

# TeachMe Academy

## CA – Foundation Law Marathon Batch

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CMA, CS Rohan Nimbalkar

# CA – Foundation Business Laws

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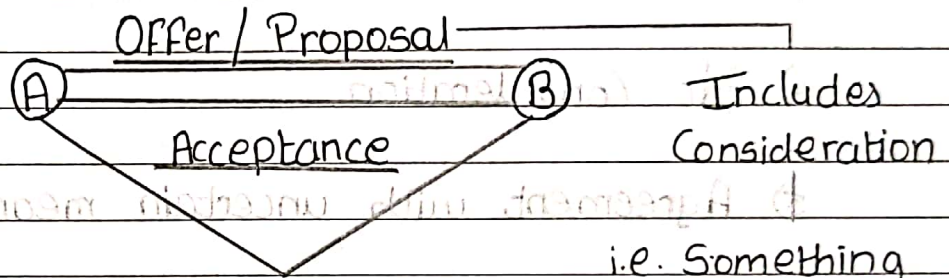
MERCHANTILE LAW

Business

Contract Act

Sales of Goods Act

Partnership Firm



May be oral — Agreement or written

Enforceable by law

has value in eyes of law

(supported by law)

Contract

Voluntary activity is not treated as consideration.

• Offer / Proposal:

An expression of willingness with intention to receive acceptance on it.

- All contracts are agreements but all agreements are not contracts.



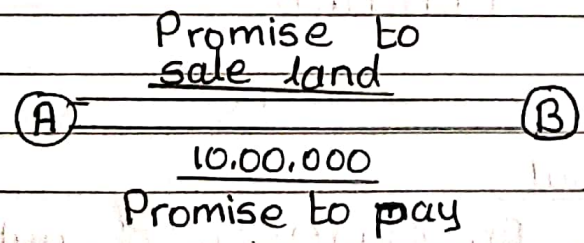
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## Example :

- 1) Agreement with incapable person.  
e.g. minor, unsound mind, insolvent person, person connected to imprisonment, Alien enemy.
- 2) Impossible Agreements (Initially impossible)
- 3) Agreements which are specifically declared as void.
- 4) No Consideration.
- 5) Agreement with uncertain meaning
- 6) Illegal Agreement.

## AGREEMENT :

Promise or set of promises forming consideration for each other.



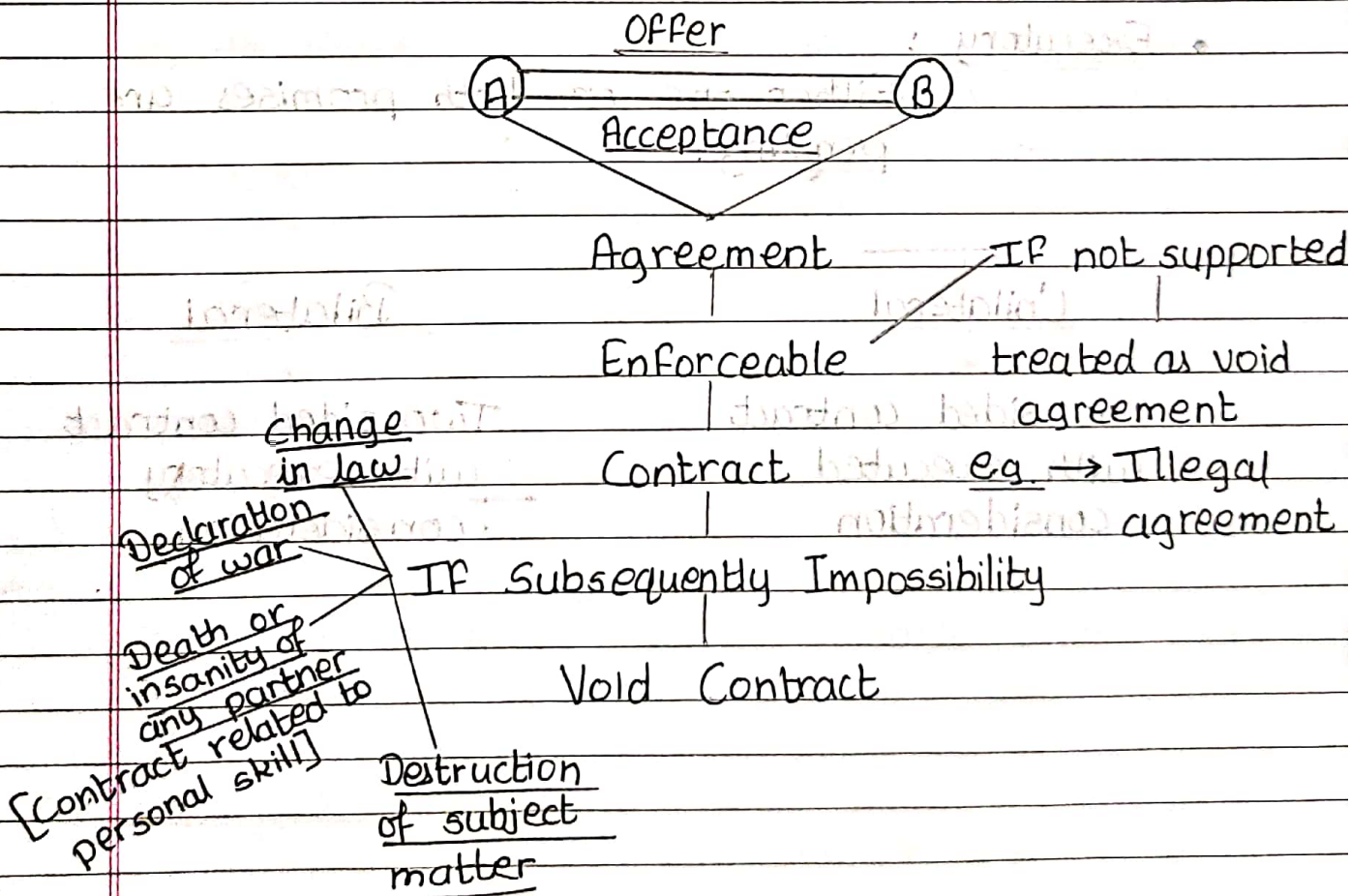
A's promise is consideration B's promise and B's promise is consideration for A's promise.

- Offer once accepted becomes promise.
- Offer must be given with intention to receive acceptance on it. (create legal relationship)

• VALID CONTRACT: Agreement which is enforceable by law.

• VOID CONTRACT: Agreement which is not enforceable by law.

• VOID AGREEMENT:





• RECIPROCAL PROMISE : Promises flowing from both sides.

- Unilateral : Single
- Bilateral : Two / Both
- Executed : Activity already performed.
- Executory : Promises / Performance pending

• Executed : All promises are completely performed.

• Executory : Either one or both promises are pending.

Unilateral



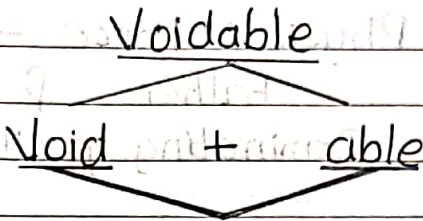
One sided contract with executed consideration

Bilateral



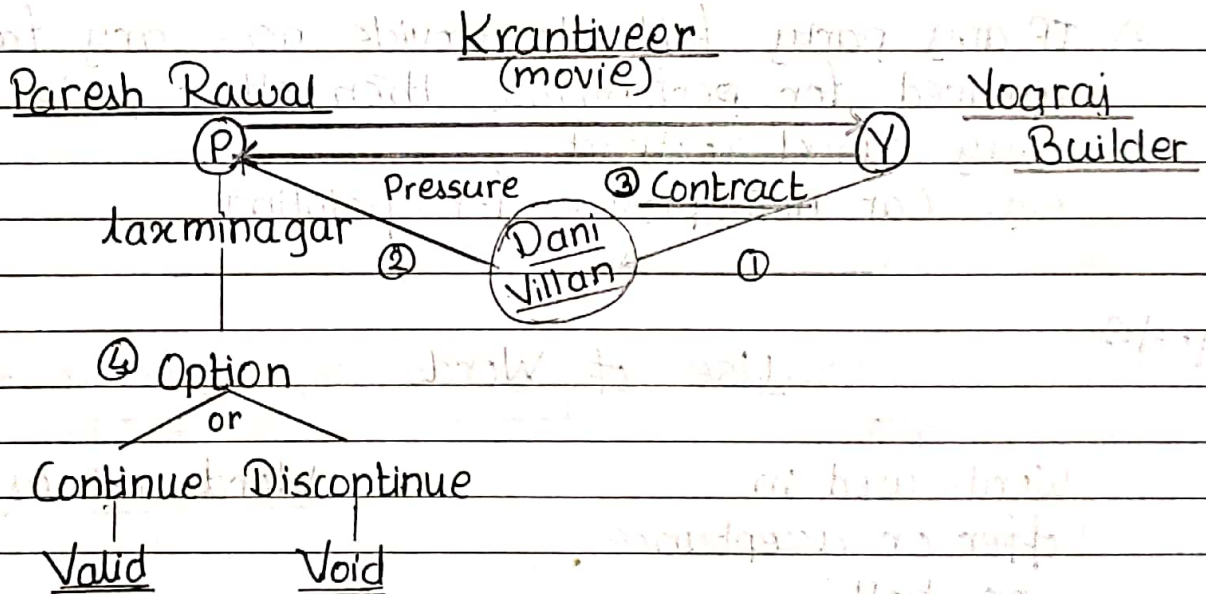
Two sided contract with executory consideration.

• VOIDABLE CONTRACT:



- Contract which can be made void.
- Agreement which is enforceable at the option of one or more parties ~~and~~ but not at the option of others.

Example:



Generally contract becomes voidable under following situations:

- 1) No free Consent of Party:  
without any burden/force.



Following factors / elements affects free consent

where crime is involved ←

a) Coereion : Physical Force - (Krantiveer)

b) Undue Influence : Father & Son Dominating position.

c) Fraud

d) Misrepresentation

e) Mistake

2) IF contract is <sup>not</sup> completed within time then agrieved (affected) party may cancel contract.  
e.g. Car painting doesn't completed in time.

3) IF any party fails to provide necessary facility required for performance then other party may cancel contract.  
e.g. Car not provide for painting.

28/06/19

Use of Words (for making contracts)

Words used in offer or acceptance or both

Words not used

Expressed Contract

(PMT → Swagat)

By Behaviour

Tacit Contract

e.g. (chai, chai, chai)  
Train

(ATM, Bus, PMT)

By force of law

Implied / Quasi contract

e.g. (founder of Inst goods) [Real estate]  
[fact] → watchman → [fact]

- All illegal agreements are void but all void agreements are not illegal.

### VOID AGREEMENTS

To Commit Crime	Uncertain meaning	Without Consideration	Agreement with minor
<u>Illegal</u>	<u>Only Void</u>	<u>Only Void</u>	<u>Only Void</u>

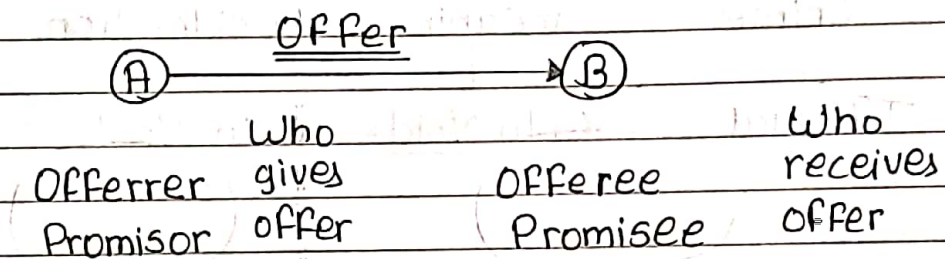
<p><u>Only Void</u></p> <ul style="list-style-type: none"> <li>- No punishment to party e.g. Agreement with minor</li> <li>- Collateral contracts are void valid.</li> </ul>	<p><u>Illegal + Void</u></p> <ul style="list-style-type: none"> <li>- Punishment e.g. Agreement to commit murder</li> <li>- Collateral Agreements are also Illegal + Void.</li> </ul>
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- Collateral: Contracts / Agreements are made only when there is same objective of both the parties. / Two contracts are made with same objective.



- OFFER : (Proposal) (Section 2a)  
Expression of final willingness with intention to receive acceptance on it.

- Offer may be positive or Negative  
(To do something) (Abstain From doing)



- Offer must be capable of creating legal relationship  
(IF there is no consideration there is no legal relationship)

- Offer may be unconditional.

- Condition should not force any party to enter into contract or to accept it.

In other words it should not contain term (condition) non compliance of which may lead to acceptance.

- Offer must be communicated.  
(Oral or writing or behaviour)

- Offer must be certain and not vague.  
Example: Person ordered 150 litre oil.

3/7/19 - Offer must be distinguished from invitation to offer.

OFFER	INVITATION To OFFER
- There is final willingness	- There is no final willingness.
- Generally offer is given after invitation to offer	- First Stage
	- Examples: Menu cards, Catalogue, Brochures, Banners, Goods in showroom / shop.

4/10/19 • TYPES OF OFFER.

1) General offer / Public offer:

Offer given to public and which can be accepted by any person from public.

(IE includes group of person)  
e.g. Offer available for all CA students



2) Specific / Special Offer:

Offer given to specific / identified person.

3) Counter Offer:

Counter offer is given in response to previous offer which has effect of cancellation of previous offer. (Offer committed from opposite party).

Example: (Bargaining / Negotiation)

- Conditional / Qualified acceptance is also treated as counter offer.

4) Cross Offer:

Both parties exchange same offer in ignorance.

- Offer of other person can not be treated as acceptance, therefore acceptance shall be given by one of the party to complete the agreement of contract.

5) Open / Standing / Continuing Offer:

When offer is available for specific period then it is treated as opening / standing / continuing offer.

## • ACCEPTANCE :

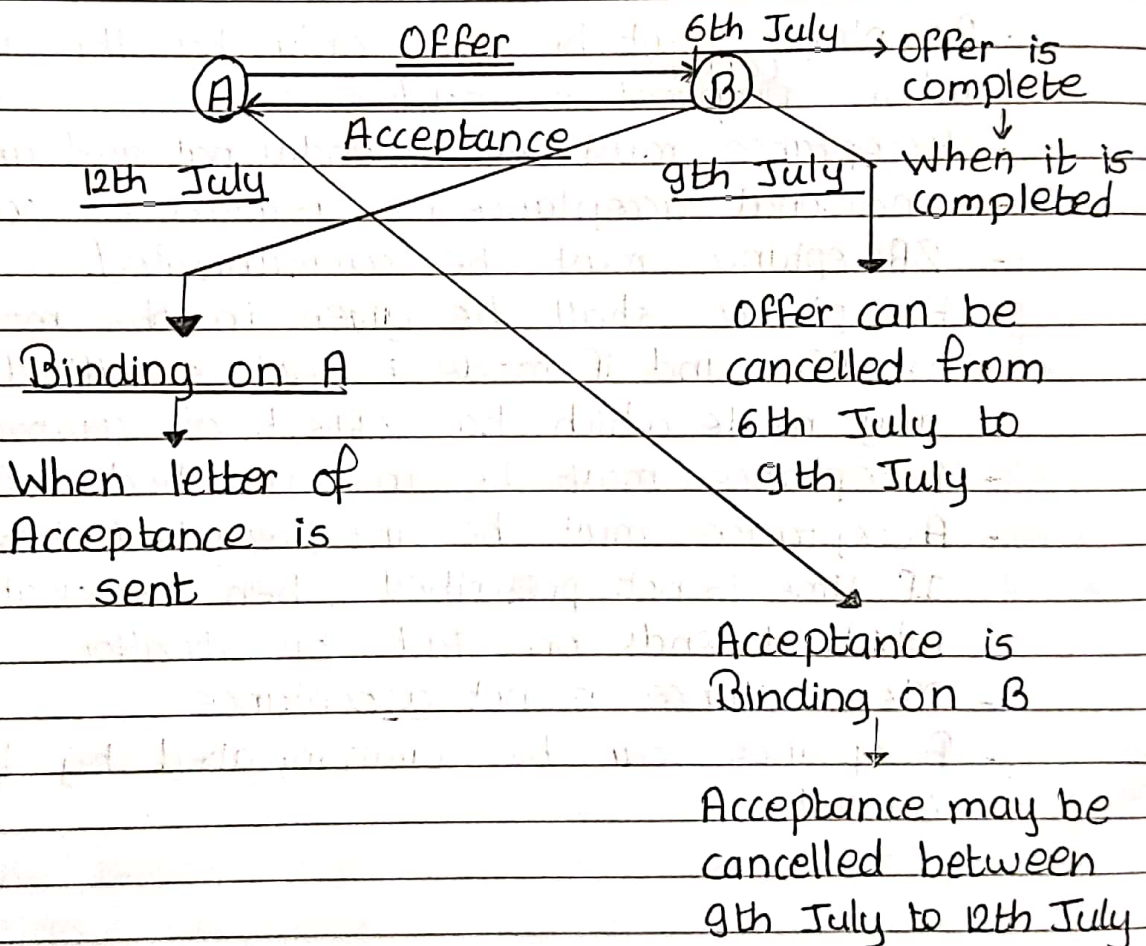
Giving consent (saying yes) to offer

- when the person to whom the proposal is made signifies assent there to, the proposal is said to be accepted and proposal when accepted becomes promise.
- Acceptance must be given only by the person to whom <sup>(offer)</sup> proposal is made
- Acceptance must be unconditional and unqualified
- Conditional acceptance is treated as counter offer.
- Acceptance must be communicated.
- Acceptance shall be given in the mode specified in offer and if mode is not specified then in any mode which has effect of communication.
- Acceptance must be in prescribed mode.
- Acceptance must be in prescribed time.  
IF time is not prescribed then reasonable time which depends on facts or situation.
- Mere silence is not acceptance.
- Acceptance can be communicated by behaviour / conduct.



## • When Offer & Acceptance is Completed:

Acceptance to offer is lighted match to the train of gun powder. Once acceptance to offer is given it becomes contract and obligation are created and person cannot escape from this obligation.



• CONSIDERATION : Quid Pro Quo (Latin word)  
Something in return

which has value in the eyes of law. It may be promise, goods, money, skills etc.

Consideration : Promise or performance that parties exchange with each other.

- Consideration must move at the desire of promiser
- Consideration may move from promisee or any other person. There can be stranger to consideration but there can not be stranger to contract.
- In other words consideration may be paid by third person on behalf of promisee.
- Consideration may or may not be adequate. Promisor may take consideration less than its market price at his desire.

- P.T.O

EVIDENCE

Prima facie Evidence

Not final & it may change.

Conclusive Evidence

Final & will not change.



Consideration:

- Consideration may be past, present or future
- Consideration must be real and not illusory:-  
Impossible consideration not allowed.  
e.g: Titanic → Captain → Save → Property (consideration)

- Consideration shall be such for which promisee is not legally bound to perform.

- Consideration must not be unlawful, immoral or against public policy (Contractual Marriage)

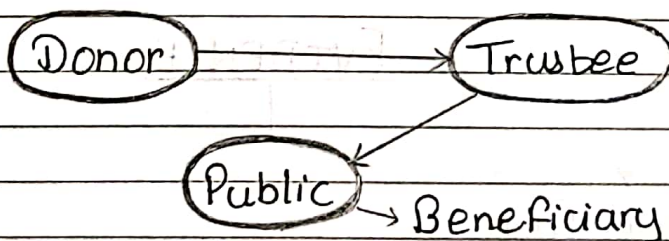
- Suit by third person:-

Privity of contract :- Contract is in between parties and ~~not~~ third persons are not allowed to file suit (case).

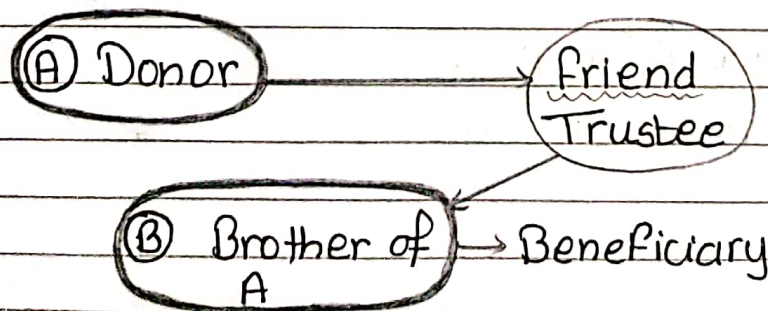
Exceptions:

- ① In case of trust → (Organisational Trust)  
Beneficiary can file suit even if he was not party to contract.

Public Trust



Private Trust



\* Estoppel: stopped from denying.

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2) In case of family settlements:

Any member of family can file suit even though they were not part of contract/settlement, if settlement is in writing.

3) In case of certain marriage contract:

Female member of family can enforce provision for marriage expenses made on partition of HUF.

4) In case of assignment of contract:

transfer of benefit.

- Assignee can file suit.

13/11/19

5) In case of <sup>original</sup> acknowledgement / <sup>Acceptance of something</sup> Estoppel:

In case of acknowledgement the person receiving acknowledgement can file suit even if he was not part of contract.

6) Covenant running with land:

(Obligation which continues with land):

IF obligation attached with land is not fulfilled then any person from family of a person who imposed restriction can file suit.

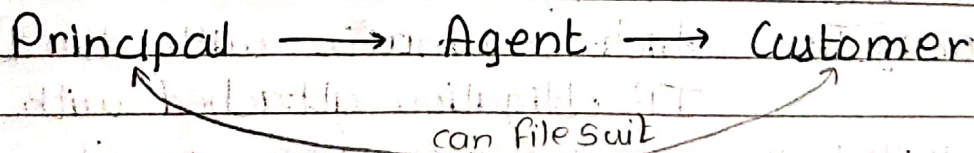
Assignor - who gives benefit

Assignee - who receives benefit



<u>Assignment</u>	<u>Succession</u>
- Transfer of benefit only. (No transfer of liabilities)	- In case of death of any party, property will be transferred to legal representative is succession.
- No liability transferred	- Liability also transfers to the extent of Asset received.
- Assignment is voluntary	- It is by process of law.

Person who is acting on behalf of others  
 → Contract entered through agent :  
 Third person may file suit on principal & vice-versa.



## • VALIDITY OF AGREEMENT WITHOUT CONSIDERATION

General Rule :- No consideration, No Contract

IF there is no consideration then contract / Agreement shall be Void.

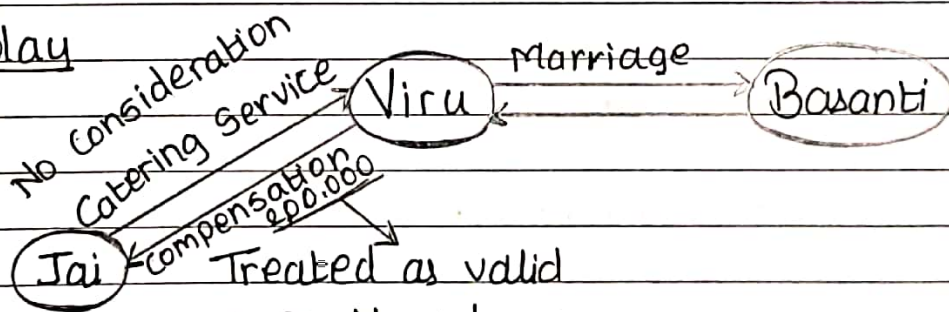
EXCEPTIONS: Where contract is valid even though there is no consideration.

### ① Natural Love and Affection:

Such contracts are valid IF it is made in writing, and it should be registered.

### ② Compensation for Past Voluntary Services:

Shalay



Treated as valid  
even though no  
consideration from Jai.



## • ESSENTIALS OF CONTRACT

### 1) Capacity to Contract

Person should not be :-

- 1) Minor
- 2) Unsound mind
- 3) Alien enemy
- 4) Insolvent
- 5) Person in imprisonment

### 2) Free Consent

Following elements will disturb free consent :

- 1) Coercion
- 2) Undue influence
- 3) Fraud
- 4) Misrepresentation
- 5) Mistake

### 3) Lawful Consideration and Object

4) Agreement not specifically declared as void.

5) Possibility of performance.

6) Certainty of meaning

## D Capacity of Contract:

- @ Minor: (Age below 18)
- Contract/ with minor is void ab Initio.
  - Agreement (It is void from beginning)

Case Study is: Mohori Bibi Vs. Dharmo Das Ghose.

- Minor is never personally liable.
- Minor can always plead-(Defend) minority.  
He can protect himself from liability.

16/7/19

- No Ratification after attaining majority.
- Minor can be beneficiary (He can take benefit of contract)

### Agreement Involves:

- ① Only liability on minor → Void
- ② Only Benefit → Valid
- ③ Liability + Benefit → Void.

- Minor's property is liable for necessities:

Necessaries Includes :

- ① Food
- ② Clothes
- ③ Shelter
- ④ Education and Instructions

- His Property is liable if:-

- ① Necessaries were provided when it was not sufficiently available with minor.
- ② It was supplied to minor or his dependent relatives.

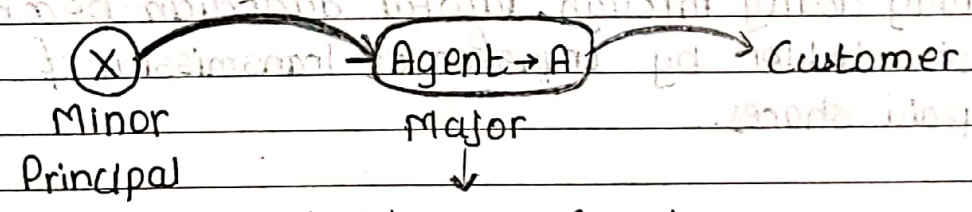
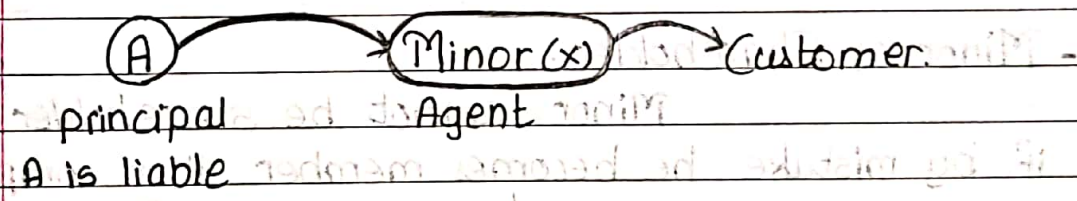


- Contracts by Guardian: Guardian can make valid contract on behalf of Minor. But if contract is related to immovable property then permission of Court is required.

- No specific performance against Minor. (Specific performance is given in case of antique/immovable property if damages are not sufficient (Recoverable))

- Minor can not be declared as insolvent: Minor is never personally liable therefore he can not be declared as insolvent.

- Minor can be Agent: But minor can not be principal.   
 (person acting on behalf of others)



In this case Agent is liable as he is acting on behalf of Minor.

- Minor can not bind parents or guardian in any contract. (Guardians are not liable for contracts made by minor).
- Generally Guardians are not liable for contracts made by minor except where minor was acting as an agent for guardians.

### - Liability For Tort:

Wrongful Act without wrong intention.

- Minor is liable in tort but if tort is related to breach of contract then minor is not liable.

### - Joint Contract by Minor and Major:

Major is completely liable for contract.

### - Minor as Shareholder:

Minor cannot be shareholder and if by mistake he becomes member then company can cancel the contract / Membership. But minor may acting through, lawful guardian - become a shareholder by transfer or transmission of fully paid shares.

when both the persons are agreed.

In case of death or insanity, share can be transferred from one person to another.



### (b) UNSOUND MIND:

- Only property is liable for necessities supplied.
- Burden of proof is on person who is taking objection.

### (c) Alien Enemy:

- Generally all agreements / contracts are void; But it can be executed with permission of Central Government.

### (d) PERSON In IMPRISONMENT:

- Existing contracts suspended and new contracts can not be entered.
- Exception: CG (Central Government) Approval.

### (e) INSOLVENT:

- Person who is not capable of repayment of liabilities. Either by assets or earning capacity.

### (f) FREE CONSENT: (Consensus - ad - idem)

- Agreed on same things in same sense.

Factors / Element which affects / disturbs Free consent:

(Section 13 & 14)

- 1) COERCION:
- 2) Undue Influence
- 3) Fraud
- 4) Misrepresentation
- 5) Mistake

① COERCION: (In English law known as duress)

Section 15

Committing or threatening to commit any forbidden by Indian Penal Code (IPC) act, (with intention that other party will enter in contract).

- Threat to commit suicide is also coercion.
- Generally it includes physical force.
- It is immaterial that IPC was in existing or not when coercion was applied.
- Contract becomes voidable.
- Coercion may proceed from third party.
- Coercion <sup>must</sup> be done to induce other party to enter in contract.
- Detain or threatening for detaining is also coercion.

② UNDUE INFLUENCE: Section 16

Improper

- This is also known as mental coercion.
- One party is in dominating position. Such party uses dominating position to obtain unfair advantage e.g. father - son, Doctor - patient, lawyer - client, fiance - fiancée.
- Generally husband and wife relationship is excluded but if there is 'Pardanasheen woman'



then husband is assumed to be in dominating position.

### 20/11/19 3) FRAUD: (Section 17)

- Expression of false fact OR promise made without intention to perform it in future. OR any other act declared as fraudulent.
- There must be intention to deceive.
- The fact must be material (which affects decision making)
- Mere silence is not fraud.
- Except following cases:
  - 1) In case of fiduciary relationships (Relationship of trust and confidence)
  - 2) Where silence = speech.
  - 3) Person speaks half truth.
- Contract is voidable.
- Punishment is applicable

### 4) MISREPRESENTATION: (Section 18)

- Expression of false fact without intention to deceive other party.
- Contract is voidable but court may order to continue contract after some modifications.
- Punishment is not applicable.

5) MISTAKE : (Section 20 to 22)Mistake of FactsBilateral  
Mistake  
(Both)Void.Mistake may  
be of Qty,  
Quality, Price,  
& other itemsUnilateral  
Mistake  
(Single)Valid.If unilateral mistake  
is caused by Fraud  
Then it is voidableMistake of Law.OF Indian  
law.Valid Contract  
(Ignorance of  
law is no  
excuse)OF Foreign  
LawVoid.Both treated  
as same.

- Mistake is because of wrong beliefs.



- Object or Consideration against public policy:

- i) Agreements of trading with enemy:

- An agreement made with an alien enemy in time of war is illegal on the ground of public policy.

- This is based upon one of the two reasons:

- 1) The further performance of the agreement could involve commercial intercourse with enemy.

- 2) The continued existence of agreement could confer upon the enemy an immediate or future benefit.

- Agreement with lawful and unlawful object (both)  
(may be one promise is legal & other illegal)

IF legal and illegal promises are separable

IF consideration given separately

Legal Promise

Valid

Illegal Promise

Void

IF legal and illegal promises are not separable

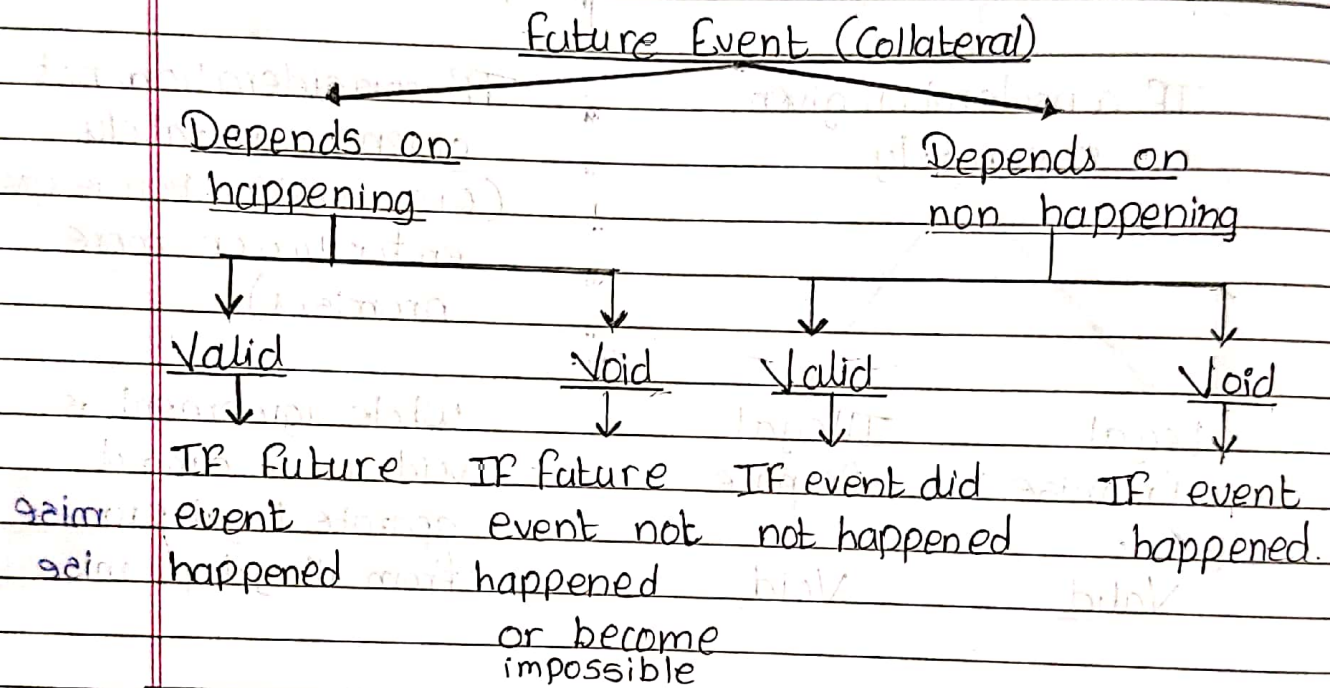
IF consideration not given separately.  
(One consideration is given for two or more promises)

Whole agreement is void as we can not separate legal promise from illegal promise



• CONTINGENT CONTRACT:

- Section - 31
- Also known as Conditional Contract.
- IF performance of contract is dependent on happening & non-happening of future events



- IF time is fixed for happening or non-happening then additionally time limit shall be considered for validity of contract.
- Agreement Contingent on Impossible Event is void.

- Wagering Agreement

- Always void
- Event is not collateral
- Loss of one is gain of another.
- No control on future event

- Contingent Contract

- Always Valid.
- Events are collateral
- Not Applicable.
- Little control on future event.

291-1119

- QUASI CONTRACT:

It is not contract in real sense as there is no offer and acceptance therefore it is Deemed to be Contract:

- Obligations created on parties due to force by law. (No agreement between parties)
- These contracts are given to avoid situations where loss of one is gain to another.

Examples :-

- 1) Claims for necessary supplied to persons incapable of contracting (Section 68). (Minor, unsound mind)
- 2) Right to recover money paid for another person (Section 69)

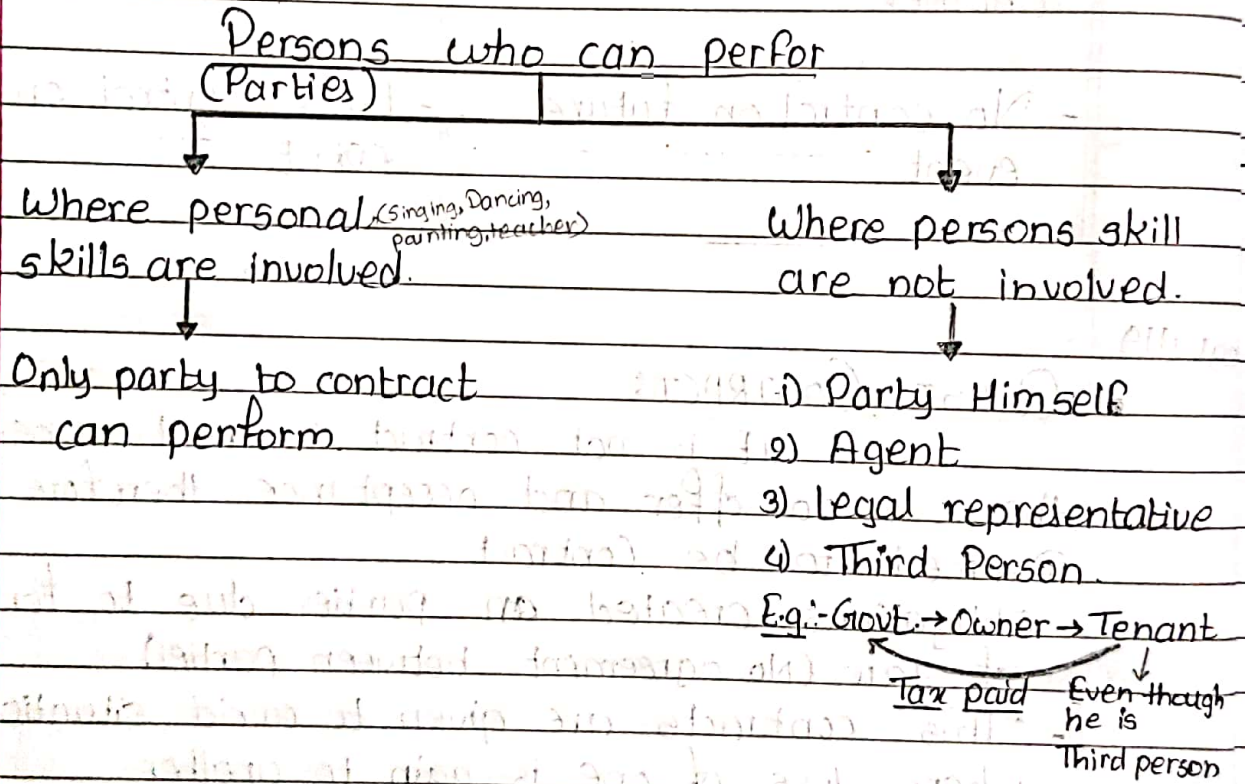


Gratuitous → free of cost  
Non-Gratuitous → for which money is paid.

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- 3) Obligation of a person enjoying benefit of non-gratuitous act (section 70)
- 4) Responsibility of a finder of goods (71)
- 5) Liability for money paid or thing delivered by mistake or under coercion (section 72)

• PERFORMANCE OF CONTRACT:



5) Joint Promisor

Dhol movie - Kishore Kumar, R.D. Burman, Usha Khanna, Mohd Rafi, Kishore Kumar, Alka Yagnik, Usha Khanna, Kishore Kumar

## OFFER OF PERFORMANCE OR TENDER OF PERFORMANCE :

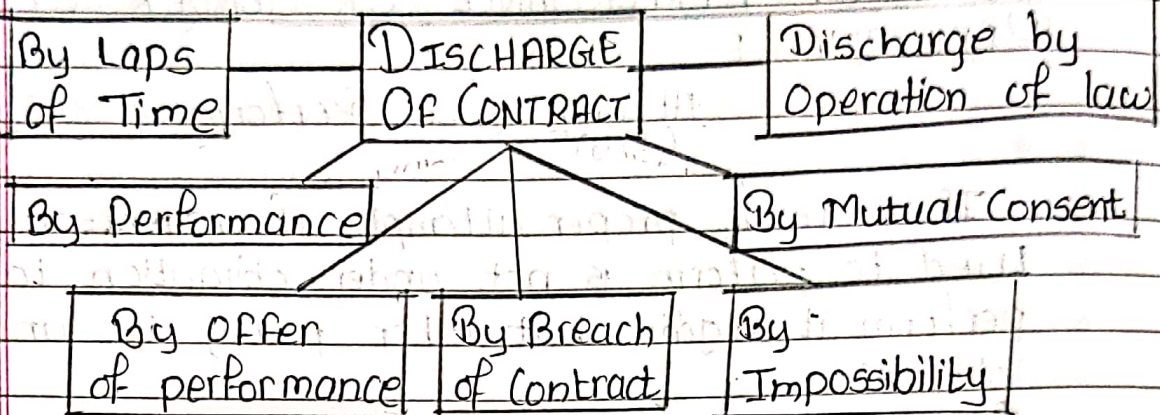
### Attempt to Perform (Try)

- IF there is proper attempt then person who tried to perform is not under obligation to perform it again but other party is under obligation.
- But in case of money person shall pay it later and interest shall not be paid for period after the offer of performance.

### • Proper Attempt :

- ① Reasonable opportunity shall be given to other party to accept performance (Delievery).
- ② Within Business Hour.
- ③ Within reasonable time or specified time (Domino's - 30 minutes)
- ④ Performance should not be in parts. (But if part delievery is made to complete whole delievery then it is valid).
- ⑤ Shall be performed for Appropriate person.





### • DISCHARGE BY MUTUAL CONSENT:

1) Novation of contract :- 62.

- a) New contract may be introduced.
- b) New party may be introduced.

2) Alteration of Contract: (62)

- Change in terms and conditions of existing contract.

3) Remission: (68)

- Acceptance of lesser performance.
- Example :- Cash Discount.

4) Rescission: 69

- Cancelling the contract.

5) Waiver:

- Giving up of rights by parties.

• DISCHARGE BY BREACH OF CONTRACT : (Section 39)

Types of Breach

Actual Breach

Anticipatory Breach.

Breach of Contract on performance date

Breach of contract before performance date.

after 1 month.

30th July 2019

IF Breach of contract

30th August 2019

Contract date

is before performance date

Performance date

Anticipatory Breach.

IF there is a breach

Then it is actual Breach

Option to party to treat it as breach immediately or wait till performance date & then file suit.

One of the option selected can not change later.

Actual loss - Ordinary Circumstances of loss

By CMA CS Rohan Nimbalkar

Performance Damage. If there is no loss



## • Remedies for Breach of Contract

### ① Damages:

a) Ordinary Damages: When there is actual loss.

- loss from buyers point of view:

Market Price - Cost Price.

- loss from sellers point of view:

Cost Price - Market Price.

### b) Nominal Damages:

When there is no actual loss to any party then nominal damages paid to aggrieved party to maintain his Right of decree. → To file suit.

• It might be even ₹ 1.

### c) Remote / Indirect Damages:

Remote damages are not paid as there is no direct connection between loss and Breach of Contract.

### d) Special Damages:

If remote consequences are brought to the notice of other party then if there is loss due to remote situation then party may claim damages known as special damages.

### e) Vindictive / Exemplary Damages:

This damages can be claimed if:-

i) There is injury to emotions (Breach of promise to marry)

① Wrongful dishonour of cheque.  
(Lesser the amt of cheque higher the amt of Damages)

## ② SPECIFIC PERFORMANCE:

- Request to court to order other party to complete the contract on same terms and conditions. In following cases specific performance is generally ordered:

- 1) Immovable property
- 2) Antique Goods
- 3) Where damages are not sufficient.

## ③ QUANTUM MERUIT:

(As much as earned)

A) IF contract is being executed

B) But contract can not be completed due to impossibility or Breach of Contract.

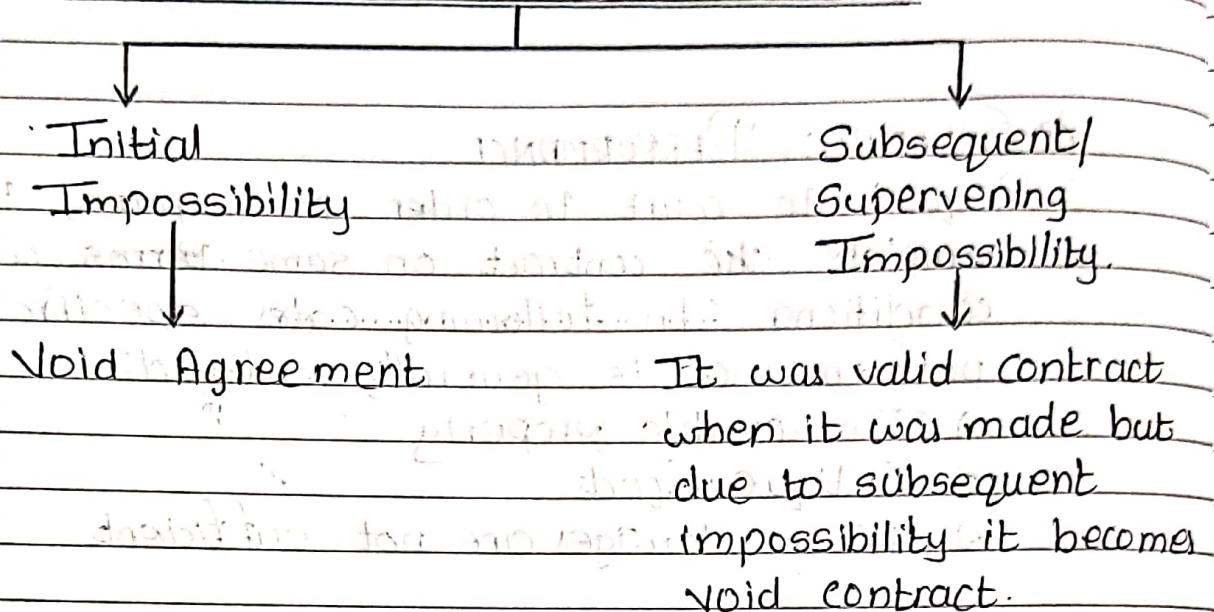
C) Then court may order Quantum Meruit

where party will pay to other party to the extent of contract completed.

## • DISCHARGE BY IMPOSSIBILITY



## • DISCHARGE OF IMPOSSIBILITY:



### Example of subsequent impossibility:

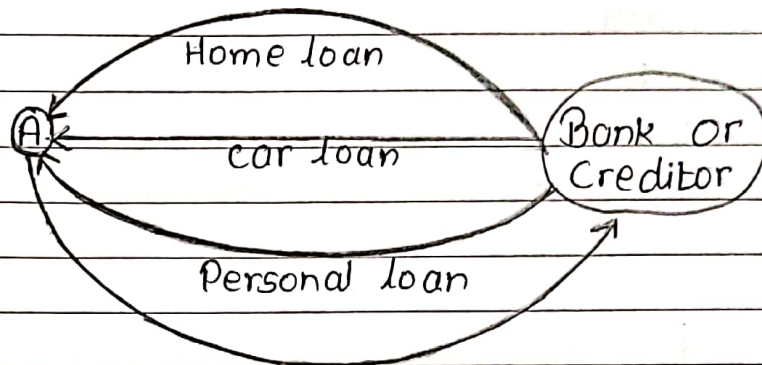
- 1) Change in law
- 2) Declaration of war
- 3) Destruction of subject matter
- 4) Death or insanity of partner.

## • DISCHARGE OF OPERATION OF LAW:

- ① Death of any party
- ② Insolvency of party.

## • Appropriation Of Payment : (59 to 61)

One person took different types of loan from another party.



IF A paid ₹ 50,000 then it will be adjusted against which loan?

- ① Payment shall be adjusted according to instructions given by debtor.
- ② IF instructions not given by debtor then the creditor may adjust it against any loan except disputed or illegal loan.
- ③ IF payment is not adjusted by debtor or creditor (Adjustment pending from long time).
  - Adjusted against loan which was taken earlier.
  - IF all loans are taken on same day then amount adjusted (in all loans) proportion of loan amount of each loan.



# INDIAN CONTRACT ACT, 1872

## Nature of Contract

1. Atharva, a minor borrowed ₹ 1000 from Parth and agreed to repay it within three months. He failed to return the amount after stipulated period of time. Can Parth realize his money from Atharva through a court of law?
2. Mr. Karan promised to pay ₹ 50,000 to his wife Mrs. Kiran so that she can spend the sum on her 30th birthday. Mrs. Kiran insisted her husband to make a written agreement of he really loved her. Mr. Karan made a written & registered agreement. Mr. Karan could not pay the specified amount to his wife. Mrs. Kiran wants to file a suit against Mr. Karan for recovery of promised amount. Advise whether Mrs. Karan will succeed. (3 Marks) (Nov. 2018)

## 2. Offer & Acceptance

3. CK Soap Co. advertised that it would give a reward of ₹50,000 if anyone develop skin disease after using, CK soap of the company. Miss Disha purchased the advertised soap and developed skin disease in spite of using this soap according to the instructions. She claimed reward but company refused pay on the ground that offer was not made to her as well as she had not communicated her acceptance of the offer. Decide whether Miss disha can claim the reward or not. Advise Disha with reference to provisions and applicable case law.
4. Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance in the light of the following:
  - (i) The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.
  - (ii) The telegram of revocation and letter of acceptance both reached together. (RTP Nov. 2018)
5. Nikita offered through an advertisement newspaper to sell designer goods on a particular date at a particular place a Shimla. In response to the advertisement Aachal travelled all the way from Pune to Shimla and found that the place was locked and there was no such sale and goods are already sold. She wanted to sue Nikita. Advise Aachal about appropriate course of action?

## Consideration

6. Transferred his house to his daughter M by way to gift. The gift deed, executed by X, contained a direction that M shall pay a sum of ₹ 5,000 per month to N (the sister of the executant). Consequently M executed an instrument in favour of N agreeing to pay the said sum. Afterwards, M refused to pay the sum to N saying that she is not liable to N because no consideration had moved from her. Decide with reasons under the provisions of the Indian Contract Act, 1872 whether M is liable to pay the said sum to N.

7. Mr. B, an old man, by a registered deed of gift, granted certain landed property to Ms. R, his daughter. By the terms of the deed, it was stipulated that an annuity of ₹ 20,000 should be paid every year to Mr. S, who was the brother of Mr. B. On the same day Mrs. R made a promise to Mr. S and executed in his favour an agreement to give effect the stipulation. Ms. R failed to pay the stipulated sum. In an action against her by Mr. S, she contended that since Mr. S had not furnished any consideration, he has no right of action. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. R is valid? (RTP No. 2018)

## Capacity of Parties

8. X, a minor was studying in B.Com in a college. On 1st July, 2005 he took a loan of ₹ 10,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2005, X possesses assets worth ₹ 2 lakhs. On due date X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of the Indian Contract Act, 1872 decide whether B would succeed.

## Free consent

9. A threatened his wife and son to commit suicide if they did not agree to transfer A's house to his brother. Thereupon his wife and son agreed to transfer the house. Subsequently, his wife and son filed a suit to set aside the transfer. Will they succeed?
10. A has two cars, a Fiat and an Ambassador. He agreed to sell one of the cars to B. B is thinking that he is buying Fiat car, whereas A is thinking that he is selling Ambassador car. Is there any contract created?

## Void Agreements

11. Mr. Seth an industrialist has been fighting a long-drawn litigation with Mr. Raman another industrialist. To support his legal campaign Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of ₹ 5 lakhs would be paid, if Mr. X does not take up the brief of Mr. Raman. Mr. X agrees, but at the end of the litigation, Mr. Seth refuses to pay. Decide whether Mr. X can recover the amount promised by Mr. Seth under the provisions of the Indian Contract Act, 1872.
12. A and B agree to share the proceeds of a robbery committed by them. A lends ₹ 500 to B to buy implements required for the robbery. Can A recover from B the money lent by him (A). Give reasons.



## Contingent Contracts & Quasi Contracts

13. Y holds agricultural land in Gujarat on a lease granted by X, the owner. The land revenue payable by X to The Government being in arrear his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid?
14. A shopkeeper sent a bag of rice to B. The cart driver delivered the bag to B's neighbour by mistake. Can the shopkeeper recover the price of the bag from B's neighbour? B's neighbour pleads that he never asked for the supply of rice and, therefore, not liable to pay. Advise the neighbour?
15. An insurance company paid money by mistake on a policy which had lapsed. Though the company was not ignorant of the fact of lapsing, but this was overlooked at the time of payment. Can the company recover the amount?

## Performance of Contract

16. X, Y and Z are partners of software business jointly promise to pay ₹ 30,000 to A. Over a period of time Y became insolvent, but his assets are sufficient to pay one-fourth of his debts. Z is compelled to pay the whole. Decide whether Z is required to pay whole amount himself to A in discharging joint promise?
17. A agreed to sell 10 tons of wheat to B. No time of delivery has been fixed. At 11 P.M. A takes a truck of wheat to B at his house. Is it a valid tender?

## Discharge of Contracts

18. Mr. Ram of Chennai placed an order with Mr. Shah of Ahmedabad, for supply of urad dal on 10.11.2006 at a contracted price of ₹ 40 per kg. The order was for the supply of 10 tonnes within a months' time viz., before 9.12.2006. On 4.12.2006 Mr. Shah wrote a letter to Mr. Ram stating that the price of uraddal was sky rocketing to ₹ 50 Per. Kg. and he would not be able to supply as per original contract. The price of urad dal rose to ₹ 53 on 9.12.2006 Advise Mr. Ram citing the legal position.
19. M Ltd. contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for ₹ 11.50 lakhs. Due to labour strike M Ltd. could I manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ₹ 12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd. referring to the legal provisions of the Indian Contract Act.

20. A mill owner sent a machine for necessary repairs to a workshop. The workshop delayed the machine beyond a reasonable time. Consequently, A's mill had to be closed down. A claim loss of profit he would have earned had the mill not closed down. Advice A.
21. Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which. Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of ₹ 50,000 towards advance as per the terms of the above' contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹ 50.000 which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention. (4 Marks) (Nov 2018)





## • Elements of Sale of Goods:

- 1) Subject matter must be goods.
- 2) Consideration shall be money or partly in money / partly in goods.
- 3) Consideration may be paid immediately or in advance or consideration may be paid in installments.
- 4) Delivery of goods may be made immediately or in parts.
- 5) There must be transfer of property in the goods.  
(transfer of ownership)

## §119 • GOODS: [Section 2 (7)]

- Every kind of movable property

- Includes :- Stock and shares, growing crops, grass, things attached to earth or forming part of land which are agreed to be severed before sale or under the contract of sale.

- Excludes :- Actionable claims and money.

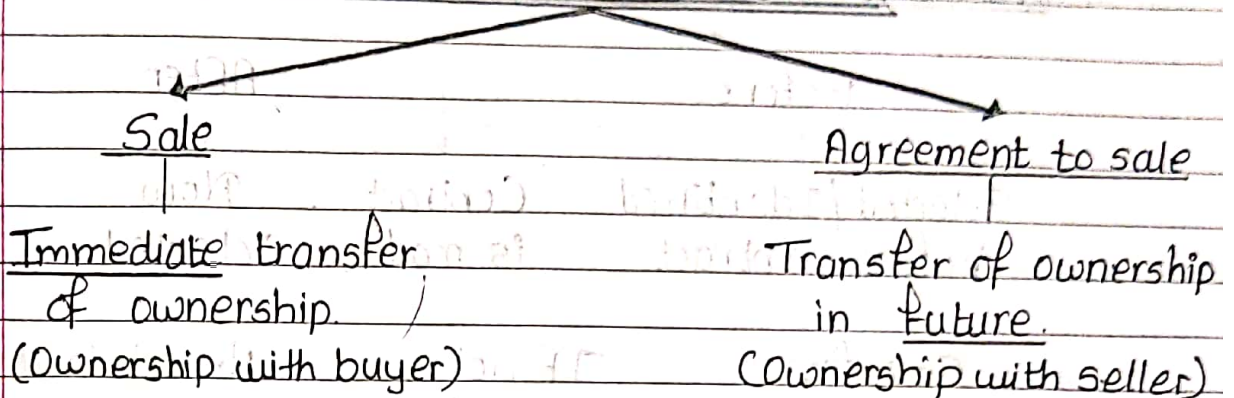
- Example :- Unsecured Debts / Debtors.

- Money includes current currency only.

Except :- Antique coins, old currency are treated as goods.



• Contract of Sale Includes



\* ∴ Buyer [2(1)] : Person who buys goods or agrees to buy the goods.

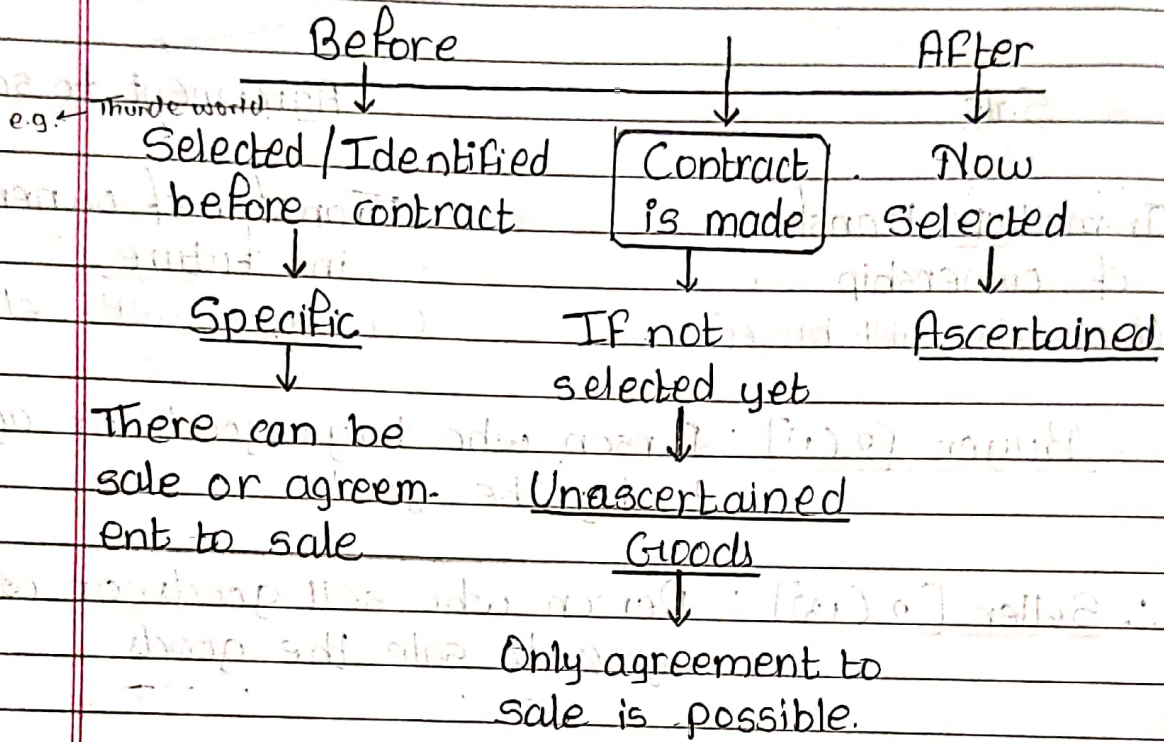
\* ∴ Seller [2(13)] : Person who sell goods or who agrees to sale the goods.

• TYPES OF GOODS :-

1) Existing Goods :- ① Goods Manufactured/Produced (Section 6) + ② Ownership with Seller

2) Future Goods :- Either: ① Not Manufactured (Section 2[6]) OR ② Not in ownership of seller.

3) Unascertained Goods / Specific / Ascertained:



4) Goods in Deliverable State:

Goods are in such position that buyer may take immediate delivery of goods. (Goods identified or packed).

• Transfer of Ownership:

① Future Goods → ② Existing Goods → ③ Unascertained Goods

④ Appropriation of Goods (Selection of Goods) → ⑤ Specific / Ascertained Goods

⑥ Goods in Delivery state → ⑦ Notice to buyer

Before ————— After  
 - Seller is owner ————— - Buyer is owner  
 - Irrespective of position is with seller



\* Immediate sale is possible in case of goods are in delivery state.

• CONDITIONAL SALE: [Reservation of Right of Disposal]

Additional condition may be imposed by seller for transfer of ownership.

Example → 'Payment of full amount in cash.'

In such case ownership will be transferred when normal condition is fulfilled + Normal procedure given above also completed.

- In other words :- Payment + Selection and Deliverable state.

• TRANSFER OF RISK:

- Risk follows ownership.

- In case of normal sale :- Risk will be transferred when Goods are selected and in deliverable state.

- In case of Conditional Sale: Risk transferred when:

Condition fulfilled + Normal Procedure completed.

Generally risk is transferred with ownership but in following cases it will be transferred before or after transfer of ownership:

① IF there is specific agreement

(between buyer & seller)

② Person in default:

In case if there is loss of goods due to fault of other party than owner then other party is liable. (Not owner).

③. Person fails to comply the duties of Bailee:<sup>eg. cement</sup>

④. Other person than owner may be liable due to usage of trade. (eg → e-business)

3/8/19.

• Transfer of Ownership by person other than owner:

- Only owner can transfer ownership.

- In latin word "Nemo dat Quod Non Habet."

\* जिसके पास वो नहीं है, वो जो नहीं दे सकता \*

→ (No one can give what he has not got)

जिसके पास वो नहीं है, जो जो नहीं है  
Ownership → Ownership

- Exceptions to above Rules:-

\* Where person other than owner can transfer ownership :-

Situation 1:- Sale by mercantile Agent.

If mercantile agent having possession with consent from owner then he can transfer ownership even though agent is not owner.

Situation 2:- Sale by one of Joint Owner.

One of the joint owner can sale goods even if there is consent of other.



joint owner is not taken and Buyer will get title if purchased it in good faith.

Situation 3 :- Sale by person having possession under Voidable Contract.

If person who received goods under voidable contract and sells goods before cancellation of contract then buyer will get proper title of goods if he bought in good faith.

Situation 4 :- Sell by seller having possession after sell:

Buyer will get title if he purchased goods in good faith.

Situation 5 :- Sell by buyer having possession before sell.

Buyer will get valid title if he purchased goods from the buyer having possession with good faith. e.g. → sale on approval basis

Situation 6 :- Effect of Estoppel → Stopped From denying.

If any person is selling goods of another person and owner was aware about it and owner did not take any objection then owner is not allowed to take objection after sale, in other words he (seller) stopped from denying the validity of sell.

Situation 7 :- Sale by unpaid seller.

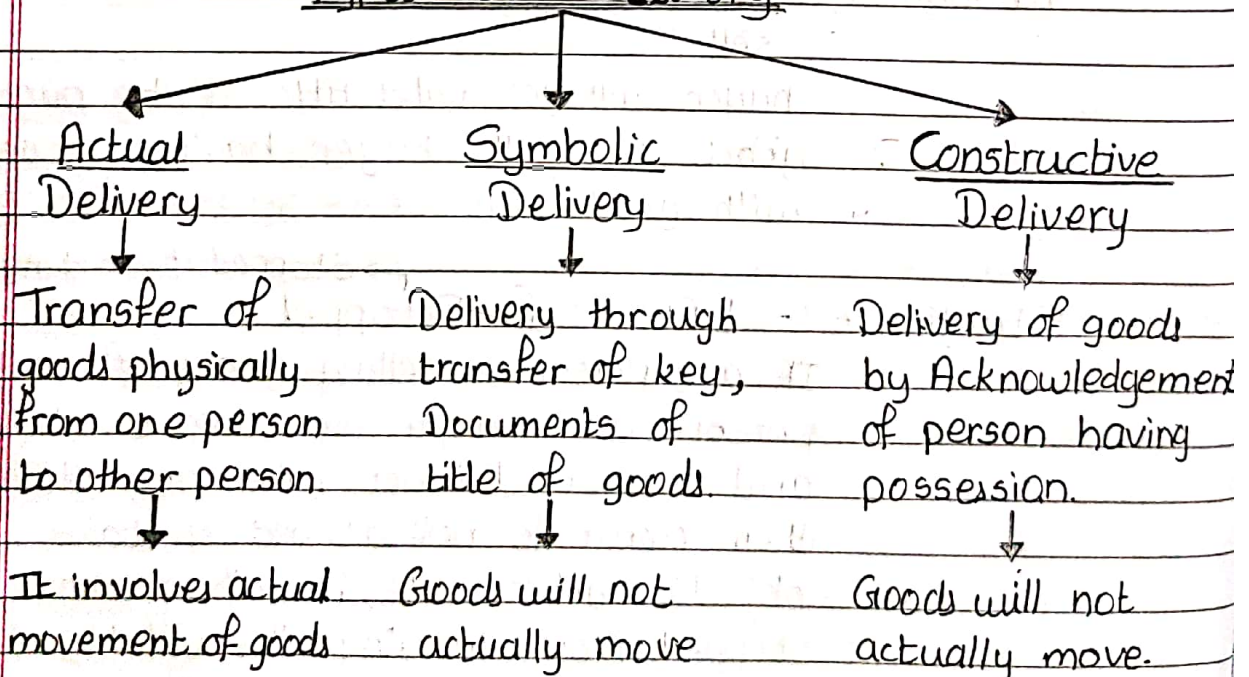
Situation 8 :- Sale by other person than owner under provision of other act.

- i) Sale by official receiver / liquidator.
- ii) Sale by finder of lost goods:
  - a) Owner refuses to pay lawful charges
  - b) Cost of finding owner is  $\frac{2}{3}$ rd or more of the value of goods.
  - c) IF goods are perishable goods.

7/8/19

DELIVERY : Voluntary transfer of Possession  
सर्वाधिकार

### Types Of Delivery





• Document of Title

Such documents represents ownership

& ownership is transferred with transfer of documents.

Examples :-

① Railway Receipts

② Doc. Warrant

③ Multimodal transport receipt

④ Bill of lading

(All receipts of transportation given by transportation authority itself treated as Document of Title [D.O.T.]

Does not include mates receipt. (Not treated as DOT.)

Example :- Godown Receipt

Document showing Title.

Such documents shows the name of owner

Transfer of documents is not transfer of ownership.

Additional formalities are required to be fulfilled.

Examples :-

① Share certificate

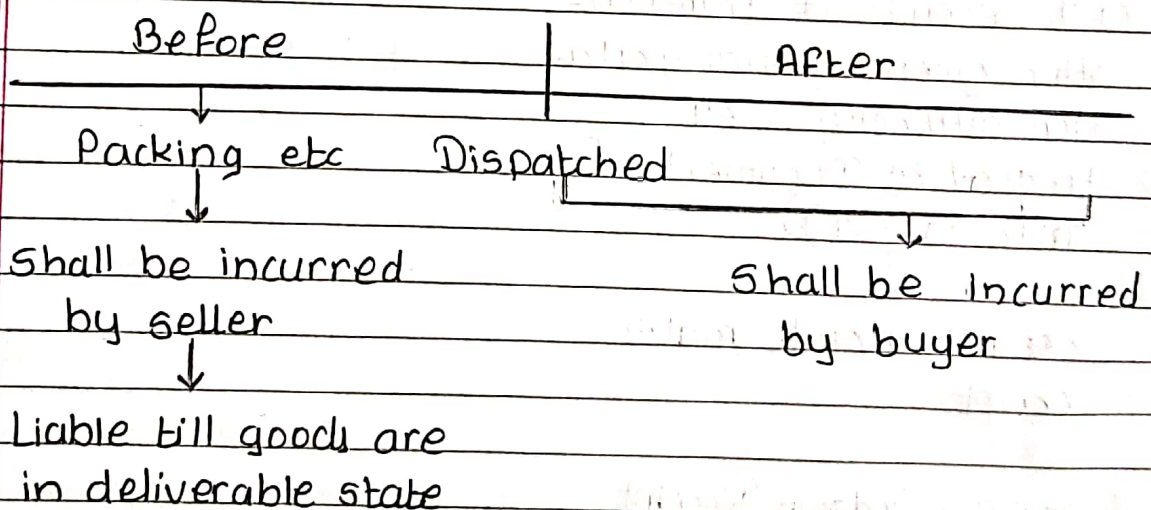
② Document of Vehicles

## • Rules Regarding Delivery Of Goods:

- ① Part delivery of goods not allowed unless part delivery is made with intention to make it full delivery.
- ② It is buyers responsibility to take delivery of goods and pay for it.
- ③ Place of Delivery :-  
- at place where it is manufactured or lying at the time of sale.
- ④ Time of Delivery :- Within reasonable time.  
- Within business hours.

10/8/19

### ⑤ Expenses For Delivery :-



### ⑥ Delivery of Wrong Quantity:

- Prima Facie--Initial Impression  
- Not sure, can be changed. →



⑥ Delivery of Wrong Quantity

Either accept it and pay for it

OR

Reject it

Seller is responsible for expenses of return.

⑦ Delivery to Carrier:-

- Prima facie. Deemed to be Delivery to Buyer

⑧ Deterioration during transit:

(e.g. → Sugar → 100kg → 90kg)

- Decrease in quality or market value of goods
- Buyer shall take responsibility.

- Seller agreed to deliver at his own risk

↓  
Abnormal Loss

↓  
Seller is liable

↓  
Normal Loss

↓  
Buyer is liable

⑨ Buyer's right to examine the goods:

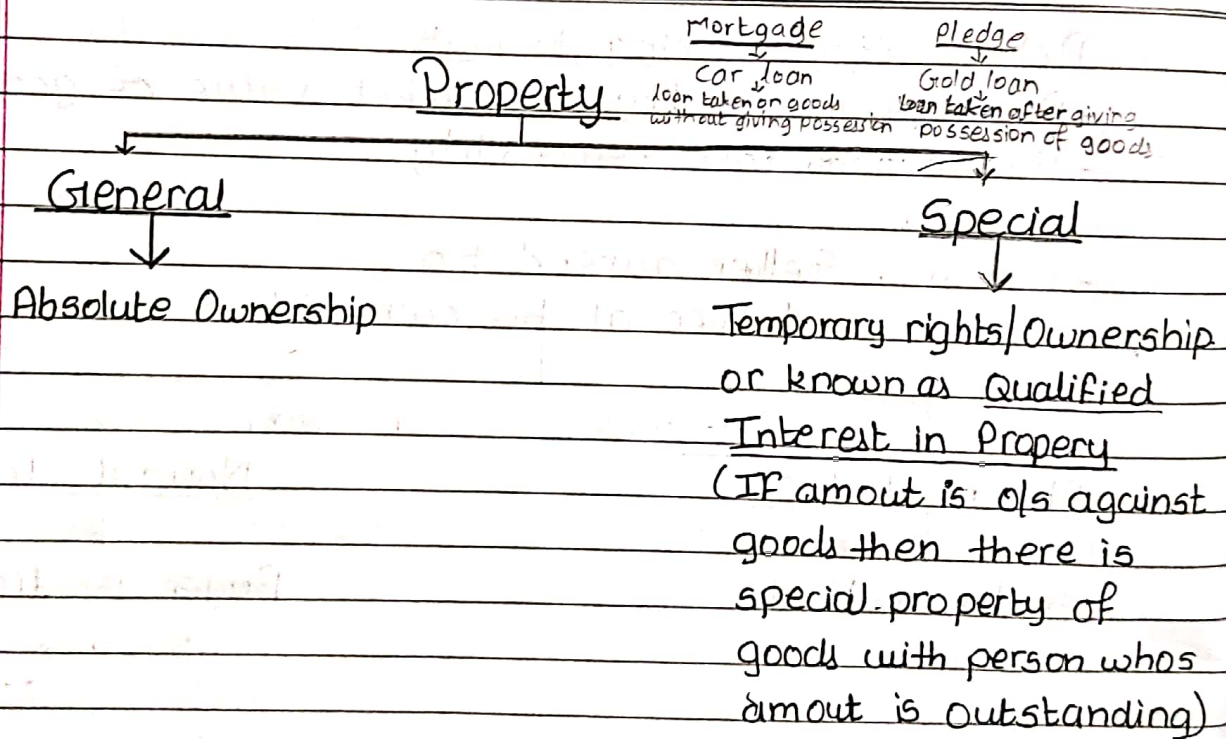
- Buyer can examine goods before taking delivery of goods.

Acceptance of Delivery of Goods:

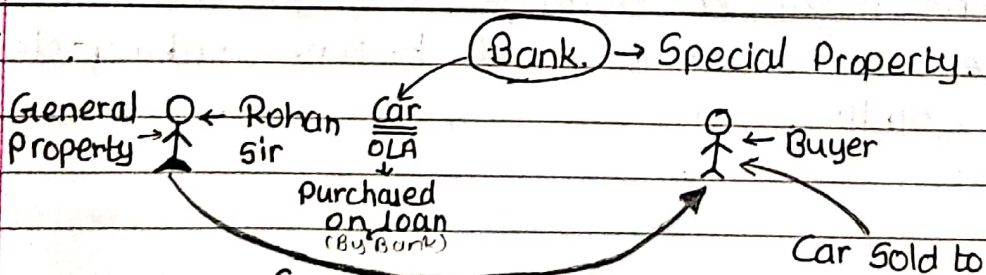
- ① Approval given by buyer
- ② Does any act in consistence with ownership of seller, and not.
- ③ Not returned within reasonable time.

Buyer is responsible for damages caused by wrongful rejection of Goods. (IF buyer rejected goods wrongfully)

12/8/19



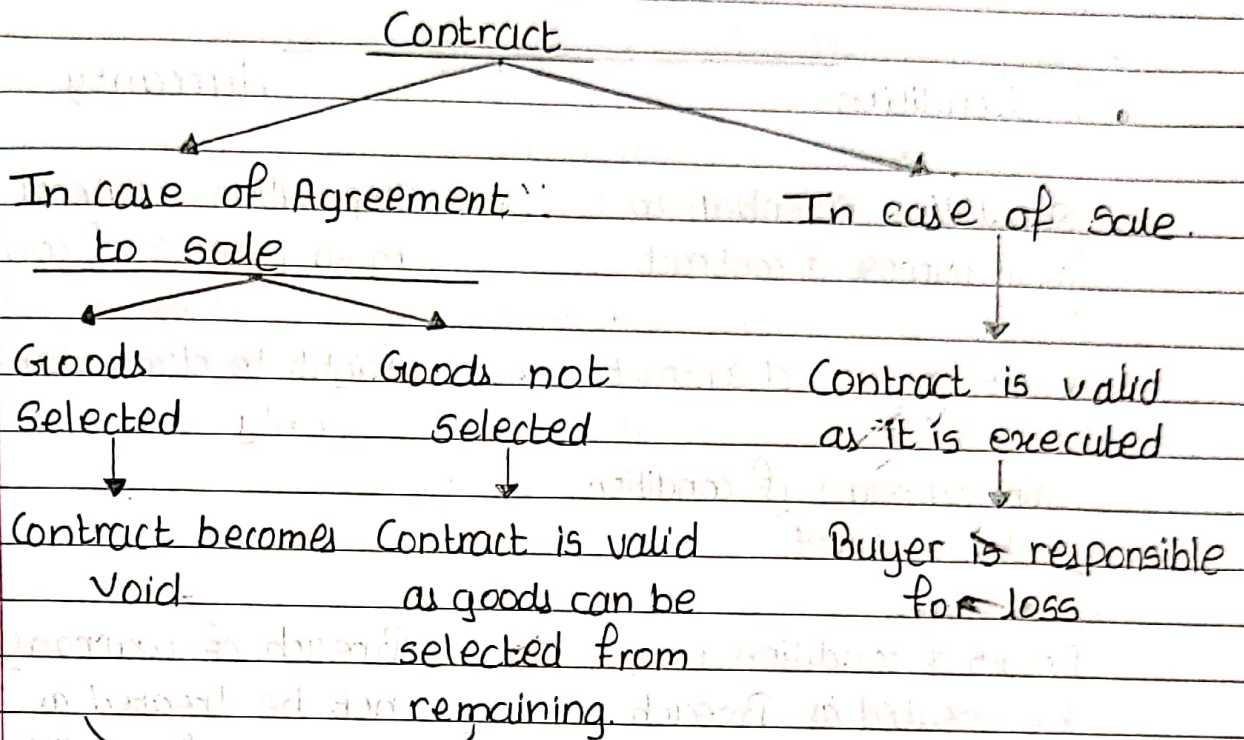
Example:



General Property may be transferred without affecting special property

By CMA CS Rohan Nimbalkar





→ Seller shall take responsibility of loss as he is owner of goods.

<sup>condition</sup>  
Stipulation as to Time

Time is essence of contract  
(Time is important for delivery / sale)

Example :- Agreement specified that time is important or price of goods is volatile like shares, silver, gold etc.

Time is not essence of contract

Contract shall be continued and other party may claim damages.



• Condition

↓  
Stipulation essential to main purpose of contract

↓  
Right to cancel contract

+  
claim damages if condition not fulfilled

↓  
Breach of condition may be treated as Breach of warranty

↓  
Root of contract

Warranty

↓  
Stipulation collateral to main purpose of contract.

↓  
Right to claim damages only.

↓  
Breach of warranty can not be treated as breach of condition.

↓  
Branch of contract

Condition and Warranties may be

Expressed

Decided by parties / Agrmnt

More powerful than implied

Implied

Imposed by law

Implied conditions & warranties may be changed by expressing different conditions & warranties



- When condition to be treated as warranty:  
(Contract cancellation not allowed even though condition not fulfilled)  
 (1) Buyer waives the performance of condition.  
 (2) Buyer elects to treat breach of condition as breach of warranty.  
 (3) Where contract is non-severable and buyer already accepted whole or part of contract.  
 (4) Where condition can not be fulfilled due to impossibility.

IMPLIED

Conditions

Warranties

- ① Condition as to title
- ② Sale by Description (sec. 15)
- ③ Sale by Sample (sec. 17)
- ④ Sale by sample as well as description (sec. 15)
- ⑤ Condition as to quality or fitness (sec. 16)

- ① Warranty as to undisturbed possession.  
Buyer shall get quiet possession of goods if it is disturbed due to fault of seller then buyer can sue for damages.
- ② Warranty as to non-existence of encumbrance.  
(free from any loan charge) - cannot sue if seller already informed buyer about encumbrance.
- ③ Disclosure of dangerous nature of goods  
(should be disclosed by seller)
- ④ Warranty as to quality or fitness annexed with usage of trade [sec. 16 (4)]

When this condition is applicable if it is not eatable then it may be returned. Goods must be capable of serving basic purpose & if it is unable to serve basic purpose then it is not merchantable quality.

- ⑥ Condition as to wholesomeness.  
In case of eatable products, eatable products must be eatable.
- ⑦ Condition as to merchantability.  
(fit for purpose)

- CAVEAT EMPTOR:

Let the buyer beware.

- Buyer is responsible to make proper selection of goods and later he cannot hold seller, for defective goods. responsible
- Seller is not responsible to disclose defects in goods which he sell.

- Exceptions: (where seller is responsible)

① Sale by Sample

② Sale by description

③ Sale by sample as well as description

④ Condition as to Quality or fitness

⑤ Warranty as to Quality or Fitness annexed with wage of trade

⑥ Where goods are sold by seller by fraud and misrepresentation.

- IF goods are purchased under patent / brand name then seller is not responsible.



## • UNPAID SELLER. (Section 45 (a))

- Seller is treated as unpaid if whole amount is not received from buyer or cheque / B.O.E. given by buyer is dishonoured.

When seller shall be treated as unpaid:

① IF credit period was given :- After completion of credit period.

② IF cheque or B.O.E. is given : Once it is dishonoured.

③ In case of insolvency : When buyer declared as insolvent by court...

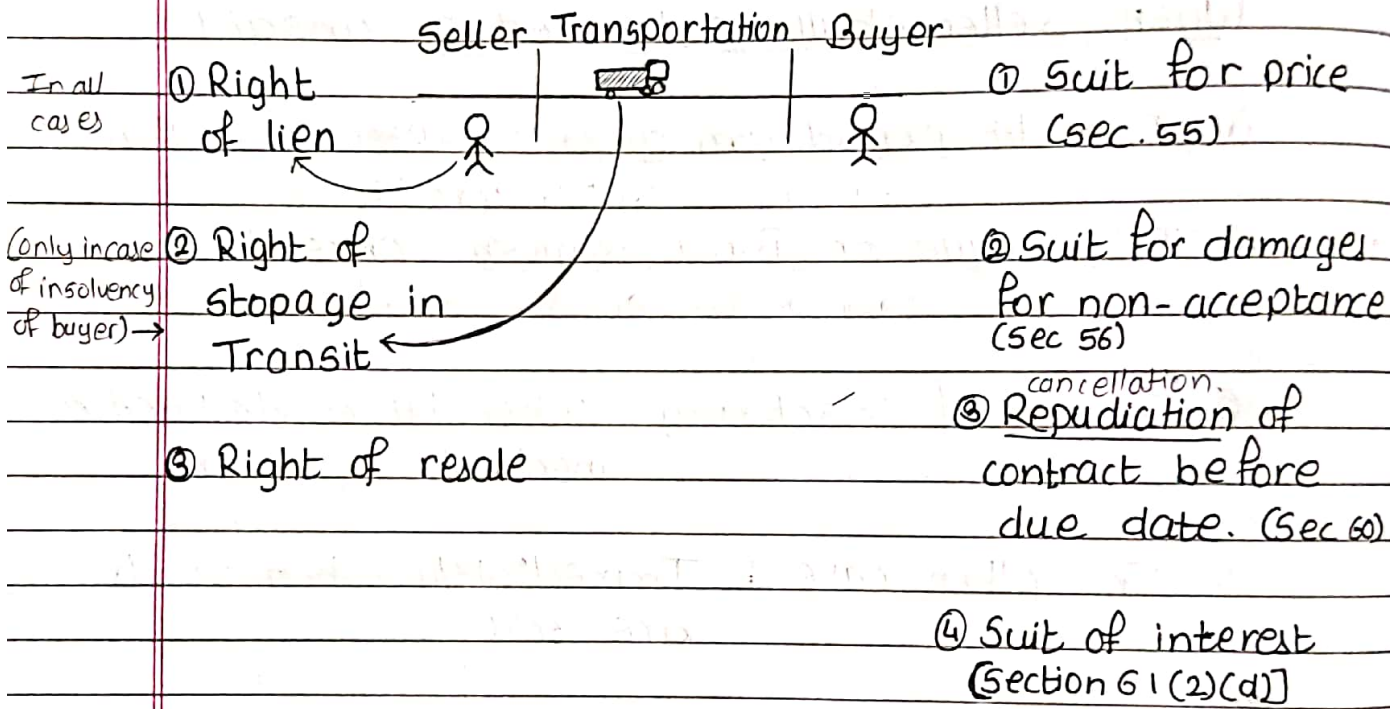
④ In other case : Immediately when goods are sold.

\* Seller includes his agent.

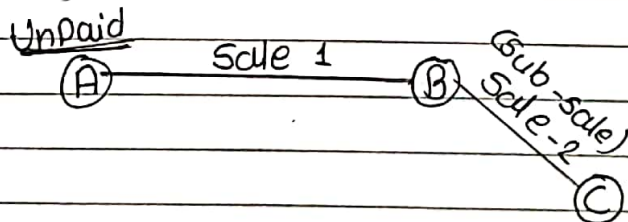
## Rights of Unpaid Seller

Right against goods

Rights against buyer



### Sub-Sale.



### EFFECT OF SUB-SALE:

Generally right of unpaid seller is not affected except :- (Right → lien or stoppage in transit)



- ① Sub-sale / Pledge made with consent / assent of seller.
- ② Sub-sale / Pledge is effected by transfer of document of title.

• Buyers Rights against seller;

- ① Suit for Non-Delivery
- ② Suit for specific performance.
- ③ Suit for damages for Breach of warranty.
- ④ Suit for recovery of price.

• AUCTION SALE:

# Sale of Goods Act 1930

## Formation of Contract of Sale

1. A sells a laptop computer to B with a stipulation that payment should be made within 3 days. B makes the payment after 7 days of the contract.
2. A agrees to sell two of his cars to B at a price to be fixed by C. He immediately gives delivery of first car. C refuses to fix the price. A asks for the return of the car already delivered while B claims the delivery of the second car too. Decide.

## Conditions & Warranties

3. For the purpose of making uniform for the employees, Mr. Yadav bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Mr. Yadav whether he is entitled to have any remedy under the sale of Goods Act, 1930? (RTP May 2019)
4. Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. What remedy Ram is having now under the Sale of Goods Act, 1930? (RTP Nov 2018)

## Transfer of Ownership

5. A agreed to purchase 100 bales of cotton from B from his large stock. A sent his men to take delivery of goods. They could pack only 70 bales. Then there was accidental fire and the entire stock was destroyed, including the 70 bales that were packed. Who will bear the loss and to what extent.
6. A delivered some jewellery to B on sale or return basis. B pledged the jewellery with C. A want to claim back the goods from C. Advice.

## Rights of Buyer & Rights of Unpaid Seller

7. Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.  
Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different. If the dues were not settled in cash and are still pending? (6 Marks) (Nov 2018)



8. Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930. (6 Marks) (May 2018)
9. Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (RTP May 2019)

## • Partnership:

Agreement between two or more persons to carry business and share profit and Business will be carried on by all or any one of them acting for all.

## • Elements / Essentials of Partnership:

1) Two or more persons :- (may be natural or artificial) <sup>companies</sup>

2) Agreement :- (Oral or Written)

Person can not become partner by status.

Example → In HUF, child taking birth in Family automatically become member of HUF.

3) Business :

Business means activity carried on to earn profits. Partnership firm can be formed only to carry business and rearranges activity by religious activity and non-profit activities are not allowed under partnership.

4) Sharing of Profit:

- It is prima facie evidence of partnership and not conclusive.

- There must be sharing of profit between partners.

- Sharing of profit and sharing of loss is different.

(Loss sharing is not compulsion)  
- Profit sharing ratio shall be decided by partners.



and if not decided then PSR shall be equal.

- Capital Ratio and PSR may be different,

In following cases there is no partnership even if there is sharing of profit.

① Profit sharing by widow or child of deceased partner.

② Profit sharing by employee/manager

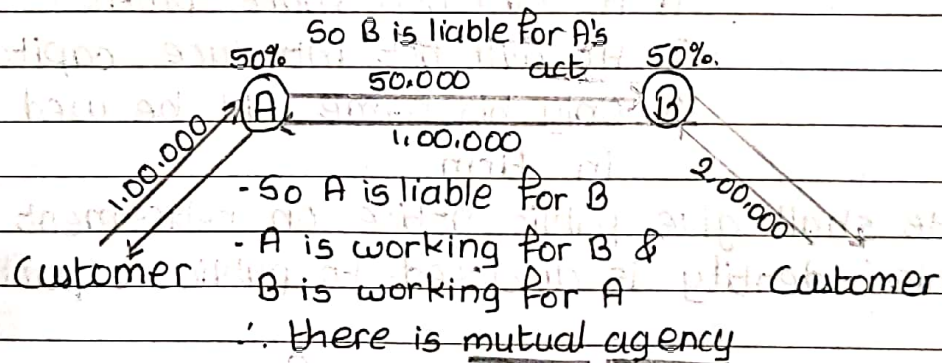
③ Profit sharing by lender of capital

④ Profit sharing by person whose goodwill/name used in firm.

⑤ Mutual Agency:

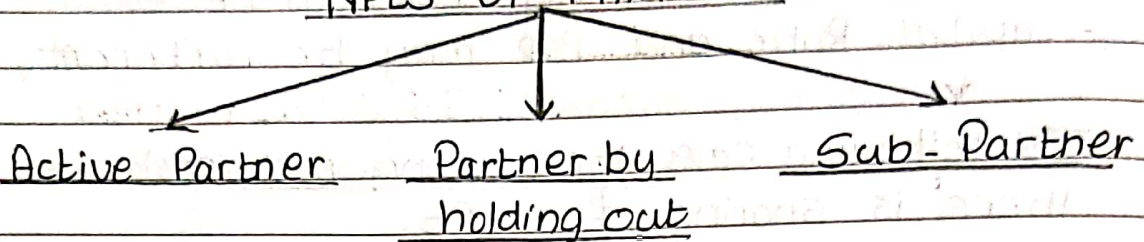
⑤ Mutual Agency:

- Also kn (It is acid test or conclusive evidence of partnership)



Mutual agency is not in existence in any other type of business.

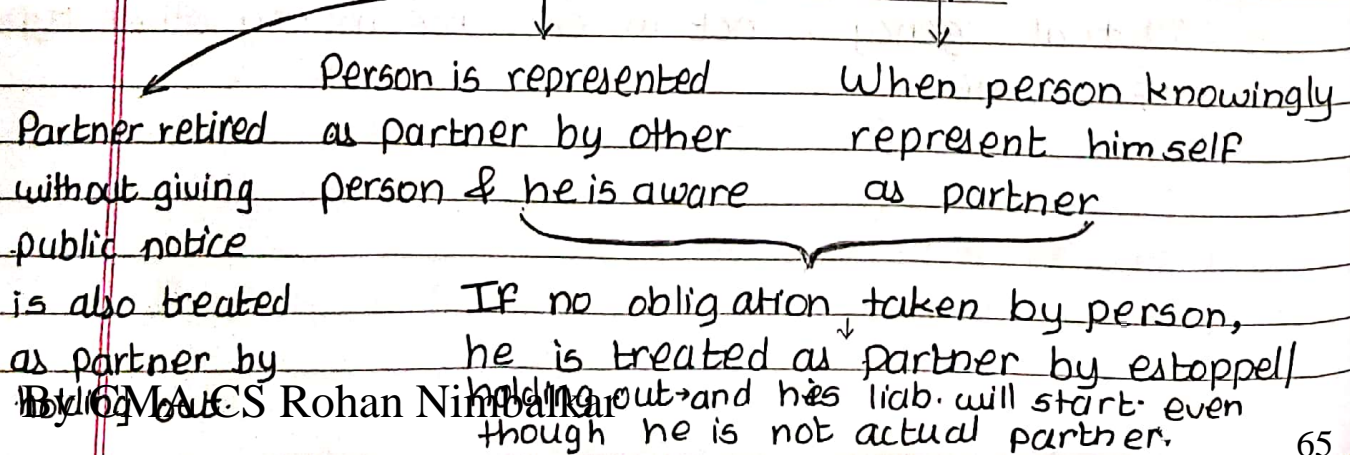
## TYPES OF PARTNER.



- Active Partner: Become partner by agreement and will actively participate in business of firm.
- Dormant Partner: (sleeping partner) who will not actively participate in the business. No need to give public notice on retirement.
- Nominal Partner:
  - ① He will not share profit
  - ② He will not introduce capital
  - ③ Only his name will be used as partner in firm.

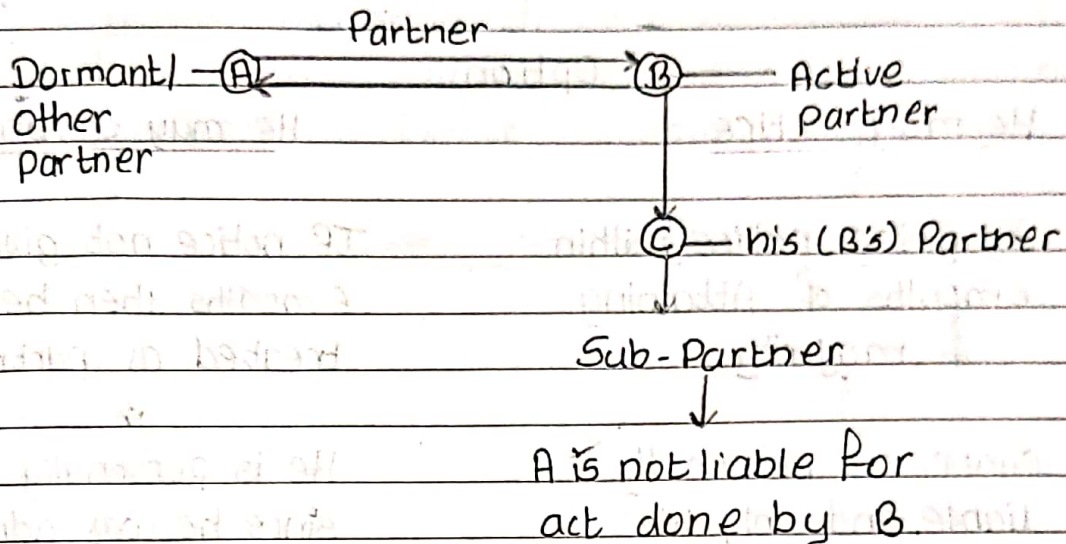
- He shall give public notice on retirement because his identity is disclosed to public as partner.

### • Partner by Holding out or Estoppel:





- Sub-Partner:



21/8/19

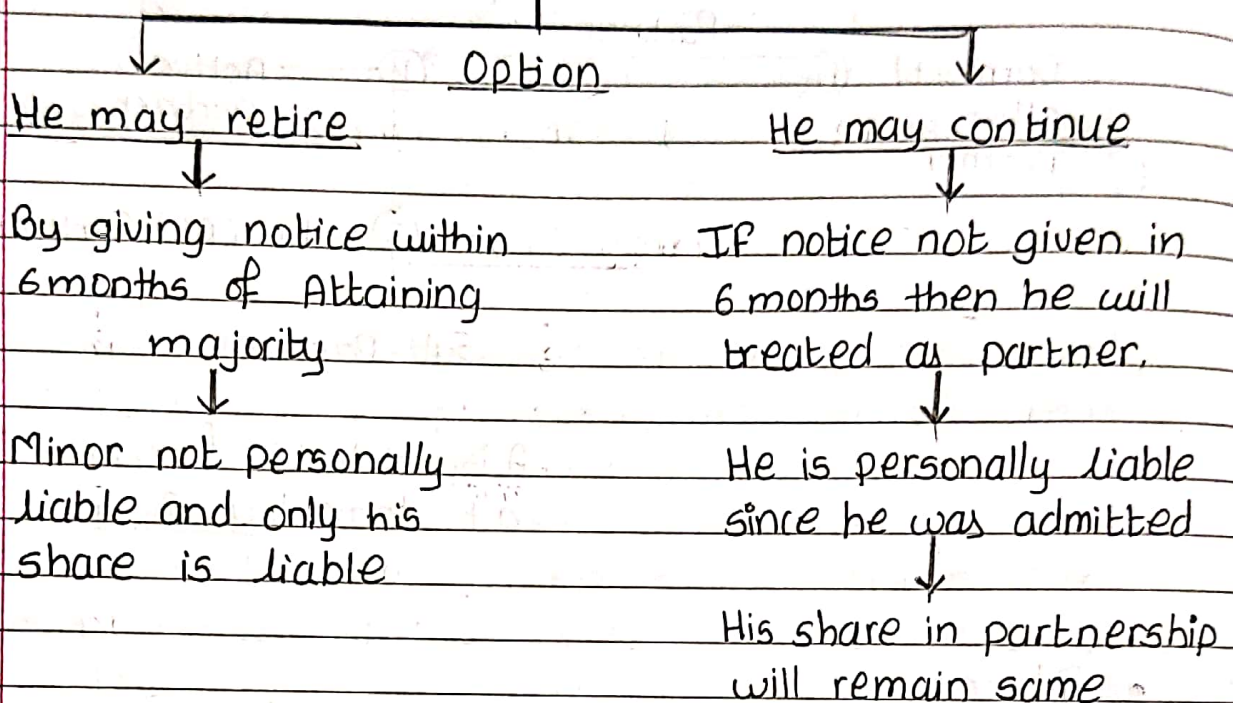
- Minor:

- Can be admitted in existing firm for benefit. (No liability of partner)
- Consent of all partners required.
- His share in partnership firm is liable. (No personal liability)

Rights:

- 1) To share profits
- 2) To check accounts
- 3) To sue for accounts only if he is severing connections from firm.

When completes Age of 18.



## • RELATION OF PARTNERS:

Rights of partners:

① Right to take part in conduct of business:

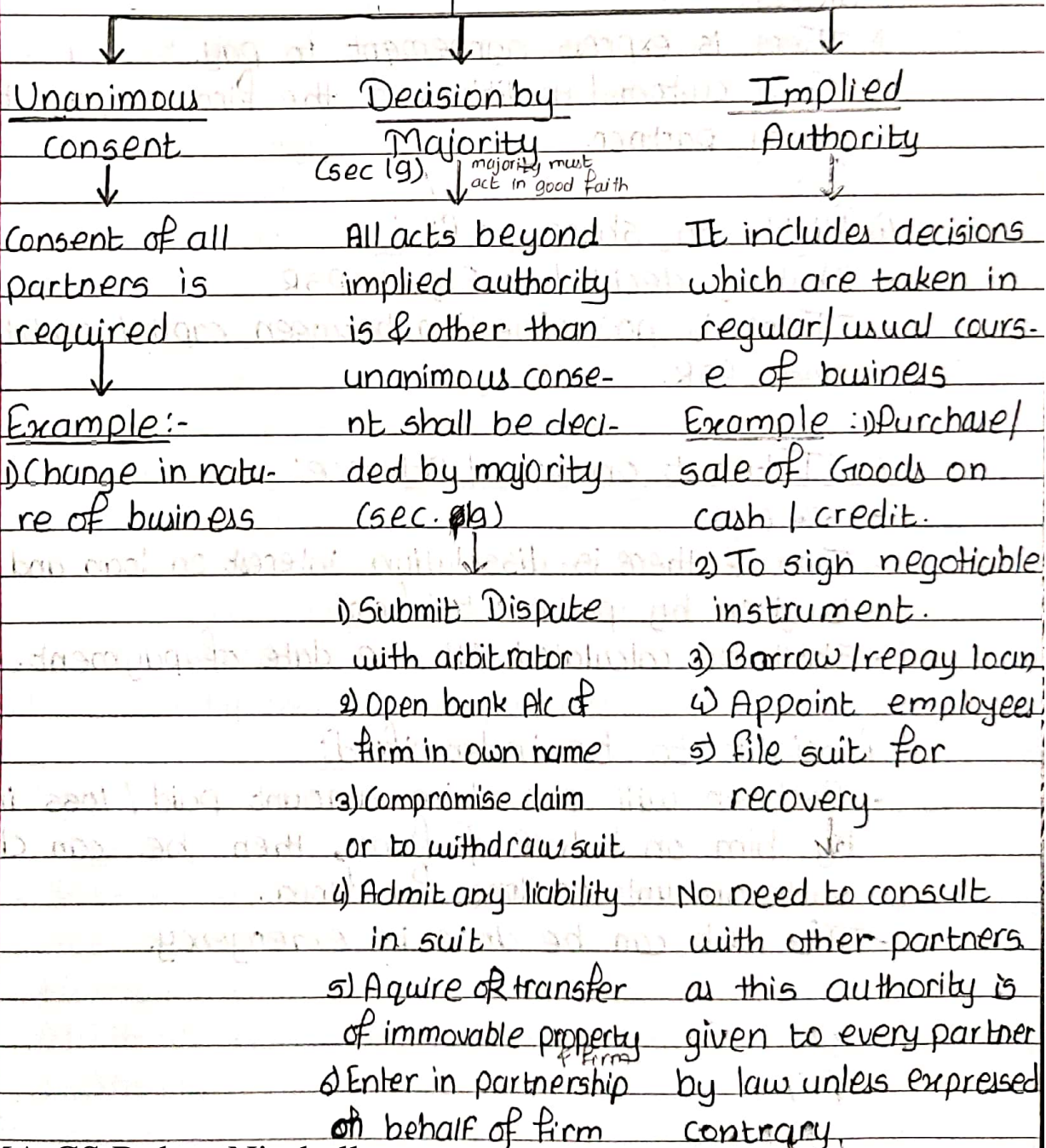
- Right to take part / participate can be restricted by making express agreement where specific partner will not be allowed.
- IF there is no specific agreement then every partner shall have right to participate and if any partner is restricted then he may file suit for Dissolution.



2) Right to be Consulted

- Every partner shall have right to be consulted and to express opinion on the matter before it is decided. (Except : Implied Authority)

Decision Making



3) Right to access to books: <sup>with good intention</sup>  
- Right must be exercised bona-fide.

4) Right to Remuneration (Salary) / Right to  
interest on capital:

- No partner can claim salary / interest on capital unless:-

1) There is express agreement to pay.

2) It is customs / traditions of the firm to pay it to every partner.

Note:- Interest on capital is paid only if there is profit

4) Right to share profit:

- Nothing decided: Equal PSR.

- There is no connection between capital contribution and PSR.

6) Interest on Loan / Advance:

- 6% p.a.

- Even if there is dissolution interest on loan and advance is given by partner to firm.

- Shall be calculated till the date of payment.

7) Right to be indemnified:

- Partner will can claim amount paid / loss incurred by him on behalf of firm, then he can claim such amount or less for firm.

- This act can be done in emergency.



8) Right to stop admission of new partner:

- Any Partner can stop admission because consent of all partners is required.

9) Right to Retire:

a) Partnership at will : Notice to all partners for retirement

b) Fixed Period : Consent of all partners before retirement of fixed period.

- If partnership is continued even after fixed period then it is partnership at will after finishing fixed period.

24/8/19

10) Right not to be expelled:

- Expulsion is allowed only if: (Exceptions)

1) ~~Expulsion is for benefit of firm~~

2) Expulsion is in good faith:

a) Expulsion is for benefit of firm

b) Notice given to partner being expelled

c) Opportunity of being heard given to partner being expelled.

3) Decision by majority of partners

11) Right of outgoing partner to carry on competing business.

- Partner may start his own competing business after retirement:-

1) Without using firm name

2) Without representing himself as a partner of firm

3) Without soliciting the customer of old firm.

## 12) Right of outgoing partner to share subsequent profit:

- IF account is not settled after retirement/death then outgoing partner will have right to share subsequent profit.
- Or he can claim the interest of 6% p.a.

## 13) Right to dissolve the firm:

### - Partnership at will:

After notice to partners.

- Fixed Partnership: Consent of all partners.

## • Property of firm:

①

① Purchased from capital introduced by partner

② Purchased in the course of Business out of revenue of firm.

③ Goodwill.

Note: Agreement shall be referred to know that property belong to partners of firm.



• Personal Profits Earned by Partners:

By carrying same/  
competing business

By carrying other  
type of business

Other partners can  
claim share of  
personal profit.

IF restricted  
by agreement

IF not restrict-  
ed by  
agreement

Other partners  
may claim  
damages for  
breach of  
Agreement

Other partners  
can not  
claim.

• Change in Constitution of Firm:

- ① Change in Partners
- ② Change in business of firm
- ③ Partnership carried even after fixed period.

No change in Rights and Obligations of partners.

In this case for retirement partner can give notice (Previously he was required to take consent as it was fixed partnership).

• Firm is liable for the act of partner only if:

- 1) Act of partner was for business of firm.
- 2) TE was done/accepted in the name of firm.
- 3) He was partner at the time of act done & he signed/Accepted

- Liability to third parties [sec 25-27]

### Liability To Third Parties

#### Contractual Liability

All partners are liable & contract entered for business of firm & in the name of firm

#### Liability for wrongful act

All partners are liable only - if:-

- 1) Partner act:- Tort committed in ordinary course of biz.
- 2) with authority of other partners

\* If due to negligence of any partner in ordinary course of biz then all partners are liable.

#### Liability for Misappropriation [Sec 27]

Firm is liable if:-

- 1) active partner received money in ordinary course of business.
- 2) Firm received money & it is in custody of firm & then misapplied it.

कुछ नहीं कर सका। सिर्फ Profit share कर सका है (Not treated as Partner)

- Right of Transferee of a Partner's Share [sec. 29]

#### Transferee not allowed :-

- 1) To take part in conduct of business.
- 2) To Require and Inspect A/c's.

#### Allowed:

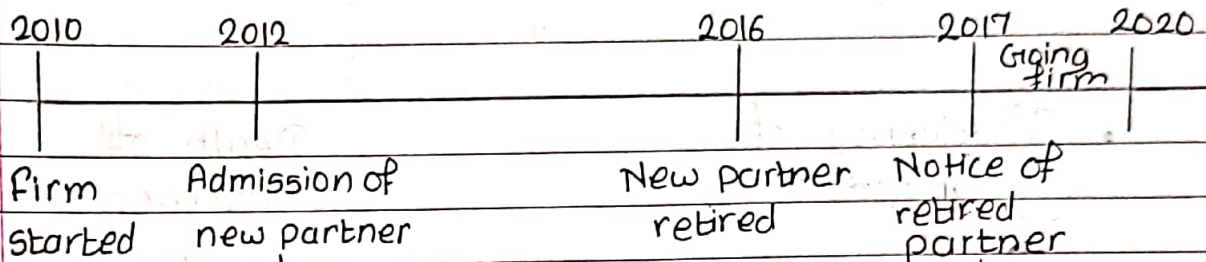
- 1) To receive share of profit.
- 2) To receive share & Asset on dissolution.

By CMA TGS Rohan Nishankar accounts on dissolution.



## • Admission Of Partner:

### • Consent of all partners:



IF following conditions are satisfied then new partner is liable from start:

- 1) There is consent of new partner to make him liable from start.
- 2) No obligations by creditors
- 3) New firm assumes/accepts liability of old firm.

## • Retirement of Partner:

- Fixed Partnership: Consent of all partners required for retirement before fixed time.

- Partnership at will: Notice to remaining partners.

• Retiring partner is generally liable upto the date of notice.

- Retiring partners liability shall be Nil if:
  - 1) Consent of all partners
  - 2) No obligation by creditors.
  - 3) New firm assumes / liability of old firm.

- |   |                                    |
|---|------------------------------------|
| Insolventcy of<br>Partner<br>↓  | Death of<br>partner.<br>↓          |
| - Public notice not required.   | —————> Public notice not required. |
| - Liable till adjudication and insolventcy  | —————> Liable till death.          |
| - Generally firm will dissolve  | —————> Same                        |
| - Remaining partners may continue partnership if specified in agreement that remaining partners may continue after insolventcy / death of partner | —————> Same.                       |

### REGISTRATION:

- Optional
- Registration is deemed to be complete when all documents along with statement / form and with fees filed with Registrar of firm. (R.O.F.)



- Consequences of Non-Registration:

(Disabilities of unregistered firm).

1) Firm or any other person on behalf of firm can not file suit against third party.

(Firm may file suit after registration)

(Not applicable for criminal cases)

2)

2) No set-off allowed.

(allowed only upto ₹100)

3) Partner not allowed to file suit against firm for breach of rights-received from act or agreement.

(Not applicable for criminal cases)

4) Partners has right to file suit for Dissolution.

5) Above restrictions in points 1, 2 & 3 are not applicable to Foreign firm.

6) But third person may file suit on the firm.

- DISSOLUTION OF FIRM: [Section 39-47]

-Dissolution of Jural relationship

↓  
legal

-Dissolution of firm leads to dissolution of partnership but dissolution of partnership may or may not lead to dissolution of firm.

## • Reasons of Dissolution:

- 1) Agreement between partners.
- 2) Insolvency / Death of all partners except one.
- 3) Business of firm becomes unlawful.
- 4) On happening of certain contingencies:
  - a) Time period completed (fixed partnership).
  - b) Death of Partner.
  - c) Insolvency of partner.
- 5) By notice from any partner (IF it is partnership at will).
- 6) By order / Intervention of court:
  - a) Partner becoming of unsound mind.
  - b) Permanent incapability of partner.
  - c) Misconduct of a partner.
  - d) Transfer or sale of share in partnership by partner.
  - e) Wilful or consistent breach of agreement by partner.
  - f) Other Just and equitable reasons.  
example: Deadlock in management.

IMP \* IF any partner is travelling in a train without ticket then it is also ground for dissolution of firm.

## • Notice required in:-

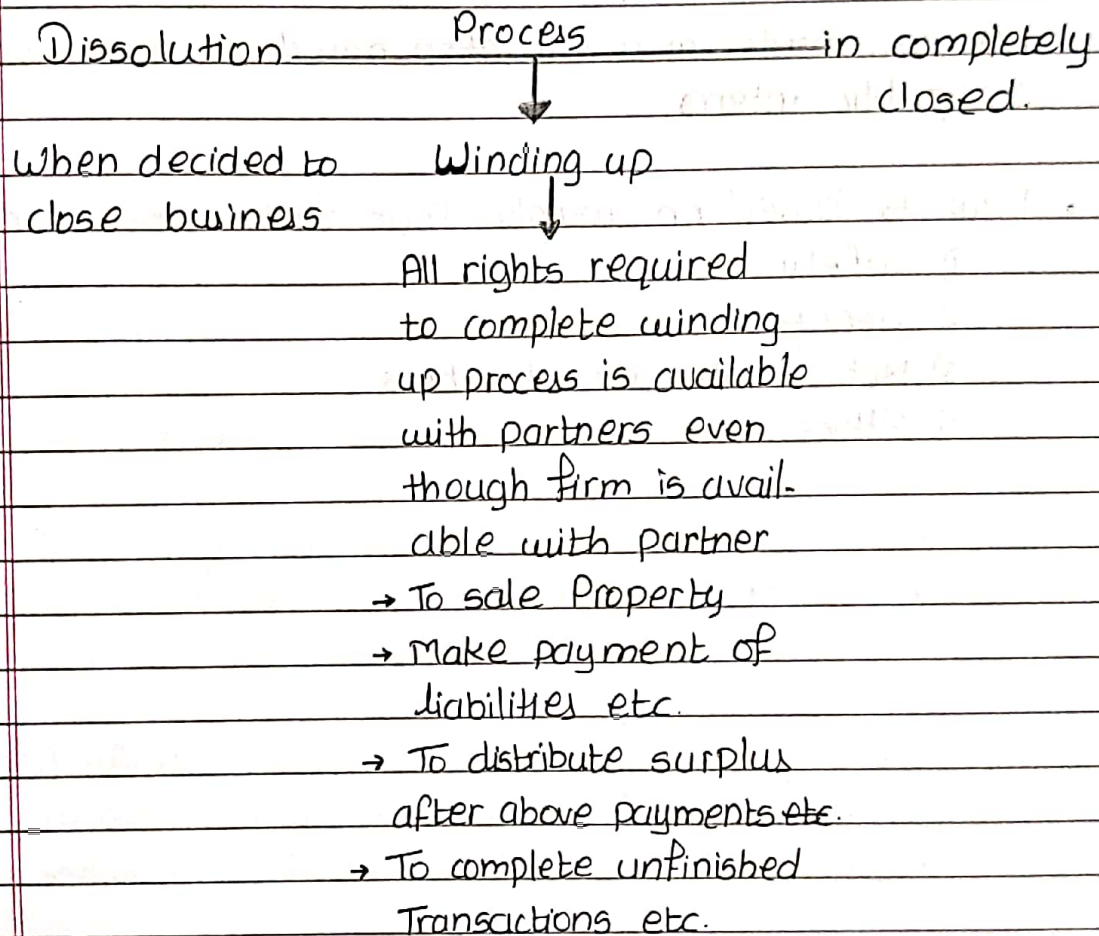
- 1) Retirement / Expulsion
- 2) Dissolution
- 3) Minor elects not become partner on attaining majority.

By CMA CS Rohan Nimbalkar



## • CONSEQUENCE OF DISSOLUTION.

### 1) Liability continues till public notice.



## • PUBLIC NOTICE (Section 72)

- To be printed in official gazette.
- One vernacular newspaper circulating in district where principal place of business of firm is situated.
- \* Notice<sup>shall</sup> also be given to R.O.F.

# Indian Partnership Act 1932

## Nature of Partnership

1. R is not a partner in a particular firm. But, he represents himself or knowingly permits himself to be represented as a partner of that particular firm to Sanjay, who on the faith of such representation gives credit to the firm. Is R liable as a partner in the firm?
2. A, Band C are partners in a firm carrying on money leading business. D, a customer, deposits his jewellery with the firm for safe custody. A and B sell this jewellery and misappropriate the money C, being a sleeping partner, have no knowledge about this sale. Now, D files a suit against all the three partners. Can C be held liable? Give reasons.

## Registration of Firm

3. P, X, Y and Z are partners in a registered firm A & Co. x died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable? (RTP May 2019)
4. A and B are partners carrying on the business of shoe making. Their firm is not registered. The firm purchases raw material worth ₹ 20,000 on credit from C. But the firm refuses to pay the price of raw material in the plea of its non-registration. C institutes a suit against the firm claim the amount due. Will C succeed? Give reasons.

## Relations of Partners

5. A, B and C are partners of a firm carrying on banking business. D, a customer of the firm, deposits his ornaments with the firm for safe custody. A and B sell those ornaments and misappropriate the money. C, being a sleeping partner, does not know anything about this act of A and B. Now D institutes/tries a suit against the firm including all the partners. C intends to escape liability on the ground of being a sleeping partner. Will C succeed? Give reasons.
6. Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd. Explain with reasons: (RTP May 2019)
  - (i) Whether Ram's private estate is liable for the price of the machine purchased by the firm?
  - (ii) Against whom can the creditor obtain a decree for the recovery of the price?
7. X, Y and Z are partners in a firm. They jointly promised to pay ₹ 3,00,000 to D. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z. (4 Marks) (May 2018)
8. Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay ₹ 6,00,000 to Kartik. Over a period of time Vijay became insolvent, but his assets are sufficient to pay one-fourth of his debts. Sanjay is compelled to pay the whole. Decide whether Sanjay is required to pay whole



amount himself to Kartik in discharging joint promise under the Indian Contract Act, 1872. (RTP Nov 2018)

9. "Thought a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."

(i) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner. (4 Marks) (Nov 2018)

(ii) State the liabilities of a minor partner both:

(1) Before attaining majority and

(2) After attaining majority. (2 Marks) (Nov. 2018)

(iii) State the legal position of a minor partner after attaining majority:

(a) When he opts to become a partner of the same firm.

(b) When he decide not to become a partner. (2 Marks) (Nov. 2018)

### **Reconstitution & Dissolution of Firm**

10. Mr. A, Mr. B and Mr. C were partners in a partnership firm M/ s ABC & Co., which is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October/2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth ₹ 20,00,000 to M/ s ABC & Co. M/ s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/ s ABC & Co., but also from the legal heirs of Mr. C.

Analyse the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X. (3 Marks) (Nov 2018)

11. Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to, give public notice of his retirement. After his retirement, Mr. M, Mr. N and ₹ Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P.

Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation. (3 Marks) (Nov. 2018)

12. X Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X go, angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, Estate whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances? (6 Marks) (May 2018)
13. Ram & Co., a firm consists of three partners A, Band C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932. (RTP Nov. 2018)