KUMAR LAW CLASSES
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(Specialised in CA, CS, CWA Coaching – Foundation/Executive)
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ELEMENTS OF BUSINESS LAWS (PART –A)

Difference Between -

Agreement	**Contract**
Offer and its acceptance constitute an agreement.	Agreement and its enforceability constitute a contract.
An agreement may not create a legal obligation.	A contract necessarily creates a legal obligation.
Every agreement may not be a contract.	All contracts are agreements.
Agreement is not a concluded or a binding contract.	Contract is concluded and binding on the concerned parties.
Void Agreement	**Voidable Contract**
It is void from the very beginning.	It remains valid till it is repudiated by the aggrieved party.
A contract is void if any essential element of a valid contract (other than free consent) is missing.	A contract is voidable if the consent of a party is not free.
It cannot be enforced by any party.	If the aggrieved party so decides, the contract may continue to be valid and enforceable.
Third party does not acquire any rights.	An innocent party in good faith and for consideration acquires good title before the contract is avoided.
Lapse of time will not make it a valid contract, it always remains void.	If it is not avoided within reasonable time, it may become valid.
Question of damages does not arise.	The aggrieved party can also claim damages.
Void Agreement	**Illegal Agreement**
All void agreements are not necessarily illegal.	All illegal agreements are void.
Collateral transactions to a void agreements are not affected. i.e. they do not become void.	Collateral transactions to an illegal agreements are also affected i.e. they also become void.
If a contract becomes void subsequently, the benefit received has to be restored to the other party.	The money advanced or thing given cannot be claimed back.
Coercion	**Undue Influence**
Relationship between the parties is not necessary.	Some sort of relationship must exist between parties.
Consent is given under the threat of an offence.	Consent is obtained by dominating the will, no offence is committed.
It involves physical force or threat.	It involves moral pressure.
It may move from even a stranger and may be against the promisor himself or a person in whose welfare the promisor is interested.	It is employed by the party to the contract.
When the contract is avoided, any benefit received has to be restored or refunded.	When the contract is avoided, it is at the discretion of the court to direct the aggrieved party to restore or refund the benefit received.

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Fraud	Misrepresentation
Wrong statement is made intentionally.	Wrong statement is made innocently.
The person making the wrong statement does not believe it to be true.	The person making the wrong statement believes it to be true.
There is an intention to deceive.	ere is no intention to deceive.
Besides rescinding the contract, the aggrieved party can also claim damages.	The aggrieved party can rescind the contract but cannot claim damages.
Except where the silence amounts to fraud, the contract is voidable even if the party defrauded had the means of discovering the truth with ordinary diligence.	The aggrieved party cannot avoid the contract if he had the means of discovering the truth with ordinary diligence.
Indemnity	**Guarantee**
In a contract of indemnity there are only two parties: the indemnifier and the indemnified.	In a contract of guarantee, there are three parties; the surety, the principal debtor and the creditor.
In a contract of indemnity, the liability of the indemnifier is primary.	In a contract of guarantee, the liability of the surety is secondary.
The indemnifier need not necessarily act at the request of the debtor.	The surety gives guarantee only at the request of the principal debtor.
In the case of indemnity, the possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.	In the case of a guarantee, there is an existing debt or duty, the performance of which is guaranteed by the surety.
Indemnifier cannot sue third-parties in his own name, unless there be assignment.	The surety, on payment of the debt when the principal debtor has failed to pay is entitled to proceed against the principal debtor in his own right
Bailment	**Pledge**
A 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. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee". Ex. Mr. A deliver some gold to a jeweller Mr. B to make Ornaments. In this case Mr. A are bailor and Mr. B is bailee and by delivering gold to Mr. B, a relationship of bailment is created between Mr. A and Mr. B.	Pledge or Pawn is a special kind of baillment where a movable goods is bailed as security for the repayment of a debt or for the performance of a promise. Ex. Mr. A borrow Rs. 100 from Mr. B and kept his book with him as security for repayment, it is a contract of pledge. Mr. A taking the loan is called the pledger or pawnor and Mr. B with whom books are pledged is called the pawnee.

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A bailment is for a purpose of ally kind.	A pledge or pawn is bailment of goods for a specific purpose i.e., repayment of a debt or performance of a duty.
In bailment the bailee use the goads bailed if the terms of bailment so provide.	The pawnee cannot use the goods pledged.
Bailee may either retain the goods or sue bailor for his dues.	The pawnee has a right to sell the goods, pledged with him after giving notice to Pledger or Pawnor, in case of default by the Pawnor to repay the debt
Particular Lien	**General Lien**
A particular lien is one which is available only against that property of which the skill and labour have been exercised. A bailee's lien is a particular lien.	A general lien signifies the bailee's right to retain, the goods bailed as well as any other property of the bailor, until the claims' of bailee are satisfied.
A particular lien is a right to retain only for a charge on account of labour employed or expenses bestowed upon the identical property detained.	A general lien is the right to retain the property of another for a general balance of accounts
Sale	**Agreement to Sale**
In a sale, the property in the goods sold passes to the buyer at the time of contract so that buyer becomes the owner of the goods.	In an agreement to sell, the ownership does not pass to the buyer at the time of the contract, but it passes only when it becomes sale on the expiry of certain time or the fulfillment of some conditions subject to which the property in the goods is to be transferred.
A sale is an executed contract	An agreement to sell is an executory contract
A sale is contract plus conveyance.	An agreement to sell is a contract pure and simple.
In a sale, the loss falls on the buyer, even though the goods are with the seller.	If there is an agreement to sell and the goods are destroyed by accident, the loss falls on the seller.
In case of sale, If the seller becomes insolvent while the goods are still in his possession, the buyer shall have a right to claim the goods from the official Receiver or Assignee because the ownership of goods has passed to the buyer.	In case of an agreement to sell, the buyer cannot claim the goods even when he has paid the price. Buyer's only remedy in this case is to claim rateable dividend for the money paid from the estate of the insolvent seller.
Sale	**Bailment**
In a sale, the property in the goods sold passes to the buyer at the time of contract so that he becomes the owner of the goods.	A 'bailment' is a transaction under which goods are delivered by one person (the bailor) to another (the bailee) for some purpose, upon a contract that they be returned or disposed of as directed after the purpose is accomplished.

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In a sale, the property in the goods sold passes to the buyer at the time of contract.	The property in the goods is not intended to and does not pass on delivery though it may sometimes be the intention of the parties that it should pass in due course.
Sale	**Contract for Work and Labour**
If as a result of the contract, property in an article is transferred to one who had no property therein previously for a money consideration, it is a sale.	Where it is otherwise it is a contract for work and labour.
Sale	**Hire Purchase agreement**
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.	A hire purchase agreement is an agreement under which the owner delivers his goods on hire basis to a person called 'hirer' and the hirer has the option to buy the goods by paying the agreed amount in specified installments.
In case of sale, property in goods passes as soon as the contract is made, though price may not yet have been paid.	In a hire purchase agreement, hirer is only entitled to possession of the goods and the title of goods passes only after the payment of last installment.
Buyer can further pass the title to another person, as he is possessing the title.	Hirer cannot pass any title even to an innocent and bona fide purchaser, as he is not possessing the title.
Conditions	**Warranty**
A condition is a stipulation (in a contract), which is essential to the main purpose of the contract.	A warranty is a stipulation which is only collateral to the main purpose of the contract.
A breach of condition gives the aggrieved party a right to sue for damages as well as the right to terminate the contract.	A breach of warranty gives only the right to claim damages.The contract cannot be terminated.
In the event of the breach of a condition, the aggrieved party may choose to treat the breach of condition as a breach of warranty. A buyer may for instance, like to retain the goods and claim only damages.	A breach of warranty cannot be treated as a breach of condition.
Lien	**Stoppage-in-Transit**
The goods must be in actual possession of the seller.	The goods must be in possession of an independent carrier or bailee. The goods are neither in the possession of the seller nor in the possession of the buyer.
This right can be exercised even when the buyer is solvent but refuses to pay the price.	This right can be exercised only when the buyer becomes insolvent.

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This right comes to an end when the seller parts with the goods.	This right commences only when the seller delivers the goods to a carrier.
This is a right to retain possession over the goods.	This is a right to regain possession of the goods.
This right can be exercised by the seller himself.	This right can be exercised by the seller through the carrier or the bailee in whose possession the goods are.
Bills of Exchange	**Promissory Note**
It is an unconditional order to pay.	It is an unconditional promise to pay.
It is made by the creditor.	It is made by the debtor.
Acceptance by the debtor is necessary.	No acceptance is required.
There are three parties to a bill of exchange i.e. Drawer, Drawee and payee.	There are only two parties to a promissory note i.e. Maker and Payee.
When the bill is dishonored, it is better to get it noted by the notary public.	Noting is not necessary.
Bills of Exchange	**Cheque**
Bill of Exchange may be drawn on any one, including banker.	A cheque is a bill of exchange and always drawn on a banker
A bill of exchange may be drawn payable on demand, or on the expiry of a specified period after sight or date.	A cheque can only be drawn payable on demand
A bill of exchange payable after sight must be accepted before payment can be demanded.	A cheque does not require acceptance and is intended for immediate payment.
The drawer of a bill is discharged, if it is not presented for payment.	The drawer of a cheque is discharged only if he suffers any damage by delay in presentment for payment.
Notice of the dishonour of a bill is necessary.	Notice of the dishonour of cheque is not necessary.
Negotiability	**Assignability**
Negotiation requires mere delivery of a bearer instrument and endorsement and delivery of an order instrument to effectuate a transfer.	Assignment requires a written document signed by the transferor.
No notice is necessary in a transfer by negotiation.	Notice of transfer of debt (actionable claim) must be given by the assignee to the debtor in order to complete his title
In case of negotiation the transferee, as holder-in-due course, takes the instrument free from any defects in the title of the transferor.	On assignment, the transferee of an actionable claim takes it subject to all the defects in the title of, and subject to all the equities and defences available against the assignor, even though he took the assignment for value and in good faith.

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Holder	Holder in Due Course
A person is a holder of a negotiable instrument who is entitled in his own name (i) to the possession of the instrument, and (ii) to recover or receive its amount from the parties thereto.	A holder in due course is (i) a person who for consideration, obtains possession of a negotiable instrument if payable to bearer, or (ii) the payee or endorsee thereof, if payable to order, before its maturity and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.
Hindu Joint Family Firm	**Partnership Firm**
A Hindu Joint Family firm arises as a result of status, i.e., by birth in the family.	A Partnership comes into existence by means of a contract between the partners.
The death of a co-parcener does not dissolve the family firm.	The death of a partner dissolves the partnership.
In a joint family firm only the Karta or manager (who is the head of the family) has implied authority to borrow and bind other members.	In a partnership each partner is entitled to borrow and bind other members
In a joint family business only the Karta is personally liable for the debts of the firm.	Every partner is personally liable for the debts of the firm.
No registration of a family firm is necessary.	A partnership firm must be registered before it can maintain suits against outsiders.
Company	**Partnership Firm**
A company is a distinct legal person.	A partnership firm is not distinct from the several persons who compose it.
Property of the Company belongs to the company and not to the individuals comprising it.	Property of the Partnership firm is the property of the individuals comprising it.
The creditors of a company can proceed only against the company and not against its members.	The creditors of a partnership firm are creditors of individual partners and a decree against the firm can be executed against the partners jointly and severally.
Members of a company are not its agents.	Partners are the agents of the firm.
A member of a company can contract with his Company.	A partner cannot contract with his firm.
Co-ownership	**Partnership**
Co-ownership may have two or any number more than two.	Partnership is between two persons but not more than 20 (10 in the case of banks)

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Co-ownership is not always the result of an agreement: it may arise by the operation of law or from status, e.g., co-heirs of a property.	Partnership must arise from an agreement.
A co-owner is not the agent of the other co-owner(s).	A partner is the agent of the other partners, but a co-owner is not the agent of the other co-owner(s).
A co- owner can without the consent of the others transfer his rights and interests to strangers	A partner cannot do so without the consent of all the other partners so as to make the transferee a partner in the firm.
Co-ownerships end at death.	Partnerships end at death or insolvency.
Dissolution of Partnership	**Dissolution of the Firm**
Dissolution of partnership simply means a change in the relation of the partners i.e. when a new partner is admitted or when an existing partner retires, dies, becomes insolvent or is expelled.	Dissolution of a firm means the dissolution of partnership between all the partners of a firm.
The dissolution of partnership may or may not involve the dissolution of a firm.	It occurs when there is complete breakdown of relationship between all the partners.
A firm, after a change in relation of the partners, may decide to continue as a reconstituted firm. But, when a firm is dissolved, it necessarily involves the dissolution of partnership.	In such a situation, the business of the firm is completely stopped, its assets are realised, the liabilities paid off and the surplus distributed among the partners according to their share in the property of the firm. Thus, the partnership is completely discontinued.
Company	**Hindu Joint Family Business**
A company consists of heterogeneous (varied or diverse) members.	HUF consists of homogenous (unvarying) members since it consists of members of the joint family itself.
Company is an artificial person and is formed and registered by complying with the prescribed formalities prescribed under the Companies Act.	HUF is created by the operation of law.
A person becomes member of a company by acquiring share and whose name is entered in the Register of Members.	A person becomes a member of Joint Hindu Family business by virtue of birth.
Registration of a company is compulsory.	No registration is compulsory for carrying on business for gain by a Hindu Joint Family even if the number of members exceeds twenty.
Company	**Club**
A company is a trading association.	A club is a non-trading association.
Registration of a company is compulsory.	Registration of a club is not compulsory.

Company	**Corporation**
A company is formed and registered by complying with the prescribed formalities prescribed under the Companies Act.	A corporation is formed under any law for the time being in force.
A company includes a corporation sole, co-operative society.	A corporation includes a company but does not include corporation sole, co-operative society.
Company is narrow term than Corporation.	Corporation is broader term than Company.
Liability of members are limited.	Liability of members are unlimited.
Corpus is known as share capital.	Corpus is known as capital.
Private Company	**Public Company**
In case of Private Company, Minimum 2 members and Maximum 50 members.	In case of Public Company, Minimum 7 members and no Maximum limit of members.
The name of a Private company must end with the word ‘Private Limited’.	The name of a Public company must end with the word ‘Limited’.
In a Private company, the right to transfer the shares is restricted by the articles of association.	The shares of a Public Company is freely transferable.
A private company can commence its business soon after obtaining the certificate of incorporation.	A Public company can commence business only after obtaining the certificate of incorporation as well as the certificate of commencement of business.
A Private Company must have at least 2 Directors.	A Public Company must have at least 3 Directors.
Company Limited by Shares	**Company Limited by Guarantee**
A company in which the liability of its members is determined on the basis of the amount, if any, remaining unpaid on the share IS held by them is termed as a company limited by shares'.	A company having the liability of its members limited by its memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up is termed as a 'company limited by guarantee'.
The liability of the members is limited to the extent of nominal value of shares held by them.	The liability of the members is to pay the amount guaranteed by him only if the company is wound up while he is a member or within one year after he ceases to be a member.
The liability can be enforced against the members of the company during the existence of the company or during the winding up of the company.	The liability can be enforced against the members of the company during the winding up of the company. The members cannot be asked to pay the guaranteed amount during the life time of the company.
Holding Company	**Subsidiary Company**
Defined under Section 2(19) of the Companies act.	Defined under Section 2(47) of the Companies act.

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Holding Company means a holding Company within the meaning of Section 4 of the Companies act.	A Company shall be deemed to be a subsidiary Company of another if, that other company holds more than half of the nominal value of its equity share capital or controls the composition of its Board or it is a subsidiary company of any company which is subsidiary company of the other company.
Memorandum of Association	**Articles of Association**
MOA is the charter of the company and defines the scope of its activities.	AOA of the company is a document which regulates the internal management of the company.
MOA cannot be altered except in the manner and to the extent provided by the act.	AOA being only the byelaws of the company can be altered by a special resolution.
MOA is a supreme document of the company.	AOA are subordinate to the memorandum. It cannot alter or control the memorandum.
Every company must have its own memorandum.	A company limited by shares need not register its AOA. In such a case table A applies.
A company cannot depart from the provisions contained in its memorandum, and if it does, it would be ultra-vires the company.	Anything done against the provisions of articles, but which is intra-vires the memorandum, can be ratified.
Managing Director	**Manager**
Managing Director is defined under Section 2(26) of the Companies act, 1956.	Manager is defined under Section 2(24) of the Companies act, 1956.
A Managing Director means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its board of directors or by virtue of its memorandum or articles of association is entrusted with substantial powers of management which would not otherwise be exercisable by him and includes a director occupying the position of a managing director, by whatever name called.	A Manager means an individual who subject to the superintendence, control and direction of the Board of Directors has the management of the whole or substantially the whole of the affairs of a company and includes a director or any other person occupying the position of a manager by whatever name called and whether under a contract of service or not.
Only a Director can be appointed as Managing Director.	Manager may or may not be a Director.
There may be two or more Managing Directors in a Company.	There shall be only one Manager in a Company.
A 'Managing Director' is entrusted with substantial powers of management which would not otherwise be exercisable by him.	A 'Manager' by virtue of his office has the management of the whole or substantially the whole of the affairs of a company.
Shareholder	**Member**
A shareholder is a person who buys and holds shares in a company having a share capital. They become a member once their name is entered on the register of members. Many companies limited by guarantee do not have a share capital, and consequently, their members are not shareholders.	A member is one of the Company's owners whose name has been entered on the register of members of that Company. The subscribers of the memorandum of association of a company are the deemed members of the company and on the registration of the same, their names are required to be entered register of members.

Annual General Meeting (AGM)	Extra – Ordinary General Meeting (EGM)
Annual General Meeting is required to be held by every company every year. Every company must, in each calendar year hold an annual general meeting, provided that not more than 15 months shall elapse between two annual general meetings. However, a company may hold its first annual general meeting within 18 months from the date of its incorporation.	All the general meetings of a company, with the exception of the statutory meeting and the annual general meetings, are called extraordinary general meetings.
Whole Time Secretary	**Secretary in Whole Time Practice**
Section 383A(1) of the Companies act, 1956 provides that every company having paid up capital of not less than 5 crores shall have a Whole Time Company Secretary. The whole time Secretary shall be appointed as a whole time employee of the Company.	Section 2(45A) of the companies act, 1956 provides that a Secretary who shall be deemed to be in practice within the meaning of section 2(2) of the act and who is not in full time employment. He is a member of the Institute of Company Secretaries of India and has a certificate of Practice issued by the ICSI.
The whole time secretary has statutory and general duties prescribed in the Companies act. He also acts as Principal officer under various acts. He also acts as officer in default as per Section 5 of the Companies act.	Unlike, the whole time secretary, he does not have any statutory or Administrative duty. His area of practice have been specified and he must comply with the same.