JAIIB/ DBF PAPER 3 – LEGAL & REGULATION ASPECTS OF BANKING CAPSULE PDF

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Module A- Regulations and Compliance

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Unit 1- Legal Framework of Regulation of Banks

Business of Banking

Banking: Banking is defined in **section 5(b) of the Banking Regulation Act as the** acceptance of deposits of money from the public for the purpose of lending or investment.

Deposits Withdrawable by cheque: **Under section 49A of the Banking Regulation Act**, no organization other than a bank is authorized to accept deposits withdrawable by Cheque.

Acceptance of Deposits by Non-banking entities: The Reserve Bank of India (the Bank), having considered it necessary in the public interest and being satisfied that for the purpose of enabling the Bank to regulate the credit system to the advantage of the country, it is necessary to give the directions set out below, hereby, in exercise of the powers conferred by sections 45J, 45JA, 45K, 45L and 45MA of the Reserve Bank of India Act, 1934 (Act 2 of 1934) (the RBI Act) and of all the powers enabling it in this behalf, and in supersession of the earlier directions contained in Notification No.DFC.118/DG (SPT)-98 dated January 31, 1998 issues the following Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 (the Directions) applicable to every non-banking financial company hereinafter specified.

Licence for Banking: In India, it is necessary to have a licence from the **RBI under Section 22 of the Banking Regulation Act for commencing** or carrying on the business of banking.

Permitted Business: Main business of banks is acceptance of deposits and lending, the banks have now spread their wings far and wide into many allied and even unrelated activities. The forms of business **permissible under section 6(1) of the Banking Regulation Act, apart from banking business,**

1. Borrowing, raising or taking up of money
2. Lending or advancing of money either against security or without security
3. Drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange.
4. Granting and issuing of letter of credit
5. Buying and selling of foreign exchange and foreign bank notes
6. Negotiating of loans and advances
7. Providing of safe deposit
8. Undertake and execute trust **ETC, ETC**

Prohibited Business: **Section 8 of the Banking Regulation Act** prohibits a banking company from engaging directly or indirectly in trading activities and undertaking trading risk. Buying or selling or bartering of goods directly or indirectly is prohibited.

Constitution of Banks

Banks in India fall under one of the following categories:

- Body corporate constituted under a special statute;

- Company registered under Companies Act, 1956 / foreign company
- Cooperative Society registered under a central and state enactment on cooperative societies.

Public sector bank

A Public Sector bank is one in which, the Government of India holds a majority stake. These banks are constituted under special statue. The State Bank of India was constituted under **The State Bank of India Act, 1955**. The six subsidiaries of State Bank of India were constituted under the **State Bank of India (Subsidiary Banks) Act, 1959**. The government further nationalized **14 commercial banks through Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969 on 19th July 1969**. It later nationalized six more commercial banks **through Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 on 15th April 1980.** The State Banks (Repeal and Amendment) Bill 2017 merges five associate banks of SBI and Bharatiya Mahila Bank with SBI.

Banking Companies

A banking company, as defined in section 5(c) of the Banking Regulation Act is a company which transacts the business of banking. Such company may be **a company constituted under section 3 of the Companies Act, 1956** or incorporated under the **Companies Act, 2013 or foreign company** within the meaning of **section 591 (u/s 379 of companies Act, 2013) of that Act.** All the private sector banks are banking companies. These banks are governed by the **Companies Act, 1956 or Companies Act 2013 in respect of their constitution and by the Banking regulation Act.**

Co-operative bank

A Cooperative bank is essentially a cooperative Society. There are two types of Co-operative banks: Multi-state cooperative society and State Cooperative society. Multi-state cooperative societies are registered under the cooperative society's act of the Centre. State cooperative societies are registered under the state cooperative act. **The Banking laws (Application to Co-operative Societies) Act, 1956** extended certain provisions of the Banking Regulation Act and Reserve Bank of India Act to the Co-operative banking sector.

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Reserve Bank of India Act 1934

The Reserve Bank of India Act 1934 is an Act to constitute a Reserve Bank of India (RBI) and provide the central bank (RBI) **with various powers to act as the central bank of India. RBI Act 1934.**

There are total 61 Sections in the RBI Act 1934.

Some important sections are listed below:

- **Section 3:** Establishment and incorporation of Reserve Bank.
- **Section 4:** Capital of the Bank. The capital of the Bank shall be five crores of rupees.
- **Section 6:** Establishment of Offices, branches and agencies
- **Section 8:** The composition of central board of Reserve Bank of India
- **Section 17:** The business that RBI can carry out
- **Section 18:** Provides for direct discount of bills of exchange and promissory notes
- **Section 20**: Obligation of the Bank to transact Government business.
- **Section 21:** Bank to have the right to transact Government business in India.
- **Section 21A:** Bank to transact Government business of States on agreement.
- **Section 22:** Right to issue bank notes.
- **Section 24:** Denominations of notes. (1) Subject to the provisions of sub-section (2), bank notes shall be of the denominational values of two rupees, five rupees, ten rupees, twenty rupees, fifty rupees, one hundred rupees, five hundred rupees, two thousand rupees, five thousand rupees and ten thousand rupees or of such other denominational values, not exceeding ten thousand rupees.
- **Section 27:** Re-issue of notes. The Bank shall not re-issue bank notes which are torn, defaced or excessively soiled.
- **Section 26 (1):** Defines legal tender of notes
- **Section 26(2):** Withdrawal of legal tender of notes
- **Section 42:** Cash reserves of scheduled banks to be kept with the Bank.
- **Section 45(U):** Defines repo, reverse repo, derivative, money market instruments and securities.

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Banking Regulation Act, 1949

The Banking Regulation Act 1949 is a legislation in India that regulates all banking firms in India. Initially, the law was applicable only to banking companies. But, 1965 it was amended to make it applicable to cooperative banks and to introduce other changes.

There are total 55 Sections in the Banking Regulation Act, 1949. Some important sections are listed below:

- **Section 18**: Cash reserve
- **Section 17:** Reserve fund
- **Section 8:** Prohibition on trading

- **Section 9:** Disposal of Non Banking assets
- **Section 6:** Business allowed for a banking company
- **Section 10BB:** Power of Reserve Bank to appoint [chairman of the Board of directors appointed on a whole-time basis or a managing director] of a banking company.
- **Section 11:** Requirement as to minimum paid-up capital and reserves
- **Section 12:** Regulation of paid-up capital, subscribed capital and authorised capital and voting rights of shareholders
- **Section 21**: Power of Reserve Bank to control advances by banking companies
- **Section 21A:** Rates of interest charged by banking companies
- **Section 22(1):** Licensing of banking companies
- **Section 23**: Restrictions on opening of new, and transfer of existing, places of business
- **Section 29:** Accounts and balance-sheet
- **Section 30:** Auditing of Banking Company
- **Section 36AE :** Power of Central Government to acquire undertakings of banking companies in certain cases
- **Section 44A:** Procedure for amalgamation of banking companies.

1. Amalgamation of two banking companies is under the provisions of Section 44A of the Banking Regulation Act, 1949.
2. Amalgamation of a banking company with a non-banking company is governed by sections 391 to 394 of the Companies Act, 1956.

- **Section 47A:** Power of Reserve Bank to impose penalty
- **Section 49A:** Restriction on acceptance of deposits withdrawable by cheque.

RBI as a Central Bank and Regulator of Banks

The Reserve Bank was constituted under Section 3 of the RBI Act, 1934 for taking over the management of currency from the central government and carrying on the business of banking in accordance with the provisions of the Act.

The Major powers of the RBI in the different roles as regulator and supervisor can be summed up as under:

- Power to issue banking licence

- Power of appointment and removal of banking boards/ Personnel
- Power to regulate the business of banks
- Power to gives directions
- Power to inspect and supervise banks
- Power regarding audit of banks
- Power to collect, collate and furnish credit information
- Power to impose penalties

Unit 2- Control Over Organisation of Banks

Licensing of Banking Companies

License Requirement from RBI: The banking business in India, a company requires a licence form the **RBI under Section 22 of the Banking Regulation Act, 1949.**

Discretion of Reserve Bank: RBI to consider the defects or improvements revealed in an inspection held under **Section 35 of the BR Act** while disposing of an application for licence.

Conditions to be Satisfied: **Section 11 BR Act** specifies the minimum capital and reserve requirements of banking company, the Reserve Bank can stipulate a higher requirement of capital for licensing a banking company as under section 22. The Reserve Bank has to be satisfied that the company has a adequate capital and earning prospects.

Foreign Bank: In the case of companies, incorporated outside India applying for a licence, apart from the conditions specified in the case of domestic companies, three additional conditions have been stipulated for consideration by the Reserve Bank.

- Whether carrying on a banking business by the company in India will be in public interest
- Whether the government or the law of the country, in which the company is incorporated discriminates in any way against banking companies registered in India
- Whether the company complies with provisions of the BR Act, as applicable to foreign companies.

Cancellation of Licence: **Sub-Section(4) of Section 22 of the Banking Regulation Act Authorises** the RBI to cancel the licence granted to any company.

Branch Licensing

Under Section 23 of the Banking Regulation Act, 'Place of business' for this purpose includes any **sub-office, pay office, sub-pay office or any place at which deposits are received, cheques cashed or moneys lent.**

For granting permission under section 23, the RBI may require to be satisfied of the following:

- Financial condition and history of the bank;
- General character of its management;
- Adequacy of capital structure and earning prospects;
- Public interest.

Paid-Up Capital and Reserves

Section 11 of the Banking Regulation Act provides for certain **minimum requirement** as to **paid-up capital** and reserves of banking companies.

Foreign Banks: **Under Sub-section (2) of section 11 of the BR Act,** a foreign bank operating in India, has to deposit and keep deposited with the **Reserve Bank an amount 15 lakhs** and if it has place of business in **Mumbai or Kolkata or Both, 20 Lakhs.** The amount has to be kept in cash or unencumbered approved securities or in both.

Indian Banks: In case of banking Companies in India, the requirements of minimum paid-up capital and **reserves under Section 11 (3)** are as follow:

Amount	Term Condition
Rs. 5 lakhs	If it has a place of business in more than 1 state
Rs. 10 lakhs	If it has a place of business in more than 1 state include Mumbai and Kolkata
Rs 1 lakh	If business is in only one state and does not including Mumbai and Kolkata + Rs.10000 for other places of business, in the same district in which the principal place of business is situated, + an additional Rs. 20000 for each place of business elsewhere; in total not exceeding Rs. 5lakhs
Rs. 50000	If the bank has only one place of business
Note	If place of business are one state only, but one or more of them is in Mumbai or Kolkata Rs 5lacs + 25000 for each place of business outside these cities and the aggregate not exceeding Rs 10 lacs.

Paid-up Capital, Subscribed capital and Authorised Capital: In terms of **Section 12(i) (ii) of the Banking Regulation Act, Banking Companies** are permitted to issue equity share or equity share and preference share.

Shareholding in Banking Companies

Section 12(2) Banking Regulation Act 1949: Certain restrictions on voting rights of shareholder.

Section 12 B Banking Regulation Act 1949: No person (hereinafter referred to "as the applicant") shall, except with the previous approval of the Reserve Bank, on an application being made, acquire or agree to acquire, directly or indirectly, by himself or acting in concert with any other person, shares of a banking company or voting rights therein, which acquisition taken together with shares and voting rights.

Section 12(3) Banking Regulation Act 1949: on behalf of a minor or a lunatic on the ground that the registered holder holds the share on behalf of the minor or lunatic.

Section 13 Banking Regulation Act 1949: Under the Amending Act, Impose a ceiling on the commission, brokerage, discount or remuneration on the sale of share of banking companies.

Section 15 Banking Regulation Act 1949: No dividend is payable until all capitalized expenses are completely written off. **Example:** Preliminary expense, share-selling commission, brokerage etc.

Subsidiaries of Banking Companies

Section 19 Banking Regulation Act 1949: Restriction on nature of subsidiary companies.

Section 19 (2) Banking Regulation Act 1949: Apart from the restriction on subsidiaries, there is also a ceiling on shareholding in companies other than subsidiaries.

Board of Directors

Section 10A Banking Regulation Act: Stipulates certain qualifications for directors of banking companies. Board of directors to include persons with professional or other experience

Section 10A (2)(b) Banking Regulation Act: Have **substantial interest** in, or be connected with, whether as employee, manager or managing agent,—

1. Any company, not being a company registered under **section 25 of the Companies Act, 1956 (1 of 1956), or**
2. Any firm, which carries on any trade, commerce or industry and which, in either case, is not a small-scale industrial concern, or
3. Be proprietors of any trading, commercial or industrial concern, not being a small-scale industrial concern.

Period of office: The directors of a banking company shall not hold office for **more than 8yrs continuously.**

Section 10B Banking Regulation Act: Provide that every banking company should have a full-time or part-time chairman, appointed from among its directors.

Section 36AB Banking Regulation Act: The RBI has the **power to appoint additional directors** on the boards of banking companies.

Section 10 Banking Regulation Act: Prohibits employment of managing agents and imposes restrictions on employment.

Controls over Management

Power to remove Management and other personnel: The RBI is empowered under section 36AA of the Banking Regulation Act to remove any chairman, director, CEO or other officer or employee of a banking company.

Appeal: An appeal against the order of removal lies with the Central Government. Such an appeal has to be filed within **35 days from the date of communication of the order**. The appellate decision of the central government, and subject there to the order of the RBI, shall be final and no liable to challenge in any Civil Court.

Supersession of Board of Directors of Banking Company: **Section 36CA of BR act** empowers RBI to supersede Board of Banking Company for a period of **6 Months which may be extended upto 12 months.**

Unit 3- Regulation of Banking Business

Power to Issue Directions

The Banking Regulation: The Act authorized the **Reserve Bank to issue directions to banks under Sections 21 and 35A of the Act.**

Section 21 BR Act 1949: Gives the power to regulate advances by banking companies. RBI allows to control loans and advances extended by banking companies.

Section 35A BR Act 1949: vests power in the RBI to give directions to banks and can take action:

To prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company
To ensure better governance and control

Section 36 BR Act 1949: RBI is empowered to caution or prohibit any banking company regarding any transaction or class of actions.

Acceptance of Deposits

Regulation of Acceptance of Deposits: The Banking Regulation Act does not contain any specific provisions for regulation of acceptance of deposits of banks. However, **Section 35A which authorizes the RBI** to give directions is wide enough to cover acceptance of deposit.

Returns on Unclaimed Deposits: Bank have to file a return every year on their **unclaimed deposits under Section 26 of the Banking Regulation Act.** The return has to be filed **within 30 days of the end of each calendar year** in the form and manner prescribed and should cover all **deposit not operated for 10 yrs**. In the case fixed deposits the period of **10years starts from the expiry of the period of the deposit.**

Nomination

Section 45ZA BR Act: Where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together, may nominate, in the prescribed manner, one person to whom in the event of the death of the sole depositor or the death of all the depositors. Unless the nomination is varied or cancelled, the nominee is entitled to all the rights of the depositor's in the event of death of the depositor's. In the case of minor nominees, there is also a provision to appoint a person to receive the deposit on behalf of the minor.

Article of safe custody and safety lockers: There are also provisions in the Banking Regulation Act for nomination in respect of articles kept in safe custody with bank and safety lockers. **Sections 45ZC and 45ZE provide that any person,** who leaves any article in safe custody and in safety lockers respectively with a banking company, may nomination one person as nominee to receive the article in the event of death of that person. The nomination has to be in the prescribed manner and on return of articles kept in safe custody or removal of contents of locker by nominees as provided; the bank gets a valid discharge. Rule 3 and 4 of banking companies (Nomination) rules, 1985 deal with the form and procedure applicable to articles in safe custody and safety lockers respectively in the case of banking companies and co-operative banks.

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Regulation Loans, Advances & Interest Rates

Regulation of Loans and Advances: The RBI is empowered under **Section 21 of the Banking Regulation** Act to issue directions to control advances by banking companies.

The RBI issue directions from time to time regulating the lending operations of banking companies in exercise of these **powers vested under Section 21**. Apart from this, the general powers to give directions under **Section 35A are also available for regulation of loans and advance.**

Restriction on loans and advances: **Section 20** of the Banking Regulation Act imposes certain restrictions on loans and advances.

Restrictions on power to remit debt: For remitting any debt to its directions, a banking company requires prior permission of the RBI under Section 20A of the BR Act.

Interest rates: RBI is authorized to regulate interest rates **under Section 21 (with Section 35A) of the BR Act.**

Regulation of Money Market Instruments

Section 45-W of RBI Act 1934: "Power to regulate transactions in derivatives, money market instruments, etc"

The Bank may, in public interest, or to regulate the financial system of the country to its advantage, determine the policy relating to interest rates or interest rate products and give directions in that behalf to all agencies or any of them, dealing in securities, money market instruments, foreign exchange, derivatives, or other instruments of like nature as the Bank may specify from time to time:

Provided that the directions issued under this sub-section shall not relate to the procedure for execution or settlement of the trades in respect of the transactions mentioned therein, on the **Stock Exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).**

The Bank may, for the purpose of enabling it to regulate agencies referred to in **sub-section (1), c**all for any information, statement or other particulars from them, or cause an inspection of such agencies to be made.

Reserve Funds

Creation of Reserve Fund: Every Banking Company incorporated in India has to create a reserve fund **under Section 17(1) of the BR** act out of the profits as shown in the profits and loss account prepared **under Section 29 of the Act**. Every year, a **sum equivalent to not less than 20% of such profit** has to be transferred to the reserve fund. Such transfer of profits to reserve fund has to be made before any dividend is declared.

Appropriation from Reserve fund/ Share Premium Account: Appropriation of any amount from the reserve fund or the share premium account has to be reported to the **Reserve Bank within 21 days of such appropriation.**

Foreign Bank: The provisions of **Section 17(1) of the Banking Regulation Act** for creating of reserve fund do not apply to foreign banks operating in India. In their case, instead of creating a r**eserve fund under section 17(1), section 11(2) of the Act requires them to deposit** and keep deposited with the **RBI an amount calculated at 20% of the profit for each year** in respect of all the business transacted through their branches in India.

Maintenance of Cash Reserve

Every Bank company which is a scheduled bank has a duty to maintain certain cash reserve with the **RBI under Section 42 of the RBI Act.** In the case **of non-scheduled banks Section 18 of the BR Act** provides for the maintenance of cash reserve.

Scheduled Banks: A scheduled Bank is a bank included in the second schedule of the RBI Act. **Under Section 42(6) of the Act, the RBI** may include any bank in the second schedule if it satisfies. It has a paid-up capital and reserves of an **aggregate value of not less than Rs 5 lacs.**

Quantum of Cash Reserve: The cash reserve required to be maintained by a **scheduled bank with the RBI Under Section 42(1) of the RBI Act (as amended in 2006)**is an average daily balance, being such percent of the total of the demand and time liabilities in India of that bank as shown in the return referred to in the sub-section(2).

Interest: Until the amendment to the RBI Act in 2006, the Reserve bank was authorized **under the Act (Section 42(1B))** to pay interest to a scheduled bank when it maintained reserve above the statutory minimum as required under the **RBI notification under erstwhile proviso to the sub-Section (1) or under the sub-Section (1A)of section 42.**

Returns: Every scheduled bank has to submit a return to the Reserve bank showing its demand and time liabilities and borrowing from banks in India, classifying them into demand and time liabilities and giving other details required **under Section 42(2) of the RBI Act.**

Penalties: F**ailure of file the return as required also attracts a penalty under section 45(4) of the act.** Where Reserve Bank is satisfied that a bank has sufficient reason for committing the default, either in maintaining reserves or in filing return, the penalty may be waived.

Cash Reserves of Non-scheduled Bank: In the case of banking companies, which are not scheduled banks **under Section 18 of the BR Act,** the cash reserve need not be maintained with the RBI.

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Banking Ombudsman

- Banking ombudsman, a quasi-judicial authority is formed with an intent to resolve the complaints of the customers of the Bank.
- **Section 35A of the Banking Regulation Act, 1949 deals with Banking Ombudsman Scheme**. It came into effect in **1995 and presently the Banking Ombudsman Scheme 2006 is in operation.**
- The scheme covers not just scheduled Commercial Banks but also Regional Rural Banks and Scheduled Primary Co-operative Banks. Recently, RBI also extended the concept of Banking Ombudsman to NBFC's as well.

Areas of customer redressal available with the Ombudsman mechanism

- Non-payment or unreasonable delay in the payment /collection/ issue of cheques, drafts, bills etc.;
- Non-acceptance, without sufficient cause, of small denomination notes and coins tendered for any purpose, and for charging of commission in respect thereof;
- Non-payment or delay in payment of inward remittances;
- Non-adherence to prescribed working hours;
- Delay/failure to provide any banking facility (other than loans and advances) which has been promised in writing by the Bank
- Delay/ non-credit of proceeds to the respective parties' accounts, non-payment of deposit or non-observance of the RBI directives, with respect to the rate of interest on bank deposits
- Complaints from NRIs having accounts in India in relation to their remittances from abroad, deposits and other bank related matters;
- Refusal to open deposit accounts without any valid reason for this refusal;
- Levying charges without adequate prior notice to the customer;
- Non-adherence to RBI instructions on ATM / Debit Card /Prepaid Card / Credit Card operations in India by the bank or its subsidiaries
- Non-adherence to RBI instruction with regard to Mobile Banking / Electronic Banking service in India.
- Non-disbursement or delay in disbursement of pension (to the extent the grievance can be attributed to the action on the part of the bank concerned, but not with regard to its employees);
- Refusal to accept or delay in accepting payment towards taxes, as asked by Reserve Bank/Government;
- Failure /Delay with regard to the issue, service or redemption of Government securities;
- Forced closure of deposit accounts without any notice or without giving sufficient reason;
- Refusal to close or delay in closing accounts;
- Not following the fair practices code as adopted by the bank;

- Non-observance of Reserve Bank guidelines on engagement of recovery agents by banks;
- Non-adherence to RBI guidelines on allied-banking activities like sale of insurance or mutual fund or other investment products by banks
- Any other matter relating to the violation of RBI directives

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

Annual Accounts and Balance Sheet

All Banks whose shares are listed with stock Exchange are required to publish their unaudited quarterly results as per proforma prescribe by the SEBI. Every banking company has to **prepare its balance sheet and profit and loss account** as stipulated in **Section 29 of the Banking Regulation Act.**

The Balance sheet and Profit and loss account of a banking company incorporated in India has to be signed by the manager or principal officer of the company and **at least 3 directors if there are more than 3 directors** and by all directors if there are **not more than 3 directors**. **Case of foreign banks**, the manger or the agent of its principal office in India can sign.

In case of banking companies, the profit and loss account, which has to be placed before the annual general meeting should relate to the period ending with the last working day of the year immediately preceding the year in which the annual general meeting is held. The **Provisions of Section 210 of the Company Act,** in this behalf, have been specifically made inapplicable to **banking companies by Section 29(3A) of the Banking Regulation Act.**

Publication of Account and Balance sheet: The account and balance sheet prepared **under Section 29 of the Banking Regulation Act** along with the auditor's report have to be published, as provided in **Section 31 there of read with rule 15 of the Banking Regulation (Companies) Rules , 1949.**

Furnishing of Accounts and Balance sheet to Register: **Section 220 of the Companies Act** Provides for submission by companies of copies of accounts and balance sheet along with the auditor's report to the Registrar of Companies. However, In the case of banking companies, **Section 32 of the Banking Regulation Act provides** for furnishing to the registrar Three copies of the account, balance sheet and auditor's report submitted to the **Reserve Bank under Section 31 of the Act**, Which would be dealt with in all respect.

Audit and Auditors

The balance sheet and Profit and loss account of a banking company have to be audited, as stipulated **under Section 30 of the Banking Regulation Act.**

Power and Functions of Auditors: The Powers, functions and duties of the auditors and the liabilities and penalties to which they are subjected to **under Section 227 of the Companies Act** are applicable to auditors of banking companies.

Special Audit: **Reserve Bank is empowered under Section 30(1B)** of the **Banking Regulation Act** to order a special audit of the accounts of any banking company.

Submission of Returns

Return of Liquid Asset: Every Banking company has to submit has to submit a return of its liquid assets **under Section 24(3) of the Banking Regulation Act.** The Return has to be **submitted 20 days** form the **end of the month** to which it relates. The return has to be in the form prescribed **under rule 13A of the Banking Regulation (Companies) Rules, 1949.**

Monthly Return: **Last Friday Previous Month** under **Section 27 of the BR Act.**

Return of Assets in India: **Section 25(1) of the BR Act.**

Return of Unclaimed Deposit: **Under Section 26 of the BR Act, a** banking company has to file **within 30 days of the** close of each calendar year a return on unclaimed deposit **(not operated for 10yrs).**

Return of Cash Reserve of Non- Scheduled Banks: Every Banking company, not being a scheduled bank, has to furnish a return to **the Reserve Bank under Section 18(1) of the BR Act relating to cash reserve.**

Return by Scheduled Banks: **Under Section 42 of the RBI Act**, scheduled banks have to submit returns to the Reserve bank of their demand and time liabilities as specified in the **sub-section (2) thereof.**

Inspection and Scrutiny

Inspection: The Reserve Bank is empowered **under Section 35** of the **BR Act to conduct an inspection of any banking company.**

Power of the Government: A copy of the report of inspection has to be sent the central govt. in all cases where inspections have been conducted as directed as by the Central government.

1. Prohibit the banking company from receiving fresh deposits.
2. Direct the Reserve Bank to apply for winding up of the banking under **Section 38 of the BR Act.**

Scrutiny: Apart from making regular inspections, Reserve Bank is also empowered to conduct a scrutiny of the affairs and the books and accounts of any banking company under the **sub-section (1A)of Section 35 of the Banking Regulation Act.**

Amalgamation of Banks

Voluntary Amalgamation: A banking company may be amalgamated with another banking company under **Section 44A of the Banking Regulation Act.**

Amalgamation by Government: The Central Government is empowered to order amalgamation of two banking companies **under Section 396 of the Companies Act.** However, such power has to be exercised only after consultation with the Reserve Bank.

Moratorium and Amalgamation: The Reserve Bank is authorized under **Section 45 of the Banking Regulation Act** to apply to the Central Government for an order of moratorium in respect of any banking company where it appears to it that there is good reason to do so.

Winding UP of Banks

Suspension of Banking and Winding Up: A Banking company which is temporarily unable to meet its obligation may apply to the **High Court under Section 37 of the Banking Regulation Act** for staying the Commencement or continuance of any proceedings against it.

Winding Up by High Court: The High court shall order the winding up of a banking company in the **circumstances mentioned in Section 38 of the Banking Regulation Act**.

Official Liquidator: **Section 38A of the BR act** provides for a liquidator to be appointed by the Central Government, attached to respective High court, for conducting the winding up proceedings relating to banking companies.

Reserve Bank as Liquidator: Although there is a provision for an official liquidator as above, of the Reserve Bank applies to the **Court under Section 39 of the Act,** the Reserve Bank, State bank or any other Bank notified by the Central Government in this behalf or any individual stated in the application may be appointed as the official liquidator.

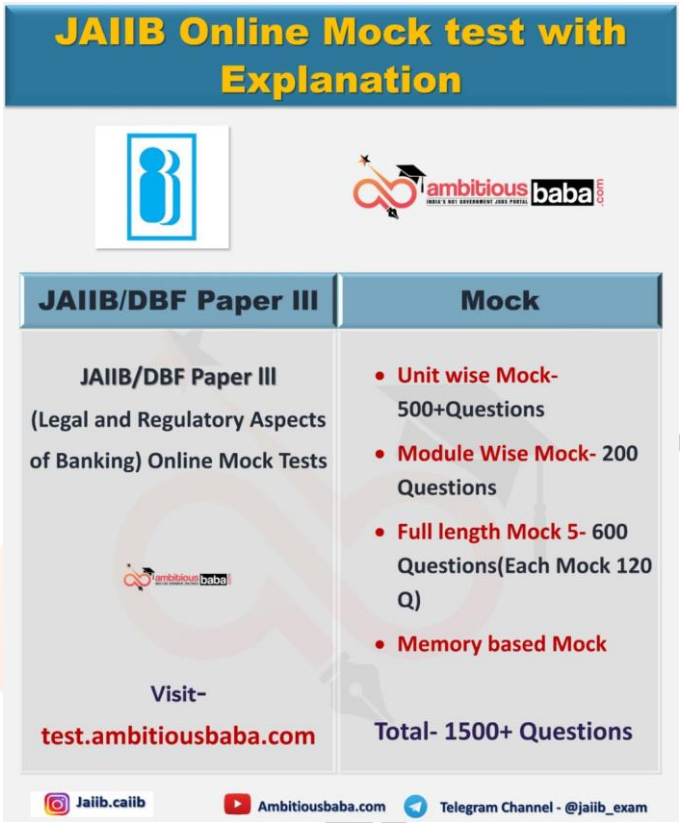
Preferential Payment: In the winding up proceedings, the liquidator of a banking company has to make certain preferential payments **under Section 43A of the Banking Regulation Act.**

Voluntary Winding Up: Apart from the provision for compulsory winding up as above**, Section 44 provides** for voluntary winding up b banking Companies.

Penalties for Offences

Penalties under the RBI Act: **Chapter V of the RBI Act** deals with penalty for violation of the Act. Banking Companies have to make applications and furnish returns, statements, etc. Banking Companies have to make application and furnish returns, statements etc., under different provision of the Act, regulations, orders, directions etc. While doing so, the making of any statement which is false in any particular material, knowing it to be false or willfully omitting to make any material statement, is punishable **with imprisonment up to a period of three years and also a fine.**

Penalties under the BR Act: The provisions of the **Banking Regulation Act**, relating to penalties, are provided in **Section 46 thereof.** According, making willfully any false in any return balance sheet or other document or information given under the Act is punishable. Similarly, willful omission to make any material statement is also punishable. **In both case, punishment is up to 3 years imprisonment and fine.**



Unit 5- Public Sector Banks and Co-operative Banks

State Bank and Its Subsidiaries

Establishment of State Bank: 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 and to carry in the Business of banking and other business in accordance with that Act.

Business of State Bank: The State Bank may carry on the business on banking as defined in **Section 5(b) of the Banking Regulation Act and other business specified in Section 6(1) of that Act.**

Account and Audit: The State Bank has to close its books and balance **accounts each year as on 31 March or such other date as may be specified by Central Govt**. and **RBI** its balance sheet and profit and loss account together with auditors report and a report by the Central

Board on the working and activities of the Bank. The Audit may be conducted by any person duly qualified to be auditors of companies **under section 266 of the Companies Act, 1956 (Corresponding Section 141 of the Companies Act, 2013).**

Subsidiary Bank: The Share of the Subsidiary banks are freely transferable as provided in **Section 18 of the Act. State bank is empowered under Section 47 to inspect the subsidiary bank. 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

Rule and Regulation: The Central Government empowered to make **rules under Section 62 of the Act** for giving effect to the purposes of the Act. The state bank is also empowered to make regulations **under Section 63 with the approval of the RBI** for giving effect to the purposes of the Act.

Regional Rural Banks

The RRBs are public sector Institutions, regionally based, rural oriented and engaged in commercial banking. They were **first set up in 1975 under the Regional Rural banks Ordinance, 1975**. The ordinance was later replaced **by the RRB act, 1976.**

Establishment of RRBs: Section 3 of the Act Authorises the Central Government to establish regional rural banks by notification in the official gazette at the request of a sponsor bank. **Central Government – 50%, State Government – 15% and Sponsor Banks – 35%.**

Business of Regional Rural Banks: Regional rural Banks may transact the business of banking as defined in **Section 5(b) of the Banking Regulation Act** and any other business permissible for a bank to **undertake under Section 6(1) of that Act.**

Account and Audit: The Audit may be conducted by any person duly qualified to be auditors of companies **under section 266 of the Companies Act, 1956 (Corresponding Section 141 of the Companies Act, 2013). The Auditors have to be appointment with the approval of the Central Government.**

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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.

Directors: The Directors of Nationalised banks are nominated by Central Government or elected from the shareholders. **The Nomination of Directors is as under**:

- Not more than 4 whole time director (as against 2 earlier)
- Not more than 6 directors to be nominated by Central Govt.

- 1 official director, 1 representing workmen employee of the bank, 1 director representing officers of the bank, 1 director possessing necessary expertise and experience in matter relating to regulation or supervision of commercial bank.

Additional Director: RBI may appoint one or more additional directors on the board of a Nationalised bank.

Account and Audit: The Audit may be conducted by any person duly qualified to be auditors of companies **under section 266 of the Companies Act, 1956 (Corresponding Section 141 of the Companies Act, 2013). The Auditors have to be appointment with the approval of the Central Government.**

Scheme of Management: In exercise of the **powers under section 9 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and Section 9 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980,** the Central Govt. has framed 2 schemes,

- Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970
- Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980

Paid-up Capital – Originally entire Paidup Capital was held by Central govt., some of these banks have recently made public issue of shares, but the Central Govt. still holds majority of shares in all these banks. The Shares other than those held by the Central Govt. are freely transferrable. SBI Act 4 Divide capital into shares of Rs.10 each instead of Rs.100 Restriction on voting rights (being 200 shares only) was modified upto 10 % of the Issued Capital and restriction on dividend deleted BC(A&T) 3 Authorised Capital of Rs.1,500 crore divided into shares of Rs.10 each.

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

Co- Operative Banks

Applicability of BR Act: The co-operative banks operating in more than one state, are registered under the multi-state Co-operative Societies Act. The Banking Regulation Act is applicable to co-operative banks as provided in **Section 56 of that Act**with certain modifications. **The Act was made applicable to co-operative societies by the Banking laws (Application to Co-operative Societies) Act, 1965.** For this purpose, a co-operative bank means a state co-operative bank, Central co-operative bank and a primary co-operative bank.

Paid-up Capital and Reserve: The Minimum paid-up capital and reserve required to commerce or carry on banking business by a co-operative bank is **not less than 1 lac under section 11 (as applicable to co-operative bank).**

Restriction on loan and Advance: **Section 20 of BR Act (Application to Co-operative Societies)** lays down certain restrictions on loan and advance by Co-operative bank**.**

- 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.

Licensing of Co-operative bank: Every Co-operative bank society a licence from the RBI under **Section 22 of the BR Act (Application to Co-operative Societies).**

Liquid Assets: Co-operative banks have to maintain liquid assets as provided in **Section 24(1) of the Banking Regulation Act.**

Inspection: **The provision of Section 35** relating to inspection are applicable to co-operative banks with minor modifications.

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Module B- Legal Aspects of Banking Operations

Index

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Unit 4	**Types of Credit Facilities**
Unit 5	**Indemnities**
Unit 6	**Bank Guarantees**
Unit 7	**Letters Of Credit**
Unit 8	**Deferred Payment Guarantee**
Unit 9	**Law Relating to Bill finance**
Unit 10	**Various Types of Securities**
Unit 11	**Law Relating to Securities and Modes of Charge- 1**
Unit 12	**Law Relating to Securities and Modes of Charge 2**
Unit 13	**Registration and Satisfaction of Charges**

Unit 1: Case Laws on Responsibility of Paying Bank

Negotiable Instruments Act and Paying Banks

Section 31 Negotiable Instruments Act, 1881: Liability of drawee of cheque. —The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Note: Section 10, 85, 85A, 89 and 128 of the Negotiable Instrument Act, 1881, grant protection to a paying banker.

Section 31 Applies Only a Bankers: This is because as per **Section 6 of the Negotiable Instruments Act, 1881 "Cheque"** has been defined as a **"Bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand".**

Section 10 Negotiable Instruments Act, 1881: "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Section 85 Negotiable Instruments Act, 1881: "Cheque payable to order"

Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

Section 85A Negotiable Instruments Act, 1881: "Drafts drawn by one branch of a bank on another payable to order"

Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of, the same bank for a sum of money payable to order on demand, purports to be indorsed by or on behalf of the payee, the bank is discharged by payment in due course.

Section 89 Negotiable Instruments Act, 1881: a promissory note

Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

Where the cheque is an electronic image of a truncated cheque, any difference in apparent tenor of such electronic image and the truncated cheque shall be a material alteration and it shall be the duty of the bank or the clearing house, as the case may be, to ensure the exactness of the apparent tenor of electronic image of the truncated cheque while truncating and transmitting the image.

Any bank or a clearing house which receives a transmitted electronic image of a truncated cheque, shall verify from the party who transmitted the image to it, that the image so transmitted to it and received by it, is exactly the same.

Section 128 Negotiable Instruments Act, 1881: Payment in due course of crossed cheque.—Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Unit 2: Case Laws on Responsibility of Collecting Bank

Statutory Protection to Collecting Bank

Section 131 of the Negotiable Instruments Act grants protection to a collecting banker

- **Non-liability of a Banker Receiving Payment of Cheque:** A Banker, who has , in good faith and without negligence, received payment for a customer of cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.
- **Conditions for Protection: Though Section 131 grants protection to a collecting banker, the protection is conditional.** For the collecting banker to claim the protection under section 131, he has to comply with certain conditions and they are:

1. The collecting banker should have acted in good faith
2. He should have acted without negligence
3. He should receive payment for a customer
4. The cheque should be crossed generally or specially to himself.

Duties of Collecting Bank

- Duty to open account with references
- Duty to follow up the reference where the referee is not known

- **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.
- Duty to verify the instruments / any apparent defect in the Instruments
- Duty to take into account the state of customers account
- Negligence of Collecting Bank in Collecting Cheques Payable to Third parties.

Unit 3: Different types of Borrowers

Types of Borrowers

- Individual
- Partnership Firm
- Hindu Undivided Family
- Companies
- Statutory Corporations
- Trusts and Cooperative Societies

Individual

- If the banker lent money to an individual who is not competent to contract then the lended money cannot be recovered under following cases.
- If Individual is Minor who has not attained the **age of 18 years under Indian Majority Act and 20 years if he is a ward under the Guardian and ward's Act.**
- If an individual is not of sound mind then he is incompetent to enter into contract.
- If statutory disqualification imposed on certain person in respect of their to contract.

Partnership Firm

- **Legal Position Of Partnership**: **Under Indian Partnership Act 1932** which provides for partnership so it is necessary that a banker dealing with a partnership firm should verify whether firm registered or not.
- **Authority Of The Partners: Section 19 of the Partnership Act, 1932 deals** with the implied authority of a partner as an agent of the firm and Section 22 deals with the mode of doing acts to bind the firm.

- **Insolvency Of Partner:** If at the time of insolvency of one of the partner the firm's account is in credit then the other partner can operate the same but the banker should obtain a fresh mandate and all previous cheque issued by the insolvent partner may be paid provided the partner confirm the same.
- **Death Of Partner:** As the death of partner dissolves the Partnership firm upon receipt of such information bank's are required to stop the transaction of firm in a running credit facility like Cash credit, bank allow the transaction in a separate account so that the business of firm is not adversely affected.

Hindu Undivided Family

- A banker dealing with Hindu Undivided Family should known the **'karta'** who is the senior most member of family.
- Banker should ensure that **'karta' of family deal's** with the bank and borrows only for the benefit of family business.
- The application to open an account must be signed by all members and all adult members should be made jointly.

Powers and duties of the manager

A manager or 'Karta' of a joint family has the following powers and duties:

Power

- Right to possession and management of the joint family property
- Right to income from the joint family property
- Right to represent the joint family
- Right to sell the joint family property for purpose

Duties

- Duty to run the family business and manage the property for the benefit of the family.
- Duty to account for the income from the joint family business and property.

Companies

A company is another type of borrower, which a banker deals with in his business of lending.

Basic laws governing company

In India, now companies are governed by the Companies Act, 2013. Companies as per the Companies Act, 1956 are required to be registered under the Act. Section 11 of the Companies Act 1956 provides that an association or partnership consisting of more than 10 in the case of banking business and more than 20 in the case of other business.

Incorporation of Company

Section 12 of the Companies Act, 1956 provides that any 7 or more persons or where a company are known by two document called "**Memorandum of Association" and "Articles of Association".**

Memorandum of Association: It contains name of the Company, its authorised capital, registered office and liability of shareholders, objects of the company etc.

Articles of Association: Articles of Association rules and regulations governing the internal management of the company. **Ex:** NO. of directors, Borrowing powers of the company, Procedure for transfer and transmission of shares ETC.

Statutory Corporations

Companies are Registered under companies Act 1956 , There may be corporation established by an Act of Parliament.These are called Statutory Corporations. For example state Bank of India is established under state Bank Act 1955.

Trust and co-operative societies

- Club, societies, schools and other non trading association such bodies if not incorporated under the laws governing them cannot enter into any transactions. **These bodies are usually governed by companies Act or Co-operative societies Act.**
- **Trust are governed by Indian Trust Act 1882.** A banker dealing with trust should acquaint himself with the respective laws applicable to them.
- Trustee manages trust, the powers and duties of trustee are provided in trust deed and are also regulated by the respective laws applicable to such trust's. Banker dealing with a trust should ensure that all the permission required for taking a loan is obtained from respective Government authorities.

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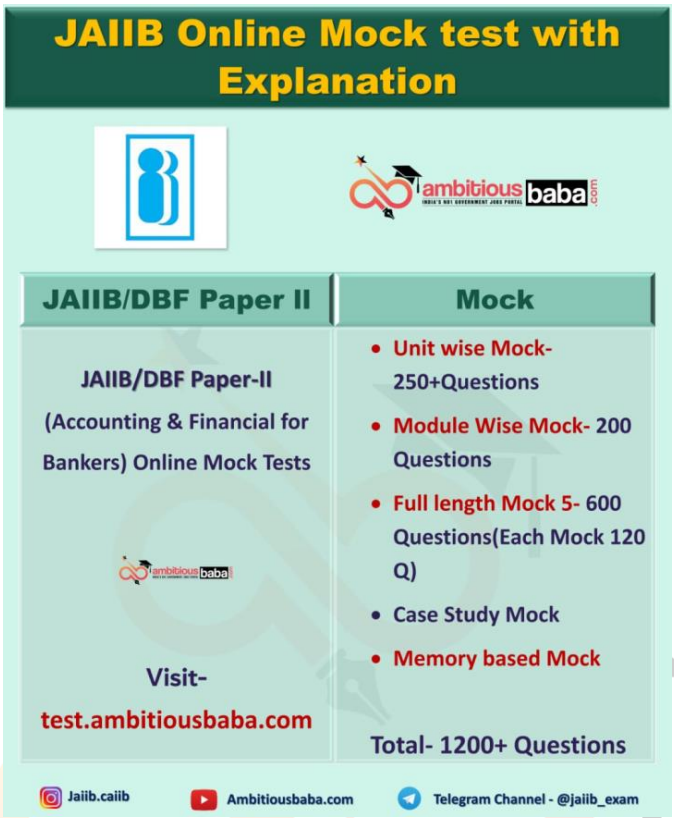

Unit 4: Types of Credit Facilities

Types of Credit Facilities

Credit facilities are classified into two types on funds

- Fund based Credit facilities
- Non-Fund based Credit facilities

Fund Based Credit Facilities: Fund based credit facilities involve the outflow of funds meaning there by, the money of the banker is lent to the customer.

- **Cash Credits/overdrafts**: Cash Credit (CC) is a short-term loan offered to businesses to meet their working capital requirements, whereas Overdraft facility is funding offered by banks to individuals or companies to withdraw money from the banks even if their account balance is low, zero or below.
- **Term loan/ Demand loans:** Term loan/ Demand loans are granted to customers generally for meeting the capital expenditure needs of the business. Short term-1year, Medium Year- 7 years, Long-term loans- Above 7 years.

- **Bill finance:** Bill finance is also one of the important facets of lending by banks. Generally, the bill finance is conducted through discounting of bills of exchange drawn by the borrower or third persons on the customer of borrower.

Non-fund Based Credit Facilities: In this type of credit facility the bank's funds are not directly lent to the customer. There are following types

- **Guarantee facility:** A bank guarantee is a type of guarantee from a lending institution. The bank guarantee means a lending institution ensures that the liabilities of a debtor will be met. In other words, if the debtor fails to settle a debt, the bank will cover it.
- **Letter of Credit facility:** A letter of credit (LOC) is a bank document that guarantees a payment.
- **Underwriting and credit guarantee:** Underwriting services are provided by some large financial institutions, such as banks, or insurance or investment houses, whereby they guarantee payment in case of damage or financial loss and accept the financial risk for liability arising from such guarantee.

Unit 5: Indemnities

Contract of Indemnity Defined

Section 124 of the Indian Contract Act, 1872 defines contract of indemnity as follows:

Contract of indemnity" defined: A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity." —**A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor** himself, or by the conduct of any other person, is called a **"contract of indemnity.""**

Illustration A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity. A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity."

Differentiate between Indemnity and Guarantee.

INDEMNITY	GUARANTEE
It refers to reimbursement of loss.	It is merely a security to Creditor.
It is explained in Section 124 of Indian Contract act, 1872.	It comes under Section 126 of Indian Contract Act, 1872.
Only two parties i.e. Indemnifier and Indemnified.	Includes three parties- surety, principal debtor and creditor.
Only 1 contract is done.	Includes 3 contracts between the 3 parties.

Primary liability.	Secondary liability

Right of An Indemnity Holder

Section 125 of the Contract Act lays down the rights of an indemnity Holder.

Rights of 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— —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 in respect of any matter to which the promise to indemnify applies;
- All costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;
- All sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

Unit 6: Bank Guarantees

Bank Guarantees

Guarantee is defined in section 126 of Indian Contract Act.

There **are three parties** to a **contract of guarantee**

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

- **Surety:** The person who gives the guarantee is called the '**surety'**
- **Principal debtor:** The person in respect of whose default the guarantee is given is called the '**principal debtor'**
- **Creditor:** The person to whom the guarantee is given is called the **'creditor'**

Types of Bank Guarantees

- **Financial Guarantee:** These are guarantees issued by banks on behalf of the customers, in lieu of the customer being required to deposit cash security or earnest money.
- **Performance Guarantee**: These are guarantees issued by banks on behalf of its customers whereby the bank assures a third party that the customer will perform the contract entered into by the customer as per the conditions stipulated in the contract, failing which bank will compensate the third party up to which the amount specified in the guarantee.
- **Deferred Payment Guarantee**: Under this type of the guarantee, the banker guarantees payment of installments over a period of time. This type of the guarantee is required when the customer on credit purchases goods/machinery and payment is to be made in installments on specified dates. A deferred payment guarantee constitutes an undertaking on the part of the bank to make payment of deferred installments to the seller (beneficiary) on due dates in the event of default by the customer (buyer).

Issuance of Bank Guarantee – Precautions to be taken

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

- Amount Guaranteed
- Period of Guaranteed

Claim period in a guarantee: In a guarantee, it is necessary to provide for a period slightly longer than the validity period, for the beneficiary to make a claim. The claim period is usually a few months more than the validity period of the guarantee. Since if the debtor were to commit a default on the last day of the validity period, then the beneficiary, at the earliest, invokes **the same only on the next day.**

Amendment to Section 28 of Indian Contact Act and its effect on Bank Guarantee: Prior to the amendment **of Section 28 of the Indian Contract Act, 1872** most bank guarantees had a standard clause at the end of their guarantee agreements. As per this clause, the beneficiary was required to enforce his claims within a period of **three to six months**, failing which, the bank's liability was extinguished and hence the rights of the beneficiary.

Unit 7: Letters Of Credit

Letters Of Credit

An Letters Of Credit can be compared to guarantee given by a **bank on behalf of its customer to the effect that the bank would make payment to the beneficiary** when the beneficiary presents the documents as it required in the LC. **They are not negotiable instrument.**

Parties to a Letter of Credit

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

Types of Letters of Credit

- **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**

1. **Red Clause Letter of credit** - In a usual LC transaction the beneficiary will be entitled to receive payment only on his handing over the documents and bills drawn under the LC to the negotiating bank. However in certain credits the beneficiary will be entitled to get and advance of the price. These credits contains a "Red Clause" which authorises an intermediary bank to make an advance to the beneficiary before shipment.
2. **Green Clause Letter Of Credits** –This is refinement of the "Red Clause". This type of LC not only permits preshipment advance but also permits advances to the exporter to cover storage at the port of shipment.The Red Clause and Green Clause credit are called Anticipatory Credits.
3. **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

- **Bill of Exchange**
- **Invoice**
- **Transport Documents**
- **Bills of Lading**
- **Airway Bill**
- **Post Parcel Receipt and Courier Receipt**
- **Insurance Document**
- **Other Documents:** Certificate of origin, Certificate of Weight or quality or analysis, Health authorities certificate etc.

Uniform Customers and Practices for Documentary Credits- UCPDC 600

The ICC Banking Commission approved the UCP 600, ICC's new on documentary credits, on 25 October 2006. UCP 600, which come into effect in 1 July 2007, contains significant changes, including:

- A reduction in the number of articles from 49 of UCP 500 to 39.
- New articles on "Definitions" and "Interpretations" provide more clarity and precision in the rules.
- The replacement of the phrase "reasonable time" for acceptance or refusal of documents by a definite period of five banking days.
- New provisions which allows for the discounting of deferred payment credits.
- A definitive description of negotiation as "purchase" of drafts of documents.

Unit 8: Deferred Payment Guarantee

Deferred Payment Guarantee

A third Party, mostly banks and financial institutions, guarantee the payment of the instalments. This guarantee ensure timely payment of the instalments to the seller/exporter, failing which, the guarantee can be invoked and payment received. To understand better the deferred payment guarantee, it is necessary to understand how a payment is made in a deferred payment contract and how the same is guaranteed by a bank.

Method of Payment

In a contract for import of goods on deferred payment terms, the importer is required to make payments in instalments over a period of time which may range **from 1 to 7 years**, in a normal deferred payment contract. The payment is usually done on the following terms:

- Advance payment of 10% to 15% of the price of the goods is made by the buyer.
- Another 10% to 15% on receipt of document under letter of credit.
- The balance amount is paid in instalments spread over a period of 1 to 7 years, which is secured by a 'Deferred Payment Guarantee'.

In a deferred payment guarantee, which as stated earlier, issued by banks and financial institutions , what is guaranteed, is the timely payment of instalments and interest if provided. This is done by issuing a deferred payment guarantee in which the following terms are mandatory:

- The supply of goods by the seller to the buyer and the seller agreeing to postpone the payment of the price, this being the consideration of the guarantee;

- The Payment schedule of both the instalment and the interest;
- The unconditional and irrevocable assurance of the bank that it would make payments on the invocation of the guarantee.

Unit 9: Law Relating to Bill finance

Bill Financial

Bill finance is one of the modes of lending by a banker. A compared to other modes of financing, Bill finance offers a banker an easy mode of lending. Bill finance involves discounting or purchase of commercial bills arising out of sale of goods.

Bill finance, as compared to cash credit and overdraft, has the following advantage;

- The underlying transactions are easily identifiable
- There is definite data of repayment
- The bill will carry more than one signature if it on usance basis
- It represents an easily transferable asset and in case of need the same can be rediscounted to improve the liquidity of the bank.

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 (Section 12 NI Act):** 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.

1. **Bills drawn with an instruction to deliver against payment/D.P. Bills** – In a transaction of supply of goods, a seller draws a bill on the buyer and sends the same to his banker along with document of title of goods like bill of lading etc. The seller

instructs the banker to deliver the bill and documents of title of goods only when buyer pays the price of goods.

2. **Bills drawn with instruction to deliver against acceptance / D.A.Bills** – An usuance 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

Negotiable Instrument Act 1881

Section	Description
5	**"Bill of exchange is defined"** as " instrument in writing containing an unconditional order signed by maker directing a certain person to pay certain sum of money only to, or to the order of a certain person or to the bearer thereof
7	Drawer, Drawee and Payee
8	**Holder** of Bill of exchange means a person entitled in his name to possess the bill and recover the amount presented by Bill.
9	**"Holder in Due Course"** means any person who for consideration become the possessor of the bill
10	**"Payment in Due Course"** means payment in accordance with tenor of the bill of exchange to the holder or holder in due course in good faith and without negligence
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 purposeof transferring it, such signing is called Endorsement.
19	Demand Bills
30	Liability of Drawer
32	Liability of Acceptor/Drawee of Bill
35	Liability of Endorser
79	Interest rate specified
80	Interest when no rate is specified

Various types of Bill Finance

- **Bill Purchase:** When the bank negotiate bills on demand, whether clean or documentary, the facility is known as bill purchase.
- **Bill Discount:** This facility is extended by banker when the bills of exchange are payable after a particular period that is bills payable otherwise on demand.
- **Advance against Bills for Collection:** When the bank advance against the bills, which are in course of collection, the facility is known as advance against bills for collection.

Unit 10: Various Types of Securities

Unsecured loans & secured loan

Unsecured loans

Unsecured loans are loans that are approved without the need for collateral. Collateral is when you pledge an asset to secure a loan. With an unsecured loan, instead of pledging assets, borrowers qualify based on their credit history and income.

What is a secured loan?

A secured loan is a type of loan in which a borrower pledges an asset such a car, property, equity, etc. against that loan. The loan amount made available to the borrower is usually based on the value of the collateral. If in case the borrower defaults the loan, the lender can liquidate the asset and recover the loan amount, making these loans risk-free for the lender. As a result, these loans are easier to obtain and charge a lower interest rate than an unsecured loan.

Types of secured loan

Usually a secured loan can be availed against the following types of collateral:

• Real estate, including any financial equity earned since purchasing the residence

• Bank accounts such as savings accounts and fixed deposits

• Commercial and residential property

• Private vehicles

• Stocks, mutual funds, or bond investments

• Insurance policies, including life insurance

• Precious metals, high-end collectibles, and other valuables

Various Kinds of Securities

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

- Vehicle Financing

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Unit 11: Law Relating to Securities and Modes of Charge- 1

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Mortgage

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

The transferor is called the "**mortgagor" and the transferee a "mortgagee**". The principal money and interest of which payment is secured is called **"mortgage money"** and the instrument by which the transfer is effected is called **"mortgage deed".**

Six Different kinds of mortgage

1. Simple Mortgage: Section 58(B) Transfer of Property Act

- 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: Section 58 (c) Transfer of Property Act

- 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: Section 58(d) Transfer of Property Act

- 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 : Section 58(e) Transfer of Property Act

- It provides personal covenant to pay on a specified date notwithstanding the absolute transfer of the property to the mortgagee.
- There is an absolute transfer of the property in favour of the mortgagee. Property shall be re-conveyed to the mortgagor in the event of repayment of mortgage money.
- The mortgagee can sue the mortgagor for the recovery of the money and can obtain a decree for sale.

5. Mortgage by deposit of title deeds / Equitable Mortgage: Section 58(f) Transfer of Property Act

- 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 – Section 58(g) Transfer of Property Act

- A mortgage which is not a simple mortgage, a mortgage by conditional sale and unufructuary mortgage and English mortgage or a mortgage by deposit of title deeds within the meaning of this section, is called an "Anomalous Mortgage".
- It is negatively defined and should not be anyone of the mortgages listed above.
- It is combination of two mortgages: **Simple** and **usufructuary mortgage**
- usufructuary mortgage accompanied by conditional sale

Difference between Equitable Mortgage and Pledge

Pledge	Mortgage
Pledgee acquires only a limited interest in the property and ownership remains with the 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 pledged and can sell the same in the event of default by the pledger, of course, after giving reasonable notice.	The mortgagee, as a rule, takes decree of a Court of Law before having recourse against the property mortgaged.
Pawnee has no right foreclosure. He can only sell the property to realize his dues.	In certain cases, the mortgagee can foreclose the property.

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Unit 12: Law Relating to Securities and Modes of Charge 2

Pledge

Pledge means bailment of goods for purpose of providing security for payment of debt or performance of promise (**as per the Section 172 of Contract Act 1872).**

The Requirements are to be satisfied:

- There must be bailment of goods (bailment means delivery of goods);

- The bailment must be, by or on behalf of the debtor; and
- The bailment, must be for the purpose of providing security for the payment of a debt or performance of promise.
- **Pawnor** – The person whose goods are bailed
- **Pawnee –** The person who takes the goods for security

Advantages of Pledge:

- The goods are in the custody of the pawnee and, therefore, it is easy to sell in case of default. If the banker takes proper precautions, through periodical inspections, it will not be possible for the pawnor to create subsequent charges against the same goods.
- Because of close supervision, it will not be possible for the pawnor to manipulate the stocks.
- Even if the goods are lost, the banker can recover the amount under the insurance policy.
- The formalities connected with the pledge are simpler then in the case of Mortgage.

Difference Between Hypothecation and Mortgage

BASIS FOR COMPARISON	MORTGAGE	HYPOTHECATION
Meaning	Mortgage implies a legal process wherein the title of real estate property passes from the owner to the lender, as a collateral for the amount borrowed.	Hypothecation refers to an arrangement, wherein a person borrows money from bank by collateralizing an asset, without transferring title and possession.
Applicable to	Immovable asset	Movable asset
Legal Document	Mortgage deed	Hypothecation agreement
Defined under	Transfer of Property Act, 1882	SARFAESI Act, 2002
Indicates	Transfer of interest in the asset.	Security for payment of an amount.
Loan amount	High	Comparatively low

Tenure	Long	Comparatively short

Unit 13: Registration and Satisfaction of Charges

Types of Charges

"Charges" registered under the Companies Act can be classified into two types:

Fixed Charge: 'Fixed Charge' is also called '**specific Charge'**. It extends over a specific property or properties of the company.

Floating Charge: A floating charge is a security interest over a fund of changing assets of a company or other legal person. Unlike a fixed charge, which is created over ascertained and definite property, a floating charge is created over property of an ambulatory and shifting nature.

Provisions of Law Relating to Registration of Charges

Section 77, Companies Act 2013: This section provide that 'charge' means and includes mortgage/charge over any or all properties of the company within or outside India.

Section 77(1), Companies Act 2013: This section provides that the charge created over the properties of the company shall be registered with the **Registrar of Companies within 30 Days** of creation of charge.

Section 77(2), Companies Act 2013: This section provide that the Registrar shall give a certificate under his hand of the Registration of any charge registered, stating the amounts thereby secured.

Section 78, Companies Act 2013: This section provides that in case the charges is not registered by the Company, the charge holder may apply for filling of charge in the prescribed manner within a period **14 Days** after giving the Company a notice in this regard.

Section 79, Companies Act 2013: This section provide that if a company acquires a property charged under Section 77, then the company shall declare the same by filling the particulars of the property, so acquired, subject to charge.

Section 80, Companies Act 2013: This section provides that after registration of charge created, any other person acquiring such property charged or any party thereof, shall be deemed to have notice to the charge registered and shall take property subject to such charge.

Section 82, Companies Act 2013: This section provide that the Company shall intimate the Registrar of any payment/satisfaction in full of any **charge registered within a period 30 days.**

Section 83, Companies Act 2013: Power of Registrar to Make Entries of Satisfaction and Release in Absence of Intimation from Company.

Section 84, Companies Act 2013: This section provides that in case an order for appointment of receiver or manager is obtained by any person, then such person shall give notice of such **appointment of receiver/ manager within a period of 30 days** from the date of such order.

Section 85, Companies Act 2013: This section requires the company shall maintain at its registered office, a register of charges in prescribed form and manner.

Section 86, Companies Act 2013: This section provides that contravention of any the aforesaid provision shall be punishable with a **fine not less than Rs 100000 but which may extend to Rs 1000000** and every officer in default shall be punishable with imprisonment for a **term of upto 6 months.**

Section 86, Companies Act 2013: This section provides that the Central Govt may direct that the time for filing charge may be extended upon being satisfied of a few conditions mentioned in the section.

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Module C: Banking Related Laws

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Unit 1&2: SARFAESI ACT, 2002

SARFAESI Act

The SARFAESI Act gives detailed provisions for the formation and activities of Asset Securitization Companies (SCs) and Reconstruction Companies (RCs). Scope of their activities, capital requirements, funding etc. are given by the Act. RBI is the regulator for these institutions.

As a legal mechanism to insulate assets, the Act addresses the interests of secured creditors (like banks). Several provisions of the Act give directives and powers to various institutions to manage the bad asset problem. **Following are the main objectives of the SARFAESI Act.**

- The Act provides the legal framework for securitization activities in India
- It gives the procedures for the transfer of NPAs to asset reconstruction companies for the reconstruction of the assets.

- The Act enforces the security interest without Court's intervention
- The Act give powers to banks and financial institutions to take over the immovable property that is hypothecated or charged to enforce the recovery of debt.

Major feature of SARFAESI is that it promotes the setting up of asset reconstruction (RCs) and asset securitization companies (SCs) to deal with NPAs accumulated with the banks and financial institutions. **The Act provides three methods for recovery of NPAs, viz:**

- Securitization;
- Asset Reconstruction; and
- Enforcement of Security without the intervention of the Court.

Definition of SARFAESI Act, 2002

In SARFAESI Act, 2002, the definitions are given in Section 2 of the Act.

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 "**Debt Recovery Tribunal"** can file an appeal to the authority called as Appellate Tribunal.

3. Asset Reconstruction - An asset reconstruction means acquisition by an ARC of any right or interests of any Bank or Financial Institution in any financial assistance for the purpose of realisation of such financial assistance.

4. Bank – SARFAESI Act, All the banking companies, Nationalised banks, Cooperative banks and RRBs.

5. Board – The Word 'Board' is used SEBI under SEBI Act 1992.

6. Borrower – Any person, who has been granted financial assistance, given guarantee.

7. Central Registry – Under this Act, '**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 – SARFAESI Act, Debts Recovery Tribunal are those tribunals established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, to deal with the cases of recovery of **debts above Rs. 10lacs** due to the banks and financial institutions.

9. Default: Default is failure to meet the legal obligations of a loan, for example when a home buyer fails to make a mortgage payment, or when a corporation or government fails to pay a bond which has reached maturity.

10. Financial Assistance: Whenever any bank or financial institution grants a loan or advance or makes subscription of debenture or bonds or gives guarantee or issues letters of credit or extends other credit facility, it is called financial assistance.

11. Financial Asset - 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: Financial Institution means

- A public financial institution within the meaning of the Companies Act, 1956 (now ICA 2013)
- Any institution specified by the Central Government under the Recovery of Debts due to Bank and Financial Institutions Act, 1993.
- The 'International Finance Corporation' established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958.

13. Hypothecation: Hypothecation means

- A change in or upon any moveable property
- Existing or future
- Created by a borrower
- In favour of a secured creditor

14. Non-Performing Asset: A non-performing loan is a loan that is in default or close to being in default. Many loans become non-performing after being in default for 90 days, but this can depend on the contract terms.

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15. Originator: Originator is the owner of a financial asset that is acquired by a securitization company or reconstruction company for the purpose of securitization or asset reconstruction.

16. Obligor – Borrower or any other person liable to pay to the bank

17. Property: Property means

- Immovable property;
- Movable property;
- Any debt or any right to receive payment of money, whether secured or unsecured;
- Receivables, whether existing or future;

- Intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature;

18. Qualified Institutional Buyer: Means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, 4[trustee of securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3 or any asset management company making investment on behalf of mutual fund] or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulations made thereunder, or any other body corporate as may be specified by the Board.

19. Reconstruction Company: Means a company formed and registered under the Companies Act, 1956 (1 of 1956) for the purpose of asset reconstruction;

20. Scheme: Means a scheme inviting subscription to security receipts proposed to be issued by a securitisation company or reconstruction company under that scheme;

21. Securitisation: Means acquisition of financial assets by any securitisation company or reconstruction company from any originator, whether by raising of funds by such securitisation company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise;

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: Means any bank or financial institution or any consortium or group of banks or financial institutions and includes—

- debenture trustee appointed by any bank or financial institution; or 5[(ii) securitisation company or reconstruction company, whether acting as such or managing a trust set up by such securitisation company or reconstruction company for the securitisation or reconstruction, as the case may be; or]
- any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created for due repayment by any borrower of any financial assistance;

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: Means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitization.

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

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

Unit 3: Regulation of Securitisation and Reconstruction of Financial Assets of Banks and Financial Institutions

Registration of Securitisation Company Or Reconstruction Company

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Can commence or carry business if

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

Cancellation of Certificate of Incorporation

- The company ceases to carry on the business
- The company ceases to receive or hold any investment from a qualified institutional buyer.

- The company fails to comply with any of the conditions subject to which the certificate of registration was granted
- Fails to comply with RBI directions.
- Fails to maintain accounts in accordance with directions issued by RBI.
- Fails to give accounts and documents to RBI for inspection.

Acquisition of Right of Interest In Financial Assets

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act 2002/Section 5 Acquisition Of Rights Or Interest In Financial Assets

- Notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution,-

1. by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or
2. by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

- If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.
- Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of securitisation company or reconstruction company, as the case may be.

- If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.

Important Point

- Asset Reconstruction means acquisition of any right or interest of any bank of financial institution in any financial asset for the purpose of realisation.
- Securitisation Company needs registration from RBI for commencement of business.
- Right of acquisition of financial asset by Securitisation Company/RC is subject to the prior agreements or contracts about the asset. **(False)**
- Acquisition of financial asset by Securitisation Company/RC is with the liability also over such asset. (**False)**

The four documents involved in the Securitisation Transaction

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

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

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

Security Receipt – It is in favour of investors.

Note: 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.

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Unit 4: Enforcement of Security Interest

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? 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

- A Lien on any goods, money or security given by or under the Indian Contract Act, 1872.
- A pledge of moveable within meaning of Section 172 of the Indian Contract Act, 1872.
- Any conditional sale, hire-purchase or lease or any other contract in which security interest has been created.
- Any rights of unpaid seller.
- Any security interest for securing repayment of any **financial asset not exceeding Rs. 1 Lakh rupees.**
- Any security interest created on agricultural land.

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

Unit 5: Central Registry

Central Registry

(1) The Central Government is authorized to set up or cause to be set up a '**Central Registry'** by issue of notification from such date as may be specified in the notification for the purpose of registration of following transactions:

- Securitisation and reconstruction of financial assets
- Creation of security interest under the SARFAESI Act,

(2) There are some other Acts which require registration of certain things and charges. These Act are:

- Registration Act, 1908
- Companies Act, 2013
- Merchant Shipping Act, 1958
- Patents Act, 1970
- Designs Act, 2000
- Motor Vehicles Act, 1988

Register of Securitisation, Reconstruction and Security Interest Transactions

A record shall be maintained at the central registrar at the head office of the central registrar in which transaction relating to:

- Securitisation of Financial Assets
- Reconstruction of Financial Assets
- Creation of security interests shall be maintained.

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Filing of Transactions of Securitisation, Reconstruction and Creation of security Interest

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.

Note: Modification also have to be filled within 30 days

Unit 6: Offences and Penaltie

PENALTIES

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

Penalties For Non-Compliance Of Directions Of Reserve Bank Of India

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

OFFENCES

If any person:

1. contravenes, or

2. attempts to contravene, or

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

Cognisance Of Offences

Section 30 provides that no court shall take cognizance of any offence punishable under **section 27 in relation to non-compliance** with the provisions of s**ection 23, section 24 or section 25 or under section 28 or section 29 or any** other provisions of the **SARFAESI Act,** except upon a complaint in writing made by an officer of the Central Registry or an officer of the RBI, generally or specially authorized in writing in this behalf by the Central Register or, as the case may be, the Reserve Bank and congnisance of the offence under the **SARFAESI Act shall be taken by the Metropolitan Magistrate** or the Judicial Magistrate of First class only. No Court below the rank than this can take cognizance of such offences.

Unit 7: Miscellaneous Provisions

Non-Applicability of the Provisions of the SARFAESI Act in Certain Cases

The Object of the SARFAESI Act is to give powers to the banks and financial institutions to enforce the securities given to the loans and advance by the borrowers **without the intervention of Court.** It should be noted that the securities not in possession of the bank or financial institution are only covered by this Act.

Section 31 gives the exclusion for securities that can be taken possession of and to some other specific securities to **which Act is not applicable.**

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

Civil Court not to have Jurisdiction

Civil courts not to have jurisdiction, jurisdiction has conferred to DRT and AT. Under this Act as well as under Recovery of Debts Due to **Bank and Financial Institutions Act, 1993.**

Limitation

Section 36 SARFAESI Act: The action has to be taken within 3 years from date on which a cause of action arose.

Power of the Central Government to Make Rules

For Carrying out the Provision of this Act, **the Central Government can frame rules and notify them in the official Gazette.** The Act also allows the Government to notify the rules in the Electronic Gazettee as defined in the **Information Technology act 2000,** on the Website of the Government.

Amendments to Certain other Enactments

For effective purpose of this Act, it has amended some related provisions of the **Companies Act, 1956 (now ICA, 2013),** The **Securities Contracts (Regulation) Act, 1956** and the **Sick industrial Companies (special provision) Act, 1956.**

The amendments are as under

- Section 4A of the Companies Act, 1956 is amended for the purpose of declaring any securitization company or reconstruction company registered with the Reserve Bank of India as a Public financial Institution within the meaning of Section 4A of the Companies Act, 1956.
- The Securities Contracts (Regulation) Act, 1956 is amended at Clause (h) of Section (2) for including securities receipt as defined in Clause (zg) of Section 2 of the SARFAESI Act.
- Amendment to the Sick Industrial Companies (Special Provision) Act, 1985 is made to provide that.
- No Reference to the Board for Industrial and Financial Reconstruction (BIFR) shall lie, where financial assets are acquired by any securitisaton company or reconstruction company under sub-Section 5 of the SARFAESI Act
- For the purpose of providing that a reference pending before BIFR shall abate if the secured creditor, representing not less than 60% in value of the amount outstanding, take any measures to recover their secured debt under sub-section(4) of Section 13 of SARFAESI Act.

Unit 8: The Banking Ombudsman Scheme, 2006: Purpose, Extent, Definitions, Establishment and Powers

Object of Scheme and Extent

- To resolve complaints relating to banking services and to facilitate the satisfaction or settlement of such complaints.
- Resolve disputes between a bank and its constituents as well as amongst banks, through the process of conciliation, mediation and arbitration.

Appointment and Tenure

- The Reserve Bank may appoint one or more of its officers in the rank of Chief General Manger or General Manager to be Know as the Banking Ombudsmen to carry out the functions entrusted to them by or under the scheme. This appointment may be made for a period **not exceeding 3 yrs at a time.**

Territorial Jurisdiction and location of office

- The RBI shall specify the territorial limits to which the authority of each of the banking ombudsman shall extend.
- The office of the banking ombudsman will be located at such places as may be specified by the Reserve Bank.
- The Banking ombudsman may hold sittings at such places within his area of jurisdiction as may be considered necessary and proper by him, in respect of a complaint or reference before him.

General Powers of Banking Ombudsman

The Banking ombudsman shall have the following powers and duties.

- To receive complaints relating to banking services.
- To consider such complaints relating to the deficiencies in the banking and other services and facilitate their satisfaction or settlement by agreement through conciliation and mediation between the bank the aggrieved parties or by passing an award in accordance with the scheme.

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Unit 9: Procedure for Redressal of Grievances

Grounds of Complaint

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

- Non-payment/inordinate delay in the payment/collection of cheques
- Non-acceptance, without sufficient cause, of small denomination notes

- Non- Payment or delay in payment of inward remittances.
- Failure to honour a guarantee or letter of credit commitment.
- Non-adherence to prescribed working hours
- Refusal to open deposit accounts without any valid reason for refusal
- Failure to honour guarantee/LC commitments by banks.
- Claims in respect of unauthorized/fraudulent withdrawals.
- Force closure of deposit accounts without due notice or without sufficient reason.
- Complaints from exporters in India.
- Complaints from NRI having account in India.
- Any other matter relating to the violation of the directives issued by the RBI in relation to banking services.

Complaints concerning Loans and Advances may also be filed

- Non-observance of RBI directives on interest rates
- Delay in sanction. disbursement of Loan
- Non-acceptance of application for loans without giving valid reasons.

Procedure For Filing Complaint

- 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.
- The complaint should be made **before one year after the cause of action has arisen.**

Power To Call For Information

- The Banking Ombudsman may require the bank named in the complaint or any other related bank to provide any information or furnish certified copies of any document relating to the subject matter of the complaint that is or is alleged to be in the possession of such bank. **In the event of the failure of a bank to comply** the requisition without any sufficient cause, the banking ombudsman may draw the inference that the information, if provided or copies if furnished would be unfavorable to such bank.
- The banking ombudsman shall **not disclose any information or document** to any person except with the consent of the person furnishing such information or document.

Settlement Of Complaint By Agreement

- The banking ombudsman has to serve a notice of the receipt of complaint along with a copy of the complaint to the branch or office of the bank named in the complaint.
- For the purpose of promoting a settlement of the complaint, the banking ombudsman may follow such procedures as he may consider appropriate and he shall not be bound by any legal rule of evidence.
- The proceedings before the banking ombudsman shall be summary In nature.

Award By The Banking Ombudsman

- 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.
- 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.
- 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 Banking Ombudsman.
- If the bank disagree, bank must intimate Banking Ombudsman within one month from the date of the receipt of copy of the Award to file the review petition.
- The Banking Ombudsman 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.
- The **maximum amount** Banking Ombudsman **can award for compesation is Rs.20 lakhs.**
- In case of complaints relating to credit card operations, the banking ombudsman shall take into account the loss of complainant's time, expense incurred by the complainant, harassment and mental anguish suffered by the complainant, while determining the amount of compensation. **The Compensation shall not exceed Rs 1 Lac.**

Rejection Of the Complaint

1. The banking ombudsman may reject the complaint at any stage if it appears to him that the complaint made is:

- Other than what is made under Clause 8 of the Scheme or in accordance with sub-clause (3) of clause 9 of the Scheme; or
- Without any sufficient cause; or
- That it is not pursued by the complainant with reasonable diligence; or
- Prima facie, there is no loss or damage or inconvenience caused to the complainant; or
- Beyond the pecuniary jurisdiction of the banking ombudsman under the scheme

2. The banking ombudsman may reject a complaint at any stage, if after consideration of the complaint and evidence produced before him the banking ombudsman is of the opinion that the complicated nature of the complaint requires consideration of elaborate documentary and oral evidence and the proceedings before the banking ombudsman are not appropriate for adjudication of such a complaint. The decision of the banking ombudsman in this regard shall be final and binding on the complainant of the bank.

Proceeding Before The Appellate Authority

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

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

- Dismiss the appeal; or
- Allow the appeal and set aside the award; or
- Remand the matter to the banking ombudsman for fresh disposal in accordance with such directions as the appellate authority may consider necessary or proper; or
- Modify the award and pass such directions as may be necessary to give effect to the award so modified; or
- Pass any other order as it may deem fit.

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

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Unit 10: Jurisdiction, Powers and Authority of Tribunals

Jurisdiction, Powers and Authority of Tribunals

- Whenever the Tribunal or the Appellate Tribunal is established from its appointed day, i.e., date from which they function is declared in the notification, they exercise jurisdiction, powers and authority to entertain and decide applications or appeals, as the case may be, from the banks and financial institutions for and about recovery of debts due to them.
- Chairperson of Appellate Tribunal is given general power of superintendence and control over the Tribunals under his jurisdiction. The chairperson can transfer any application from any
- Presiding Officer within his jurisdiction to any other Presiding Officer within his jurisdiction, on Receiving application for transfer of case or even on his own motion. However before such transfer, he has to give notice to the parties and hear them. He also has power of appraising work of presiding officers, under his control.

Bar Of Jurisdiction Of Civil Courts

- From the date of establishing the Tribunal, i.e., the appointed day, no court or other authority shall have any jurisdiction, powers or authority to deal within any way in recovery cases above Rupees ten lakh. Thus the Civil Courts or any other authority will loose and will not have the jurisdiction for cases where due amount recoverable is above Rupees ten lakh by banks and financial institutions. However, this is not applicable to High Courts and Supreme Courts exercising jurisdiction **under Articles 226 and 227 of the Constitution.**
- The relevant date of bar of jurisdiction by the court or other authority is not the date when this Act came into application. The date is since when the Tribunal is established having jurisdiction in that particular area. In **Bhanu Construction Company Ltd. vs Andhra Bank [2002] 37 SCL 769,** a question came whether the order passed by a Civil Court after coming into force of the DRT Act but before establishing the Tribunal is valid on jurisdiction point or not. The Supreme Court held that order passed by the Civil Court prior to establishment of a Tribunal but after commencement of DRT Act was well within the jurisdiction of the Civil Court.

Unit 11: Procedure Of Tribunals

Application to the Tribunal

The Purpose for filing application is for Recovery of the debt due to them.

DRT Act	About
Section19(1)	Application for recovery to Tribunal within local limits of whose jurisdiction
Section19(2)	Recovery of the debt is from same person, any other bank also has to recover debt, they may join.
Section19(3)	No need to pay the fee, if Case is transferred from Civil Court to Tribunal
Section19(4)	On receipt of application under sub-section(1) or (2) the Tribunal has to issue summons to the defendant requiring him to show cause within 30 days of the service of summons as to why the relief prayed for should not be granted
Section19(5)	The Defendant has to present written statement at or before first hearing or within such time as the Tribunal may permit.
Section19(6)	defendant has to claims any amount on first hearing from the applicant and to have setoff against the applicant's demand with ascertained sum of money
Section19(7)	When written statement contains claim and set off, the written statement has the same effect as a plaint in a cross-suit.
Section19(8)	Counter claim
Section19(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.
Section19(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
Section19(11)	Counter Claim to be disposed as an Independent action.

Section19(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
Section 19(13 A and B)	Tribunal Dispose of the property, Damage to the property, remove/whole any part of the property
Section19(14)	When the applicant wants that the properties of the defendant should be attached.
Section19(15)	The Tribunal can pass conditional attachment order.
Section19(16)	If any attachment order is passed without complying the requirements of Subsection (13), then such order is void.
Section19(17)	The Tribunal has power to pass interim orders, attachment orders etc. If there is any breach of the orders, the Tribunal may order that the properties of the person guilty of the breach of the order be attached and person be detained in civil prison for a term not exceeding 3 months.
Section19(18)	appoint a receiver of any property • remove any person from the custody/possession of property • confer powers to receiver. • appoint a commissioner for preparation of an inventory of the property of the defendant or for sale thereof
Section19(19)	If the recovery certificate is granted against a company, the Tribunal may order that the sale proceeds of such company be distributed among the Secured Creditors as provided in Section 529A of the Companies Act.
Section19(20)	Pass interim or final order for payment of amount including interest thereon
Section19(21)	The tribunal is required to send copy of every order by it to the applicant and the defendant.
Section19(22)	Issue a Certificate of Recovery to the recovery officer for recovery of the amount of debts.
Section19(23)	Sending Certificate of Recovery to other tribunals if it is local limits of other jurisdiction
Section19(24)	Application received by the tribunal for recovery of debt shall be disposed of finally within 180 days

Section19(25)	The tribunal may make such orders and give such directions as may be necessary

Appeal to the Appellate Tribunal

- Any person aggrieved by the order passed by Under DRT Act, may appeal to an Appellate Tribunal.
- 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.
- Appellate Tribunal should disposed off the appeal within 6 months.
- These is no provision in the Act for further appeal against the order passed by the Appellate Tribunal. However writ Jurisdiction of High Court under Article 226 and Supervisory jurisdiction of High Court as well as Special Leave Petition before the Supreme Court are not Barred.

Unit 12: Recovery of Debts Determined by Tribunal and Miscellaneous Provisions

Modes of Recovery of Debts

- On receipt of the copy of the recovery certificate issued **under Section 19(22) DRT Act,** the Recovery officer has to proceed to recover the amount specified in the certificate.

Validity of Recovery Certificate

- **One of the Rules under the Act (5A)** says that when any party wants to have a review of the order passed by the Tribunal or the Recovery certificate issued by the Tribunal on the ground that error is apparent on the face to the record, he can make application for review within **60 days of passing the order or issuing the certificate.**

Application of Certain Provisions of The Income Tax Act

- **Provision of Section 29** of this Act are linked to certain section of the **Income Tax Act, 1961.** For its effective purpose and to avoid its repetition in this Act, it is stated that these provisions will apply as if provided in this Act and Rules framed there under.
- **The section says that the provisions of the Second Schedule and Third Schedule to the Income tax Act, 1961 and the Income Tax (certificate Proceedings) Rules,**

1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if those provisions and rules refer to debt due under this Act.

Power of Tribunal to issue certificate of Recovery in case of Decree or order

- If there is a decree or order passed by any court before coming into operation the DRT Act and the decree or order is not yet executed, the decree-holder, may apply to the Tribunal for issue of recovery certificate. There is no fresh hearing or tribal, etc. in such cases and the **Tribunal has to directly issue the recovery certificate based on the decree of the Civil Court.**

Chairperson, Presiding officer and Staff of Appellate Tribunal and Tribunal Public Servants

The Chairperson of an Appellate Tribunal, the Presiding officer of a tribunal, the Recovery officer and other officers of the Appellate Tribunal and Tribunal are deemed public servants within the meaning of **Section 21 of the Indian Penal Code.**

Unit 13: The Bankers' Books Evidence Act, 1891

Application and Definitions

Company: Company means a company as defined in **Section 3 of the Companies Act, 1956** (now ICA 2013) and includes a foreign company within the meaning of that Act.

Legal Proceeding: Any proceeding or inquiry in which evidence is or may be given;

Any investigation or inquiry under **code of Criminal Procedure, 1973** or under any other law for the time being in force for the collection of evidence, conducted by a police officer or any other person authorized for the purpose by the magistrate or by any law.

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

A certificate copy of any entry in a banker's **"Book shall",** in all legal proceedings, be received as prima facie evidence of the existence of such entry. Further, it shall be admissible as evidence of all the matters, transactions and accounts therein recorded in every case as the original entry itself.

Case In Which Officer of Bank Not Compellable to produce Books

In any proceeding where the bank is not a party, no officer of a bank shall be compellable to produce any banker's book, contents of which can be proved, under this Act by production of certified copies. Similarly no the certified copies. However, the court may order otherwise for special cause.

Unit 14: The Legal Services Authorities Act, 1987: Lok Adalats

Organisation of lok Adalats

Lok Adalts are organized by the **State Authority, the Distt. Authority, the Supreme Court Legal Service Committee or High Court Legal Services Committee or Taluk legal Services committee**, at such intervals and places as deemed appropriate. **The Lok Adalts are created under Legal Services Authority Act 1987.**

Jurisdiction of Lok Adalats

A **Lok Adalt has jurisdiction** to determine and arrive at a compromise or **settlement between the parties to the dispute**.

Types of Cases

It deals with the cases where

(a) The parties to the dispute agree to refer the issue to Lok Adalt;

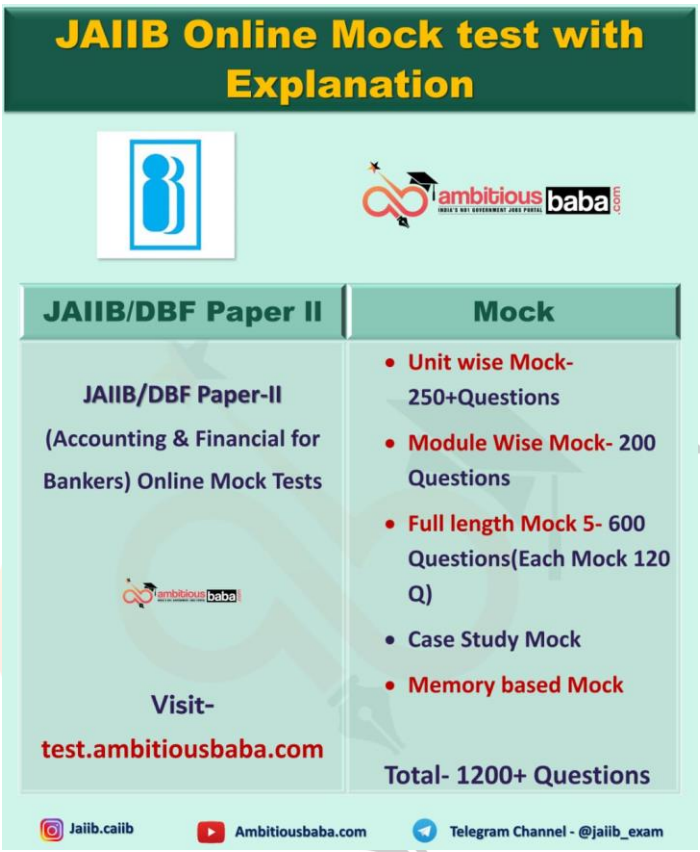
(b) One of the parties approaches the Lok Adalt and Lok Adalt is satisfied that there are chances of settlement. In such case, the Adalt issues notice to the other party;

(c) In the opinion of the Lok Adalt, the cognizance of the dispute can be taken.

Note: The Monetary ceiling of amounts regarding which civil disputes can be settled under this mechanism is **presently Rs 20lacs. The repayment period should be within one to three years.**

Nature of Award of The Lok Adalats

The Award of Lok Adalat shall be deemed to be a decree of a civil court or an order of any other court. In case of compromise or settlement arrived at by a Lok Adalat the court fee paid in the case shall be refunded in the manner provided under the **Court fees Act, 1870.** Every award shall be binding on all the parties to the dispute. No appeal shall lie in any court against the award.



Unit 15: The Consumer Protection Act, 1986: Preamble, Extent and Definitions

Important Definitions

Complainant Means

- A Consumer, or
- Any Voluntary Consumer association registered under the Companies Act, 1956 or under any law for the time being in force, or
- The Central Govt. or state govt., who or which makes the complaint, or

- One or more consumers, where there are numerous consumers having the same interest, and
- In case of death of a consumer, his legal heirs or representative.

Complaint Means

- An unfair trade practice or restrictive trade practice has been adopted by any trader or service provider;
- The goods bought by him or agreed to be bought by him suffer from one or more defects;
- The services hired or availed of or agreed to be hired or availed by him suffer from deficiency in any respect;
- A trader or the service provider has charged for the goods or for the services mentioned in the complaint

"Consumer" means any person who,

- Buys any goods for a consideration which has been paid or promised to be paid
- Under any system of deferred payment
- Includes any user of such goods
- 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.

District Forum: Consumer Dispute Redressal forum established **under clause (a) of Section 9 under this Act.**

Goods: Means goods as defined in the **Sale of Goods Act, 1930**.

National Commission: Means the National Consumer Dispute Redressal Commission established **under Clause (c) of Section 9.**

Notification: Means a notification published in the official Gazette by the **State or Central Govt.**

Regulation: Means the regulations made by the **National Commission under this Act.**

Restrictive Trade Practice

- A trade practice which tends to bring about manipulation of price, or
- Its Conditions of Delivery,

Spurious goods and service: Means such goods and services which are claimed to be genuine but they are actually not so.

State Commission: Means Consumer Disputes Redressal Commission established in a state **under clause (b)of Section 9 of the Act.**

Unit 16: Consumer Protection Councils

Central Consumer Protection Council

The Central Govt. has established a council known as the Central Consumer Protection Council.

- The Minister in charge of the Consumer Affairs in the Central Govt., who shall be the Chairman of the Council.
- The Central council shall meet as and when necessary but **at least once in a year.**
- The Objects of the Council, as stipulated **under Section 6 of the Consumer Protection Act, 1986,** shall be to promote and protect the rights of the Consumers.
- Such number of official and non-official member representing such interest as may be prescribed.

State Consumer Protection Council

- The State Govt., **under Section 7 of the Consumer Protection Act, 1986**, shall establish Consumer Protection Council or the State Council by issuing a notification.
- The Minister in Charge of the Consumer Affairs in the State Govt. who shall be the Chairman of the Council.
- Such number of official and **non-official member (not exceeding 10)** representing such interest as may be prescribed by the state govt.
- There has to be at **least 2 meeting every year.**

District Consumer Protection Council

- For every District, the State Govt. established the Dist Consumer Protection Council called as Disct Council.
- The District Council **under Section 8A (2) of the Consumer Protection Act, 1986.**
- The **Collector of the District** who shall be the **Chairman** of the Council.
- There has to be at **least 2 meeting every year.**

Unit 17: Consumer Disputes Redressal Agencies

Establishment of Consumer Disputes Redresal Agencies

- **District Forum**
- **State Commission**
- **National Commission**

Composition of Forum

	District	State	National
Established by	State Govt	State Govt	Central Govt
Composition of Forum	Under Section 10 of the Consumer Protection Act, 1986	Under Section 15 of the Consumer Protection Act	Under Section 20 of the Consumer Protection Act
President (Qualified to be)	District Judge	High Court	Supreme Court
Minimum Other Members (One Woman)	2	2	4
Member Qualification	Minimum 35 years of age Bachelor's Degree	Minimum 35 years of age Bachelor's Degree	Minimum 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 of Forum

	District	State	National

Established by	State Govt	State Govt	Central Govt
Jurisdiction of Forum	Under Section 11 of the Consumer Protection Act, 1986	Section 12,13 and 14 of District forum	Section 12,13 and 14 of District forum
Claimed Amount	Does not exceed Rs. 20 Lakhs.	Rs.20 Lakhs to Rs.1 Crore Appeal against the order of District Forum with in State	Exceeds Rs. 1 Crore Appeal against the order of the State Commission

Form of Complaint

	District	**State**	**National**
Established by	State Govt	State Govt	Central Govt
Act	Section 12 of the Consumer protection Act		

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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	Application of complainant or on its own motion the state commission may transfer any proceeding at any stage from one Dist forum to another Dist if in the interest of justice it requires	Application of complainant or on its own motion the state commission may transfer any proceeding at any stage from one Dist forum to another Dist. And State Commission to another Commission if in the interest of justice it require

Appeal

	District	State	National
Established by	State Govt	State Govt	Central Govt
Act	Under Section 15 of the Consumer Protection Act.	Under Section 19 of the Consumer Protection Act.	Under Section 24 of the Consumer Protection Act.
Transfer Appeal Time	30	30	
Appeal (50% amount or whichever is less)	Appeal to state commission: Payment of amount : 25,000	Appeal to National Commission : Payment of amount: Rs. 35,0000	Appeal to Supreme Court : Payment : Rs. 50,000

Other Important Point

- **Dismissal of Frivolous complaints:** If the district forum, state commission, national commission finds that complaint instituted before it is frivolous, it shall dismiss the complaint. And order the complainant to pay Rs. 10,000.
- **Penalties:** Where trader or a person against the whom the complaint is made fails or omits to comply with any order made by the commissions, he shall be punishable with imprisonment for a term 1 month to 3 years or with fine Rs. 10,000 or with both

Unit 18: The Law of Limitation

Limitation and Its Computation

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

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

Computation of the period of limitation

- When the period of limitation expires on a day when the court is closed, the suit, appeal or
  application may be instituted, preferred or made on the day when the court reopens.
- Any appeal or any application other than execution petitions may be admitted after the prescribed period, if the appellant or applicant makes out sufficient cause for not preferring the appeal or application within the period of limitation.
- In computing the period of limitation, the day from which such period is to be reckoned, shall be excluded. The computation of the period of limitation for filing appeal shall exclude the day on which the judgment complained was pronounced and the time taken for obtaining a copy of the decree, sentence or order appealed. Time required for obtaining a copy of the order or award shall be excluded while computing the time limit for filing revision or review application or an application to set aside the award.
- For an application for execution of decree, the period during which the institution or execution has been stayed by injunction or order, the day on which the order was issued or made and the day on which it was withdrawn shall be excluded.
- For filing any suit of which notice has to be given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice, or the time required for obtaining such consent or sanction shall be excluded.
- In computing the period of limitation for any suit, the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government shall be excluded.

Acts Giving Rise To Fresh Period Of Limitation

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

- Where before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.
- Where payment on account of a debt or of interest on a legacy is made before expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. In this case 'debt' does not include money payable under a decree or order of a court.

Certain Important Provisions in Schedule of the Limitation Act

Some of the important aspects that are required to noted for filing suits of different types are given below:

Description of suits	Period of limitations	Time from which period begins to Run
For Money payable towards money lent	3yrs	When the loan is made
For Money lent under an agreement that it shall be payable on demand	3yrs	When loan is made
On a bill of exchange payable at singt, or after sight, but not at a fixed time	3yrs	When the bill is presented
On a bill of exchange or promissory note payable at a fixed time after sight or after demand	3yrs	When the fixed time expires

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On a promissory note or bond payable by instalments	3yrs	The Expiration of the first term of payment as the part then payable; and for the other parts, the expiration of the respective terms of payment
For arrears of rent	3yrs	When the arrears become due.
For specific performance of a contract	3yrs	The date fixed for the performance, or if no such date is fixed, when the plaintiff has noticed that performance is refused
To Enforce payment of money secured by a mortgage or otherwise charged upon immovable property	12yrs	When the money sued for become due.
By a mortgagee for Foreclosure	30 yrs	When the money secured by the mortgage become due
By a mortgagee for possession of immovable property	12yrs	When the mortgagee become entitled to possession
Any suit for which no period of limitation is provided elsewhere in this schedule	30rys	When the right to sue accrues
Executive of a decree	12 yrs	From the date of decree
Recovery of loss caused by fraud	3yrs	From the date of the fraud
Appeal to file in high court against judgement of lower court	90 days	From the date of decree
Appeal to file in other court against Judgement of lower court	30 days	From the date of decree

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Unit 19: Tax Laws

Income Tax Act, 1961

The Income Tax Act, 1961 is an act to levy, administer, collect, and recover income tax in India. **The act is effective from 1 April 1962. It consists of 298 sections and 14 schedules.** The act helps determine a taxpayer's taxable income, tax liability, appeals, penalties, and prosecution. The government has been making amendments to the act from time to time.

Income Tax Rules, 1962

Income tax rules act as a supplement to the **Income Tax Act, 1961. Income tax rules are effective from 1 April 1962. The Central Board of Direct Taxes (CBDT) has the power to amend the income tax rules. For example, Section 10 (13A) (1) o**f the Income Tax Act states that the house rent allowance can be exempted up to a certain limit. Rule 2A under income tax rules states how the limit can be calculated.

Income Tax

The Law relating to taxation of income is governed by Income Tax Act, 1961.

This Act envisage taxation of income of an assessee on the basis of his

- Residence
- Place of source of income

Assessee and Assessment year

The Income accruing, or arising to a person (called "Assessee) is taxed on the basis of 'Assessment year'. The term Assessment year represents the period 12 months beginning from **1st April every year.**

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

- Salaries
- Income from house property
- Profits and gains from business or profession
- Capital gains
- Income from other sources

Covered Under TDS Under The Income Tax Act, 1961

- Salaries- Section 192
- Interest in securities- Section 193
- Payment of interest, other than interest of securities- Section 194A

- Payment to contractors or sub- contractors- 194C
- Payment of brokerage and commission- Section 194H
- Payment by way of rent- Section 1941
- Payment of professional and technical fees- Section 194J
- Payment to non-resident- Section 195

Taxpayers and Income Tax Slabs

Taxpayers in India, for the purpose of income tax includes:

- Individuals, Hindu Undivided Family (HUF), Association of Persons(AOP) and Body of Individuals (BOI)
- Firms
- Companies

Income Range	Tax rate	Tax to be paid
Up to Rs.2,50,000	0	No tax
Between Rs 2.5 lakhs and Rs 5 lakhs	5%	5% of your taxable income
Between Rs 5 lakhs and Rs 10 lakhs	20%	Rs 12,500+ 20% of income above Rs 5 lakhs
Above 10 lakhs	30%	Rs 1,12,500+ 30% of income above Rs 10 lakhs

Service Tax

Service tax in India is a type of indirect tax charged on the services provided by a service provider. **The Central Government via the Finance Act, 1994 governs** the taxability of services provided by an individual or a **company under Section 66B**. The tax is imposed on all the services provided or to be provided in the taxable territory of the country. Services covered through negative list are exempted, along with services listed under the Mega Exemption Notification 25/2012 as amended by Notification No. 40/2016. The Place of Provision Rules 2012 and the Point of Taxation Rules 2011 are considered while determining the tax liability. **Service tax is charged at the rate of 15% currently.** The taxability arises once the value of **services exceeds Rs. 10 lakhs during the financial year.**

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Module D: Commercial Laws with Reference to Banking Operations

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Unit 1: Meaning and Essentials of a Contact

The law of contact constitutes the most important branch of commercial law. In India, the law relating to contracts is governed by the **Indian Contract Act, 1872**.

MEANING OF CONTRACT

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

1. An agreement between two persons or more.

2. The agreement must be enforceable by law (i.e. the rights and obligations arising out of it).

- It is made by free consent of all the parties.
- It is made for a lawful consideration.
- It is made with a lawful object and
- It is not declared as void expressly in the Indian Contract Act

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Key Components To Form A Contract

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

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

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

Essentials Of A Valid Contract

Proposal and Acceptance

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

An Agreement may be Oral or Written

While an agreement may be Oral or Written, under certain laws an agreement is required to be in writing only and is also required to be registered and attested. If such formalities are not complied with, then the agreement cannot be enforced before a court of law. This applies in the case of sale or mortgage if immoveable property, lease, etc.

The Contract Act defines consideration as under.

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

- Has done or abstained from doing, or
- Does or abstains from doing, or
- Promises to do or to abstain from doing something.

Free Consent

Free consent of the parties to a contract is required. A consent is said to be free when the parties agree to the same thing in the same sense.

Capacity to Contract

The parties to an agreement must be legally competent to enter into a contract. Section 11 of the Contract Act lays down that every person is competent to enter into a contract if,

- He has attained the age of majority, and
- He is of sound mind and
- He is not disqualified from entering into an contract by any law to which he is subject.

Minor's Contracts

As per Section 11 of Indian Contract Act, a minor is a person who has **not attained the age of 18 years**, But if a guardian has been appointed to the person or property of the minor by a court, **the age of majority of such a person is 21 years and not 18 years.**

Unit 2: Contracts of Indemnity

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

Rights Of Indemnity Holder

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

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

- All damages which he may be compelled to pay in any suit, in respect of any matter to which the promise to indemnify applies.
- All costs which he may be compelled to pay in any suit.
- All sums paid in compromise, not contrary to indemnity.
- Right to sue for specific performance- the indemnity holder is entitled to sue for specific performance if he has incurred absolute liability and the contract covers such liability.

Implied Indemnity

A Contract of indemnity may be express or implied depending upon the circumstances of the case, through **section 124 of the India Contract Act** does not seem to cover the case of implied indemnity.

Enforceability of Contract of Indemnity

The Liability of the Indemnifier commences as soon as the loss of the indemnified becomes absolute, certain or imminent. It is not necessary that the promise should pay for the loss.

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Unit 3: Contracts Of Guarantee

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

Parties To The Contract

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

- The person in respect of whose default the guarantee is given is called the **'principal debtor'.**
- The person to whome the guarantee is given is called **'creditor/beneficiary'.**

Consideration

Anything done, or any promise made, for the benefit of the principle debtor, is a sufficient consideration to the surety for giving the guarantee.

The Liability of the surety

The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is regarded as a favoured debtor.

Continuing Guarantee

A guarantee which extends to a series of transactions, is called, a '**Continuing Guarantee'**. This type of guarantee is not limited to only transaction but to many transactions.

Death of surety

Normally, when the surety dies, the guarantee ends from that date. However, this is not true in all cases. It depends upon the terms of the contract and the intention of the parties as regards future transactions.

Generally all guarantee obtained by banks are continuing guarantee and in the case of death of a surety the guarantee would stand revoked for future transactions.

Variance in terms of the Contract

Any Variance (change/ modification) mode without the surety's consent, in the 'term of contract' guaranteed by him, between the principal debtor and the creditor discharges the surety as to transactions subsequent to the variance.

Discharge of principal debtor

The surety is discharged if the principal debtor is released by the creditor.

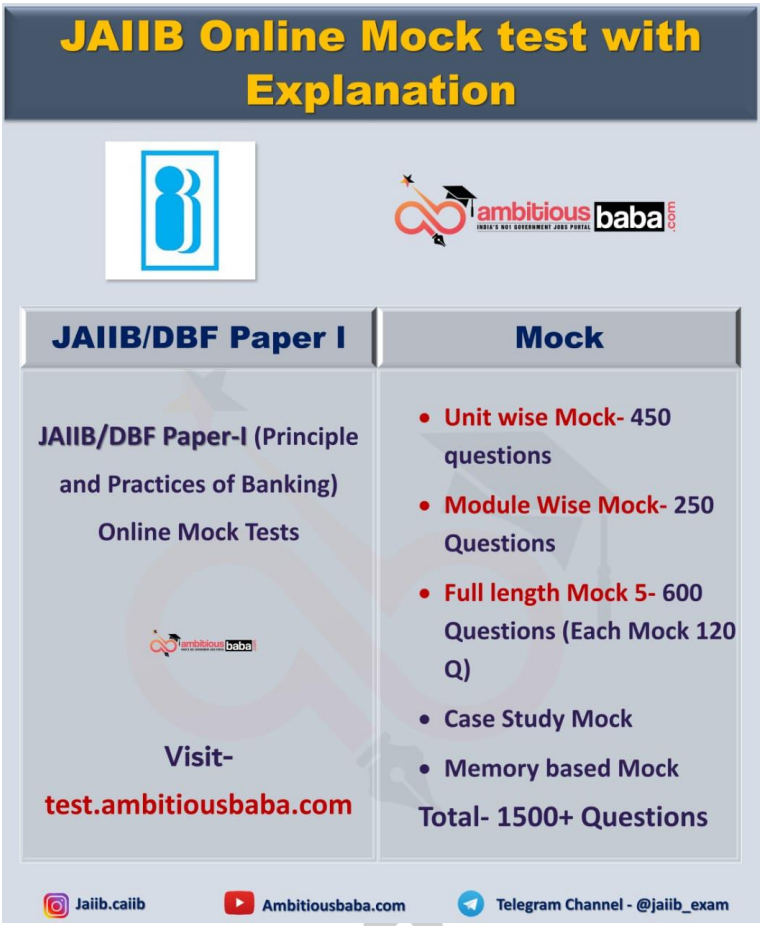
Forbearance to Sue

Further, mere forbearance on the part of creditor to sue the principal debtor or to enforce any other remedy, against him, does not discharge the surety unless the parties has agreed for such discharge.

Security

A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of surety- ship made, whether the surety knows of the

existence of such security or not. It the creditor loses such security, then the surety is discharged to the extend of the value of the security.



Unit 4: Contract Of Bailment

Bailment

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

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

Meaning Of Bailment

When one person delivers to another, certain goods to be used for a certain purpose, the contract is known as a contract of bailment. Here, the contract will specify the time for which the goods will remain with the person taking them. Also, the person who gives the goods can

direct the other either to return the goods after the requisite time has expired or, direct him to dispose off the goods in a particular manner.

Bound To Disclose To Bailee Bailor

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

- Of which the bailor is aware,
- And which materially interfere with the use of them,
- Or expose the bailee to extraordinary risk;

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

Effects of Mixing of goods and Expenses

- If the bailee (with the consent of the bailor), mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture this produced.
- If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods and the goods can be separated or divided, the property in the goods remain with the parties respectively. The Bailee is is bound to bear the expense of separation or division, and any damage arising from the mixture.

Duties of the Bailee with regard to goods

- It is the duty of the bailee to return the goods bailed as soon as the time, for which they were bailed has expired or the purpose for which they were bailed has been accomplished.
- The bailee is responsible to the bailor for any loss, destruction or deterioration of the goods of the goods are not returned on time.
- In the absence of any contact to the contrary, the baillee is bound to delivery to the bailor any increase or profit which may have arisen from the goods bailed.

Unit 5: Contracts of Pledge

Introduction

- The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'.

- The bailor is in this case called 'pawnor'.
- The bailee is called 'pawnee'.

Ingredients of Pledge

To Constitute a valid pledge, there must be:

- A contract in relation to an identified chattel to be delivered to the pledgee as security;
- Actual delivery of possession of the identified chattel in pursuance of the contract

The essential ingredients of a valid pledge are:-

- The property pledged should be actually or constructively delivered to the pawnee; and
- Pawnee has only a special property in the pledge while the general property remains with the pawnor and wholly reverts to him on discharge of debt.

Nature Of Pledge

- If the pawnor makes default in payment of the debt in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor and retain the goods pledged as a security (or) he may sell the goods pledged, after giving notice of the sale to the pawnor.
- If the proceeds of such sale are less than the amount due, in respect of the debt, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.
- It is important to note, that in all contract of bailment, the bailee, while he is in possession of the goods, steps into the shoes of the owner for the purpose of legal remedy. Thus, if any person were to deprive the bailee of the goods-by way of theft etc. the bailee, himself would have the right file a suit against such other person.

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Unit 6: Contracts Of Agency

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

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

Meaning Of Agency

The person should be authorised to do an act for a person in such a manner, as to bind that person, i.e. to make him answerable for such acts done on his behalf. The agent creates

contractual relations between two separate persons when he enters into a contract on behalf of one of the parties.

Normal Rules Of Contract

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

Persons To Be Majors And Of Sound Mind

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

Consideration

No consideration is necessary to create an agency.

Authority Of An Agent

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

Agent's Authority in an Emergency

In an emergency, an agent has authority to do all acts to protect his principal form loss as would be done by a person his own case.

When Agent cannot Delegate

An agent cannot employ another to perform acts which he has undertaken to proform personally. A sub-agent may be employed of the custom of trade or the nature of agency so requires. A 'sub agent' is a person employed by and acting under the control of the original agent. The agent is responsible to the principal for the acts of the sub-agent. The sub-agent is responsible for his acts to the agent, but not to the principal.

Right of person as to acts done for him without his Authority-Effect of Ratification

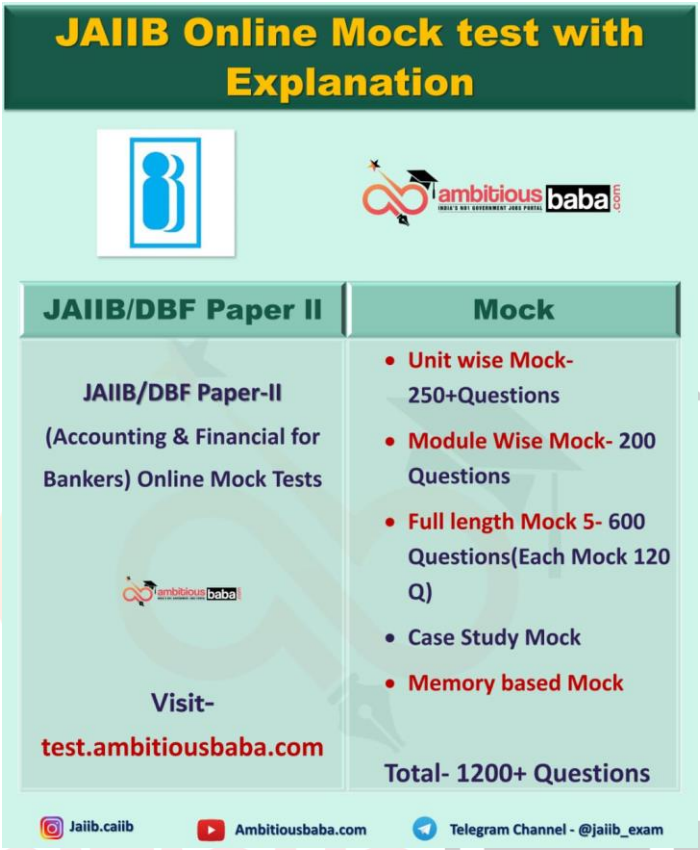
If acts are done by an agent on behalf of the principal without his knowledge or authority, the principal may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed with his authority. Ratification may be express or implied in the Conduct of the person on whose behalf the acts are done.

When Agent's Remuneration becomes Due

An agent can detain received by him on account of goods sold, even of all the goods consigned to him for sale are not sold.

Fraud by Agent

A principal is liable for the agent's fraud acting within the scope of his authority whether the fraud is committed for the benefit of the principal or for the benefit of the agent.



Unit 7: Meaning and Essentials of a Contract of Sale

Contract Of Sale Of Goods

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

Features Of Contract Of Sale Of Goods

(a) Bilateral contract: A sale involves two persons - The buyer and the seller.

(b) Money consideration: The consideration for a sale of goods must be money, called the price payable for the transfer of goods. It cannot be a barter, where goods are exchanged for goods.

(c) Moveable property: The Sale of Goods Act covers only the sale of moveable goods and not immoveable property like land and building. The contracts relating to transfer of immoveable property are governed by the Transfer of Property Act and not Sale of Goods Act.

(d) No particular form: The Sale of Goods Act does not make it mandatory to enter into written contracts for the sale of goods. However, if any particular law provides for sale of certain types of goods to be done by a contract in writing, then that law has to be complied and the contract has to be in writing.

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

The contract may provide for:

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

Distinction Between a sale and An Agreement to sell

SALE	AGREEMENT TO SELL
In the contract of sale, the exchange of goods takes place immediately.	In the agreement to sell the parties agree to exchange the goods for a price depending on the fulfilment of certain conditions at a future specified date.
The nature in the sale is absolute.	The nature of the agreement to sell is conditional.
It is an executed contract.	It is an executory contract.
Transfer of risk takes place immediately.	Transfer of risk doesn't take place, until and unless the goods are transferred.

The right to sell remains with the buyer	The right to sell remains with the seller.
Here the seller has the right to sue for the price.	Here the seller has the right to sue for damages.
It creates a right in rem.	It creates a right in personam.
The seller has no right to resell.	The seller has the right to resell the same goods if the conditions are not fulfilled.
On the off chance that the products are annihilated, the misfortune is borne by the buyer despite the fact that the merchandise is in the ownership of the seller.	The loss falls on the seller despite the fact that the merchandise is in the ownership of the buyer.

Unit 8: Conditions and Warranties

Under the Sale of Goods Act, the stipulations in a contract of sale with reference to goods are classified based on their importance as condition or a Warranty.

Condition

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

Warranty

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

Implied Conditions and Warranties

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

- Title of the Seller
- Sale of goods by description
- Sale by sample
- Sale is by sample as well as by description
- **Quit possession**: There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.
- Goods are free from any charge or encumbrance
- Quality or fitness of goods for any particular purpose
- **Caveat Emptor (Buyer beware):** Caveat means a warning, a caution. According to the doctrine of caveat emptor, the person who buys goods must keep his eyes open, his mind active and be cautious while buying the goods. In other words, the buyer must examine the goods thoroughly. Later on, if the goods do not serve his purpose or he depends upon his own judgement and he makes a bad choice, he cannot blame the seller for selling him such goods. The Sale of Goods Act also enshrines doctrine by stating that 'There is - (implied warranty or condition as to the quality or fitness of goods for any particular purpose' except in cases specifically explained above.

Unit 9: Unpaid Seller

Unpaid Seller

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

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

Unpaid seller's rights against the goods

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

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

Unpaid seller's lien

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

- If the goods have been sold without any stipulation as to credit;
- If the goods have been sold on credit, but the term of credit has expired;
- If the buyer becomes insolvent.

The unpaid seller of goods loses his lien thereon

- When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- When the buyer or his agent lawfully obtains possession of the goods;
- By waiver of lien.

Unit 10: Definition, Meaning and Nature of Partnership

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

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

Partnership is the result of an agreement between the persons joining together to do some lawful business.

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

Types Of Partnership

1. Partnership at will

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

2. Partnership for a fixed period

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

3. Particular partnership

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

Limited Liability Partnership (LLP)

The framework of law and rules dealing with limited Liability Partnership (LLP) are contained in the Limited Liability Partnership Act, 2008 (the LLP Act) and the limited liability Rules, 2009 (the LLP rules). Limited Liability Partnership Act, 2008 come into effect by way of Notification dated 31st March 2009.

The Salient Feature of Limited Liability Partnership Act, 2008:

- LLP shall be a body corporate and a legal entity separate from its partners.
- The Mutual rights and duties of partners of the LLP and those of the LLP shall be governed by an agreement between the Partners, subject to the provisions of the Act.
- No Partner would be liable on account of the independent or unauthorized actions of other partners or their misconduct.
- Every LLP shall have two partners
- Central Government shall have powers to investigate the affairs of a LLP, if required, by appointment of competent inspector, for the purpose.
- Indian Partnership Act, 1932 shall not be applicable to LLPs.

Unit 11: Relations of Partners to One Another

General Duties of Partners

The partners should not make secret profits. They have to be just and faithful to each other. They must render true accounts of the business and full information of all things affecting the firm to all the partners or their legal representatives.

Duty to Indemnify the loss caused by Fraud

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

Determination of Rights and Duties of Partners by Contract between the Partners

The partners of a firm can decide their mutual rights and duties and change them from time to time with the consent of all the partners. This may be implied (i.e. understood by the dealings between them/ with outsiders) or may be expressed (i.e. specifically discussed and made clear). These should however, be not against the provisions of the Partnership Act.

The CONDUCT OF THE BUSINESS

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

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

Mutual Rights And Liabilities

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

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- A partner is not entitled to receive remuneration for taking part in the conduct of the business;
- The partners are entitled to share equally in the profits earned and liable to contribute equally to the losses made by the firm;
- Where a partner is entitled to interest on the capital subscribed by him such interest is to be paid only out of profits of the firm;
- Interest at 6 per cent on extra amount paid by the partner;
- The firm has to indemnify a partner in respect of payments made and liabilities incurred by him:
- In the ordinary and proper conduct of the business, and

- In doing such act in an emergency, for the purpose of protecting the firm from loss;
- Similarly, a partner has to indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

Right and Duties of Partners

- After a change in the partner of a firm the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change.
- Similarly, after the expiry of the term of the firm, if a firm constituted for a fixed term, continues to carry on business, the mutual right and duties of the partners remain the same as they were before the expiry.
- Mutual rights and duties remain same for additional undertaking/adventure carried out.

Unit 12: Relations of Partners to Third Parties

Implied Authority of Partner as Agent 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 implied authority of a partner does not empower him to

- Submit a dispute relating to the business of the firm to arbitration (i.e. for settlement by an independent person other than the parties to the dispute);
- Open a banking account on behalf of the firm in his own name;
- Compromise or relinquish (give up) any claim by the firm;
- Withdraw a suit or proceeding filed on behalf of the firm;
- Admit (accept) any liability in a suit or proceeding against the firm;
- Acquire immoveable property on behalf of the firm;
- Transfer immoveable property belonging to the firm; or
- Enter into partnership on behalf of the firm.

Liability of A Partner for Act of the Firm

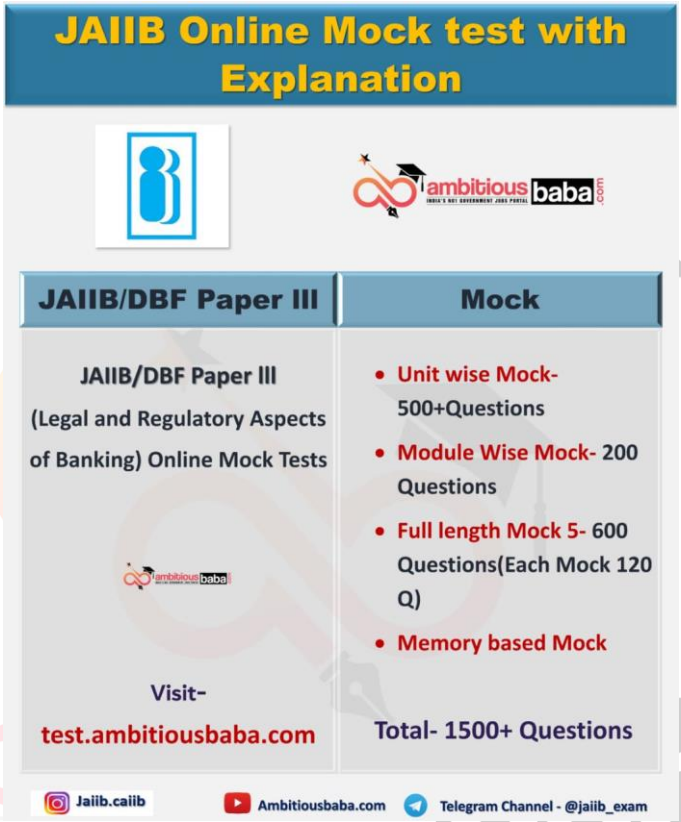
Every partner is liable jointly with all other partners and also severally for all acts of the firm while he is a partner.

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.

Rights of Transferee of a Partner's Interest

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 13: Minor Admitted to the Benefits of Partnership

A Minor Cannot be a Partner

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

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

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

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 (whichever date is later) the person may give public notice to the effect whether he has elected to become a partner or not. This notice determines his position as regards the firm.

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

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

- His rights and liabilities as a minor continue up to the date on which he becomes a partner but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and
- His share in the property and profits of the firm shall be the share to which he was entitled as a minor.

If such person elects not to become a partner:

- His rights and liabilities shall continue to be those of a minor up to the date on which he given public notice that he does not want to become a partner;
- His share shall not be liable for any acts of the firm done after the date of the notice; and
- He shall be entitled to sue the partners for his share of the property and profits.

Retirement of a Partner

A Partner may retire:

- With the consent of all other partners'
- In accordance with an express agreement by the Partners, or
- Where the Partnership is at will, by giving notice in writing to all the other partner of his intention to retire.

Unit 14: Dissolution Of a Firm

Dissolution Of Agreement

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

Compulsory Dissolution

A firm is dissolved:

- If all the partners (except one) are adjudicated insolvent; or
- By the happening of any event which makes it unlawful for the business itself to be carried on or the event makes the business unlawful if it carried on in partnership.

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

Dissolution On The Happening Of Certain Contingencies

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

- If the partnership is constituted for a fixed term, then by the expiry of that term;
- If the partnership is constituted to carry out one or more adventures or undertaking, then by the completion thereof;
- By the death of a partner; and
- By the adjudication of a partner as an insolvent.

Dissolution By The Court

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

- that a partner has become of unsound mind;
- that a partner (other than the partner suing for dissolution) has become permanently incapable of performing his duties as partner;
- that a partner (other than the partner suing) is guilty of conduct which is likely to affect prejudicially the carrying on of the business;
- that a partner (other than the partner suing) wilfully or persistently commits breach of agreements in relation to the management of the affairs of the firm or the conduct of its business or it is not reasonably practicable for the other partners to carry on the business in partnership with him, because of his conduct with respect to the business;
- that a partner (other than the partner suing) has transferred the whole of his interest in the firm to a third party;

- that the business of the firm cannot be carried on except at a loss; or
- on any other ground which renders it just and equitable that the firm should be dissolved.

Unit 15: Effect of Non-Registration

A company is compulsorily required to be incorporated and registered with the Registrar of **Companies under the Companies Act, 1956 (Now ICA 2013).** However, a partnership firm is not required to be compulsorily registered with the Registrar of Partnership Firms.

Registration

- The partner's may or may not enter into a partnership deed and may decide to have an oral partnership if they have a strong understanding amongst themselves.
- Even if a partnership deed is entered into by the partners they may not opt for registration of the partnership firm.

The provisions of the Section 69 are briefly stated hereunder:

- A partner of an unregistered firm cannot enforce by way of a suit, any right available to him under the Partnership Act or a right conferred by a contract amongst the partners against the partnership firm or any partner thereof.
- Similarly an unregistered firm cannot enforce by way of a suit, any right arising by a contract against any third party.
- Due to the provision which is stated in the Section 69, a majority of the partnership firms decide to register the firm to avoid future hassles and complexities on solving issues amongst the partners as well as with third parties.

Unit 16: Definition and Features of Company

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

Features Of A Company

Registration

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

Artificial Legal Person

A company is an artificial legal person which is created by law and can be dissolved by the law alone. It is invisible, intangible and exists only in the eyes of the law. It enjoys many rights of a

natural person. A company may enter into contracts in its own name, and it can acquire and dispose property and can be fined under the provisions of the law for violation of law

Independent corporate personality

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

Limited liability

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

Perpetual succession

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

Separate property

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

Transfer of shares

The Companies Act, 1956 (Now ICA 2013) states that shares or other interest of any member in a company shall be moveable property, transferable in the manner provided by the articles of association. A shareholder may sell his shares in the open market and get back his money without changing the capital of the company.

Common Seal

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

Corporate veil

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

Distinction Between A Company And Partnership

Registration

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

Number of members/partners

Private- There must be a minimum of two shareholders and maximum of 200. For directors, the minimum is two and maximum of 15.

Public sector-Minimum 7 members, no max limit shareholders. For Directors, Minimum 3 directors, and if listed company one-third must be independent

Legal status

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

Ownership of property

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

Management

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

Perpetual existence

- A company has a perpetual existence.
- A partnership 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 with unlimited liability, the liability of the members of the company is limited. The liability of partners in a partnership is unlimited.

Transfer

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

Death

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

Agency

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

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Unit 17: Classifications Of Companies

The Basis Mode Of Incorporation

Statutory Company: A statutory company is created or incorporated by a special Act passed by either the Central or the State legislature. The Statutory Companies are not required to have Memorandum of Association. Although each statutory company is governed by the provisions of the Special Act, the Companies Act, 1956 is also applicable to them insofar as the provision of the Companies Act.

Registered under the Companies Act, 1956 And Also Companies Act, 2013: Such Companies are incorporated and registered under the prevailing companies Act. Registered under the Companies Act prevailing before the enactment of the Companies Act, 1956, the companies Act, 1913.

Classifications Of Companies On The Basis Of Liability

- Company limited by shares
- Company with unlimited liability
- Company limited by guarantee

Classifications Of Companies On The Basis Of Public Interest

- Private company
- Public company
- Government company
- Foreign company
- One Person Company
- Small Company

Private company

- **Section 2(68) of Companies Act, 2013** defines private companies.

- According to that, private companies are those companies whose articles of association restrict the transferability of shares and prevent the public at large from subscribing to them.
- The Section further says private companies can have a **maximum of 200 members (except for One Person Companies).**
- Moreover, more than two persons who own shares jointly are treated as a single member.
- This definition had previously prescribed a minimum paid-up share capital of Rs. 1 lakh for private companies, but an amendment in 2005 removed this requirement.
- Private companies can **now have a minimum paid-up capital of any amount.**

Public Companies

- **Section 2(72) of Companies Act, 2013** defines Public companies
- Has a minimum of **seven members, no maximum** limit is mentioned
- Has a minimum paid-up capital **of five lacs**, again there is **no maximum limit**

Government Company

- **Section 2(45) of Companies Act, 2013** defines government companies
- Govt. Company as any company in which **not less than 51% of the paid-up share capital.**

Foreign Company

- **Section 2(42) of Companies Act, 2013** defines Foreign companies

One Person Company

- **Section 2(62) of Companies Act, 2013** defines One person companies

Small Company

- Small company is defined under **section 2(85) of Companies Act, 2013.**
- As per this section Small Company means a company, other than a public company, Paid up share capital of which does **not exceed 50 lakhs rupees** or such higher amount as may be prescribed which shall **not be more than 5 crore rupees**

Unit 18: Memorandum Of Association & Articles Of Association

Memorandum of Association

The first step in the formation of a company is the preparation of the memorandum of association. It is a document of great significance as it embodies the fundamental rules regarding the constitution and scope of activities of a company. The purpose of memorandum of association among others is to enable the member's creditors and those who deal with the company to know the permitted scope of its activities.

Various clauses of the memorandum of association:

- Name clause
- Registered office clause
- Objectives Clause
- Liability clause
- Capital clause
- Association or subscription clause

Articles Of Association

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

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

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

Unit 19: Doctrines of Ultra vires/Constructive Notice/Indoor Management

Doctrines of Ultra vires

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

Constructive Notice

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

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

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

Effect of the Doctrine of Constrictive Notice

- He who deals with company is deemed to have notice of the public documents whether he has actually seen them or not.
- Another effect is that a person dealing with the company is not only deemed to have notice but is also presumed to have read those documents and to have understood not only the company's powers but also of its officers.
- The Doctrine of constrictive notice is of a negative nature in the sense the it stops a person from contending that he had no notice of the contents of the documents.

Indoor Management

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

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

Unit 20: Membership of Company

Who is a Member of Company?

According to the Companies Act, 2013 the term member of a company means:

- The subscribers of the memorandum of the company who shall be deemed to have agreed to become member of the company and on its registration shall be entered as member in its register of members
- 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

- By Subscribing to Memorandum of Association
- Membership by Allotment of Shares
- Transfer of Shares
- Transmission of Shares
- Membership by Acquiescence
- Joint Membership

Who can be Members of a Company

- **Any person competent to Contract** - Every person who is competent to contract can become member of company.
- **Minor and persons of Unsound Mind (Under Indian Contract Act 1872):** Minor and persons of Unsound Mind cannot be member, as they are incompetent to contract
- **Company as Member**: As a company is a legal person it can become a member of another company.
- **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.
- **Registered Society (Under Societies Registration Act 1860):** can hold shares in a company.
- **Non-Residents**: A NRI cannot become a member without complying with the requirements of the FEMA 1999 and without permission of RBI.
- **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.**

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Cessation Of Membership In A Company

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

- If a member transfers his shares to another person.
- If a member's shares are forfeited
- If the shares are sold pursuant to a decree of a Court.
- If the member surrenders his shares to the company where such surrender is permitted.
- If he rescinds the contract to take the shares, e.g. on the ground of misrepresentation in the prospectus.
- If a member is adjudicated insolvent (shares and other properties of an insolvent vest in the Official Receiver or Assignee).
- On the death of a member: However, the estate of the deceased member, remains liable until the shares are registered in the name of his legal representative.
- If redeemable preference shares are redeemed.
- If the company is being wound up. In such a case a member remains liable as a contributor and is also entitled to share in the surplus assets, if any.

Right and Duties (Liability) of Members of a Company

- **Unlimited Liability Company:** The member is liable in full for all the debts of the Company contracted during the period of his membership.
- **Company Limited by Guarantee**: The member is liable to contribute a sum of money agreed and specified In the liability clause of memorandum of association in the even of being wound up.
- **Company limited by shares**: The member is liable to pay the full nominal value of the shares and the member ends there.

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Unit 21: Prospectus

Prospectus

The Companies Act, 2013 (Sec. 2(70)) defines a prospectus as any document described or issued as a prospectus and includes a **red herring prospectus (Sec.32) or shelf prospectus (sec. 31**) any notice, circular, advertisement or other document inviting deposits from the

public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of a body corporate.

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

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

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

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

Compliance With Respect To Prospectus

- **Time of issue of Prospectus**: A prospectus can be issued only after the incorporation of the company.
- **Contents of the Prospectus**: **Section 26 of the Companies Act 2013**, stipulates the mandatory provisions that are to be stated in the prospectus.
- **Date of publication**: it is stated that a prospectus must be dated and this ensures a prima facie evidence of the date of its publication.
- **Signature of every director on the Prospectus**: A prospectus must be signed by every person
- **Application form with a Prospectus:** Every application form for shares must be accompanied by a copy of the prospectus except for the application forms issued to underwriters and existing shareholders and debenture holders.
- **Statements by expert in Prospectus:** A prospectus including a statement purporting to be made by an expert cannot be issued unless he has given his written consent to the issue thereof and he has not withdrawn such consent before the delivery of a copy of the prospectus for registration to the Registrar of Companies and a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.
- **Registration of the Prospectus:** Before the issue of a prospectus the same must be delivered to the Registrar of Companies for registration with the documents which are

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stipulated under the Companies Act, 2013, e.g. the consent of the expert, copy of contracts relating to appointment and remuneration of the managerial personnel, etc.

Unit 22: Directors

Directors

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

The ownership and management of the company is thus bifurcated.

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

Minimum Number of Director

SECTION 149(1) OF COMPANIES ACT, 2013

Every company shall have a Board of Directors consisting of INDIVIDUALS as directors and shall have—

- A minimum number of **three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company;** and
- a **maximum of fifteen directors:**
- Provided that a company may appoint more than fifteen directors after passing a special resolution

Section 149(1)(b) and first proviso to section 149(1) does not apply to Government Company and section 149(1) and first proviso does not apply to Section 8 Companies (see notification 463E and 466E respectively).

Private Company ((Sec. 2(68)of ICA 2013) vs Public Company (Sec 2(71) 2013)

Point	Private Company	Public Company
Paid-up Capital	Minimum paid-up capital of Rs 1,00,000/-	Minimum paid-up capital of Rs 500,000/-

No. of Members	Minimum 2 members and maximum 200	Minimum 7 members, no max limit
Name of Company	Name must end in "private limited"	Name must end in "public limited"
No. of Directors	Minimum two directors, and no need for independent directors	Minimum 3 directors, and if listed company one-third must be independent
Managerial Remuneration	There are no restrictions	Restricted to 11% of the Net profit of the company
Quorum of Meetings	Minimum two members, present in person	Quorum will depend on the total number of members of the company
Public offer	Private companies cannot have public offers for shares	Public offers must be in the demat form only
Accepting Deposits	Not allowed according to the act	If paid capital exceeds 100 crores, or turnover exceeds 500 crores, the company can accept public deposits

Appointment of Directors and proportion of those who to Retire By Rotation

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

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

Additional Directors

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

Vacation of office by Directors

- In terms of Section 167 of Indian Companies Act, 2013 the office of a director shall become vacant in case:
- He incurs any of the disqualifications as specified in Section 164.
- He absents himself from all the meeting of the Board of directors held during a period of 12 Months with or without seeking leave of absence of the Board;
- He acts in contravention of the Provisions of Section 184 relating to entering into contracts or arrangements in which he directly or indirectly interested;
- He fails to disclose his interest in any contract or arrangement in which he directly or Indirectly interested, in contravention of the provisions of Section 184.

Unit 23: Foreign Exchange Management Act, 1999

FERA

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

- Consolidate and amend the law,
- Regulate certain payments,
- Dealing in foreign exchange,
- The import and export of currency, for the conservation of the foreign exchange resources of the country,
- and finally the proper utilization of this foreign exchange so as to promote economic development of the Company.

FEMA

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

Regulation and Management of Foreign Exchange

- 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

- 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.
- 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 24: Transfer Of Property Act, 1882

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

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

Types Of Mortgage

Simple Mortgage	does not deliver possession of the mortgaged property mortgagor himself personally to pay the mortgage money in the event of his failing to pay, the mortgagee shall have right to get the mortgaged property sold and recover his dues

Mortgage By Conditional Sale	The mortgagor apparently sells the mortgaged property to the mortgagee with the condition that on default of payment on a certain date the sale becomes absolute, the sale shall becomes void, the buyer(mortgagee) shall transfer the property to seller(mortgagor)
Usufructuary Mortgage	Gives possession To retain such possession until payment of mortgage-money To receive rents and profits arising from the property Appropriate the same towards payment of interest or mortgage-money or both
English Mortgage	The Mortgagor binds himself to repay the mortgage-money on a certain date and transfers the mortgaged property absolutely to the mortgagee Subject to the condition that he will re-transfer it to the mortgagor upon payment of the mortgage-money The power of sale without intervention of Court if money not paid
Mortgage by Deposit of Title Goods	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.

Enforcement of Mortgages Through Court

After the enactment of the Recovery of Debts due to Bank and Financial Institutions **Act, 1993, recovery** of debts due to banks and financial institutions in **excess of 10 lacs only** can be commenced in the Debts Recovery Tribunals.

Leases of Immoveable Property

- A lease is a transfer of a right to enjoy the property for a certain time on in perpetuity (that is forever), in consideration of a price paid or promised, to be given periodically to the transferor by the transferee.
- A lease for **Agriculture/manufacturing** purpose is deemed to be a year to year lease. This lease can be terminated by the lessor/lessee by giving 6 months notice to one another.
- A lease for any other purpose is deemed to be a lease from month to month. It can be terminated by giving 15 days notice to one another.

Unit 25: The Right to Information Act, 2005

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

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

Definitions

- Central Government is the appropriate authority if the concerned public authority is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by that Government or the Union Territory Administration.
- It is the State Government, if the concerned public authority is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by that Government.
- 'Central Information Commission' means the Central Information Commission constituted by the Central Government.
- 'Central Public Information Officer' means the Central Public Information Officer designated by the public authority and includes a Central Assistant Public Information Officer.
- 'Information' means any material in any form, including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any law for the time being in force.

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

- by or under the Constitution;
- by any other law made by Parliament;
- by any other law made by the State Legislature;
- by notification issued or order made by the appropriate Government and includes any

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

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

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

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

Unit 26: Right to Information and Obligations of Public Authorities

Obligations Of Public Authorities

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

Procedure For Obtaining Information

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

- If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer, **within five days, the request to that other public authority** and inform the applicant immediately.
- PIO may seek the assistance of any other officer for the proper discharge of his/her duties.
- PIO, on receipt of a request, shall as expeditiously as possible, and in any case within **thirty days of the receipt of the request**, either provide the information on payment of such fee as may be prescribed or reject the request for any of the **reasons specified in 8.8 or 8.9 of the Act.**
- Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

Disposal Of Request

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

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

- The reasons for such rejection,
- The period within which an appeal against such rejection may be preferred,
- The particulars of the appellate authority.

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

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

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

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

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

(b) Payment of fees

- As per the **Right to Information (Regulation of Fee and Cost) Rules, 2005, t**he application shall be accompanied by a fee of rupees ten. It may be paid in cash against proper receipt or by demand draft or a banker's cheque or by Indian Postal Order. The instrument is payable to the accounts officer of the public authority.

(c) Disposal of the request

- Where the application is received by another public authority or the information is more closely connected with the functions of another public authority, the application shall be transferred to that **other public authority within five days from the date of the receipt of the application** and inform the applicant about the transfer.
- If the application relates to the public authority receiving it, the information shall be provided as expeditiously **as possible but within thirty days.**
- If the information sought concerns the life or liberty of a person, the same shall be provided within **forty-eight hours of the receipt of the request.**
- The applicant is required to pay the charges for providing the information. The rules prescribe the charges for computing the cost. **The charges are computed at the following rates:**
  - ✓ Rupees two for each page in A-4 or A-3 size paper created or copied;
  - ✓ Actual charge or cost price of a copy in larger size paper;
  - ✓ Actual cost or price for samples or models; and
  - ✓ For inspection of records, no fee for the first hour and a fee of rupees five for each fifteen minutes or fraction thereof thereafter.

(d) Third Party information

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

(e) Rejection of the request

- The request for Information may be rejected where such a request for providing access **would involve an infringement of copyright subsisting in a person other than the State.**
- **Where a request has been rejected, the Central Public Information Officer shall** communicate to the person making the request the reasons for such rejection, the particulars of the appellate authority and the period within which an appeal against such rejection may be preferred.

(f) Information exempt from disclosure

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

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

Appeal

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

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

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

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

Penalties

The Central Information Commission has the power to impose a pe**nalty of 250 rs for each day** till the information is furnished subject to a **maximum of 25000 rupees**.

Unit 27: The Prevention of Money Laundering Act, 2002

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

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

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

Reporting to Financial Intelligence Unit-India Banks are to report information relating to cash and suspicious transactions to the Director, Financial Intelligence Unit-India (FIU-IND), New Delhi (details of reports given above**). KNOW YOUR CUSTOMER (KYC) KYC guidelines**

issued by RBI u/s 35(A) of B R Act (and Rule 7 of Prevention 1 Money Laundering Rules) keeping in view the recommendation of Financial Action Task Force.

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

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

Periodical Updation Of Kyc Simplified: The Reserve Bank has revised its earlier instructions on periodical updation of 'Know Your Customer' (KYC).

Risk review of customers: Risk review should be done periodically net less than **once in 6 months** (15th of May / Nov.)

- Banks to keep a record of cash transactions above Rs.10 lac.
- Banks to send report of these transactions to Financial Intelligence Unit of India. Cash transaction report: CTR (covering amount above Rs.10 lac of single transaction of total of all transactions within a month) for each month to be sent by 15th of the next month. Individual transactions below Rs.50000 not to be reported. Suspicious transaction report (STR). to be submitted within 7 working days of occurrence.
- Banks to maintain records of transactions for a period of min 10 years from date of transaction. Record of documents to be kept for min 10 years from date of termination of relationship.
- Banks to issue TCs, DDs, MTs and TTs for Rs.50000 and above only by debit to customers' account.
- Due diligence to be ensured for transactions of Rs.50000 and above in case non-customer transactions.
- Banks are to appoint a Sr. Mgmt. Officer, to be designated as Principal Office responsible for monitoring and reporting.
- Unique Customer Identification Code to be allotted to all new customers.

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

- it is subject to normal KYC compliance. Account opened as a small account, attracts conditions applicable to small a/c
- it is normal banking service available to all.
- No min balance
- No max no. of deposits but max no. of withdrawals 4 in a month including ATM
- No other account is allowed to be opened along with such account. If already opened, it is to be closed within 30 days.

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

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

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