UNIT-3-Legal Environment

BUSINESS LAWS

DEFINITION OF BUSINESS

Business "comprises all profit seeking activities and enterprises that provide goods and services necessary to an economic system. It is the economic pulse of a nation, striving to increase society's standard of living. Profits are a primary mechanism for motivating these activities.

DEFINITION OF LAW

Law refers to the principles and regulations established by a Government and applicable to people, whether in the form of legislation or of custom and policies recognized and enforced by judicial decision.

Salmond defines law as the "body or principles recognized and applied by the State in the administration of Justice."

MEANING AND DEFINITION OF BUSINESS LAW

Business law, also called commercial or mercantile law, is that branch of legal system which regulates business activities. The same meaning is revealed in the two definitions given below:

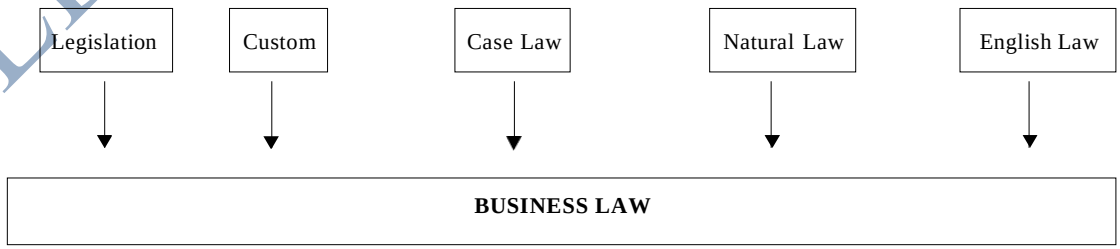
(1) "Business law is that portion of the legal system which guarantees an orderly conduct ofbusiness affairs and the settlement of legitimate disputes in a just manner."
(2) "Business law establishes a set of rules and prescribes con duct that enables us to avoidmisunderstandings and injury in our business relationships.

SCOPE OF BUSINESS LAW

The scope of business law is indeed vast. It usually deals with topics of licences, large houses, monopolies, issues of securities, contracts, property, agency, negotiable instruments, foreign exchange, partnerships, companies, insurance, sales, bailment, guarantees, labour, suretyship, bankruptcy, consumer interest, business crimes, raising loans from financial institutions, obtaining electricity, iron and steel, customs clearance, allotment of materials, import of capital goods, pollution control and the like. These and other aspects are covered by legislations enacted by Central, State or Local Bodies.

SOURCES OF BUSINESS LAW

The important sources of business law are : (1) Legislation, (2) Custom, (3) Case law, (4) Naturallaw, and (5) English law .



Sources of Business Law

1. Legislation Legislation is the common source of law. Both Parliament and State assemblies have enacted a number of legislations that cover various aspects of business.

2. Custom A substantial part of business law is customary, notwithstanding advances made in science and technology. This is true both in developed and developing countries. A custom, when accepted by courts and incorporated in judicial interpretations, becomes a law. Many of the business customs or usages have already been adopted and legalized. The Indian Contract Act provides that nothing therein contained, "shall affect any usage or custom of trade." Similarly, the Negotiable Instruments Act provides that nothing there-in contained "shall affect any local usage relating to instruments in an oriental language."

3. Case Law Case law, popularly called "precedent" by lawyers is a judgement of a superior court including a point of law or principle and which necessitates its adoption and adherence in a subsequent case involving the same point. Case law is useful in as much as it helps courts to render uniformity with regard to the interpretation of statutes or formulation of principles.

4. Natural Law Natural law or natural justice is another source of law. The natural justice that no man can be punished twice for the same crime is a guiding principle for any legislation. Similarly, natural justice demands that no individual can be dubbed guilty unless the charges are proved against him/her.

5. English Law Our business laws are largely based on English acts applicable in England. Our Sale of Goods Act, for instance, has been taken directly from the English Sale of Goods Act. Similarly, our Companies Act corresponds with the English Companies Act. Again in any discussion on the IndianContract Act, reference is invariably made to the English law.

Role of business law/Need for Business Law

1. Assisting businesses to resolve complex legal issues by preventing them and navigating them.
2. Advising and supporting businesses on establishing their company's policies, structure, procedures and objectives for their business operations.
3. To ensure that all the relevant outcomes and laws are obeyed and understood by businesses.
4. Solving and investigating into legal disputes by analyzing the applicable laws and collecting valid proofs to develop legal arguments for the courts.
5. To properly complete the paperwork by apt drafting, revision, and verification of files in accordance of laws related to business operations.
6. To examining and report any existing or potential legal issues to the authorities.
7. To negotiate transactions, contract terms, and settlements on behalf of the businesses which are involved.
8. To ensure that all business strategies, processes and actions are complying with the relevant local, federal, and international laws.

The Indian contract act, 1872

The law of contract is the most important branch of business law. It affects everybody, trade, commerce and industry. All the contracts are based on the agreements which are either express or implied. Disputes are arises sometimes as to the existence of the obligations and sometimes as to the nature and extent of the obligations. We all entered into contracts every day from sun rise to sun set. Example: buying a computer.

Contract is an agreement made between two or more persons to do a particular act. The contract is an agreement, creating and defining the obligations between the parties by which certain rights are given to one party and a correspondent duty is imposed on the other party. Or an agreement enforceable by law is known as a contract.

Contract = **Agreement + enforceable by law**

Essentials requirements of contract:

1. **Two parties**: two parties are necessary to make a contract. The person who makes the promise is known as the **promisor** and the person to whom the promise is made is known as the **promisee**.
2. **An agreement**: there has to be an agreement between two parties. An offer when accepted becomes an agreement.

Agreement = offer + acceptance

3. **Legal obligations**: the agreement should give rise to legal obligations enforceable by law. Any obligation (duty) which is not enforceable by law is not regarded as a contract.

Agreements which are not contracts

The following two types of agreements are not contracts as there is no intention to create legal relations here.

1. **Agreements relating to social matters**: an agreement between two parties to go together to the cinema does not create a legal obligation.
2. **Domestic agreements between husband and wife**: domestic agreement also does not create any legal obligation on the part of the parties.

All contracts are agreements but all agreements are not contracts: An agreement may or may not give rise to legal obligations. If no legal binding is intended, a contract does not arise. Agreements of moral or social nature do not make contracts because parties never intend to create binding legal obligations. So all agreements are not contracts but all contracts are necessarily composed of agreements.

Difference between as an agreement and a contract

Basis of difference	Agreement	Contract
Enforceability	Offer and its acceptance constitute an agreement.	Agreement and its enforceability constitute a contract.
Legal obligation	An agreement may not create a legal obligation.	A contract necessarily creates a legal obligation.
Binding the parties	Agreement is not a concluded.	Contract is concluded and binding on the concerned parties.
Result	Every agreement may not be a contract.	All contracts are agreements.

Essential elements of a valid contract

In order to become a contract there must be an agreement which is enforceable Court of law. An agreement becomes enforceable by court of law if it fulfils Certain laid down conditions. These conditions are called essentials **or elements of a valid contract.**

According to Indian contract act, 1872 under section of 10, all arrangements are Contracts if they are made by the free consent of the parties competent to contract, For a lawful consideration and a lawful object and are not hereby expressly Declared to be void. Thus an agreement becomes valid contract if it has the following Elements.

1. **Offer and acceptance**: an agreement involves two parties, one making the offers and the other accepting it. The offer is the starting point of the contract. The offer must be certain and must be communicated to the offeree.

2. **Intention to create legal relationship**: when two parties enter into an agreement, their intention must be to create legal relationship between them. If the intention is not to create legal relations no valid contract is formed.
   For example, if A person agrees to come to the house of B person for dinner at B's request. There is an agreement, but it cannot be termed as a contract because it does not carry and legal obligation.
3. ***Lawful consideration**: the agreements must be supported by consideration on both sides. Each party to an agreement must give receive something in return.
   For example, A agrees to sell his house to B for Rs 2 lakhs. Here, the consideration for A is Rs 2 lakhs, and for B it is the house.
4. **Competence of parties to contract**: the parties to the contract must be capable of entering into a valid contract. The following persons are incapable of contracting:
   - A minor
   - A person of unsound mind
   - Persons disqualified from contracting by law.

   For example, contract with minor is not valid contract.
5. ***Free consent**: the parties must have entered into the contract out of their own free will. Consent implies agreeing upon the same thing in the same sense. Free consent implies consent which is not vitiated by coercion, undue influence, fraud, misrepresentation or mistake. If the consent is obtained by any of the above four factors except mistake, the agreement is voidable at the option of the party whose consent is not free. The party can either reject or accept the contract. If the agreement is induced by mutual mistake, the agreement is void. Thus, to make a contract valid, not only consent is necessary but the consent should also be free. the following are not involved to be valid the contract:
   - Coercion
   - Undue influence
   - Misrepresentation
   - Fraud
   - Mistake
6. **Lawful object**: the object of the agreement should be lawful. The object would be unlawful if it is forbidden by law, fraudulent, cause injury to the person or to the public property and opposed to public policy. If the object is unlawful, the agreement is not valid.
   For example, if A rents out a house for use as a gambling den then that agreement is void.
7. **Agreement not declared as void**: enforceability of an agreement also depends upon whether it is expressly declared void by any law in force in the country or not. In some case such as restraint of marriage, trade or legal proceedings, wagering agreements and agreements with uncertain meaning are declared void.
   For example, A agreed to pay Rs 1 lakh to B if he (B) does not marry throughout his life. This is not valid agreement.
8. **Certainty and possibility of performance**: the meaning of the agreement must be certain or capable of being certain, otherwise the agreement will not be enforceable by the law.
   For example, if A agrees to sell to B 100 liters of oil @ Rs.10 per liter, the agreement is not enforceable as there is nothing to show the type of oil being sold.
9. **Legal formalities**: the last essential of a valid contract is that it must be written, attested or registered.

   Therefore, all the above essential elements must be there in a contract to make it valid. An agreement which fulfills all the above requirements is a valid or enforceable agreements and an enforceable agreement is called a **contract**. But if any of these elements is not there in the agreement, the agreement either void, voidable illegal or enforceable depending upon circumstances.

Classification of contracts

Contracts may be classified in terms of their validity or mode of formation.

1. **Classification on the basis of validity and enforceability**

Valid contract: All the essential elements which are mentioned in section-10 under Indian contract act-1872 must be there in a contract to make it valid.

Voidable contract: an agreement that is enforced by law at the option one or more of the parties to and not at the option of other. When the consent of the parties is not free, it is obtained by coercion, undue influence, fraud and misrepresentation then the contract is voidable.

Void contract: a contract which entered into may be valid initially. It may subsequently become void may be occurred of some event.

For example, a contract to import goods from another country is a valid contract but if war breaks out between two countries then the contract becomes a void contract.

Unenforceable contract: an unenforceable contract is one which cannot be unenforced in the court of law due to some technical defect.

For example, a contract, stamping and registration has not been done where it is necessary.

Void agreement: an agreement that is not enforceable by law is a void agreement. Such agreement does not create any legal rights.

Illegal agreement: an illegal agreement is one which goes against some rules of basic public policy or which is criminal or immoral in nature.

2. **Classification of contracts on the basis of mode of creation**

The contracts may be classified on the basis of their mode of creation into

- Express contracts
- Implied contracts
- Quasi contracts

Express contracts: An express contracts result from the express promise.

Promise is said to be express when it is made in words spoken or written.This means that the offer and acceptance constituting a contract may be oral or written. Thus the express contract is one which is entered into by the two parties by the words or spoken or written.

For example, if A writes a letter to B offering to sell certain goods at a price and B accepts the offer by a letter this is an express contracts.

Implied contracts: A contract is said to be tacit or implied when we infer the contract from the conduct of the parties. Implied contracts arises when one person, without being requested to do so, renders services under circumstances indicating that he expects to be paid for them, and the other person, knowing such circumstances, accepts the benefits of those services.

For example, A enters into a public transport bus

***Quasi contracts**: under certain conditions the law creates and enforces legal rights and obligations where no express or implied contract exists. These obligations are known as **quasi contracts.** A quasi contract rests upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expenses of another. It is not a contract at all because it does not arise by virtue of an agreement. Only the obligations created here resemble the obligations created by the contracts. Only section 68 to 72 of the Indian contract act deals with such cases.

For example, if A trades man leaves goods at B's house by mistake and B treats the goods as his own, he is bound to pay for them.

3. **Classification on the basis of extent of the execution**

The contracts may be classified into executed contracts and executor contracts on the basis of the extent of their performance.

- Executed contracts
- Executory contracts

Executed contracts: an executed contract is one that has been completely performed and nothing remains to be done by either party. A contract may be executed at once.

For example, if A agrees to sell certain goods to B at a certain price and A delivers goods and B pays the price the contracts becomes executed.

Executory contracts: An executory contract is one under the terms of which something remains to be done. It is a contract which is wholly unperformed.

For example, A agrees to sell his car to B for Rs.2,00,000 after one month. B is to pay for the car on delivery. It is an executed contract. If one of the parties has performed his part of the obligation the contracts is still deemed executory although it is executed on one side and executory on the other.

4. **Classification on the basis of the obligation to perform**

The contracts may be classified into

- Unilateral contracts
- Bilateral contracts

***Unilateral contracts**: a unilateral contract is one which there is an obligation to perform the contract only on the part of one party when the contract is concluded. In such contracts only one party is to perform obligation after the formation of the contract, the other having performed him obligation by doing an act.

For example, A pays the bus fare for his journey from Guntur to Bangalore. A has performed his promise. Now it is for the transport company to perform the promise. Or APSRTC bus by running on its route makes an offer for its services for the promise of anyone entering the bus to pay the fare. In both cases there is a unilateral contract.

Bilateral contract: in a bilateral contract there is an obligation on the part of the both the parties to do or refrain from doing something. In such cases promise on one side is exchanged for a promise on the other. In bilateral contract there are two outstanding obligations at the time of entering into the contract. For each promise, one party is the other promise and as such each can hold the other liable for breach of his promise.

For example, A agrees to paint a picture in one month in return for which B promises to pay Rs.1 000. This is a bilateral contract.

BREACH OF CONTRACT

A contract terminates by breach of contract. When one of the parties to the Contract fails or refuses to perform the obligations imposed upon him by the Contract, breach of contract occurs. This breach confers upon the aggrieved party a right of action against the defaulted party. In some cases breach also **discharges** the injured party from performing his obligations under the contract which may be due from him.

Types of breach: breach of contract may be (1) anticipatory breach or (2) actual breach.

1. **Anticipatory breach of contract:** Anticipatory breach of contract when a party repudiates his liability under the contract before the time for performance is due or when a party by his own act disables himself from performing the contract.
2. **Actual breach of contract:** actual breach of contract occurs when during the Performance of the contract or at the time when the performance of the contract due, one party either fails or refuses to perform his obligations under the Contract.

REMEDIES FOR BREACH OF CONTRACT

The remedies available to the aggrieved party in the event of the breach of a Contract are shown in the following:

1. Rescission: When there is a breach of contract by one party, the other party may rescind the contract and need perform his part of obligation. But in case the aggrieved party intends to sue the guilty party for damages he has to file a suit for rescission of the contract. When the court grants rescission, the aggrieved party is freed from his obligation under the contract. Later he is entitled to Compensation for

any damage, which he has sustained.

2. **Suit for damages:** Another remedy left to the aggrieved party is filing a suit for damages. Damages are the monetary compensation allowed to the injured party for the loss Or injury suffered by him as a result of the breach of contract. The object of Providing damages is to put the aggrieved party in the same position, so far as Money can do, in which he would have been, had the contract been performed.

Kinds of damages:

- Ordinary damages:
- Special damages:
- Nominal damages
- Vindictive damages

3. Suit for specific performance: Specific performance means the performance of the contract as per the Terms of the contract the aggrieved party or the injured party can file a suit against the party liable for performance under certain circumstances.

4. Suit for injunction: An injunction is an order of the court directing a person to do or restrain from doing some act, which is the subject matter of the contract and which a Party undertakes to do or not to do. The power of court to grant injunction is Discretionary. It may be granted for temporary or an indefinite period. An Injunction is a means of enforcing a contract. The power of the court to grant Injunction is discretionary. However, the court generally grants injunctions In the following cases.

5. Suit for Quantum meruit: Quantum meruit means as much as is merited. A person can claim payment For the work done or goods supplied, he has a right to be compensated for the Part he has done. The person is entitled to reasonable compensation for the Services rendered by him. The damages are measured by taking into account The value so much has already done.

Intellectual property Rights:

Intellectual property (IP) is a term referring to creation of the intellect (the term used in studies of the human mind) for which a monopoly (from greek word monos means single polein to sell) is assigned to designated owners by law. Some common types of intellectual property rights (IPR), in some foreign countries intellectual property rights is referred to as ***industrial property***, copyright, patent and trademarks, trade secrets all these cover music, literature and other artistic works, discoveries and inventions and words, phrases, symbols and designs. Intellectual Property Rights are themselves a form of property called intangible property.

Although many of the legal principles governing IP and IPR have evolved over centuries, it was not until the 19th century that the term *intellectual property* began to be used and not until the late 20th century that it became commonplace in the majority of the world.

Types of Intellectual Property

The term intellectual property is usually thought of as comprising four separate legal fields:

1. Trademarks
2. Copyrights
3. Patents
4. Trade secrets

1.Trademarks and Service Marks: A trademark or service mark is a word, name, symbol, or device used to indicate the source, quality and ownership of a product or service. A trademark is used in the

marketing is recognizable sign, design or expression which identifies products or service of a particular source from those of others. The trademark owner can be an individual, business organization, or any legal entity. A trademark may be located on a package, a label, a voucher or on the product itself. For the sake of corporate identity trademarks are also being.

In addition to words, trademarks can also consist of slogans, design, or sounds. Trademark provides guarantee of quality and consistency of the product or service they identify. Companies expend a great deal of time, effort and money/ in establishing consumer recognition of and confidence in their marks.

Federal Registration of trademarks:

Interstate use of trademarks is governed by federal law, namely, the United States Trademark Act (also called the Lanham Act), found at 15 U.S.C 1051et seq. In the United States, trademarks are generally protected from their date of first public use. Registration of a mark is not required to secure protection for a mark, although it offers numerous advantages, such as allowing the registrant to bring an action in federal court for infringement of the mark.

Applications for federal registration of trademarks are made with the PTO. Registration is a fairly lengthy process, generally taking anywhere from twelve to twenty-four months or even longer. The filing fee is $335 per mark (Present $225 per class) per class of goods or services covered by the mark.

A trademark registration is valid for 10 years and may be renewed for additional ten year periods thereafter as long as the mark is in used in interstate commerce. To maintain a mark the registrant is required to file an affidavit with the PTO between the fifth and sixth year after registration and every ten years to verify the mark is in continued use. Marks not in use are then available to others.

A properly selected, registered and protected mark can be of great value to a company or individual desiring to establish and expand market share and better way to maintain a strong position in the marketplace.

2Copyrights: Copyright is a form of protection provided by U.S. law (17 U.S.C 101 et seq) to the authors of "original works of authorship" fixed in any tangible medium of expression. The manner and medium of fixation are virtually unlimited. Creative expression may be captured in words, numbers, notes, sounds, pictures, or any other graphic or symbolic media. The subject matter of copyright is extremely broad, including literary, dramatic, musical, artistic, audiovisual, and architectural works. Copyright protection is available to both published and unpublished works.

Copyright protection is available for more than merely serious works of fiction or art. Marketing materials, advertising copy and cartoons are also protectable. Copyright is available for original working protectable by copyright, such as titles, names, short phrases, or lists of ingredients. Similarly, ideas methods and processes are not protectable by copyright, although the expression of those ideas is.

Copyright protection exists automatically from the time a work is created in fixed form. The owner of a copyright has the right to reproduce the work, prepare derivative works based on the original work (such as a sequel to the original), distribute copies of the work, and to perform and display the work. Violations

of such rights are protectable by infringement actions. Nevertheless, some uses of copyrighted works are considered "fair use" and do not constitute infringement, such as use of an insignificant portion of a work for noncommercial purposes or parody of a copyrighted work.

Definition:

General Definition of copyright "Copyright owner", with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

Federal Registration of Copyrights: The works are protected under federal copyright law from the time of their creation in a fixed form. Registration, however, is inexpensive, requiring only a $30 (present $85) filing fee, and the process is expeditious. In most cases, the Copyright Office processes applications within four to five months.

Copyrighted works are automatically protected from the moment of their creation for a term generally enduring for the author's life plus an additional seventy years after the author's death. The policy underlying the long period of copyright protection is that it may take several year for a painting, book, or opera to achieve its true value, and thus, authors should receive a length of protection that will enable the work to appreciate to its greatest extent.

3. Patents: A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. Generally, the term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. U.S. patent grants are effective only within the United States, U.S. territories, and U.S. possessions. Under certain circumstances, patent term extensions or adjustments may be available.
The right conferred by the patent grant is, in the language of the statute and of the grant itself, "the right to exclude others from making, using, offering for sale, or selling" the invention in the United States or sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention. Once a patent is issued, the patentee must enforce the patent without aid of the USPTO.

There are three types of patents:

Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;

Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and

Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

Federal Registration of Copyrights: Patents are governed exclusively by federal law (35 U.S.C 100 et seq). To obtain a patent, an inventor must file an application with the PTO (the same agency that issues trademark registration) that fully describes the invention. Patent prosecution is expensive, time consuming and complex. Costs can run into the thousands of dollars, and it generally takes over two year for the PTO to issue a patent.

Patent protection exists for twenty years from the date of filing of an application for utility and patents and fourteen years from the date of grant for design patents. After this period of time, the invention fall into the public domain and may be used by any person without permission.

The inventor is granted an exclusive but limited period of time within which to exploit the invention. After the patent expires, any member of the public is free to use, manufacture, or sell the invention. Thus, patent law strikes a balance between the need to protect inventors and the need to allow public access to important discoveries.

4Trade Secrets: A trade secret consists of any valuable business information. The business secrets are not to be known by the competitor. There is no limit to the type of information that can be protected as trade secrets; **For Example:** *Recipes, Marketing plans, financial projections, and methods of conducting business can all constitute trade secrets.* There is no requirement that a trade secret be unique or complex; thus, even something as simple and nontechnical as a list of customers can qualify as a trade secret as long as it affords its owner a competitive advantage and is not common knowledge.

If trade secrets were not protectable, companies would no incentive to invest time, money and effort in research and development that ultimately benefits the public. Trade secret law thus promotes the development of new methods and processes for doing business in the marketplace.

Protection of Trade Secrets: Although trademarks, copyrights and patents are all subject to trade secrets and no formalities are required to obtain rights to trade secrets. Trade secrets are protectable under various state statutes and cases and by contractual agreements between parties. **For Example:** *Employers often require employees to sign confidentiality agreements in which employees agree not to disclose proprietary information owned by the employer.*

If properly protected, trade secrets may last forever. On the other hand, if companies fail to take reasonable measures to maintain the secrecy of the information, trade secret protection may be lost. Thus, disclosure of the information should be limited to those with a “need to know” it so as to perform their duties, confidential information should be kept in secure or restricted areas, and employees with access to proprietary information should sign nondisclosure agreements. If such measures are taken, a trade secret can be protected in perpetuity.

Another method by which companies protect valuable information is by requiring employee to sign agreements promising not to compete with the employer after leaving the job. Such covenants are strictly scrutinized by courts, but generally, if they are reasonable in regard to time, scope and subject matter, they are enforceable.

AGENCIES RESPONSIBLE FOR INTELLECTUAL PROPERTY REGISTRATION

United States Patents and Trademark Office:

The agency charged with granting patents and registering trademarks is the United States Patent and Trademark Office (PTO), one of fourteen bureaus within the U.S. Department of Commerce. The PTO, founded more than two hundred years ago, employs nearly 700 (present 1000 employs) are working. At present it is located in 18 building in Arlington, Virginia. Its official mailing address is Commissioner of Patents and Trademarks, Washington, DC 20231.

The PTO is physically located at 2900 Crystal Drive in Arlington, Virginia. Its web site is http://www.uspto.gov and offers a wealth of information, including basic information about trademarks and patents, fee schedules, forms, and the ability to search for trademarks and patents. Since 1991, under the Omnibus Budget Reconciliation Act, the PTO has operated in much the same way as a private business, providing valued products and services to customers in exchange for fees that are used to fully fund PTO operations.

INTERNATIONAL ORGANIZATIONS, AGENCIES AND TREATIES

There are a number of International organizations and agencies that promote the use and protection of intellectual property. Although these organizations are discussed in more detail in the chapters to follow, a brief introduction may be helpful:

International Trademark Association (INTA) is a not-for-profit international association composed chiefly of trademark owners and practitioners. It is a global association. Trademark owners and professionals dedicated in supporting trademarks and related IP in order to protect consumers and to promote fair and effective commerce. More than 4000 (***Present 6500 member***) companies and law firms more than 150 (***Present 190 countries***) countries belong to INTA, together with others interested in promoting trademarks. INTA offers a wide variety of educational seminars and publications, including many worthwhile materials available at no cost on the Internet (see INTA's home page at http://www.inta.org). INTA members have collectively contributes almost US $ 12 trillion to global GDP annually. INTA undertakes advocacy [active support] work throughout the world to advance trademarks and offers educational programs and informational and legal resources of global interest. Its head quarter in New York City, INTA also has offices in Brussels, Shanghai and Washington DC and representative in Geneva and Mumbai. This association was founded in 1878 by 17 merchants and manufacturers who saw a need for an organization. The INTA is formed to protect and promote the rights of trademark owners, to secure useful legislation (the process of making laws), and to give aid and encouragement to all efforts for the advancement and observance of trademark rights.

World Intellectual Property Organization (WIPO) was founded in 1883 and is specialized agency of the United Nations whose purposes are to promote intellectual property throughout the world and to administer 23 treaties (Present 26 treaties) dealing with intellectual property. WIPO is one of the 17 specialized agencies of the United Nations. It was created in 1967, to encourage creative activity, to promote the protection of Intellectual Property throughout the world. More than 175 (***Present 188***) nations are members of WIPO. Its headquarters in Geneva, Switzerland, current Director General of

WIPO is ***Francis Gurry*** took charge on October 1, 2008. The predecessor to WIPO was the BIRPI [Bureaux for the Protection of Intellectual Property] it was established in 1893. WIPO was formally created by the convention (meeting) establishing the world intellectual Property organization which entered into force on April 26 1970.

Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) An International copyright treaty called the convention for the protection of Literary and Artistic works signed at Berne, Switzerland in 1886 under the leadership of ***Victor Hugo*** to protect literary and artistic works. It has more than 145 member nations. The United States became a party to the Berne Convention in 1989. The Berne Convention is administered by WIPO and is based on the precept that each member nation must treat nation must treat nationals of other member countries like its own nationals for purposes of copyright (the principle of "nation treatment"). In addition to establishing a system of equal treatment that internationalized copyright amongst signatories, the agreement also required member states to provide strong minimum standards for copyrights law. It was influenced by the French "right of the author".

Madrid Protocol It is a legal basis is the multilateral treaties Madrid (it is a city situated in Spain) Agreement concerning the International Registration of Marks of 1891, as well as the protocol relating to the Madrid Agreement 1989. The Madrid system provides a centrally administered system of obtaining a bundle of trademark registration in separate jurisdiction. The protocol is a filing treaties and not substantive harmonization treaty. It provides a cost-effective and efficient way for trademark holder. It came into existence in 1996. It allows trademark protection for more than sixty countries, including all 25 countries of the European Union.

Paris Convention The Paris convention for the protection of Industrial Property, signed in Paris, France, on 20th March 1883, was one of the first Intellectual Property treaties, after a diplomatic conference in Paris, France, on 20 March 1883 by Eleven (11) countries. According to Articles 2 and 3 of this treaty, juristic (one who has through knowledge and experience of law) and natural persons who are either national of or domiciled in a state party to the convention. The convention is currently still force. The substantive provisions of the convention fall into ***three main categories***: National Treatment, Priority right and Common Rules.

An applicant for a trademark has six months after filing an application in any of the more than 160 member nations to file a corresponding application in any of the other member countries of the Paris Convention and obtain the benefits of the first filing date. Similar priority is afforded for utility patent applications, although the priority period is one year rather than six months. The Paris Convention is administered by WIPO.

North American Free Trade Agreement (NAFTA) came into effect on January 1, 1994, and is adhered to by the United States, Canada, and Mexico. The NAFTA resulted in some changes to U.S. trademark law, primarily with regard to marks that include geographical terms. The NAFTA was built on the success of the Canada-U.S Free Trade Agreement and provided a compliment to Canada's efforts through the WTO agreements by making deeper commitments in some key areas. This agreement has brought economic growth and rising standards of living for people in all three countries.

General Agreement on Tariffs and Trade (GATT) was concluded in 1994 and is adhered to

by most of the major industrialized nations in the world. The most significant changes to U.S intellectual been abandoned and that the duration of utility patent is now twenty years from the filing date of the application (rather than seventeen years from the date the patent issued, as was previously the case).

THE INCREASING IMPORTANCE OF INTELLECTAL PROPERTY RIGHTS

❖ Protecting Intellectual Property Rights
❖ Technology has led to increase awareness about the IP
❖ Some individuals and companies offer only knowledge. Thus, computer consultant, advertising agencies, Internet companies, and software implementers sell only brainpower.
❖ Domain names and moving images are also be protected
❖ More than fifty percent of U.S. exports now depend on some form of intellectual property protection.
❖ The rapidity with which information can be communicated through the Internet has led to increasing challenges in the field of intellectual property.
❖ The most valuable assets a company owns are its Intellectual property assets
❖ Companies must act aggressively to protect these valuable assets from infringement (breaching, violation of law) or misuse by others
❖ The field of intellectual property law aims to protect the value of such investments.

Negotiable Instrument Act 1881

Negotiable Instrument Act 1881:

- Applicable to the entire India including J&K.
- NI Act came into effect on 1st March, 1882
- Total 17 chapters having 147 sections
- Last amended in December 2012 (added section 143 to 147).

Promissory note (Section 4): 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.

Bill of exchange (Section 5): 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): Cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and includes the electronic image of a truncated cheque and a cheque in the electronic form.

Drawer and Drawee (Section 7):

Drawer – Maker of bill of exchange or cheque.
Drawee – Who is directed to pay.
Drawee in case of need – If specified in Bill (or endorsement), a drawee to be resorted in case of need.

Holder (Section 8): Holder of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive the amount due thereon from the parties thereto. If a promissory note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

Holder in due course (Section 9): Any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

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

Negotiable Instruments (Section 13) :A promissory note, bill of exchange or cheque payable either to order or to bearer.

Transfer of a Negotiable Instrument : By assignment or by negotiation. A bearer NI is transferred by mere delivery.

Endorsement (Section 15) : Signing of an instrument on back, face or slip annexed to it for the purpose of negotiation.

Payable to Order or Bearer: A Negotiable Instrument is payable to order if specified so or payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable. A Negotiable Instrument is payable to bearer if specified or last endorsement is an endorsement in blank. A negotiable instrument may be made payable to two or more payees jointly, payable by one of the two, or one or -some of several payees.

Negotiation (Section 14) : When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Amount in figures and words differs (Section 18) : Amount stated in words shall be the amount undertaken or ordered to be paid.

Cheque Crossed Generally (Section 123): A cheque bears across its face an addition of the words ‘and company ‘or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words, not negotiable.

General crossing is done to direct the bank to make payment of cheque through a bank only.

Cheque crossed specially (Section 124): Cheque bears across its face an addition of the name of a banker, either with or without the words not negotiable.
A special crossed cheque can be paid to the named bank or his authorized agent for collection.

Different Branches of a bank are considered as same (as it is crossed to bank not branch)

Cheque bearing Not Negotiable (Section 130): A person taking a cheque crossed generally or specially, bearing in either case the words not negotiable, shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Dishonour of cheque for insufficiency of funds (Section 138): As per Section 138 of Negotiable Instruments Act 1881, Cheque drawn for payment for discharge of any debt or other liability, is returned by the bank unpaid due to insufficient funds or exceeding the arrangement (in case of CC/OD account), such person is deemed to have committed an offence.

Consequences of dishonour of cheque or Punishment for dis honor of cheque

Imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both.

Conditions for punishment under Section 138

- The cheque has been presented within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.
- The payee or the holder in due course. of the cheque as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the Drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said.

Cognizance of offences (Section 142)

No court can take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

Complaint for dishonor of cheque: Complaint for dishonor of cheques is required to be made in the court of a metropolitan magistrate or a judicial magistrate of first class within one month of the date of cause of action i.e., one month from lapse of 15 days of giving notice for demand of amount of cheque.

Offences by companies (Section 141): If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

A person shall not be liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager,

secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Difference between promissory note and bill of exchange

Promissory note and bill of exchange are defined under Negotiable Instrument Act 1881 as under:

Promissory note (Section 4): 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.
Bill of exchange (Section 5): 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.

Following are difference between promissory note and bill of exchange:

Promissory note – Only two parties, maker and the payee.
Bill of exchange – Three parties, drawer, drawee and payee. Drawer is the maker who orders the drawee to pay the bill to a certain person (called payee) or to his order. Drawer and payee may be same person.
Promissory note – Liability of maker is primary and absolute
Bill of exchange – Liability of the drawer is secondary and conditional (if drawee fails to make payment).
Promissory note – unconditional **promise** by the maker to pay to the payee or his order;
Bill of exchange – unconditional **order to the drawee** to pay as per directions of drawer.
Promissory note – cannot be drawn payable to bearer
Bill of Exchange – can be so drawn payable to bearer.
Promissory note – Acceptance by the maker is not required for presenting for payment.
Bill of exchange – if payable after sight – prior acceptance of drawee or of someone on his behalf is required for presenting for payment.
Promissory note – Notice of dishonour is not required, in case of dishonour.
Bill of exchange – Notice of dishonour is required to be given to drawer and the immediate endorsers.
Given above are the point of main difference between promissory note and bill of exchange