Shortest Notes For Mercantile Law

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ONE PAGE REVISION NOTES

FOR

MERCANTILE LAW

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INDIAN CONTRACT ACT, 1872 AT A GLANCE

Applicability of the Act [Section 1]

The Indian Contract Act, 1872 extends to the whole of India except the State of Jammu and Kashmir and came into force on the first day of September 1872.

Offer/Proposal[Section 2(a)]

- Can be oral, written or through conduct
- Offer and Invitation to offer/treat
- Must be communicated to the offeree
- Counter Offer
- Offer to the whole world

Consideration [Section 2(d)]

- An act, abstinence or promise.
- Must be at the desire of the promisor.
- May be from the promisee or any other person.
- Can be past, present or future.
- Must be something of value (in the eyes of law).
- It may be adequate or not.

Consensus Ad Idem

- Both the parties to a contract must agree to same thing at the same time.
- The contract may become void if it turns out that the parties were of a different understanding.

Lawful Object [Section 23]

The consideration or object of an agreement is lawful, unless:

- It is forbidden by law; or
- Is of such nature that, if permitted it would defeat the provision of any law or is fraudulent; or
- Involves or implies, injury to the person or property of another; or
- The Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Contract [Section 2(h)]

As per Contract Act, an agreement enforceable by law is a contract.

Agreement [Section 2(e)]

An agreement is a promise or set of promises between two or more persons to do or refrain from doing a particular thing or consideration, the contract may be oral or written.

Acceptance [Section 2(b)]

- Can be oral, written or through conduct
- Must be communicated to the offeror
- Must be absolute and unqualified
- Must be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted.
- Acceptance by performing conditions of an offer (Carlill *vs*. Carbolic Smoke Ball Co.)

Free Consent [Section 14]

Consent is said to be free when it is not caused by:

- Coercion [Section 15]
- Undue Influence [Section 16]
- Fraud [Section 17]
- Misrepresentation [Section 18]
- Mistake [Section 20,21,22]

Discharge of the Contract

- Performance of contract
- Breach of Contract

Performance of Contract [Section 37]

The final step in contract formation is its performance.

Every such offer must fulfill the following conditions:

- It must be unconditional.
- It must be made at a proper time and place under such circumstances that the person to whom it is made may have a reasonable opportunity for inspection.
- An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Essentials of a Valid Contract

- Offer/Proposal
- Acceptance
- Intention to create Legal relationship
- Consideration
- Consensus ad idem
- Free Consent
- Contractual Capacity
- Lawful Consideration/Object
- Agreement should not be void or voidable
- Discharge of the Contract

Legal Relationship

- Intention to enter into a legal relationship
- Social engagement are not binding, e.g., an agreement to have lunch at a friend's place.

Contractual Capacity [Section 11]

Every person is competent to contract who is of:

- Age of majority
- Sound mind
- Someone not disqualified under Indian laws. **For example,** Alien enemy, Foreign sovereigns and ambassadors
- Both individual and companies having legal competency have the capacity to contract.

Breach of the Contract

- Anticipatory breach
- Actual Breach
- Liability of loss only due to causation
- Remoteness of damages
- Mitigation of loss

Remedies

- Injunction

Temporary (interim)

Permanent

- Damages

Nominal

Compensatory Punitive/Exemplary

- Account of Profits
- Specific performance
- Declaration
- Rectification
- Recission/Substitution/Novation

SPECIFIC CONTRACTS **AT A GLANCE**

Essentials of a Valid Contract

- Offer/Proposal
- Acceptance
- Intention to create Legal relationship
- Consideration
- Consensus ad idem
- Free Consent
- Contractual Capacity
- Lawful Consideration/Object
- Agreement should not be void or voidable
- Discharge of the Contract

Quasi-Contracts

Quasi-contracts are defined to be "the lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometime a reciprocal obligation between the parties. It is not legitimately done, but the terms are accepted and followed as if there is a legitimate contract".

For example, X supplies goods to his customer Y who receives and consumes them. Y is bound to pay the price.

Bailment [Section 148]

Bailment is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them".

Contingent Contract
[Section 31]

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. **For example,** A contracts to pay B `10,000 if B's house is burnt.
This is a contingent contract.

Indemnity Contract [Section 124]

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

For example, Contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of `200. This is a contract of indemnity.

Lien

'Lien' is a right of a person to retain the possession of goods of another person so long as some claim upon that person is not satisfied by him.

Agency Contract

By a contract of agency, a person employs another person to do any act for him or to represent him in dealing with third persons so as to bind himself by the acts of such another person.

Implied Contract

Where the offer and acceptance are made not by use of words but **by conduct only** and are therefore implied from the circumstances, the agreement is an implied agreement. Either, the entire agreement may be implied or only a few terms of the agreement may be implied. **For example,** if a person enters a bus, there is **implied** promise that he will pay the bus fair.

Guarantee Contract
[Section 126]

A contract of guarantee is a contract to perform a promise or discharge the liability of a third person in case of his default. **For example,** X and his friend Y enter a shop and X says to Z "Supply the goods required by Y and if he does not pay you, I will". It is a contract of guarantee.

Principal Debtor [Section 126]

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

Creditor [Section 126]

The person, to whom the guarantee is given, is called the 'creditor'. Z is the creditor in the aforesaid example.

Surety [Section 126]

The person who gives the guarantee is called the 'Surety'. X is the surety in the aforesaid example.

Agent [Section 182]

According to Section 182 of the Act, "An Agent is a person **employed to do any act for another**, or **to represent another** in dealings with third persons".

Principal [Section 182]

According to Section 182 of the Act, "**The person for whom an act is done by the agent or who is represented in dealings with third persons by the agent** is called the principal".

Pledge (or Pawn) [Section 172]

The bailment of goods as security for payment of a debt or performance of a promise is called pledge (or pawn). **For example,** X borrows `1,00,000 from Citi Bank and keeps his shares as security for payment of a debt. It is a contract of pledge.

Pledgor (or Pawnor) [Section 172]

The person who delivers the goods as security for payment of a debt or performance of a promise is called the Pawnor or Pledgor. In the above example, X is the pawnor.

Pledgee (or Pawnee) [Section 172]

The person to whom the goods are delivered as security for payment of a debt or performance of a promise is called the Pawnee or Pledgee. In the above example, Citi Bank is the pawnee.

SALE OF GOODS ACT, 1930 AT A GLANCE

Short Title, Extent and Commencement [Section 1]

- This Act may be called the Sale of Goods Act, 1930.
- It extends to the whole of India except the State of Jammu and Kashmir.
- It shall come into force on the 1st day of July, 1930.

Sale and Agreement to Sell

- In a sale the property in the goods is transferred from the seller to the buyer.
- In an agreement to sell, the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled.
- An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Stipulation

A stipulation in a contract of sale with reference to goods which are the subject thereof may be a Condition or a Warranty.

Warranty [Section 12(3)]

- A Warranty is a stipulation collateral to the main purpose of the contract.
- Its breach gives rise to a claim for damages but not a right to treat the contract as repudiated.

Implied Conditions

These are conditions:

- As to title
- A sale by description
- In a sale by sample
- In a sale by sample as well as description
- As to fitness or quality
- To merchantability
- As to wholesomeness

Implied Warranties

- 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
- The goods are free from any charge or encumbrances
- That the seller will disclose the dangerous nature of goods to the ignorant buyer.

Sale Contract [Section 4(1)]

- A sale contract/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.
- Goods here mean only movable goods.
- Price must be expressed in money.

Features of Sale Contract

- A contract of sale may be made in writing or orally or partly in writing and partly orally or may be implied from the conduct of the parties.
- There must be an offer to buy or sell goods for a price and acceptance of such offer.
- It may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by installments or that both is done at a future date.
- It may be for existing or future goods.

Condition [Section 12(2)]

- A Condition is a stipulation essential to the main purpose of the contract.
- Its breach gives a right to the buyer to repudiate the contract.

Express & Implied Conditions & Warranties

- In a Contract of sale, conditions and warranties may be express or implied.
- They are express when they are mentioned in the contract by the parties.
- Implied conditions and warranties are those which are implied by law unless the parties stipulate to the contrary.

Caveat Emptor

This means 'let the buyer beware'. The doctrine of Caveat Emptor does not apply:

- When there is custom or usage of trade.
- When there is a fraud by the seller
- When the buyer intimates the purpose to the seller and depends upon his skill or Judgment.
- In case of implied conditions and warranties.
- It is not part of the seller's duty to point out defects of the goods which he offers for sale; rather it is the duty of the buyer to satisfy him about the quality as well as the suitability of goods. **For example,** Pigs were sold subject to all faults and the seller knows that the pigs were suffering from swine-fever but he did not inform the buyer about this defect.
- The seller was not liable for damages because Caveat Emptor is the rule.

Rules for Transfer of Property

Rules for ascertaining when the property in goods passes to the buyer are the following:

- Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.
- Where there is a Contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
- To ascertain the intention of the parties, relevant issues are; terms of the contract, the conduct of the parties and the circumstances of the following rules will be relevant.

Performance of Sale Contract [Section 31]

It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Delivery [Section 2(2)]

Delivery means **voluntary transfer of possession of goods from one person to another**.

Types of Delivery

- Actual Delivery,
- Symbolic Delivery, and
- Constructive Delivery.

Duty of Seller and Buyer

- Seller's duty is to deliver the goods and the buyer's duty is to accept and pay for the goods as per the terms of the contract of sale.
- Delivery of goods

Unpaid Seller [Section 45]

By virtue of Section 45 of the Act, the seller of the goods is deemed to be an "unpaid seller" in the following cases, namely:

- When the **whole price has not been paid or tendered**.
- When a **bill of exchange or other negotiable instrument has been received as conditional payment**, and the condition has not been fulfilled by reason of the **dishonor of the instrument or otherwise.**

Auction Sale [Section 64]

Auction sale means a public sale where intending buyer assemble at one place and offer the price at which they are ready to buy the goods.

INDIAN PARTNERSHIP ACT AT A GLANCE

Short Title, Extent and Commencement [Section 1]

- This Act may be called the **Indian** Partnership **Act, 1932**.
- **It** extends **to the whole of India except the State of Jammu and Kashmir**.
- It shall come into force on the **1st day of October, 1932**, **except Section 69 which shall come into force on the 1st day of October, 1933.**

Partnership [Section 4]

According to Section 4 of the Indian Partnership Act, 1932, "The relation between persons who have agreed to share profits of a business carried-on by all or any of them acting for all".

Essential Elements of Partnership

This definition contains five elements, which constitute a partnership, namely:

- There must be a **Agreement**;
- Between **two or more persons**;
- Who **agree to carry-on a business**;
- With the **object of sharing profits**; and
- The **business must be carried-on by all** or **any of them acting for all** (i.e., there must be mutual agency).

Partner, Firm and Firm Name [Section 4]

The persons who enter into partnership are individually called 'partners' and collectively 'a firm' and the name under which they carry-on their business is called 'firm name'.

Test for Determination of Existence for Partnership

The real tests of partnership are:

- **Agreement** between **two or more person based on mutual trust and confidence**;
- To carry**-on business**;
- To earn **and share profits therefrom**;
- Mutual **agency**; and
- Unlimited**, joint,** and **several liability**.

Kinds of Partnership

- Partnership at Will
- Partnership for a Fixed Period
- Particular Partnership

Procedure for Registration [Section 58 & Section 59]

The various steps involved in the registration of a firm are given below:

Step 1: Obtain a **Statement in the prescribed form** from the Office of the Registrar of Firms of the area in which any place of business of the firm is situated or proposed to be situated.

Step 2: State the **following information in the statement**:

- The **name** of the firm;
- The **principal place** of the firm;
- The **names of other places** where the firm carries-on business;
- The **date when each partner** joined the firm;
- The **names in full and permanent addresses** of the **partner**;
- The **duration** of the firm.

Step 3: Get the statement duly **verified and signed by all the partners** or by their authorized agents.

Step 4: File the Statement alongwith prescribed fees with the Registrar of the Firms of the area.

Step 5: Obtain a Certificate from the Registrar.

Admission of a Partner/Rights and Liabilities of Incoming Partners

Section 31 provides that subject to a contract between partners and to the provisions regarding minors in a firm, **no new partner can be introduced into a firm without the consent of all the existing partners.** Such a partner enjoys all the rights as are conferred upon him by the Act and by the contract between him and the existing partners.

Effect of Non-Registration [Section 69]

- Suits **between Partners and Firm:** A person suing as a **partner of an unregistered firm cannot sue the firm or any partners of the firm** to enforce a right arising from a contract or conferred by the Partnership Act.
- **Suits between Firm and Third Parties:** An unregistered firm **cannot sue a third party to enforce a right arising from a contract** until the firm is registered, and the names of the persons suing appear as partners in the register of firms.
- **Claim of Set-Off:** An **unregistered firm or any partner thereof cannot claim a set-off** in a proceeding instituted against the firm by a third party to enforce a right arising from a contract, until the registration of the firm is effected. This right of set-off, however, is not affected if the claim of set-off does not exceed `100 in value [Section 69 (4)(b)].

Retirement of a Partner/Rights and Liabilities of a Retired Partner

An outgoing partner means a partner who has retired from a firm. The firm is reconstituted by the remaining partners. **Section 32 contemplates three ways in which a partner may retire from the firm, *viz.***

- He may retire **at any time with the** consent **of all other partners**.
- **Where there is an agreement** between the partners about retirement, **a partner may retire in accordance with the terms of that agreement.**
- **Where the partnership is at will,** a partner may retire **by giving to his partners a notice of his intention to retire.** Section 32 clearly comprehends a situation where a partner may retire without dissolving the firm.

Partnership Deed

The document in which the respective rights and obligations of the members of a partnership are set forth is called a 'partnership deed'. It should be drafted with care and be signed by all the partners. It must be stamped in accordance with the Indian Stamp Act.

Kinds/Types of Partners

- Actual or Ostensible Partner,
- Sleeping or Dormant Partner,
- Nominal Partner,
- Partners in Profits Only,
- Working Partner,
- Partnership for a Fixed Period,
- Limited Partnership,
- Sub-Partners,
- Incoming Partners,
- Retired or Outgoing Partners,
- Partnership by Estoppels or Holding Out, and
- Duration of Partnership.

Expulsion of a Partner

Section 33 provides that **a partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by the contract between the partners.** Thus, a partner may be expelled from the firm if:

- The power of expulsion is conferred by a contract between the partners,
- The power is exercised by a majority of the partners, and
- The power is exercised in good faith.

Modes of Dissolution of Firm

Dissolution without the Order of Court

- Dissolution by Agreement
- Compulsory Dissolution
- On the Happening of certain Contingencies
- Dissolution by Notice

Dissolution by Court

- Insanity
- Permanent Incapacity
- Misconduct
- Transfer of Interest
- Business Working at a Loss
- Just and Equitable
- Persistent Breach of Agreement

Dissolution of Partnership	Dissolution of Firm
• **Any change in the relationship of the partners** is called dissolution of partnership.	The **dissolution of partnership between all the partners of a firm** is called the dissolution of the firm.
• **Dissolution of partnership is not the dissolution of the firm.**	**Dissolution of the firm is the dissolution of the partnership.**
• **Business may or may not come to an end** in dissolution of the	**Business will come to an end** in the dissolution of a firm.

NEGOTIABLE INSTRUMENT ACT AT A GLANCE

Short Title, Extent, and Commencement [Section 1]

- This Act may be called the Negotiable Instruments Act, 1881.
- Saving of usages relating to hundis, etc. It extends to the whole of India but nothing herein contained affects the 'Indian Paper Currency Act, 1871' Section 21, or affects any local usage relating to any instrument in an oriental language. It is provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act and it shall come into force on the first day of March, 1882.

Object of the Act

The main object of the Negotiable Instruments Act is to legalize the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods. The purpose of the Act was to present an orderly and authoritative statement of leading rules of law relating to the negotiable instruments. To achieve the objective of the Act, the Legislature thought it proper to make provision in the Act for conferring certain privileges to the mercantile instruments contemplated under it and provide special procedure in case the obligation under the instrument was not discharged.

Definition of Negotiable Instrument [Section 13(2)]

A negotiable instrument means a promissory note, bill of exchange, or cheque payable either to order or to bearer". "A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

Types of Negotiable Instruments

The Negotiable Instruments Act mentions only three kinds of negotiable instruments (Section 13). These are:

- Promissory notes;
- Bills of exchange; and
- Cheques.

Promissory Notes [Section 4]

A 'promissory note' is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument.

The person who makes the promissory note and promises to pay is called the **maker**. The person to whom the payment is to be made is called the **payee**.

Bill of Exchange [Section 5]

A bill of exchange is "an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument".

Cheque [Section 6]

Section 6 defines a cheque as "a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand". A cheque is also, therefore, a bill of exchange with two additional qualifications:

- It is always drawn on a specified banker.
- It is always payable on demand.

Bank Draft or Demand Draft

Demand draft is drawn by one branch of a bank on another branch of the same bank instructing the latter to pay a specified sum of money to a named payee or to his order. The essential features of a bank draft are as follows:

- It is drawn by a bank's branch on another branch.
- It cannot be made payable to bearer.
- Its payment cannot be stopped or countermanded.
- It is always payable on demand.

Holder [Section 8]

According to Section 8 holder means a person:

- Who is entitled in his own name to the possession of the instrument, and
- Who has also the right to receive or recover the amount due thereon from the parties thereto.

Meaning of Crossing

A cheque is said to be crossed when two transverse parallel lines with or without any words are drawn across its face. A crossing is a direction to the paying banker to pay the money generally to a banker or a particular banker as the case may be, and not to the holder at the counter. Crossing may be written, stamped, printed, or perforated.

Crossing affords security and protection to the true owner, since payment of such a cheque has to be made through a banker. It can, therefore, be easily detected to whose use the money has been received. Cheques are crossed in order to avoid losses arising from open cheques falling into the hands of wrong persons.

Types/Modes of Crossing

- General Crossing,
- Special Crossing,
- Restrictive Crossing,

Transfer of Negotiable Instruments

One of the essential characteristics of a negotiable instrument is that it is freely transferable from one person to another. This transfer may take place either:

- By assignment , or
- By negotiation

Endorsement [Section 15]

Endorsement is the written order on the instrument by its rightful holder to make the payment to another person. According to Section 15, when the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto or so signs for the same purpose a stamped paper intended to be completed as negotiable instrument, he is said to endorse the same, and is called the endorser.

Meaning of Discharge of an Instrument

An instrument is said to be discharged only when the party who is ultimately liable thereon is discharged from liability. All rights of action under the instrument are completely extinguished and the instrument ceases to be negotiable.

Mode of Discharge of an Instrument

- By Payment in Due Course,
- By Cancellation,
- By Party Primarily Liable becoming Holder,
- By Express Waiver, and
- By Discharge as a Simple Contract.

FOREIGN EXCHANGE MANAGEMENT ACT, 1999 AT A GLANCE

Short Title, Extent, Application and Commencement [Section 1]

- This Act may be called The Foreign Exchange Management Act, 1999.
- It extends to the whole of India.
- It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India, and also to any contravention thereunder committed outside India by any person to whom this Act applies.
- It shall come into force on such date (June, 1, 2000) as the Central Government may, by notification in the Official Gazette, appoint. It is provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Capital Account Transaction [Section 2(e)]

Capital Account Transaction means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions by way of giving guarantees or surety for any debt, obligation or other liability of:

- A person resident outside India, or
- Of a person resident in India and owed to a person resident outside India.

Current Account Transaction [Section 2(j)]

Current Account Transaction means a transaction other than a capital account transaction and includes:

- Payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
- Payments due as interest on loans and as net income from investments.
- Remittances for living expenses of parents, spouse, and children residing abroad.
- Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

Object of the Act

The main objective of the Act (according to Preamble to the Act) is to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

Authorized Person [Section 2(c)]

Authorized Person means an authorized dealer, money changer, offshore banking unit or any other person for the time being authorized to deal in foreign exchange or foreign securities.

Repatriate to India [Section 2(y)]

Repatriate to India means bringing into India the realized foreign exchange, and:

- The selling of such foreign exchange to an authorized person in India in exchange for rupees, or
- The holding of realized amount in an account with an authorized person in India to the extent notified by the Reserve Bank.

And includes use of the realized amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly.

Directorate of Enforcement [Section 36]

The Central Government shall establish a Directorate of Enforcement with a Director and such other officers and class of officers as it thinks fit; that shall be called officers of Enforcement, for the purposes of this Act.

The Central Government may authorize the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

Subject to such conditions and limitations as the Central Government imposes, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

Salient Features of FEMA

The salient features of FEMA, 1999 as follows:

- Free transactions on current account subject to reasonable restrictions that may be imposed.
- RBI controls over capital account transactions.
- Control over realization of export proceeds.
- Dealing in foreign exchange through authorized persons like authorized dealer/money changer/offshore banking unit.
- Adjudication of Offenses.
- Appeal provision including Special Director (Appeals) and Appellate Tribunal.
- Directorate of Enforcement.

Foreign Exchange [Section 2(n)]

Foreign Exchange means foreign currency and includes:

- Deposits, credits and balances payable in any foreign currency;
- Drafts, travelers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency; and
- Drafts, travelers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

Similarities between FERA & FEMA

The similarities between FERA and FEMA are as follows:

- The Reserve Bank of India and Central Government would continue to be the regulatory bodies.
- Presumption of Extra Territorial Jurisdiction as envisaged in Section (1) of FERA has been retained.
- The Directorate of Enforcement continues to be the agency for enforcement of the provisions of the law such as conducting search and seizure.

Penalties [Section 13]

If any person contravenes any provisions of this Act or contravenes any rules, regulations, direction, notification or order issued in exercise of the powers under this Act or contravenes any conditions.

Subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty upto **Thrice the sum** involved in such contravention where such amount is quantifiable or upto two lakh rupees where the amount is not quantifiable and where such contravention is a continuing one, further penalty which may extend to **Five Thousand Rupees** for every day during which the contravention continues after the first day.

CONSUMER PROTECTION ACT, 1986 AT A GLANCE

Short Title, Extent and Commencement [Section 1]

- This Act may be called the Consumer Protection Act, 1986.
- It extends to the whole of India except the State of Jammu & Kashmir.
- It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.
- Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.

Rights of the Consumer

- Right to Safety,
- Right to be Informed,
- Right to Choose,
- Right to be Heard,
- Right to Redress,
- Right to Healthy Environment,
- Right to Consumer Education, &
- Right to Basic Needs.

Goods

Goods mean goods as defined in the Sale of Goods Act, 1930.

Under that act, 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 the land which are agreed to be severed before sale or under the contract of sale".

Defect in Goods

Defect is defined as "Any fault, imperfection, shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or is claimed by the trader in any manner whatsoever in relation to any goods".

Deficiency in Service

Deficiency means "Any fault, imperfection, short-coming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service".

Object of the Act

The main objective of the Act (according to Preamble to the Act) is to provide for better protection of the interest of consumers. Consumer councils and other authorities have been set-up for settling the consumers' disputes and other matters.

- Better Protection of Interests of Consumers,
- Protection of Rights of Consumers,
- Consumer Protection Councils, &
- Quasi-Judicial Machinery for Speedy Redressal of Consumer Disputes.

Duties of the Consumer

- Duty to be Careful,
- Duty to Insist on Information,
- Duty to Inspect Goods,
- Duty to Form Association,
- Duty to Make Complaint, and
- Duty to Aware of Rights.

Who can File Complaint under the Consumer Protection Act, 1986?

The following persons can file a complaint under the Consumer Protection Act, 1986:

- A **consumer**,
- Any **voluntary consumer association** registered under the Companies Act, 1956, or under any other law for the time being in force,
- The Central Government, or
- Any State Government, and
- One or more consumers, where there are numerous consumers having the same interest.

Grievance Redressal Machinery

There are two levels of agencies in the State and one agency at the National level.

The Act provides speedy redressal to consumer complainants. The Consumer Protection Act provides for a three-tier consumer disputes redressal system encompassing:

- **District Level:** In every district.
- **State Level:** A commission at the State level.
- **National Level:** The National Commission at the Center.

Consumer [Section 2 (d)]

"Consumer" means any person who:

- Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 'hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes.

Consumer Protection Council [Section 4]

The Act provides for the establishment of a **Central Consumer Protection Council** by the Central Government and a **State Consumer Protection Council** in each State by the respective State Governments.

The State Government shall establish for every district, by notification, a council to be known as the **District Consumer Protection Council** with effect from such date as it may specify in such notification.

Penalties [Section 27]

Failure or omission by a trader or other person against whom a complaint is made or the complainant to comply with any order of the State Commission or the National Commission shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to 3 years, or with fine of not less than `2,000 but which may extend to `10,000 or with both.

Thank You