

# LAW

J.K. SHAH<sup>®</sup>  
CLASSES  
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# 01

## INDIAN CONTRACT ACT, 1872

### UNIT 1

#### NATURE OF CONTRACT

##### INTRODUCTION:

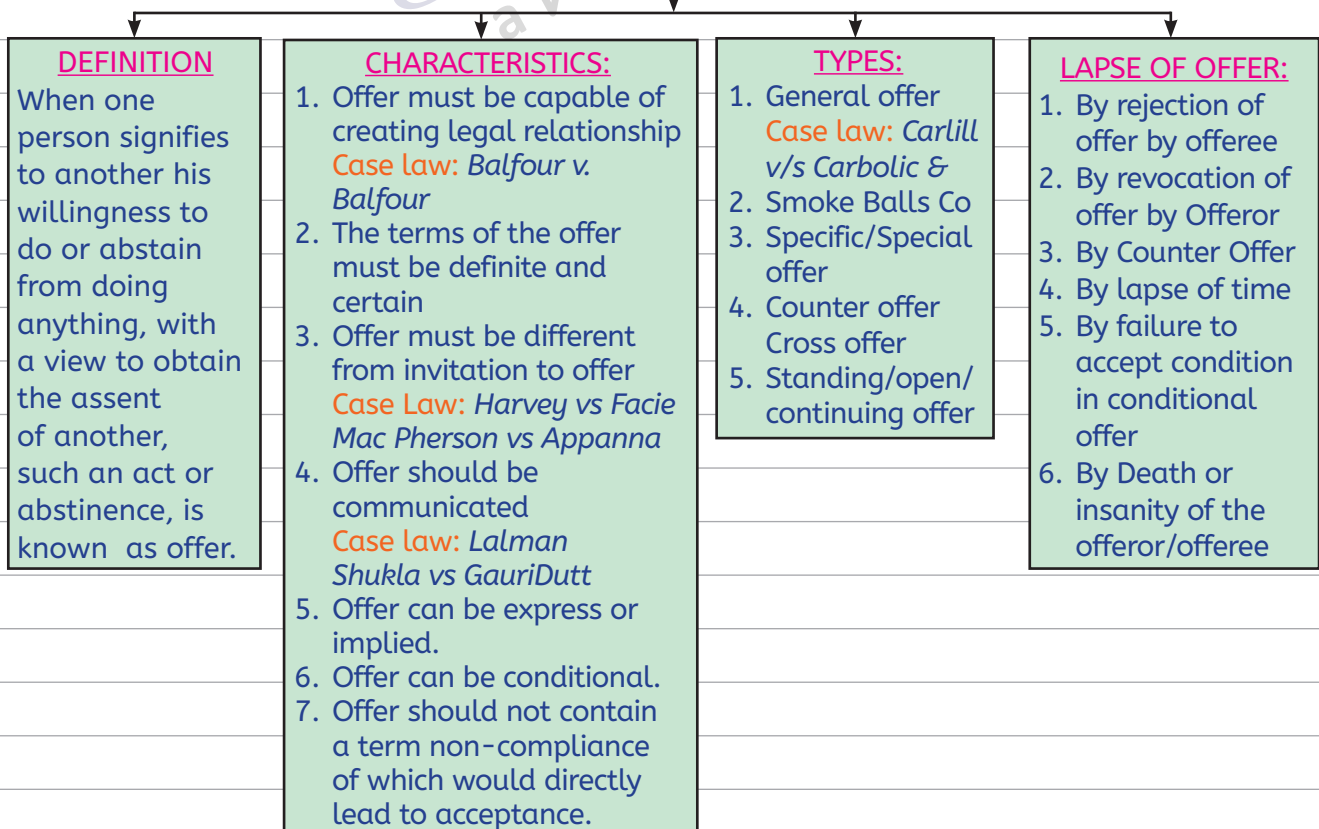
- It received its assent on 25th April, 1872 and was introduced on 1st September, 1872.
- It is applicable to whole of India.

**Contract** = Agreement + Enforceable by law

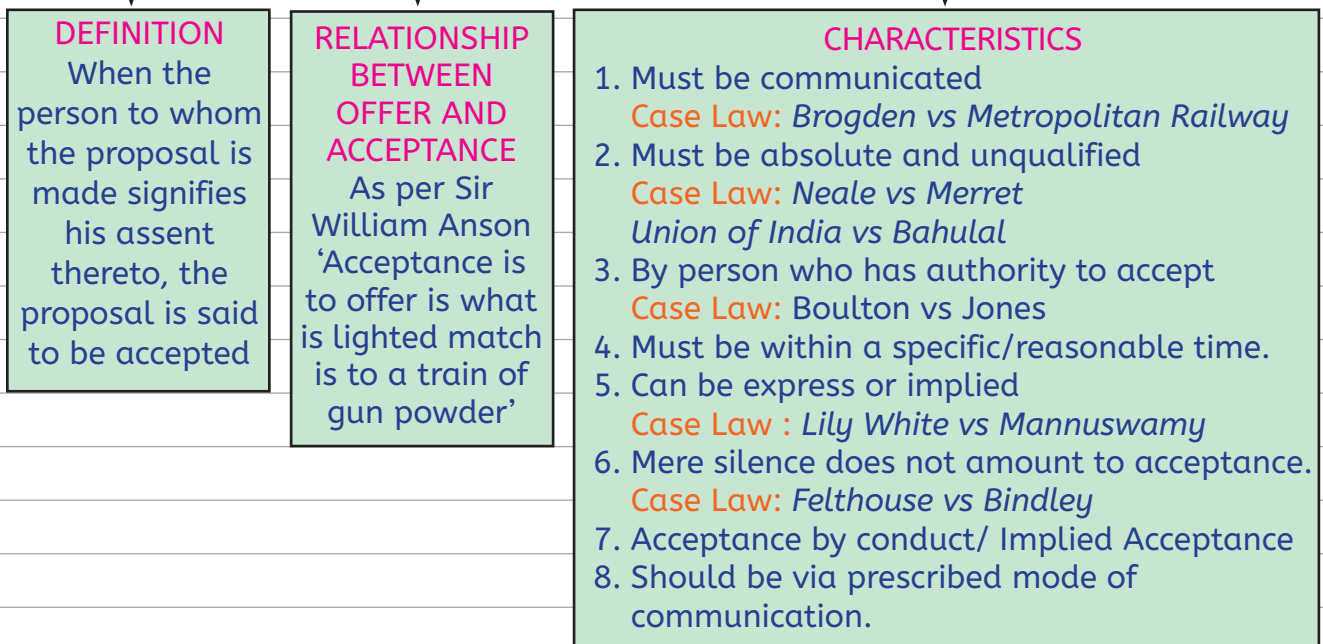
##### Agreement:

- “Every promise and every set of promises forming the consideration for each other, is an agreement.”
- All Contracts are agreements but all agreements are not contracts.

#### OFFER

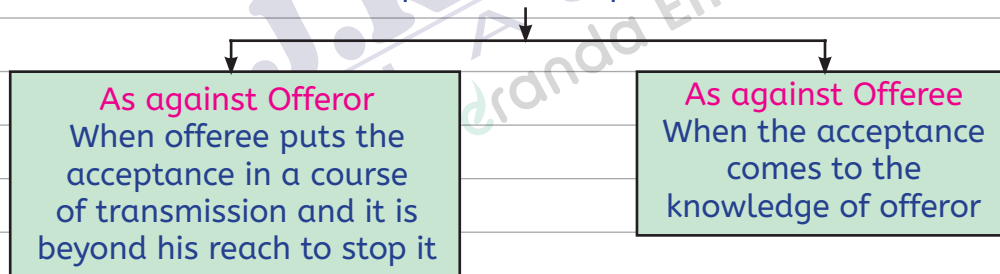


• **ACCEPTANCE**



• **COMMUNICATION OF OFFER & ACCEPTANCE AND REVOCATION OF OFFER & ACCEPTANCE**

1. Communication of offer is complete when it comes to the knowledge of offeree.
2. Communication of acceptance is complete



3. Modes of Acceptance:

- (a) Communication by Act

*Case Law: Central Bank Yeotmal vs Vyankatesh*

- (b) Communication by Omission

- (c) Communication of special conditions

*Case Law: Mukul Datta vs Indian Airlines*

4. Revocation of offer is valid before offeree puts the acceptance in course of transmission and it is out of his reach to stop it.
5. Revocation of acceptance is valid before acceptance comes to the knowledge of offeror.

- **TYPES OF CONTRACTS**

1. Valid contract
2. Void Contract Void Agreement
3. Voidable Contract
4. Illegal Agreement
5. Unenforceable contract
6. Express contract
7. Implied contract
8. Tacit contract
9. Quasi Contract
10. Executed contract
11. Executory contract
12. Unilateral contract
13. Bilateral contract
14. E-Contracts

- **ESSENTIAL ELEMENTS OF A VALID CONTRACT (Section 10)**

1. There must be an offer and its acceptance.
2. There must be an intention to create a legal relationship.
3. There must be two parties.  
*Case Law: State of Gujarat vs Ramanlal S & Co.*
4. There must be capacity of parties.
5. There must be mutual consent (consensus-ad-idem)
6. There must be free consent.
7. There must be lawful object
8. There must be lawful consideration.
9. The performance must not be impossible.
10. The performance must not be uncertain.
11. The agreement must not be declared to be void.
12. All the legal formalities must be fulfilled.

**UNIT 2**

**CONSIDERATION**

**DEFINITION**

When at the desire of the promisor, the promisee or any other person did or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such an act or abstinence is called a consideration for the promise.

**CHARACTERISTICS:**

1. The consideration must move at the desire of the promisor.  
*Case Law: Durga Prasad vs Baldeo*
2. It may move from the promisee or any other person  
*Case law: In Chinnayya v/s Ramayya*
3. Consideration can be past, present or future
4. Consideration can be negative or positive.
5. Consideration need not be adequate.
6. It must be real and not illusory
7. It must not be illegal, immoral, or opposed to public policy.
8. Consideration can be executed or executory.
9. Consideration for an act which a person a legally bound to perform is not a valid consideration.

**DOCTRINE OF PRIVITY OF CONTRACT.**

**RULE:** *Stranger to Contract cannot sue. But a stranger to a consideration can sue.* Exceptions to the rule "A stranger to a contract cannot sue"

- i. Beneficiaries in the case of trust
- ii. Written family settlements
- iii. In case certain marriage contracts/ arrangements.
- iv. In Assignment of contract, assignee has a right to sue
- v. Acknowledgement of Debts
- vi. Covenants with land
- vii. If contracts made by the agent, principal can enforce the contract.

**NO CONSIDERATION NO CONTRACT**

**Exceptions:**

1. Out of Natural Love and Affection
2. Compensation paid for past voluntary services
3. Promise to pay Time Barred Debts in writing
4. No consideration is necessary to create an agency
5. In case of completed gifts, no consideration is necessary
6. Bailment
7. Charity

**UNIT 3**

**OTHER ESSENTIAL ELEMENTS OF A VALID CONTRACT**

➤ **CAPACITY OF PARTIES (Section 11&12)**

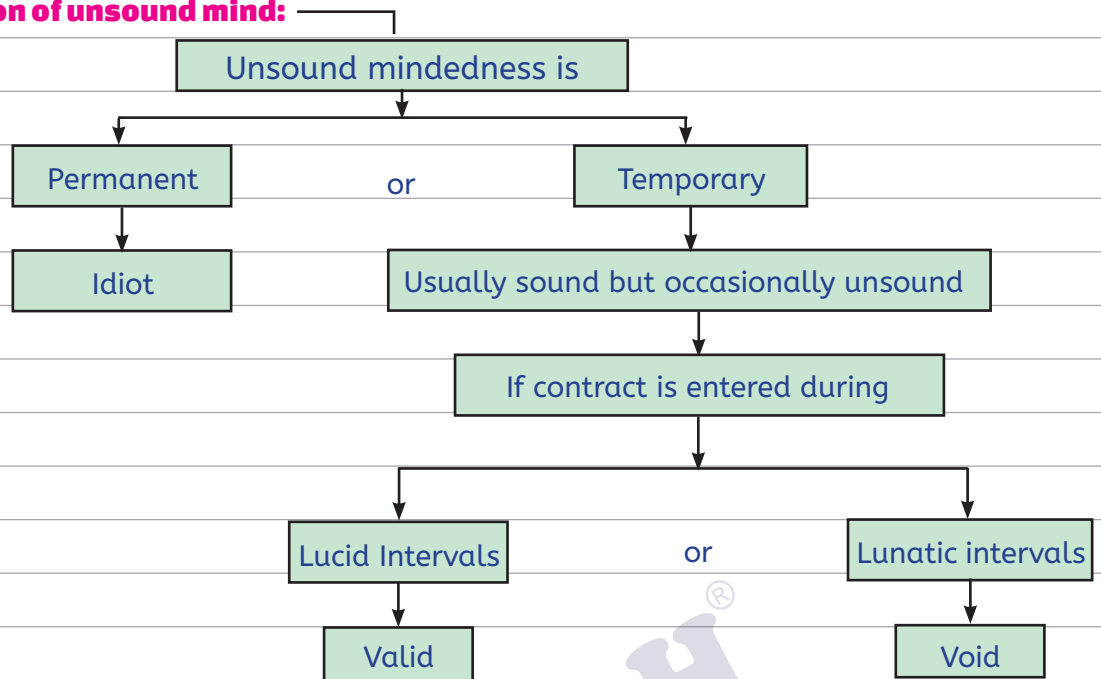
An agreement will be valid and enforceable only if the parties to it are legally competent to enter into contract.

Following persons are not competent to contract:

**1. Minor**

- A minor is a person who is below the age of eighteen years.
- An agreement with a minor is void ab initio
- The minor's contracts do not impose any liability on his parents or guardians.
- Parents/Guardians can enter into a contract on behalf of minor for his benefits.
- Parents/Guardian cannot bind a minor in a contract to purchase immovable properties
- If minor falsely represents his age, still the contract is void-ab-initio as he can always plead minority.
- Minor cannot ratify the agreement after attaining majority
- If any necessities of life (food, clothing, shelter, education, health) are supplied to a minor, he is not personally liable but only his property is liable.
- A minor can be appointed as an agent but he is not liable for his acts as an agent
- Minor cannot be a declared as insolvent.
- Minor cannot be a shareholder but if the application is made by Parents/Guardians and if the shares are fully paid then a m,minor can be shareholder.
- Minor is liable for tort (civil wrong)
- Minor cannot be a partner but he can be admitted for benefits.
- **Case law:** *In Mohiri Bibee vs. Dharmodas Ghose*

**2. Person of unsound mind:**



**3. Persons disqualified by law**

- (i) Alien enemies
- (ii) Insolvents
- (iii) Convicts
- (iv) Foreign sovereigns, diplomatic staff, and accredited representatives of foreign states
- (v) Corporation and a company

➤ **CONSENSUS-AD- IDEM (Section 13)**

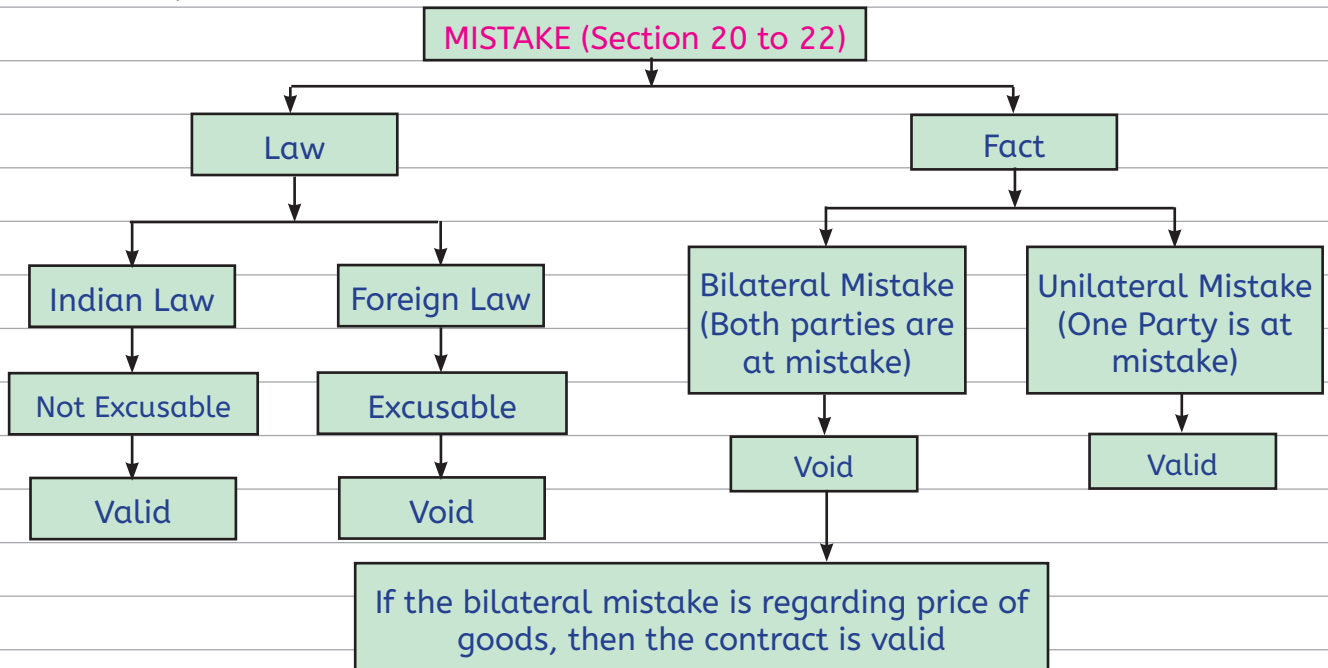
Two or more persons are said to consent when they agree upon the same thing in the same sense. It is also known as consensus ad idem (i.e., meetings of the minds). For the creation of contract, there must be consensus ad idem

**FREE CONSENT (Section 14)**

Consent is said to be free if it is **not induced** by



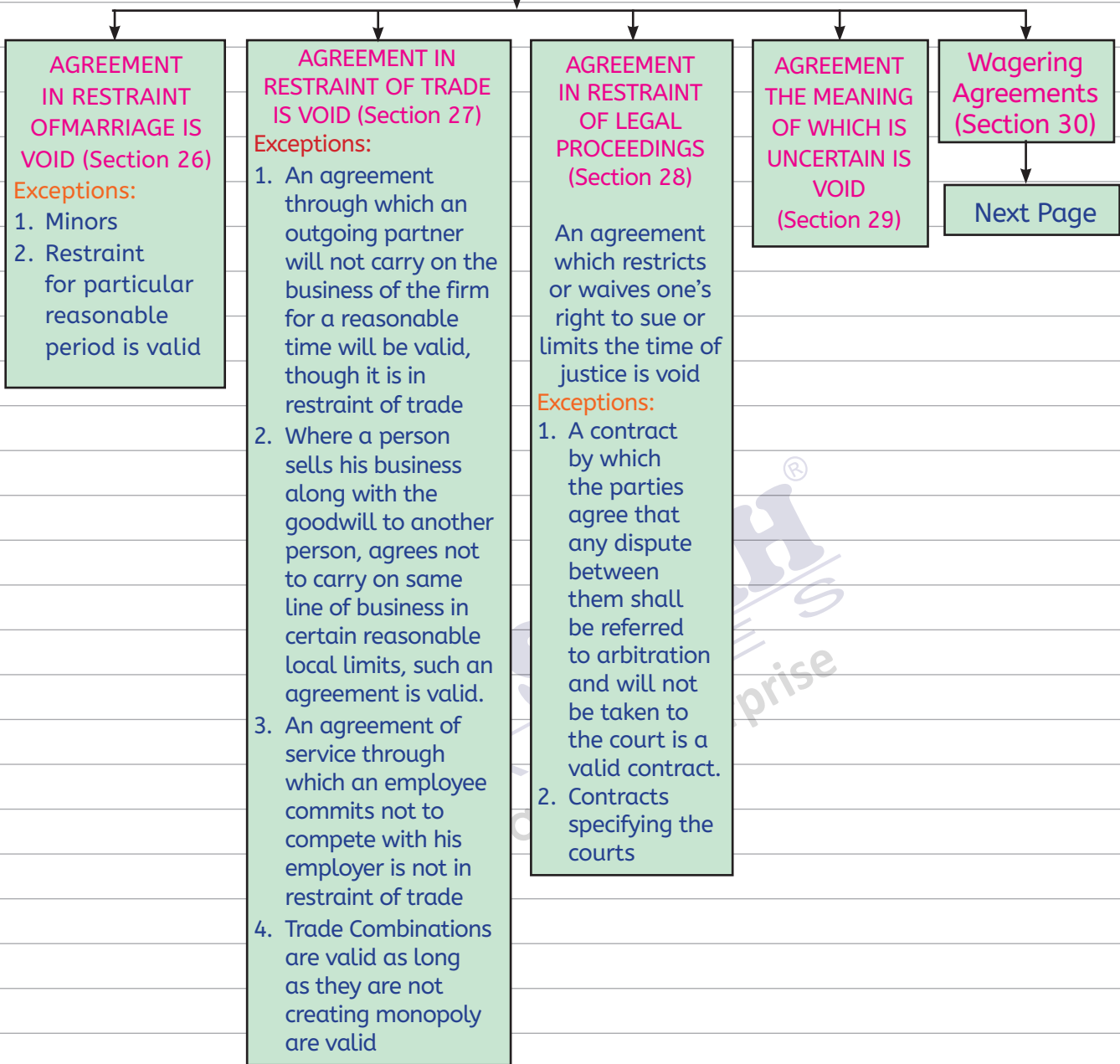




**UNLAWFUL OBJECT & UNLAWFUL CONSIDERATION (Section 23 & 24)**

1. Agreement forbidden by law
2. Agreement defeating the provisions of law
3. Agreement causing injury to a person or loss of property.
4. Where consideration is immoral.
5. Agreement has a fraudulent object.
6. Agreement interfering with course of law and justice
7. Where consideration is opposed to public policy.
  - (a) Stifling Prosecution
  - (b) Maintenance and Champerty
  - (c) Trading with an enemy
  - (d) Trafficking in public offices
  - (e) Marriage brokerage contracts
  - (f) Interest against obligation
  - (g) Agreement for the creation of monopolies

• **AGREEMENTS EXPRESSLY DECLARED AS VOID**



**WAGERING AGREEMENTS (SECTION 30)**

<p>Wagering Agreements (Section 30)</p>	<ol style="list-style-type: none"> <li>1. Payment of money or money's worth upon ascertainment of future uncertain event is known as wagering.</li> <li>2. Wagering agreements are void but collateral to wagering are valid. Illegal agreements are void and collateral to illegal are also void.</li> <li>3. Promissory Note arising out of wagering is also void.</li> <li>4. Game is involving             <ul style="list-style-type: none"> <li>→ Skill → Valid</li> <li>→ Chance → Void</li> </ul> </li> <li>5. In horse races if amount involved is             <ul style="list-style-type: none"> <li>→ &lt;500 → Void</li> <li>→ ≥500 → Valid</li> </ul> </li> <li>6. The Act provides that an agreement to buy lottery tickets is one by way of wager and is void.</li> <li>7. Speculative transactions are valid as they involve skills.</li> </ol>
<p>Essentials of a Wager</p>	<ol style="list-style-type: none"> <li>1. There must be a promise to pay money or money's worth.</li> <li>2. Promise must be conditional on an event happening or not happening.</li> <li>3. There must be uncertainty of event.</li> <li>4. There must be two parties, each party must stand to win or lose.</li> <li>5. There must be common intention to bet at the timing of making such agreement.</li> <li>6. Parties should have no interest in the event except for stake.</li> </ol>
<p>Crossword Puzzles and Competitions</p>	<ul style="list-style-type: none"> <li>✓ Crossword puzzles in which prizes depend upon the correspondence of the competitor's solution with a previously prepared solution kept with the editor of a newspaper is a lottery and therefore, a wagering transaction.</li> <li>✓ Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competitions are valid provided the prize money does not exceed 1,000.</li> <li>✓ <b>Case Law: State of Bombay vs. R.M.D. Chamarbangwala</b></li> </ul>
<p>Speculative transactions</p>	<ul style="list-style-type: none"> <li>✓ An agreement or a share market transaction where the parties intend to settle the difference between the contract price and the market price of certain goods or shares on a specified day is a gambling and hence void.</li> <li>✓ In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.</li> </ul>
<p>Chit Fund</p>	<p>Chit fund does not come within the scope of wagering. In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.</p>

**UNIT 4**

**PERFORMANCE OF CONTRACTS**  
(Section 37 to 67)

• **CONTRACT WILL BE PERFORMED BY (Section 37,40,41)**

1. Promisor himself
2. Legal Representative  
However, if the contract involves personal skills and if the promisor dies, the contract becomes void.
3. Agent
4. Third persons, if promisee permits

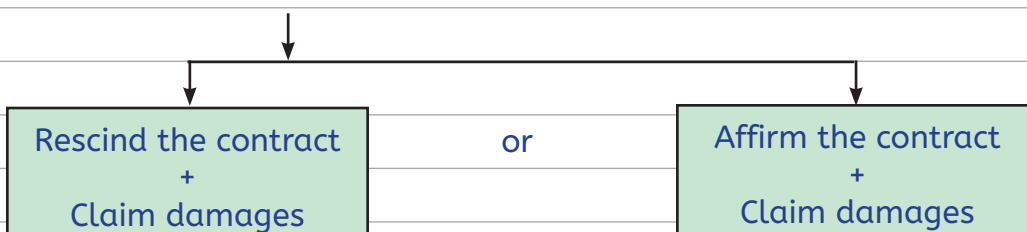
• **REQUISITES OF A VALID PERFORMANCE (Section 38)**

A performance to be valid must fulfil the following conditions otherwise promisor will be liable non-performance:

1. It must be unconditional
2. Performance must be at a proper time and place
3. Performance must be within reasonable time.
4. Performance must give reasonable opportunity for inspection

• **EFFECT OF REFUSAL OF A PARTY TO PERFORM (Section 39)**

If Promisor fails to perform the contract,  
Promisee can



• **DISTINCTION BETWEEN SUCCESSION AND ASSIGNMENT**

➤ **Succession**

When the benefits of a contract are succeeded by a process of law, both the ASSET and the LIABILTY would be transferred to the legal heir.

➤ **Assignment:**

Assignment is voluntary transfer of right. Unlike succession, the assignor can assign only the assets to the assignee and not the liabilities.

• **LIABILITY OF JOINT PROMISORS (Section 42 to 44)**

- Liability of joint promisor is joint and several
- If any joint promisor dies, his legal representatives must jointly with the surviving promisors fulfil the promise.
- On the death of all the joint promisors, the representatives of all of them must jointly fulfil the promise.
- The promisee may compel anyone of the joint promisor to perform the promise
- Where a promisee releases one of the joint promisors, the release of one promisor does not discharge the other joint promisors

• **RIGHTS OF JOINT PROMISEES (Section 45)**

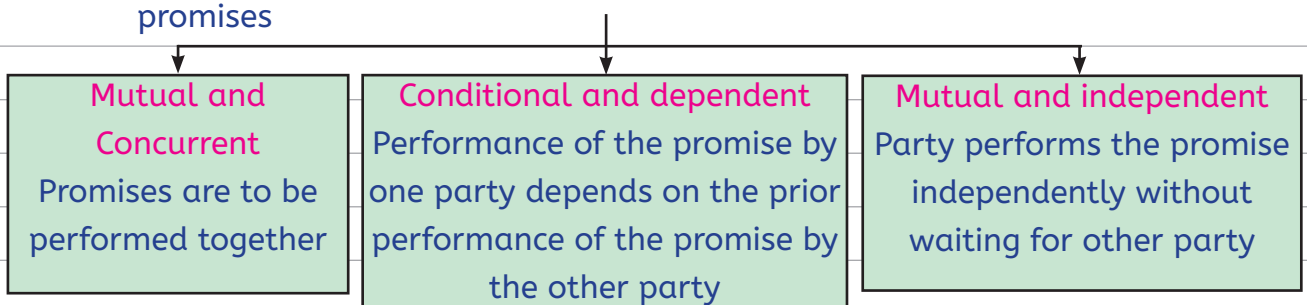
- Rights of joint promises is only joint and not joint & several
- If any joint promisee dies, his legal representative must jointly with the surviving promisees claim the performance.
- On the death of all the joint promisees, the legal representatives of all of them must jointly claim the performance.

• **TIME AND PLACE FOR PERFORMANCE (Section 46 to 50)**

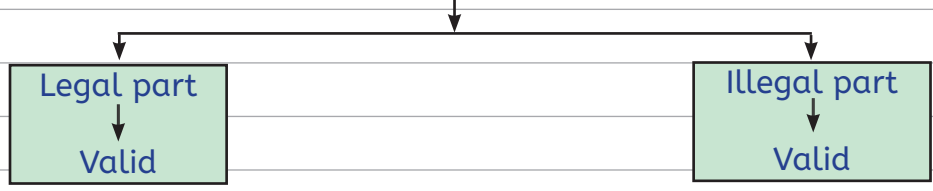
- Where the day for performance is not specified → promisor has to perform within reasonable time
- Where the time for performance is not specified → promisor has to perform during business hours
- Promisee has to specify day, time and place for performance.
- Where the place for performance is not specified → promisor has to apply to promisee to appoint the place
- Performance is after reasonable time, business hour or at a place other than appointed place → Performance is valid if promisee accepts or demands it.

• **RECIPROCAL PROMISES (Section 51 to 54, 57, 58)**

- Promises which form the consideration for each other are called reciprocal promises



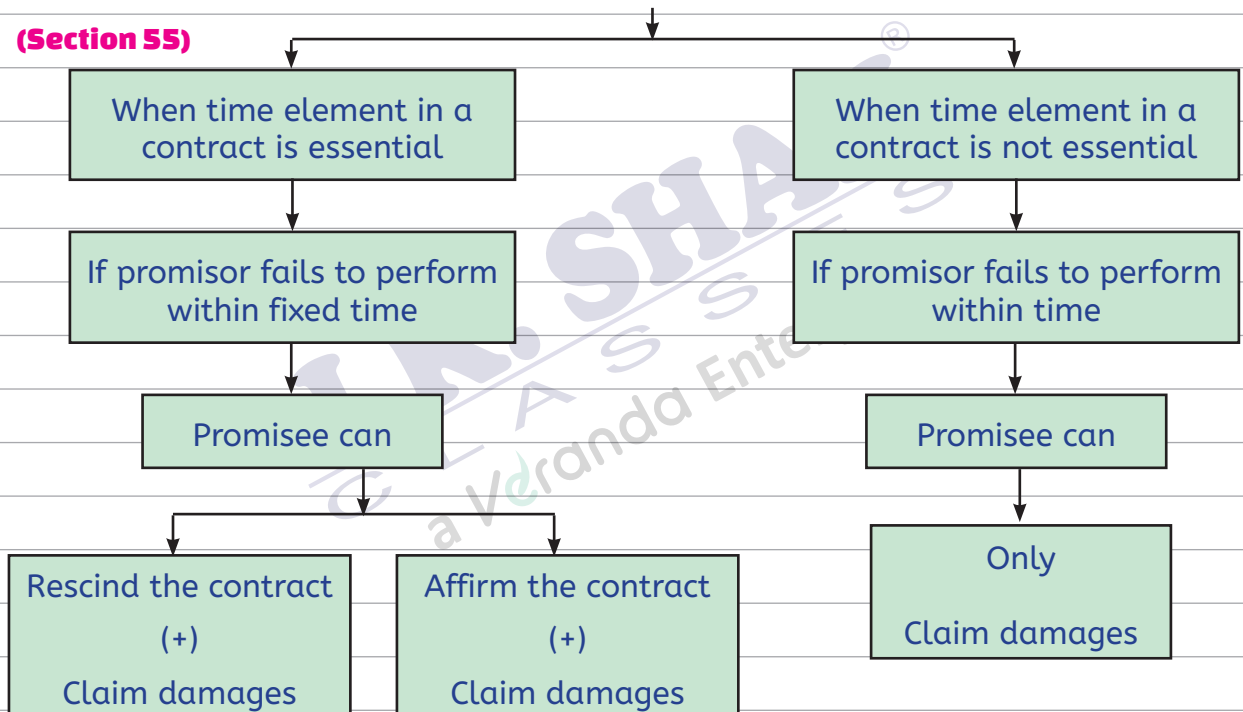
- Where one party to a reciprocal promise prevents the other party from performing his promise, the contract becomes voidable at the option of the party who is so prevented. And the aggrieved party can also recover compensation.
- Legal and Illegal Reciprocal Promises



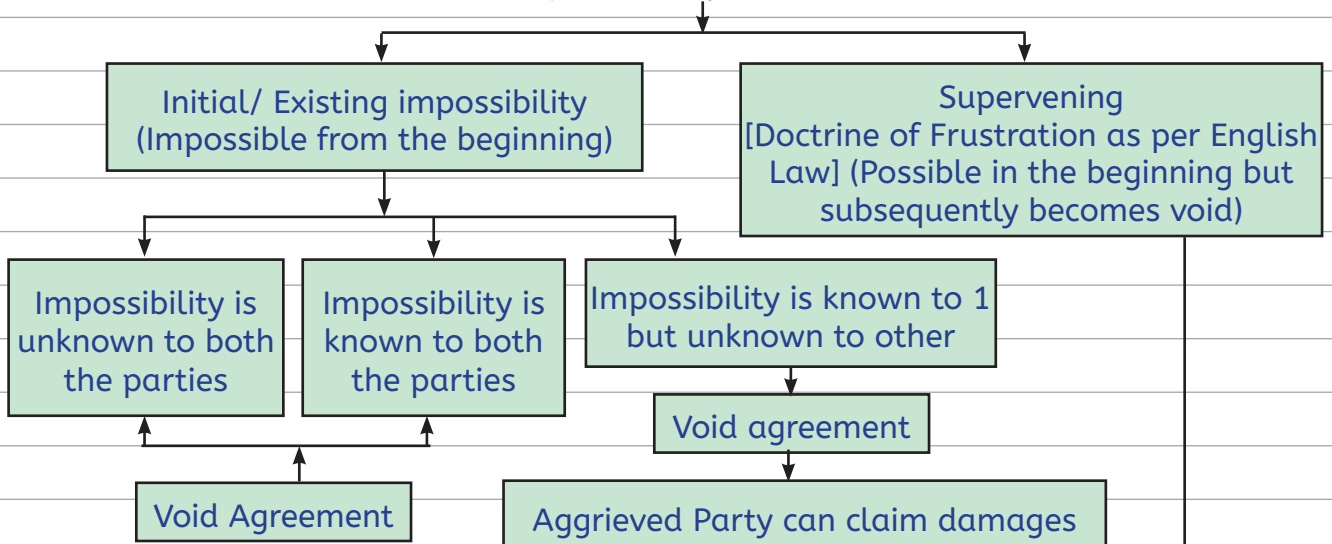
But if the things are inseparable then the entire agreement is void

**EFFECTS OF FAILURE TO PERFORM AT A TIME FIXED IN A CONTRACT IN WHICH TIME IS ESSENTIAL**

**(Section 55)**



**IMPOSSIBILITY OF PERFORMANCE (Section 56)**

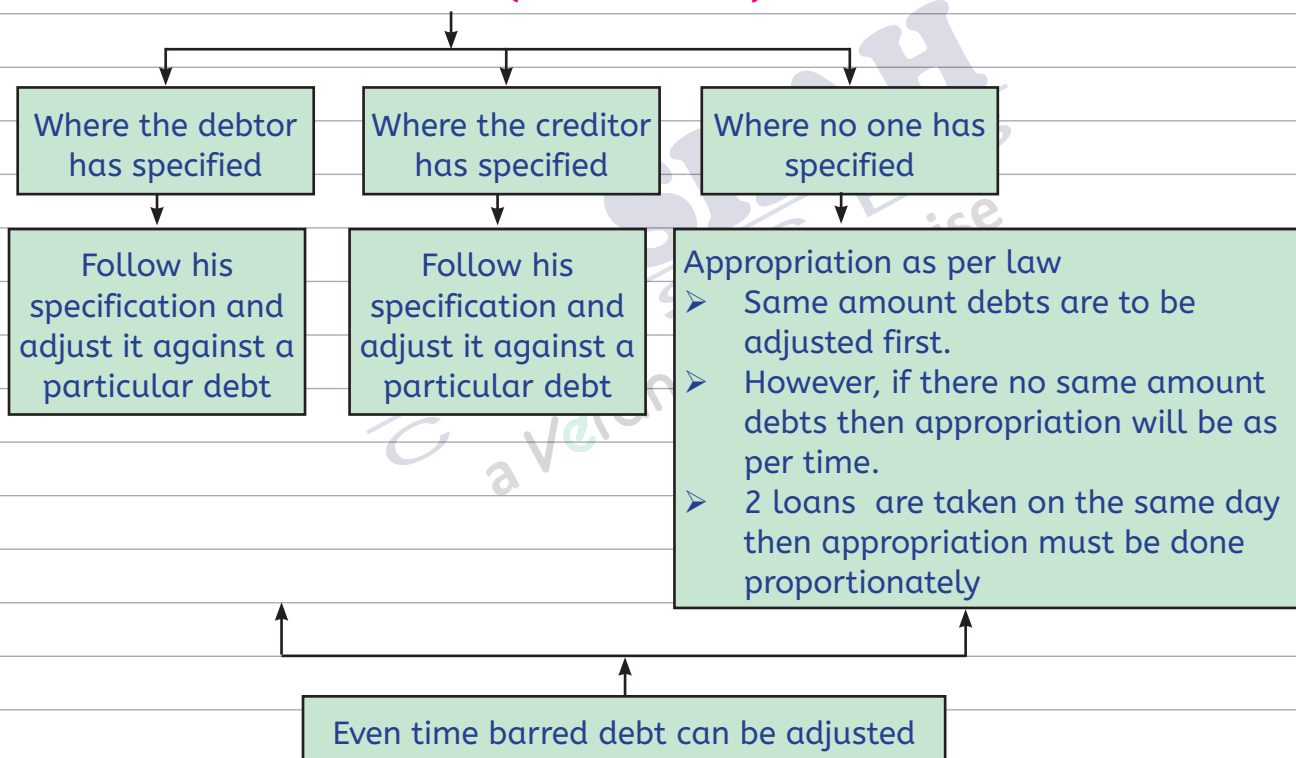


Impossibility arising due to following circumstances:

1. Destruction of subject matter
2. Outbreak of war.
3. Change of law
4. Incapacity to perform a contract of personal services
5. Non-existence of a particular state of things

Void contract

➤ **APPROPRIATION OF PAYMENTS (Section 59 to 61)**



➤ **CONTRACTS WHICH NEED NOT BE PERFORMED (Section 62,63,66)**

1. **Novation:** Cancellation of old contract and substitution of new contract. It must be with the mutual consent of all the parties.
2. **Alteration:** It means change in one or more terms of the contract. It must be with the mutual consent of all the parties
3. **Rescission:** It means the cancellation of the contract.  
Communication of rescission is same as communication of offer.
4. **Remission:** It means the acceptance of lesser fulfilment of the terms of the promise

➤ **QUANTUM MERUIT (Section 64,65)** (as much as is earned)

- ✓ Any benefit received under voidable contract which is subsequently avoided is to be returned back.
- ✓ Any benefit received under void contract is to be returned back.

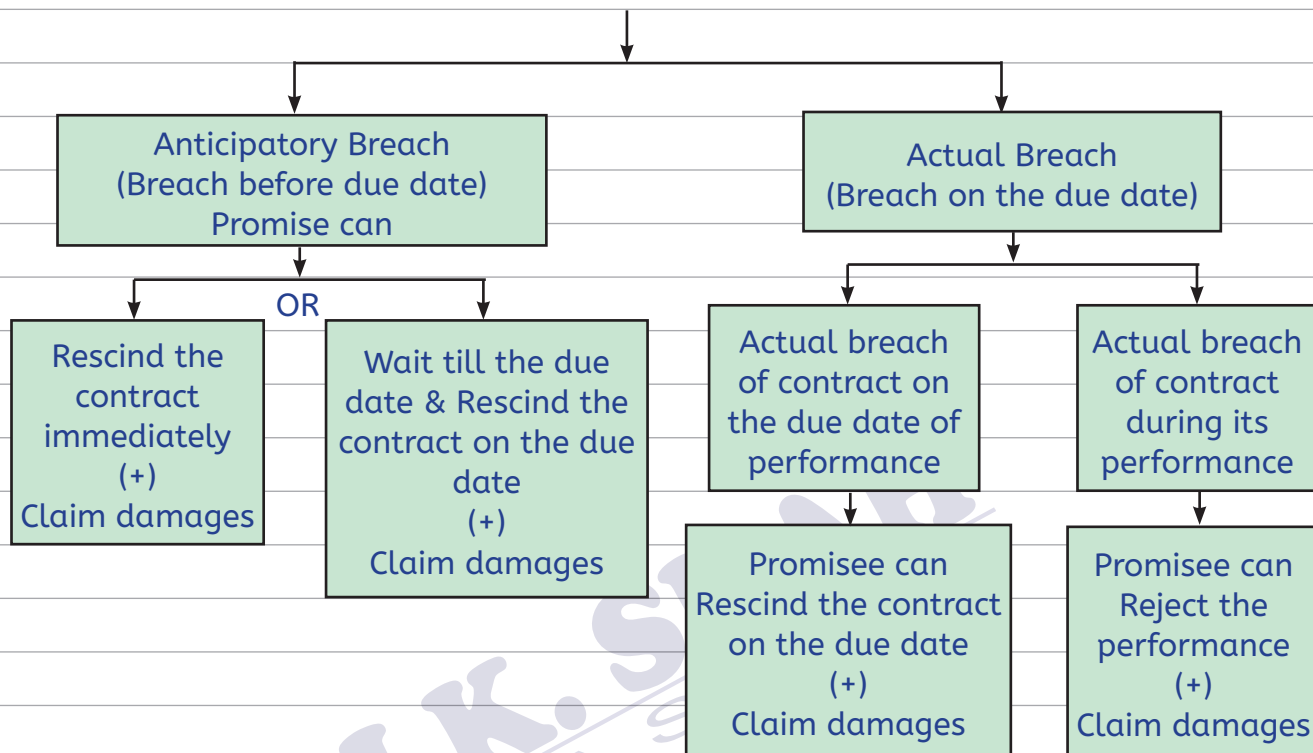
➤ **EFFECTS OF NEGLIGENCE OF PROMISEE (Section 67)**

If any promisee neglects or refuses to afford the promisor facilities for the performance of a promise, the promisor is excused from the performance of his promise.



**UNIT 5**

**BREACH OF CONTRACT (Section 73 to 75)**



**DAMAGES FOR BREACH OF CONTRACT (Section 73):**

- (1) **Ordinary/ Usual damages:** Market Value-Contract Price
- (2) **Liquidated damages:** Pre-estimated damages which shall arise in ordinary breach circumstances.
- (3) **Special damages:** Pre-estimated damages which shall arise in special circumstances.
  - **Case Law :** Hadley v/s Baxendale
- (4) **Exemplary/ Vindictive/ Punitive damages:** Here intention of the party is not to recover loss but to punish the other party. It can be claimed in following cases:
  - (a) Where a banker wrongfully dishonours customer's cheque
  - (b) Where there is a breach of a promise to marry
- (5) **Nominal damages:** Here intention of the parties to establish a right to sue. Such damages are awarded by court. Such damages are for nominal amounts like ten rupees or even ten paise.
- (6) **Damages for deterioration caused by delay:** Such damages are recovered for damages or 'deterioration' caused to goods on account of delay by carriers
- (7) **Remote or indirect damages:** The remote damages are not recoverable.

### **LIQUIDATED DAMAGES AND PENALTY (Section 74):**

- Liquidated damages: Pre-estimated damages which shall arise in ordinary breach circumstances. Intention of parties is to recover the loss. Its genuine calculation of loss.
- Penalty: Pre-estimated penalty which shall arise in ordinary breach circumstances.
- Intention of parties is to punish the other party. Its not genuine calculation but its a random amount
- As per Indian law, there is no difference between Liquidated damages and Penalty but English Law recognizes the difference between the two.
- Only court can reduce the amount of Liquidated damages/Penalty if it is found unreasonable. However even court cannot increase the amount.
- A party who rightfully rescinds the contract only can claim damages (Section 75)

### **DISCHARGE OF CONTRACT**

Discharge of contract and discharge of party are different.

- (1) Discharge by performance
- (2) Discharge by mutual agreement
- (3) Discharge by impossibility of performance
- (4) Discharge by lapse of time
- (5) Discharge by operation of law
- (6) Discharge by breach of contract
- (7) Discharge by remission
- (8) When a promise neglects or refuses to provide reasonable facilities for the performance, promisor and contract is discharged.
- (9) Merger of Rights

### **ADDITIONAL REMEDIES AVAILABLE IN CASE OF BREACH OF CONTRACT:**

Apart from claiming damages, following remedies are available in case of breach of contract:-

- (1) Rescission of contract
- (2) Suit for Quantum Meruit
- (3) Suit for Specific Performance:

Where (i) The damages are not an adequate remedy or  
(ii) The damages cannot be estimated or  
(iii) The subject matter of contract is unique in nature,

Then the aggrieved party can file a suit for specific performance in the court. However it is at the discretion of the court.

Specific performance cannot be ordered if

- (i) Performance of contract is continuous in nature
- (ii) Performance of contract involves personal skills

**(4) Suit for Injunction:**

Injunction is an order of the courts restraining a person from doing something which he promised not to do. In this case also, the courts are at discretion to issue an injunction order.

**UNIT 6**

**CONTINGENT AND QUASI CONTRACT**

**CONTINGENT CONTRACTS**  
(Section 31 to 36)

**Meaning**

- It is a contract to do or not to do something if the event collateral to it happens or does not happen (Section 31)

**Rules of enforcement of contingent contract**

- Contingent Contracts Dependent on the 'Happening' of Future Uncertain Event  
Contract is valid- if event happens  
Contract becomes void- if the event does not happen/ becomes impossible
- Contingent Contracts Dependent on the 'Non-Happening' of Future Uncertain Event  
Contract is valid- if event does not happen/ becomes impossible  
Contract becomes void- if the event happens (Section 33)
- Contingent Contracts Dependent on future conduct of a living person. (Section 34)  
Contract is valid if person acts accordingly Otherwise it becomes void
- Contingent Contracts Dependent on the Happening or Non-Happening of Specified Uncertain Event Within Fixed Time (Section 35)
- Contingent Contracts Dependent on Impossible Event is void. (Section 36)

**Essentials of contingent contract**

1. There must be a valid contract.
2. The performance of the contract must be conditional
3. The event must be uncertain
4. The uncertain event must be collateral to the contract

## **QUASI CONTRACTS (Section 68 to 72)**

### **INTRODUCTION**

It is an implied contract.

It is based on the principle of “Prevention of unjust enrichment at the expense of other”

### **CIRCUMSTANCES (OR CASES) OF QUASI CONTRACTS**

(1) Supply of necessaries to persons who are incompetent to contract (Section 68)

(2) Payment by a Person Having Some Interest in Payment (Section 69)

#### **Conditions:**

- (i) The person making the payment must have some interest in paying the amount.
- (ii) The person making the payment must not be bound by law to pay the amount.
- (iii) The other person from whom the money is sought to be recovered must be legally bound to pay the money.

(3) Claim for any benefit received under a non-gratuitous act (Section 70)

#### **Conditions:**

- (a) The person must lawfully do something for another person or deliver something to him.
- (b) The person doing some act or delivering something must not intend to act gratuitously
- (c) The other person must voluntarily accept the acts or goods and he must have enjoyed their benefits

**Case Law:** *Shyam Lal vs State of Uttar Pradesh*

(4) Finder of goods (Section 71)

**Case Law:** *Hollins vs Howler*

(5) Payment of Money or Delivery of Goods by Mistake or Under Coercion (Section 72)

# 02

## SALE OF GOODS ACT, 1930

### UNIT 1

#### FORMATION OF CONTRACT OF SALE

##### INTRODUCTION:

- Introduced on 1st of July, 1930
- Applicable to whole of India
- This law was previously part of Indian Contract Act, 1872
- Where the Sale of Goods Act is silent on any point, the Indian Contract Act is applicable.

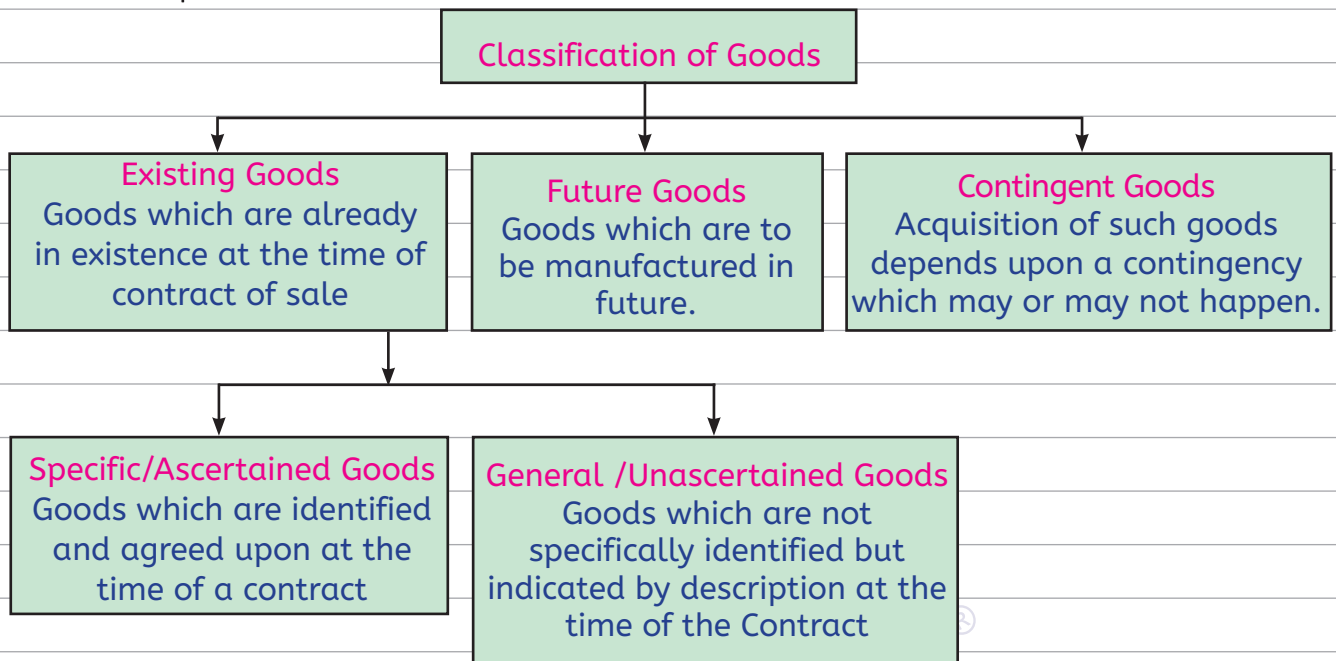
##### CONTRACT OF SALE (Section 4)



- “A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price.

##### DEFINITIONS

1. **Buyer [Section 2(1)]:** Buyer means a person who buys or agrees to buy goods.
2. **Seller [Section 2(13)]:** Seller means person who sells or agrees to sell goods.
3. **Goods [Section 2(7)]:** Any movable asset, except money and actionable claims, including stocks and shares, including growing crops, grass and things attached to or forming part of the land which are can be severed before the contract of sale.



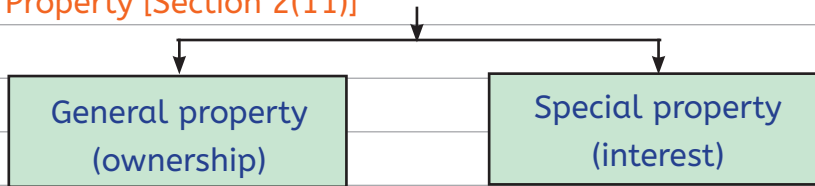
- ✓ Money here means legal tender of money, i.e. the recognised circulation in the country; but not old rare coins.
- ✓ Things attached to the earth are not movables, but trees, growing crops which can be easily severed from the earth before sale. Fruits, vegetables and flowers which can be separated from the trees, are included in 'goods'.
- ✓ Livestock i.e. cows, buffaloes, cats etc are 'goods'.
- ✓ Patents, copyrights, goodwill, trade-marks, are all considered goods which can be the subject matter of a contract.
- ✓ Water, gas and electricity are goods
- ✓ As per English law, "shares and stock" are not treated as "goods".
- ✓ To conclude, everything movable is goods, except the following:-
  1. Money
  2. Actionable Claims
  3. Immovable assets
  4. Services
  5. Human Beings

#### 4. Price [Section 2(10)]

= Money Consideration of the goods

- ✓ Gift of Goods  $\neq$  Sale Of Goods Act
- ✓ Exchange of goods for goods i.e Barter  $\neq$  Sale Of Goods Act
- ✓ Exchange of goods for goods + Price = Sale Of Goods Act
- ✓ Goods distributed as free samples  $\neq$  Sale Of Goods Act

5. Property [Section 2(11)]

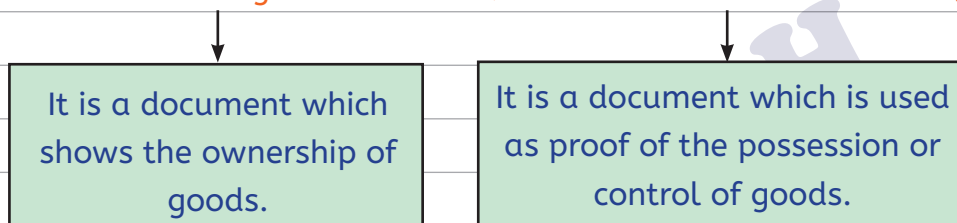


But in Sale Of Goods Act, 'property' means the general property in goods and not merely a special property

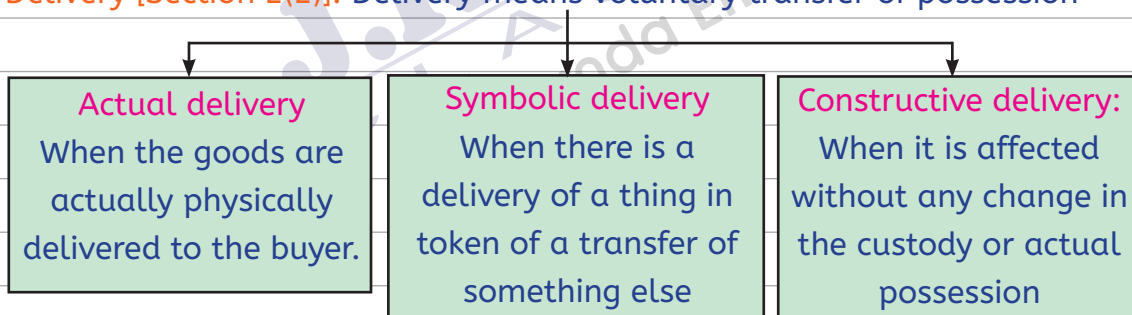
6. Mercantile Agent [Section 2(9)]

Mercantile Agent means an agent having authority to sell goods, or to consign goods for the purpose of sale, or, to buy goods, or to raise money on the security of goods.

7. Documents showing Title to Goods/ Documents of Title to Goods [Section 2(4)]



8. Delivery [Section 2(2)]: Delivery means voluntary transfer of possession



9. Insolvent [Section 2(8)]: A person is said to be insolvent when he ceases to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.

10. Quality of goods includes their state or condition. [Section 2(12)]

• **ESSENTIAL ELEMENTS OF A VALID CONTRACT OF SALE**

- (1) All the requirements of a valid contract must be fulfilled
- (2) There must be two parties to the contract of sale
- (3) There must be some goods as a subject-matter
- (4) The general property in the goods must be transferred to the buyer
- (5) There must be some price for the goods
- (6) A contract of sale can be absolute or conditional



• **DISTINGUISH BETWEEN**

(1) **Sale and Bailment**

Sale	Bailment
1. The ownership in goods is transferred from the seller to the buyer.	1. There is only transfer of possession of goods from the bailor to the bailee
2. The return of goods in contract of sale is not possible.	2. The bailee must return the goods to the bailor on the fulfilment of the purpose for which the bailment was made.
3. The consideration is the price in terms of money.	3. The consideration may be gratuitous or non-gratuitous.

(2) **Sale and Agreement to sell**

Sale	Agreement to sell
1. Ownership and risk are immediately transferred	1. Ownership and risk are transferred at some future time
2. A sale is an executed contract	2. An agreement to sell is an executory contract
3. Risk is transferred immediately	3. Risk is transferred in future
4. Consequences of Breach by buyer: In a sale, if the buyer fails to pay for the goods, the seller can: (i) File a suit for recovery of price (ii) Claim damages.	4. Consequences of Breach by buyer: In an agreement to sell, if the buyer fails to pay for the goods, the seller can only claim damages for breach of contract
5. Consequences of Breach by seller: In a sale, if the seller defaults, i.e. commits a breach, the buyer can: (i) sue for damages (ii) claim the goods back from third party	5. Consequences of Breach by seller: In the case of an agreement to sell, if the seller commits a breach, the buyer can only claim damages.
6. A subsequent loss or destruction of the goods is the liability of the buyer	6. Such loss or destruction is the liability of the seller.
7. Creates Jus in rem	7. Creates Jus in personam

(3) Sale and Hire Purchase

Sale	Hire Purchase
1. Ownership is transferred immediately	1. The ownership in goods passes to the hirer upon payment of the last instalment.
2. The position of the buyer is that of the owner of the goods.	2. The position of the hirer is that of a bailee till he pays the last
3. The return of goods in contract of sale is not possible.	3. The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
4. If buyer becomes insolvent, seller takes the risk	4. The owner takes no such risk, for if the hirer fails to pay an instalment the owner has right to take back the goods.
5. The buyer can resell the goods.	5. The hirer cannot resell the goods
6. Tax is levied at the time of the contract.	6. Tax is not leviable until it eventually converted into a sale.

- CONTRACT FOR WORK AND LABOUR**

In contract for work and labour or materials, the contract is for the exercise of the skill and labour, and delivery of goods is only subsidiary.

- BARTER AND EXCHANGE**

**Barter:** Where goods are transferred for goods, the transaction is one of a 'barter' and not sale

**Exchange:** Where money is exchanged for money, the transaction is one of 'exchange' and not sale

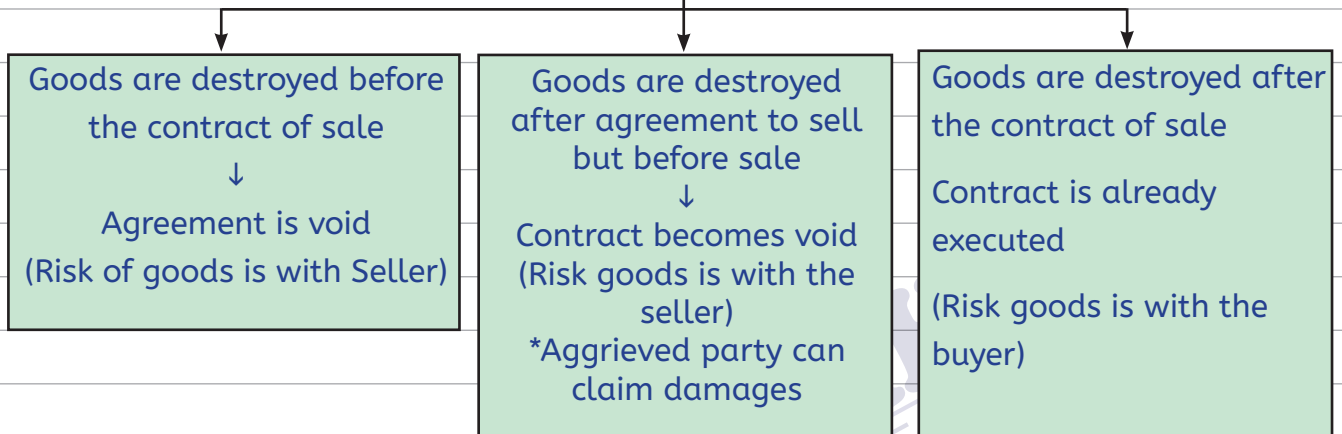
- FORMATION AND MODES OF A CONTRACT OF SALE (Section 5)**

A contract of sale may be made in anyone of the following modes:

- (1) There may be immediate delivery of goods, but the price to be paid at some future date.
- (2) There may be immediate payment of price, but the delivery to be made at some future date.
- (3) There may be immediate payment of price and the immediate delivery of goods.
- (4) The price and delivery of the goods may be postponed.

- (5) The price and delivery of the goods may be agreed to be made in instalments. A contract of sale may be made (a) in writing, or (b) by words of mouth, or (c) partly in writing and partly by words of mouth, or (d) may be implied from the conduct of the parties. However, if any particular mode is prescribed by any law, then the contract of sale must be made in that particular mode.

• **EFFECT OF DESTRUCTION OF GOODS (Section 6 to 8)**



• **PRICE AND MODES OF FIXING THE PRICE (Section 9&10)**

Price may be fixed in any of the following modes:

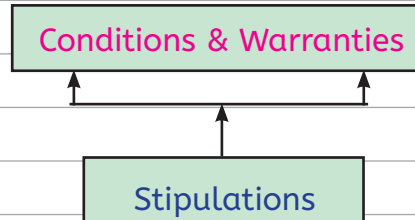
- (1) The fixation of price by the contract of sale
- (2) The fixation of price in a manner provided in the contract of sale
- (3) The fixation of price by course of dealings
- (4) The fixation of a reasonable price
- (5) The fixation of price by third party:
  - ✓ However, if such third party fails to make the valuation, the contract becomes void. But if the buyer has received the goods and has appropriated them, he becomes bound to pay reasonable price to the seller.
  - ✓ Sometime, the third party is influenced or prevented by the buyer or the seller from fixing the price. In such cases, the innocent party may recover damages from the defaulting party.

• **STIPULATION AS TO TIME (Section 11)**

- ✓ Stipulations as to time for payment of price:  
As regard time for the payment of price, it is not deemed to be of the essential of a contract of sale unless the contract specifies that it is essential.
- ✓ Stipulations as to time of delivery of goods:  
Stipulations as to time of delivery are usually the essence of the contract unless the contract specifies that it is not essential.

**UNIT 2**

**CONDITIONS AND WARRANTIES**



➤ **Condition (Section 12):** Stipulation essential to the main purpose of the contract In Breach of Condition, buyer can

- (i) 3Rs → Rescind the contract, Return the goods, claim Refund
- (ii) Claim damages

➤ **Warranty (Section 12):** Stipulation collateral to the main purpose of the contract In Breach of Warranty, buyer can

- (i) Only claim damages

➤ **DISTINCTION BETWEEN CONDITION AND WARRANTY**

CONDITION	WARRANTY
1. A condition is a stipulation which is essential to the main purpose of the contract.	1. It is only collateral to the main purpose of the contract.
2. In Breach of Condition, buyer can (i) 3Rs → Rescind the contract, Return the goods, claim Refund (ii) Claim damages	2. In Breach of Warranty, buyer can (i) Only claim damages
3. A breach of condition may be treated as a breach of warranty	3. A breach of warranty cannot be treated as a breach of condition

➤ **WHEN A CONDITION CAN BE TREATED AS A WARRANTY (Section 13):**

- (1) Voluntary waiver of condition by buyer
- (2) Buyer treats the breach of the condition as breach of warranty
- (3) Waiver by law as to impossibility
- (4) Where a contract of a sale is not severable and the buyer has accepted the goods or part thereof, then buyer cannot reject the goods and can only claim damages.

**CONDITION**

**Express**

Express conditions are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract.

**Implied**

It is a condition, which the law implies into the contract of sale. Law presumes that the parties have incorporated it into their contract unless they are expressly excluded by the parties  
In case of conflict between the express and implied conditions, the express term shall prevail

**Implied**

- (1) **Conditions as to title (Section 14):** It is presumed that the seller has a valid title to the goods, i.e., he has the right to sell the goods. If later on, the buyer comes to know that the seller had no valid right to sell the goods, then he may reject the goods and claim the refund of the price, if already paid
- (2) **Condition as to sample (Section 17):** In case of sale of goods by showing the sample to the buyer, there is an implied condition that the goods delivered shall correspond with the quality of the sample.
- (3) **Condition as to description (Section 15):** When the goods are sold by description, there is an implied condition is that the goods shall correspond with the description.
- (4) **Condition as to sample as well as description (Section 15):** When the seller shows sample of the goods to the buyer and also gives him their description, there is an implied condition is that the goods shall correspond with both, the sample as well as description.
- (5) **Condition as to quality or fitness for buyer's purpose [Section 16(1)]:**  
Ordinarily, there is, no implied condition that the goods shall be fit for the particular purpose of the buyer as seller is not responsible in following cases:  
(i) To know the particular purpose of buyer.  
(ii) If buyer chooses the goods negligently.  
However in following exceptions, seller is responsible to the buyer:  
(i) If the buyer makes his purpose clear to the seller.  
(ii) If the buyer buys the goods 'relying upon his skill and judgment'.
- (6) **Condition as to merchantability [Section 16(2)]:** The term 'merchantability' has not been defined in the Sale of Goods Act.

Goods are purchased for

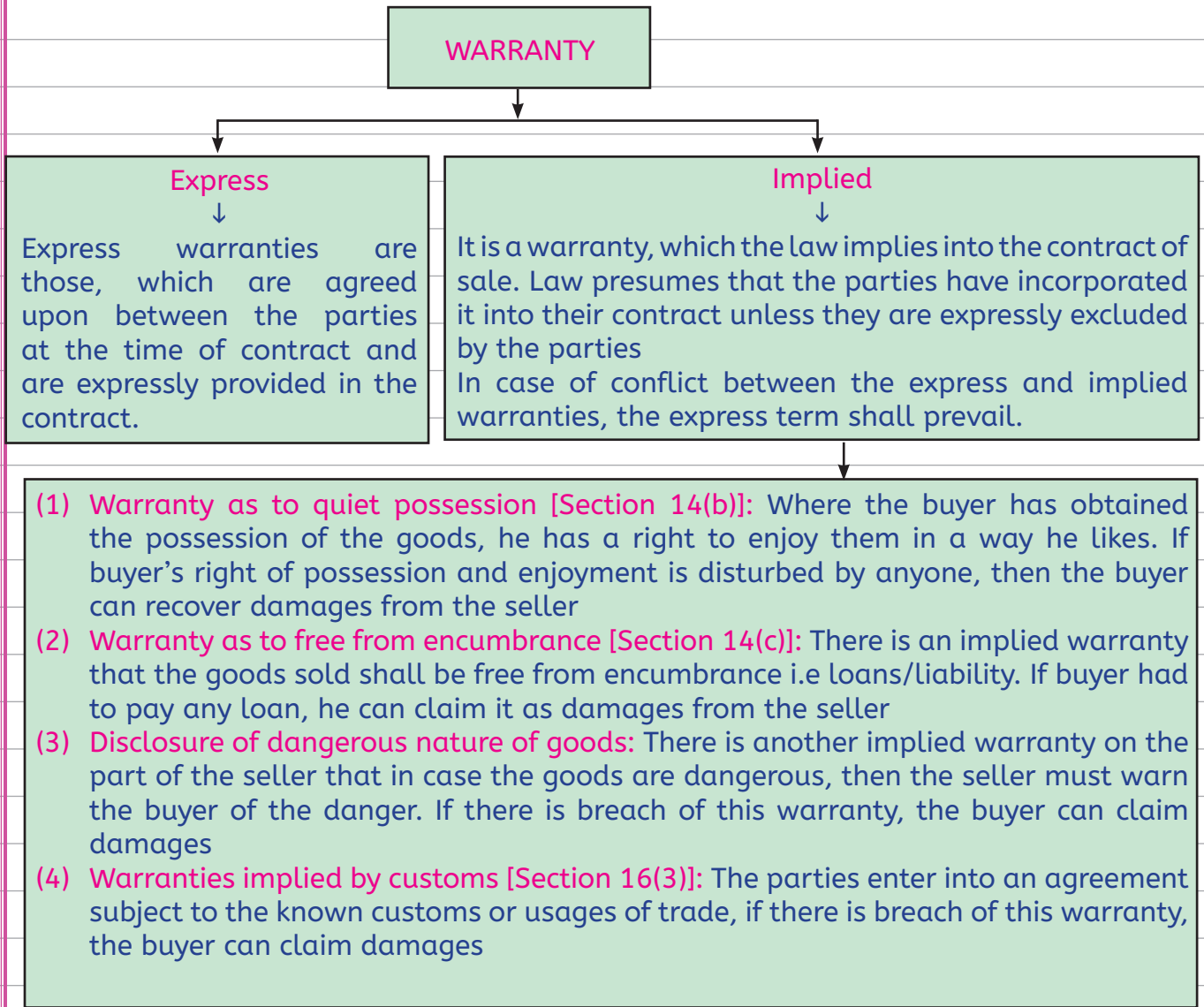
**Self use**

Then they should be reasonably fit for the purpose for which they are generally used

**Resale**

Then they should be immediately re-saleable in the market under their description

- (7) **Condition as to wholesomeness:** As per this condition, foodstuffs/eatables sold must be fit for human consumption.



➤ **DOCTRINE OF CAVEAT EMPTOR (BUYER BEWARE)**

- ✓ The Doctrine states generally seller is not responsible for bad goods.

This Doctrine takes the side of the seller.

Seller is not responsible in following cases:-

- (i) To know the particular purpose of buyer.
- (ii) If buyer chooses the goods negligently
- (iii) If the goods are defective and the defect is patent (i.e defect which can be discovered by mere inspection)

- ✓ **Exceptions**: The exceptions to the doctrine of Caveat Emptor; which are mentioned below (i.e in the following seller is responsible) :

- (1) Where the buyer specifies the particular purpose for which the goods are required to the seller.

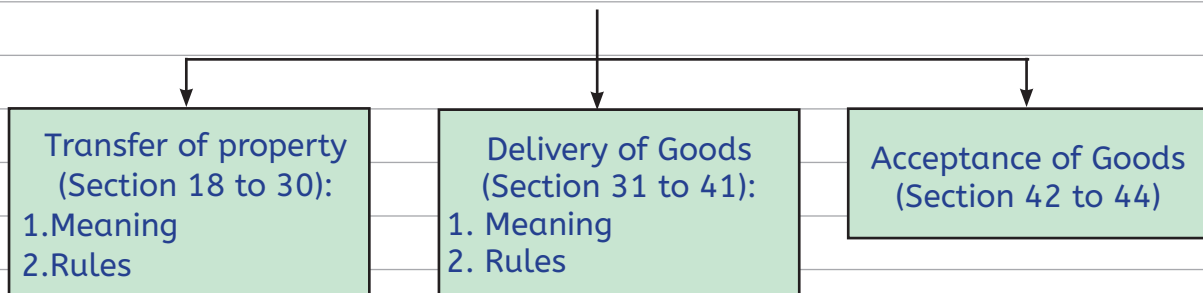
**Case Law**: *Priest vs. Last*

**Case Law**: *Bombay Burma Trading Corporation Ltd. vs. Aga Muhammad*

- (2) Where buyer relies on the seller's skill or judgment.
- (3) Where there is contract of sale by sample, the rule of caveat emptor will not apply if the goods do not correspond with sample
- (4) Where goods are bought by description, the goods shall correspond with the description.
- (5) If the goods are bought both by sample as well as by description this rule will not apply if goods do not correspond with both sample and description.
- (6) There is an implied condition that the goods shall be of merchantable quality
- (7) When the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.
- (8) When the goods are purchased under some brand name.

**UNIT 3**

**TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS**



➤ **TRANSFER OF PROPERTY**

**Meaning:** The term 'property in the goods' may be defined as the legal ownership of the goods.

Transfer of Ownership means transfer of Risk, Rights and Returns pertaining to the goods

**Rules:**

- (1) The ownership is transferred at the time of making the contract if the following conditions' are fulfilled (Section 20):
  - (a) The sale must be of specific/ascertained goods
  - (b) The goods must be in a deliverable state
  - (c) The contract of sale must be unconditional
  
- (2) Transfer of ownership in case of sale of unascertained goods
  - (a) When the goods are ascertained (Section 18):

It is a unilateral act of the seller alone to identify and set apart the goods and
  - (b) When the goods are appropriated to the contract (Section 23): Appropriation is the process by which the goods to be delivered under the contract are identified and set apart with the mutual consent of the seller as well as buyer.

It is a bilateral act of the seller and the buyer to identify and set apart the goods.

The essentials are:

    - (a) There is a contract for the sale of unascertained or future goods.
    - (b) The goods should conform to the description and quality stated in the contract.



- (c) The goods must be in a deliverable state.
  - (d) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.
  - (e) The appropriation must be made by:
    - (i) The seller with the assent of the buyer; or
    - (ii) The buyer with the assent of the seller.
  - (f) The assent may be express or implied.
  - (g) The assent may be given either before or after appropriation.
- (3) Where the specific goods are to be put in a deliverable state by the seller, the ownership is transferred as soon as the seller has put the goods in a deliverable state and the buyer comes to know about the act of the seller (Section 21).
- (4) Where the specific goods in a deliverable state are to be weighed or measured by the seller to ascertain the price, the ownership is transferred to the buyer as soon as the seller has done the act of ascertaining the price and the buyer comes to know about this act of the seller (Section 22).
- (5) However, Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred (Section 19)
- (6) Transfer of ownership in case of sale on approval (Section 24):
- ✓ The ownership of goods is with seller and the possession of goods is with buyer
  - ✓ The buyer has an option to return the goods.
  - ✓ The ownership is transferred to the buyer in any of the following three ways:
    - (a) When the buyer accepts the goods
    - (b) When the buyer adopts the transaction by doing some act which shows that he has accepted the goods
    - (c) Where the buyer fails to return the goods within fixed or reasonable time
  - ✓ Sale for cash only or Return
- It may be noted that where the goods have been delivered by a person on “sale or return” on the terms that the goods were to remain the property

of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., cash is paid for.

(7) Reservation of right of disposal (Section 25)

- ✓ The seller may like to retain the ownership of the goods until some later date, e.g., until the price is paid or some conditions are fulfilled. The seller may do so by reserving his right of disposal.
- ✓ In the following two circumstances the seller is presumed to have reserved the right of disposal :
  - (1) By taking the documents showing title in his own name or his agent's name
  - (2) By sending the bill of exchange for the price, to the buyer, along with the documents of title

(8) Risk passes with the ownership (Section 26):

- ✓ The risk and the ownership of the goods go together. In other words, the goods are at the risk of the party who has the ownership of the goods.
- ✓ Exceptions:
  - (a) Agreement between the parties: The risk and the ownership may be separated by an agreement between the seller and the buyer.
  - (b) Goods are at the risk of the party in default
  - (c) Trade customs: The risk and the ownership may also be separated by the trade customs

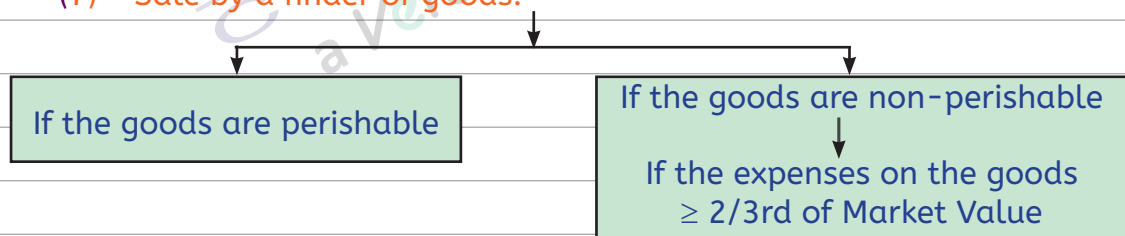
(9) Transfer of title by non-owners (Section 27 to 30)

- ✓ **“Nemo dat quod non-habet”**: This means that ‘no one can transfer a better title than he himself has’. Thus, the buyer cannot get a better title than that of the seller. If the seller's own title is defective, the buyer's title will also be defective.
- ✓ **Exceptions**:

In the following exceptional circumstances, a non-owner can transfer a valid title to a bonafide buyer:

  - (1) **Sale by a mercantile agent**
  - (2) **Sale by a joint owner**: When the joint owner is in the sole possession of the goods, and he sells them to a person who buys in a good faith, the buyer gets a valid title to the goods.

- (3) **Sale by estoppel:** When the owner of goods, by his conduct or by statement, wilfully leads the buyer to believe that the seller has the authority to sell, then he is estopped (i.e., prevented) from denying the seller's authority to sell
- (4) **Sale by unpaid seller:** To be done in Unit 4
- (5) **Sale by a seller in possession of goods after their sale :** If the seller continues to have the possession of the goods even after their sale and if he resells the same goods to a new buyer then in such cases, the second buyer gets a valid title to the goods if he buys them in a good faith
- (6) **Sale by a buyer in possession of goods after their sale:** If the buyer obtains the possession of the goods which he has bought or agreed to buy from the seller and the seller still has some lien or other rights over the goods. If the buyer resells the same goods to a new person. In such cases, the second buyer gets a valid title free.
- (7) **Sale by a finder of goods:**



- (8) **Sale by a person in possession under a voidable contract:**  
The buyer gets a valid title only if the following conditions are satisfied:-
- A person must obtain the possession of the goods by coercion, undue influence, fraud or misrepresentation.
  - The seller must have obtained the possession of the goods under a voidable contract and not under a void contract.
  - The contract must not have been rescinded (i.e., put to an end) at the time of sale
  - The buyer must act in a good faith.

(9) **Sale Under the Provision of Other Acts:**

- (a) Sale by an Official Receiver or Liquidator of the Company will give a valid title to the purchaser.
- (b) Sale by a pawnee/pledgee under default of pawnor in repayment of debt will give valid title to the purchaser.
- ❖ In case of hire-purchase, hirer cannot pass a good title even to a bonafide buyer.

➤ **DELIVERY OF GOODS (Section 31 to 41)**

- (1) “Delivery” means a voluntary transfer of possession from one person to another”[Section 2(2)].
- (2) Delivery of goods may be actual, symbolic or constructive.
- (3) **Duties of seller and buyer (Section 31):** It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.
- (4) **Payment and delivery are concurrent conditions (Section 32):** Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

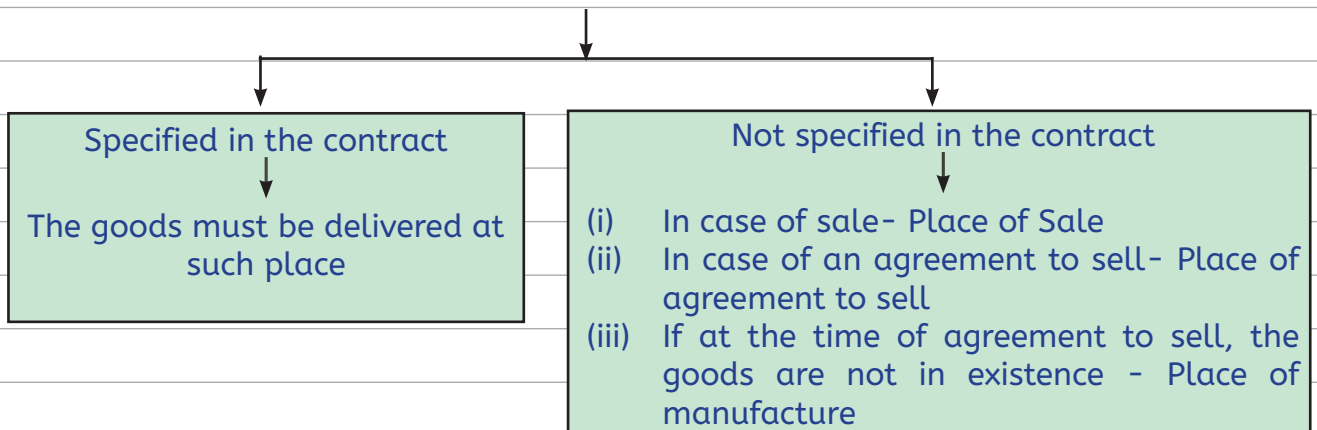
**Rules:**

- (1) **Buyer in position to access the goods (Section 33):**  
The delivery of the goods may be made in any of the modes, but it must have the effect of putting the goods in the possession of the buyer or his agent.
- (2) **Demand for delivery of goods (Section 35):**  
It is seller’s duty to put the goods in deliverable state and inform the buyer regarding same. It is buyer’s duty to make a demand for the delivery of the goods.
- (3) **Goods in the possession of a third person[Section 36(3)]:**  
Sometimes, at the time of sale, the goods are in the possession of a third person. In such cases, the effective delivery takes place when such person acknowledges to (i.e., inform) the buyer, that he holds the goods on his (buyer’s) behalf.

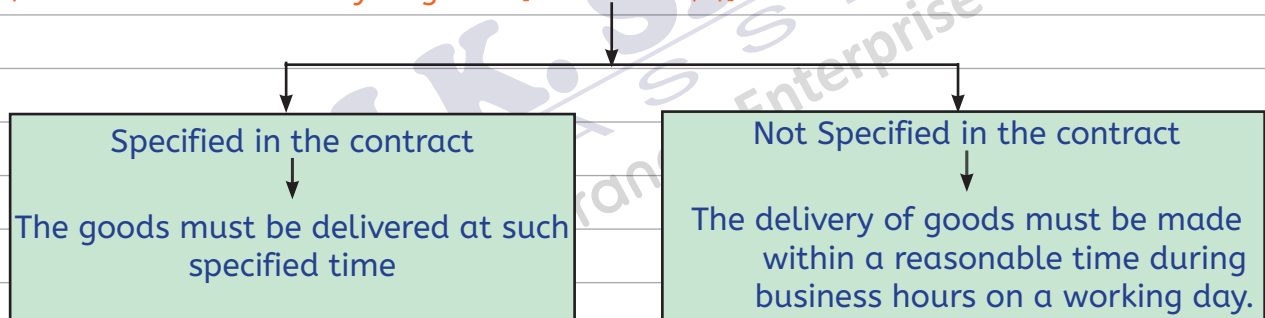
(4) Delivery to a carrier or wharfinger [Section 39(1)]:

Where the sold goods are delivered to a carrier/wharfinger for the purpose of transmission to the buyer or safe custody, the delivery of goods to the carrier/wharfinger is treated as a delivery to the buyer.

(5) Place for the delivery of goods [Section 36(1)]:



(6) Time for the delivery of goods [Section 36(2)]:



(7) Time for demand or tender of delivery [Section 36(4)]:

The demand of delivery by the buyer must be made within reasonable time during business hours and on a working day.

(8) Expenses for the delivery of goods [Section 36(5)]:

The expenses of putting the goods into a deliverable state are borne by the seller. And the expenses of receiving the goods are borne by the buyer. However, the seller and the buyer may also agree otherwise

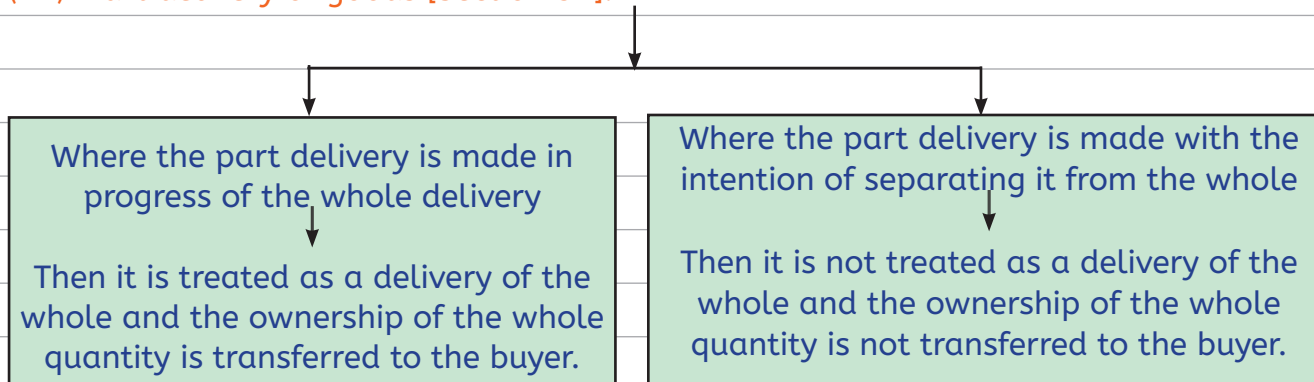
(9) Deterioration of goods during transit [Section 40]:

The buyer shall bear the loss of deterioration of goods which is incidental i.e. natural in transit.

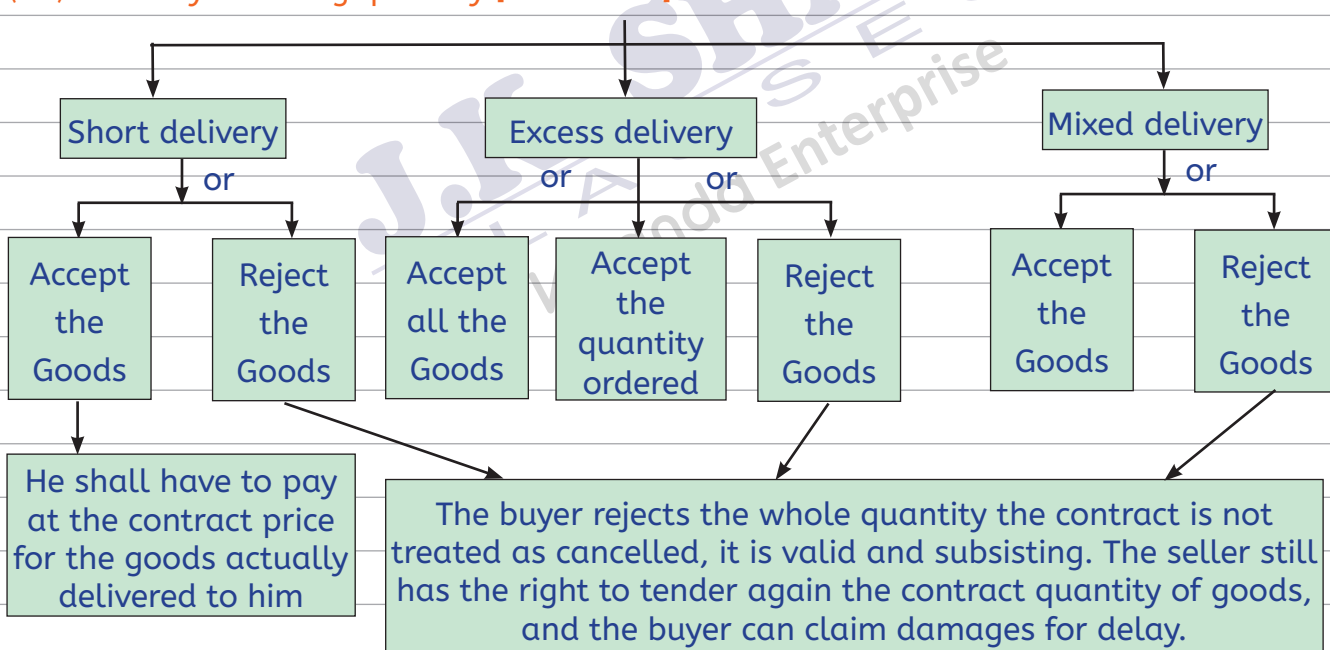
**(10) Delivery of goods by instalments [Section 38]:**

As a rule, the delivery of goods by instalments is not considered as a good delivery and the buyer is not bound to accept the goods delivered to him by instalments, unless otherwise agreed.

**(11) Part delivery of goods [Section 34]:**



**(12) Delivery of wrong quantity [Section 37]:**



**(13) Buyer's right to examine the goods:** Where goods are delivered to the buyer, who has not previously examined them, he is entitled to a reasonable opportunity of examining them (Section 41)

➤ **ACCEPTANCE OF DELIVERY OF GOODS**

Acceptance is deemed to take place when the buyer (Section 42)-

- (a) intimates to the seller that he had accepted the goods; or
- (b) does any act to the goods, which is inconsistent with the ownership of the

seller i.e when the buyer adopts the transaction by doing some act which shows that he has accepted the goods; or

(c) retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them.

➤ **Buyer not bound to return rejected goods (Section 43):**

Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

➤ **Liability of buyer for neglecting or refusing delivery of goods (Section 44):**

When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

**UNIT 4**

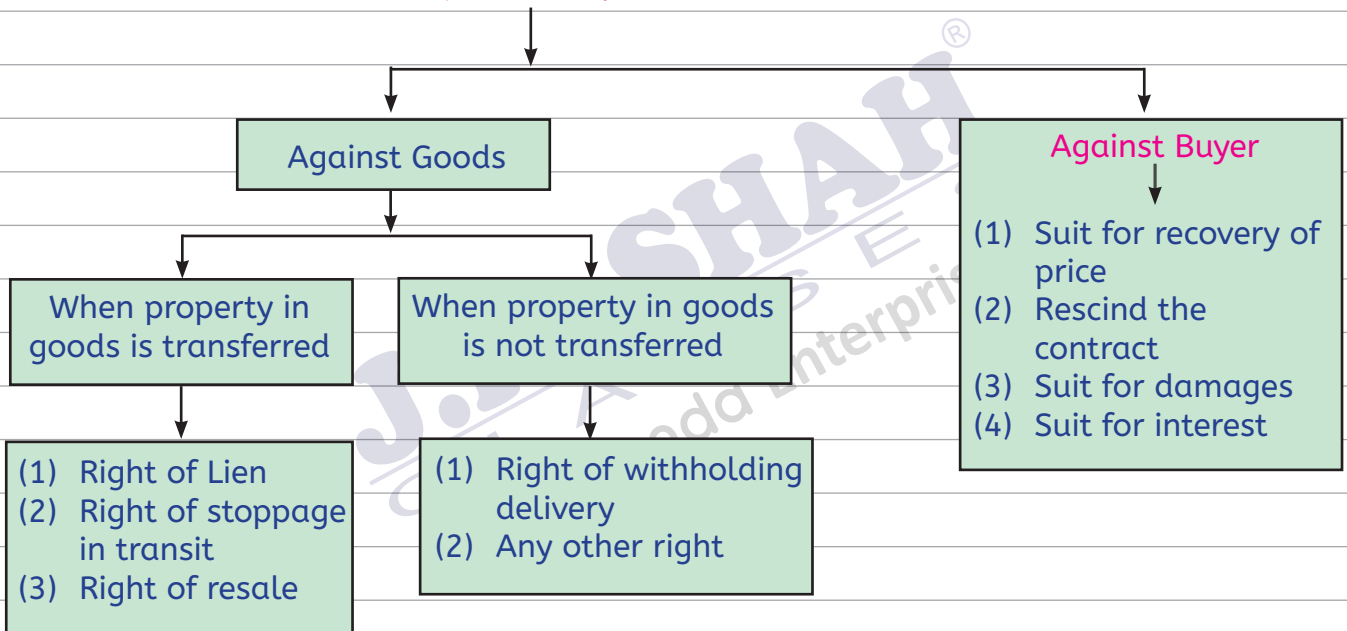
**UNPAID SELLER**

➤ **MEANING OF UNPAID SELLER (Section 45(1)):**

A seller will be called 'unpaid' if the following conditions are fulfilled:

- (1) The whole or part of the price has not been paid or tendered and that the seller has immediate right of action for the price.
- (2) A bill of exchange or other negotiable instrument has been received but the same has been dishonoured.

➤ **RIGHTS OF UNPAID SELLER (Section 46)**



**(A) Rights Against the Goods:**

1. Where the ownership of the goods has transferred to the buyer: In this case, the unpaid seller has the following rights:

(a) Right of lien (Section 47 to 49)

- The right of lien is the right to retain possession of the goods.
- This right can be exercised only when the possession of goods is with the seller.
- The unpaid seller of goods can retain his possession of goods until payment of the price in following cases:
  - (a) Where the goods are not sold on credit.
  - (b) Where the goods have been sold on credit, but the term of credit has expired
  - (c) Where the buyer becomes insolvent.



- The unpaid seller can retain the goods only for the payment of the price of the goods: He cannot retain the goods during the exercise of lien etc.
  - The right of lien is indivisible in nature.
  - Termination of Lien:
    - (a) By delivery of goods to the carrier
    - (b) By delivery of goods to the buyer
    - (c) By waiver of the lien
    - (d) By payment of price by the buyer
  - The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree (order from court) for the price of the goods.
- (b) **Right of stoppage in transit (Section 50 to 52)**
- The right of stoppage in transit is the right to regain possession of the goods.
  - This right can be exercised only when,
    - (i) Seller should have parted with the possession
    - (ii) Possession should be with a carrier, &
    - (iii) Buyer has not acquired the possession.
  - The right of stoppage in transit can be exercised if the buyer has become insolvent.
  - The unpaid seller can stop the goods in transit only for the payment of the price of the goods.
  - **When does the transit come to an end?**

The right of stoppage in transit is lost when transit comes to an end. Transit comes to an end in the following cases:

    - (1) When the buyer or other bailee obtains delivery.
    - (2) Buyer obtains delivery before the arrival of goods at destination.
    - (3) Where the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods as soon as the goods are loaded on the ship, unless the seller has reserved the right of disposal of the goods.
    - (4) If the carrier wrongfully refuses to deliver the goods to the buyer.
    - (5) Where goods are delivered to the carrier hired by the buyer, the transit comes to an end.

- (6) Where the part delivery of the goods has been made to the buyer, there the transit will come to an end for the remaining goods which are yet in the course of transmission.
- (7) Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end.

➤ **How stoppage in transit is affected (Section 52)**

The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

➤ **Distinction between Right of Lien and Right of Stoppage in transit**

Right of Lien	Right of stoppage in transit
1. The essence of a right of lien is to retain possession	1. The essence of stoppage in transit is to regain possession
2. Seller should be in possession of goods under lien	2. In stoppage in transit, (i) seller should have parted with the possession (ii) possession should be with a carrier, & (iii) buyer has not acquired the possession.
3. Right of lien can be exercised even when the buyer is not insolvent.	3. Right of stoppage in transit can be exercised only when buyer becomes insolvent
4. Right of lien precedes right of stoppage in transit.	4. Right of stoppage in transit begins when the right of lien ends

(c) Right of Resale (Section 54)

The unpaid seller has the direct right to resell the goods in the following circumstances:

1. Where the goods are of perishable nature
2. Where the unpaid seller has expressly reserved his right of resale.

In any other case, the unpaid seller has the right to resell the goods by following the procedure:

1. Unpaid seller should give a notice to the buyer of his intention to resell the goods (+)

Additional time for payment

2. If the buyer does not pay the price within a reasonable time, the seller may resell the goods

✓ If the notice of resale is given then in case of loss on resale, it can be recovered and in case of profit on resale, it can be retained.

✓ However the notice of resale is not given, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale he must return it to the original buyer.

**Sale by unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer (It is an exception to the rule of "Nemo dat quod non-habet")

**2. Where the ownership of the goods has not been transferred to the buyer:**

(a) Right of Withholding Delivery

When the ownership of the goods sold is not transferred to the buyer, if the buyer fails to pay the price, the unpaid seller may refuse to deliver the goods to the buyer. Such right is known as right of withholding the delivery of the goods.

(b) Any other right

Since ownership and possession of goods is with the seller, seller can use, gift, resell the goods, etc.

**(B) Rights against the Buyer (Section 55,56,60,61)**

1. **Suit for recovery of price**

Where the buyer takes the ownership as well as possession of goods and the buyer fails to pay the price of the goods, the seller can file a suit against the buyer for recovery of the price.

2. **Rescind the contract**

By not paying the price, the buyer has breached the contract. So the unpaid seller can rescind the contract.

3. **Suit for damages**

The seller may bring a legal action against the buyer for the recovery of damages suffered.

4. **Suit for interest**

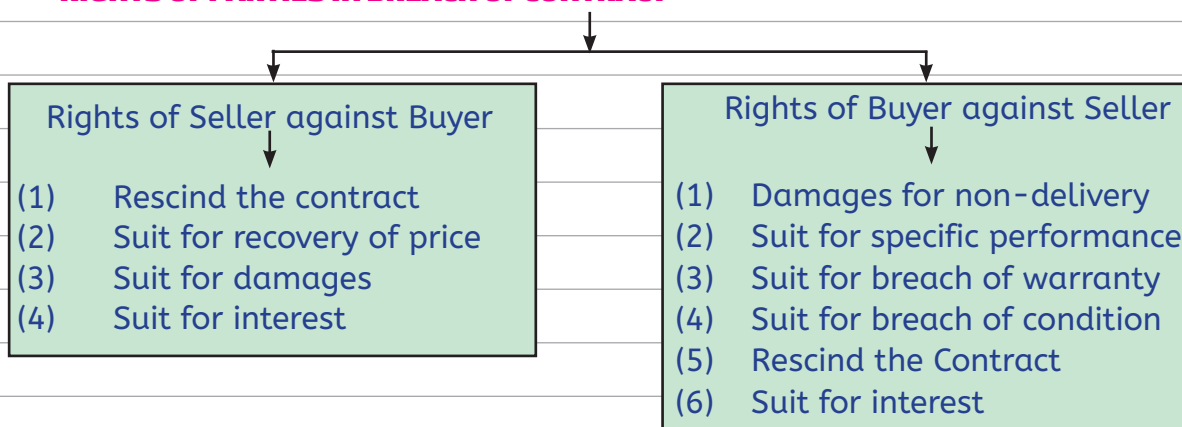
The court may award the interest from the date of tender of the goods or from the date when the price is payable. The rate of interest to be awarded is at the discretion of the court.

• **EFFECTS OF SUB-SALE OR PLEDGE BY BUYER (Section 53)**

- The right of lien or stoppage in transit is not affected by the buyer selling or pledging the goods unless the seller has assented to it.
- Exceptions:
  - (a) When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer.
  - (b) When a document showing title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value.

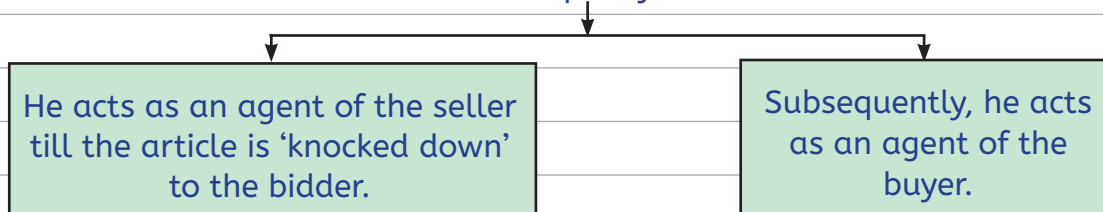
**Case law:** Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd

• **RIGHTS OF PARTIES IN BREACH OF CONTRACT**



• **AUCTION SALES (Section 64)**

- ✓ An auction sale is a sale at which the auctioneer, as agent for the seller, invites persons present to bid for goods sold.
- ✓ Auctioneer acts in a dual capacity



✓ **Rules regarding Auction Sales:**

- (i) Where goods are put up for sale in lots, they are deemed to be sold in lots.
- (ii) The sale is complete and ownership is transferred when the auctioneer announces its completion by the fall of the hammer or in any other customary manner.
- (iii) Bidder may retract his bid anytime before auction sale is complete.
- (iv) The sale may be notified to be subject to a 'reserve price' or 'upset price.' When the sale is notified to be subject to a 'reserve price', the bidding and knocking down of the article to the highest bidder are all subject to the condition that the 'reserve price' should be reached.
- (v) If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.
- (vi) A right to bid may be 'reserved' expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any other person on his behalf, may bid at the auction.

• **INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE (SECTION 64A)**

In the event of any tax, being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without restriction as to the payment of tax where tax was not chargeable at the time of the making of the contract.

- (a) If the tax increases, the seller has to add the tax to the contract amount and the buyer is liable to be such increased amount. If he fails to pay, seller has a right to recover it and sue the buyer and
- (b) If the tax decreases, the buyer may deduct such amount from the contract price, and he shall not be liable to pay, or be sued for, or in respect of, such deduction.

# 03

## INDIAN PARTNERSHIP ACT, 1932

### UNIT 1

#### NATURE OF PARTNERSHIP

##### INTRODUCTION

- Introduced on 1<sup>st</sup> of October, 1932
- Applicable to whole of India
- This law was previously part of Chapter XI Indian Contract Act, 1872
- Where the Indian Partnership Act is silent on any point, the Indian Contract Act is applicable.

##### PARTNERSHIP

Partnership is the relation between two or more persons who have agreed to share profits of a business carried on by all or any of them acting for all.

##### PARTNER

Person who enters into partnership

##### FIRM

Partners are collectively known as firm

##### FIRM NAME

The name under which their business is carried on is called the 'firm name'.

Crown', Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words cannot be used in the name of the firm except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

However, now such rule does not exist.

➤ **ESSENTIAL ELEMENTS OF PARTNERSHIP**

1. It is an association of two or more persons

- ✓ There must be at least two persons to form a partnership. Maximum number of partners, IPA is silent. But Companies Act 2013 specifies it as 50. If number of partners fall below it ceases to be partnership. If it goes beyond 50, it will become an illegal association.
- ✓ The persons can be natural or artificial. Hence 2 companies can be partners. But a firm cannot enter into a contract for partnership though their partners can become partners.
- ✓ All such persons must be competent to contract. According to Indian Contract Act every person except the following:
  - (i) Minor
  - (ii) Person of unsound mind
  - (iii) Person disqualified by any law to which they are subject (alien, insolvents etc)

2. There must be an agreement

- ✓ Partnership comes into existence by agreement and not by status (like by birth in HUF) or by operation of law (like law of inheritance).
- ✓ The agreement may be express or implied, oral or written. However the partnership deed must be in written.
- ✓ All the essential elements of a valid contract must be satisfied.

3. There must be business.

- ✓ Business means any trade, occupation and profession carried on with an intention to make profits.
- ✓ When two or more people agree to share income from a joint property it does not amount to partnership because there does not exist any business. Any charitable trust, NGO, etc cannot be considered as a partnership firm.

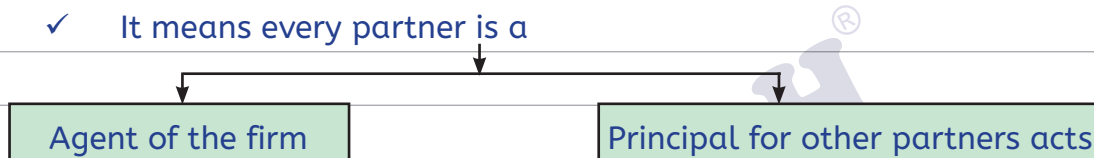
4. Sharing of Profits:

- ✓ Sharing of profits is essential but sharing of losses is not essential. Partner can share profits & losses or only profits but never only losses.
- ✓ It is not necessary that every person sharing profits is a partner. Following persons are getting profits but are not partners:
  - (i) Money Lender (ii) Employee/Manager (iii) Seller of Goodwill

- (iv) Retiring partner sharing profits pending settlement of accounts.
- (v) Legal Representative of deceased partner sharing profits pending settlement of accounts.
- (vi) Minor
- ✓ Just because a person is sharing profits, he is not a partner. But if a person is a partner, he will definitely get share in profits.

### 5. Mutual Agency

- ✓ It's the most essential element of Partnership. It determines the true test of partnership.
- ✓ There must exist a mutual agency relationship among the partners.
- ✓ It means every partner is a



- ✓ It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.
- ✓ **Case Law: KD Kamath & Co.**  
The Supreme Court has held that the two essential conditions to be satisfied are that:
  - (1) there should be an agreement to share the profits as well as the losses of business; and
  - (2) the business must be carried on by all or any of them acting for all, within the meaning of the definition of 'partnership' under section 4.

### ➤ TRUE TEST OF PARTNERSHIP

- ✓ Mode of determining existence of partnership (Section 6): In determining whether a group of persons is a partnership firm or not or whether a person is or not a partner in a firm, all relevant facts should be taken together.
- ✓ For determining the existence of partnership, it must be proved.
  1. There was an **agreement** between all the persons concerned
  2. The agreement was to **share the profits** of a business and
  3. The business was **carried on by all or any of them** acting for all.
- ✓ **Case Law: Santiranjn Das Gupta Vs. Dasyran Murzamull (Supreme Court)**  
In Santiranjn Das Gupta Vs. Dasyran Murzamull, following factors weighed



upon the Supreme Court to reach the conclusion that **there is no partnership between the parties:**

- (a) Parties have not retained any record of terms and conditions of partnership.
- (b) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties
- (c) No account of the partnership was opened with any bank
- (d) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

➤ **DISTINCTION BETWEEN**

1. **Partnership and Co-ownership:**

Partnership	Co-ownership
1. It arises from an agreement.	1. It may arise from agreement or operation of law.
2. It is formed to carry on business.	2. It may or may not involve carrying on a business.
3. It involves profit or loss.	3. It may or may not involve profit or loss
4. Partners have a mutual agency relationship.	4. Co-owners do not have a mutual agency agreement.
5. Maximum partners can be 50.	5. No such limit is applicable here.
6. A partner cannot transfer his share to a stranger without the consent of any other business.	6. A co-owner can transfer his share to a stranger without the consent of other owners.
7. A partner has no right to claim partition of property.	7. A co-owner has the right to claim partition of property.

2. **Partnership and HUF:**

Partnership	HUF
1. It arises from agreement.	1. It arises by status.
2. Governed by Indian Partnership Act, 1932.	2. It is governed by Hindu Law.
3. Maximum partners can be 50.	3. No such limit is applicable here.
4. A person can be admitted by the consent of the other existing partners.	4. A male person becomes a member merely by his birth.
5. A minor can be admitted only to the benefits of the firm.	5. A male minor becomes a member merely by his birth.
6. Each partner is implied authority to bind the firm for the actions done by him in the daily course of business.	6. Only Karta has such authority.

7. Unlimited liability.	7. Karta's liability is unlimited and the coparcener's liability is limited to their share in the family property
8. Each partner has the right to ask for the books of accounts and also for the profits and losses.	8. The coparceners have no such right
9. In case of death of a partner, partnership is dissolved unless otherwise agreed.	9. HUF continues to operate even after death of a coparcener.

### 3. Partnership and Joint Stock Company:

Partnership	Joint Stock Company
1. A firm does not enjoy separate legal entity i.e. separate legal existence.	1. It has a separate legal existence.
2. The liability of the partner is unlimited.	2. Limited to the value of shares held by the members.
3. It does not enjoy a long lease of life because of dissolution due to different reasons.	3. It enjoys a perpetual existence.
4. Maximum partners can be 50.	4. In case of private limited company, Minimum members - 2, maximum members - 200 In case of public limited company, Minimum members - 7, maximum members - no limit
5. A partner cannot transfer his share without the consent of other partners.	5. A member can transfer his share as and when he wishes to.
6. There is mutual agency amongst the partners	6. There is no mutual agency amongst the members.
7. Distribution of profits is compulsory as per the partnership deed	7. No such compulsion of distributing the profits.
8. The ownership & management lies with all the partners.	8. Ownership is with shareholders and the management is with board of directors
9. Property of the firm is the joint property of all the partners.	9. The property of company is not the joint property of the members.
10. The creditors of the firm can proceed against the partners jointly and severally.	10. The creditors of a company can proceed only against the company.
11. No compulsory Audit	11. Its compulsory

**4. Partnership and Club:**

Partnership	Club
1. Business oriented objects	1. Not aimed at making profits entirely.
2. Maximum partners can be 50.	2. No such limit is applicable here.
3. Does not enjoy long lease of life	3. Enjoys a long lease of life
4. There is mutual agency amongst the partners	4. There is no mutual agency amongst the members

➤ **TYPES OF PARTNERS**

**1. Active/Actual Partner:**

- ✓ A partner who is actively engaged in the conduct of the business of the partnership is known as 'active partner'.
- ✓ When an active partner retires from the firm, he has to give a public notice. Otherwise, he will be liable on the principle of 'holding out'.
- ✓ He is liable for acts of firm.

**2. Sleeping or Dormant Partner:**

- ✓ A 'Sleeping partner' is one who does not take any active part in the business.
- ✓ Such partner joins the firm by agreement and invests capital and shares in the profit of the business like the other partners.
- ✓ A sleeping partner need not give public notice of his retirement from the firm.
- ✓ He is liable for acts of firm

**3. Nominal Partner:**

- ✓ A partner, who simply lends his name to the firm, without having any real interest in it, is called a nominal partner.
- ✓ He neither invests nor shares in the profits or takes part in the management of the business.
- ✓ He, along with other partners, is liable to outsiders for all the debts of the firm.
- ✓ Difference between sleeping and nominal partner: A nominal partner is known to the outside world as a partner of the firm but in reality does not share in the profit of the firm. A dormant partner on the other hand, even though not known as a partner to the world at large but in fact shares in the profits of the business.

**4. Partner for profits only:**

- ✓ Partners may agree that a particular partner shall get a share of the profits only but he will not be called upon to contribute towards the losses. Such a partner is known as 'partner for profits only'.
- ✓ He continues to be liable to third parties for all acts of the firm.

**5. Sub-Partner:**

- ✓ When a partner agrees to share his profits divided from the firm with a third person, that third person is known as 'sub-partner'.
- ✓ He cannot represent the firm and bind the firm by his acts. He has no right against the firm nor is he liable for the acts of the firm.

**6. Partner by Holding Out or by Estoppel (Section 28):**

- ✓ To hold a person liable as a partner by holding out, it is necessary to establish the following :
  1. He represented himself or knowingly permitted himself to be represented as a partner.
  2. Such representation occurred by words spoken or written or by conduct.
  3. The other party on the faith of that representation gave credit to the firm.
- ✓ Once he poses himself as a partner, though he is not a partner, he is estopped from saying that he is not a partner in a firm.
- ✓ The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

**7. Incoming Partner:**

A person who is admitted as a partner into an already existing firm with the consent of all the existing partners is called as "incoming partner".

**8. Outgoing Partner:**

A partner who leaves a firm in which the rest of the partners continue to carry on business is called an outgoing partner.

➤ **TYPES OF PARTNERSHIP**

1. **Particular Partnership:**

- ✓ When a partnership is started for a particular purpose, it ends only when the purpose is completed.
- ✓ If the partnership is carried even after the completion of the target then it is deemed to be partnership at will.

2. **Partnership at will (Section 7):**

- ✓ When no provision is made by contract between the partners for the duration of their partnership, or for the determination (termination) of their partnership, the partnership is “Partnership at will”.
- ✓ Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
- ✓ The firm is dissolved as from the date mentioned in the notice as the date of dissolution or if no date is mentioned, then from the date of the communication of the notice.

3. **Partnership for a fixed period:**

Where a provision is made by a contract for the duration of the partnership, the partnership is called ‘partnership for a fixed period’. It is a partnership created for particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

4. **General partnership:**

Where a partnership is constituted with respect to the business in general, it is called a general partnership. A general partnership is different from a particular partnership.

➤ **PARTNERSHIP DEED**

- ✓ The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the ‘partnership deed’. It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899. Where the partnership comprises of immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

✓ **Partnership deed may contain the following information:-**

1. Name of the partnership form.
2. Names of all the partners.
3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

- ✓ A partnership firm may add or delete any provision according to the needs of the firm.

➤ **REGISTRATION OF FIRM**

1. The registration of a firm is not compulsory. It is optional for the firm either to get itself registered or not. There is no penalty for non-registration of a firm. The registration can be done anytime, either in the beginning or during the continuance of business.
2. Procedure:
  1. **Step 1-** Obtain a statement in the form from the office of the Registrar.
  2. **Step 2-** State the following information:
    - ✓ Name of the firm
    - ✓ Principal place of the firm
    - ✓ Name of the other places where the firm carries its business
    - ✓ Date when each partner joined
    - ✓ Name in full and permanent address of each partner
    - ✓ Duration of the firm.
  3. **Step 3-** Get the statement of duly verified and signed by all the partners or their agents.
  4. **Step 4-** File the statement along with prescribed fees
  5. **Step 5-** Obtain a certificate or registration from the Registrar.

3. The registration becomes effective from date of filing of duly signed and verified documents and not from the date of issue since the act of the Registrar in recording an entry of the statement in the firm is only a clerical act.
4. Consequences of non-registration:
  1. The partners cannot file a suit against the firm or other partners
  2. The firm cannot file a suit against third parties
  3. The partner of the firm or the firm cannot claim a set-off over `100
5. Following are not the disabilities of an unregistered firm:
  1. The third party can file a suit against the firm even if the firm is unregistered.
  2. The partners of an unregistered firm can file a suit for:
    - ✓ The dissolution of the firm,
    - ✓ The accounts of the dissolved firm, and
    - ✓ Realisation of the property of the dissolved firm
  3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
  4. The right to sue or claim a set-off if the value of suit does not exceed ` 100 in value.
  5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.
6. In the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm.
7. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms.

**UNIT 2**

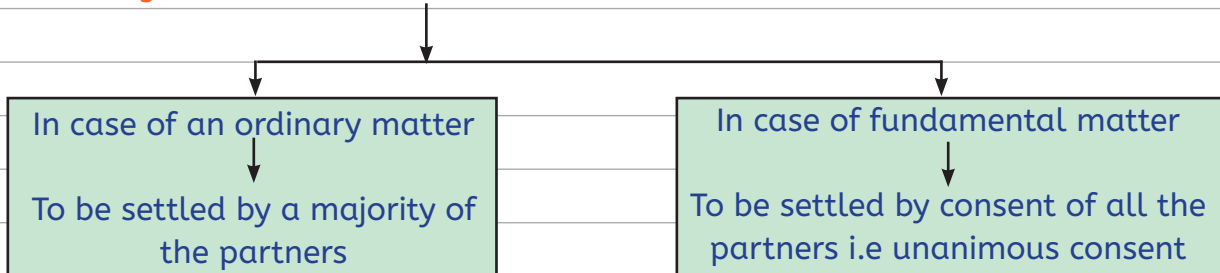
**RELATIONS OF PARTNER**

➤ **RIGHTS OF PARTNERS (Section 12 &13)**

1. **Right to take part in business:**

However, the partners may provide, by a contract, that this right shall not be available to some partners.

2. **Right to be consulted:**



3. **Right to have access to books:** However, the partners may provide, by a contract, that this right shall not be available to some partners.

4. **Right to share profits:** No agreement between the partners can restrict this right.

5. **Right to interest on capital and on advance:**

Interest on capital: It can be claimed only if partnership agreement specifies and only out of profits.

Interest on loans and advances: It is payable @6% per annum whether there are profits as well as losses.

6. **Right to indemnity:**

The partners have a right to recover expenses incurred and payments made by him in ordinary course of business or in emergency. No agreement between the partners can restrict this right.

7. **Right to use the partnership property for the purpose of the partnership business.**

8. **Right to be consulted at the time of admission of a new partner.**

9. **Right to retire from the firm.**

10. **Right not to be expelled by majority of partners.**

11. **Right to remuneration** if the partnership agreement expressly provides for the payment of remuneration to working partners.

12. **Right to dissolve the firm.**



➤ **DUTIES OF PARTNERS**

1. Duty of good faith
  2. Duty to carry on the firm business to the greatest common advantage (Section 9)
  3. Duty to render true, accounts
  4. Duty to give full information
  5. Duty to indemnify for loss caused by fraud (Section 10)
  6. Duty to attend diligently
  7. Duty to share losses
  8. Duty to account for personal profits (Section 16)
    - (a) Personal profits from any transaction of the firm.
    - (b) Personal profits from the use of the property of the firm.
    - (c) Personal profits from the business connection of the firm.
    - (d) Personal profits from the use of the name of the firm.
- However, the above duty is subject to a contract between the partners
9. Duty to account for profits of a competing business
  10. Duty to use firm property exclusively for firm (Section 15).

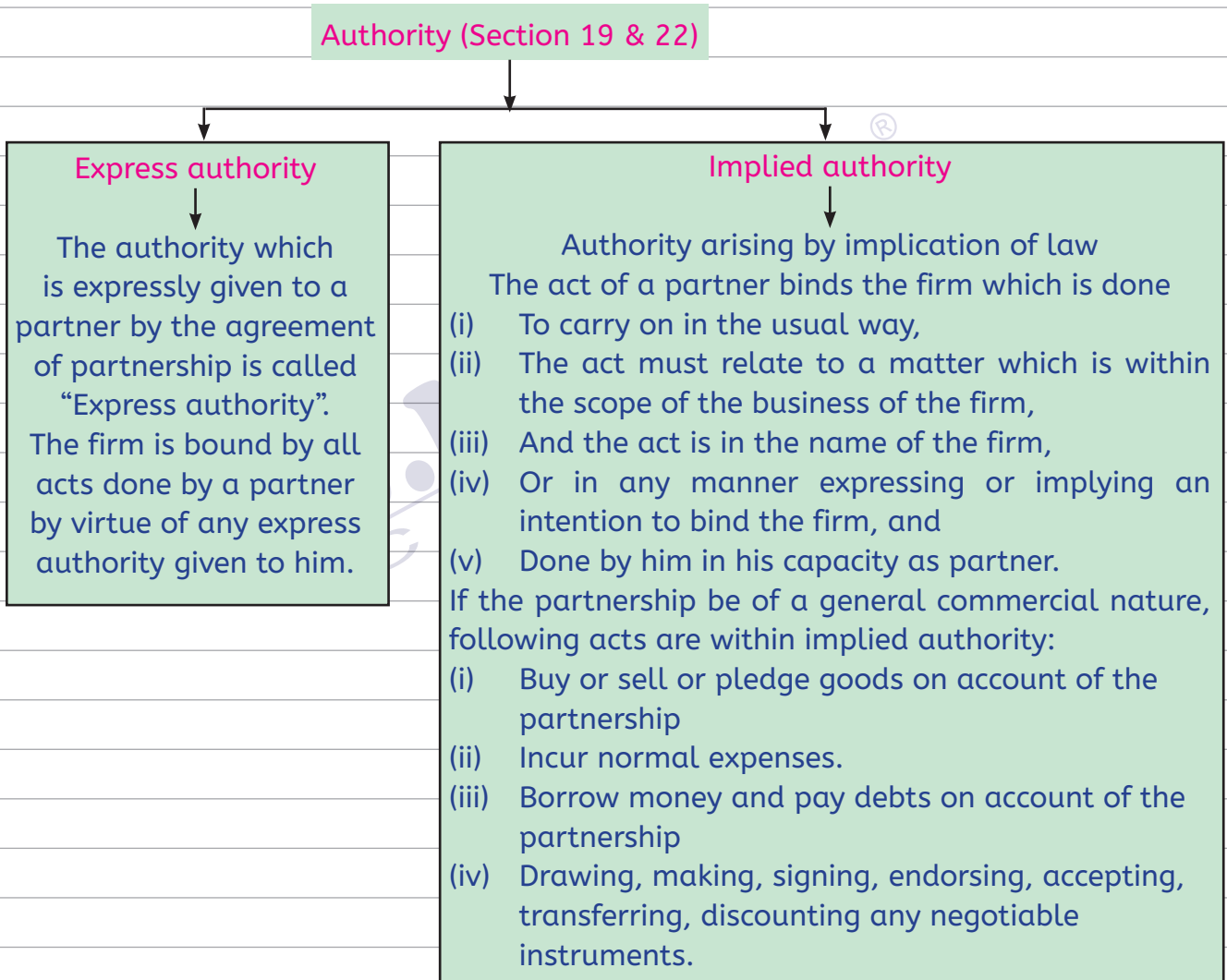
- The mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing (Section 11).
- According to **section 17**, subject to contract between the partners-
  - (a) **After a change in the firm:** Where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change;
  - (b) **After the expiry of the term of the firm:** Where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the rules of partnership at will; and
  - (c) **Where additional businesses are carried out:** where a firm constituted to carry out one or more business, carries out other additional business, the rights & duties are the same as those in respect of the original business.

➤ **PROPERTY OF THE FIRM (Section 14)**

1. Property and rights brought into the firm by the partners
2. Property and rights purchased by the firm
3. Property and rights acquired otherwise
4. Goodwill of the firm

➤ **AUTHORITY OF A PARTNER**

- ✓ Authority means the right of a partner to bind the firm by his own acts (Section 18).



✓ **Limitations of Partner's Implied Authority:**

The implied authority of a partner does not empower him to

- (a) Submit a dispute relating to the business of the firm to arbitration,
- (b) Withdraw a suit or proceeding filed on behalf of the firm,
- (c) Compromise or relinquish any claim or portion of a claim by the firm,
- (d) Admit any liability in a suit or proceeding against the firm,
- (e) Transfer immovable property belonging to the firm,

- (f) Acquire immovable property on behalf of the firm.
- (g) Open a banking account on behalf of the firm in his own name or
- (h) Enter into partnership on behalf the firm.

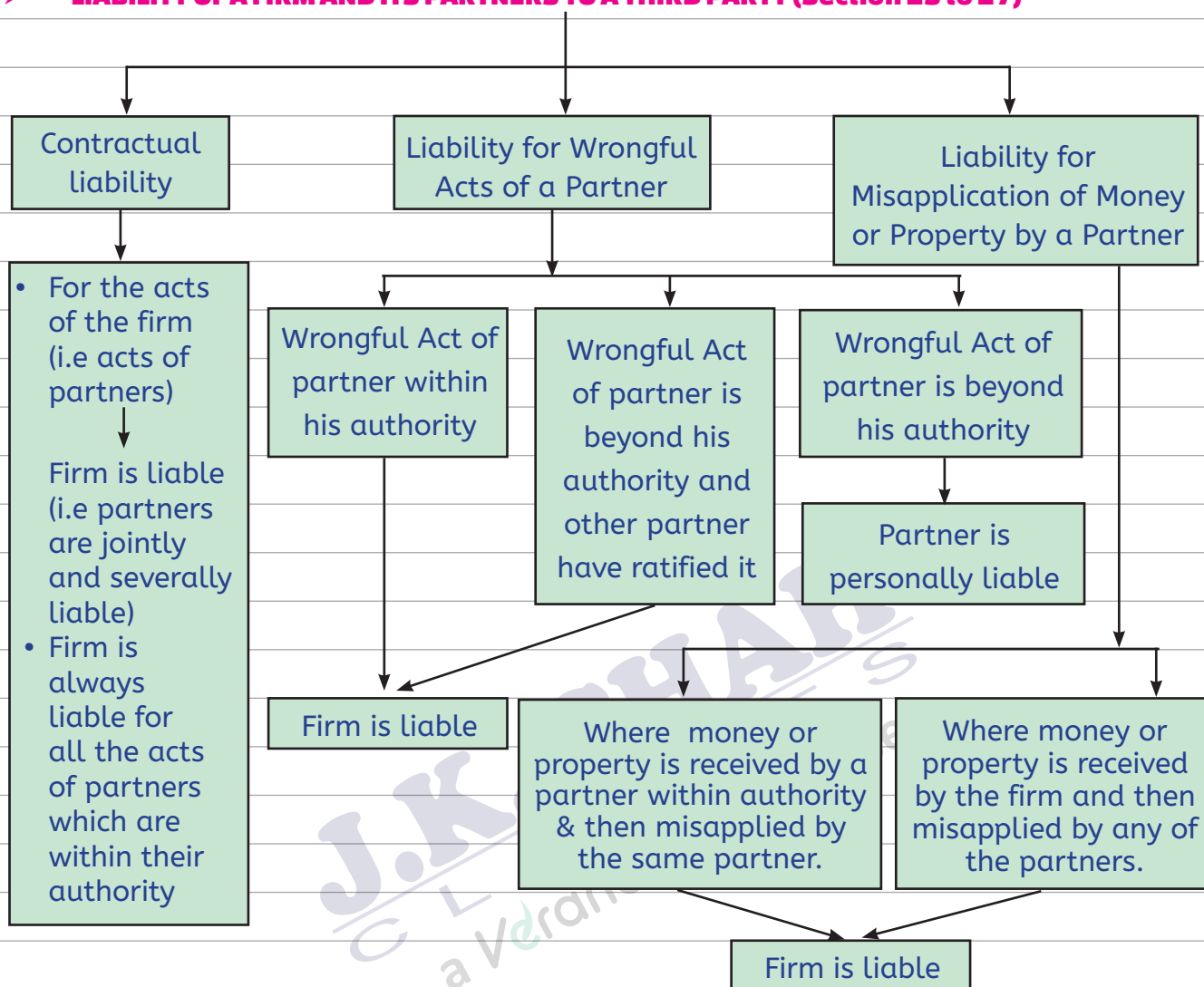
- ✓ The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner (Section 20).

Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:

1. The third party knows about the restrictions, and
2. The third party does not know that he is dealing with a partner in a firm.

- ✓ If any partner does an act which is beyond his authority but in emergency and good faith then the firm is liable (Section 21).
- ✓ An admission or representation (i.e. statement of facts) made by a partner concerning the affairs of the firm makes the firm liable (Section 23).
- ✓ Notice to a partner = Notice to the firm (Section 24)
  - (i) Such notice must relate to the affairs of the business
  - (ii) Such notice must be given to a working partner and not a sleeping partner
  - (iii) There must not be any fraud committed by the partner and third party against the firm.

➤ **LIABILITY OF A FIRM AND ITS PARTNERS TO A THIRD PARTY (Section 25 to 27)**



➤ **TRANSFER OF PARTNER'S INTEREST (Section 29):**

A share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the transferee of a partner's interest by sale, or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of such a transferee are as follows:

(1) During the continuance of partnership, such transferee is NOT entitled

- (a) to interfere with the conduct of the business,
- (b) to require accounts, or
- (c) to inspect books of the firm.

He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

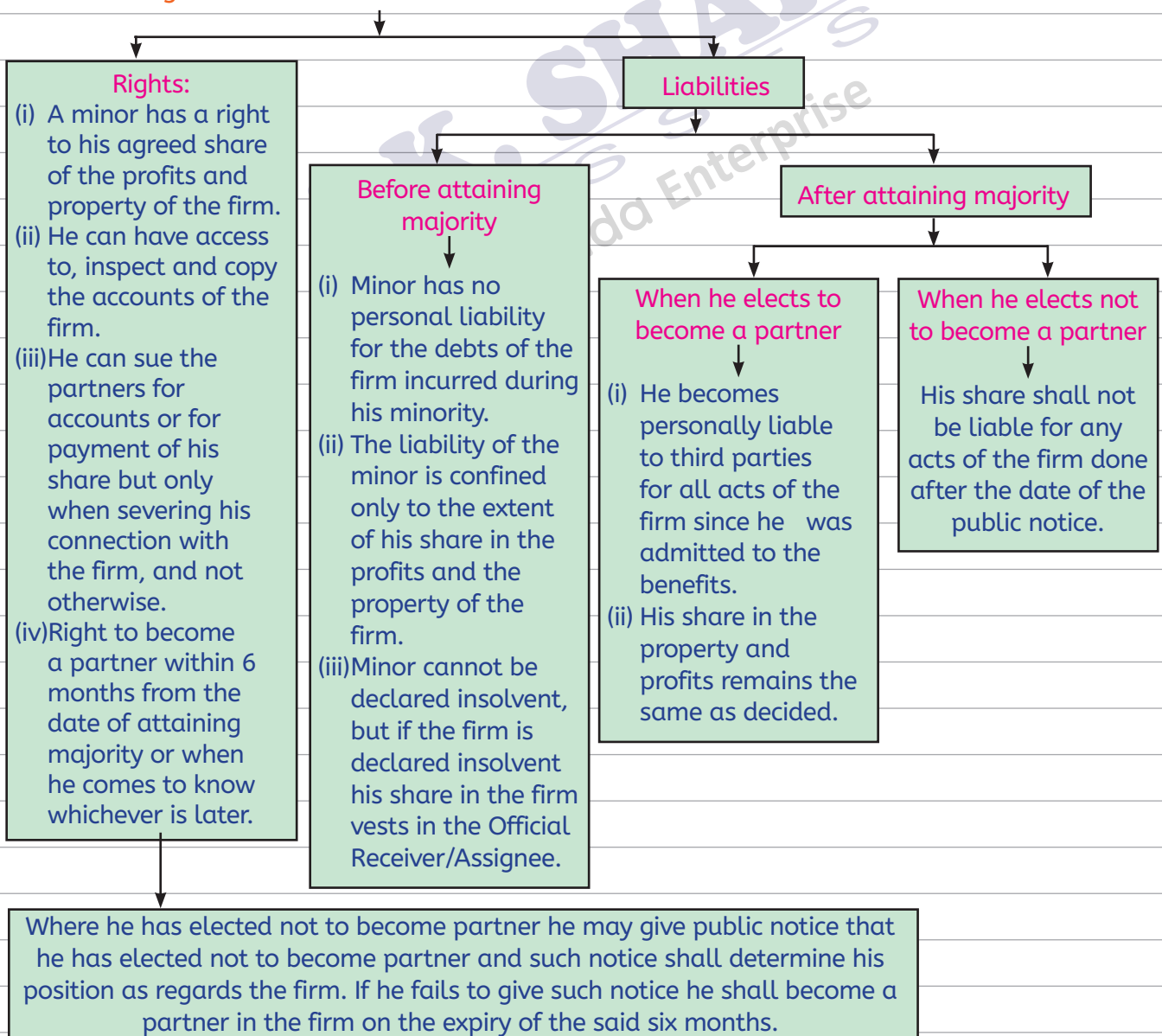
(2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:

- (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
- (b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

➤ **MINOR'S POSITION IN PARTNERSHIP FIRM (Section 30)**

- ✓ A minor cannot become a partner in a firm because partnership is founded on a contract and contract with a minor is void-ab-initio. Though a minor cannot be a partner in a firm, he can be admitted to the benefits of partnership with the consent of all the partners.

✓ **Rights and liabilities of Minor**



➤ **RECONSTITUTION OF A FIRM (Section 31 to 38)**

(Dissolution of partnership)

The reconstitution of a firm means a change in the constitution i.e., composition of the firm and it takes place in the following cases :

- (1) Admission of a new partner (Section 31)
- (2) Retirement of a partner (Section 32)
- (3) Expulsion of a partner (Section 33)
- (4) Rights of outgoing partner (Section 36 & 37)
- (5) Insolvency of a partner (Section 34)
- (6) Death of a partner (Section 35)
- (7) Revocation of continuing guarantee (Section 38)

(1) Admission of a Partner (Section 31)

- ✓ A new partner can be admitted into an existing firm in any of the following ways
  - (a) With the consent of all the partners.
  - (b) In accordance with a contract already entered into between the partners for the admission of a new partner.
- ✓ The liability of an incoming partner may be discussed as under:
  1. Liability for the acts of the firm done before admission:  
An incoming partner is not liable for the acts of the firm done before his admission into the firm.
  2. Liability for the acts of the firm done after admission:  
He is liable for all the acts of the firm done after he became a partner in the firm.
  3. If the incoming partner agrees to bear the past liabilities, then for past liabilities he shall not be liable to third parties as he is a stranger to contract but he shall be liable to other partners.

(2) Retirement of a Partner (Section 32)

- ✓ A partner may retire from the firm in anyone of the following three modes:
  - (i) By consent. A partner may retire, at any time with the consent of all other partners.
  - (ii) By agreement. The partners may enter into an express agreement about the retirement of a partner. In such cases, a partner may retire according to the terms of the agreement.

(iii) By notice. In case of partnership at will, a partner may retire by given a written notice of retirement to all other partners.

- ✓ A retiring partner continues to be liable to third parties for the acts of the firm done even after his retirement until a public notice of his retirement is given.

### (3) Expulsion of a Partner (Section 33)

- ✓ He can be expelled only if the following conditions are satisfied:
  - (a) The power of expulsion should be given to the partners by an express contract between them.
  - (b) The power of expulsion should be exercised by majority of partners.
  - (c) The power of expulsion should be exercised in absolute good faith. The test of good faith includes three things:
    - (i) that the expulsion must be advantageous to the firm and not to the partners personally.
    - (ii) that the partner to be expelled is given a notice to that effect
    - (iii) that he was given an opportunity of being heard.
- ✓ If these conditions are not fulfilled the expulsion is null and void and the expelled partner can demand re-instatement in the firm
- ✓ An expelled partner continues to be liable to third parties for the acts of the firm done even after his retirement until a public notice of his retirement is given.
- ✓ The public notice can be given either by the expelled partner himself or by the firm.

### (4) Rights of outgoing partner (Section 36 & 37)

- ✓ To carry on competing business :

An outgoing partner may carry on a business, but it can be restricted by an agreement (below mentioned).

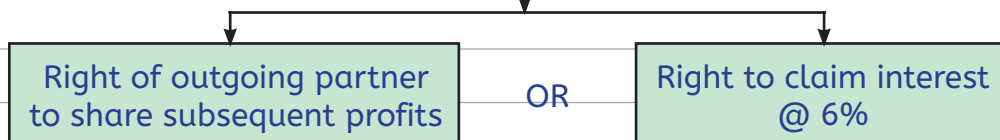
However he cannot

  - (a) Use the firm name.
  - (b) Represent himself as carrying on the business of the firm, or
  - (c) Solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

But he can advertise his business. Restraint of trade agreement:

A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits, such agreement shall be valid if the restrictions imposed are reasonable (Indian Contract Act, 1872).

- ✓ If settlement of accounts is not yet done, then,



#### (5) Insolvency of a Partner (Section 34)

- (i) The partner declared an insolvent, ceases to be a partner on the date on which the order of adjudication is made.
- (ii) The firm is dissolved on the date of the order of insolvency unless there is a contract to the contrary.
- (iii) The estate of the insolvent is not liable for any act of the firm after the date of the order of insolvency.
- (iv) The firm cannot be held liable for any acts of the insolvent partner after the date of the order of insolvency.

#### (6) Death of a Partner (Section 35)

- ✓ The firm is automatically dissolved on the death of a partner. However, the partners may specifically provide in their agreement that the firm shall not be dissolved, and the remaining partners shall continue the firm's business.
- ✓ Where the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any acts of the firm which are done after his death.

#### (7) Revocation of continuing guarantee (Section 38)

A continuing guarantee given to a firm, or by a third party in respect of the transaction of a firm, is in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.



**UNIT 3**

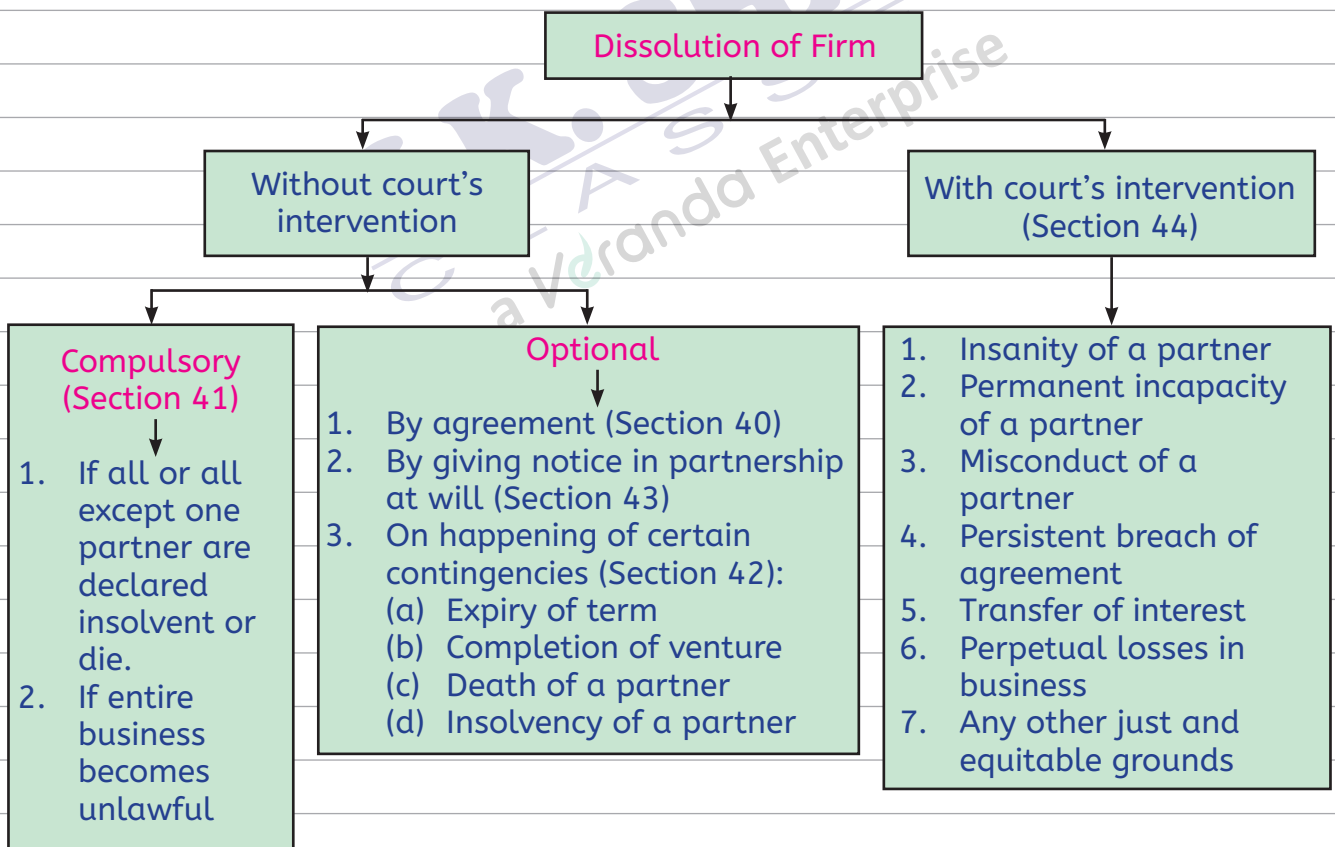
**DISSOLUTION OF FIRM (Section 39 to 55)**

➤ **DISSOLUTION OF PARTNERSHIP**

The term 'dissolution of partnership' may be defined as a change in the relations of partners, and not the extinction of relationship. In this case, the firm as a whole is not closed down. But only the relations between some of the partners come to an end, and the remaining partners continue to carry on the business of the firm. Thus, the 'dissolution of firm' is different from 'dissolution of partnership.'

➤ **DISSOLUTION OF FIRM (Section 39)**

When the firm as a whole is closed down, it is called the dissolution of the firm. Thus, in case of dissolution of the firm, the business of the firm is stopped and the relations between all the partners come to an end.



➤ **CONSEQUENCES OF DISSOLUTION**

1. **Liabilities for the acts done after dissolution (Section 45):**

On the dissolution of a firm, partners have to give a public notice of the dissolution. If it is not given, the partners shall remain liable to the third party for their acts done even after the dissolution of the firm

**2. Continuing Authority for Winding Up (Section 47):**

On the dissolution of a firm, the authority of each partner to bind the firm continues for the following purpose:

- (a) If it is necessary to wind up the affairs of the firm, and
- (b) If it is necessary to complete the transactions started but not completed at the time of dissolution.

**3. Partner's Right for Utilisation of Assets (Section 46):**

On the dissolution of the firm, each partner is entitled to the following rights:

- (a) He is entitled to have the property of the firm utilised in payment of its debts and liabilities.
- (b) He is entitled to have the surplus distributed<sup>®</sup> among all the partners according to their rights.

**4. Mode of Settlement of Accounts (Section 48):**

✓ **Utilization of assets:**

The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be utilized in the following manner:

- (a) First of all, the assets shall be utilized in paying the debts of the firm to the third parties.
- (b) If there is any surplus, the same shall be utilized in paying each partner the amount of loan advanced to the firm other than the capital.
- (c) If there is still any surplus, the same shall be utilized in paying each partner towards the amount of his capital.
- (d) If there is still any surplus, the same shall be divided among all the partners in proportion to their share in the profits of firm.

✓ **Payment of losses:**

The losses of the firm, including the deficiencies of capitals shall be paid in the following manner:

- (a) First of all, the losses shall be paid out of the profits.
- (b) If the profits, are not sufficient to pay the losses, then the balance of loss shall be paid out of capital, and
- (c) If still some balance of losses remains, it shall be paid by the partners individually in the proportion in which they were entitled to share profits.

5. Payment of firm's debts and Partner's Private Debts (Section 49):

- (1) Firm's property shall be applied first in payment of firm's debts then the surplus, if any, shall be applied for payment of partner's private debts to the extent in which the concerned partner is entitled to the surplus.
- (2) Partner's private property shall be applied first in the payment of his debts and the surplus, if any, shall be used in payment of firm's debts.

# 04

## THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

### ➤ BACKGROUND AND AIM OF THE ACT

- ✓ The Parliament passed the Limited Liability Partnership Bill on 12th December, 2008 and the President of India has assented the Bill on 7th January, 2009 and called as the Limited Liability Partnership Act, 2008, and many of its sections got enforced from **31st March 2009**.
- ✓ This Act have been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected there with or incidental thereto.
- ✓ The LLP Act, 2008 has **81 sections and 4 schedules**.
- ✓ The **First Schedule** deals with **mutual rights and duties of partners**, as well limited liability partnership and its partners where there is absence of formal agreement with respect to them.
- ✓ The **Second Schedule** deals with **conversion of a firm into LLP**.
- ✓ The **Third Schedule** deals with **conversion of a private company into LLP**.
- ✓ The **Fourth Schedule** deals with **conversion of unlisted public company into LLP**.
- ✓ The Ministry of Corporate Affairs (MCA) and the Registrar of Companies (ROC) are entrusted with the task of administrating the LLP Act, 2008.
- ✓ It is also to be noted that **'The Indian Partnership Act, 1932 is not applicable to LLPs**.

### ➤ MEANING OF LLP

- ✓ A LLP is a new form of legal business entity with limited liability.
- ✓ The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.
- ✓ Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

➤ **CHARACTERISTICS OF LLP**

Following are the characteristics of a LLP:

1. **LLP is a body corporate**
2. **Perpetual Succession**
3. **Separate Legal Entity**
4. **No mutual Agency**
5. **LLP Agreement:** The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.
6. **Artificial Legal Person**
7. **Common Seal:** It is not mandatory for a LLP to have a common seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.
8. **Limited Liability**
9. **Management of Business:** The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.
10. **Minimum and Maximum number of Partners:** Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.
11. **Business for Profit Only**
12. **Investigation:** The Central Government shall have powers to investigate the affairs of an LLP by appointment of competence authority for the purpose.
13. **Compromise or Arrangement:** Any compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.
14. **Conversion into LLP:** A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.
15. **E-Filing of Documents.**
16. **Foreign LLPs:** Section 2(1)(m) defines foreign limited liability partnership “as a limited liability partnership formed, incorporated, or registered outside India which established a place of business within India”. Foreign LLP can become a partner in an Indian LLP.

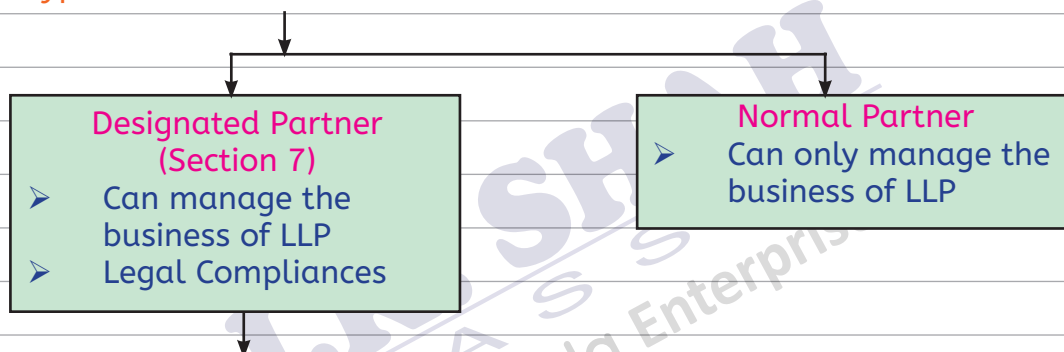
➤ **SMALL LIMITED LIABILITY PARTNERSHIP [Section 2(ta)]**

As per Section 2(ta), it means a limited liability partnership—

- (i) the contribution of which, does not exceed ₹ 25,00,000 or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed ₹ 40,00,000 or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
- (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

➤ **PARTNER**

✓ **Types of Partners**



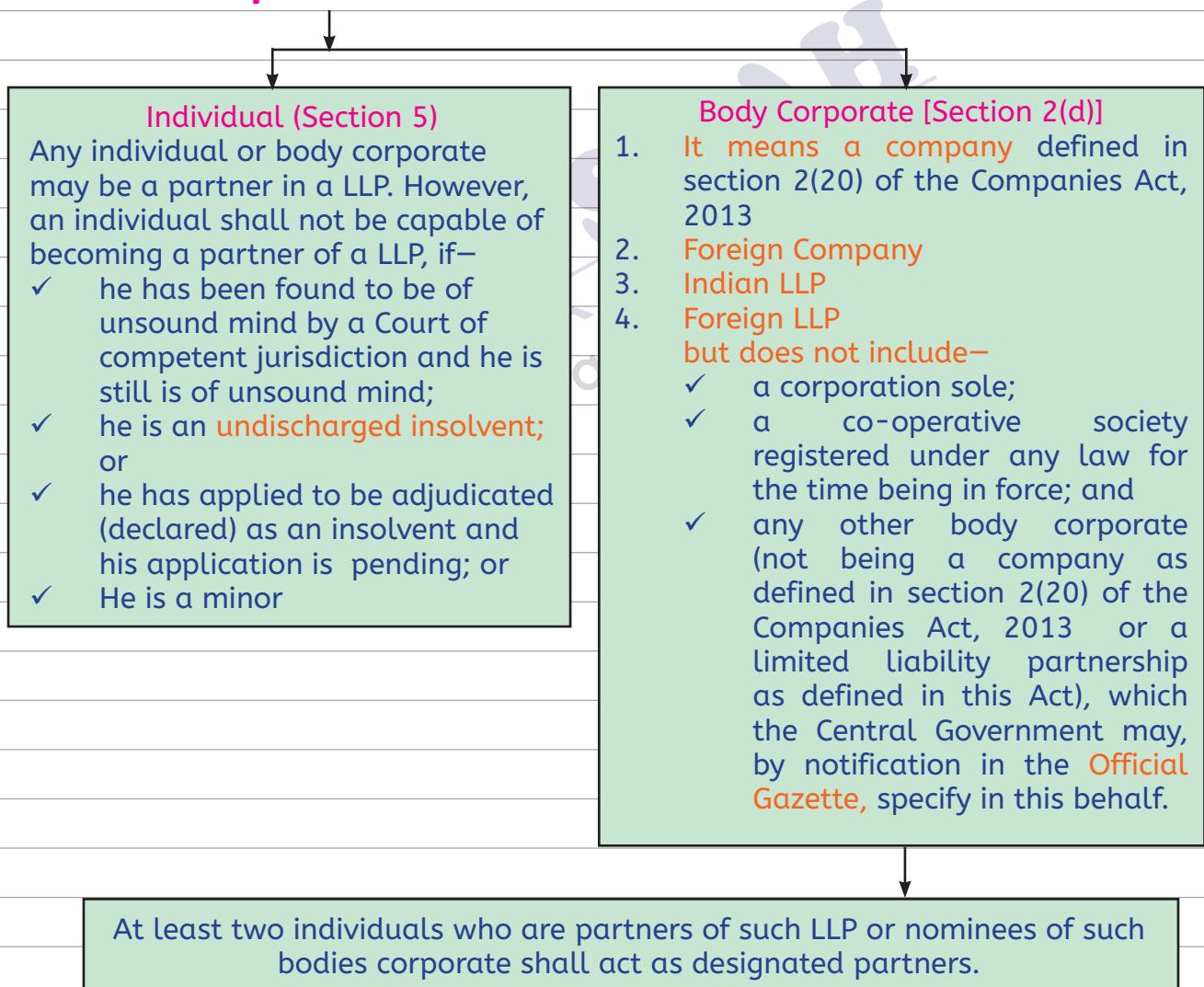
- Every LLP shall have at least two designated partners and at least one of them shall be a resident in India.
- Resident in India: For the purposes of this section, the term “resident in India” means a person who has stayed in India for a period of **at least 120 days during the immediately preceding one year.**

**Rules for becoming Designated Partner:**

1. If the incorporation document
  - (a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or
  - (b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner.
2. Any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

1. An individual shall become a designated partner in any limited liability partnership only after has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.
2. Every limited liability partnership shall file with the Registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within 30 days of his appointment.
3. An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.
4. Every designated partner of a limited liability partnership shall obtain a Designated Partners Identification Number (DPIN) from the Central Government.

➤ **Who can be a partner?**



- ✓ **Number of partners (Section 6)**
- ✓ Every LLP shall have at least two partners. Maximum: No limit
- ✓ If at any time the number of partners of a LLP is reduced below 2 and the LLP carries

on the business for **more than 6 months** while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those 6 months and has the knowledge of the fact that it is carrying on business with him alone, shall be **liable personally for the obligations of the LLP**.

➤ **FOREIGN LLP**

- ✓ **Foreign LLP [section 2(m)]:** It means a LLP formed, incorporated or registered outside India which establishes a place of business within India.
- ✓ As per **Section 59**, the Central Government may make rules for provisions in relation to establishment of place of business by foreign LLP within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 2013 or such regulatory mechanism with such composition as may be prescribed.

➤ **LIMITED LIABILITY PARTNERSHIP AGREEMENT (Section 23)**

- ✓ It means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.
- ✓ It is **optional** for a LLP to have a LLP Agreement.
- ✓ In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the **First Schedule**.

➤ **FINANCIAL YEAR [Section 2(l)]**

- ✓ “Financial year”, in relation to a LLP, means the period from the **1st day of April of a year to the 31st day of March** of the following year.
- ✓ However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.  
**Example:** If LLP is incorporated on 20th October, 2010 the first Financial Year will be 20th October, 2010 to 31st March, 2012

➤ **NON-APPLICABILITY OF THE INDIAN PARTNERSHIP ACT, 1932 (SECTION 4)**

Unless otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a LLP.



➤ **APPLICATION OF THE PROVISIONS OF THE COMPANIES ACT, 2013(Section 67):**

- ✓ The provisions of Companies Act can be made applicable to LLPs only by notification in Official Gazette.
- ✓ The Central Government may, by notification in the **Official Gazette**, direct that any of the provisions of the Companies Act, 2013 specified in the notification—
  - ▶ shall apply to any LLP; or
  - ▶ shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the notification.
- ✓ However, before notifying the Central Government has to lay the notification proposed in draft before each House of Parliament, while it is in session.
- ✓ The Houses of Parliament have to finalise the draft proposed whether they approve it or disapprove it or approve it with modifications within a period of 30 days which may be comprised in one session or in two or more successive sessions.

➤ **INCORPORATION OF LLP**

**Step 1: LLP Name**

1. **Name (Section 15):**

1. Every limited liability partnership shall have either the words “limited liability partnership” or the acronym “LLP” as the last words of its name.
2. LLP shall not be registered by a name which, in the opinion of the Central Government is—
  1. undesirable; or
  2. identical or too nearly resembles to that of any other limited liability partnership or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.

2. **Reservation of name (Section 16):**

1. A person has to apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as the name of a proposed LLP; or
2. Upon receipt of an application and on payment of the prescribed fee, the Registrar may, if he is satisfied, **reserve the name for a period of 3 months** from the date of intimation by the Registrar.

**Step 2: Incorporation Document (Section 11)**

**1. For a LLP to be incorporated:**

1. two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
2. the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and
3. Statement to be filed:  
Along with the incorporation document, a statement in the prescribed form shall also be filed,  
made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and  
by anyone who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made there under have been complied with, in respect of incorporation and matters related to it.

**2. The incorporation document shall—**

1. be in a form as may be prescribed;
2. state the name of the LLP;
3. state the proposed business of the LLP;
4. state the address of the registered office of the LLP;
5. state the name and address of each of the persons who are to be partners of the LLP on incorporation;
6. state the name and address of the persons who are to be designated partners of the LLP on incorporation;
7. contain such other information concerning the proposed LLP as may be prescribed.

**3. If a person makes a statement as discussed above which he knows to be false; or shall be punishable**

1. with imprisonment for a term which may extend to 2 years and
2. with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 5 Lakhs.

**Step 3: Incorporation Registration (Section 12)**

- ✓ When the requirements imposed by Section 11 have been complied with, the Registrar shall retain the incorporation document & accept the statement as mentioned above and, he shall, within a period of 14 days—
  - ▶ register the incorporation document; and
  - ▶ give a certificate that the LLP is incorporated by the name specified therein.
- ✓ The certificate issued shall be signed by the Registrar and authenticated by his official seal.
- ✓ The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

**Step 4: Effect of registration (Section 14)**

1. On the incorporation of a LLP, the persons who subscribed their names to the incorporation document shall be its partners .
2. On registration, a limited liability partnership shall, by its name, be capable of—
  - (1) suing and being sued;
  - (2) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
  - (3) having a common seal, if it decides to have one; and
  - (4) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

**Step 5: LLP Agreement (Section 23)**

- ✓ This step will come only if LLP chooses to have LLP Agreement.
- ✓ The LLP agreement, if made therein shall be filed with the Registrar in e-Form 3 within 30 days of incorporation of LLP and accompanied by such fees as may be prescribed.
- ✓ In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

**REGISTERED OFFICE OF LLP AND CHANGE (SECTION 13):**

1. Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

2. If any document is to be sent to LLP or a partner or designated partner thereof by post or by any other manner, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
3. A LLP may change the place of its registered office and **file the notice of such change**.
4. If any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of ₹ 500 for each day during which the default continues, subject to a maximum of ₹ 50,000.

### **CHANGE OF NAME OF LLP (SECTION 17)**

1. Where the Central Government is satisfied that a LLP has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which –
  1. resembles the name of any other LLP or Company
  2. a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,then on an application of such limited liability partnership or proprietor, the Central Government may direct that such limited liability partnership to change its name or new name **within a period of 3 months** from the date of issue of such direction.
2. But the above application of the proprietor of the registered trade marks shall be maintainable within a period of **3 years from the date of incorporation or registration or change of name of the limited liability partnership under this Act**.
3. Where a LLP changes its name or obtains a new name, it shall **within a period of 15 days from the date of such change, give notice of the change to Registrar** along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such limited liability partnership shall change its name in the limited liability partnership agreement.
4. If the **LLP is in default in complying with any direction given, the Central Government shall allot a new name** to the limited liability partnership in such manner as may be prescribed and the Registrar shall enter the new name in the register of limited liability partnerships in place of the old name and issue a fresh certificate of incorporation with new name, which the limited liability partnership shall use thereafter. However, LLP can change the name subsequently in accordance with the provisions of section 16.

**PARTNERS AND THEIR RELATIONS RELATION**

<p>Eligibility to be partners          (Section 22):</p>	<p>On the incorporation of a LLP, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the LLP by and in accordance with the LLP agreement.</p>
<p>Cessation of partnership interest          (Section 24):</p>	<ol style="list-style-type: none"> <li>1. A person may cease to be a partner of a LLP in following ways:             <ol style="list-style-type: none"> <li>1. Voluntarily by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner</li> <li>2. Resign as per the agreement (only if LLP has LLP Agreement)</li> <li>3. On his death</li> <li>4. Dissolution of the LLP</li> <li>5. If he is declared to be of unsound mind by a competent court;</li> <li>6. If he has applied to be declared as an insolvent</li> </ol> <p>Even if a person as ceased to be a partner, he shall be still considered as a partner unless:  <b>The person (outsider) has notice</b> that the former (old) partner has ceased to be a partner of the LLP; or  <b>Notice</b> that the former partner has ceased to be a partner of the LLP has <b>been delivered to the Registrar.</b></p> </li> <li>2. The cessation of a partner from the LLP does not by itself discharge the partner from any obligation to the LLP or to the other partners or to any other person which he incurred while being a partner.</li> <li>3. Where a partner of a LLP ceases to be a partner, unless otherwise provided in the LLP agreement, the former partner/ legal representative (in case of death of partner) shall be entitled to receive from the LLP–             <ol style="list-style-type: none"> <li>1. an <b>amount equal to the capital contribution</b> of the former partner actually made to the LLP; and</li> <li>2. <b>his right to share in the accumulated profits of the LLP</b>, after the deduction of accumulated losses of the LLP, determined as at the date the former partner ceased to be a partner.</li> </ol> </li> <li>4. A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the LLP.</li> </ol>

<p>Registration of changes in partners (Section 25):</p>	<ol style="list-style-type: none"> <li>1. Every partner shall inform the LLP of any change in his name or address <b>within a period of 15 days</b> of such change.</li> <li>2. <b>A LLP shall inform following to Registrar within a period of 30 days</b> <ol style="list-style-type: none"> <li>1. Where there is any change in the name or address of a partner, file a notice with the Registrar within 30 days of such change.</li> <li>2. Where a person becomes a partner or ceases to be a partner. If it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.</li> </ol> </li> <li>3. A notice filed with the Registrar—           <ol style="list-style-type: none"> <li>1. shall be in such form and accompanied by such fees as may be prescribed;</li> <li>2. shall be signed by the designated partner of the LLP and authenticated in a manner as may be prescribed.</li> </ol> </li> <li>4. Any person who ceases to be a partner of a LLP may himself file with the Registrar the notice if he has reasonable cause to believe that the LLP may not file the notice with the Registrar and In case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP unless the LLP has also filed such notice. However, where no confirmation is given by the LLP <b>within 15 days</b>, the registrar shall register the notice made by a person ceasing to be a partner under this section.</li> <li>5. <b>Penalty:</b> If the LLP contravenes the provisions, the LLP and every designated partner of the LLP shall be punishable with fine of ₹ 10,000. If any partner contravenes the provisions, such partner shall be punishable with fine of ₹ 10,000.</li> </ol>
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**EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNER**

<p>Partner as agent (Section 26):</p>	<p>Every partner of a LLP is, for the purpose of the business of the LLP, the agent of the LLP, but not of other partners.</p>
<p>Extent of liability of LLP (Section 27):</p>	<ol style="list-style-type: none"> <li>1. The <b>LLP is liable</b> if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.</li> <li>2. But if a partner acts beyond authority and the person knows that he has no authority or does not know or believe him to be a partner of the LLP - LLP is not bound by anything done by a partner in dealing with a person.</li> </ol>

	<p>3. An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP. The liabilities of the LLP shall be met out of the property of the LLP.</p>
Extent of liability of partner (Section 28):	<p>1. A partner is not personally liable, directly or indirectly for an obligation referred to in section 27 solely by reason of being a partner of the LLP.</p> <p>2. But the partners are personally liable for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the LLP.</p>
Holding out (Section 29):	<p>1. Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a LLP is liable to any person who has on the faith of any such representation given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit. However, where any credit is received by the LLP as a result of such representation, the LLP shall, be liable to the extent of credit received by it or any financial benefit derived thereon.</p> <p>2. Where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.</p>
Unlimited liability in case of fraud (Section 30):	<p>1. In case of fraud:</p> <ol style="list-style-type: none"> <li>1. In the event of an act carried out by a LLP, or any of its partners,</li> <li>2. with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose,</li> <li>3. the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose.</li> <li>4. shall be unlimited for all or any of the debts or other liabilities of the LLP. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless LLP proves that such act was without the knowledge or the authority of the LLP.</li> </ol> <p>2. Where any business is carried on with such intent or for such purpose as mentioned, every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with</p> <ol style="list-style-type: none"> <li>1. Imprisonment for a term which may extend to 5 years and</li> <li>2. With fine which shall not be less than ₹50,000 but which may extend to ₹ 5 Lakhs.</li> </ol>

	<p>3. Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, the LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.          However, such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.</p>
<p>Whistle blowing          (Section 31):</p>	<p>1. The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that—</p> <ol style="list-style-type: none"> <li>1. Such partner or employee of a LLP has provided useful information during investigation of such LLP; or</li> <li>2. When any information given by any partner or employee leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.</li> </ol> <p>2. No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information.</p>
<p>Maintenance of books of account, other records and audit, etc.          (Section 34):</p>	<p>1. <b>PROPER BOOKS OF ACCOUNT:</b></p> <ol style="list-style-type: none"> <li>1. The LLP shall maintain such proper books of account as may be prescribed</li> <li>2. relating to its affairs for each year of its existence by following the principles of accounting and shall maintain the same at its registered office          The accounts of LLP shall be audited in accordance with such rules as may be prescribed. However, the Central Government may, by notification in the Official Gazette, exempt any class or classes of LLP from the requirements of this section.</li> <li>3. Penalty:          Any LLP which fails to comply with the provisions of this section shall be punishable with fine of ₹25,000 but which may extend to ₹5 Lakhs          Every designated partner of such LLP shall be punishable</li> <li>4. With fine which shall not be less than ₹ 10,000 but which may extend to ₹1 Lakh.</li> </ol> <p>2. <b>STATEMENT OF ACCOUNT AND SOLVENCY:</b></p> <ol style="list-style-type: none"> <li>1. Every LLP shall,</li> <li>2. Within a period of 6 months from the end of each financial year,</li> <li>3. prepare a Statement of Account and Solvency</li> <li>4. for the said financial year</li> <li>5. in such form as may be prescribed, and</li> </ol>



	<p>6. such statement shall be signed by the designated partners of the LLP. Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.</p> <p>3. <b>Penalty:</b> Any LLP which fails to comply with the provisions of this section shall be punishable with fine of ₹ 100 for each day during which the failure continues, subject to maximum of ₹ 1 lakh for LLP and ₹ 50,000 for every designated partner.</p>
Accounting and auditing standards (Section 34A)	<p>The Central Government may, in consultation with the National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013,—</p> <ol style="list-style-type: none"> <li>1. prescribe the standards of accounting; and</li> <li>2. prescribe the standards of auditing, as recommended by the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949, for a class or classes of limited liability partnerships.]</li> </ol>
Annual return (Section 35):	<ol style="list-style-type: none"> <li>1. Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.</li> <li>2. <b>Penalty:</b> Any LLP which fails to comply with the provisions of this section shall be punishable with fine of ₹100 for each day during which the failure continues, subject to maximum of ₹1 lakh for LLP and ₹50,000 for every designated partner.</li> </ol>

➤ **CONVERSION INTO LLP:**

Conversion from firm into LLP (Section 55):	A firm may convert into a LLP in accordance with the provisions of this Chapter and the <b>Second Schedule</b> .
Conversion from private company into LLP (Section 56):	A private company may convert into a LLP in accordance with the provisions of this Chapter and the <b>Third Schedule</b> .
Conversion from unlisted public company into LLP (Section 57):	An unlisted public company may convert into a LLP in accordance with the provisions of this Chapter and the <b>Fourth Schedule</b> .

Registration and effect of conversion (Section 58):

**Registration:**

1. The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions this Act and the rules made there under, register the documents issue a certificate of registration in such form as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under this Act.
2. The LLP shall, within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 2013 as the case may be, about the conversion and of the particulars of the LLP in such form and manner as may be prescribed.
3. Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, will become partners of the LLP to which such firm or such company has converted, and shall be bound by the provisions of the various Schedules, as the case may be, applicable to them.

**Effect of Registration:**

On and from the date of registration specified in the certificate of registration issued under the various Schedule, as the case may be, –

1. There shall be a LLP by the name specified in the certificate of registration registered under this Act; 2. All assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership; and
3. The firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

**WINDING UP AND DISSOLUTION (Section 63):**

1. The winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up may be dissolved.

2. Circumstances in which LLP may be wound up by

**Tribunal (Section 64):** A LLP may be wound up by the Tribunal:

1. if the LLP decides that LLP be wound up by the Tribunal;
2. if, for a period of more than six months, the number of partners of the LLP is reduced below two;
3. if the LLP is unable to pay its debts;

4. if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
5. if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or
6. if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.
7. **Rules for winding up and dissolution (Section 65):** The Central Government may make rules for the provisions in relation to winding up and dissolution of LLP.

➤ **MISCELLANEOUS**

Business transactions of partner with LLP (Section 66):	A partner may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.
Electronic filing of documents (Section 68):	<ol style="list-style-type: none"> <li>1. Any document required to be filed, recorded or registered under this Act <b>may be filled, recorded or registered electronically</b> subject to such conditions as may be prescribed.</li> <li>2. A copy of or an extract from any document electronically filed with or submitted to the Registrar which is supplied or issued by the Registrar and <b>certified through affixing digital signature</b> to be a true copy of or extract from such document <b>shall, in any proceedings, be admissible in evidence</b> as of equal validity with the original document.</li> </ol>
Registration offices (Section 68A):	<ol style="list-style-type: none"> <li>1. For the purpose of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under rules made thereunder and for the purpose of registration of LLPs under this Act, the Central Government shall, by notification, establish such number of registration offices at such places as it thinks fit, specifying their jurisdiction.</li> <li>2. The Central Government may appoint such Registrars, Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars as it considers necessary, for registration of limited liability partnerships and discharge of various the functions under this Act.</li> <li>3. The powers and duties of the Registrars and the terms and conditions of their service shall be such as may be prescribed.</li> <li>4. The Central Government may direct the Registrar to prepare a seal or seals for the authentication of documents required for, or connected with the registration of limited liability partnerships.]</li> </ol>

<p>Payment of additional fee (Section 69):</p>	<p>Any document or return required to be filed or registered under this Act with the Registrar, if, is not filed or registered in time provided therein, may be filed or registered after that time may be registered or filed after that time, on payment of such additional fee as may be prescribed in addition to any fee as is payable for filing of such document or return:</p> <p>Such document or return shall be filed after the due date of filing, without affecting any other action or liability under this Act:</p> <p>A different fee or additional fee may be prescribed for different classes of limited liability partnerships or for different documents or returns required to be filed under this Act or rules made thereunder.</p>
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➤ **ESTABLISHMENT OF SPECIAL COURTS**

<p>Establishment of Special Courts (Section 67A):</p>	<ol style="list-style-type: none"> <li>(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many <b>Special Courts as may be necessary</b> for such area or areas, as may be specified in the notification.</li> <li>(2) The Special Court shall consist of—             <ol style="list-style-type: none"> <li>(a) <b>a single Judge</b> holding office as Sessions Judge or Additional Sessions Judge, in case of offences punishable under this Act with imprisonment of 3 years or more; and</li> <li>(b) <b>a Metropolitan Magistrate or a Judicial Magistrate of the first class</b>, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court.</li> </ol> </li> <li>(3) But till the Special Courts are designated or established, the Courts designated as <b>Special Courts in terms of section 435 of the Companies Act, 2013 shall be deemed to be Special Courts</b> for the purpose of trial of offences punishable under this Act.</li> <li>(4) Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established under this Act or the Companies Act, 2013, be tried by a Court of Sessions or the Court of Metropolitan Magistrate or Judicial Magistrate of the first class, as the case may be, exercising jurisdiction over the area.</li> </ol>
<p>Procedure and Powers of Special Court (Section 67B):</p>	<ol style="list-style-type: none"> <li>(1) All offences specified under Section 67A shall be <b>triable only by the Special Court established or designated for the area in which the registered office of the limited liability partnership is situated</b> in relation to which the offence is committed or where there are more than one Special Courts for such area, by such one of them as may be specified in this behalf by the High Court concerned.</li> <li>(2) While trying an offence under this Act, a special court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.</li> </ol>

	<p>(3) The Special Court may, if it thinks fit, can have</p> <table border="1"> <tr> <td> <p><b>Summary trial</b> The Special court may try an offence in a summary way any offence under this Act which is punishable with imprisonment not exceeding 3 years. But in case of conviction in summary trial, <b>no sentence of imprisonment for a term exceeding 1 year shall be passed.</b></p> </td> <td> <p><b>In case where no summary trial can be made:</b> Where it appears to the <b>Special Court</b> that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the <b>Special Court</b> shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in <b>accordance with the procedure for the regular trial.</b></p> </td> </tr> </table>	<p><b>Summary trial</b> The Special court may try an offence in a summary way any offence under this Act which is punishable with imprisonment not exceeding 3 years. But in case of conviction in summary trial, <b>no sentence of imprisonment for a term exceeding 1 year shall be passed.</b></p>	<p><b>In case where no summary trial can be made:</b> Where it appears to the <b>Special Court</b> that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the <b>Special Court</b> shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in <b>accordance with the procedure for the regular trial.</b></p>
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<p>Appeal and revision (Section 67C):</p>	<p>The High Court may exercise, so far as may be applicable, all the powers given by the Code of Criminal Procedure, 1973 on a High Court as if a <b>Special Court within the local</b> limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court</p>		

➤ **DISTINCTION BETWEEN LLP AND PARTNERSHIP FIRM**

	Basis	LLP	Partnership firm
1.	Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	Body corporate	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the partners and outsiders
6.	Perpetual succession	The death, insanity, Retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave But its existence continues	The death, insanity retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
7.	Name	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.

8.	Liability	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
9.	Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10.	Designated partners	At least two designated partners and atleast one of them shall be resident in India	There is no provision for such partners under the Indian partnership Act, 1932.
11.	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership
12.	Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	Annual filing documents	LLP is required to file: (a) Annual statement of accounts (b) Statement of solvency (c) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
14.	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a Partnership firm.
15.	Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the Benefits of the partnership with the prior consent of the existing partners.

➤ **DISTINCTION BETWEEN LLP AND LIMITED LIABILITY COMPANY (LLC)**

	Basis	LLP	LLC
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	Members / Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	Internal governance structure	The internal governance structure of a LLP is governed by agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).

4.	Name	Name of the LLP to contain the word "Limited liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Private company to contain the word "Private limited"
5.	Number of members/ partners	Minimum - 2 members Maximum - No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum - 2 members Maximum - 200 members Public company: Minimum - 7 members Maximum - No such limit on the members.
6.	Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution except in case of wilful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected shareholders.
8.	Minimum number of directors/ partners	Minimum 2 partners.	Private Co. - 2 directors Public Co. - 3 directors

# 05

## THE COMPANIES ACT, 2013

### ➤ **BACKGROUND AND AIM OF THE ACT**

**Structure of the Act:** The Companies Act, 2013 has 470 Sections (covered in 29 Chapters) and 7 Schedules

### ➤ **DEFINITION OF COMPANY**

The term 'company' has been defined under Section 2(20) of the Companies Act, 2013. As per this, 'company' means a company incorporated under Companies Act, 2013 or under any of the previous laws relating to companies.

### ➤ **ACT APPLICABLE TO:**

The provisions of this Act shall apply to-

1. Companies incorporated under this Act or under any previous company law.
2. Insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;
3. Banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
4. Companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;
5. Any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act, and
6. Such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.  
Example: Food Corporation of India (FCI), National Highway Authority of India (NHAI) etc.



➤ **CHARACTERISTICS OF COMPANY**

Following are the characteristics of a company:

1. Separate legal entity
2. Limited liability
3. Perpetual Succession
4. Separate Property

*Case law: Macaura vs. Northern Assurance Co. Ltd.*

5. Common Seal:

The Companies (Amendment) Act, 2015 has made the common seal optional

This amendment provides that the documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal. In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

➤ **IS COMPANY A CITIZEN?**

Although, a company is regarded as a legal person (though artificial), it is not a citizen either under the Constitution of India or the Citizenship Act, 1955.

➤ **HAS COMPANY A NATIONALITY AND RESIDENCE?**

It is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence.

➤ **LIFTING OR PIERCING THE CORPORATE VEIL**

- ✓ **Corporate veil:** It refers to a separate legal existence enjoyed by the company which is distinct from people who own & manage it.

It is an artificial curtain created by law which separates the company from the people who own and manage it.

- ✓ **Effect of corporate veil:** Only company is liable for the acts/defaults done in name of company, even though directors/employees acted on behalf of company.

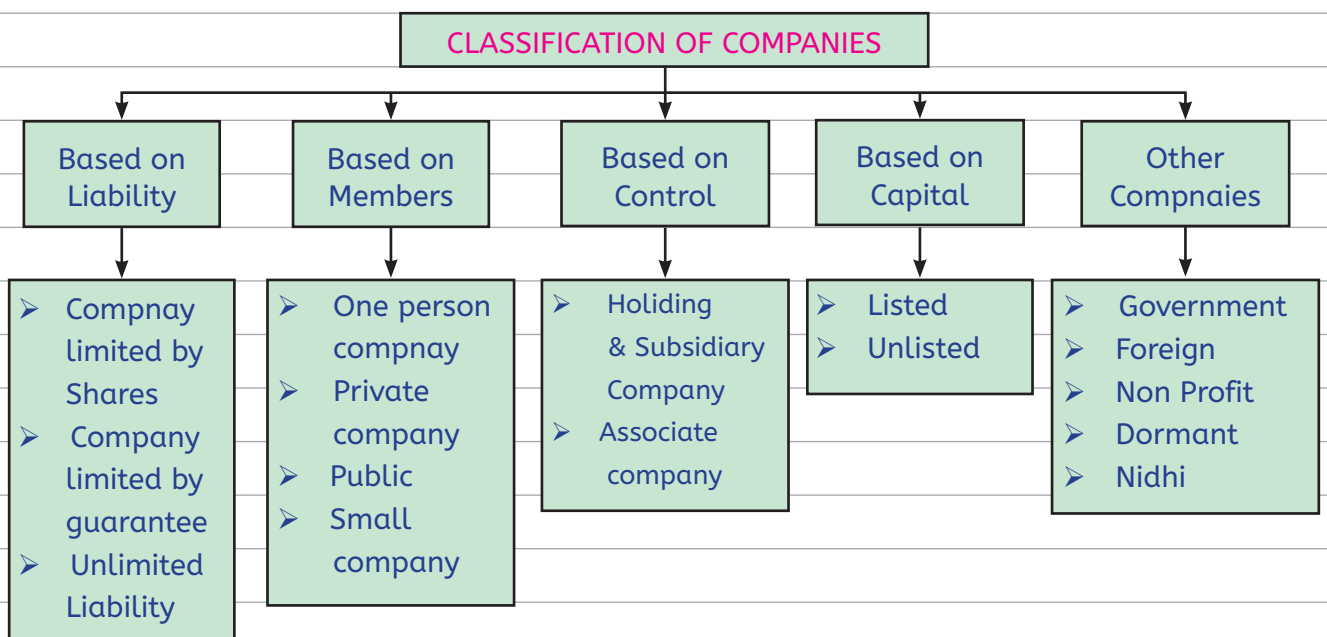
*Case law: Salomon v. Salomon & Co. Ltd.*

- ✓ **Lifting of corporate veil:** It means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Only in appropriate circumstances, the Courts shall lift the corporate veil.

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

1. Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat law, to defraud creditors or to avoid legal obligations. *Case law: Gilford Motor Co. v. Homes*
2. For determining residence and character: The Courts also look behind the facade of the company and its place of registration in order to determine its residence for the purposes of taxation or the character of the company, for example whether it is enemy.  
*Case law: Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.*
3. Formation of Companies to divide income and avoid tax or avoid any welfare laws:  
*Case law: Sir Dinshaw Maneckjee Petit*
4. To avoid a legal obligation  
*Case law: Workmen employed in Associated Rubber Industries Ltd v. Associated Rubber Industries Ltd.*
5. Where companies form other companies as their subsidiaries to act as their agent.  
*Case law: Merchandise Transport Limited vs. British Transport Commission*

➤ **CLASSIFICATION OF COMPANY**



**A. BASED ON LIABILITY**

1. **Company limited by shares:** As per Section 2(22), A company limited by shares is a registered company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them. If his shares are fully paid - up, he has nothing more to pay.

2. **Company limited by guarantee:**

- As per Section 2(21), a company limited by guarantee or a “guarantee company” is a company having the liability of its members limited to such an amount as the members may respectively thereby undertake, by the memorandum of association of the company, to contribute to the assets of the company.
- The liability of members to pay their guaranteed amounts arises only when the company has gone into liquidation and not when it is a going concern.
- Clubs, trade associations and societies for promoting different objects are examples of companies limited by guarantee.
- If a guarantee company has share capital, the shareholders have two-fold liability; to pay the amount which remains unpaid on their share whenever called upon to pay, and secondly, to pay the amount payable under the guarantee when the company goes into liquidation.

3. **Unlimited Company:**

- As per Section 2(92), unlimited company is a company not having any limit on the liability of its members. In such a company the liability of a member ceases when he ceases to be a member.
- The members of an unlimited company are not liable directly to the creditors of the company, unlike in the case of partners of a firm. The liability of the members is only towards the company, so long it is a going concern; and in the event of its being wound up, only the Liquidator can ask the members to contribute to the assets of the company.

**B. BASED ON MEMBERS**

1. **Private Company:**

- As per Section 2(68), private company is a company which by its articles, –  
(i) restricts the right to transfer its shares;

(ii) limits the number of its members to two hundred (except in case of One Person Company):

The clause provides that where two or more persons hold one or more shares in a company jointly, they shall be treated as a single member:

However following shall not be included in the number of members:

- ❖ Employees
- ❖ Past employees

(iii) prohibits any invitation to the public to subscribe for any securities of the company.

- There should be at least two persons to form a private company i.e., the minimum no. of members in a private company is two. A private company should have at least two directors. The name of a private limited company must end with the words “Private Limited”.

## 2. Public Company:

- As per Section 2(71), public company is a company which-
  - ❖ is not a private company
  - ❖ Seven or more members are required to form the company.
  - ❖ a private company which is a subsidiary of a public company shall also be deemed to be a public company for the purposes of this Act, even where such subsidiary company continues to be a private company in its articles (three restrictions).
- There should be at least seven persons to form a public company i.e., the minimum no. of members in a public company is seven. A public company should have at least three directors. The name of a public limited company must end with the word “Limited”.

## 3. One Person Company:

- **Definition:** As per Section 2(62), one person company is a company which- One Person Company’ means a company which has only one person as a member. It is basically a private company with some unique features.  
As regards the name of a One Person Company, the Act provides that the words “One Person Company” or ‘OPC’ shall be mentioned in brackets below the name of such Company, wherever its name is printed, affixed or engraved.

➤ **Important points:**

- ❖ Only one person as member.
- ❖ Minimum paid up capital - no limit prescribed.
- ❖ The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- ❖ The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- ❖ Such other person may be given the right to withdraw his consent.
- ❖ The member of OPC may at any time change the name of such other person by giving notice to the company<sup>3</sup> and the company shall intimate the same to the Registrar.
- ❖ Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 120 days during the immediately preceding one calendar year)-
  - shall be eligible to incorporate a OPC;
  - shall be a nominee for the sole member of a OPC.
- ❖ No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- ❖ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- ❖ Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.
- ❖ Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.

4. **Small Company:**

- **Definition:** As per Section 2(85), small company means a company, **other than a public company,** -
- (i) paid-up share capital of which **does not exceed 4 crore rupees** or such higher amount as may be prescribed which shall not be more than five crore rupees;
- and

- (ii) turnover of which as per its last profit and loss account **does not exceed 40 crore rupees** or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Note: Earlier the above limits were 2 crores and 20 crores each. But now they have been amended to 4 crores and 40 crores

➤ Provided that nothing in this clause shall apply to--

- (i) a holding company or a subsidiary company;
- (ii) a company registered under section 8; or
- (iii) a company or body corporate governed by any special Act. It is basically a private company meeting prescribed threshold.

### C. BASED ON CONTROL

#### 1. Holding & Subsidiary Company

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

[Section 2(46)]

Whereas section 2(87) defines “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company –

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies
- (iii) Subsidiary’s subsidiary.

For the purposes of this section –

- (I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (II) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

## 2. Associate company

- As per Section 2(6), In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
- The term “significant influence” means control of at least 20% of total share capital, or of business decisions under an agreement.

## D. BASED ON CAPITAL

### 1. Listed company:

As per the definition given in the section 2(52), it is a company which has any of its securities listed on any recognized stock exchange.

Provided such class of companies, which are listed or intend to list such class of securities as may be prescribed in consultation with Securities and Exchange Board of India, shall not be considered as listed company.

### 2. Unlisted company: Means a company other than listed company.

## E. OTHER COMPANIES

### 1. Government Company

- As per Section 2(45), government company means any company in which not less than fifty- one per cent. of the paid-up share capital is held by-
  - (i) the Central Government, or
  - (ii) by any State Government or Governments, or
  - (iii) partly by the Central Government and partly by one or more State Governments,
- And the section includes a company which is a subsidiary company of such a Government company;

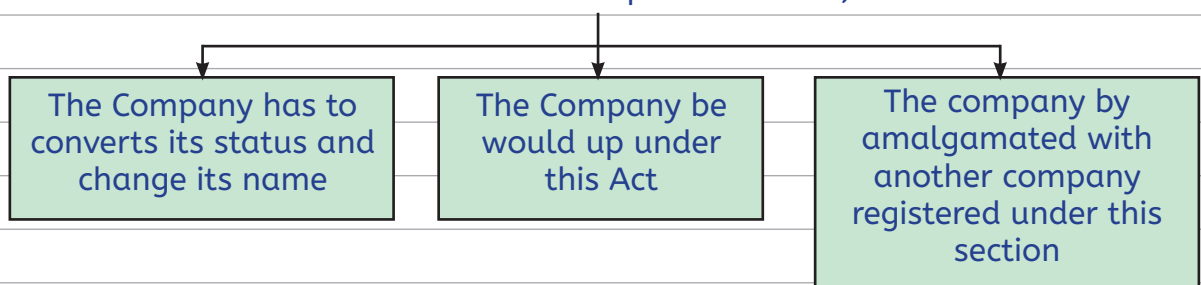
### 2. Foreign Company

As per Section 2(42), foreign company means any company or body corporate incorporated outside India which-

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner

### 3. Company not for profit/Non-Profit companies

- **Object of formation of Section 8 Company:** Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- **Restrictions on such company:**
  - (i) Such company is prohibited from declaring any dividend to its members
  - (ii) Such company has to apply its surplus only in promoting its objects
- **Power of Central government to issue the license-**  
Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing license on such conditions as it deems fit. The registrar shall on application register such person or association of persons as a company under this section  
On registration the company shall enjoy same privileges and obligations as of a limited company.
- **Privileges of Limited Company:** On registration the company shall enjoy same privileges and obligations as of a limited company.
- **Revocation of license:** The Central Government may by order revoke the license of the company where the company contravenes any of the requirements or the conditions of this section.  
But before such revocation, the Central Government must give it a written notice of its intention to revoke the license by 7th day and opportunity to be heard in the matter.
- **Order of the Central Government:**  
Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that:





➤ **Penalty/punishment in contravention:**

Company shall, be punishable with:

Fine: Minimum 10,00,000 upto 1 crore rupees

Directors and every officer of the company who is in default shall be punishable with:

Fine: Minimum 25,000 upto 25 lacs rupees

and where it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447 which deals with fraud.

**4. Dormant company:**

➤ Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

➤ “Significant accounting transaction” means any transaction other than—  
(i) payment of fees by a company to the Registrar;  
(ii) payments made by it to fulfil the requirements of this Act or any other law;  
(iii) allotment of shares to fulfil the requirements of this Act; and  
(iv) payments for maintenance of its office and records.

**5. Nidhi Company:**

As per Section 406(1) ‘Nidhi or Mutual Benefit Society means a company which the Central Government may, by notification in Official Gazette declare to be a ‘Nidhi or Mutual Benefit Society’

**6. Public financial institutions**

As per Section 2(72), following institutions are to be regarded as public financial institutions.

(i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;  
(ii) the Infrastructure Development Finance Company Limited,  
(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

- (iv) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
- (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

- (A) it has been established or constituted by or under any Central or State Act; or
- (B) not less than fifty-one per cent of the paid-up share capital is held or  
Governments or partly by the Central Government and partly by one or more State Governments.

➤ **MODE OF REGISTRATION/ INCORPORATION OF COMPANY**

**PROMOTERS:** Persons who form the company are known as promoters. It is they who conceive the idea of forming the company. They take all necessary steps for its registration. It should, however, be noted that persons acting only in a professional capacity e.g., the solicitor, banker, accountant etc. are not regarded as promoters.

The Companies Act, 2013 defines the term “Promoter” under section 2(69) which means a person—

- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

➤ **INCORPORATION OF COMPANIES [SECTION 7]**

Following is the procedure, in brief, for the incorporation of a company:-

I. **Selection of the type of company:**

The promoters of a company may however select the type of a company as they wish to form themselves into viz, One person company, private company, public company, non-profit company, etc.

II. **Preliminary Requirements:**

All the directors of the proposed company must ensure that they are having Director’s Identification Number (DIN). Out of all the directors of the proposed company, atleast one director should have digital signature to digitally sign the incorporation and other related documents.

III. **Reservation of Name:**

Any of the promoters should apply to the Registrar of Companies (ROC) regarding the reservation of name.

IV. **Preparation of the Memorandum of Association and Articles of Association:**

Drafting of the MOA and AOA is generally a step subsequent to the reservation of name made by the Registrar. MOA and AOA shall be in the respective forms as specified in Schedule -1.

**V. Filing of the documents with the Registrar of Companies:**

An application shall be filed, with the Registrar of Companies within whose jurisdiction the registered office of the company is proposed to be situated:

- (i) The memorandum and articles of the company duly signed by all the subscribers to the memorandum;
- (ii) A declaration by an advocate or chartered accountant or cost accountant or company secretary in practice, that all the requirements of this Act and the rules made there under in respect of registration have been complied with;
- (iii) A declaration by each of the subscribers to the Memorandum and by all the persons named as the first directors, if any, in the articles that they are not convicted of any offence in last 5 years.
- (iv) The address for correspondence till its registered office is established;
- (v) Certain prescribed particulars of every subscriber to the memorandum along with proof of identity;
- (vi) The particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of Directors and such other particulars including proof of identity as may be prescribed; and
- (vii) The particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms

**VI. Certificate of Incorporation and allotment of Corporate Identity Number:**

If the Registrar of Companies is satisfied that everything has been complied with in regard to incorporation of companies, he shall issue a certificate of incorporation in Form No. INC.11, normally within 7 days of the receipt of documents, to the company signed & dated under his hand.

**VII. Effect of Registration [Sec. 9]:**

Section 9 provides that from the date of incorporation, the subscribers become the members of the company. The company shall be a body corporate with a name, capable of exercising all the functions of an incorporated company under this Act.

➤ **EFFECT OF FURNISHING OF FALSE OR INCORRECT INFORMATION OR SUPPRESSION OF MATERIAL**

**FACT**

Furnishing of false or incorrect information or suppression of material fact at the time of incorporation (i.e. at the time of incorporation process)

If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action for fraud under section 447.

Furnishing of false or incorrect information or suppression of material fact representation or by suppressing any material fact (i.e. post incorporation)

1. The promoters, the persons named as the first directors of the company and the persons making declaration under this section shall each be liable for action for fraud under section 447.

2. **Order of the Tribunal:**

The Tribunal may, on an application made to it, on being satisfied that the situation so warrants—

- (i) Pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- (ii) Direct that liability of the members shall be unlimited; or
- (iii) Direct removal of the name of the company from the register of companies; or
- (iv) Pass an order for the winding up of the company; or
- (v) Pass such other orders as it may deem fit:

Provided that before making any order,—

- (i) The company shall be given a reasonable opportunity of being heard in the matter; and
- (ii) The Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

➤ **SIMPLIFIED PROFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICe)**

The Ministry of Corporate Affairs has taken various initiatives for ease of business. MCA has simplified the process of filing of forms of incorporation of company through Simplified Proforma For Incorporating Company ELECTRONICALLY (SPICe)

➤ **MEMORANDUM OF ASSOCIATION**

“Fundamental Document”

- ✓ Memorandum of Association is the fundamental condition upon which alone is allowed to incorporate.

<p><b>Definition and Meaning of Memorandum:</b> Section 2(56) of the Companies Act, 2013.</p>	<p>“memorandum” means memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act.</p>
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Memorandum of association is a document, which contains the fundamental provisions of the company’s constitution. It defines as well as confines the powers of the company. It not only shows the objects of formation but also determines the utmost possible scope of its operations beyond which its action cannot go.

<p><b>Purpose of Memorandum:</b></p>	<p>The purpose of memorandum is two-fold.</p> <ol style="list-style-type: none"> <li>1. The <b>Prospective shareholder</b> who contemplates the investment of his savings, should know the field in, or the purpose for which it is going to be used and what risk he is taking in making the investment.</li> <li>2. <b>Outsiders or Creditors</b> dealing with the company will know without reasonable doubt whether the contractual relation into which he contemplates entering with the company is one relating to a matter within its corporate objects.</li> </ol>
<p><b>Form of Memorandum [Section 4]:</b></p>	<ul style="list-style-type: none"> <li>✓ Table A is applicable to companies <b>limited by shares</b>;</li> <li>✓ Table B is applicable to companies <b>limited by guarantee and not having a share capital</b>;</li> <li>✓ Table C is applicable to the companies <b>limited by guarantee and having a share capital</b>;</li> <li>✓ Table D is applicable to <b>unlimited companies and not having a share capital</b>;</li> <li>✓ Table E is applicable to <b>unlimited companies and having a share capital</b>.</li> </ul>

- The memorandum must be printed, divided into paragraphs, numbered consecutively, and signed by at least seven persons (two in the case of a private company and one in the case of One Person Company) in the presence of at least one witness, who will attest the signatures.
- The Memorandum of Association of a company cannot contain anything contrary to the provisions of the Companies Act. If it does, the same shall be devoid of any legal effect. Similarly, all other documents of the company must comply with the provisions of the Memorandum.
- **Contents of Memorandum:** Section 4 of the Companies Act provides that the memorandum of association of every company must contain the following clauses:-

1. Name clause	<ul style="list-style-type: none"> <li>• The first clause in the memorandum must state the name by which a company is known.</li> <li>• The name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company. This clause is not applicable on the companies formed under section 8 of the Act.</li> <li>• The name including phrase ‘Electoral Trust’ may be allowed for Registration of companies to be formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT). For the Companies under section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and will constitute an offence under any law.</li> </ul>
2. Situation or registered office clause	<ul style="list-style-type: none"> <li>• The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein.</li> </ul>
3. Object clause	<ul style="list-style-type: none"> <li>• The objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;</li> <li>• If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name.</li> </ul>

4. Liability Clause:	The liability of members of the company, whether limited or unlimited, and also state, – <ul style="list-style-type: none"> <li>• in the case of a company limited by shares, that the liability of its members is limited to the amount unpaid, if any, on the shares held by them; and</li> <li>• in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute.</li> </ul>
5. Capital Clause (only in the case of a company having a share capital):	The amount of authorized capital divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share. A company not having share capital need not have this clause.
6. Association Clause and Subscription:	In this clause, the persons (includes a body corporate) subscribing to the memorandum declare their desire to be formed into a company and agree to take the shares indicated opposite their respective names.
7. Succession Clause (only in the case of OPC):	This clause shall state the name of the person who, in the event of the death of the subscriber, shall become themember of the company.

The above clauses of the Memorandum are called compulsory clauses, or “Conditions”. In addition to these a memorandum may contain other provisions, for example rights attached to various classes of shares.

➤ **ARTICLES OF ASSOCIATION**

Definition and Meaning of Articles Section 2(5) of the Companies Act, 2013	‘articles’ means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act.
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The articles of a company are its bye – laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles of a company are sub–ordinate to and are controlled by the memorandum of association.

Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association. The section lays the following law-

- (1) **Contains regulations:** The articles of a company shall contain the regulations for management of the company.



- (2) **Inclusion of matters:** The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.
- (3) **Contain provisions for entrenchment:** The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.
- (4) **Manner of inclusion of the entrenchment provision:** The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.
- (5) **Notice to the registrar of the entrenchment provision:** Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.
- (6) **Forms of articles:** The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.
- (7) **Model articles:** A company may adopt all or any of the regulations contained in the model articles applicable to such company.  
In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

The following are the key differences between the Memorandum of Association vs. Articles of Association:

1. **Objectives:** Memorandum of Association defines and delimits the objectives of the company whereas the Articles of association lays down the rules and regulations for the internal management of the company. Articles determine how the objectives of the company are to be achieved.
2. **Relationship:** Memorandum defines the relationship of the company with the outside world and Articles define the relationship between the company and its members.

3. **Alteration:** Memorandum of association can be altered only under certain circumstances and in the manner provided for in the Act. In most cases permission of the Regional Director, or the Tribunal is required. The articles can be altered simply by passing a special resolution.

4. **Ultra Vires:** Acts done by the company beyond the scope of the memorandum are ultra-vires and void. These cannot be ratified even by the unanimous consent of all the shareholders. The acts ultra-vires the articles can be ratified by a special resolution of the shareholders, provided they are not beyond the provisions of the memorandum.

➤ **EFFECT OF MEMORANDUM AND ARTICLES:**

As per section 10 of the Companies Act, 2013, where the memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles.

➤ **DOCTRINE OF ULTRA VIRES**

- ✓ The meaning of the term 'ultra vires' is 'beyond the powers of. Anything which is outside the specified objects and powers or not reasonably incidental to or necessary for the attainment of objects of the company is ultra vires the company and therefore is void-ab-initio.
- ✓ No rights and liabilities, on the part of the company, arise out of such transactions and it remains nullity even if every member assents to it.
- ✓ Consequently, an act, which is ultra vires the company, does not bind the company and neither the company nor the other contracting party can sue on it.
- ✓ An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company. Sometimes, act which is ultra vires can be regularised by ratifying it subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.
- ✓ **Case law:** *Ashbury Railway Carriage and Iron Company Limited v. Riche*

➤ **DOCTRINE OF CONSTRUCTIVE NOTICE**

- ✓ When the memorandum and articles of association of a company are registered, they become public documents and are open to inspection by anyone on payment of nominal fee. Hence, every person dealing with the company is under an obligation to know the contents of these documents.
- ✓ Whether a person reads the documents or not, he is presumed to have knowledge of the contents of the documents. He is not only presumed to have read the documents but also understood them in their true perspective, Thus, if a person enters into a contract which is beyond the powers of the company as defined in the memorandum, or outside the authority of directors as per memorandum or articles, he cannot acquire any rights under the contract against the company.

➤ **DOCTRINE OF INDOOR MANAGEMENT**

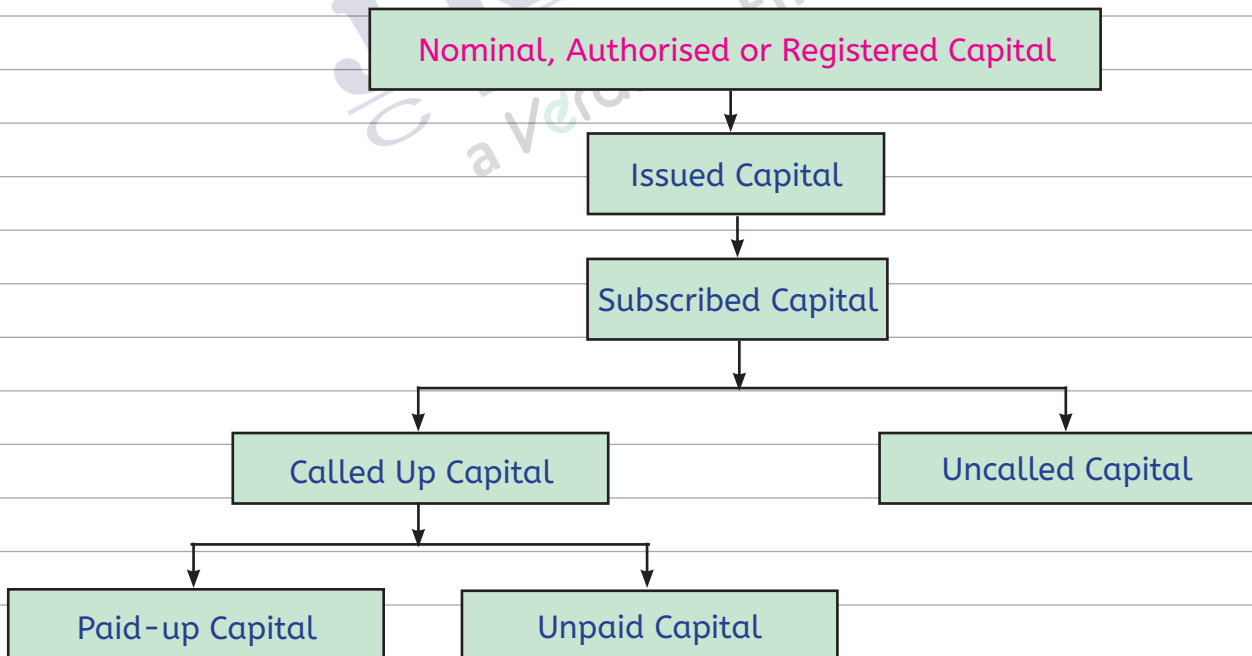
- ✓ While persons dealing with a company are presumed to have read the public documents and understood their contents and ascertain that the transaction is not inconsistent therewith, they are entitled to assume that the PROVISIONS of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see how the company carries out its own internal proceedings or indoor management. He can assume that all is being done regularly.
- ✓ The doctrine of indoor management, thus, imposes an important restriction on the scope of doctrine of constructive “notice. While the doctrine of “constructive notice” seeks to protect the company against the outsiders, the principle of indoor management operates to protect the outsiders against the company.
- ✓ **Case law: The Royal British Bank vs. Turquand**
- ✓ **Exceptions:** The doctrine of indoor management is subject to the following exceptions or limitations:-
  1. **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.
  2. **Suspicion of Irregularity:** Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or nothing the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.
  3. **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.

➤ **SHARE**

- ✓ **Definition and Meaning of Share:** Section 2(84) of the Companies Act, 2013 defines the term “share”. As per this, share means a share in the share capital of a company and includes stock.
- ✓ By its nature, a share is not a sum of money but a bundle of rights and liabilities. A share is a right to participate in the profits of a company, while it is a going concern and declares dividend; and a right to participate in the assets of the company, when it is wound up.
- ✓ The shares or debentures or other interests of any member in a company shall be movable property transferable in the manner provided by the articles of the company [Section 44 of the Companies Act, 2013]. Every share in a company having a share capital, shall be distinguished by its distinctive number [Section 45]. This shall not apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

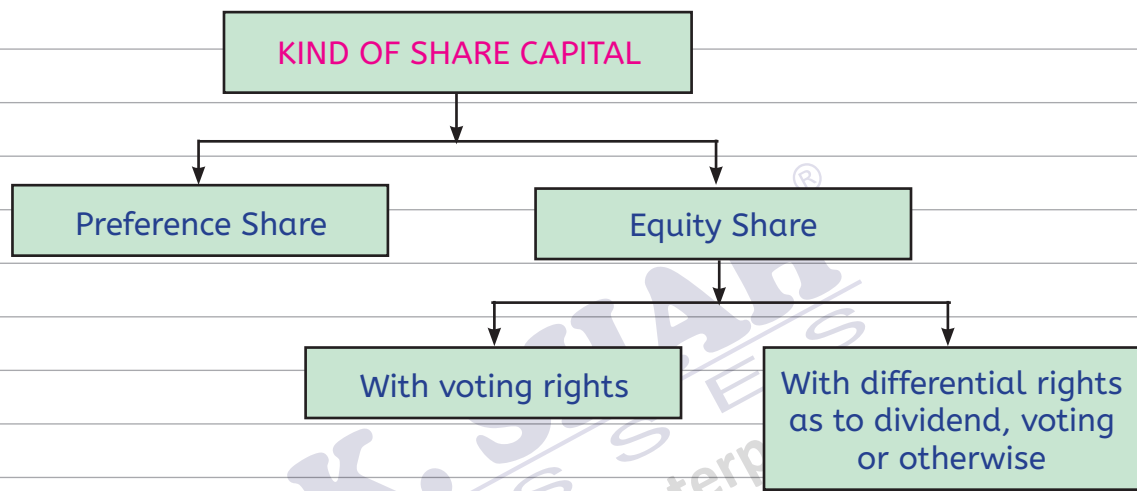
➤ **CLASSIFICATION OF SHARE CAPITAL**

The share capital of a company can be classified as:



- ✓ According to Section 2(8) “authorised capital” or “nominal capital” means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.
- ✓ Whereas Section 2(86) “subscribed capital” means such part of the capital which is for the time being subscribed by the members of a company.

- ✓ As per Section 2(15) “Called-up capital” means such part of the capital, which has been called for payment.
- ✓ Section 2(64) defines “paid-up share capital” or “share capital paid-up” means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.



**(A) PREFERENCE SHARE**

A preference share is a share which fulfils the following two conditions:

- ✓ It carries preferential right in respect of payment of dividend; and it also carries preferential right in regard to repayment of capital.
- ✓ In simple terms, preference share capital must have priority both regards to dividend as well as capital.

**(B) EQUITY SHARE**

- ✓ “Equity share capital” with reference to any company limited by shares, means all share capital which is not preference share capital;
- ✓ Equity share capital –
  - (1) with voting rights; or
  - (2) with differential rights as to dividend, voting or otherwise in accordance with prescribed rules.