 37: Consumer Protection Councils

District CPC	State CPC	National CPC
Chairman – Collector of the district.	Chairman – Minister in charge of the consumer affairs in state govt.	Chairman – Minister in charge of the consumer affairs in central govt.
	Members – not exceeding 10 appointed by centre govt.	
Meeting at least once in a year	Twice in a year	Twice in a year

Unit 38: 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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> Does not exceed Rs. 20 Lakhs. 	<ul style="list-style-type: none"> Rs.20 Lakhs - Rs.1 Crore Appeal against the order of District Forum 	<ul style="list-style-type: none"> 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 complain 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, <u>he shall be punishable with imprisonment for a term 1 month to 3 years or with fine Rs. 10,000 or with both.</u>		

Appeal

- **Appeal to State Commission:** If order of the district forum involves payment to a person preferring the appeal, appeal cannot be filed without payment of 50% the amount ordered to be paid or Rs. 20,000 whichever is less.
- **Appeal to National Commission:** If order of the state commission involves payment to a person preferring the appeal, appeal cannot be filed without payment of 50% the amount ordered to be paid or Rs. 35,000 whichever is less.
- Any person aggrieved by the order of National Commission can file the **appeal in Supreme Court**. If order of the National commission involves payment to a person preferring the appeal, appeal cannot be filed without payment of 50% the amount ordered to be paid or Rs. 50,000 whichever is less.

Unit 39 : Meaning and Essentials of A Contract (452)(143)

Contract means an agreement enforceable by law.

Unit 40: Contracts of Indemnity (458)()

A contract of Indemnity is a contract by which one party promises to save the other from loss caused to him.

Unit 42: Contracts Of Bailment

- Giving a product on rent for use for another person is a Contract of Bailment.
- It is obligation of the bailee to keep his goods separate from the goods of the bailor.
- The bailer is liable for any loss to the bailee if the goods bailed are defective and the bailor knowingly does not disclose this fact to the bailee.
- The person delivering the goods is called the bailor.
- The person to whom they are delivered is called the bailee.

Unit 43: Contracts of Pledge

The bailment of goods as security for payment of a debt or performance of a promise is called **Pledge**. The bailer in this case is **Pawnor** and the bailee is called **Pawnee**.

Unit 44: Contracts Of Agency (479)(148)

An **agent** is a person employed to do any act for another person or to represent another person in dealing with some third person. The person for whom such act is done is called the **Principal**.

- **Agent** can be appointed by express appointment / implication of law / ratification by principal
- The usual form of contract of agency is by way of a Power of Attorney.
- When a person by his words or conducts appoints someone as his agent it is known as **agency by Estoppel**.
- **Agency by Ratification** : the acts are done by one person for another, but without knowledge or authority, he may elect to ratify or disown such acts. If he ratifies then its agency by ratification
- **Agency of Necessity** arises where – there is real necessity for acting on behalf of the principal, impossible to communicate with principle, husband improperly leaves wife without providing proper means for sustenance.
- **Agency of Holding Out**

Unit 45: Meaning and Essentials Of a Contract Of Sale (488)

Document of Title Of Goods includes bill of lading dock-warrant, warehouse-keeper's certificate, railway receipt etc.

Merchantile Agent means an agent having authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods.

Unit 47: Unpaid Seller (500)

Rights of an Unpaid Seller

Rights against the goods			Rights against the buyer personally			
Where the property in the goods have passed		Where the property in the goods have not passed	Suit For price	Suit for damages	Repu diatio n of contr act	Suit for intere st
Lien	Stoppage in Transit	Resale				

A seller who has accepted negotiable security as an absolute payment is no longer an unpaid seller.

An **Unpaid Seller** has the following rights

1. A **Lien** on the goods for the price while he is in possession of them.
2. In case of the **Insolvency of the Buyer**, a right of stopping goods in transit after he has parted with the possession of them
3. A Right to re-sale
4. Right to withhold delivery of goods.

Unit 48: Definition, Meaning and Nature Of Partnership (506)

Partnership is the relation between persons who have agreed to share the profits of a lawful business carried on by all or any of them acting for all. There is mutual relation of "agency" between the partners. Any partner can by his acts bind all the partners of the firm.

Types of Partnership

1. **Partnership at Will**

2. **Partnership for a fixed period** partnership agreement for a fixed period.
3. **Particular Partnership** for completing particular job

Unit 50: Relations of Partners to Third Partners (518)

- 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.

Unit 51: Minor Admitted to the Benefits of Partnership (526)

A person who is the minor cannot be a partner in a firm but with the consent of all the partners, he may be admitted to the benefits of the partnership.

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

All the partners' of the firm are personally liable for all the liabilities of the firm, However, 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 therefrom.

Legal Position After the Minor Attains Majority

At any time within six months of his attaining majority or of his obtaining knowledge that he had been admitted to the benefits of partnership.

Becomes a partner	Not to become a partner
<ol style="list-style-type: none"> 1. His rights and liabilities as a minor continue up to date on which he becomes a partner but he also becomes <u>personally liable</u> to the third parties for all acts of the firm done since he was admitted to the benefits of the partnership. 2. His share in property and profits of the firm shall be the share to which he was entitled as a minor. 	<ol style="list-style-type: none"> 1. His rights and liabilities shall continue to be those of a minor up to date on which he given public notice that he does not want to become a partner. 2. His share shall not be liable for any acts of the firm done after the date of the notice. 3. He shall be entitled to sue the partners for his share of the property and profits.

Unit 52: Dissolution Of Firm (526)

A Partnership firm can be dissolved.

Dissolution By Agreement : A firm can be dissolved with the consent of all the partners

Compulsory Dissolution

A firm is dissolved

- a. If all the partners are adjudicated insolvent
- b. By the happening of any event which makes it unlawful for business itself.

Dissolution on the happening of Certain Contingencies

A firm is dissolved in following circumstances

- a. If the partnership is constituted for a fixed term, then by the expiry of that term
- 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 the partner; and
- d. By the adjudication of a partner as an insolvent.

To avoid dissolution in these cases, the partners should expressly agree that the firm shall not be dissolved .

Dissolution by the Court

- a. That a partner has become of unsound mind.
- b. Has become permanently incapable of performing the duties
- c. Partners willfully or persistently commits breach of agreements

Liability for acts of Partners done after dissolution

Any partner of the firm must give a public notice to the effect that the firm is dissolved. This is because even after dissolution of a firm, the partners continue to be liable to third parties for any act done by any of them, until such notice is given.

Unit 53: Effect Of Registration (530)

A company is compulsorily required to be registered with the ROC under the Companies act 1956. However partnership firm is not required to be registered.

- A partner of an unregistered firm can not file a suit against other partners to get his share of profits.
- An unregistered firm cannot enforce by way of a suit, any right arising by a contract against any third party.

Unit 54: Definition and Features of Company (535)

Section 3 of the Companies Act, 1956 defines a company as “ A Company formed and registered under this Act, or an existing Company”.

Distinction between A Company and Partnership

	Company	Partnership
Registration	Compulsory	Not Compulsory
Number of Members/ Partners	Private Company : 2 – 50 Public Company : 7 to unlimited	Banking Business: 2- 10 Other Business: 2- 20
Number Of Directors	Private Company : 2 Public Company : 3 – 10	
Legal Status	Separate legal existence	Does not have a separate legal existence
Ownership of Property	By the company itself	Owned by the partners
Management	By a board of directors elected by share holders	By partners
Perpetual Existence	Has a perpetual existence	Does not have a perpetual existence
Contracts	A member of the company can contract with the company	A partner cannot contract with the partnership firm.
Liability	Except in case of a Company <u>with unlimited liability, the liability of the company is unlimited.</u>	The liability of partners in a partnership is <u>unlimited.</u>
Transfer	A transferee of shares in a Company becomes a member of the Company.	A person can become a partner in a partnership firm with the <u>consent of all the partners.</u>
Death	Death of any or all members does not determine the existence of the Company	Death of a partner dissolves the partnership unless the partnership deed provides otherwise.
Agency	Not the agents	Each partner of a firm is an agent of the other.

Features Of Company

- Registration** : A company has to be compulsorily registered under the Companies Act, 1956
- Artificial Legal Person** *created by law and can be dissolved by law alone. It is invisible, intangible and exists only in the eyes of law. It enjoys many rights of natural person.*
- Independent Corporate Personality** : A partnership has no existence apart from its members
- Limited Liability**
- Perpetual Succession**
- Separate Property**
- Transfer of Shares**
- Common Seal**
- Corporate Veil** is said to be lifted or pierced when the court ignores the separate entity of the company.

Unit 55: Types Of Companies (542)

Classification of Companies On the Basis of

Mode Of Incorporation	
	Statutory Company – created by Special Act
	Registered under the Companies Act, 1956 – Companies incorporated and registered under the companies act.

Liability	Company Limited by Shares – The member is not bound to pay anything more than the fixed amount on the share
	Company Limited by Guarantee - <i>Where the liability of the members of the Company is limited by the Memorandum of Association to such an amount as the members undertake to contribute to the assets of the company in the event of liquidation of the company</i>
	Company with Unlimited Liability – Where the liability of the members is unlimited.
Public Interest	Private Company is defined in section 3 of the Companies Act <ul style="list-style-type: none"> • Minimum PaidUp Capital Rs. 1 Lakhs. • Only 2 Directors and 2 members • Need not obtain Certificate of commencement • Only get Certificate of Incorporation • A private company need not hold a statutory meeting and submit a statutory report to the ROC.
	Public Company : <ul style="list-style-type: none"> • Minimum PaidUp Capital Rs. 5 Lakhs • Minimum 7 members and 3 Directors • Appointment and remuneration payable to the directors applicable to a public company not applicable to private company
	Government Company : 51% of the paid-up share capital by Govt. (Central/State)
	Foreign Company : incorporated outside India but has place of business in India
Holding and Subsidiary Companies	A company is deemed to be subsidiary of another <ul style="list-style-type: none"> • Other company controls the majority of composition of Board of Directors. • That other company holds majority of shares • Holding company's subsidiary has its own subsidiary, it becomes subsidiary of the first mentioned company.

Unit 56:Memorandum Of Association & Articles Of Association

Memorandum Of Association	Articles Of Association
<ul style="list-style-type: none"> • The first step in the formation of Company is the preparation of the MOA. • It is a document of great Significance as it embodies the fundamental rules regarding the <u>constitution and scope of activities of the Company</u> 	<p>It consists of a Set of rules/regulations and bye laws made by the company for <u>internal management</u> of the company and for carrying out the objects of the company embodied in its MOA</p>
<ul style="list-style-type: none"> • A Company is legal person and hence it must have a name to be identified. • Name of the state in which the registered office of the company is situated. A Company shall from the date on which commences business / within 30 days after the date of Incorporation whichever is earlier, should have registered office. • It should clearly state the objects/nature of the business of the Company for which the company is established. • Liability Clause – if the company is to be incorporated with limited liability the liability clause must state that the <u>liability of the members shall be limited by the unpaid amount on shares.</u> • Capital Clause – amount of share capital which the company will be authorised to raise and the number and the value of shares into which it is 	<p>The Companies Act, 1956 requires that the <u>Articles of Association</u> must be filed together with the MOA by the following kind of the companies.</p> <ul style="list-style-type: none"> • Unlimited Company – <i>The AOA must state number of members with which the company is to be registered</i> • Company Limited by Guarantee – <i>The AOA must state number of members with which the company is to be registered.</i> • Private Company limited by shares – <i>The AOA must contain the restrictive conditions peculiar to a private company. (i.e. with respect to prospectus, deposits, number of members, and transfer of shares)</i>

divided.

Distinction Between the MOA and AOA

Memorandum Of Association	Articles Of Association
<ul style="list-style-type: none"> ➤ Contains fundament conditions upon which the company is incorporated ➤ It states purpose of the company and reasons for which company ➤ Clauses in MOA can be altered only by a special resolution passed by the company and with the sanction of company law board. ➤ If a company commits an act in contravention of the MOA(e.g. company having objects only to manufacture biscuits starts activities of bottling milk without proper amendments in object clause) then the acts done and liabilities arising therefrom are not binding on the company. And the same cannot be ratified by the company. 	<ul style="list-style-type: none"> ➤ Internal regulations of company ➤ Subordinate to MOA ➤ Any terms of AOA can be altered by a special resolution and no approval from the company law board or any other authority required. ➤ If a company does something in contravention of the provisions of the AOA, it is only a procedural irregularity and the same can be ratified by the shareholders at a general meeting and thus recified.

Unit 23 : Doctrines of Ultra vires/Construction Notice.**Doctrine of Ultra Wire****Doctrine of Constructive Notice****Doctrine of Indoor Management**

Ultra Wire	Constructive Notice	Indoor Management
<p>Company cannot carry out the objects which are not stated in MOA</p> <ul style="list-style-type: none"> • If a company's money has been spent ultra vires in purchasing any property, that belongs that company • If a director of company makes an ultra vires payment he is <u>personally liable</u> to the company • Director are agents of the company, they must act within limits of the power of the company – <u>Breach of Authority</u> 	<p>Every outsider is assumed to have knowledge of MOA & AOA</p>	<p>Outsider are not required to see the compliance of internal regulations of company</p> <p>1. If outsider has actual knowledge of internal irregularity of the company, <u>he is not entitled to claim protection of this doctrine</u></p>

Unit 58: Members

In the case of companies having no share capital there are members but not shareholders

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

- The subscribers of the MOA

- 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

1. **By subscribing to MOA**
2. **Membership by Allotment shares**
3. **Transfer of shares**
4. **Transmission of Shares**
5. **Membership by Acquiescence**
6. **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

1. If a member transfer his shares to another person
2. if a members shares are forfeited
3. if the shares are sold pursuant to a decree of court
4. if the member surrenders his shares
5. if a member is adjudicated insolvent
6. on the death of the member

Rights of Members (564)

- **Statutory Rights**
 1. Priority to have new shares offered, in case the company proposes to increase capital
 2. Transfer of shares
 3. To inspect the register of members
 4. appoint directors and auditors
 5. to convene an extraordinary general meeting of the company
 6. to file petition to the High Court to order winding up of the Company
- **Documentary Rights**
- **Proprietary Rights**

Unit 59: Prospectus

A Public company can raise funds for its business form the public by issuing a document known as prospectus. Private companies cannot issue prospectus to raise funds from the public. It is prohibited under the AOA of the company. It is necessarily the public companies issue the prospectus.

Compliance with Respect To Prospectus

Prospects	
Time of Issue	A prospectus can be issued only after the <u>incorporation of the company</u>
Contents	<i>Section 56 read with Schedule II of the companies act 1956 stipulates the mandatory provisions that are to be stated in the prospectus</i>
Date Of Publication	Section 55 states that a prospectus must be dated
Signatures	A prospectus must be signed by all directors
Application form	Every application from for shares must be accompanied by a

	copy of the prospectus
Statements by experts	Expert comments
Registration of the Prospects	Registration with ROC is necessary

Misstatements in a Prospectus and Remedies

A person who has been induced to subscribe for shares / debentures on the faith of the statements in a prospectus which is untrue has twofold remedies:

1. Remedies against the Company - *the person can rescind the contract, claim damages from the company*
2. Remedies against the promoters and experts – *a suit can be filed against the promoters and experts*
3. **Criminal Liability**

Section 56 requires certain matters and reports must be stated in the prospectus. Failure to do so will render the director or any other person responsible for the issue of such prospectus to be punished with fine.

Section 63 provides that if prospectus contains an untrue statement, every person who is responsible for the untrue statement in the prospectus shall be punishable with fine or imprisonment or with both.

Unit 60 : Directors

- Every Public Company/Private Company having a PaidUp Share Capital of Rs. 5 Crores must have a Managing Director.
- A Person cannot act as a director unless within 30 days of his appointment he signs and files with the Register his consent to act as a Director.
- At least 2/3 of the total number of directors of a public company are to be persons whose period of office is liable to determination by the retirement by rotation
- Additional Directors, Alternate Directors and Casual vacancies in the board of the directors is filled in by the **Board of Directors**

Company	Min Directors	Max. Directors	Min.PaidUp Share Capital		
Private	2	12			
Public	3	12	Rs. 5 crores		

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.

Liquidation	Dissolution /wind up of the Company
Perpetual	Forever
Ultra Wires	Beyond the powers of
Intra Wires	Within the powers of
Ratification	Subsequent Approval
Acquiescence	Agreement
Underwriter	A person agrees with the company that if the public does not subscribe a particular number of shares, then the underwriter would purchase / subscribe to the shares.
Underwriting Agreement	Agreement entered into between the Company and an Underwriter

Unit 61: Foreign Exchange Management Act, 1999 (582)

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.*

Authorised Person	<i>Any bank or any person including authorised money changer or dealer, authorised under FEMA to deal in Foreign Exchange/Securities</i>
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Capital Account Transaction	Account	A transaction by which there is change in the assets or liabilities <u>outside India of persons resident in India or assets or liabilities in India of persons resident outside India.</u>
Current Transaction	Account	Any transaction other than Capital Account Transaction
Foreign Currency		Any currency other than Indian Currency.
Foreign Exchange		<ul style="list-style-type: none"> Amount payable in foreign currency Drafts, travellers' cheques, LC or bill of exchange drawn in Indian currency but payable in foreign currency
Foreign Security		To include shares, stocks, bonds and debentures, government securities etc. However it does not include bill of exchange /promissory notes
Person Resident in India		Residing in India for more than 182 days in the preceding financial year
Person Resident outside India		
Repatriate to India		Bringing into India – foreign exchange and selling it to an authorised person in India in exchange of rupees.

Regulation and Management of Foreign Exchange

- Deal transfer any foreign exchange / foreign security to any person other than an authorised person
- makes any payment to any person resident outside India.
- Receive any payment on behalf of any person resident outside India
- 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

- To appoint authorised person deals in foreign exchange.
- 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)

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

Special Director (Appeals)	
Appellate Tribunal	
High Court	
Supreme Court	

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 62: Transfer Of Property Act, 1882 (590)

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		<ul style="list-style-type: none"> does not deliver possession of the mortgaged property mortgagor himself personally to pay the mortgage money <p>in the event of his failing to pay, the mortgagee shall have right to get the mortgaged property sold and recover his dues</p>
Mortgage By Conditional Sale		<ul style="list-style-type: none"> The mortgagor apparently sells the mortgaged property to the mortgagee with the condition that on default of payment on a certain date <u>the sale becomes absolute, the sale shall becomes void, the buyer(mortgagee) shall transfer the property to seller(mortgagor)</u>
Usufructuary Mortgage		<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> • The Mortgagor binds himself to repay the mortgage-money on a certain date and <u>transfers the mortgaged property absolutely to the mortgagee</u> • 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 Goods	<ul style="list-style-type: none"> • The Mortgagor delivers documents of title • With intent to create a security thereon • The delivery of documents of title is done in a town specified by state govt. •

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.