



**B. COM. PART-I
(SEMESTER-I)**

**B.C. 104
BUSINESS LAW-I**

UNIT NO. 2

**Department of Distance Education
Punjabi University, Patiala**

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Lesson No. :

- 2.1 : Sale of Goods Act - I**
- 2.2 : Sale of Goods Act - II**
- 2.3 : Partnership Act, 1932**
- 2.4 : The Limited Liability Partnership Act, 2008.**

**NOTE : Students can download the syllabus from
department's website www.pbidde.org**

SALE OF GOODS ACT – I

Learning objectives:

The major objectives of this lesson are to discuss:

- Essential Element of a Valid Sale
- Contract of Sale
- Sale and hire-purchase agreement
- Subject matter of Contract of Sale of Goods
- Effect of Destruction of Goods

Structure

- 2.1.1 Introduction
- 2.1.2 Essential Element of a Valid Sale
- 2.1.3 Contract of Sale, How it is made? (Section 5)
- 2.1.4 Sale and hire-purchase agreement
- 2.1.5 Subject matter of Contract of Sale of Goods
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2.1.1 Introduction

As per Contract of Sale of goods (Section 4), a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between our part owner and another. A contract of sale may be absolute or conditional. It is absolute when it is a sale pure and simple, transferring the property in absolute to the buyer. It is conditional if there are conditions annexed to contract by the parties. The term "Contract of Sales" is a generic term and includes both sale and an agreement to sell.

Sale

Where under a contract of sale, the property in the goods is transferred from the Seller to the buyer, it is called a sale.

Agreement to Sell

Where under a contract of sale, the transfer of the property in the goods is to take place at a future time or subject to some conditions therefore to be fulfilled, the contract is called agreement to sell. An agreement to sell becomes a sale when the time elapses on the condition, subject to which the property in goods is to be transferred is fulfilled.

The term 'property' as used in the Sale of Goods Act means general property in goods as distinguished from special property. If a owns certain goods, he had general property in the goods. If he pledges them to B, B will have special property in the goods.

2.1.2 Essential Element of a Valid Sale

The following essential elements are necessary to constitute a sale of goods :

1. There must be two parties, i.e., buyer and seller, to effect the sale. The parties must be competent to contract.
2. There must be some goods, i.e. the property which is transferred from the seller to the buyer.
3. The goods which form the subject-matter of the contract of sale must be moveable and not immovable.
4. A price in money must be paid or promised to be paid. The consideration, it must be in the form of money.
5. There must be a transfer of general property as distinguished from special property in goods from the seller to the buyer.
6. All the essential elements of a valid contract must be present.

2.1.3 Contract of Sale, How it is made? (Section 5)

It is, like any other contract, made by ordinary offer, to buy or sell goods by one party and its acceptance to sell or buy goods respectively by the other party. It may be expressed or implied from the conduct of the parties. It may be :

- (i) made in writing or
- (ii) made by words (oral)
- (iii) made partly in writing and partly by words of mouth, or
- (iv) implied from the conduct of the parties, or
- (v) implied from the course of business between the parties.

Payment of price or delivery of goods is, however, not the necessary condition unless otherwise agreed upon by the parties. The contract of sale may provide for the immediate delivery of the goods, or immediate payment or the price of both, shall be postponed.

2.1.4 Sale and hire-purchase agreement

A hire purchase agreement is a contract whereby the seller of goods agrees to transfer the property in the hire purchase when a certain fixed number of installments of the price is paid by the buyer. Till that time, the installments paid by the hire-purchaser are regarded as the hire charge for the use of the goods. If there is default by hire-purchaser in paying of installment, the seller can recover the goods and the installments paid by the hire-purchaser shall not be recoverable by him from the seller. This is because the ownership still rests with the seller. The hire-purchaser is entitled to use the goods by paying periodically, a certain fixed amount. He eventually becomes the owner of the goods, but until it happens there is no transfer of property from the seller to the hire-purchaser.

Example

B hires a piano from A on the condition that B should pay Rs. 100 monthly, as rent. The stipulation is that if he regularly pays the rent for 20 months, the piano becomes his property at the end of 20 months. Further, it is provided that B can return the piano any time and need not pay any more. This is hire-purchase agreement proper. If, however, it is agreed that 20 months' rent must be paid and that he cannot return the piano, the agreement is a sale and not hire-purchase agreement.

2.1.5 Subject matter of Contract of Sale of Goods

Goods form the subject-matter of the contract of sale. According to Section 2(7), "goods means every kind of movable property other than actionable claims and money' and includes stocks and shares, growing

crops, grass and things attached to or forming part of land which are agreed to be before sale or under the contract of sale.

An actionable claim is something which can be recovered only by means of a suit or action in a court of law. A debt from one person to another is actionable claim and cannot be brought or sold as goods. It can only be signed. Money also does not come under goods.

1. Existing Goods

There are the goods which are owned and possessed by the seller at the time of sale. These may be specified goods, ascertained goods or obtained goods.

2. Future or Contingent goods

These are the goods which the seller does not possess at the time of the contract but which will be acquired, manufactured or produced by him at some future date, or on the happening of some contingency, e.g., "The eggs yet to grow."

2.1.6 Effect of Destruction of Goods

Goods damaged before making of contract : (Section 7) where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have (at the time when the contract was made) perished or become so damaged as not longer to answer to their description in the contract.

Example : A agrees to sell a horse to B who tells A that he (B) needs the horse for riding to Bombay immediately, the horse died at the time of agreement. Both A and B are ignorant of this fact. The agreement is void.

In the above example, the intention of the parties is completely frustrated and there is nothing on which the contract can operate and hence it is void. This rule is based either on the ground of mutual mistakes or on the ground of impossibility of performance.

2. Goods perishing after the agreement to sell but before the sale is effected (Section 8). Where there is an agreement to sell the specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as description in the agreement before the agreement is thereby avoided.

2.1.7 Delivery of Title of Goods

A document of title to goods is one which is, used in the ordinary course of business as proof of the possession or control of goods. It authorized either by endorsement or delivery, it possesses, to transfer or receive goods represented by goods. It symbolizes the goods and confers a right on the purchaser to receive the goods or to further

transfer such rights to another person. This may be done by mere delivery or proper endorsement.

2.1.8 Prices : (Section 9)

The price in a contract of sale must be expressed in money, it

- (i) may be fixed by the contract itself, or
- (ii) may be left to be fixed in an agreed manner, or
- (iii) may be determined from the course of dealing between the parties.

Where the price is not determined in accordance with the foregoing provision, the buyer must pay the seller a reasonable price. What is reasonable price is a question of fact dependent on the circumstances of each particular case.

2.1.9 Conditions and Warranties: (Section 12)

A stipulation on a representation in a contract of sale with reference to goods which are the subject thereof may be condition or a warranty.

If the parties regard a stipulation or representation as vital and essential to the main purpose of the contract, it is a condition. It forms the very basis of the contract. If there is a breach of condition, the aggrieved party can treat the contract as repudiated.

A warranty, on the other hand, is a stipulation which is subsidiary or collateral to the main purpose of the contract. It is not vital to the existence of the contract. If there is a breach of a warranty, the aggrieved party can only claim damages and it has no right to treat the contract as repudiated.

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case at the time of entering in a contract. A stipulation may be a condition, though called a warranty in a contract. For example, A agrees to supply a suit to B by 15th November, which the later wants to wear on the day of his marriage to be held on 16th November, the time of the delivery of the suit is a condition. On the other hand, if the suit which A agrees to deliver to B by the 15th November is required by the buyer to be used in the forthcoming winter season the time of delivery is a warranty. The court has to look to the intention of the parties by referring to the terms of the contract and the surrounding circumstances to judge, whether a stipulation is a condition or a warranty. A stipulation may be a condition though called a warranty in a contract.

Expressed and Implied Condition and Warranties

In a contract of sale, conditions and warranties may be expressed or implied. Expressed conditions and warranties are those which have been agreed upon by the parties at the time of the contract and

expressly provided in the contract. Implied conditions and warranties are those which are implied by law unless the parties stipulate to the contrary.

Implied Condition

1. Condition as to title (Section 14)

In a contract of sale there is an implied condition on the part of the seller that

- (i) In the case of a sale, he has a right to sell the goods, and
- (ii) In the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

2. Sale by description (Section 15)

Where there is a contract for sale of goods by description there is an implied condition that the goods correspond with the description. If the sale is by sample as well as by description, the goods must correspond both with the sample and the description.

3. Sale by Description (Section 17)

In the case of contract for sale by sample there is an implied condition

- (a) that the bulk correspond with the sample in quality;
- (b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- (c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent of reasonable examination of the sample.

4. Conditions as to quality or fitness (Section 16)

The conditions as to quality or fitness is implied :

- (i) where the goods sold are such as the seller deals in ordinary course of business;
- (ii) where the buyer relies on the seller's skill or judgement as to fitness of the goods for any particular purpose; and
- (iii) where the buyer expressly or impliedly makes known to the seller that he wants the goods for that particular purpose.

5. Condition as to Merchantability (Section 16 (2))

Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be in a merchantable quality.

6. Condition as a Wholesomeness (Section 16 (3))

In case of eatables and provisions, there is, in addition to the implied condition as to merchantability, another condition that the goods shall be wholesome.

7. Condition Implied by Custom : (Section 16 (3))

An implied condition as to quality or fitness for a particular purpose may also be annexed by the usage of trade in the locality concerned.

Implied Warranties

There are two implied warranties in a contract of sale :

1. Implied warranty of quiet possession : In a contract of sale, unless there is a contrary intention there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

2. Implied warranty of freedom encumbrance : In a contract of sale, unless there is a contrary intention, there is an implied warranty that the goods are free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

2.1.10 Caveat Emptor (Section 16)

The maxim "Caveat Emptor" means "Let the buyer beware". According to this rule the buyer himself should be careful while purchasing. If the goods are subsequently found to be unsuitable for his purpose he cannot blame the seller of the same, as there is no implied undertaking by the seller that he shall supply such goods as suit the buyer's purpose.

For example : A purchases a horse from B. A needs the horse for riding but he does not mention this fact to B. The horse is not suitable for riding but is suitable only for being driven in carriage. A can neither reject the horse nor can claim any for being driven in carriage. A can neither reject the horse nor can claim any compensation from B.

Exception : The doctrine of Caveat Emptor has certain important exceptions. These are :

Implied conditions and warranties : The law implies certain conditions and warranties on the part of the seller and the buyer can rely upon them to avoid the applications of this maxim.

Sale under a patent or trade name : In the case of contract for the sale of a specified article under its patent or other trade name, it is not implied that the goods shall be reasonably fit for any particular purpose.

Goods bought by description : Where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards to defects which such examination ought to have revealed.

Usage of trade ; An implied warranty or condition as the quality or fitness for a particular purpose may be annexed by the usage of trade.

Consent by fraud : Where the consent of the buyer is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of Caveat Emptor does not apply.

2.1.11 Transfer of property

Property, Possession, Risk : There are three stages to the performance of a contract of sale on the part of the seller :

- (1) the transfer of the property in the goods ;
- (2) the transfer of the possession of the goods; and
- (3) the passing of the risk.

Transfer of property in goods from the seller to the buyer is the main object of the contract of sale. The term “property in goods” must be distinguished from “possession of goods”. “Property in goods” means ownership of goods whereas “possession of goods” refers to the custody or control of goods. An article may belong to A although it is not in his possession. B may be in possession of that article although he is not its owner.

Example : A leaves his damaged radio-set with B for repair. The ownership of the radio-set is with A, but the possession is with B.

Passing of Property

The primary rules for ascertaining when the property in goods passes to the buyer are as follows:

1. When there is a contract for the sale of unascertained goods, no property in goods is transferred to the buyer unless and until the goods are ascertained.
2. Where there is a contract for the sale of specific or ascertained goods, the property in term is transferred to the buyer at such time as the parties to the contract intend it to be transferred. For the purpose of ascertaining the intention of the parties, regard is to be given to the terms of the contract, the contract of the parties and the circumstances of the case. Where the intention of the parties cannot be ascertained, the following rules shall apply :

2.1.12 Specific Goods (Section 20, 21 and 22)

In case of a contract for the sale of specific goods in a deliverable state and if the contract is unconditional, property passes as soon as the contract is entered into.

In case of a contract for the sale of specific goods, if the seller has to do something to put them in a deliverable state, property passes only when such thing is due and notice thereof given to the buyer.

In case of a contract for sale of specific goods which are in a deliverable state and the seller has to do something for the purpose of ascertaining the price, property will pass only when such act is done.

2.1.13 Unascertained Goods

It is a condition precedent to the passing of property under a contract of sale that the goods are ascertained. The condition is not fulfilled where there is a contract for sale of a portion of a specified larger stock. Till the portion is identified and appropriate to the contract, no property passes to the buyer.

According to Section 23(1), where there is a contract of the sale of unascertained or future goods by description and goods of that description are in a deliverable state and unconditionally appropriated to the contract the property in the goods there upon passes to the buyer. The appropriation may be done either by the seller with the assent of the buyer or by the buyer with the assent of the seller. Such assent may be expressed or implied, and may be given either before or after appropriation is made.

Appropriation of Goods

When unascertained goods are ascertained according to the description of the goods in a contract of sale, it is said the goods have been appropriated to the contract. The appropriation of goods is essentially the process of making the goods ascertained so that the property in them may be transferred to the buyer. Until goods are appropriated there is merely an agreement to sell. The agreement to sell becomes a sale only when the goods for which the contract is to operate are ascertained.

Essentials of an Appropriation

1. The goods must be in a deliverable state.
2. The seller should earmark the goods for fulfilling the contract.
3. The goods should, so far as quality and quantity are concerned, conform to the description in the contract.
4. The goods should be unconditionally appropriated to the contract. The appropriation is unconditional when the seller does not reserve to himself the right of disposal of the goods.
5. The appropriation must be either by the seller with the assent of the buyer or by the buyer with the assent of the seller.

Various ways of the Appropriation

The appropriation of goods may be made:

1. **By the seller with the assent of the buyer :** This is more usual way. The selection of the goods by one party and the adoption of

that act by the other converts a mere agreement to sell into an actual sale, and the property thereby passes.

2. **By the buyer with assent of the seller** : This happens when the buyer is already in possession of a large quantity of goods. Where a warehouse man purchases some goods from a large quantity lying in his godown, he may appropriate the quantity purchased with the assent of seller. When this is done, ownership passes from the seller to the buyer.

Delivery to Carrier

A seller is deemed to have unconditionally appropriated the goods to the contract where he delivers the goods to the buyer or to a carrier or to transmission to the buyer, and does not reserve the right to dispose off.

The delivery to carrier may be :

(i) **Absolutely of the buyer** : Where the bill of landing or railway receipt is made out in the name of the buyer and is sent to him, the presumption is that no right of disposal has been reserved by the seller in respect of those goods. The ownership in such a case passes from the seller to the buyer.

(ii) **Absolutely for the seller** : Where the bill of landing or railway receipt is taken by seller or by his agent and is sent to the agent of the seller to be delivered to the buyer in the fulfillment of certain conditions, the seller is deemed to have reserved the right of disposal of the goods. In such a case, the ownership does not pass to buyer until the necessary conditions are fulfilled and the documents of title are delivered to the buyer.

Goods sent on approval or on sale or structure basis (Section 24)

In case of goods delivered to buyer on approval or on sale or return, when he signified his approval or acceptance. If he retains the goods without giving notice of rejection, property passes when the time agreed for returning the goods expires or after a reasonable time has expired.

2.1.14 Transfers by Non-Owners

Nemo dt Qui non habet

When the seller himself is the owner of goods which he sells or he is somebody's agent to dispose off the goods, he conveys the title on the goods to the buyer. Difficulty arises when the seller is neither himself the owner nor has he any such authority from the owner to sell the goods. The general rule of law is that no one can transfer a better title than the owner himself. This is expressed in Latin maxim "Nemo dat

quod have.” This means “no one can give that which he has not got.” For example, if A steals an article and sells it to B, B does not become the owner of the article. He does not acquire any title although he may have acted honestly and may have paid values for the goods. In other words that the title of the Transferee, i.e., the buyer of the goods, cannot be better than that of the transferor, i.e., the seller. This projects that the owner is true.

Section 27 also provides that where goods are sold by a person who is not the owner thereof does not sell them. This is, however exposed to certain exceptions.

Exceptions

Sale by a mercantile agent (Section 27): A mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell the goods or to consign goods for the purpose of selling or to buy goods or to raise money on the security of goods. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a valid title to the goods if the following conditions are satisfied:

- (i) The agent should be in possession of the goods or documents of the title to the goods with the consent of the owner.
- (ii) The agent should sell the goods while acting in the ordinary course of the business.
- (iii) The buyer should not act in good faith.
- (iv) The buyer should not have at the time of the contract of sale received a notice that the agent has no authority to sell.

Example : P, the owner of a car, delivered it to a mercantile agent for sale with instructions not to sell below a certain price without P's consent. A sold the car to T below the stipulated price and misappropriated the money. Held, T obtained goods title of the car.

Sale under the Implied authority of owner or title by estoppel (Section 27)

When the true owner by his conduct, or by an act or omission, leads the buyer to believe that the seller has the authority to sell and induces the buyer to buy the goods, he shall be estopped from denying the fact of want of authority of the seller. To the buyer in such a case gets a better deal than of the seller.

Sale by the one of several joint owners (Section 28)

A buyer in good faith of goods of one or the several joint owners, who is in sale possession of the goods by the permission of the co-owners, sets good title to the goods.

Sale by a person in possession of goods under the voidable contract (Section 29)

When the seller of goods has obtained the possession under a voidable contract, but the contract has not been rescinded, he buys them in good faith and without any notice of the seller's defect of title. If a contract under which the seller obtains goods is valid, then even an innocent buyer of the goods from such a seller does not acquire title to the goods.

Sale by seller in possession after sale [Section 30 (1)]

Where a seller, having sold goods, continues to be in possession of the goods or of the documents or title to goods and sells them either himself or through a mercantile agent to a person who buys them in good faith and without notice of the previous sale, the buyer gets a good title.

Sale by buyer in possession after sale [Section 30 (2)]

Where a person, having bought or agreed to buy goods obtained with the consent of the seller, possession of the goods, or document of the title to the goods, and sells them either himself or through an agent, the buyer who acts in a good faith and without notice of any or other right of the original seller in respect of the goods, gets a good title.

Sale by an unpaid seller [Section 54 (3)]

Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods, the buyer acquired a good title to the goods as against the original buyer.

Exceptions in the Acts

- (a) Sale by a finder of lost goods under certain circumstances (Section 169 of Indian Contract Act.)
- (b) Sale by a Pawnee or pledge under certain circumstances (Section 176 of the Indian Contract Act).
- (c) Sale by an official Receiver or Official Assignee or Liquidator of companies.
- (d) In all the above cases, even though the seller is not the owner of the goods, the buyer gets a valid title.

Sale in market overt

In England, person who buys goods in market Overt, obtains a goods title to the goods. "Market overt" means an "open public and legally constituted market" where goods are sold in market overt, buyer acquires a good title to them respective of the seller's title provided.

- (a) the goods are sold in accordance with the custom of the market; and

(b) the buyer acted in good faith and no reason to believe that the seller's title to the goods was either defective or non-existent.

2.1.15 Performance Of Contract

Delivery and Acceptance

It is the duty of the seller to deliver the goods of the buyer to accept and pay for them in accordance with the terms of the contract of sale. The contract may contain special terms as to delivery and acceptance. But in the absence of any such terms, it is the duty of the seller to deliver the goods of the buyer to accept them. If there are no terms in the contract dealing with the matter, delivery at the time of payment of the price are concurred conditions, that is, they both take at the same as in a cash sale time as in a cash over a shop counter.

Delivery of goods (Section 33)

Delivery means voluntary transfer of possession of goods by one person to another. Delivery of goods sold may be made, by which the parties agree shall be treated as delivery the effect of putting the goods in the possession of the other.

Delivery of goods may be actual, symbolic or constructive.

1. Actual delivery : Where the goods are handed over by the seller to the buyer or his duly authorized agent, the delivery is said to be actual.

2. Symbolic delivery : Where goods are ponderous or bulky and incapable of actual delivery, e.g., hay-stack in a meadow, the delivery may be symbolic. Handing over the key of a warehouse to the buyer or documents of goods are the examples of symbolic delivery of the goods to the buyer and is as effective as actual delivery, even though there is no change in the possession of the goods.

3. Constructive delivery or delivery by attornment : Where a third person (bailee) who is in possession of the goods of the seller at the time of the sale acknowledge to the buyer that he holds the goods on his behalf, there takes place a delivery by an allotment or constructive delivery. This may happen in the following cases :

- (a) Where the seller is in possession of the goods and hold them on behalf of the buyer.
- (b) Where the buyer is in possession of the goods and the seller agrees to the buyer's holding the goods as owner.
- (c) Where the third person in possession of the goods acknowledges the buyer that he holds them on his behalf.

Example: A sells to B 10 bags of wheat lying in C's godown. A gives an order to C, asking him to transfer the goods in his books to B, C

assents to such order and transfers the goods in his books to B. This is a delivery attornment.

2.1.16 Rules of Delivery of Goods

Mode of delivery (Section 33): Delivery should have the effect of Putting the goods in the possession of he buyer or his duly authorized agent. Delivery of goods may be (i) actual (ii) constructive or (iii) symbolic.

Payment and delivery (Section 32): Delivery of the goods and payment of the price must be according to the terms of contract.

Effect of part of delivery (Section 34): A delivery of the goods, progress of the delivery of the whole, has the same effect for the purpose of passing the property in such goods, as delivery of the whole, but a delivery of the goods, with an intention of delivering it from the whole, does not operate as a delivery of the seller.

Buyer to apply for delivery: Apart from any expressed contract, the seller of goods is not bound to deliver them until the buyer applies for delivery. If the buyer does not apply for delivery, he shall have no cause of action against the seller.

Place of Delivery: The place at which the delivery of the goods is to take place must be specified in the contract. Where it is donme, the goods must be delivered at that place during business hours on a working day. Where there is no specific agreement as to place, the goods sold are to be delivered at the place at which they are at the time of the sale.

Goods in possession of a third party: When at the time of the sale, the seller is bound to send the goods to the buyer, but no time of sending them is fixed, the seller is bound to send them within a reasonable time.

But immediate delivery is contemplated. Demand or tender of delivery should be made at a reasonable hour. What is reasonable hour is a question of facts.

Cost of Delivery: Unless otherwise agreed, all expenses of and incidental to making of delivery shall be borne by the buyer.

Delivery of wrong quantity: The delivery of quantity of goods contracted for, should be strictly according to the terms of contract. A defective delivery entitles the buyer to reject the goods. The three contingencies which may arise are :

(i) Delivery of goods less than contracted for: Where the seller delivers to the buyer, a quantity of goods less than be contracted sell,

the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay them at the contract rate.

(ii) Delivery of goods in excess of the quantity contracted for where the seller delivers to the buyer a quantity of goods larger than he contracted to sell. The buyer may accept the goods included in the contract and reject the rest or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(iii) Delivery of goods for sale mixed with other goods, where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

Installment Delivery (Section 18)

Unless it is a term of the contract of sale, the contract must be performed as a whole and account be divided either by the seller or buyer. The Powers may be expressed or be inferred from the circumstances of the case.

Delivery to a carrier or wharfinger (Section 39)

Where, in pursuance of a contract of sale, goods are delivered to a carrier for the purpose of transmission to the buyer or a wharfinger for sale custody, delivery of goods to them is prima-facie deemed to a delivery of the goods to the buyer. In such a case, the seller must enter reasonable contract with the carrier or wharfinger on behalf of the seller responsible in damage.

Acceptance of Delivery

Acceptance of something more than mere receipt or taking of goods by buyer does it mean the final assent by the buyer that he has received the goods under performance of contract of sale. If he wrongfully refuses to accept the goods under the contract he is liable for damages. According to Section 42 the buyer is deemed to have accepted the goods.

When the goods have been delivered to him and he does any act in relation to them which is consistent with the ownership of the seller, as the instance:

- (a) where he re-sells the goods; or
- (b) where he uses the goods in a manner proper only for the owner;
- (c) where he makes some alteration in time, the buyer retains the goods without intimation to the seller that he has rejected them.

Buyer's liability for rejecting, neglecting or refusing delivery

Buyer's liability in case of rejection of goods: When the seller is ready and willing to deliver the goods and requests, delivery of the goods.

- (a) any loss caused by his neglect or refusal to take delivery;
- (b) a reasonable charge for the care and custody of the goods, where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract, the seller to sue for price or for damages.

2.1. 17 Right and Duties of the Buyer**Rights of the buyer**

1. To have delivery of the goods as per the terms of the contract.
2. To repudiate the contract for breach of conditions or if the delivery of the goods is not according to the terms of the contract.
3. To examine the goods before he accepts them.
4. To sue the seller for damages if he wrongfully neglects or refuses to deliver the goods. He may also sue the seller for the return of the price if he has already paid it.

Duties of the Buyer

1. To take delivery of, and pay for, the goods.
2. To apply for delivery.
3. To take risk of deterioration incidental to the transit.
4. To be liable to the seller for any loss occasioned and neglect or refusal to take delivery.

2.1.18 Rights of an Unpaid Seller**Who is an unpaid seller?**

According to Section 45 A seller is deemed to be an unpaid seller :

- (a) When the whole of the price has not been paid or tendered.
- (b) When a bill of exchange or other negotiable instrument has been fulfilled by result of the dishonour payment, and the condition which it was received has not been fulfilled by result of the dishonour of the instrument, or otherwise.

The following conditions must be fulfilled before a seller can be deemed to be an unpaid seller :

- (i) He must be unpaid and price must be due.
- (ii) He must have an immediate right of action for the price.
- (iii) A bill of exchange or other negotiable instrument was received but the same has been dishonoured.

When payment is made by a negotiable instrument, it is as usually a condition being that the instruments shall be duly honoured. If the instrument is not honoured, the seller is an unpaid seller." A seller

who has a money decree for the price of the goods is still an unpaid seller if the decree has not been satisfied.

2.1.18.1 Right of an Unpaid Seller against the goods :

(a) Where the property in goods has passed to the buyer : In such a case, an unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-existence with rights of lien and stoppage in transit where the property has passed to the buyer.

(b) Where the property in the goods has passed on to the buyer. In such a case, an unpaid seller has the following rights against the goods :

Rights of the Lien (Section 47 to 49)

Lien is the right to retain possession of goods until the payment is made to the unpaid seller of the goods who is in possession of them. He is entitled to retain possession of them until payment of tender of the price in the following cases namely :

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

The seller may exercise his rights of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. But if he loses the possession of the goods also loses the rights of lien.

A lien is defined as a right to retain possession of goods until payment or tender of the price. The lien depends on actual possession and not on title. It is not affected even if the seller has parted with the document capable of transferring title.

The following conditions are necessary before an unpaid seller can exercise his right of lien :

- (a) The ownership must have passed on to the buyer.
- (b) The goods must be in the possession of the seller or under his control.
- (c) The possession of the goods by the seller must not expressly exclude the rights of lien.
- (d) The price or part of the price must remain unpaid.

Where an unpaid seller has made part delivery of goods, he may exercise his rights of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien (Section 49) : The unpaid seller of goods loses his lien on the goods :

- (1) When he delivers the goods to a carrier or other bailee for the purpose of termination to the buyer, without reserving the right of disposal of the goods.
- (2) When the buyer or his agent lawfully obtains possession of the goods. The buyer in this case must obtain possession of the goods as buyer.
- (3) By waiver thereof.

The unpaid seller may waive his right to retain the goods or withhold delivery and he may do this either expressly or impliedly.

Right of Stoppage in transit (Section 60 to 62)

When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of goods as long as they are in the course of transit and may retain them until payment of tender of the price.

Duration of transit (Section 61) : Transit is an intermediate state, Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission of the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

Transit comes to an end in the following cases:

- (a) If the buyer or his agent behalf, obtains delivery of the goods before they arrive at the appointed destination.
- (b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf.
- (c) Where the carrier or the other bailee wrongfully refuses to deliver the goods of the buyer or his agent in that behalf.
- (d) Where partly the delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up the possession of the whole of the goods.

Right of re-sale (Section 64)

The unpaid seller can re-sell the goods :

- (i) Where the goods are of perishable nature;
- (ii) Where the unpaid seller has exercised his right of lien or stoppage in transit and given notice to the buyer of his intention to resale the goods, and where the buyer has not within a reasonable time paid the price, and

(iii) Where the seller expressly reserves a right of re-sale in case the buyer should make default.

2.1.18.2 As against buyer personally:

Suit for Price (Section 55) : Where under a contract of sale of the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

Damage for non-acceptance (Section 56) : Where the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for damages for non-acceptance.

Repudiation of contract before the sue is due (Section 60) : Where the buyer to contract of sale repudiated the contract, before the date of delivery the seller may either treat the contract as subsisting and wait till the date of delivery or he may treat the contract as rescinded and sue for damages for the breach.

Suit for Interest: The seller can recover interest on price from the date on which the payment becomes due, if there is a special agreement to that effect.

2.1.18.3 Summary

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between our part owner and another. A contract of sale may be absolute or conditional. It is absolute when it is a sale pure and simple, transferring the property in absolute to the buyer. It is conditional if there are conditions annexed to contract by the parties. The term "Contract of Sales" is a generic term and includes both sale and an agreement to sell. Where under a contract of sale, the property in the goods is transferred from the Seller to the buyer, it is called a sale. Where under a contract of sale, the transfer of the property in the goods is to take place at a future time or subject to some conditions therefore to be fulfilled, the contract is called agreement to sell. An agreement to sell becomes a sale when the time elapses on the condition, subject to which the property in goods is to be transferred is fulfilled. The term 'property' as used in the Sale of Goods Act means general property in goods as distinguished from special property. If A owns certain goods, he had general property in the goods. If he pledges them to B, B will have special property in the goods.

2.1.18.4 Key Words**Sale**

Where under a contract of sale, the property in the goods is transferred from the Seller to the buyer, it is called a sale.

Hire-purchase agreement

A hire purchase agreement is a contract whereby the seller of goods agrees to transfer the property in the hire purchase when a certain fixed number of installments of the price is paid by the buyer.

Existing Goods

There are the goods which are owned and possessed by the seller at the time of sale. These may be specified goods, ascertained goods or obtained goods.

Future or Contingent goods

These are the goods which the seller does not possess at the time of the contract but which will be acquired, manufactured or produced by him at some future date, or on the happening of some contingency, e.g., "The eggs yet to grow."

2.1.18.5 Self Assessment Questions/Exercise

1. Discuss the subject matter of Contract of Sale of Goods
2. What are Conditions and Warranties?
3. Discuss Expressed and Implied Condition and Warranties
4. What is Sale by description as per Section 15?

2.1.18.6 Further Readings

- | | | | |
|----|-------------------------------|---|-----------------------|
| 1. | Business Regulatory Framework | : | Garg K.C.,Chawla R.C. |
| 2. | Mercantile Law | : | Kappor G.K. |
| 3. | Mercantile Law | : | Kappor N.D. |
| 4. | Principles of Mercantile Law | : | Singh Avtar |
| 5. | Business Laws | : | V.K. Sharma |

SALES OF GOODS ACT - II**(Sale by Auction & Hire Purchase Agreement)****Learning objectives:**

The following Lesson deals with the law of sales of goods 1930, and in this chapter, we will discuss what an Auction Sale is and what is a Hire Purchase Agreement.

Structure:

- 2.2.1 Introduction
- 2.2.2 Meaning
- 2.2.3 Sale by Auction
 - 2.2.3.1 Meaning
 - 2.2.3.2 Rules regarding Auction Sales (Sec 64)
- 2.2.4 Hire Purchase Agreement
 - 2.2.4.1 Meaning
 - 2.2.4.2 Definitions
 - 2.2.4.3 Contents of Hire Purchase Agreement.
- 2.2.5 Hire Purchase Charges
 - 2.2.5.1 Meaning
 - 2.2.5.2 Rights Of Hire Purchaser
 - 2.2.5.2.1 Right to purchase
 - 2.2.5.2.2 Right to terminate
 - 2.2.5.2.3 Right of hirer when goods are seized by the owner
 - 2.2.5.2.4 Owner require permission of court to repossess the goods
- 2.2.6 Difference between Sales & Hire Purchase Agreement
- 2.2.7 Difference between Installment Sales & Hire Purchase
- 2.2.8 Summary
- 2.2.9 Key words
- 2.2.10 Self Assessment Questions/Exercise
- 2.2.11 Further Readings

2.2.1 Introduction:

An auction is a manner of selling property by bids. A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in any other manner.

2.2.2 Meaning

On a sale by auction, a contract is formed between the auctioneer and the buyer, and incurs certain liabilities though not all liabilities of a seller.

2.2.3 Sale By Auction

2.2.3.1 Meaning

An auction is a manner of selling property by bids usually to the highest bidder by public competition. The auctioneer, who sells goods by auction, is an agent of the seller only. He may, however sell his own property as principal and need not disclose the fact that he is so selling. The auctioneer holds the goods as a bailee.

2.2.3.2 The rules regarding auction sale are laid down in section 64 and are as under :

1. Where an auction sale is made in lots, each lot is prima facie deemed to be the subject of a Separate contract of sale
2. A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner. Until such announcement is made any bidder may withdraw his bid. This can be done by the bidder on the principle that each bid is only an offer by the bidder to the auctioneer and it may be retracted at any time before it is accepted. When the auctioneer announces the completion of the sale by the fall of the hammer, the sale is complete and the property in the goods passes immediately to the buyer.
Donnant V. Skinner (1948), A purchased a car in an auction sale and gave false cheque for the price and obtained delivery of the car. D, the seller had inserted a clause in the agreement that the property in the car would not pass to the buyer until the cheque was cleared. Before D could discover the fraud, A sold the car to Skinner. Held the property in the car had passed to A at the fall of the hammer and therefore the defendants acquired a good title to the car and the plaintiff could not recover it back.
3. A right to bid may be reserved expressly by or on behalf of the seller.
4. Where a right to bid is so reserved, the seller or any other person on his behalf may bid at the auction.
5. In case the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful---
 - (a) For the seller to bid himself or to employ any person to bid at such sale, or

(b) For the auctioneer knowingly to take any bid from the seller or any such person.

6. Any sale contravening the above rule may be treated as fraudulent by the buyer. He will be entitled to avoid it under section 19 of the Indian Contract Act. Knock-outs i.e., combinations among bidders not to bid against each other are not illegal. But if the object of the knock-outs is to depress the sale i.e. the price, the purchase may be fraudulent and therefore, voidable.

7. A sale by auction may be notified to be subject to a reserved or upset price. The seller, can fix a reserved price in order to protect himself against "knock-out" agreement. A combinations of persons not to bid against one another at auction called Knock-outs is not illegal.

8. If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of buyer.

When an auctioneer sells goods, he impliedly undertakes the following obligations-

a) He undertakes that such possession will not be distributed by his principal or himself.

b) He warrants his authority to sell.

c) He undertakes to give possession against the price paid in to his hands.

Self-Check Exercise-1

1. What is Auction sale and what are the various rules regarding auction sales?

2.2.4 HIRE PURCHASE AGREEMENT

2.2.4.1 Meaning

A very significant development in the field of trade is "instalment selling" which has gained acceptance among buyers and sellers all over the world. The hire-purchase system is quite popular for business transactions, particularly in consumer durables. Now days, we find offers like sale of Motor Cars, Motor-Cycles, Refrigerators, TVs, air-conditionals at 0% interest. Manufacturers tie-up with financiers to sell such products to buyers on easy instalments terms.

Unlike cash-sales, where price has to be paid in lump sum at the time of taking delivery of goods and credit sales where full price is to be paid by the buyer on expiry of credit period allowed by the seller, in case of instalment system, the buyer is allowed to make the payment in easy instalments over a period of time.

2.2.4.2 Definitions

1. Hire Purchase agreement

Means an agreement under which the goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of agreement and includes an agreement under which:

- (i) The possession of goods is delivered by the owner thereof to a person on the condition that such person pays the agreed amount in periodical instalments ;.
- (ii) The property in the goods is to pass to such person on payment of the last such instalment; and
- (iii) Such person has a right to terminate the agreement at any time before the property so passes. That is he has the option to return the goods in which case he need not pay instalments falling due thereafter. However, the hirer cannot recover the sums already paid as such sums legally represent hire charges of goods in question.

2.2.4.3 CONTENTS OF HIRE PURCHASE AGREEMENT

According to Sec. 4 of the Hire-Purchase Act, 1972. The following shall be the contents of any hire purchase agreement.

Special features of the Hire-purchase agreement are

- (i) The hire vendor transfers only the possession of Goods to hire purchaser immediately after the agreement of hire purchase is made.
- (ii) Goods should be delivered by the hire vendor on the condition that the hire purchaser should pay the agreed amount in periodical installments.
- (iii) Hire-purchaser generally makes a down payment on signing the agreement and the balance of amount along with interest is paid in installments at regular intervals for a Specified period.
- (iv) Each installment, including down payment (if any) is treated as hire charge by the seller
- (v) Each installment consists partly of interest and partly of capital payment.
- (vi) The property in goods is to pass to the hire-purchaser on the payment of the last installment
- (vii) The hire-purchaser has the right to terminate the agreement at any time before the property so passes.
- (viii) In case of default in respect of payment of even the last installment, the hire vendor has the right to take the goods back without making any compensation.

2. Hire :

Hire means any periodical sum payable by the hirer to the owner of the property under a hire-purchase agreement.

3. Hirer :

Hirer means the person who acquires or has acquired the possession of goods from an owner under a hire-purchase agreement, and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law

4. Owner :

Owner means the person who lets or has let, delivers or has delivered possession of goods to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignment or by operation of law.

5. Hire-Purchase Price :

Hire-purchase price means the total amount payable by the hirer under hire-purchase agreement to complete the purchase of, or the acquisition of property in the goods to which the agreement relates and includes any sum so payable by the hirer under the hire-purchase agreement by way of deposit or other initial payment on him under such agreement on account of any such deposit or payment, whether than sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means.

6. Down Payment :

Initial payment made at the time of signing hire-purchase agreement and taking possession of the goods.

1. The hire purchase price of the goods.
2. The cash price of the goods, that is to say, the price at which the goods may be purchased by the hirer for cash.
3. The date on which the agreement shall be deemed to have commenced.
4. The number of installments, the amount of each of those installments and the date or the mode of determining the date, upon which it is payable, .and the person to whom and the place where it is payable
5. Description of the goods covered by the agreement.

2.2.5 Hire-Purchase Charges**2.2.5.1 Meaning**

'Hire-purchase charges' are the difference between hire-purchase price and cash price of the goods. Section 7 has restricted the hire charges, which can be levied by the owner. A statutory limitation is imposed on

the amount that can be levied with respect to each cash price installment. The H.P. charges may be determined by applying the formula

$$SC = \frac{CI \times R \times T}{100}$$

where SC represents the statutory charges

CI the amount of cash price installment expressed in rupees or fractions of the rupee.

R represents the rate, and

T represents the time, expressed in years and fractions of years," that elapse between the date of agreement and the date on which the hire-purchase installment corresponding to the cash price installment is payable under the agreement.

The rate (R) is determined by the Central Government after consulting Reserve Bank of India but it should not be less than 10% p.a.

Cash price installment in relation to a hire-purchase installment is calculated as follows:

Hire-purchase installment

$$\text{Cash Price Installment} = \frac{\text{Hire-purchase price}}{\text{Net cash price}} \times \text{Net cash price}$$

Net cash price means cash price as specifically mentioned in the agreement less any deposit. The term deposit refers to initial payment whether actually paid or agreed to be paid because of delivery of goods or any other mode of settlement. "Net hire-purchase price" means the hire-purchase price of the goods as specified in the agreement less:

- (i) any amount payable to the hirer to cover the delivery of goods and included in the hire-purchase price.
- (ii) any amount payable to cover registration or other fees and included in the hire-purchase
- (iii) any amount payable for insurance (other than third party risk insurance) of the goods and included in the hire-purchase price.

Where the net hire-purchase charges exceed the statutory charges, the hirer can either avoid the agreement or restrict his liability to statutory amount.

2.2.5.2 RIGHTS OF HIRE-PURCHASER

The hire-purchaser has following rights:

2.2.5.2.1 Right to purchase

During the course of the hire-purchase agreement, the hirer may, after giving the owner at least 14 days' notice in writing of his intention to purchase the goods, complete the purchase of the goods by paying to the owner the hire-purchase price or the balance thereof as reduced by the rebate. Rebate is equal to two-thirds of an amount which bears to the hire-purchase charges, the same proportion as the balance of the hire-purchase price not yet due bears to the hire-purchase price. Where hire-purchase charges mean the difference between the hire-purchase price and the cash price as stated in the hire-purchase agreement. The formula for calculating rebate is

$$= \frac{[\text{Hire purchase Charges} \times \text{Balance of H.P. price not yet due}]}{\text{Total Hire purchase price}} \times \frac{2}{3}$$

Or

$$= \frac{[\text{Hire purchase Charges} \times \text{No. of Installments due}]}{\text{Total No. of Installments}} \times \frac{2}{3}$$

2.2.5.2.2 Right to terminate

The hirer has, after giving 14' days notice and returning the goods, right to terminate the agreement at any time before the property passes and the final instalment payment under the hire-purchase agreement falls due. However, the payments made by the hirer prior to the final payment are treated as payments in respect of hire, (i.e. hire charges) are not returned to the hirer if he does not continue the agreement. The provisions are as follows:

- (1) The hirer can terminate the agreement at any time after giving 14 days' notice to the owner and redelivering or tendering the goods to the owner. Hire-purchase agreements may impose severe liability if the hirer wants to terminate the agreement. To mitigate this, the Act provides:
 - (a) Where the sum-total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination exceeds one half of the purchase price the hirer shall not be liable to pay the amount so mentioned.
 - (b) Where the sum-total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination does not exceed one-half of the hire-purchase price,

the hirer shall be liable to pay the difference between the said sum-total and the said one-half, or sum mentioned in the agreement whichever is less.

2.2.5.2.3 Right of hirer when goods are seized by the owner

Where the owner seizes the goods on the termination of the agreement, he has to refund to the hirer the amount by which the amount paid by the hirer plus the value of the goods on the date of seizure exceed the hire-purchase price. The value of the goods is the best price that can be reasonably obtained for the goods by the owner less expenses incurred for seizing, repairing, storing, selling, etc., of such goods. He has to refund the amount within 30 days from the date on which notice is served by the hirer, failing which interest at 12% p.a. has to be paid on the amount from the date of expiry of thirty days. This is intended to ensure that an owner by exercising his right of seizure does not acquire any unconscionable benefit.

2.2.5.2.4 Owner require permission of court to repossess the goods

Goods can be repossessed only by making an application to the appropriate court in the following Cases:

- (i) Where the hire-purchase price is less than Rs. 15,000 and one-half of the price is paid.
- (ii) In other cases when three-fourth has been paid.

If goods are recovered in contravention of above provisions, the agreement is terminated and the hirer will be released from all liability and will have the right to recover from the owner all sums paid by him under the agreement. The surety also will have the right to recover the entire sum paid by him under the contract of guarantee.

2.2.6 Difference between Sales & Hire Purchase Agreement

Under hire-purchase agreement the owner of the goods lets them out on hire for a periodic rent on the terms that on completion of the agreed number of payments; the hirer is to have the option to buy the goods. On payment of the full amount, the property in the goods passes to him but the owner shall have the right to resume possession of the goods on the hirer's failure to pay any of the installments of rent or any other breach by the hirer of the terms of the agreement. Where the hirer agrees to buy the goods through the price paid by installments, he not merely acquires an option to purchase them in future, then the contract is a contract of sale and not a contract of hire-purchase. The essential feature of a hire- purchase agreement is that a person has a right to terminate the agreement for hire at his pleasure and is not bound to pay the value of the goods.

2.2.7 DIFFERENCE BETWEEN HIRE PURCHASE AND INSTALMENT SALE CONTRACTS

In the case of hire purchase the ownership in property is never transferred to the hirer by the owner, i.e., the property must be returned to its owner. Whereas in the case of sale contracts, the ownership in property is transferred to the buyer immediately at the time of contract, i.e., the, property cannot be returned to its seller.

Difference between Hire purchase and Installment System

'Installment sale' is different from goods sold under 'hire-purchase' agreement. In 'installment sale', 'possession' as well as 'ownership' of goods is transferred to the buyer immediately. The main differences between installment sale and hire purchase are as follows:

		Installment Sales	Hire-Purchase
1.	Ownership	Ownership in goods passes to buyer the moment, transaction is completed.	Ownership passes at stipulated time, usually on payment of last installment.
2.	Right of buyer	The buyer has no right to terminate the agreement by returning goods	The buyer has the option to return the goods and terminate the agreement.
3.	Right of seller	The seller can only sue for the unpaid balances.	The seller can repossess the goods on default of payment by buyer.
4.	Right of disposal	The buyer has the right to dispose of the goods in any manner he likes.	The buyer being in the legal position of bailee has no right of disposal of goods.
5.	Risk of loss	Any loss of goods should be borne by the buyer as risk lies with the ownership.	If buyer take reasonable care of the goods expected of a bailee, then loss occurring to goods has to be borne by the seller.

2.2.8 Summary

From the above discussion it is easy to understand what is sales by auction and how it is done and what is hire purchase. An auction is a manner of selling property by bids usually to the highest bidder by public competition. The auctioneer, who sells goods by auction, is an agent of the seller only. He may, however sell his own property as principal and need not disclose the fact that he is so selling. Under hire-purchase agreement the owner of the goods lets them out on hire

for a periodic rent on the terms that on completion of the agreed number of payments, the hirer is to have the option to buy the goods. On payment of the full amount, the property in the goods passes to him but the owner shall have the right to resume possession of the goods on the hirer's failure to pay any of the installments of rent or any other breach by the hirer of the terms of the agreement. The essential feature of a hire- purchase agreement is that a person has a right to terminate the agreement for hire at his pleasure and is not bound to pay the value of the goods.

2.2.9 Key words

1. disposal : removal/discarding
2. obligation : compulsion/responsibility
3. compensation : reparation/reimbursement
4. repossess : take back/recapture

2.2.10 Self Assessment Questions/Exercise

1. Discuss Sale by Auction in detail.
2. Make a difference between the followings:
 - a) Hire Purchase Agreement & Sales
 - b) Hire Purchase & Installment Sales
3. What is Hire Purchase Agreement and what are its contents and features in detail?

2.2.11 Further Readings

1. Business Regulatory Framework : Garg K.C., Chawla R.C.
2. Mercantile Law : Kappor G.K.
3. Mercantile Law : Kappor N.D.
4. Principles of Mercantile Law : Singh Avtar
5. Business Laws : V.K. Sharma

THE PARTNERSHIP ACT, 1932

After reading the chapter you should be able to understand:

- 2.3.1 Meaning of partnership.
- 2.3.2 Essentials of partnership.
- 2.3.3 Partnership Deed.
- 2.3.4 Formation of partnership.
- 2.3.5 Kinds of partnership.
- 2.3.6 Kinds of partners.
- 2.3.7 Rights of partners.
- 2.3.8 Duties and obligations of partners.
- 2.3.9 Reconstitution of a firm.
- 2.3.10 Dissolution of partnership firm.
- 2.3.11 long question Answer
- 2.3.12 write short notes

2.3.1 What is a partnership?

Partnership, in the language of section 4 of the Partnership Act, 1932, is the relation between persons who have agreed to share the profits of a business carried on by all or any of the acting for all. Breaking the above definition, following essentials elements of a partnership are revealed:

- a. There must be an agreement;
- b. Between two or more persons;
- c. Who agree to carry on business;
- d. With the objective of sharing profits; and
- e. The business is carried on by all or any of them acting for all.

2.3.2 Essential element of partnership- A brief explanation of these elements is as follows:

1. An agreement: the relationship of partnership arises from an agreement between the persons concerned and not from the status. Again this agreement must be valid and enforceable at law. An agreement of partnership may be written or oral. Writing is no doubt advantageous but oral agreement to constitute partnership is as valid as written one. Example: A and B agree to carry business of buying metal scrap and selling it in retail, a partnership is created between A and B.
2. Two or more persons: There must be at least two persons to form a partnership. Example A, B and C were three partners carrying on business. Subsequently, B and C retired and A continued to carry on the business. The business being run by A is not a partnership, it is a sole proprietorship.
3. Carrying on a business: There can be a partnership only if there is some business is carried on under it. Business includes every trade, occupation or profession.
4. Profit must be shared: The division of profits is an essential condition to the existence of partnership. No person can claim to be partner in a business unless he has a right to share in the profits of the business.
5. Mutual agency: The words “business is carried on by all or any of them acting for all” in the definition of partnership shows that all the partners of a business should be able to represent each other, and should be represent by each other with respect to the business of partnership. The principle of partnership is that partners carrying on the business of the firm are agents as well as principals of each other.

2.3.3 Partnership deed

A partnership agreement put to writing is termed as ‘partnership deed’. When a partnership business is started, usually the partners make a properly drafted deed and get it stamped according to the provisions of the Indian Stamped Act. Each partner keeps a copy of the deed. And in case the firm is registered, a copy of the deed is filed with the Registrar of firm at the time of such registration.

2.3.4 Registration of firms

Registration of a firm means the recording of the firm’s name, along with the prescribed particulars, in the register of firms kept in the office of the Registrar of firms. This ascertains the existence of a firm which certain particulars which cannot be denied or disputed later on by the partners.

1. Registration of a firm is discretionary: it is optional for a firm to get it registered. There is no penalty in the law for not getting a firm registered. However, law attached certain disabilities to unregistered firms as compared to the registered firms in order to encourage people to get their firms registered.
2. Procedure for registration of a firm: the registration is obtained by filling an application on a prescribed form accompanied by the prescribed fee and filling the same with the registrar of firms of the state in which the place of business is situated or proposed to be situated.
The application form should be signed and verified by all the partners, or by their agents specially authorized in this behalf.
3. Recording of alterations: with a view to keep the Registrar of firms posted with up to date information of the firm, if any change take place, it should be notified to the registrar who shall thereupon record the change in the register of firms. There are certain changes which require more formalities to be complied with as compared to other changes.
 1. Change in firm's name and principal place of business.
 2. Change regarding the closing and opening of branches.
 3. Changes in the names and addresses of the partners
 4. Changes in the constitution of the firm, or dissolution of the firm.
 5. Minor's decision as to remain a partner or not on attaining majority.
 6. Penalty for furnishing false particulars.
 7. Register of firms.

2.3.5 KINDS OF PARTNERSHIP

A partnership may be classified into the following two categories:

1. Particular partnership: (section 8) when a partnership is formed for a particular period say 5 years or for a specific venture, for example, for making a film, or constructing a ship, it is called a 'particular partnership'.
2. Partnership at will: it is a partnership where no provision is made by contract between the parties-
 - a. For the duration of their partnership, or
 - b. For the determination of their partnership.

If either of the above provision exists, it is not a partnership at will.

2.3.6 KINDS OF PARTNERS

The partners of a partnership firm can be classified in the following categories:

1. Actual or active partner- Partners actively engaged in the conduct of the business are known as active, actual and ostensible partners. Every such partner has a right has a power to bind other partners of the firm by their acts done in the ordinary course of the business and in the name of the firm.
2. Dormant or sleeping partner- these are the partners who do not participate in the business of the firm, and are not known to the outsiders. They become partners by investing money in the firm.
3. Nominal partners- These are the partners who have no real interest in the firm. They do not invest or participate in the business of the firm but only give their name to the firm. They are the nominal partners. These partners are also liable to the third parties like actual partners.
4. Partners in profits only- it is a partner who is entitled to share the profits of the firm and not liable for the losses. Such partner has no voice in management of the business. However, liability of such partners of the third parties is similar to that of an actual partner.
5. Sub-partners- when a partner of a firm agrees to share his profits with an outsider, the outsider is termed as sub-partner. Practically, this sub partner has no relation to the firm. Neither he can interfere in the management of the firm nor is he liable to the third parties for the acts of the firm.
6. Partnership by estoppel or holding out- section 28 of the Act reads as-“ Anyone who by words spoken or written or by conduct represent himself, or knowingly permits himself to be represented, as a partner in affirm, is liable as a partners in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or representing himself or represented to be partner does or does not know that the representation has reached the person so giving credit.”

Thus if the behaviour of a person cause misunderstanding to the third parties that he is a partner in a firm(when actually he is not), later on such a person is estoppel from denying the fact that he is a partner in context of the dealings with such third parties.

It may be noted that a third party can bring an action against the partner by estoppel or holding out only when he has acted on the belief that the person so representing is a partner of the firm. It does not matter that the person representing himself to be a partner does or does not know that this representation has reached to a third party.

Exceptions to the doctrine of holding out- The doctrine of holding out is not applicable to in the following cases:

1. A partner by estoppel or holding out cannot be held liable for the torts committed by the partners of a firm.
2. Where a partner dies and the business is continued and a third party deals with the firm having no knowledge of the death, the estate of deceased partner cannot be held liable for the claims.
3. Where a holding out partner is adjudicated as solvent, he cannot be held liable for the claims on the firm.

2.3.7 MUTUAL RIGHTS OF PARTNERS

1. Right to take part in conduct of the business: one of the most basic rights of a partner is that of participating in the management of the enterprise. Unless the partnership agreement provides otherwise, all partners have equal rights in the conduct and management of the partnership business. If a partner agrees not to take part in the management, he is not entitled to participate in the management accordingly. But when a third party deals with such a partner and the partner's act is well within his apparent authority, and the third party is not aware that such authority has been restricted by an agreement among the partners, he can hold the firm liable for the acts of such partner.
2. Right to express opinion: In a partnership business many decisions have to be taken from time to time. Every partner has a right to express his opinion before any matter is decided. A difference of opinion may be arising as to any matter amongst the partners.
3. Right to access to books: every partner is entitled to have access to and to inspect and copy any of the books of the firm. But this rule is also subject to a contract to the contrary. Thus if a person entitled to a share of the profits expressly agrees that he will accept the balance sheets prepared by others as correct, and will not investigate the books of account himself, he will be bound by that agreement.
4. Right to share the profits: in the absence of an agreement to the contrary, every partner has a right to share the profits equally. It may be noted that the partners may make a contrary agreement to share the profits in a different ratio or in the form of a fixed sum or in any other ways but an agreement not to share the profits equally.
5. Right to interest on capital: generally the partners are not entitled to charge interest on the capital contributed by them. But if there is an agreement to charge interest on capital contributed by them. But if there is an agreement

to charge interest on the capital, or there is a custom or usage of trade to charge so, they are entitled to get it but such interest shall be payable out of profits only.

6. Right to interest on advances: where a partner makes any payment on behalf of the firm, or makes an advance to the firm in excess of the amount of capital he has agreed to subscribe, he is entitled to get an interest @6% on such money.
7. Right to get indemnified: a partner has a right to get indemnified from the firm in respect of the payment made and liabilities incurred by him on behalf of the firm-
 1. In the ordinary and proper conduct of the business, and
 2. In doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances.
8. Right to use partnership property: every partner has a right to use the property of the firm for the purpose of the firm's business.
9. Right not to be expelled out of partnership: every partner has a right to continue in the firm and he cannot be expelled from it by the other partners. However, if the partners decide so by majority and in good faith a partner can be expelled from the partnership.
10. Right to be consulted for the admission of new partner: a new partner cannot be admitted to a firm without the consent of all partners. Thus every partner has a right to be consulted before admission of a new partner.
11. Right of an outgoing partner: following are the rights of the outgoing partner:
 1. Right to carry on competing business- a partner, after leaving the firm may start a competing business to that of the firm.
 2. Right to share subsequent profits- where after retirement or the death of a partner, his share of partnership property remains in the business, he or his representative has a right to claim the profits as earned by the use of his share of property in the business.

2.3.8 MUTUAL DUTIES AND LIMITATIONS OF PARTNERS

There are two broad categories:

1. ABSOLUTE DUTIES: are the duties which are imposed by the law and cannot be subjected to any change by the contrary contract of the partners.
 - I. Duty to act in good faith: it is a fundamental duty of every partner to act in good faith. Almost all other duties emanate from this only.
 - II. Duty to carry on business for the common advantage: every partner is bound to carry on the business of the firm to the greatest common

advantage. He must use his knowledge and skill for the common benefits of the firm.

- III. Duty to render true accounts: partners are bound to render true accounts to each other. When the accounts are kept by one partner, he would be the proper person to explain and give full information about them.
- IV. Duty to provide full information: every partner is bound to give full information to the other partners regarding all things affecting the firm. Thus if a partner knows more about the affairs and assets of the firm, he should not conceal them from the other partners.
- V. Duty to indemnify the loss caused by the fraud: every partner must indemnify the firm for any loss caused to it by his fraud practiced in the conduct of the business of the firm.
- VI. Duty to liable jointly and severally: every partner is liable jointly with all other partners and also severally for all the acts of the firm while he is a partner.
- VII. No assignment of interest: no partner can assign or transfer his interest in the partnership firm to any other person so as to make him a partner in the business without the consent of all other partners.

2. GENERAL DUTIES: are the duties which are provided by the partnership Act, but can be subjected to change by a contrary contract of the partners.

- I. Duty to attend diligently: a partner should diligently attend the affairs of the business of the firm.
- II. Duty to works without remuneration: a partner is not entitled to take remuneration for taking part in the business of the firm.
- III. Duty to share losses: every partner is liable to contribute equally to the losses of the firm irrespective of his capital contribution.
- IV. Duty to indemnify the firm for willful neglect: a partner who is guilty of 'willful' in the conduct of the business and the firm suffers losses in consequence thereof, is bound to compensate or indemnify the firm and other partners for such loss.
- V. Duty to use firm's property exclusively for the firm: property of a partnership firm belongs to all partners. It is therefore duty of every partner to use the partnership firm belongs to all partners. It is therefore duty of every partner to use the partnership property strictly and solely for the business of the firm. He cannot use this for his personal purposes.

- VI. Duty to account for personal profits: if partner derives any profit for himself from-
- a. Any transaction of the firm, or
 - b. From the use of the property of the firm, or
 - c. From the use of business connection of the firm, or
 - d. From the use of firm name,
- He shall account for that profit and pay it back to the firm.
- VII. Duty to act within authority: every partner should act within the scope of his actual or implied authority.

2.3.9 RECONSTITUTION OF A FIRM

A firm is reconstituted when by one reason or the other, any partner enters into the partnership or any partner leaves the partnership, or there is a change in the respective interests of the partners. Following may be possible instance which cause reconstitution of a partnership firm:

1. **Admission of a partner:** section 31 of the Act deals with the provisions relating to the admission of an incoming partner into a firm. It provides that a new partner can be admitted in an existing firm only with the consent of all the existing partners. The liability of a new partner commences from the date when he is admitted as a partner.
2. **Retirement of a partner:** a partner is said to be retire when the retiring member cease to be partner while the other partners continue with the partnership. Section 32 provides that a partner may retire-
 - i. With the consent of all the other partners,
 - ii. In accordance with an express agreement by the partners, or
 - iii. Where the partnership is at will, by giving noticed in writing to all the other partners of his intension to retire.
3. **Expulsion of a partner:** generally a partner cannot be expelled from a partnership firm. Section 33 of the Act provides certain circumstances in which a partner can be expelled:
 - i. the power of expulsion is given to the partners by an express contract between them,
 - ii. it is exercised by the majority of partners, and
 - iii. it is exercised in absolute good faith.

If any of these conditions is not satisfied, the expulsion of partners will be considered as improper.

4. **Insolvency of a partner:** section 34 of the Act provides that a partner ceases to be a partner from the date of his adjudication as insolvent, whether or not the firm is dissolved will depend upon the agreement between the partners.
5. **Death of a partner:** when a partner dies, he, of course ceases to be partner. The firm may or may not thereby be dissolved. Section 35 of the act provided that where by virtue of a contract between the partners, the firm is not dissolved by death of a partner, the estate of the deceased partner is not liable for any act of the firm done after his death. No public notice is necessary to terminate the liability of the deceased partner.
6. **Transfer of partnership interest:** the interest of a partner in a firm means the value of his share in the assets and profits of the firm. If a partner wants to dispose of his partnership interest otherwise than by way of retirement, there are two courses open to him. He may ask his co-partners to buy his interest, or he may sell his interest to a third person. When co-partners buy the interest, the firm is reconstituted by effecting changes in the respective interest of the partners. When the interest is sold to a third person, it is open to the partners of the partners of a firm to accept him as a partner or not.

2.3.10 DISSOLUTION OF A FIRM

Dissolution of a firm is different from the dissolution of the partnership. Partnership is a relation between the partners and partnership firm is an entity which exists because of relations. Thus whenever a partner leaves the firm, the partnership is dissolved but the firm continues unless the firm is also dissolved. Now, following are the ways through which a firm can dissolve:

1. By agreement (section 40): a partnership agreement may provide that the firm will dissolve at a certain point of time, or on the happening of certain event, or in any other circumstance. The partnership firm will obviously dissolve in accordance with the original agreement, unless all the partners agree to amend the original contract and decide to continue the firm.
2. Compulsory dissolution(section 41): in the following cases, a firm is compulsory dissolved:
 1. Insolvency of all partners, or all but one partner- when a partner is declared insolvent by the court, he ceased to be a partner from the date of order of insolvency. When all partners are declared insolvent, there remains no partner in the firm. Similarly when all but one partner are

declared insolvent, only one person remains in the firm, and minimum two persons are required to constitute a partnership.

2. Business of the firm became unlawful- where happening of any event makes it lawful for the business of the firm to be carried on or for the partners to carry it in as a partnership.
3. On the happening of certain contingencies(section42): the firm is automatically dissolved on the happening of any of the following contingencies:
 1. When the firm is constituted for a fixed term, it is dissolved on of that term.
 2. When the firm is constituted to carry out one or more adventures or undertakings, it is dissolved on their completion.
 3. When a partner dies, the firm gets dissolved.
 4. When a partner is adjudicated as insolvent, the firm gats dissolved.

However, the partners may agree that firm shall not be dissolved in any of the above case.

4. By notice (section 43): where the partnership is at will, it can be dissolved by any partner by giving a notice to other partners. The notice should clearly state his intention to dissolve the partnership firm, should be in writing and signed by him, and should be served to all the partners.
5. By court (section 44): at times there may be disagreement among the partners regarding dissolution of the firm. Any or some partners may like to go for dissolution while other does not. In such case, the partners may apply to the court of law for deciding the matter. Court has got discretionary powers in this regard. Considering the facts and circumstances of each case, the court may decide in favour or against the dissolution.

A partner may approach the court for dissolution on the following grounds:

1. Unsoundness of mind of a partner: when a partner becomes lunatic, the firm is not dissolved automatically unless a clause to this effect is there in the partnership deed. Dissolution requires order of the court. A suit can be instituted for dissolution of the firm by:
 - a. Next friend(i.e., legal representative) of the lunatic, or
 - b. Any other partner.
2. Permanent incapacity: when any partner becomes permanently incapable o performing his duties as a partner, any other partner may apply for any kind. But it should be of a permanent nature.
3. Misconduct: where a partner is guilty of conduct which is likely to affect prejudicially the business of the firm, any other partner may apply for dissolution of the firm. It is not necessary that the conduct should be

- connected with the business of the firm, it is sufficient it is capable of damaging reputation or business prospects of the firm.
4. Persistent breach of agreement and destruction of mutual confidence: where a partner willfully or persistently commits breach of agreement relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relation to the business that it is not reasonably practical for other partners to carry on the business in partnership with him, then any other partner can apply for dissolution on that ground.
 5. Transfer of interest: where a partner in one way or the other transfer his interest in partnership firm without the consent of his co-partners. This clause includes:
 - a. Transfer by a partner of his whole interest to a third party. Transfer of a part of interest by way of sub-partnership does not provide a ground for dissolution.
 - b. Permission by a partner for his partnership interest to be charged under execution of a decree against him.
 - c. Allowance by a partner to sell his partnership interest for the recovery of arrears of the land revenue or any dues recoverable as arrears of land revenue due to the partner.
 6. Perpetual losses: when it is evident that the business of the firm cannot be carried on except at losses, the firm can be dissolve on this ground. The idea is, that the whole object of the partnership is to make profits and if that object cannot be attained, it is needless for the firm to continue.
 7. Just and equitable: the court may order dissolution under this clause when there is a deadlock among the partners, or oppressive conduct by any or some partners, or any other reasons which the court thinks justified for not continuing the business of partnership.

2.3.11 Long Question Answer:

1. Define partnership and state the procedure for formation for its registration.
2. Explain the different kinds of partners.
3. "Registration of partnership is not compulsory, yet the law has ensured it." Do you agree?

2.3.12 Write Short Notes:

1. Partnership deed.
2. Registration of firms.
3. Registration of partnership.
4. Particular partnership.
5. Partnership at will.
6. Dormant partnership.
7. Nominal partner
8. Partner by holding out

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

STRUCTURE :

- 2.4.0. OBJECTIVES OF CHAPTER
- 2.4.1. INTRODUCTION
- 2.4.2. MEANING AND NATURE OF LLP
- 2.4.3. FORMATION OF LLP
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- 2.4.6. DIFFERENCE BETWEEN LLP AND LLC
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- 2.4.8. EXTENT AND LIMITATION OF LAIBILITY OF LLP AND PARTNES
- 2.4.9. FINANCIAL DISCLOSERES
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- 2.4.11. INVESTIGATION
- 2.4.12. CONVERSION FROM FIRM INTO LLP
- 2.4.13. CONVERSION FROM PRIVATE COMPANY INTO LLP
- 2.4.14. CONVERSION FROM UNLISTED PUBLIC COMPANY INTO LLP
- 2.4.15. WINDING UP AND DISSOLUTION

2.4.0. OBJECTIVES OF CHAPTER

- Understand the meaning and nature of limited liability partnership.
- Identify the steps to be taken for the formation of limited liability partnership.
- Understand the concept of designated partners.
- Differentiate limited liability partnership from the ordinary partnership and from company.
- Determine the extent and limitation of liability of limited liability partnership and partners.

Explain the requirements as to financial disclosures, winding up and dissolution of limited liability partnership

- Identify the steps to be taken for the formation of limited liability partnership.
- Understand the concept of designated partners.
- Differentiate limited liability partnership from the ordinary partnership and from company.
- Determine the extent and limitation of liability of limited liability partnership and partners.
- Explain the requirements as to financial disclosures, winding up and dissolution of limited liability partnership.

2.4.1. INTRODUCTION

The Limited Liability Partnership Act, 2008 has come into effect from 1st April 2009. The Act makes provisions for the formation and regulation of limited liability partnership and for matters connected therewith or incidental thereto. It extends to whole of India. The Act is administered by the Ministry of Corporate Affairs. It comprises of 81 Sections in 2.7 Chapters and 4 Schedules.

2.4.2. MEANING AND NATURE OF LIMITED LIABILITY PARTNERSHIP

A Limited Liability Partnership means a partnership formed and registered under the Limited Liability Partnership Act. The provisions of the Partnership Act, 1932 are not applicable to Limited Partnership. The following are the essentials of a limited liability partnership as per Sections 3 & 4 of the LLP Act:

- (i) It is a body corporate formed and incorporated under the *LLP* Act and is a legal entity separate from that of its partners. It has perpetual succession.
- (ii) Any change in the partners of a LLP shall not affect the existence, rights and liabilities of the limited liability partnership.
- (iii) The minimum number of partners is 2 but there is not ceiling on maximum number of partners.
- (iv) It is created by registration of an incorporation document with the Registrar of Joint Stock Companies.
- (v) Any individual or body corporate can be a partner of a limited liability partnership

2.4.3. FORMATION OF LIMITED LIABILITY PARTNERSHIP

The following steps are to be taken according to Sec. 11 to 15 of LLP Act for getting a limited liability formed or incorporated:

- (i) **Filing of Documents:** For a limited liability partnership to be incorporated-
- a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
 - b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of companies of the State in which the registered office of the limited liability partnership is to be situated; and
 - c) there shall be filed along with the incorporation document, a statement in the prescribed form, made by either an Advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the limited liability partnership and by anyone who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made thereunder have been complied with, in respect of incorporation and matters precedent and incidental thereto.
- (ii) **Contents of the incorporation document:** The incorporation document shall be in the prescribed form with the following details:
- a) Name of the limited liability partnership. The words 'limited liability partnership' or *LLP* should be added as the last word of the partnership name. Moreover, the name should not resemble the name of any other limited partnership nor be considered as undesirable by the Central Government;
 - b) Proposed business of the limited liability partnership;
 - c) Address of the registered office of the limited liability partnership;
 - d) Name and address of each of the persons who are to be partners of the limited liability partnership on incorporation;
 - e) Name and address of the persons who are to be designated partners of the limited liability partnership on incorporation;
 - f) Other information concerning the proposed limited liability partnership as may be prescribed.
- (iii) **Incorporation by Registration:** The Registrar shall retain the incorporation document on complying with the above requirements and shall within a period of fourteen days-
- a) register the incorporation document;
 - b) give a certificate that the limited liability partnership is incorporated by the name specified therein;

- c) shall be signed by the Registrar and authenticated by his official seal;
- d) the certificate shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein.

(iv) Effect of Registration: On registration, a limited liability partnership shall, by its name, be capable of -

- a) suing and being sued;
- b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- c) having a common seal, if it decides to have one; and doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

2.4.4. DESIGNATED PARTNERS

According to Section 7 of LLP Act, the designated partners occupy a unique position in the scheme envisaged in: the LLP Act. The following are the summarized provisions in this regard:

1. Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.
2. An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.
3. Every limited liability partnership shall file with the Registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.
4. Every designated partner of a limited liability partnership shall obtain a Designated Partner Identification Number (DPIN) from the Central Government.

2.4.5. LIMITED LIABILITY PARTNERSHIP V/S PARTNERSHIP FIRM

A comparative study of a Limited Liability Partnership and a Partnership firm established under Indian Partnership act can be done as under:

Basis	Partnership under Indian Partnership Act	Limited Liability Partnership
Liability	There is unlimited personal liability of each partner for dues of the partnership firm.	Liability limited to the properties of LLP except in case of unauthorized acts, fraud and negligence of partner(s) when the delinquent partner will be personally liable.
Registration	Registration of partnership is not mandatory.	Incorporation of partnership as LLP is mandatory.
Separate Legal Entity	It is not a legal entity separate from its partners. Firm cannot hold property in its own name; cannot sue or be sued in its own name. The firm is a convenient name of all the partners taken together.	It is a legal entity separate from its partners. The firm may hold property in its own name and sue or be sued in its own name.
Partnership Deed	Partnership deed is executed.	Incorporation Document' is executed. LLP Agreement/First Schedule governs the mutual rights and duties of partners inter se and between the partners and the LLP.
Number of Partners	Minimum 2 partners; maximum 10 partners for banking business and 20 in other cases.	Minimum 2 partners; no maximum limit.
Filing of Documents	Documents are required to be filed with Registrar of firms (of respective states).	MCA/ROC is the administrative ministry/ authority.
Liability of Partners	Partners are liable for statutory compliances.	Only Designated Partners are liable for statutory compliances except when LLP has only one Designated Partner (when all the partners are liable).
Business	A Partner cannot enter into business with firm since the latter is not a separate legal entity.	Partners may enter into contracts with their LLP including lending of money. They have rights and obligations therefore as in the case of third parties/outsideers.
Agency	Every partner of a firm is an agent of the firm and also of other partners.	Every partner of LLP is an agent only of the firm and not of the other partner(s).
Filing of Accounts	There is no requirement as to filing of Annual Accounts or Solvency Statement or Annual Return with Registrar of Firms.	Statement of Accounts, Solvency Statement and Annual Return are to be filed with RoC each year.

Resolution	A Partnership firm can be dissolved as per Act/Partnership Deed. ‘	LLP is to be wound up and dissolved as per LLP Act.
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2.4.6. LIMITED LIABILITY PARTNERSHIP V/S LIMITED LIABILITY COMPANY

The following is the comparative position of a limited liability firm with that of a limited liability company:

Basis	Limited Company	Limited Liability Partnership
Filing of Documents	Memorandum and Articles of Association are to be filed with RoC. Table A applies in the absence of Articles.	Incorporation document and LLP Agreement are to be filed. First Schedule applies in the absence of LLP Agreement.
Name	Name to end with ‘Limited or Private Limited’ (Government Companies exempted from latter).	Name to end with ‘Limited Liability Partnership’ or ‘LLP’.
Managerial Power	Managing Director/Manager vested with powers of day to day administration subject to the supervision, control and direction of the Board of Directors.	Management rests with those Partners (including designated partners) who are authorized by LLP agreement. (As Designated Partners they are responsible only for legal compliances).
Remuneration	There are certain restrictions on remuneration payable to the Directors, their relatives etc.	There is no legal restriction on remuneration to partner. Partners will be eligible for remuneration as per LLP Agreement.
Registration of Charges	Charges/mortgages to be valid should be registered with RoC	No such provision exists for LLPs.
Annual General Meeting	The AGM of shareholders is mandatory.	There is no AGM of partners.
Restrictions on Inter-corporate Loans	There are restrictions on inter-corporate investments and loans.	There are no such restrictions.
Fee	The incorporation fee and Document Registration fees are high. Moreover, many forms are to be filed in.	There is moderate fee for incorporation and filing of documents. Documents are also filed.

2.4.7. CESSATION OF PARTNERSHIP

Section 24 of the LLP Act gives the following provisions regarding cessation of a limited liability partnership:

1. A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner.
2. A person shall cease to be a partner of a limited liability partnership—
 - a) on his death or dissolution of the limited liability partnership; or
 - b) if he is declared to be of unsound mind by a competent court; or
 - c) if he has applied to be adjudged as an insolvent or declared as an insolvent.
3. Where a person has ceased to be a partner of a limited liability partnership (hereinafter referred to as 'former partner'), the former partner is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner of the limited liability partnership unless—
 - a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or
 - b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar.
4. The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership or to the other partners or to any other person which he incurred while being a partner.
5. Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the limited liability partnership—
 - a) an amount equal to the capital contribution of the former partner actually made to the limited liability partnership; and
 - b) his right to share in the accumulated profits of the limited liability partnership,

After the deduction of accumulated losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner.

2.4.8. EXTENT AND LIMITATION OF LIABILITY OF LIMITED LIABILITY PARTNERSHIP AND PARTNERS

Sections 26 to 31 provide about the liability of partners of an LLP as detailed below:

1. *Partner as Agent:* Every partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership, the agent of the limited liability partnership, but not of other partners.

2. *Extent of liability of Limited Liability Partnership:*

- (i) A limited liability partnership is not bound by anything done by a partner in dealing with a person if-
 - (a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and
 - (b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.
- (ii) The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.
- (iii) An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.
- (iv) The liability of the limited liability partnership shall be met out of the property of the limited liability' partnership.

3. *Holding Out:* Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a limited liability partnership is liable to any person who has on the faith of any such representation given credit to the limited liability partnership, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

Provided that where any credit is received by the limited liability partnership as a result of such representation, the limited liability partnership shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.

4. *Unlimited liability in case of fraud:* In the event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners

who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership.

5. Whistle blowing : The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that-

- (a) Such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or
- (b) When any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.

2.4.9. FINANCIAL DISCLOSURES

Sections 34 to 40 of the LLP Act give the following provisions regarding financial disclosures:

1. Maintenance of books of accounts, other records and audit etc:

- (i) The limited liability partnership shall maintain such proper books of accounts as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed. [Sec. 34(1)]
- (ii) Every limited liability partnership shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the limited liability partnership. [Sec. 34(2)]
- (iii) Every limited liability partnership shall file within the prescribed time, the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed. [Sec. 34(3)]
- (iv) The accounts of limited liability partnerships shall be audited in accordance with such rules as may be prescribed provided that the Central Government may, by notification in the Official Gazette, exempt any class or classes of limited liability partnerships from the requirements of this sub-section.
Provided that the Central Government may by notification in the Official Gazettee any class or classes of limited liability partnership from the above requirement [Sec. 34(4)].

(v) Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

2. **Annual Return:** Every limited liability partnership shall file an annual return duly authenticated with the Registrar within sixty days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed. [Sec. 35(1)]

Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees [Sec. 35 (2)] Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to: five lakh rupees.

Inspection of documents kept by Registrar [Section 36]

The incorporation document, names of partners and changes, if any, made therein, Statement of Account and Solvency and annual return filed by each limited liability partnership with the Registrar shall be available for inspection: - by any person in such manner and on payment of such fee as may be prescribed.

Penalty for false statement [Section 37]

If in any return, statement or other document required by or for the purposes of any of the provisions of this Act -

- a) which is false in any material particular, knowing it to be false; or
- b) which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which extend to two years, and shall also be liable to fine which may extend to five lakh rupees but which shall not be less than one lakh rupees.

2.4.10. ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS

Section 42 of LLP Act provides for assignment and transfer of partnership rights as under:

- (1) The rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.
- (2) The transfer of any right by any partner pursuant to para (1) does not by itself

cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.

- (3) The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

2.4.11. INVESTIGATION

Section 43 provides for Investigation of the Affairs of a Limited Liability Partnership as under:

- (1) The Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report thereon in such manner in the following circumstances:
- a) The National Company Law Tribunal, either on its own motion, or any application received from not less than one fifth of the total number of partners of limited liability partnership, by order, declares that the affairs of the limited liability partnership ought to be investigated; or
 - b) Any Court, by order, declares that the affairs of a limited liability partnership ought to be investigated
- (2) The Central Government may appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report on them in such manner as it may direct.
- (3) The appointment of inspectors pursuant to para (2) may be made in the following circumstances:
- a) If not less than one-fifth of the total number of partners of the limited liability partnership make an application along with supporting evidence and security amount as may be prescribed; or
 - b) If the limited liability partnership makes an application that the affairs of the limited liability partnership ought to be investigated; or
 - c) If, in the opinion of the Central Government, there are circumstances suggesting:
 - (i) that the business of the limited liability partnership is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise of a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose; or
 - (ii) that the affairs of the limited partnership are not being conducted in accordance with the provisions of this Act; or

- (iii) that, on receipt of a report of the Registrar or any other investigating or regulatory agency, there are sufficient reasons that the affairs of the limited liability partnership ought to be ' investigated.

2.4.12. CONVERSION FROM FIRM INTO LIMITED LIABILITY PARTNERSHIP

According to Section 55 a firm may be converted into a limited liability partnership accordance with the rules *izi* procedure given in second schedule to the Limited Liability Partnership Act as given below:

A partnership firm may convert into a limited liability partnership by complying with the requirements as to the conversion set out in Second Schedule to the Act. Upon such conversion, the partners of the firm shall be bound by the provisions of this Schedule that are applicable to them.

- (1) A firm may apply to convert into a limited liability partnership in accordance with this Schedule if and only if the partners of the limited liability partnership into which the firm is to be converted, comprise, all the partners of the firm and no one else.
- (2) A firm may apply to convert into a limited liability partnership by filing with the Registrar -
 - a) A statement by all its partners in such form and manner and accompanied by such fee as the Central Government may prescribe, containing the following particulars, namely:

The name and registration number, if applicable, of the firm; and

The date on which the firm was registered under the Indian partnership Act, 1932 or under any other law, if applicable, and

- b) Incorporation document and statement referred to in Section 11 of the LLP Act.
- (3) On receiving the documents referred to in paragraph 2, the Registrar shall subject to the provisions of this Act, register the documents and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:

Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform, the concerned Registrar of Firms with which it was registered under the provisions of the Indian Partnership Act, 1932 about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.

Nothing in this Schedule shall be constructed as to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other

information furnished under the provisions of this Act:

Provided that an appeal may be made before the Tribunal in case of refusal of registration by the Registrar.

The Registrar may, in any particular case, require the documents referred to in para (2) to be verified in such manner, as he considers fit.

On and from the date of registration specified in the certificate of registration issued under para (3):

- (a) There shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;
- (b) All tangible (movable and immovable) property as well as intangible property vested in the firm, all assets, interests, rights, privileges, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and
- (c) The firm shall be deemed to be dissolved and if earlier registered under the Indian Partnership Act, 1932 removed from the records maintained under that Act.

2.4.13. CONVERSION FROM PRIVATE COMPANY INTO LIMITED LIABILITY PARTNERSHIP

According to Section 56 of the Limited Liability Partnership Act, a private company may convert itself into a limited liability partnership by complying with the requirements as to the conversion set out in the Third Schedule to the Act. The provisions for conversion are as under:

- (1) A company may apply to convert into a limited liability partnership in accordance with this Schedule if and only if
 - (a) There is no security interest in its assets subsisting or in force at the time of application; and
 - (b) The partners of the limited liability partnership to which it converts comprise all the shareholders of the company and no one else.
- (2) Upon such conversion, the company, its shareholders, the limited liability partnership into which the company has converted and the partners of that limited liability partnership shall be bound by the provisions of this Schedule that are applicable to them.
- (3) A company may apply to convert into a limited liability partnership by filing with the Registrar
 - (a) a statement by all its share holders in such form and manner to be accompanied by such fees as the Central Government may prescribe, containing the following particulars, namely:

- (i) the name and registration number of the company;
 - (ii) the date on which the company was incorporated; and
- (b) incorporation document and statement referred to in Section 11.
- (4) On receiving the documents referred to in para (3), the Registrar shall, subject to the provisions of this Act and the rules made thereunder, register the documents and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:
Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 2013 about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.
- (5) Nothing in this Schedule shall be construed as to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under the provisions of this Act: *Provided* that an appeal may be made before the Tribunal in case of refusal of registration by the Registrar. The Registrar may, in any particular case, require the documents referred to in para (3) to be verified in such manner, as he considers fit.
- (6) On and from the date of registration specified in the certificate of registration issued under para (4) -
- (a) There shall be a limited liability partnership by the name specified in the certificate of registration registers : under this Act;
 - (b) All tangible (movable or immovable) and intangible property vested in the company, all assets, interest: rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the limited liability partnership without further assurance act or deed; and
 - (c) The company shall be deemed to be dissolved and removed from the records of the Registrar of Compare:

2.4.2.7. CONVERSION FROM UNLISTED PUBLIC COMPANY INTO LIMITED LIABILITY PARTNERSHIP

According to Section 57 an Unlisted Public Company may convert into a limited liability partnership by comp/ -p with the requirements as to the conversion set out in Fourth Schedule to the Act.

Upon such conversion, the company, its shareholders, the limited liability partnership into which the company converted and the partners of that limited

liability partnership shall be bound by the provisions of this Schedule v- are applicable to them.

The following provisions are relevant in this regards:

- (1) A company may apply to convert into a limited liability partnership in accordance with the provisions Schedule if and only if
 - (a) There is no security interest in its assets subsisting or in force at the time of application; and
 - (b) The partners of the limited liability partnership to which it converts comprise all the shareholders company and no one else.
- (2) A company may apply to convert into a limited liability partnership by filing with the Registrar -
 - (a) A statement by all its shareholders in such form and manner to be accompanied by such fee as the Central Government may prescribe containing the following particulars, namely:
 - (i) The name and registration number of the company;
 - (ii) The date on which the company was incorporated; and (b) Incorporation document and statement referred to in Section 11.
 - (3) On receiving the documents referred to in paragraph (2), the Registrar shall, subject to the provisions of this Act, and the rules made thereunder, register the documents and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:
Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 2013 about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.
- (4) On and from the date of registration specified in the certificate of registration issued under paragraph (3)
 - a) There shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;
 - b) All tangible (movable or immovable) and intangible property vested in the company, all assets, interests, rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and
 - c) The company shall be deemed to be dissolved and removed from the records of the Registrar of Companies.

2.4.15. WINDING UP AND DISSOLUTION

Sections 63 and 64 provide a: er for winding up and dissolution of a LLP.

1. **Modes of Winding Up (Sec. 63):** The winding up of a limited liability partnership may be by one of the following:

- (i) Voluntary;
- (ii) By the National Company Law Tribunal constituted under the Companies Act; and Limited liability partnership, so wound up may be dissolved.

2. **Winding-up by Tribunal (Sec. 64):** The following are the circumstances under which limited liability partnership may be wound up by National Company Law Tribunal:

- (i) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
- (ii) if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;
- (iii) if the limited liability partnership is unable to pay its debts;
- (iv) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- (v) if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- (vi) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

EXERCISE

- Q.1. Explain the meaning and essential features of a limited liability partnership. Enumerate the steps to be taken for formation of a limited partnership.
- Q.2. Differentiate a limited liability partnership from an ordinary partnership and a company.
- Q.3. Discuss the various grounds under which a LLP can be wound up by the court.
- Q.4. Explain the procedure and effect of conversion of partnership into LLP.
- Q.5. Discuss the provisions regarding appointment and eligibility condition for a designated partner under the LLP Act,2008.