










# Chapter 5: The Indian Contract Act, 1872

5.1

## Definitions [2]

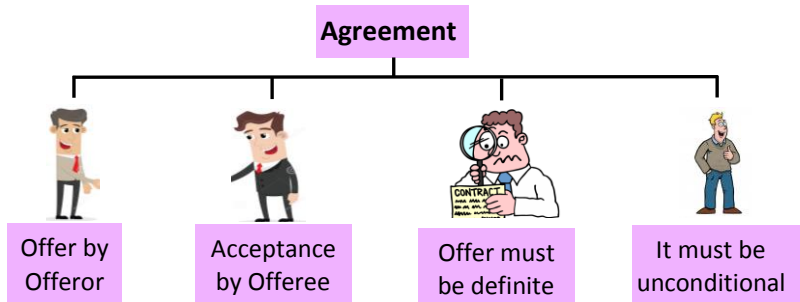
Sec		Definition
2(a)		<p style="text-align: center;"><b>Proposal</b></p> <p>When one person signifies to another,</p> <ol style="list-style-type: none"> <li>his willingness to do or to abstain from doing anything,</li> <li>with a view to obtaining the assent of that other to such act or abstinence,</li> </ol> <p>he is said to make a proposal.</p>
2(b)		<p style="text-align: center;"><b>Promise</b></p> <ol style="list-style-type: none"> <li>When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.</li> <li>A proposal, when accepted, becomes a promise.</li> </ol>
2(c)		<p style="text-align: center;"><b>Promisor &amp; Promisee</b></p> <ol style="list-style-type: none"> <li>The person making the proposal is called the “promisor”,</li> <li>The person accepting the proposal is called the “promisee”</li> </ol>
2(d)		<p style="text-align: center;"><b>Consideration</b></p> <p>When, at the desire of the promisor, the promisee or any other person has:</p> <ol style="list-style-type: none"> <li>done or abstained from doing, or does or abstains from doing, or</li> <li>promises to do or to abstain from doing, something,</li> </ol> <p>such act or abstinence or promise is called a consideration for the promise</p>
2(e)		<p style="text-align: center;"><b>Agreement</b></p> <p>Every promise and every set of promises, forming the consideration for each other, is an agreement.</p>
2(g)		<p style="text-align: center;"><b>Void Agreement</b></p> <p>An agreement not enforceable by law is said to be void</p>
2(h)		<p style="text-align: center;"><b>Contract</b></p> <p>An agreement enforceable by law is a contract.</p>
2(i)		<p style="text-align: center;"><b>Voidable Contract</b></p> <p>An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.</p>
2(j)		<p style="text-align: center;"><b>Void Contract</b></p> <p>A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.</p>

## Essentials of Valid Contract [10]

### Agreement

In order to constitute a contract, there must be an agreement in first place. An agreement in turn is composed of two elements-offer and acceptance. Thus there must be at least two parties-one making the offer and another accepting it. The terms of offer must be definite and the acceptance must be absolute and unconditional.

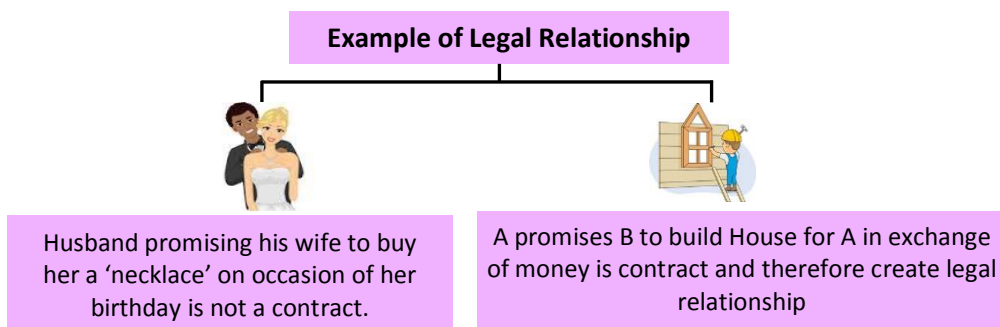
**Chart for Understanding**



**Legal Relationship**

The parties must intend to create a legal relationship. Agreements of social or domestic nature do not contemplate legal relationship, so they are not contracts.

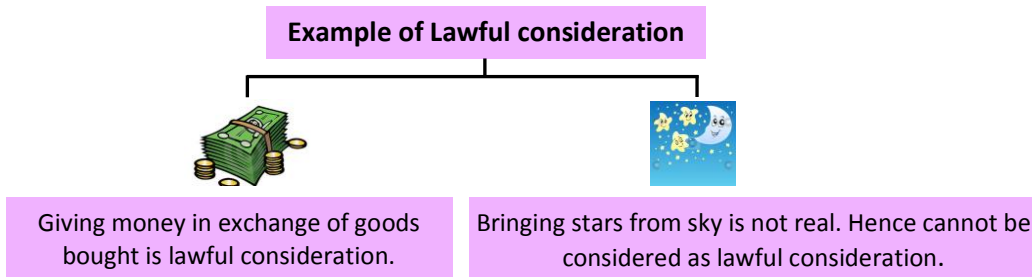
**Chart for Understanding**



**Lawful consideration**

The agreement must be supported by a lawful consideration. Consideration means 'something in return'. 'Something in return' may be an act or abstinence. But it must be real and lawful.

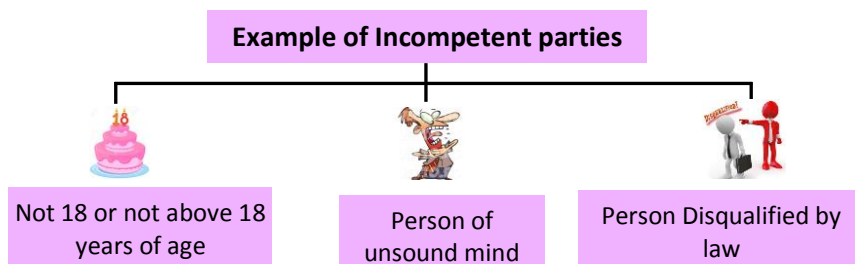
**Chart for Understanding**



**Capable Parties**

The parties to an agreement must be capable of entering into a contract. A person is considered incompetent if he is (a) not 18 or not above 18 years of age (b) of unsound mind (c) disqualified from contracting by any law to which he is subject.

**Chart for Understanding**



### Lawful Purpose

The object of agreement must be lawful.

#### Chart for Understanding

##### Example of Lawful Purpose



C pays fees to his Lawyer for fighting his case is a lawful purpose



L asks M to kill D in exchange of 50,000 Rs is Unlawful purpose

### Free Consent

The consent of the parties must be free and genuine i.e. not induced by coercion, undue influence, fraud or misrepresentation.

#### Chart for Understanding

##### Example of Free Consent



A made proposal to B asking his consent in writing without any pressure, is free consent



Z forced X to sign a promissory note at the point of pistol, is not Free Consent

### Valid Agreement

The agreement not expressly declared void or illegal by law. The terms of agreement must be certain and capable of performance.

#### Chart for Understanding

##### Example of Valid Agreement



D agrees to sell C garments. The type, quality, value etc. are not discussed. The agreement cannot be enforced as terms are uncertain.



A Promises B to bring rainfall through magic. Such agreement cannot be enforced

### Legal formalities

Where nature of agreement is such that it requires compliance of certain formalities, such requirements should be fulfilled. A contract may require registration in addition of being in writing. However as regards to legal effects, an oral contract has same weightage as a contract in writing.

### Distinction Between Agreement & Contract

Basic	Agreement	Contract
Meaning:		

Creation of Legal Obligation:		
One in Other:		

### Contract or Agreement to do Impossible Act is Void [56]

#### Meaning

Contingent agreements to do or not to do anything if an impossible event happens, are void, even if the impossibility of the **event is known or not known to the parties** at the time when agreement is made.



#### Compensation shall be given when fact is known

If a person promises to do particular act:

- knowing that such act is impossible or unlawful &
- the person to whom such promise is made does not know the fact that such act is unlawful or impossible

than the promisor must make compensation for any loss which the promisee has sustained due to non-performance of the promise.

#### Examples

	A agrees to pay B 1,000 rupees if two-straight lines should enclose a space. The agreement is void.
	A agrees to pay B 2,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

### Uncertain Agreement [29]

Agreements,

- the meaning of which is not certain, or
- not capable of being made certain, are void.

#### Chart for Understanding

##### Example of Uncertain Agreement

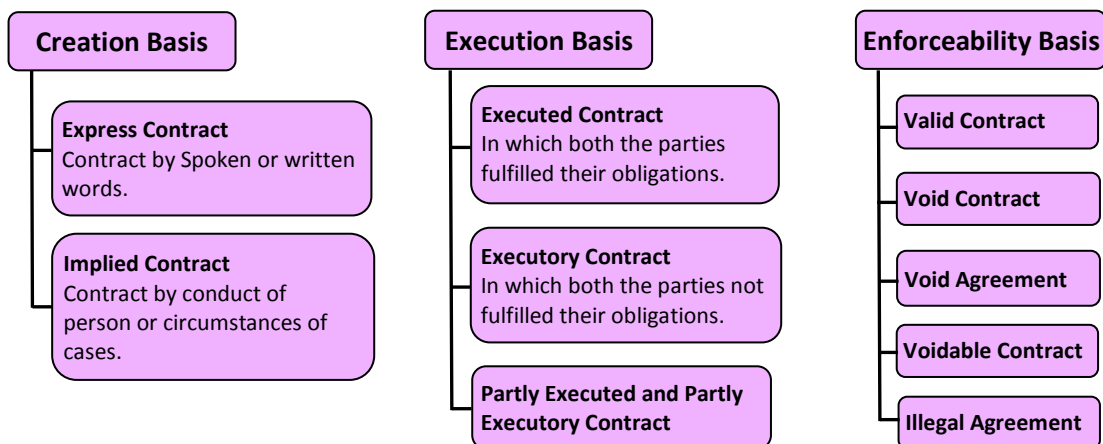


A agrees to sell to B "all the grain in A's granary at Ramnagar @ 40 per Kg." There is no uncertainty here to make the agreement void.



A agrees to sell to B "my white house for Rs. 5 cr or Rs. 10 cr". There agreement shows two prices making it uncertain. So agreement is void.

## Classification of Contracts [2 and 9]



## Offer or Proposal

### Rules of Valid Offer or Proposal

#### 1. Offer Must Be Communicated

#### Carlill Vs. Carbolic Smoke Ball Co.



1. It advertised to give reward of \$100 to person who contracted influenza, after using its Smoke balls



Mrs. Carlill used smoke balls but contracted influenza

2. She claimed reward but Company resisted

3. Court held that Mrs Carlill was entitled to a reward



#### Fact of The Case

- A pharmaceutical Company advertised that it would give a reward of \$100 to any person who contracted influenza, after using its Smoke balls for certain period according to the directions.
- Mrs. Carlill bought these smoke balls and used them as directed but contracted influenza. She claimed reward but Company resisted.

#### Question

Whether Company's resistance to give reward is tenable?

#### Decision Of Court

It was held that the advertisement did not require any communication of compliance of the condition, it was not necessary to communicate the same. Mrs Carlill was entitled to a reward of \$100 as she had performed the condition for acceptance.

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### Boulton Vs. Jones



#### Fact of The Case

- J offered to purchase 50 feet leather from Z.
- Z in meantime sold his business to B.
- So instead of Z, B supplied to leather to J.
- J refused to accept the leather.

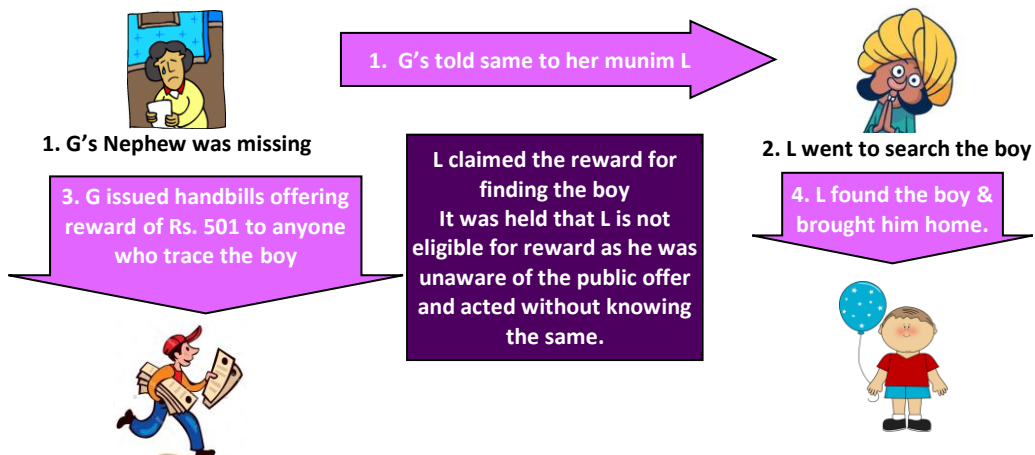
#### Question

Can J refuse such offer?

#### Decision Of Court

It was held that where an offer is made to specified person(Z), it is a specific offer. Only that person can accept such specific offer, as it is special and exclusive to him. J can refuse to accept the leather as he had not made offer to B.

### Lalman Shukla Vs. Gauri Dutt



#### Fact of The Case

- G's nephew was missing.
- L who was Munim of G went in search of missing boy.
- Meanwhile G issued handbills offering reward of Rs. 501 to anyone who trace the boy.
- L found boy and brought him home.

#### Question

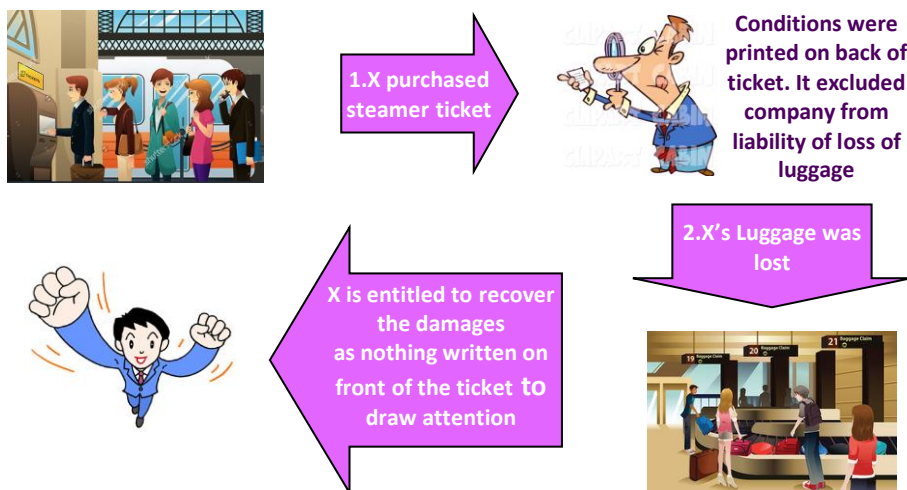
Whether L is eligible to receive reward?

#### Decision Of Court

It was held that the reward for missing the child cannot be claimed by a person who traced the child without any knowledge of the announcement. L shall not be eligible to receive reward.

## 2. Communication of Complete Offer/Proposal

### Handerson Vs. Stevenson



#### Fact of The Case

- X purchased steamer ticket for travelling from Dablin to White Haven
- The conditions were printed on back of the ticket. One of the condition excludes company from liability of the any loss, injury or delay to passenger or their luggage
- There was nothing written on front of the ticket to draw attention of the passenger at conditions on the back of the tickets
- X's Luggage was lost due to negligence of servants of the shipping company

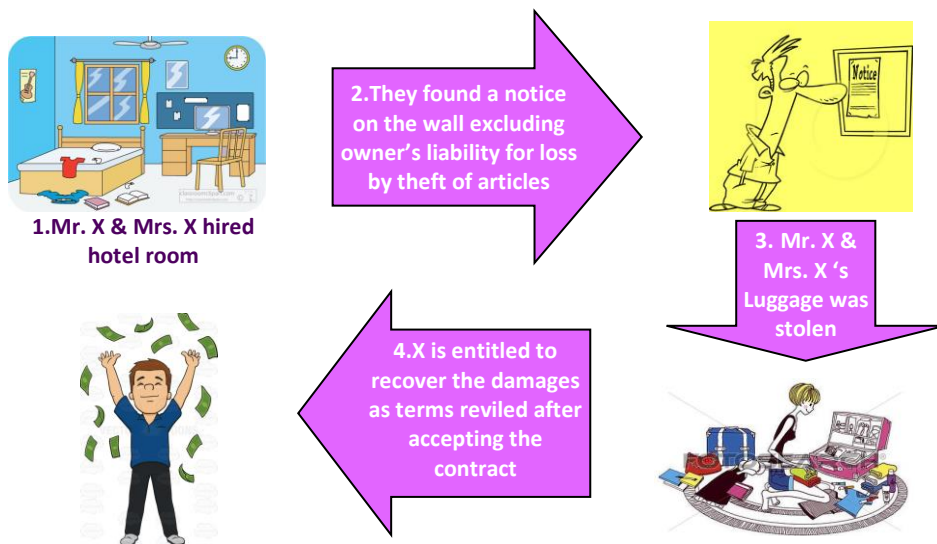
#### Question

Whether X is entitled to recover the damages?

#### Decision Of Court

It was held that there was nothing written on front of the ticket to draw attention of the passenger at conditions on the back of the tickets. Where a written document is presented to a party for acceptance, a reasonably sufficient notice shall be given of the presence of terms and conditions. Therefore X is entitled to recover the damages.

### Olley Vs. Malborough Court Ltd.



#### Fact of The Case

- Mr. X & Mrs. X hired room in hotel
- When they entered the room they found a notice on the wall disclaiming the owner's liability for any loss arising by theft of articles.
- Some of their items were stolen



**Question**

Can Mr. X & Mrs. X claim damages?

**Decision Of Court**

It was held that the terms of contract concluded before entering the room. Any terms revealed after accepting the contract will be considered void and ineffective. Hence Mr. X & Mrs. X can claim damages.

**Parker Vs. S.E. Rail Co.**



1. P deposited his bags in the cloakroom at a railway station and accepted receipt for same



2. Terms and condition of receipt had limited liability of bags up to \$ 10

2. P's bag was lost

4. P will only receive \$ 10 as attention to condition was attracted.



3. He claimed the actual value of the bag amounting to \$24



**Fact of The Case**

- a. P deposited his bags in the cloakroom at a railway station.
- b. On the face of the receipt the words "See Back" are printed.
- c. One of the conditions printed on back was "the liability of the railway company shall be limited to \$ 10 for any package."
- d. P's bag was lost. He claimed the actual value of the bag amounting to \$24.

**Question**

Can P claim \$ 24 for lost Bag?

**Decision Of Court**

It was held that If the person receiving the ticket did not see or know that there was any writing on the ticket, he is not bound by the conditions. Decision was in the favour of P.

**3. Offer Must not be Burden on Offeree**

An offer must not be burden on offeree to communicate his decision. An offer must not contain any term the non-compliance of which amounts to acceptance.

**Felth house Vs. Bindley**



1. A offer to sell white horse to B. if no reply is given within 7 days A will assume that contract is being executed.



B did not reply on matter

4. A cannot enforce contract as his assumption was wrong



3. A thought B accepted the contract





**Fact of The Case**

- a. A wrote to B "I will sell you my horse for Rs. 500. If I do not receive reply by next Sunday, I shall assume that u have accepted the offer."  
b. B did not reply.

**Question**

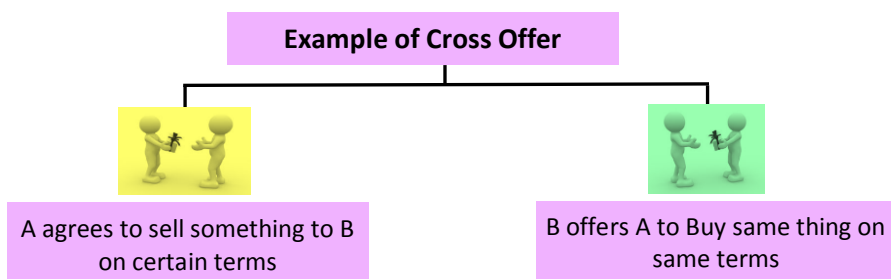
Can A enforce the contract?

**Decision Of Court**

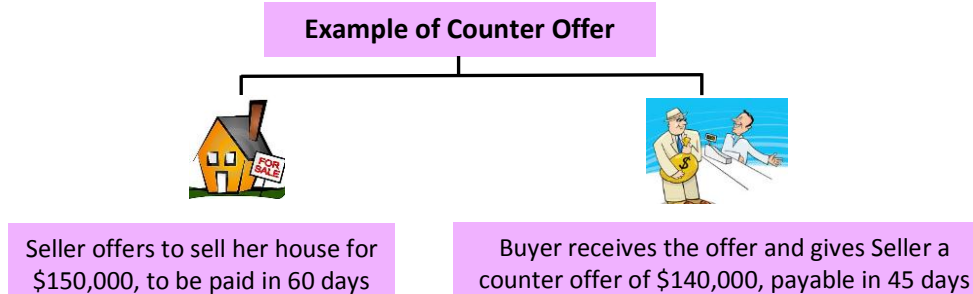
It was held that A cannot enforce the contract as offer must not be burden on offeree to communicate his decision. An offer must not contain any term the non-compliance of which amounts to acceptance.

**4. Cross offer do not Conclude a Contract**

Two offers which are identical in all respect made by two persons to each other ignorance of each other's offer known as "Cross Offer". Cross offer do not conclude a contract.

**Chart for Understanding****5. Counter Offer**

A counter offer amounts to rejection of the original offer.

**Chart for Understanding****6. Offer Vs. Invitation to Offer Vs. Intention to Offer**

Offer/Proposal	Invitation to Offer	Intention to Offer
Offer is final expression of willingness to make a person bound by his offer if the other person accepts it.	If a person without expressing his final willingness proposes certain terms on which he is willing to negotiate, it is called as invitation to offer and not offer.	The declaration of the statement indicating offer may be made or invited in future does not amount to offer.
<b>Example:</b>	<b>Example:</b>	<b>Example:</b>

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**Pharmaceutical Society of Great Britain Vs. Boot Cash Chemist Ltd.**



**Fact of The Case**

a. Goods displayed in the shop with price tags.  
 b. A self-service system was there for purchasing goods.  
 c. One customer selected the goods but shop owner refuses to sell it.

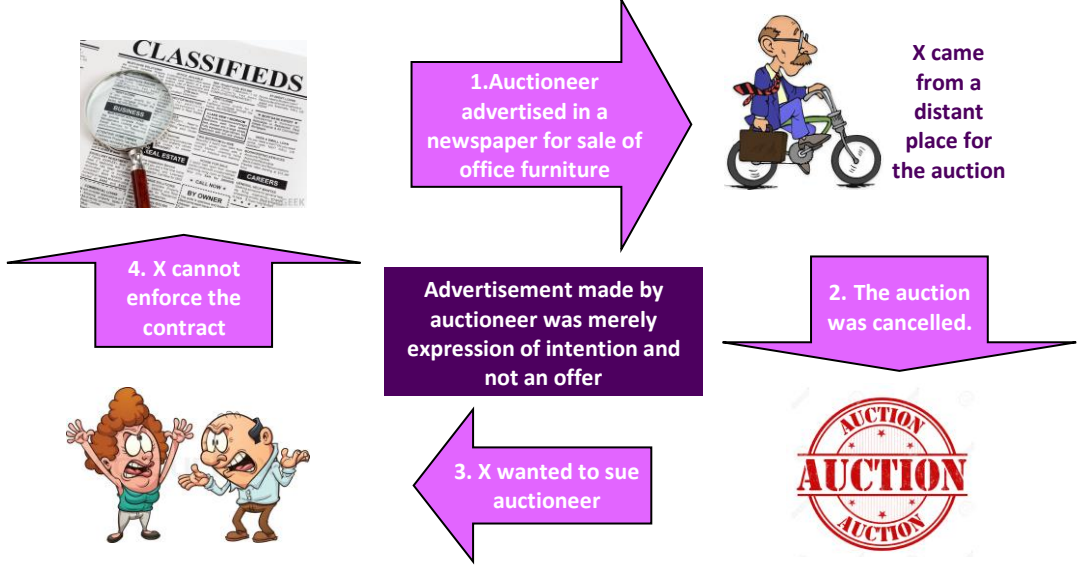
**Question**

Whether the display of goods amounts to offer? Can customer sue shop keeper?

**Decision Of Court**

It was held that the display of goods was not an offer. The Price tag on the goods is invitation to offer. Shopkeeper can refuse to sale good on basis of price tag. Hence customer can't sue shopkeeper.

**Harris Vs. N. Nickerson**



**Fact of The Case**

a. An auctioneer advertised in a newspaper that a sale of office furniture will be held on a particular day.  
 b. Mr. X with intention to buy furniture came from a distant place for the auction but the auction was cancelled.

**Question**

Whether Mr. X can enforce auction or contract?






### Decision Of Court

An offer must be distinguished from mere expression of intention. It was held that advertisement made by auctioneer was merely expression of intention and not an offer which could be accepted by travelling to the place of intended sale.

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## Revocation of Offer / Laps of Offer

### A proposal is revoked due to following reasons

	Communication of notice of revocation by the proposer to the other party;
	By the lapse of the time prescribed in such proposal for its acceptance.
	If no time is so prescribed, by the lapse of a reasonable time, <b>without communication of the acceptance</b> ;
	By the <b>failure of the acceptor to fulfill a condition</b> precedent to acceptance.
	By the <b>death or insanity of the proposer</b> , if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

## Acceptance

### Meaning [2(b)]

A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something.

### Rules governing acceptance

#### 1. Acceptance must be absolute and unqualified

As per section 7 of the Act, Acceptance is

- Valid only when it is absolute and unqualified **and**
- Is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted.

### Chart for Understanding

#### Example of above rule



A offers B to buy his motorcycle at Rs 50,000. B accepts it. Such acceptance is absolute and unqualified



A offers B to buy his motorcycle at Rs 50,000. But in exchange of A's offer B asks A to buy his Cycle for Rs 10000. Such acceptance is not absolute and unqualified

#### 2. The acceptance must be communicated

To conclude a contract between the parties, **the acceptance must be communicated in some perceptible form. Any conditional acceptance no acceptance.** Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. The acceptance must relate specifically to the offer made.

#### 3. Acceptance must be in the prescribed mode

Where the proposal prescribes the mode of acceptance, it must be accepted in that manner. Where the proposal does not prescribe the manner, then it must be accepted in a reasonable manner.

**Chart for Understanding**

**Example of above rule**

L sends letter to M , offering to sell his house. L asks M to reply by telegram. M shall then reply only through telegram

**4. Acceptance in reasonable time**

The acceptance must be given within a reasonable time and before the offer lapses


**5. Mere silence is not acceptance**

The acceptor should expressly accept the offer. Acceptance can be implied also. Acceptance must be given only by that person to whom it is made, that too only after knowing about the offer made to him.



**6. Acceptance by conduct**

Acceptance has to be signified either in writing or by word of mouth or by performance of some act. The last of the method, namely 'by some act' has to be understood as acceptance by conduct.



**Example of above rule**

	Tradesman receives an order from a customer, and the order is executed accordingly by the trader, there is an "acceptance by conduct" of the offer made by the customer. The trader's subsequent act signifies acceptance.
-----------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Who Can Accept?**

<p><b>In Case of Specific Offer</b></p> 	<p><b>In Case of General Offer</b></p> 
<p>Only that particular person or group of person to whom the specific offer has been made and none else.</p>	<p>Any person if:</p> <ul style="list-style-type: none"> <li>a. He has the knowledge of the offer and</li> <li>b. He fulfils the term and conditions of the offer.</li> </ul>

**Mode of Acceptance**

<p><b>Express Acceptance</b></p> 	<p><b>Implied Acceptance</b></p> 
<p>Expressly acceptance in writing.</p>	<p>Execute any act result in implied in acceptance.</p>

**Legal Rules for Valid Acceptance [7]**

**General rules relating to Acceptance**

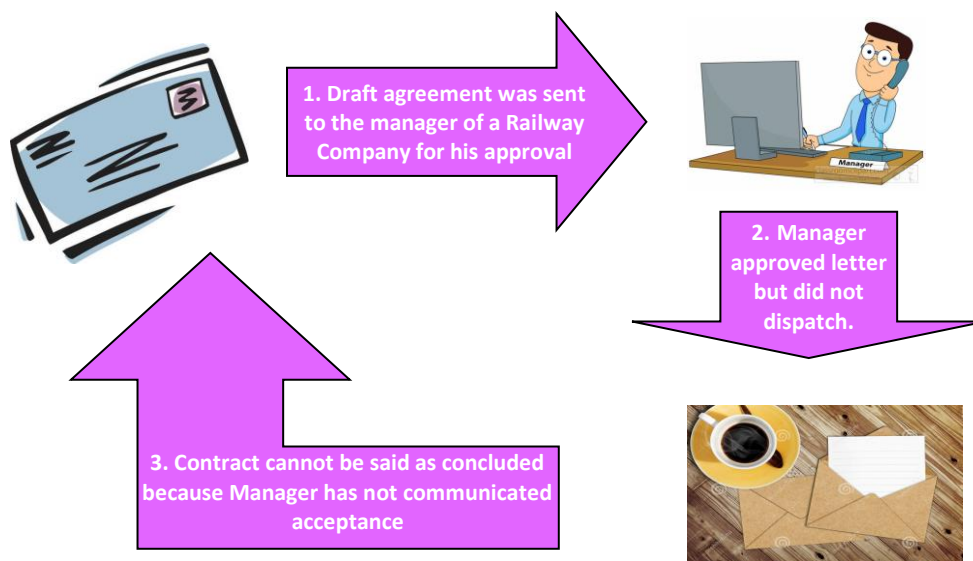
**1. Absolute & Unqualified Acceptance**

The offeree should assent to all the terms of the offer. There must be no variation or reservation i.e. acceptance must be unconditional.

## 2. Acceptance Must be Communicated

### Brodgen Vs. Metropolitan Rly. Co.

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#### Fact of The Case

- A draft agreement relating to the supply of coal was sent to the manager of a Railway Company for his approval.
- The manager put the words "approved" on the agreement. However the manager forgot to dispatch approved copy of the agreement.

#### Question

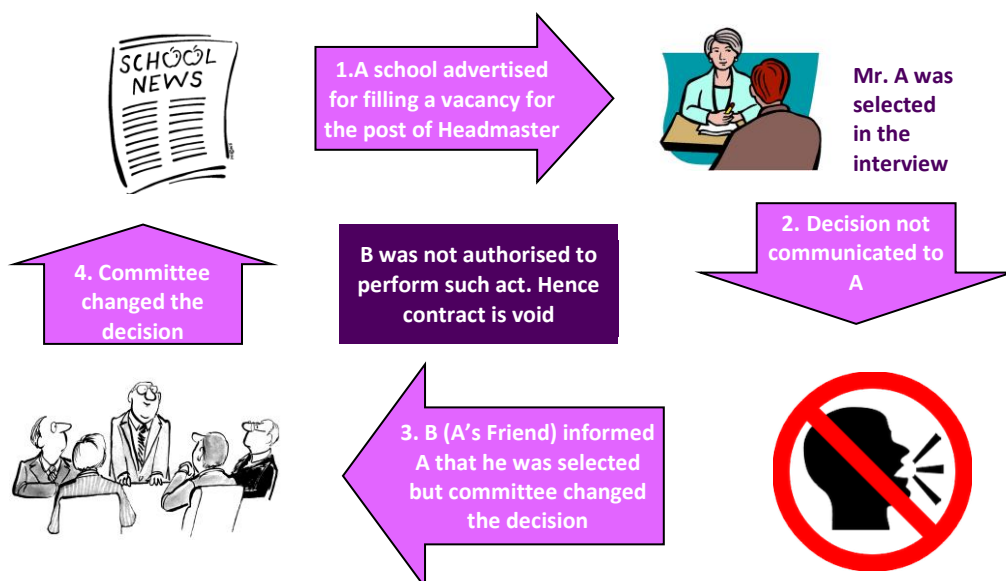
Whether the contract is concluded without communicating acceptance?

#### Decision Of Court

It was held that there was no contract as the Manager had not communicated his acceptance to proposer.

## 3. Acceptance by Whom?

### Powell Vs. Lee



#### Fact of The Case

- A school advertised for filling a vacancy for the post of Headmaster.
- Managing committee interviewed many people and selected Mr A.
- However, the decision of the managing committee was not communicated to Mr. A.

- d. Mr. B who was the member of the managing committee & also the friend of Mr. A informed Mr. A that he has been selected.
- e. In meantime managing committee changed the decision and appointed other person.

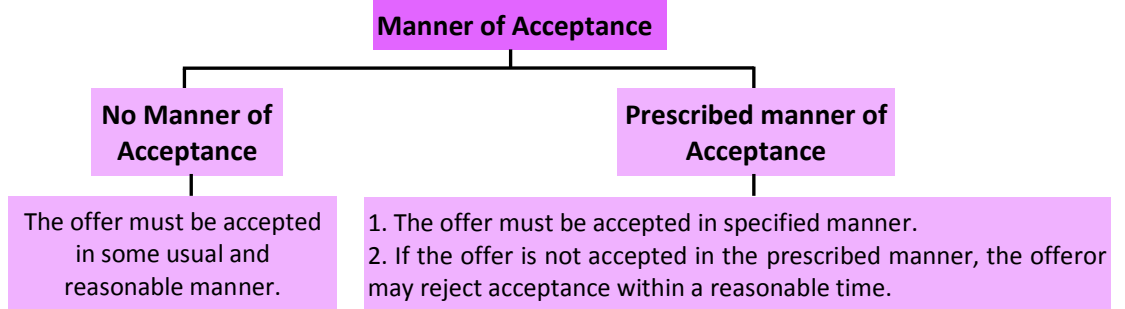
**Question**

Whether communication by Mr. B amounts to acceptance? Dose it amounts to valid contract?

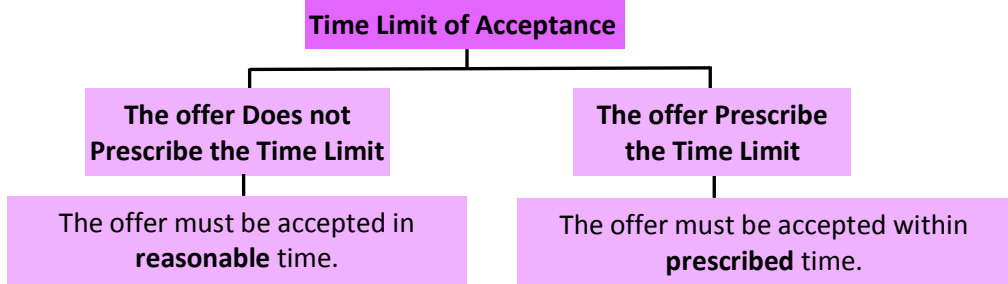
**Decision Of Court**

It was held that there was no contract between the parties as there was no authorised communication made by the school authority, the person who informed him about his appointment was not authorised to perform such act, and there was no intention to create a contract on the part of the body, the managers.

**4. Manner of Acceptance**



**5. Time Limit for Acceptance**



**Ramsgate Victoria Hotels Vs. Montefiore**



A person applied for shares in a company in June. He cannot be bound by the allotment made late in November since delay of 6 months in acceptance of application for shares was unreasonable.

**6. Acceptance Must Be Given Before offer Lapses or Revoked**

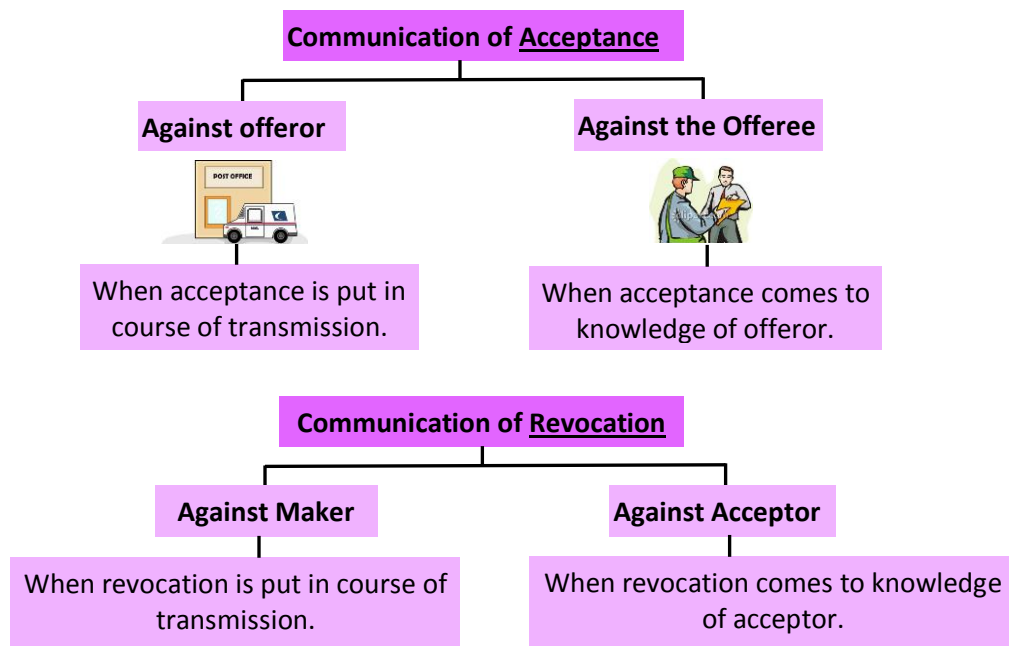
1. Acceptance can be given only to an existing offer.
2. An offer open for a limited period can be accepted only before expiry of period.
3. An offer can be revoked before acceptance.
4. Acceptance is not valid if it is given after the offer is lapsed or revoked.
5. Acceptance cannot be given before the communication of offer is complete.

**7. Mode of Acceptance**

1. By any act and
2. By omission, intending thereby to, to communicate to the other or which has the effect of communicating it to the other.

## Communication of Acceptance and Revocation [4]

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## Time Limit for Revocation [5]

Revocation Of	Time Limit for Revocation
<b>Offer</b>	Before communication of acceptance is complete against offeror.
<b>Acceptance</b>	Before communication of acceptance is complete against offeree.

### Concept Analyser

Revocation Of	Date of receipt / posting of Letter of Acceptance	Date of Receipt of letter of Revocation	Which is Valid?
Offer	1 <sup>st</sup> May 2012 (By Offeree)	5 <sup>th</sup> May 2012 (By Offeree)	Offer is valid
Offer	5 <sup>th</sup> May 2012 (By offeree)	1 <sup>st</sup> May 2012 (By Offeree)	Revocation of Offer is Valid.
Offer	2 <sup>nd</sup> May 2012 (By Offeree)	2 <sup>nd</sup> May 2012 (By offeree)	
Acceptance	1 <sup>st</sup> May 2012 (By Offeror)	5 <sup>th</sup> May 2012 (By Offeror)	Acceptance / Contract is Valid
Acceptance	5 <sup>th</sup> May 2012 (By offeror)	1 <sup>st</sup> May 2012 (By Offeror)	Revocation of Acceptance is valid.
Acceptance	2 <sup>nd</sup> May 2012 (By Offeror)	2 <sup>nd</sup> May 2012 (By Offeror)	



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## Consideration

### Meaning [2(d)]

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

- (1) Consideration is the doing or not doing of something which the promisor desires to be done or not done.
- (2) Consideration must be at the desire of the promisor.
- (3) Consideration may move from one person to any other person.
- (4) Consideration may past present or future.
- (5) Consideration be not adequate, but should be real.

## Essentials of Valid Consideration

### 1. Consideration Must Move at Desire of Promisor

#### Durga Prasad Vs. Baldeo

##### Fact of The Case

- a. D spent some money for renovation of market on request of collector.
- b. After such renovation, a shopkeeper of the market promised to pay commission to D on sale affected by him.
- c. On non-performance of such promise by the shopkeeper, D sued him for recovery of money.

##### Question

Whether D can recover money?

##### Decision Of Court

It was held that there was no consideration as money was not spent by plaintiff at request of the defendants, but at instance of third person viz. the collector, thus the contract was Void.

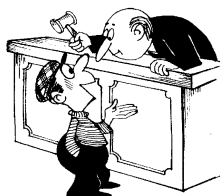


1. D spent some money for renovation of market on request of collector



A shopkeeper of the market promised to pay commission to D on sale affected by him.

2. Shopkeeper did not perform Promise.



3. As money was not spent by shopkeeper but by collector so contract between D and shopkeeper was void



D sued him for recovery of money

### Chinnaya Vs. Rammaya

#### Fact of The Case

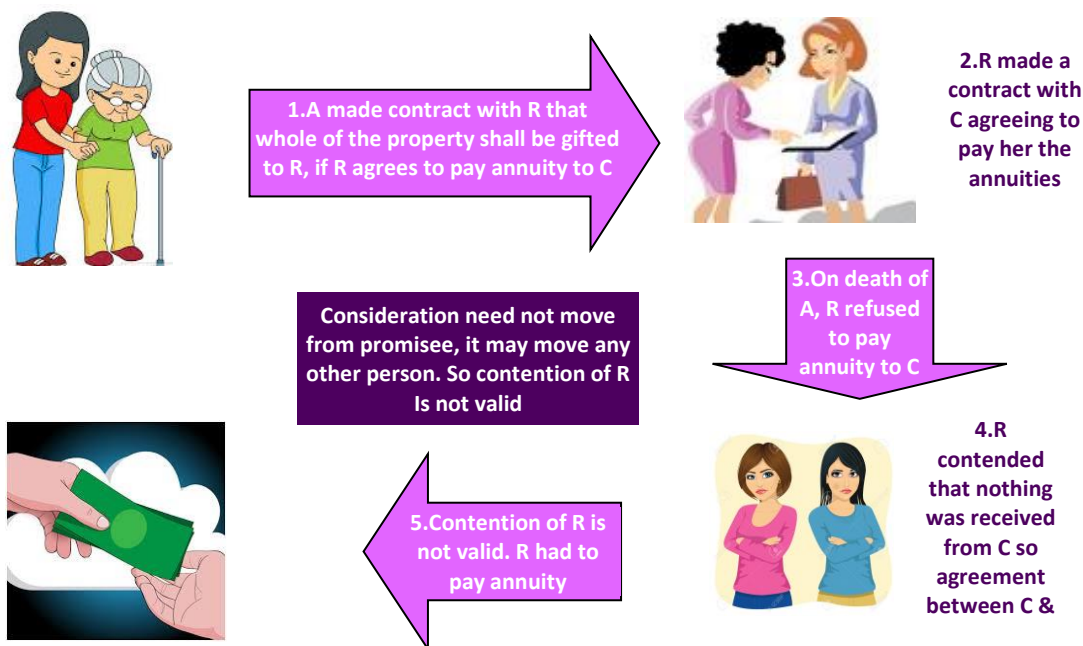
- a. A (an old lady) made contract with R (her daughter), that whole of the property shall be gifted to R, if R agrees to pay annuity to C (sister of A).
- b. R made a contract with C agreeing to pay her the annuities.
- c. On death of A, R refused to pay annuity to C on ground that nothing was received from C as consideration for annuity & agreement between C & R was void.

#### Question

Whether the contention of R is valid?

#### Decision Of Court

It was held that consideration need not necessarily move from promisee, it may move any other person. Hence contention of R is not valid.

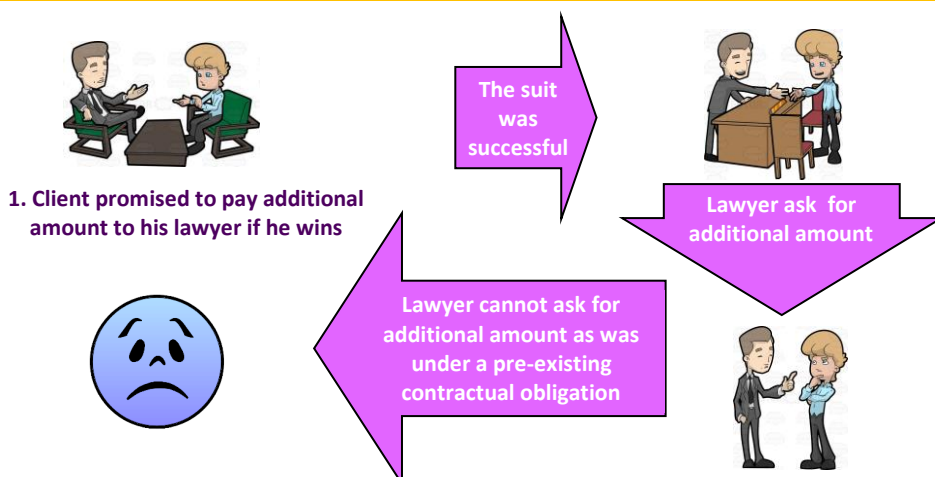


### 2. Adequacy of Consideration is not Required

1. There must be consideration in every contract.
2. However, adequacy of consideration is not required.
3. Even if it is proved that such consideration is inadequate, the contract is not void.
4. The fact of inadequacy of consideration shall be given due weightage while determining whether the consent of the promisor was freely given or not.

### 3. Consideration must be Different from Promisee's Existing Obligation

#### Ramachandra Chintaman Vs. Kaluraju



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**Fact of The Case**

- a. A client promised to pay an additional amount to his lawyer if the lawyer wins the suit for him.
- b. The suit was successful.

**Question**

Whether lawyer is entitled to additional amount for winning suit?

**Decision Of Court**

It was held that the promise was void for want of consideration. The lawyer was under a pre-existing contractual obligation to render the best of his services under the original contract.

**4. Consideration Must Be Lawful**



The agreement will be void if consideration furnished by any party is unlawful.

**5. Consideration must be Real and not Illusory**



Consideration received by party must be of some value. Consideration must not be illusory. (i.e. existing only in name)

**6. Natural love and affection**



A written and registered agreement based on natural love and affection between the parties standing in near relation to each other is enforceable even without consideration.

**Rajlukhy Devi Vs. Bhoothnath**



1. Due to frequent quarrels between husband and wife. Fed up Husband agreed to pay some money to wife



2. Agreement is made in writing and registered



3. Such agreement is void as there was no love and affection.



**Fact of The Case**

- a. There are frequent quarrels between husband and wife.
- b. One-day husband got fed up with his wife and agreed to pay a sum of money as maintenance to his wife.
- c. This agreement is made in writing and registered.

**Question**

Whether the agreement is valid?

**Decision Of Court**

It was held that such agreement is void as there was no love and affection.

**7. Compensation for past voluntary services**

A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor is enforceable under **Section 25(2)**.

The following are the essential factors for this condition

- (i) The services should have been rendered voluntary.
- (ii) The services must have been rendered for the promisor.

- (iii) The promisor must be in existence at the time when services were rendered.
- (iv) The promisor must have intended to compensate the promisee.

### 8. Promise to pay time bared debt



Where a promise in writing signed by the person making it or by his authorised agent is made to pay a debt barred by limitation it is valid without consideration [25 (3)]

### 9. Agency



According to **Section 185** of the Indian Contract Act, no consideration is necessary to create an agency.

### 10. Completed gift



In case of completed gifts the rule no consideration no contract does not apply. Explanation (1) to **Section 25** states nothing in this section shall affect the validity as between the donor and donee of any gift actually made. Thus gifts do not require any consideration.

### 11. Guarantee



In the contract of guarantee, consideration received by the principal debtor shall be sufficient consideration for the surety.

### 12. Bailment



No consideration is required for Gratuitous bailment.

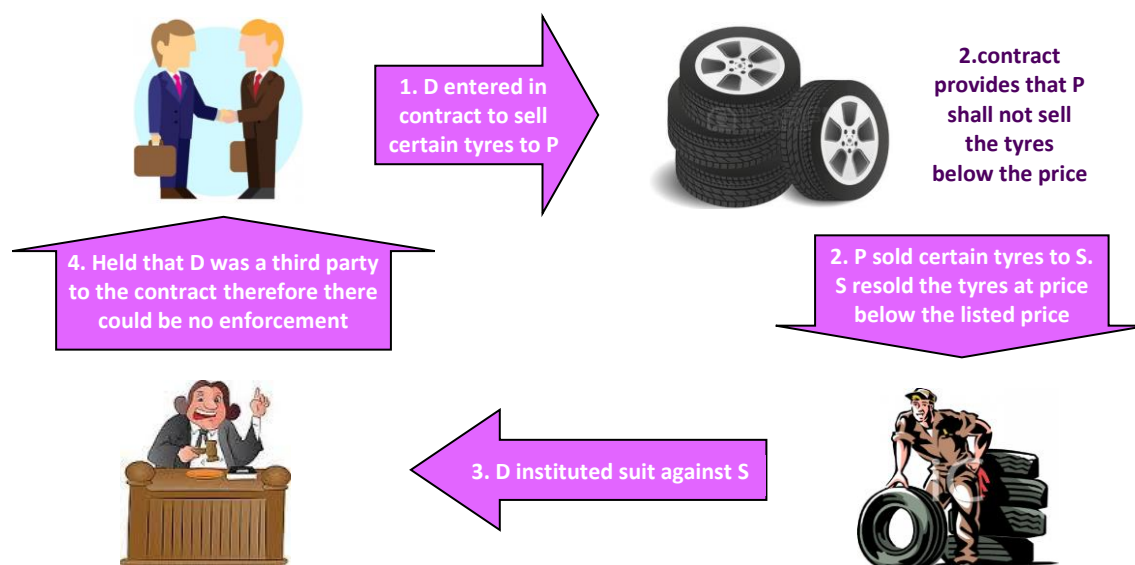
## Privity of Contract

### Meaning



1. The general rule is that parties to contract can only sue.
2. That means the person who is not the party to the contract cannot sue.

## Dunlop Pneumatic Tyre Co. Vs. Selfridge and Co.



### Fact of The Case

- a. D entered in contract to sell certain tyres to P.
- b. The contract provides that P shall not sell the tyres below the price.
- c. In addition to this contract provides that at time of resale P also impose the same condition on retailers.

- d. P sold certain tyres to S. S resold the tyres at price below the listed price.
- e. D instituted suit against S.

5.20

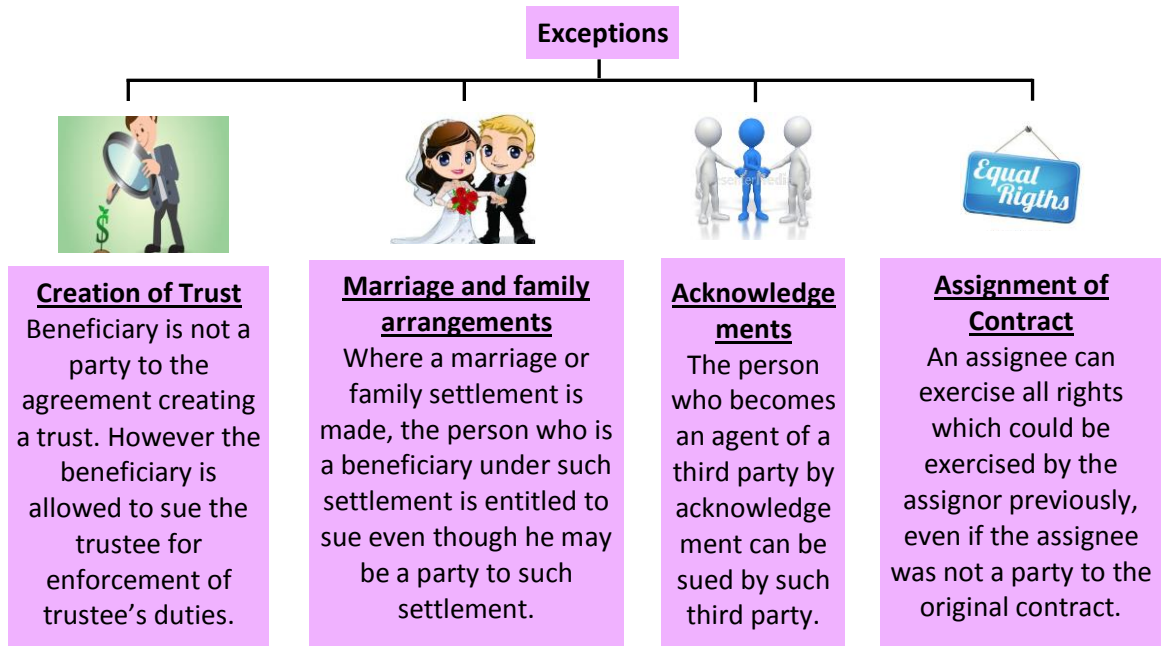
**Question**

Whether suit by D is maintainable?

**Decision Of Court**

It was held that Dunlop was a third party to the contract between the retailer and the distributor, therefore there could be no enforcement. Therefore suit by D is not maintainable.


**Exceptions of privity to contract  
Chart for Understanding**



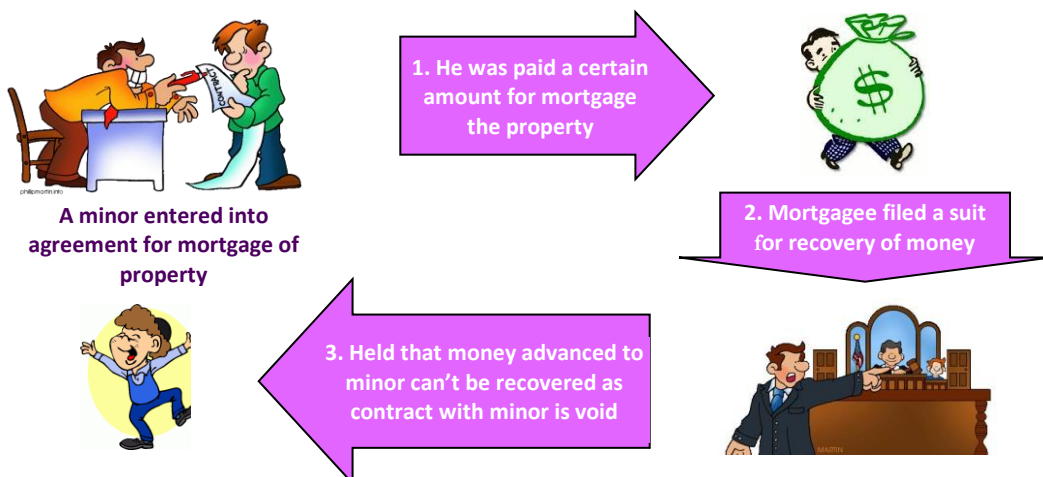
**Capacity of Parties**

**Effects of Minor's Agreement**

**1. Void Ab Initio**

- 
- 1. A minor is incompetent to contract.
  - 2. Therefore any agreement made by minor is void ab initio.
  - 3. The agreement with minor does not have any legal effect.

**Mohori Bibi Vs. Dharamodas Ghose**



### Fact of The Case

- A minor entered into agreement for mortgage of property.
- He was paid a certain amount for mortgage the property.
- Afterwards the mortgagee filed a suit against the minor for recovery of money paid to minor.

### Question

Can mortgagee recover money?

### Decision Of Court

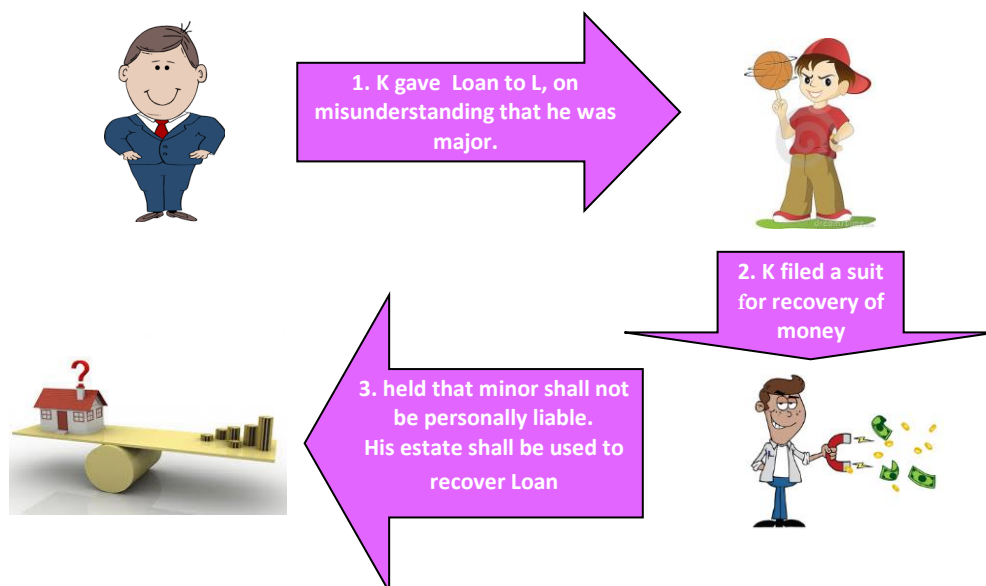
It was held that Money advanced to minor cannot be recovered. As per Sec 10 and 11 of Indian contract Act the Minor Contract is absolutely void.

## 2. Agreement for Benefit of Minor

### BENEFITS

- The agreement creating obligation for minor is void as per **Mohori Bibi Vs. Dharamodas Ghose**.
- Thus the agreement for benefit of minor are valid as it does not create any legal obligation.
- Therefore the agreement for benefit of minor can be enforced by minor.
- If the other party to the obligation failed to perform its obligation the minor can claim restitution.

## Khan Gul Vs. Lakha Singh



### Fact of The Case

- L, a minor fraudulently showed him as major.
- K gave him Loan, on misunderstanding that he was major. Afterwards K filed a suit against L for recovery of Loan given to him.

### Question

Can K recover money?

### Decision Of Court

- The court may grant the relief to the other party who entered into the agreement with minor on the basis of a misrepresentation made by the minor.
- If the minor received some consideration under the agreement the court may grant restitution to the other party.
- However minor shall not be personally liable, means the restitution shall be made only to such extent as the estate of minor has been benefited.
- The power of the court to grant relief is discretionary in nature.
- The court shall not grant relief if the other party had the knowledge of the fact that it was entering into an agreement with a minor.



### 3. Rule of Estoppel

1. The rule of estoppel does not apply to agreement of minor, because it can amount to enforcing void agreement.
2. Thus rule of estoppel does not apply against minor.

### 4. No rectification by Minor



1. The agreement entered by minor cannot be ratified by him after attaining majority.
2. If minor wants to pay for the goods after attaining majority such agreement shall be void for want of consideration.

### 5. Liability of Guardian



1. The guardian shall not be liable for the act of the minor.
2. The contract made by guardian on behalf of minor shall be valid if:
  - a. The contract is for benefit of minor.
  - b. The guardian has the authority to enter into such agreement.

### 6. Liability of Minor for Necessities

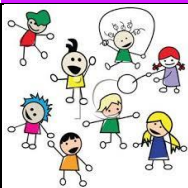


The minor shall be liable for the necessities supplied to him or any other person dependant on minor.

#### Conditions

- a. The liability is for only necessities of life depending on social status of minor.
- b. The minor is not already in possession of such necessities.
- c. The minor shall not be personally liable.

### 7. Position of Minor in Other Contracts



1. The minor cannot be guarantor.
2. Minor can be member if shares are fully paid up.
3. Minor can be apprentice provided he is of at least 14 years of age.
4. Minor cannot become a partner in a firm. However he can be admitted for benefits of partnership.

## Person of Unsound Mind

### Unsound Mind consist of



#### Lunatics

A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. He suffers from intermittent intervals of sanity and insanity. He can enter into contracts during the period when he is of sound mind.



#### Idiots

An idiot is a person who has completely lost his mental powers. He does not exhibit understanding of even ordinary matters. Idiocy is permanent whereas lunacy denotes periodical insanity with lucid intervals. An agreement of an idiot, like that of a minor, is void.



#### Drunken or intoxicated persons

A drunken or intoxicated person suffers from temporary incapacity to contract, i.e. at the time when he is so drunk or intoxicated that he is incapable of forming a rational judgment. The position of a drunken or intoxicated person is similar to that of a lunatic.



### Agreements entered into by persons of unsound mind are void

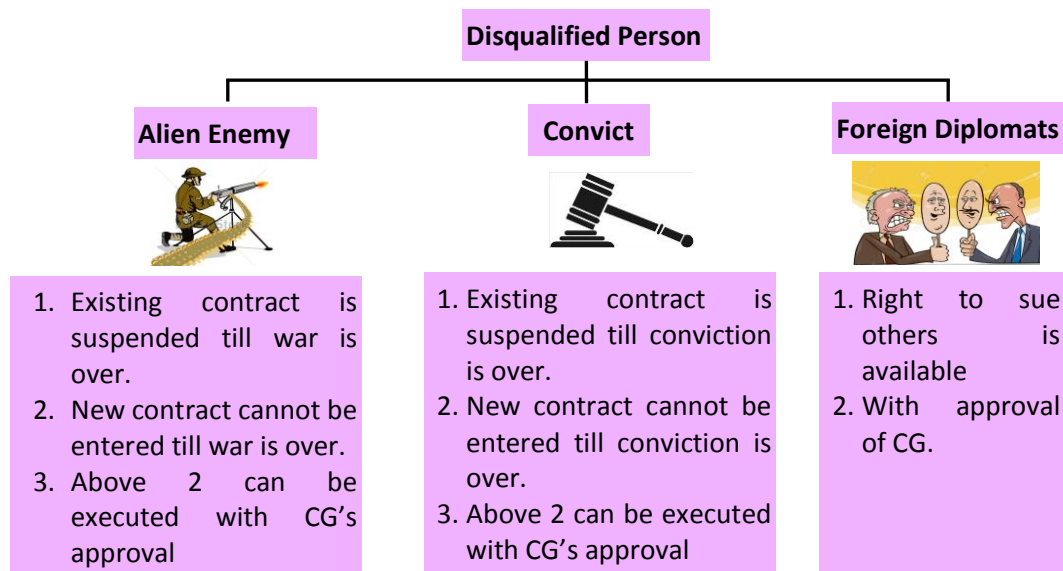
Persons of unsound mind are liable for necessities supplied to them or to anyone whom they are legally bound to support. But even in such cases, no personal liability attaches to them. It is only their estate which is liable.

5.23

### Burden of Proof

The burden of proof that the person is of unsound mind lies on the party who challenges validity of contract

## Person Disqualified Under Law

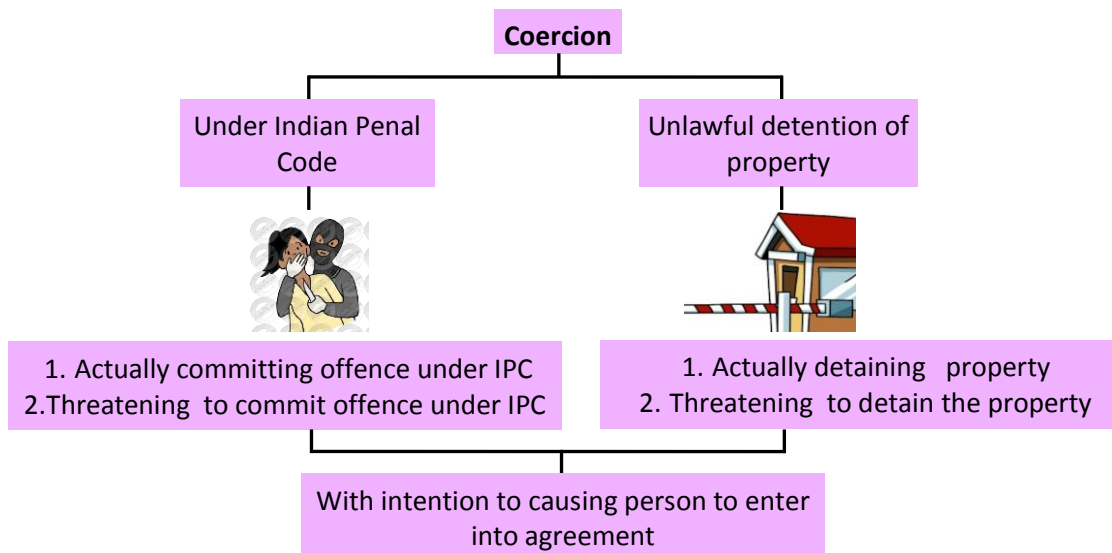


## Free Consent

### Meaning

Section 13	Section 14
Two or more persons are said to have consented when they agree upon the same thing in the same sense (Consensus-ad-idem).	Consent is free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.


## Coercion (15)



**Some Important Points**

1. It is immaterial whether Indian penal code (IPC) is or is not in force in the place where the coercion is employed [**Explanation to Section 15**]
2. It is not required that coercion must proceed from the party to the contract. It may proceed from a third person also
3. It is not necessary that coercion be immediately directed against the party whom it is intended to induce to enter into a contract. It may be directed against any third person whatever.
4. Coercion must be done to induce the other party to enter into a contract

**Threat to commit suicide**



	<p>Calcutta High Court held that "One committing suicide places himself or herself beyond the reach of the law, and necessarily beyond the reach of any punishment too. But it does not follow that suicide is not forbidden by the Indian Penal Code, Section 306 of the IPC punishes abetment of suicide, <b>Section 309</b> punishes an attempt to commit suicide. Thus, suicide as such is no crime, as indeed it cannot be, But its attempt is; its abetment too is. So it may very well be said that the Indian Penal Code does forbid suicide."</p>
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**Undue Influence (16)**

**Condition of Undue Influence**

Party is in dominant position	
Party uses its dominant position	
Dominant party obtains unfair advantage	

**Burden of Proof**

<p><b>Unconscionable transaction</b></p>		<ol style="list-style-type: none"> <li>1. The burden of proof is on dominant party.</li> <li>2. The dominant party has to prove that undue influence was not employed.</li> </ol>
<p><b>Any other transaction</b></p>		<ol style="list-style-type: none"> <li>1. The burden of proof is on the weaker party.</li> <li>2. The weaker party has to prove that undue influence was employed.</li> </ol>

**No Undue Influence**

Every transaction where the terms are disadvantages to one party is not necessarily influenced by undue influence. If contract is made in the ordinary course of business there is no undue influence.

**Distinction Between Coercion & Undue Influence**






Basis	Coercion	Undue Influence
<p><b>Governing Section</b></p>		
<p><b>Meaning</b></p>		

Intention		
Punishment		
Parties		
Relationship Between Parties		
Legal Effect		
Restitution		

### Essentials of Fraud (17)

#### Meaning

Fraud includes any of the following acts committed by a party to a contract, or with his connivance or by his agent with intent to deceive another party thereto or his agent, or to induce him to enter into the contract.

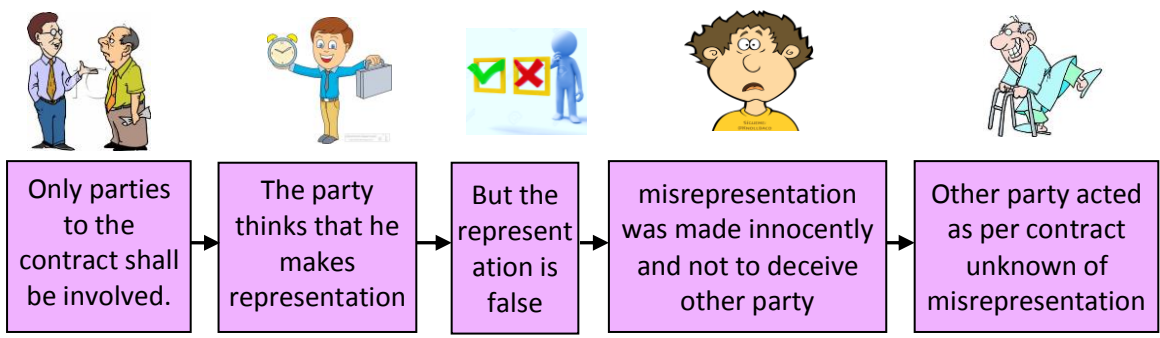
	Representation of fact which is not true.
	The active concealment of a fact by one having knowledge or belief of the fact.
	A promise made without any intention of performing it.
	Any other act fitted to deceive.
	Any such or omission as to law specially declared to be fraudulent.

5.26

**Silence as fraud**

<b>General Rule</b>	Mere silence which likely to affect the willingness of the party is not fraud.
<b>Exceptions</b>	<ol style="list-style-type: none"> <li>Where there is fiduciary relationship i.e. trust on other party and party is silent when it requires to speak about matters affecting contract.</li> <li>When silence is equivalent to speech.</li> <li>Partial disclosure of truth which deceives the other party is a fraud.</li> </ol>

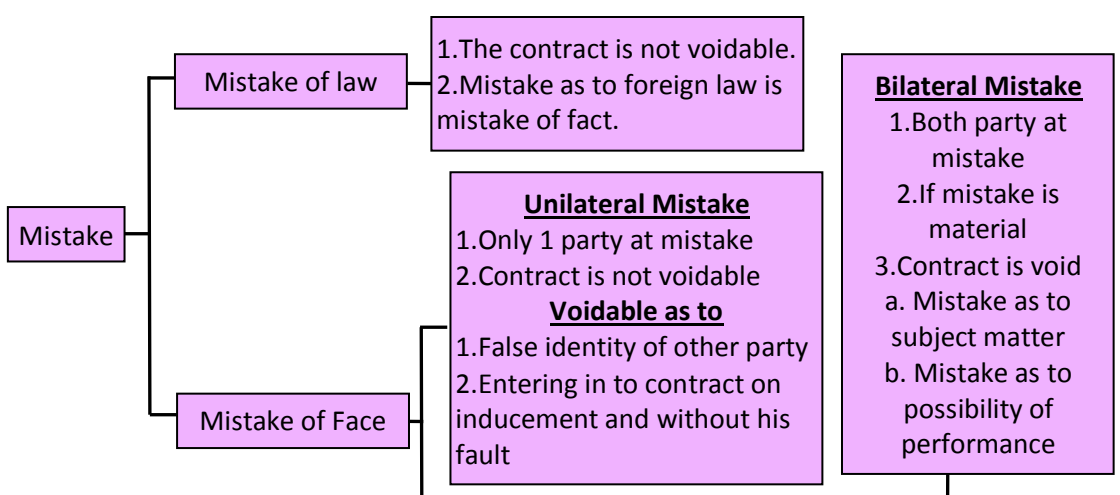
**Essentials of Misrepresentation (18)**



**Consequences of Coercion, Fraud, Misrepresentation (19)**

<b>Contract is Voidable</b>	<ol style="list-style-type: none"> <li>Contract is voidable at the option of the aggrieved party.</li> <li>The party, However, may also insist that the contract should be performed and that he should be put in the same position in which he would have been, if the representation made had been true.</li> </ol>
<b>Contract Not Voidable</b>	<ol style="list-style-type: none"> <li>But a person who had the means of discovering the truth with ordinary diligence cannot avoid a contract on the ground that his consent was caused by misrepresentation.</li> <li>Where a party to a contract perpetrates fraud or misrepresentation, but the other party is not, in fact, misled by such fraud or misrepresentation, the contract cannot be avoided by the latter.</li> </ol>
<b>Restoration of Benefit</b>	<ol style="list-style-type: none"> <li>As to the consequences of the recession of voidable contracts,</li> <li>The party rescinding voidable contract should, if he has receive any benefit there under from the other party to the contract,</li> <li>restore such benefit so far as may be applicable,</li> <li>to the person from whom, it was received.</li> </ol>

**Mistake (20 to 22)**



### Difference Between Unilateral & Bilateral Mistake

5.27

Basis	Unilateral Mistake	Bilateral Mistake
Meaning		
Section		
Effect		

### Difference Between Void & Voidable Contract







<u>Basis</u>	<u>Void Contract</u>	<u>Voidable Contract</u>
Meaning / Definition		
Status		
Rights		
Performance of Contract		
Reason		
Effect		
Damages		

5.28

**Legality of Object & Consideration**

**Unlawful Object**

An agreement, the object or consideration of which is unlawful, is void. Agreement or consideration is unlawful in following situations



	When it is forbidden by law
	If permitted then will defeat the provisions of any law
	Fraudulent
	Involves injury to the person or property of another
	Immoral
	Opposed to public policy

**Object or Consideration against Public Policy**

Agreement	Example
<b>Agreements of trading with enemy</b>	An agreement made with an alien enemy in time of war is illegal on the ground of public policy. This is based upon one of the two reasons: either that the further performance of the agreement could involve commercial intercourse with the enemy, or that the continued existence of agreement would confer upon the enemy an immediate or future benefit. Contracts which are entered into the intention of the parties can or cannot be carried out by postponing performance till the end of hostilities.
<b>Agreement to commit a crime</b>	Where the consideration in an agreement is to commit a crime, the agreement is opposed to public policy. The Court will not enforce such an agreement. Likewise an agreement to indemnify a person against consequence of his criminal act is opposed to public policy and hence unenforceable.
<b>Agreements which interfere with administration of justice</b>	An agreement the object of which is to interfere with the administration of justice is unlawful, being opposed to public policy. <ol style="list-style-type: none"> <li>1. Interference with the course of justice</li> <li>2. Stifling prosecution</li> <li>3. Maintenance and champerty.</li> </ol>
<b>Agreements in restraint of legal proceedings</b>	(a) <b>Agreement restricting enforcement for rights:</b> An agreement which wholly or partially prohibits any party from enforcing his rights under or in respect of any contract is void to that extent. (b) <b>Agreements curtailing period of limitation:</b> Agreements which curtail the period of limitation prescribed by the Law of Limitation are void because their object is to defeat the provisions of law.
<b>Trafficking in public offices and titles</b>	Agreements for the sale or transfer of public officers and titles or for the procurement of a public recognition like Padma Vibhushan or Parm Veer Chakra for monetary consideration are unlawful, being opposed to public policy.
<b>Agreements tending to</b>	If a person enters into an agreement whereby he is bound to do

<b>create interest opposed to duty</b>	something which is against his public or professional duty, the agreement is void on the ground of public policy.
<b>Agreements in restricting personal liberty</b>	Agreements which unduly restrict the personal freedom of the parties to it are void as being against public policy.
<b>Agreements in restraint of marriage</b>	Every agreement in restraint of the marriage of any person, other than a minor, is void (Section 26). This is because the law regards marriage and married status as the right of every individual.
<b>Marriage brokerage agreements</b>	An agreement by which a person, for a monetary consideration, promises in return to procure the marriage of another is void, being opposed to public policy. Similarly, an agreement to pay money to the parent or guardian or a minor in consideration of his/her consenting to give the minor in marriage is void, being opposed to public policy.
<b>Agreements interfering with martial duties</b>	Any agreement which interferes with the performance of martial duties is void, being opposed to public policy.
<b>Agreements to defraud creditors or revenue authorities</b>	An agreement the object of which is to defraud the creditors or the revenue authorities is not enforceable, being opposed to public policy.
<b>Agreements in restraint of trade</b>	An agreement which interferes with the liberty of a person to engage himself in any lawful trade, profession or vacation is called an "agreement in restraint of trade."
<b>Agreement the meaning of which is uncertain</b>	An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid.
<b>Wagering agreement</b>	A promise to give money or money's worth upon the determination or ascertainment of an uncertain event in which the parties have no interest.

### Maintenance & Champerty

	"Maintenance" is an agreement to give assistance, financial or otherwise, to another to enable him to bring or defend legal proceeding when the person giving assistance has got no legal interest of his own in the subject-matter.
	"Champerty" is an agreement whereby one party is to assist another to bring an action for recovering money or property, and is to share in the proceeds of the action. Under the English Law, both these agreements are void. If the object of a contract is just to assist the other party in making a reasonable claim arising out of a contract and them to have a fair share in the profit, the contract is valid.

### Partly Unlawful Agreements

If the agreement can be segregated

- The lawful part will be enforced.
- The unlawful part cannot be enforced.

If the agreement cannot be segregated the whole agreement shall be considered as void.



### Void Agreements- Agreement in Restraint of trade (27)

#### Meaning

The agreements in restraint of trade are void agreements.

An agreement which

- interferes with the liberty of a person
- to engage him in any unlawful trade, profession or vacation
- is called an "agreement in restraint of trade."

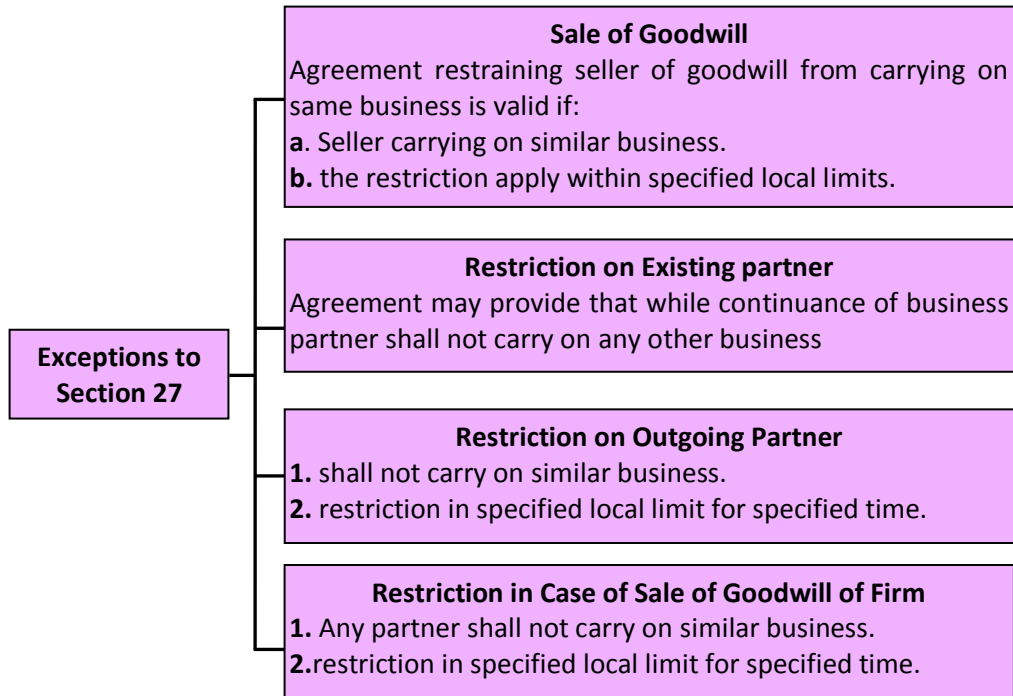


5.30

**Burden of Proof**

1. Party supporting agreement must prove that, restraint is reasonably necessary for protection of his interest.
2. Party challenging agreement must prove that restraint is injurious to the public.

**Exceptions**



**Agreement in Restraint of Legal Proceeding (28)**

**Meaning**

**Agreement restricting enforcement for rights**

An agreement which wholly or partially prohibits any party from enforcing his rights under or in respect of any contract is void to that extent.

**Agreements curtailing period of limitation**

Agreements which curtail the period of limitation prescribed by the Law of Limitation are void because their object is to defeat the provisions of law.

**Exceptions**



The agreement referring future dispute or present dispute to arbitrator is not void.




**Wagering Agreements (30)**

**Meaning**

A promise to give money or money's worth upon the determination or ascertainment of an uncertain event in which the parties have no interest.

**Essentials**




	<p><b>Promise to pay money or money's worth</b>                  The wagering agreement must contain a promise to pay money or money's worth.</p>
	<p><b>Uncertain event</b>                  The promise must be conditional on an event happening or not happening. A wager generally contemplates a future event, but it may also relate to a past event provided the parties are not aware of its result or the time of its happening.</p>

	<p style="text-align: center;"><b>Each party must stand to win or lose</b></p> <p>Upon the determination of the contemplated event, each party should stand to win or lose. An agreement is not a wager if either of the parties may win but cannot lose or may lose but cannot win.</p>
	<p style="text-align: center;"><b>No control over the event</b></p> <p>Neither party should have control over the happening of the event one way or the other. If one of the parties has the event in his own hands, the transaction lacks an essential ingredient of a wager.</p>
	<p style="text-align: center;"><b>No other interest in the event.</b></p>

### LOTTERY

A lottery, which is a game of chance, is a wagering agreement. An agreement to buy a ticket for a lottery is also a wagering agreement. Section 294-A of the Indian Penal Code, 1960 provides that anyone who keeps any office or place for the purpose of drawing any lottery (other than a State lottery or a lottery authorised by the State Government) shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both. If the lottery is authorised by the Government, the persons conducting the lottery will not be punished, but the lottery remains a wager all the same.

**The following transactions are, however, not wagers**

	<p>A crossword competition involving a good measure of skill for its successful solution. But if prizes of a crossword competition depend upon the correspondence of the competitor's solution with a previously prepared solution kept with the editor of a newspaper, it is a lottery and a wagering transaction. Competitions in games of skill are not wagers provided the amount of prize does not exceed Rs. 1000.</p>
	<p>A subscription or contribution or an agreement to subscribe or contribute toward any plate (a cup or other prize for a race or other contest), prize or sum of money of the value of Rs. 500 or above to be awarded to the winner or winners of a horse race (Exception to Section 30).</p>
	<p>Share market transactions in which delivery of stocks and shares is intended to be given and taken.</p>

### Effect of Wagering Agreement

- (i) Wagering agreements have been expressly declared to be void in India. In the State of Maharashtra and Gujarat they have been declared to be illegal.
- (ii) Suit to recover money deposited. Money deposited with a person (called stakeholder) to be paid to the party winning upon a wager cannot be recovered by the winner. On the other hand, the loser can recover his deposit from the stakeholder. But were the stakeholder pays the money to the winner, the loser cannot recover it from him.
- (iii) Collateral transactions. Since wagering agreements are void, transactions collateral to them are not affected. However, in the State of Maharashtra and Gujrat, the wagering agreements have been declared to be illegal.

## Contingent Contracts (31)

### Definition

A contingent contract is a contract to do or not to do something, if some event collateral to such contract, does or does not happen e.g. contract of indemnity or of insurance.

**E.g.:** A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

5.32

### Enforcement of Contingent Contracts on Happening of Event (32)

Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

#### Illustrations

- (a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.
- (b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.
- (c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

### Enforcement of Contingent Contracts on Non Happening of Event (Sec 33)

Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

#### Illustrations

A agrees to pay B a sum of money if a certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks.

### Contingent contract Become Impossible due to Future Conduct of Person (34)

If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

#### Illustrations

A agrees to pay B a sum of money if B marries C.  
C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

### Contingent Contracts Depending on Happening of Specific Event in Specific Time

Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

#### When contingent on specified event not happening within fixed time.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

#### Illustrations

- (a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.
- (b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

### Agreement Contingent on Impossible Event is Void (36)

Contingent agreements to do or not to do anything if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.




- Illustrations**
- (a) A agrees to pay B 1,000 Rs if two-straight lines should enclose a space. The agreement is void.
- (b) A agrees to pay B 1,000 Rs if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

## Quasi Contracts





### Meaning

In a contract, a promisor voluntarily undertakes an obligation in favour of the promisee. When a similar obligation is imposed by law upon a person for the benefit of another even in the absence of a contract. Such contracts are the quasi-contracts. These are based upon principles of equity, justice and good Conscience.

### Features

	Such a right is always a right to money generally to a liquidated sum of money.
	It does not arise from any agreement of the parties concerned, but is imposed by the law
	It is a right against a particular person so looks like a contractual right

### Types of Quasi Contract

	<p style="text-align: center;"><b>Claim for necessaries supplied to persons incapable of contracting (68)</b></p> <p>The supplier is entitled to claim their price from the property of such a person. Same is the case if money has been advanced for the purchase of necessaries. e.g. minor or a person of unsound mind</p>
	<p style="text-align: center;"><b>Right to recover money paid for another person (69)</b></p> <p>A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.</p>
	<p style="text-align: center;"><b>Obligation of a person enjoying benefits of non-gratuitous act (70)</b></p> <p>Where, a person does some act or delivers something lawfully to another person with the intention of receiving payments for the same, in such a case, the other person is bound to make payment if he accepts such services or goods or enjoys their benefit</p>
	<p style="text-align: center;"><b>Responsibility of a finder of goods (71)</b></p> <p>"A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee." Therefore, he is required</p> <ol style="list-style-type: none"> <li>To take proper care of the thing found as his own goods</li> <li>Not to appropriate it to his own use,</li> <li>To restore it to the owner when the owner is traced.</li> </ol> <p style="text-align: center;"><b>Right of finder</b></p> <ol style="list-style-type: none"> <li>Finder is entitled to retain it against whole world.</li> <li>Finder has lien for express incurred in preserving goods &amp; finding true owner.</li> <li>However he cannot file suit for recovery of this money.</li> <li>It he can claim recovered. If it was offered.</li> <li>If true owners refuses to pay lawful charge he May Sale.</li> <li>When goods are of perishable nature.</li> <li>When lawful charge amount to two third of its values or more.</li> </ol>



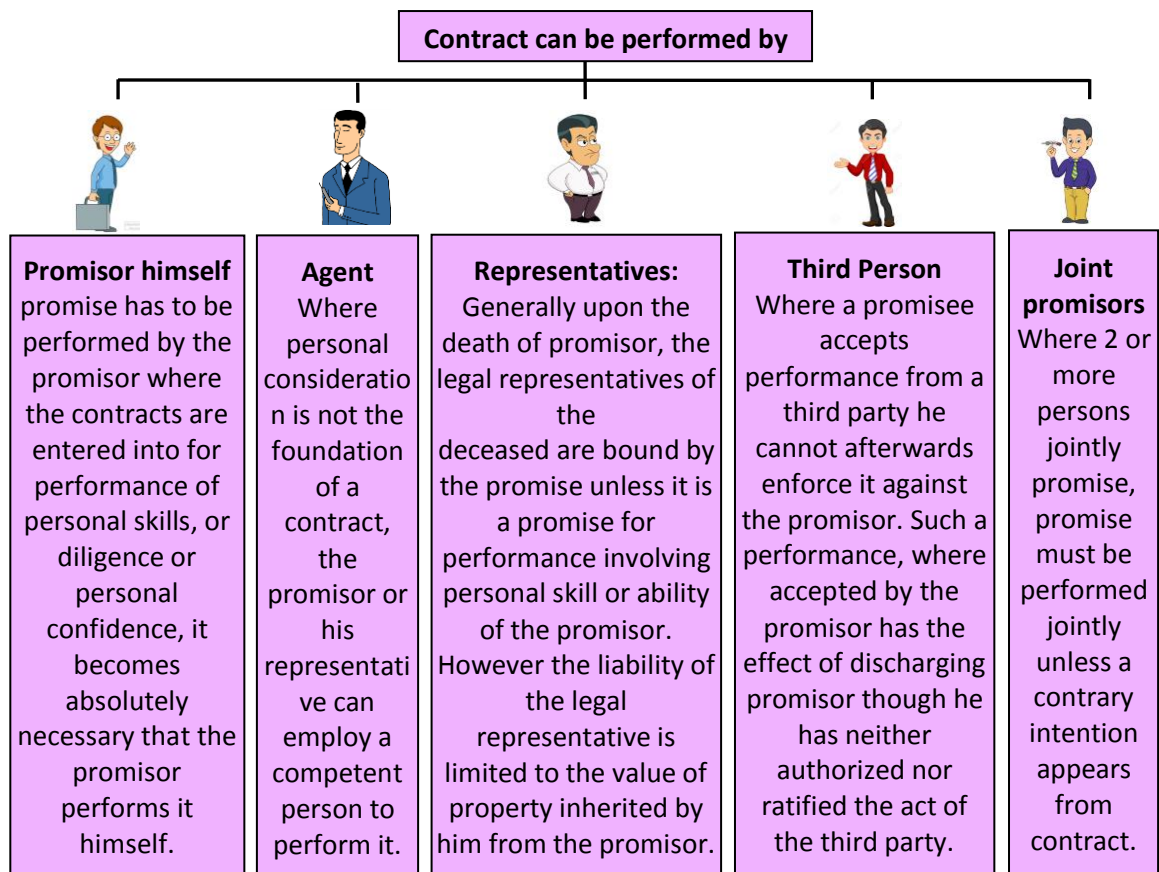
**Liability for money paid or thing delivered by mistake or under coercion (72)**  
 "A person to whom money has been paid, or anything delivered, by mistake or under coercion must repay or return it  
 In each of the above cases, contractual liability is the creation of law and does not depend upon any mutual agreement between the parties.

## Performance of Contract

### Meaning

- (a) Parties to the contract must either perform or offer to perform their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract. (Section 37).
- (b) So it may be concluded that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise.

### By whom contract must be performed?



### Time and place for performance of the promise (46 to 50)

The law on the subject is contained in Sections 46 to 50 provisions whereof are summarised below:

1. If no time is specified in a contract for the performance of the promise, the promise must be performed within a reasonable time. **(46)**
2. If a promise is to be performed on a specified date but the hour is not mentioned the promisor may perform it at any time during the usual hours of business, on such day. **(47)**
3. When no place is fixed for the performance of a promise, it is the duty of the promisor to ask the promisee to fix a reasonable place for the performance of the promise. **(49)**

4. Where promisor has not undertaken to perform the promise without an application by the promisee, and the promise is to be performed on a certain day it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business. (48)

### Performance of reciprocal promises (51 to 53)

1. General observations: where contract is consist of two promises which are consideration for each other than promises are called reciprocal promises.
2. Simultaneous performance of reciprocal promises or one after other. (51)
3. Performance of reciprocal promise where the order of performance is expressly fixed (52)
4. Performance of reciprocal promise when the order of performance is fixed by implication (implied order).
5. Effect of one party preventing another from performing promise (53): Then contract becomes voidable at the option of the party prevented.

### Reciprocal promise to do legal and illegal things (57)



When persons reciprocally promise,

- a. first to do certain things which are legal and
- b. secondly, under specified circumstances, to do certain other things which are illegal,

the first set of promises is a contract, but the second is a void agreement.






### Distinction between Secession and Assignment

<b>Secession</b> 	<b>Assignment</b> 
When the benefits of a contract are given by succession then both burden and benefits attaching to the contract are passed to the successor.	Unlike succession, the assignor can assign only the assets to the assignee and not the liabilities. Because when a liability is assigned, a third party gets involved in it. The debtor cannot through assignment relieve himself of his liability to creditor.

### Effect of refusal to accept offer of performance (38)

When offer is not accepted promisor is not responsible to fulfil his promise. Such offer must fulfil certain conditions which are as follows, namely;

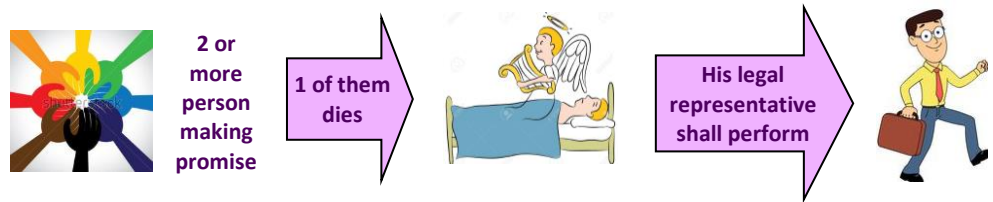
It must be unconditional	
The offer is made at a proper time and place under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing to do what he is bound to do, then and there.	
if the offer is an offer to deliver anything to the promisee, then the promisee must have a reasonable opportunity of seeing that the thing offered is the thing that the promisor is bound by his promise to deliver.	

### Liability of Joint Promisor (42 to 44)

If two or more persons have made a joint promise, ordinarily all of them during their life-time must jointly fulfil the promise. After death of any one of them, his legal representative jointly with the survivor or survivors should do so. After the death of the last survivor the legal representatives of all jointly must fulfill the promise.



5.36



If joint promisors don't discharge their obligation as per section 42 then provisions will be as follows as per **Section 43:**

	<p>Promisee may compel any one or more of such joint promisors to perform the whole of the promise.</p>
	<p>When one of the joint promisors is made to perform the whole contract, he can call for a contribution from others.</p>
	<p>If any of the joint promisors makes a default in making his contribution the remaining joint promisors must bear the loss arising from such a default in equal shares.</p>

**This rule does not apply** in case of promise made by Principal debtor and surety to promisee. If surety pays anything he can recover from the debtor but if principal debtor pays anything to creditor he cannot recover this from surety as he is just discharging his own liability. If original debtor is a single person then promisee will have to file suit against all the legal heirs on the death of debtor not to any of them.

**Section 44:**

Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors. Also release of one joint holder does not release the other holders.

**Appropriation of Payments (59 to 61)**

**(i) Application of Payment where debt to be discharged is indicated [59]:**

Then payment must be applied accordingly. The Latin maxim is quick quid soivitur, soivitur secundum modum solventis. The meaning of this maxim is that whatever is paid, is paid according to the intention or manner of the party paying.

**(ii) Application of payment where debt to be discharged is not indicated [60]:**

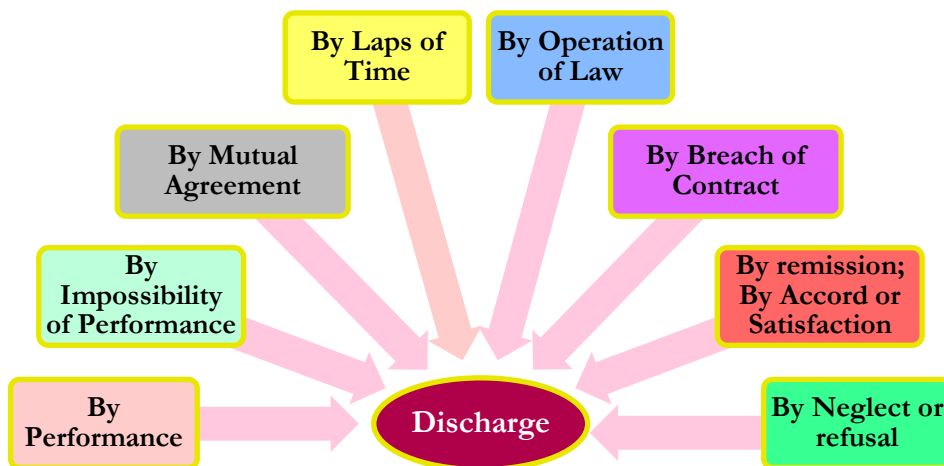
At the discretion of creditor for any lawful debt whether its recovery is or is not discovered by the law in force for the time being as to the limitation of suits.

**(iii) Application of payment where neither party appropriates [61]:**

Application of money to discharge of the debts in order of time, whether they are or are not barred by the law in force. If the debts are of equal standing the payment shall be applied in discharge of each proportionately."



**Discharge of Contract**



**Discharge by Impossibility of Performance (56 & 73)**

Agreements become void when it becomes impossible to perform them due to a variety of reasons. This is known as “impossibility of performance” and dealt with by section 56 of the Act

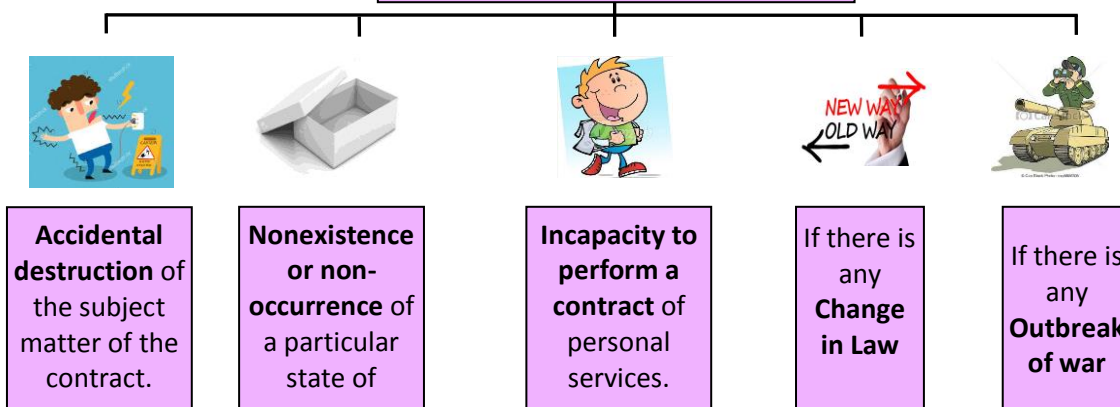
**Impossibility existing at the time of contract**

If the impossibility is known to the parties	Void
If the impossibility is unknown to the parties	Void
If impossibility known to the promisor only or he should have known with his due diligence	promisee can claim for damages on account of non-performance.

**Supervening impossibility**

When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties the contract becomes void. Supervening impossibility can arise due to a variety of circumstances as stated below

**Reasons of Supervening impossibility**



5.38

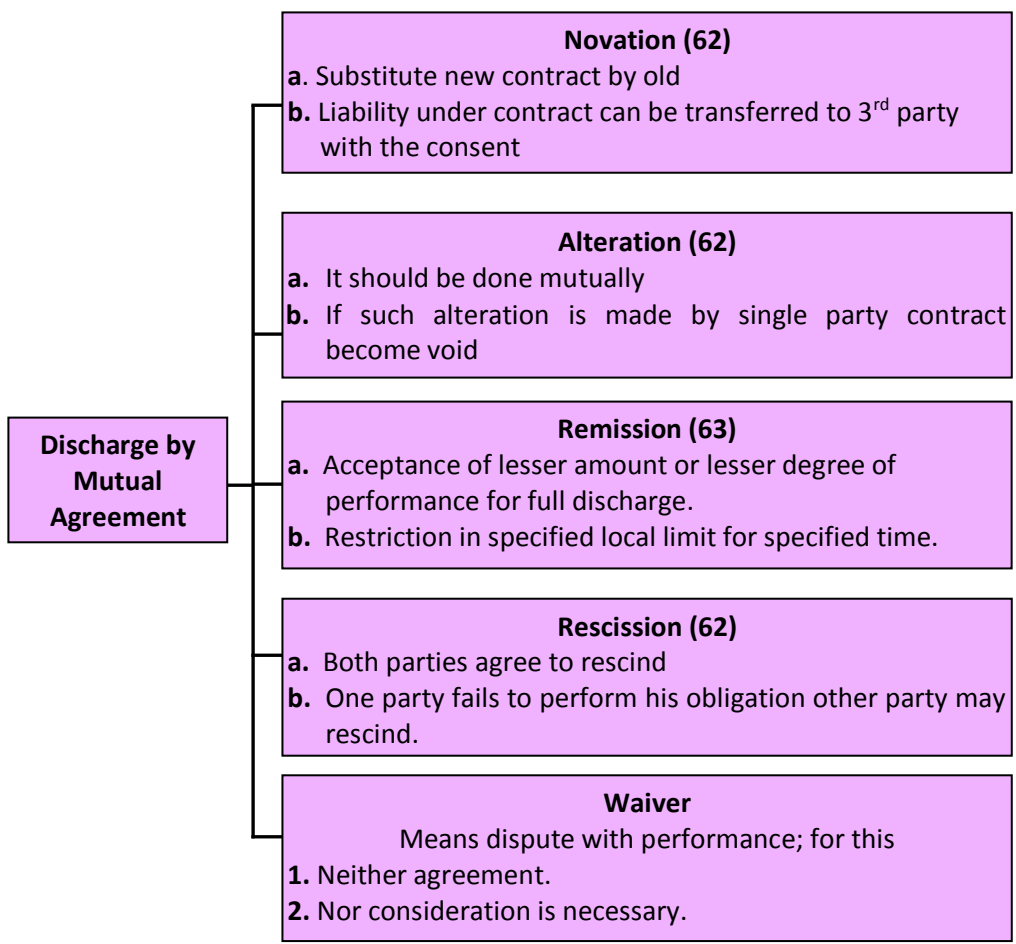
**Outbreak of war can consist of**

- (i) By emergency legislation controlling prices or relaxing restrictions of trade.
- (ii) By prohibiting or restraining transaction with alien enemy.

**What is not Supervening impossibility**

Cases	
Commercial Impossibility	
Default by 3 <sup>rd</sup> party	
Strikes, Riots & Civil Disturbances	
Self-Induced Impossibility	
Partial Failure of Objects or Partial Impossibility	

**Discharge by Mutual Agreement (62 & 63)**



## Discharge by Operation of Law

### Effect of failure to perform at a time fixed in a contract where time is essential

1. Contract is voidable at the option of promisee.
2. Contract cannot be avoided when time is not essential.

5.39

## Discharge by Operation of Law

Death	
Insolvency	
Unauthorised Alteration	
Merger of Rights	

## Discharge by Breach of Contract


Meaning of Breach	
Consequence of Breach	

## Kinds of Breach (39)

Actual Breach	Anticipatory Breach
<ul style="list-style-type: none"> <li>• One party refuses or fails to do his part of the promise</li> <li>• It may take place ,(expressly or impliedly) –               <ol style="list-style-type: none"> <li>(a) On due date of performance</li> <li>(b) During the course of performance</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• It occurs when the party declares his intention of not performing the contract before the performance is due</li> <li>• It may take place by ,(expressly or impliedly)               <ol style="list-style-type: none"> <li>(a) Refusing to perform his promise under the contract, or</li> <li>(b) By his act disabling himself from performing the promise before due date of performance</li> </ol> </li> </ul>

## Remedies for Breach of Contract

### Rescission (39)

	<ol style="list-style-type: none"> <li>a. When a contract is broken by one party,</li> <li>b. the other party may treat the contract as rescinded.</li> <li>c. In such a case aggrieved party is absolved of all his obligations under the contract and</li> <li>d. is entitled to compensation for any damages that he might have suffered.</li> </ol>
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## Suit for Damages



### Special damages

Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.


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### Liability to pay vindictive or exemplary damages


These are awarded for following

	For breach of promise to marry; and
	For wrongful dishonour by a banker of his customer's cheque. (A trader is assumed to have bigger losses than a non-trader)

### Liability to pay nominal damages



	Where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage. It is awarded just to establish the right to decree for the breach of contract.
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### Damages for deterioration caused by delay

	It can be recovered from carrier even without notice. Deterioration not only means physical damages but also mean loss of special opportunity for sale.
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### Liquidated damages and penalty

Sometimes parties to a contract stipulate at the time of its formation that on the breach of the contract by either of them, a certain specified sum will be payable as damages. Such a sum may amount to either "liquidated damages" or a "penalty".

	"Liquidated damages" represent a sum, fixed or ascertained by the parties in the contract, which is a <i>fair and genuine pre-estimate of the payable loss</i> that might ensue as a result of the breach, if it takes place.
	A "penalty" is a sum named in the contract at the time of its formation, which is disproportionate to the damage likely to accrue as a result of the breach. It is fixed up with a view to securing the performance of the contract.

The rules for determining whether a stipulation is by way of a penalty or by way of liquidated damages are as follows:

1. The parties to a contract may use the words "Penalty" or "liquidated damages" interchangeably. It must ascertain whether a sum is in truth a penalty or liquidated damages.
2. The essence of a penalty is the payment of money stipulated is to compel the performance of the contract by providing something by way of punishment if the contract is not performed. The essence of liquidated damages is *genuine per-estimate* of damage, which seems likely to be caused should the breach occur.
3. The sum stipulated is a penalty if-
  - (a) It is extravagant or unconscionable (unreasonable) in amount compared with the greatest loss which could conceivably be proved to have followed from the breach;
  - (b) The breach consists of not paying a sum of money by a certain time and the sum fixed is greater than the sum to be paid.
4. When a single lump-sum is made payable on the occurrence of one or more of several events, some of which may occasion serious and other trifling damage, there is a presumption that the sum is a penalty.

### Payment of interest

The largest number of cases decided under Section 74 relate to stipulations in a contract providing for payment of interest. "The following rules are observed with regard to payment of interest:

1. Payment of interest in case of default.
2. Payment of interest at higher rate-

From the date of the bond	From the date of default
A stipulation for increased interest from the date of the bond, and not from the date of default, is always in the nature of a penalty, and relief is granted against it.	A stipulation for increased interest from the date of default may be a stipulation by way of penalty. When it is so, relief is granted against it. Whether such a stipulation is penal is a question of construction dependent on the terms of the contract and the circumstances of each case.

### Payment of compound interest on default

At the same rate as simple interest	At the rate higher than simple interest
A stipulation in a bond for payment of compound interest on failure to pay simple interest at the same rate as was payable upon the principal is not a penalty.	A stipulation in a bond for the payment of compound interest at a rate higher than that of simple interest is a penalty and would be relieved against.

### Suit for specific performance

Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct in party in breach, to carry out his promise according to the terms of the contract.

### Suit upon Quantum Meruit

The phrase 'quantum meruit' literally means "as much as earned" or "according to the quantity of work done". A person who has begun a civil contract work and has to later stop the work because the other party has made the performance impossible, is entitled to receive compensation on the principle of 'Quantum Meruit'.

#### Following are instances where 'quantum meruit' may arise

Where the work has been done and accepted under a contract which is subsequently discovered to be void. In such a case, the person who has performed his part of the contract is entitled to recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party.

Where a person does some act or delivers something to another person with the intention of receiving payment, the other person is bound to make payment if he accepts such services or goods or enjoys the benefits.

Where the contract is divisible and where a party performs a part of the contract and refuses to perform the remaining part, the party in default may sue the other party who enjoyed the benefit of the part performance.

### Suit for injunction


Where a party to contract giving negative effect to terms of contract, the court may by issuing an "injunction order" restrain him from doing what he promised not to do.

### Contract of Indemnity & Guarantee



#### Introduction (124)

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

#### Rights of indemnity-holder when sued if acting in scope of his authority (125)

All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;	
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All cost for defending or bringing any suit if worked as a prudent person.	
All sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.	


## Guarantee

### Meaning of Certain Terms


#### Guarantee (126)

	A contract of guarantee is a contract to perform the promise made or discharge liability incurred by a third person in case of his default.
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#### Implied promise to indemnify surety (145)

	"In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully."
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#### Consideration in case of a guarantee (127)

	"Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee".
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#### Nature of surety's liability (128)

	"The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract." When the liability of the debtor is discharged, the liability of the surety is automatically discharged. However, a surety's liability to pay the debt is not discharged even if the creditor omits to sue the principal debtor since the surety is separately liable on the promise of guarantee.
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#### Continuing Guarantee (129)

	<ol style="list-style-type: none"> <li>1. "A guarantee which extends to a series of transactions is called a "continuing guarantee" (129)</li> <li>2. "The continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor". (130)</li> <li>3. But where a continuing relationship is established on the faith of a guarantee the guarantee cannot be annulled during the continuance of that relationship.</li> <li>4. "The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions." (131)</li> </ol>
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## Discharge of Surety

Cases	Particulars
Variation in Terms of Agreement [133]	By <b>variance made without surety's consent</b> in terms of contract, between principal debtor and creditor.



<b>Contract Releasing Principal Debtor [134]</b>	By <b>any contract</b> between the principal debtor and the creditor <b>by which the principal debtor is released</b> or by any act or omission of the creditor the legal consequence of which is the discharge of the principal debtor.
<b>Extension of Time to Principal Debtor [136]</b>	Where, however, a contract to <b>give time to the principal debtor</b> is entered into by the creditor with a third person and not with principal debtor, the surety will not be discharged.
<b>Settlement of Principal Debtor [135]</b>	Where a creditor makes a composition (i.e., settlement) with, or promises to give time to the principal debtor, or promises not to sue the principle debtor, by a contract.
<b>Release of 1 Co-surety does not release other Co-surety [138]</b>	Further if there are co-sureties, a release by the creditor of one of them does not discharge the other co-surety or co-sureties.
<b>Creditor act inconsistent with Surety [139]</b>	When the <b>creditor does any act which is inconsistent with the rights of the surety</b> or omits to do any act which his duty to the surety requires him to do.
<b>Notice of Revocation by Surety</b>	<p style="text-align: center;"><u>Specific Guarantee:</u></p> <p>It can be revoked only if the liability of principal debtor has not arisen.</p> <p style="text-align: center;"><u>Continuing Guarantee:</u></p> <p>It can be revoked only in case of future transaction.</p>

### Right of surety against principal debtor and/or creditor

#### 1) Against principal debtor:

- Where a guarantee debt has become due on default of the debtor and surety is required to pay it then he comes in the shoes of creditor.
- Surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of surety ship was entered into whether or not the surety was aware of the existence of such security.
- In every contract of guarantee, there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sums he has rightfully paid under the guarantee but not sum which he has paid wrongfully. **(145)**
- However surety can claim money only when he has actually paid not at the execution of promissory note only.

#### 2) Against creditor:

- On payment of the amount by surety or performance of all that he is liable for, the surety is subrogated to all the right that the creditor had against the debtor. **(140)**
- Security has the right over every security which debtor has provided to creditor whether it is in the knowledge of surety or not. If creditor has lost something of that than surety's liability will get reduced upto that amount. But not so in case creditor has parted with that security subsequent to the contract of guarantee.
- At the time before the guaranteed debt has become due and before the surety is called upon to pay the amount he has guaranteed, he has the right to require the creditor to sue for and recover the guaranteed debt. Such a right is described as a right to file a " Quia timet action" against the debtor. However, in such a case, the surety must undertake to indemnify the creditor for the risk, delay and expense which he may incur in doing so. Sanderson v. Aston- where a surety has guaranteed the fidelity of person and he finds that such a person is persistently dishonest, he can call upon the creditor to dismiss him from his service.
- Surety is entitled to plead any set-off which the principal debtor may have against the creditor.



### Guarantee When Invalid (142 to 144)

1. When guaranty has been obtained by means of miss-representation made directly by the creditor or made with his knowledge and assent concerning a material part of the transaction. **(142)**
2. When the creditor has obtained any guarantee by means of keeping silence as to material circumstances. **(143)**
3. Silence means an intentionally concealment as different from a mere nondisclosure thereof. There must exist some element of fraud.
4. When a contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such. **(144)**

### Distinction Between Contract of Indemnity & Contract of Guarantee

Basis	Indemnity	Guarantee
Meaning		
Parties		
Nature of Liability of Indemnifier & surety		
Number of Contracts		
Nature of contract		
Rights		
Contingent or Existing Liability		

## Contract of Bailment

### Meaning

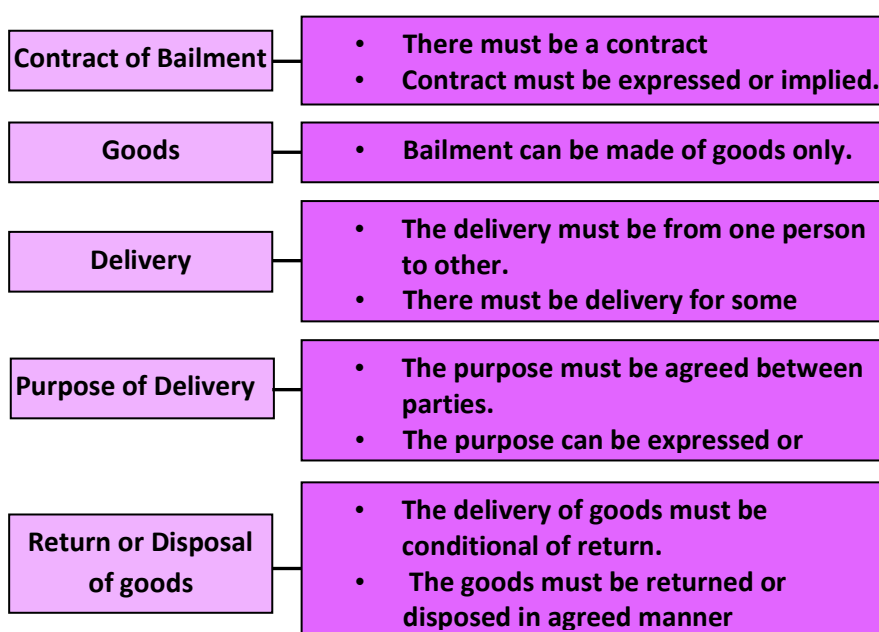
A bailment is defined under Section 148, as:

- ☛ an act whereby goods are delivered by one person to another
- ☛ for some purpose on a contract
- ☛ that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.
- ☛ The person who delivers the goods is known as the "bailor" and the person to whom the goods are delivered is known as the 'Bailee'

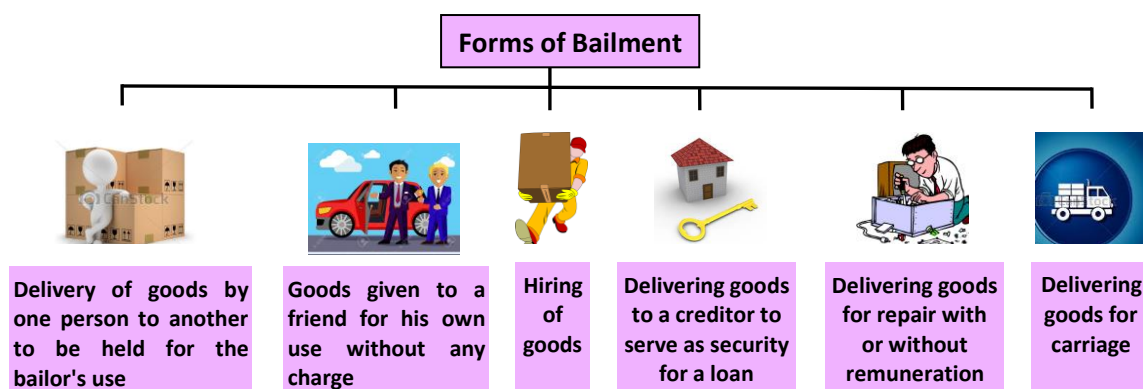
A bailment may be gratuitous or for reward.

1. A person who has custody without possession is not a Bailee.
2. A constructive delivery may also amount to delivery for bailment.

### The Essential Characteristics of Bailment

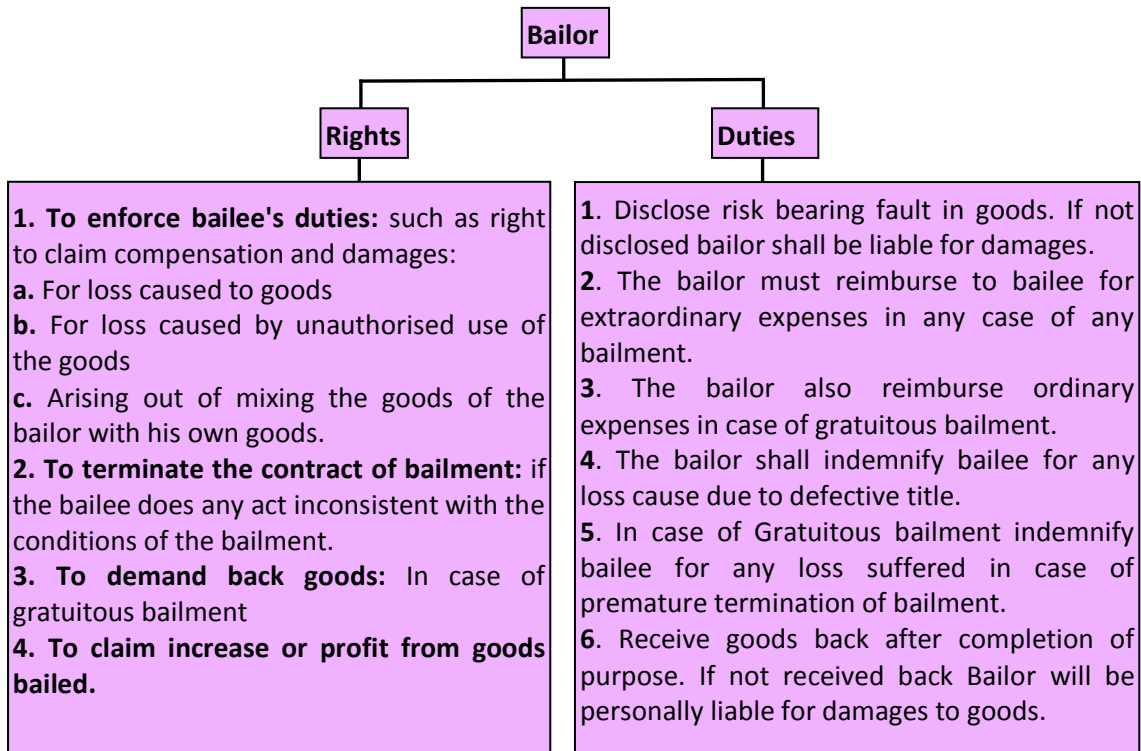


### Different forms of Bailment

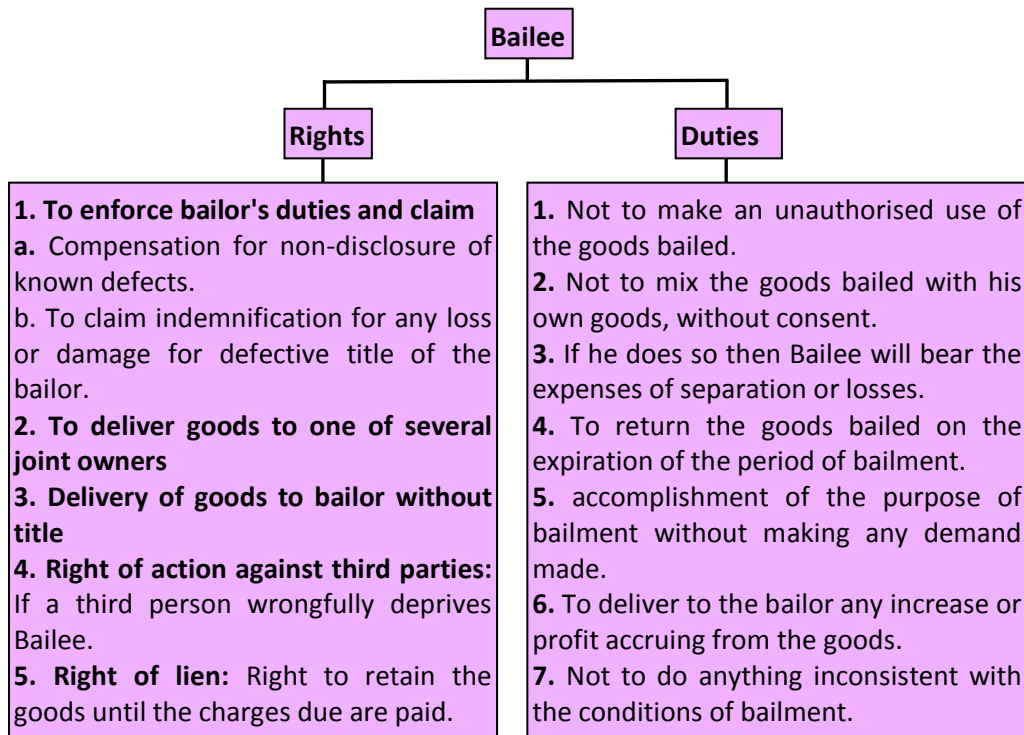


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### Bailor's Rights & Duties



### Bailee's Rights & Duties







### Rights and duties of a finder of good (71,168,169)

Finder may claim compensation for the trouble and expenses incurred by him to preserve the goods and to find out the true owner.



If the owner refuses to pay compensation then may retain the goods until he receives it. But he cannot make a suit for this.







If any reward has been announced by the owner he has a right to claim such reward. He can even sue for the reward.	
Normally he cannot sale the goods but when real owner is not found out with reasonable diligence, or if owner refuses to pay lawful charges then he can sale in the market if it normally sold in the market.	
He can sale goods when the article is in danger of being perished or losing the greater part of its value;	
He can sale goods when the lawful charges of the finder amounts to two-thirds or more of the value of the article found	

## Pledge



### Meaning

It is the bailment of goods as security for payment of debt or performance of a promise. When goods have been pledged, the bailor is called the pawner and bailee the pawnee. In case of pledge no transfer of any interest in property takes place; but a special right to property is carved out in favour of the pledge, i.e. he has right to dispose of the property in certain circumstances.

## Pawnee's Rights (173 & 176)

	<b>Pawnee's right of retainer (173)</b> Not only for the payment of the debt or the performance of the promise, but also for the recovery of the interest on the debt and other expenses for preservation of goods
	<b>Pawnee's right of retention in regard to subsequent advances (174)</b> Subject to contrary, pawnee would not be entitled to retain the goods to subsequent advances made by the pawnee.
	<b>Pawnee's right to extraordinary expenses incurred (175)</b> Expenses for preservation of the goods pledged but no special right to retain the goods for such expenses. But he can take the action for such expenses.
	<b>Pawnee's right where pawnor makes default (176)</b> The pawnee may bring a suit against the pawnor upon the debt or the promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawnor a reasonable notice of the sale. These two remedies are the alternatives not the cumulative. If receipts are less than the debt amount then pawnee may make a suit for the balance if more than he will have to refund back the money.

## Pawnor's right to redeem (177)

If there is a time limit for the payment of the debt and pawnor make default,, he may redeem the goods pledged at any subsequent time before the goods are sold, but in that case, he must pay, in addition, any expenses occasioned by the default.	
The period for a suit against a pawnee to recover the things pledged is 3 years from the date of pawnee's refusal to do so after demand (The Limitation Act-1963)	





5.48

**Agency**






**Meaning**



It is the relationship between two person where one person is employed (Known as Agent) by another (known as Principal) to act on behalf of that later with the third person.

**Salient features of agency (183-185 & 226)**

<p><b><u>Basis</u></b> Agent can render the principal answerable to a third person. A person does not therefore become an agent of another merely because he is named as his agent unless the above mentioned characteristic is present.</p>	
<p><b><u>Consideration not necessary</u></b> The existence of consideration is not at all necessary for its validity (185)</p>	
<p><b><u>Capacity to employ an agent</u></b> Only a person who has contractual capacity (a major and a person of sound mind) can lawfully employ and agent. (183)</p>	
<p><b><u>Capacity to become an agent</u></b> Any person can become an agent irrespective of whether he has contractual capacity or not but a person who is not of the age of majority and of sound mind cannot be agent so as to be responsible to his principal.</p>	

**Modes of creation of agency relationship (187, 189, 196, 214, 237)**

	<p><b><u>Agency by actual authority:</u></b> A contract of agency may be express (with spoken or written words) or implied (from the circumstances of a case things spoken or written or the ordinary course of dealing).</p>
	<p><b><u>Agency by ratification (196)</u></b> Where a person acts for someone but without his knowledge or authority and the other person subsequently accepts or ratifies the act agency by ratification arises and ratifier is bound by the act as if he had expressly authorised the person to do the act on his behalf.</p>
<p><b><u>Agency by ostensible authority</u></b> The conduct of the principal may give rise to a scope for an inference that an authority has been conferred upon an agent even though no authority in fact was given. In such as situation the agent contracts within his ostensible authority and the principal is bound to third parties for the acts of his agent. Agency by ostensible authority may happen in two ways.</p>	
	<p><b><u>i) By estoppel</u></b> If a person permits or represents another to act on his behalf, so that a reasonable person would infer that the relationship of principal and agent had been created, then he will be stopped from denying his agent's authority and getting himself relived from his obligation to a third party by proving that no such relationship in fact existed. A principal cannot privately limit or revoke an authority which he has allowed his agent publicly to assume.</p>
	<p><b><u>ii) By cohabitation</u></b> Where a married woman is cohabiting with her husband, there is a presumption of fact that she has authority to pledge his credit for necessities.</p>
	<p><b><u>iii) By Holding out</u></b> Principal is bound by the act of agent if on the earlier occasion, he has made other person to believe that such acts are done with his authority.</p>

	<p style="text-align: center;"><b><u>iv) Agency by necessity:</u></b></p> <p>Under certain circumstances, a person may be compelled to act as a agent to the other without requiring the consent of the principal. To constitute a valid agency of necessity, following condition must be satisfied.</p> <ol style="list-style-type: none"> <li>(a) There is no opportunity to communicate with his principal within the time available.</li> <li>(b) There should have been actual and definite commercial necessity for the agent to act promptly.</li> <li>(c) The agent should have acted bonafide and for the benefit of the principal.</li> <li>(d) The agent should have adopted the most reasonable and practicable course under the circumstances, and</li> <li>(e) The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.</li> </ol>
	<p style="text-align: center;"><b><u>(v) Actual authority and apparent authority:</u></b></p> <ol style="list-style-type: none"> <li>1. Actual authority results from a manifestation of consent that he should represent or act for the principal made by the principal to agent himself. It may be express or implied</li> <li>2. Apparent authority is where it results from a manifestation made by the principal to third parties. It involves the assumption that there is in fact no authority at all. Under this where a principal represents, or is regarded by law as representing, that another has authority, he may be bound as against a third party by the acts of that other person within the authority which that person appears to have, though he had not given. This emphasis to the relationship between principal and third party.</li> </ol>

### Rules regarding ratification (197 to 200)

1. Ratification must be by a person of whom the agent professes to act. Ratification can't be done for any act for which any principals is not permissible.
2. Ratification can be made **only by a person who was in existence** at the time of the act which was subsequently sought to be ratified.
3. A valid **ratification relates back to the actual date** of the act ratified.
4. Ratification may either be **express of it may even be implied** in the conduct of the person on whose behalf the acts are done **(197)**
5. **No valid ratification** can be made **by a person** whose **knowledge of the facts** of the case is **materially defective (198)**
6. Ratification cannot be done for a part of the act if it is so done then it will amount the **ratification for full. (199)**
7. One cannot ratify an act done without his authority if affecting 3<sup>rd</sup> person **(200)**.
8. An **illegal act cannot be ratified**. Also a ratification cannot be made of a transaction which is void ab initio.
9. Where an act has to be performed within a certain limit the ratification also must be made within that **time limit**.
10. Ratification may be made of an **act done by an agent** in excess of his authority.



**Extent of Agent's Authority (188, 189 & 229)**

5.50

**In normal circumstances**

An agent having an authority to do an act or business has authority to do every lawful thing which necessary for the purpose, usually done in the course of conducting such business (188) Above may be expressly excluded by mutual contract.






**In emergency:**

To do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances. (189)




**Notice to an agent:**

If any information is obtained by an agent or any notice is given to him in the course of the business of agency it will be deemed to have been obtained by or given to the principal (229).





**Obligations cast on agent (Duties of an agent) (209 to 218)**

<p><b><u>Duty in conducting principal's business</u></b> According to the directions given by the principal, or in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When agent acts otherwise, if loss incurred to be borne by agent and if profit incurred to be given to principal.</p>	
<p><b><u>Requirement as to skill and diligence</u></b> He is required to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his lack of skill. Agent is always bound to act with reasonable diligence and such skill as he possesses and to make compensation to his principal in respect of direct consequences of his own neglect, want of skill or misconduct (212)</p>	
<p><b><u>Agent's duty to account</u></b> To render proper accounts to his principal whenever demanded by the latter (213)</p>	
<p><b><u>Payment of money</u></b> To pay to principal all sums received on his account (218). Even in case of money received in illegal or void contract.</p>	
<p><b><u>Duty to communicate:</u></b> In case of difficulty, an agent must use reasonable diligence to establish contact with his principal, to obtain his instructions (214).</p>	

**Right of the Agent (217 to 225)**

<p><b><u>Right of lien on principal's property</u></b> If the amount due to himself for commission, disbursement and services has not been paid or accounted for him. It may be avoided by the express agreement this right is there only when possession of the goods is lawfully acquired by the agent. (221)</p>	
<p><b><u>Right to be indemnified</u></b> <b>Right to be indemnified</b> against consequences of lawful acts in exercise of the authority conferred upon him. (222)</p>	
<p>Right to be indemnified against consequences of <b>acts in good faith</b> (223)</p>	



<p style="text-align: center;"><b><u>Prohibition of Law</u></b></p> <p>Notwithstanding any express or implied promise in this regard, an agent cannot claim to be indemnified against the consequences of an act which he does but which is <b>prohibited under the penal law of the country (224)</b></p>	
<p style="text-align: center;"><b><u>Injury Compensation</u></b></p> <p style="text-align: center;"><b>Compensation for injury caused by principal (225)</b></p>	
<p style="text-align: center;"><b><u>Right of retainer</u></b></p> <p>An agent has to account for to his principal the balance of money received by him as agent after the deduction (retaining) of moneys due to himself from the principal on account of his remuneration and expenses etc. <b>(217)</b></p>	
<p style="text-align: center;"><b><u>Right to remuneration</u></b></p> <p>For the agreed upon or the normal remuneration in that business. He can detain the money received on account of sale etc. <b>(219)</b>. But an agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business of the agency which he has is counted. <b>(220)</b></p>	

### When Agent is Personally Liable? (230 & 231)

- (1) When there is an express agreement for so.
- (2) When he does not have authority for what he has done or he represents himself as having that authority which he does not have.
- (3) When contract is entered into by a person apparently in the character of agent, but in reality on his own account, he is not entitled to require performance of it. **(236)**
- (4) In circumstances given by **Section 230**
  - ☛ Where the contract expressly provides for the personal liability of the agent
  - ☛ When the agent signs a negotiable instrument in his own name without making it clear that he is signing as agent.
  - ☛ Where the agent worked for a foreign principal.
  - ☛ Where the agent acts for a principal who cannot be sued on account of his being a foreign Sovereign, Ambassador, etc.
- (5) Where according to use of trade in certain kinds of businesses, agents are personally liable.
- (6) Where the agent has himself an interest in the subject-matter of the agency. Interest not only of remuneration but some special type of interest should be there. In the case of an agency coupled with such interest it cannot be revoked even by the insanity or death of the principal.

### Undisclosed Principal







Where an agent, having authority to contract, makes the contract in his own name, concealing not only the name of his principal but also the fact that there is a principal, his principal is called 'undisclosed principal.' In this case mutual rights and liabilities of the parties are:

1. Agent is personally liable to third party.
2. If the third party comes to know the existence of the principal before obtained judgment against the agent, he may sue either the principal or the agent or both.
3. Third party is entitled to be placed in the same situation as if the agent had been the contracting party. thus the third party is not put to any disadvantage by principal's intervention;

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4. If the principal discloses himself before the contract is completed the third party may refuse to fulfil the contract, if the can show that had he known the true position, he would not entered into the contract.

**Principal's Liabilities for Agent's Act**

<p><b><u>When agent act within the scope of his authority</u></b>                  The principal is liable for the acts of the agent done within the scope of his actual or apparent authority. Where there are specific restrictions on the authority of the agent, then the principal is not bound by it.</p>	
<p><b><u>When the agent exceeds his authority</u></b>                  Principal is not liable but where that excess is separable from the total act then upto the extent of the authority principal is liable.</p>	
<p><b><u>Principal is bound by notice given to agent</u></b>                  Provided notice is given in the course of the business and in the course of employment. This rule will not apply if agent is out to commit a fraud on the principal.</p>	
<p><b><u>Liability of principal by estoppel</u></b>                  A principal is liable where he has by words or conduct induced a belief in the contracting party that the act of the agent was within the scope of his authority. Here the liability of the principal is not based on any real authority, but is by estoppel.</p>	
<p><b><u>Liability for misrepresentation or fraud by an agent</u></b>                  If acting within the scope of his actual or apparent authority during the curse of the agency business irrespective of the fraud is committed for the benefit of the principal or that of the agent.</p>	
<p><b><u>Where the Principal is unnamed</u></b>                  When an agent discloses the existence of the principal but does not disclose the name of the principal. If however the agent refuses to disclose the identity of his principal he will become personally liable on the contract.</p>	

**Irrevocable Agency (202 & 204)**

- Where the agency is coupled with interest (202)** - This rule is applicable only when the agency is created of the protection of the interest of the agent, it does not apply where the interest arises after creation of agency.
- Where the agent has incurred personal liability** - Principal cannot revoke the agency so as to leave the agent to bear the liability and the losses in the contract.
- Where the agent has partly exercised the authority**

**Sub-agent (19)**

**Meaning**

A "sub-agent" is a person employed by, and acting under the control of the original agent in the business of the agency (Section 19). This means he is the agent of the original agent. The relation of the sub-agent to the original agent is, as between themselves, that of the agent and principal.

**Exception**



**Section 190 provides that an agent may appoint a sub-agent and delegate the work to him if-**

- There is a custom of trade to that effect, or
- The nature of work is such that a sub-agent is necessary.
- There are some more exceptions recognised by the English Law. These exceptions are also recognised in India and are as follows:






4. Where the principal is aware of the intention of the agent to appoint a sub-agent but does not object to it.
5. Where unforeseen emergencies arise rendering appointment of a sub-agent necessary.
6. Where the act to be done is purely ministerial not involving confidence or use of discretion.
7. Where power of the agent to delegate can be inferred from the conduct of both the principal and the agent.
8. Where the principal permits appointment of a sub-agent.

### Relationship between principal and sub-agent

As a general rule, an agent cannot delegate his authority to a sub-agent. But in certain exceptional cases, he is permitted to do so. In such cases, the delegation of authority to a sub-agent is proper. In all other cases, the appointment of a sub-agent is improper. The legal relation between the principal and the sub-agent depends upon the crucial question, as to whether the appointment of the sub-agent is proper or improper.

<p style="text-align: center;"><b><u>Where a sub-agent properly appointed:</u></b></p> <p>(a) The principal is bound by the acts of the sub-agent if the sub-agent were an agent originally appointed by the principal (192. Para 1)</p> <p>(b) The agent is responsible to the principal of the acts of the sub-agent (192, Para 2)</p>	
<p style="text-align: center;"><b><u>Where a sub-agent is not properly appointed.</u></b></p> <p>Where an agent, without having authority to do so, has appointed a sub-agent, the agent is responsible for the acts of the sub-agent to the principal and to the third parties. The principal, in such case, is not represented by or responsible for the acts of the sub-agent, nor is the sub-agent responsible to the principal. (Section 193)</p>	

### Termination of Agent's Authority

	Revocation of authority by the principal
	Renunciation of agency by the agent.
	Completion of the business of agency.
	Death or insanity of either party, e.g., the principal or the agent.
	Insolvency of the principal.

# Chapter 3:

## The Indian Partnership Act, 1932

3.1

### GENERAL NATURE OF PARTNERSHIP

#### Meaning & Nature of Partnership

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all (**Section 4**)

#### Essential Elements of partnership

Agreement of two or more person

It must be agreement between two or more person



Sharing profit of business

The agreement must be to share profit of business



Business carried by all or one

The business must be carried on by all or any one of them acting as all



#### Agreement of Two or More Persons

- The partnership is creation of the mutual agreement.
- The nature of the partnership is voluntary and contractual.
- The agreement shall be expressed agreement.
- It may also be implied by act done by partners from the consistent course of conduct is followed.
- The agreement can be oral or in writing.



#### Sharing of Profits of Business

1. First, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of **business is essential**.
2. Therefore there **can be no partnership where there is no intention** to carry on the business and to share the profits thereof.
3. Secondly, there must be an agreement to share profits.



3.2

**Business Carried by All or Any of Them**

1. This is the **cardinal principle** of the partnership law.
2. An **act of one** partner in the course of the business of the firm **is in fact an act of all partners**.
3. Each partner carrying on the business is the **principal as well as the agent for all** the other partners.
4. Therefore, note that the true test of partnership is **mutual agency** rather than sharing of profits.
5. If the element of **mutual agency is absent**, then there will be **no partnership**.
6. Sharing of profits is only prima facie evidence which can be rebutted by a stronger evidence.



**Mutual Agency**

- Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard.
- Each partner carrying on the business is the principal as well as an agent of other partners.
- So, the act of one partner done on behalf of firm, binds all the partners.



**True Test of Partnership**

1. The **sharing of profits** or of gross returns accruing from property by persons holding joint or common **interest in the property** would **not by itself make such persons partners**.
2. Where there is an **express agreement between partners** to share the profits of a business and the business is being carried on by all or any of them acting for all, there will be **no difficulty in determining** the existence or otherwise of a partnership.
3. But the task becomes **difficult when either there is no specific agreement** or the agreement is such as does not specifically speak of partnership. In such case cumulative **effect of all surrounding cases** shall be taken to understand the relation of the partnership.
4. A receipt of share of profit from the business **or** payment contingent upon earning of the profit will not make the receiver a partner in case of following businesses:
  - a. a **lender of money** to persons engaged or about to be engaged in any business,
  - b. a **servant (e.g., manager of a firm)** or agent as his remuneration,
  - c. **widow or child of a deceased** partner,
  - d. a **previous owner of part of the business** as the consideration for the sale of the goodwill or share thereof.

**Partnership & Joint Stock Company**

Basis	Partnership	Joint Stock Company
<b>Personality</b>	A firm is not a legal entity i.e., it has no legal personality distinct from the personalities of its constituent members.	A registered company is a judicial person distinct from its members.
<b>Agency</b>	In a firm, every partner is an agent of the other partners, as well as of the firm.	A member is not an agent of the other members or of the company, therefore his actions do not bind either other members or the Company.



<b>Distribution of Profits</b>	The profits of the firm must be distributed among the partners according to the terms of the partnership deed.	There is no such compulsion to distribute its profits among its members. Some portion of the profits, but generally not the entire profit, becomes distributable among the shareholders only when dividends are declared.
<b>Extent of Liability</b>	In a partnership, the liability of the partners is unlimited.	On the other hand, the liability of a shareholder is limited to the amount, if any, unpaid on his shares, in the case of a company limited by shares; but in the case of a guarantee company, the liability is limited to the amount for which he has agreed to be liable.
<b>Payment of debts of business from personal property.</b>	Each partner is liable for debts of a firm incurred in the course of the business of the firm and these debts can be recovered from his private property, if the joint estate is insufficient to meet them wholly.	In case of company the members of the company does not pay the liabilities from their personal assets even if the debts of the company are not paid out of funds of company except in case of unlimited company.
<b>Property</b>	The firm's property is that which is the "joint estate" of all the partners as distinguished from the 'separate' estate of any of them and it does not belong to a body distinct in law from its members.	But in the case of a company, its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.
<b>Transfer of Shares</b>	A share in a partnership cannot be transferred without the consent of all the partners	A shareholder may transfer his shares, subject to the provisions contained in its Articles.
<b>Management</b>	In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management.	But members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate.
<b>Number of Partners</b>	In the case of firms carrying on business other than banking, the number must not exceed 20 and in the case of banks such number must not exceed 10	A private company may have as many as 50 members but not less than two and a public company may have any number of members but not less than seven.

### Partnership & Club

Basis	Partnership	Club
<b>Meaning</b>	On the other hand, partnership is also an association of persons but formed with the object of earning profit.	A club is an association of persons formed with the object not of earning profit, but of promoting some beneficial purposes such as improvement of health or providing recreation for the members, etc.
<b>Partners</b>	Partners are the agent of partnership. In case of non payment of dues to creditors by partnership, partners will become personally liable.	Unlike a partner, a member of a club is not the agent of other members nor is he liable to a creditor of the club



<b>Interest in Property</b>	Partner has interest in the property of firm.	A member of a club has no interest in the property of the club.
<b>Change in Partner/Member.</b>	Change in the partners affects the partnership and results in to new one.	Also, the change in the membership of a club does not affect its existence.

**Partnership Vs HUF**

<b>Basis</b>	<b>Partnership</b>	<b>HUF</b>
<b>Creation of relation</b>	The relation of partnership is created necessarily by an agreement.	Right in the joint family is created by status i.e. birth in family.
<b>Death of Partner of member</b>	Death of a partner ordinarily leads to the dissolution of partnership.	But the death of a member of the Hindu undivided family does not give rise to dissolution of the family business.
<b>Management</b>	But in the case of a partnership, all the partners are equally entitled to take part in the partnership business.	The right of management of joint family business generally vests in the Karta, the governing male member of the family.
<b>Authority to Bind the firm</b>	In partnership, every partner can, by his act, bind the firm.	In the joint family, the Karta or the manager, has the authority to contract for the family business.
<b>Liability</b>	In a partnership, the liability of a partner is unlimited.	but in a Hindu undivided family, only the liability of the Karta is unlimited, and the other copartners are liable only to the extent of their share in the profits of the family business.
<b>Calling of Accounts</b>	A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.	On the separation of the joint family, a member is not entitled to ask for account of the family business.
<b>Governing Law</b>	A partnership is governed by the Partnership Act.	Joint Hindu family business is governed by the Hindu Law.
<b>Position of Minor</b>	In a partnership, a minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners.	In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
<b>Continuity</b>	A firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.	A Joint Hindu Family has the continuity till it is divided. The status of Joint Hindu Family is not thereby affected by the death of a member.

**Partnership & Co-Ownership**

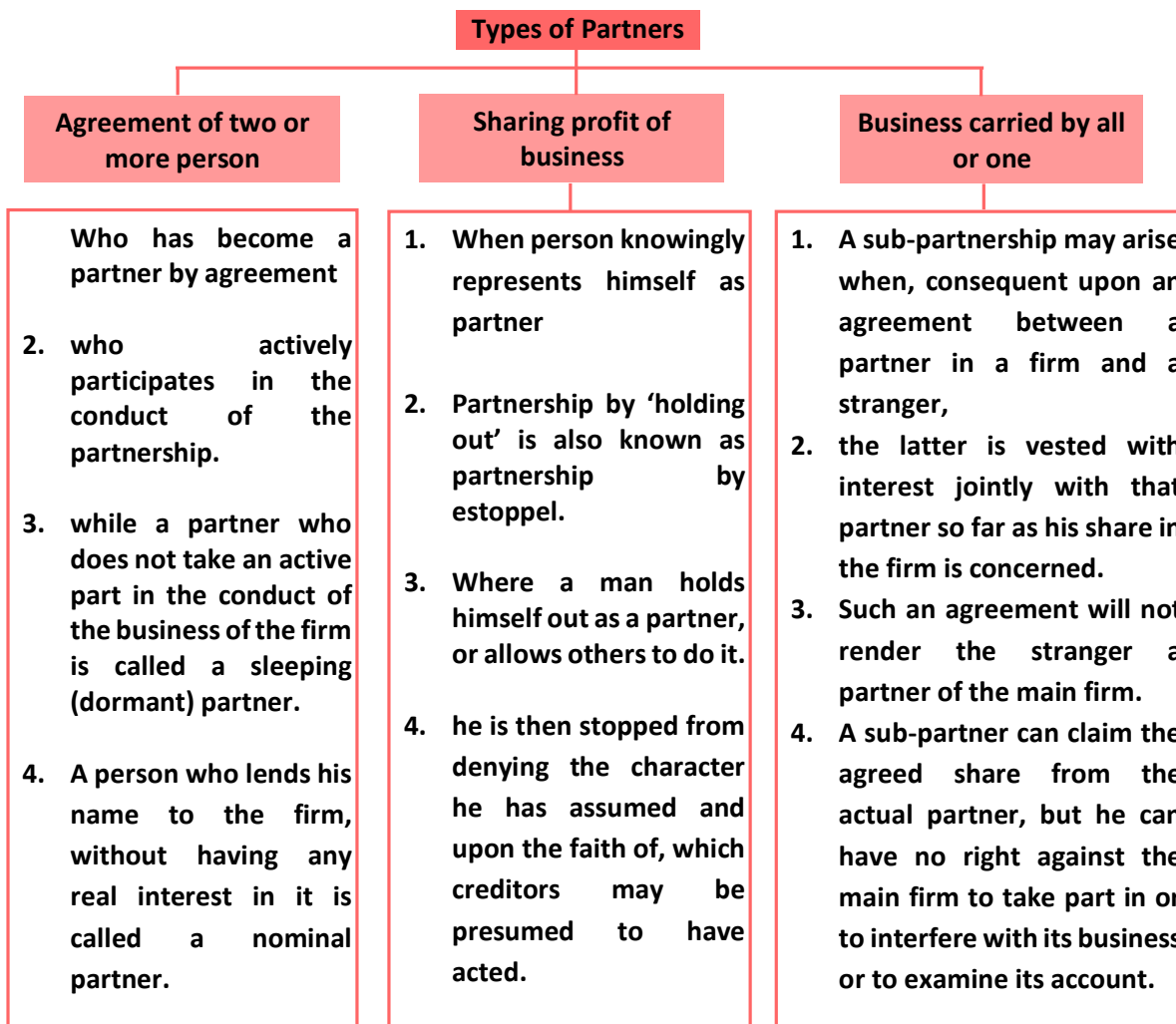
<b>Basis</b>	<b>Partnership</b>	<b>Co-Ownership</b>
<b>Creation</b>	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
<b>Interests</b>	In partnership, there is community of interest. It means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.
<b>Agency</b>	In the case of partnership, a partner is the agent of the other partners.	In the case of a co-ownership, a co-owner is not the agent of other co-owners.

<p><b>Transfer of share</b></p>	<p>A share in the partnership is transferred only by the consent of other partners.</p>	<p>Co-ownership may be dissolved at the will of co-owners; also a co-owner may transfer his interest or rights in the property without the consent of other co-owners.</p>
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### Partnership & Association

- (1) Partnership means and involves setting up relation of agency between two or more persons who have entered into a business for gains, with the intention to share the profits of such a business; but partnerships does not exist between members of a charitable society or religious association or an improvement scheme or building corporation, etc.
- (2) Partnership does not exist between members of a mutual insurance society.
- (3) In a trade combine or protection association, the relation between the members is not that of partnership.

### Types of Partners



The rule enunciated 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.

Minors Position in Partnership

3.6

Concept Analysis:

Questions	Options
1. Can minor enter in to agreement?	Yes / No
2. Whether minor is bound by contract?	Yes / No
3. Can a minor be partner in firm?	Yes / No
4. Can minor share profits only from partnership?	Yes / No

Rights & Liabilities of Minor if Added for Partnership:

Minor in Partnership

(i) A minor partner has a right to his agreed share of the profits of the firm.

(ii) He can have access to, inspect and copy the accounts of the firm.

(iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.

(iv) On attaining majority he may within 6 months elect to become a partner or not to become a partner.

(v) If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor.

(vi) If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

(i) The minor's share is liable for the acts of the firm, but he is not personally liable for any such act.

(ii) Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, he may give public notice.

(iii) If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

(iv) If the minor becomes a partner:  
 a. He becomes personally liable to third parties since he was admitted.  
 b. His share in the property and the profits of the firm remains the same.

Where the minor decides to sever his connection with the firm his rights and liabilities will be as follows.

- (i) His rights and liabilities continue to be those of a minor up to the date of giving public notice.
- (ii) His share shall not be liable for any acts of the firm done after the date of the notice.
- (iii) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

## RELATION OF PARTNERS

### Mutual Rights of Partners

3.7

#### Right to take part in the conduct of the Business

1. Every partner has the **right to take part** in the business of the firm.
2. This is because partnership business is a business of the partners and their **management powers** are **generally coextensive**.
3. Now suppose this management power of the particular partner is interfered with and he has been wrongfully precluded from participating therein, can the Court interfere in these circumstances? The answer is in the affirmative. The Court can, and will, by injunction, restrain other partners from doing so.
4. You should also note in this connection that a partner who has been wrongfully deprived of the right of participation in the management has also other remedies, e.g., a suit for dissolution, a suit for accounts without seeking dissolution, etc.
5. It is quite common to find a term in partnership agreements, which gives only limited power of management to a partner or a term that the management of the partnership will remain with one or more of the partners to the exclusion of others. In such a case, the Court will normally be unwilling to interfere with the management.

#### Right to be consulted

1. Where any difference arises between the partners with regard to the business of the firm, it shall be determined by the views of the majority of them, and every partner shall have the right to express his opinion before the matter is decided.
2. But no change in the nature of the business of the firm can be made without the consent of all the partners [Section 12 (c)].
3. This means that in routine matters, the opinion of the majority of the partners will prevail.
4. Of course, the majority must act in good faith and every partner must be consulted as far as practicable.
5. You should note that the aforesaid majority rule will not apply where there is a change in the nature of the firm itself. In such a case, the unanimous consent of the partners is needed.

#### Right of access to books

1. Every partner whether active or sleeping is entitled to have access to any of the books of the firm and to inspect and take out copies thereof [Section 12 (d)].
2. The right must, however, be exercised *bona fide*.

#### Right to remuneration

1. No partner is entitled to receive any remuneration in addition to his share in the profits of the firm for taking part in the business of the firm.
2. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration.
3. Thus a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm.
4. In other words, where it is customary to pay remuneration to a partner for conducting the business of the firm he can claim it even in the absence of a contract for the payment of the same.
5. It is not uncommon for partners, in actual practice, to agree that a managing partner will receive over and above his share, salary or commission for the trouble that he will take while conducting the business of the firm.

#### Right to share Profits

1. Partners are entitled to share equally in the profits earned and so contribute equally to the losses sustained by the firm [Section 13 (b)].
2. The amount of a partner's share must be ascertained by enquiring whether there is any agreement in that behalf between the partners.
3. If there is no agreement then you should make a presumption of equality and the burden of proving that the shares are unequal, will lie on the party alleging the same.
4. There is no connection between the proportion in which the partners shall share the profits and the proportion in which they have contributed towards the capital of the firm.

**Interest on Capital**

1. Suppose interest on capital subscribed by the partner is payable to him under the partnership deed, then in such a case, the interest will be payable only out of profits.
2. As a general rule, interest on capital subscribed by partners is not allowed unless there is an agreement or usage to that effect.
3. The principle underlying this provision of law is that regards the capital brought by a partner in the business, he is not a creditor of the firm but an adventurer.
4. The following elements must be present before a partner can be entitled to interest on moneys brought by him in the partnership business
  - (i) an express agreement to that effect, or practice of the particular partnership or
  - (ii) any trade custom to that effect; or
  - (iii) a statutory provision which entitles him to such interest.

**Interest on advances**

1. Suppose a partner makes an advance to the firm in addition to the amount of capital to be contributed by him, then in such a case, the partner is entitled to claim interest thereon @6% per annum [Section 13 (d) ].
2. While interest on capital account ceases to run on dissolution, the interest on advances keep running even after dissolution and up to the date of payment.
3. From the discussion so far, you will notice that the Partnership Act makes a distinction between the capital contribution of a partner and the advance made by him to the firm.
4. The advances are regarded as loans which should bear interest while capital bears interest only when there is an agreement to this effect.

**Right to be indemnified**

1. Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm.
2. This right is also available in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstance [Section 13 (e)].

**Right to stop admission of a new partner**

1. Every partner has the right to prevent the introduction of a new partner in the firm without the consent of all the existing partners.
2. Where a partner is introduced into the firm, he is not liable for any act of the firm done before he became a partner (Section 31).

**Right to retire**

Every partner has the right to retire with the consent of all the other partners and in the case of a partnership being at will, by giving notice to that effect to all the other partners [Section 32 (1)].

**Right not to be expelled**

Every partner has the right not to be expelled from the firm by any majority of the partners (Section 33).

**Right of outgoing partner to carry on competing business**

An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but without using the firm name or representing himself as carrying on the business of the firm or soliciting the custom of persons who were dealing with the firm before he ceased to be a partner [Section 36 (1)].

**Right of outgoing partner to share subsequent profits**

1. Where any partner has died or ceased to be a partner, and
2. the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner of his estate,
3. the outgoing partner or his estate has at his or his representative's option, the right to such share of the profit made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest @ 6% per annum on the amount of his share in the property of the firm [Section 37].

**Right to dissolve the firm**

A partner has the right to dissolve the partnership with the consent of all partners (Section 40). But where the partnership is at will the firm may be dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm (Section 40).

**Duties of Partners**

Partners are bound to carry on the business of the firm

- (i) to the greatest common advantage,
- (ii) to be just and faithful to each other and
- (iii) to render to any partner or his legal representative a true account and full information of all things affecting the firm (Section 9).

Every partner is liable to indemnify the firm for any damage caused to it by reason of his fraud in the conduct of the business of the firm (Section 10).

1. Every partner is bound to attend diligently to his duties relating to the conduct of the firm's business [Section 12 (b)].
2. A partner is not, however, normally entitled to remuneration for participating in the conduct of the business [Section 13 (a)].
3. He is also bound to let his partners have the advantage of his knowledge and skill.

All the partners are liable to contribute equally to the loss sustained by the firm.

A partner must indemnify the firm for any loss caused to it by willful neglect in the conduct of the business of the firm [Section 13 (f)].

If a partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm or firm's name then he is bound to account for that profit and refund it to the firm [Section 16 (a)].

If a partner carries on business of the same nature as and competing with that of the firm, then he must account for and pay to firm all profits made by him in the business [Section 16 (b)]. The firm will not be liable for any loss.

**Property of Partnership Firm**

The expression 'property of the firm', also referred to as 'partnership property', 'partnership assets', 'joint stock', 'common stock' or 'joint estate', denotes all property, rights and interests to which the firm, that is, all partners collectively, may be entitled.

The property which is deemed as belonging to the firm, in the absence of any agreement between the partners showing contrary intention, is comprised of the following items:

- (i) all property, rights and interests which partners may have brought into the common stock as their contribution to the common business;
- (ii) all the property, rights and interest acquired or purchased by or for the firm, or for the purposes and in the course of the business of the firm; and goodwill of the business.

**Important FAQ's:**

Whether a particular property is or is not 'property' of the firm, how can it be determined?

**Ans:** It ultimately depends on the real intention or agreement of the partners. Thus, the mere fact that the property of a partner is being used for the purposes of the firm shall not by itself make it partnership property, unless it is intended to be treated as such. Partners may, by an agreement at any time, convert the property of any partner or partners (and such conversion, if made in good faith, would be effectual between the partners and against the creditors of the firm) into a partnership property.



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### Goodwill



Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

When a partnership firm is dissolved every partner has a right, in the absence of any agreement to the contrary, to have the goodwill of business sold for the benefit of all the partners.

A goodwill is a part of the property of the firm, it can be sold separately or along with the other properties of the firm. Any partner may upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits and notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872 such agreement shall be valid if the restrictions imposed are reasonable.

### Personal Profits Earned by Partners



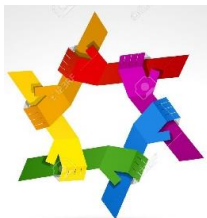
Where a partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm or firm name, he must account for that profit and pay it to the firm.

**Example:**



Where a partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm or firm name, he must account for that profit and pay it to the firm. This rule is also subject to a contract between the partners. He is under no obligation whatever to account for the profits of a non competing business, even though his connection with the firm may enable him to push his private trade better.

**Example:**



A deed of partnership may contain a clause that some or all the partners are not to carry any business other than that of the firm during the continuance of partnership [Section 11(2)]. A breach of such a provision may entitle the other partner to recover damages from the defaulting partner, but it will not give rise to any occasion for accounting to his copartners for the profits earned unless the business is shown to be in rivalry with the business of the firm.

**Example:**

### Rights & Duties of Partners after Change in the Constitution of the Firm

Change may occur in one of the four ways, namely:

- (i) where a new partner or **partners come in**,
- (ii) where some partner or **partners go out**, i.e., by death or retirement,
- (iii) where the partnership concerned **carries on business other than the business** for which it was originally formed,
- (iv) where the partnership business is carried on after the expiry of the term fixed for the purpose.

#### Rules in case of change in the constitution of the firm:

Rules	Example
Where a change occurs in the constitution of the firm in any of the first three ways mentioned above, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were before the change as may be.	
Where a firm constituted for a fixed term continues to carry on the business after the expiry of the 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 incidents of partnership at will. Some provisions have been held to be inconsistent with the incidents of partnership at will, e.g., the provision in the deed that a partner desiring to retire shall give notice of his intention of the same at a certain time before hand.	
Where the firm constituted to carry out one or more ventures or undertakings, carries out other ventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures of the undertaking are the same as of those in respect of the original adventures.	

#### Partners as Agent of Firm (Sec 18 to 30)

- The partner indeed virtually embraces the character of **both a principal and an agent**.
- So far as he **acts for himself** and in his own interest in the common concern of the partnership, he may properly be **deemed a principal**.
- So far as he **acts for his partners**, he may properly be **deemed an agent**.
- The principal distinction between him, and a mere agent is that **he has a community of interest with other partners** in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.
- The rule that a partner is the agent of the firm for the purpose of the business of the firm, cannot be applied to all transactions and dealings between the partners themselves.
- It is applicable only to the act done by partners for the purpose of the business of the firm.

#### Implied Authority of Partner of Firm

- A partner has implied authority to bind the firm by all acts done by him in all matters connected with the partnership business and which are done in the usual way and are not in their nature beyond the scope of partnership.
- You must remember that an implied authority of a partner may differ in different kinds of business. For example, it may be usual for one partner of a firm of bankers to draw, accept or endorse a bill of exchange on behalf of the firm, but the same may be unusual, for one of a firm of solicitors to do so, for it is no part of the ordinary business of a solicitor to draw, accept or endorse bills of exchange.
- If partnership be of a general commercial nature, he may pledge or sell the partnership property; he may buy goods on account of the partnership; he may borrow money, contract debts and pay debts on account of the partnership; he may draw, make, sign, endorse, transfer, negotiate and procure to be discounted, promissory notes, bills of exchange, cheques and other negotiable papers in the name and on account of the partnership.

### Acts Beyond the Implied Authority (Sec 19)

If there is no usage or custom of trade to the contrary, the implied authority of the partner does not empower him to:

- (a) **submit a dispute** relating to the business of the firm **to arbitration** as it is not the ordinary business of partnership firm to enter into a submission for arbitration :
- (b) **open a bank account** on behalf of the firm in his own name;
- (c) **compromise or relinquish any claim** or portion of a claim by the firm **against a third party** (i.e., an outsider).
- (d) **withdraw a suit** or proceedings filed on behalf of the firm;
- (e) **admit any liability in a suit** or proceedings against the firm;
- (f) **acquire immovable property** on behalf of the firm;
- (g) **transfer immovable property** belonging to the firm; and
- (h) **enter into partnership** on behalf of the firm.

### Acts in Emergency

Each partner can bind the firm by all of his acts done in an emergency, with a view to protecting the firm from any loss, provided he has acted in the same manner as a man of ordinary prudence would have acted in the like circumstances.

#### Admission by Partner

- ✓ Partners, as agents of each other can make binding admissions but only in relation to partnership transaction and in the ordinary course of business.
- ✓ an admission or representation by a partner will not however, bind the firm if his authority on the point is limited and the other party knows of the restriction.

### Notice to an Acting Partner

1. The **notice to a partner, who habitually acts in business** of the firm, on matters relating to the affairs of the firm, operates as a notice to the firm except in the case of a fraud on the firm committed by or with the connivance of that partner.
2. Thus, the **notice to one is equivalent to the notice to the rest** of the partners of the firm, just as a notice to an agent is notice to his principal.
3. This **notice must be actual and not constructive**. It must be received by a working partner and not by a sleeping partner. It must further relate to the firm's business. Only then it would constitute a notice to the firm.

### Liability to Third Parties [Sec 25-27]

#### Contractual liability

1. Every partner is liable jointly with other partners also severally for the acts of the firm done while he is a partner.
2. The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm.
3. Again in order to bring a case under Section 25, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.



**Liability for tort or wrongful act**

The firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting:

- (a) in the ordinary course of the business of the firm
- (b) with the authority of the partners.

1. If the act in question can be regarded as authorised and as falling within either of the categories mentioned in Section 26, the fact that the method employed by the partner in doing it was unauthorised or wrongful would not affect the question.
2. Furthermore, all the partners in a firm are liable to a third party for loss or injury caused to him by the negligent act of a partner acting in the ordinary course of the business. For example, one of the two partners in coal mine who acted as a manager was guilty of personal negligence in omitting to have the shaft of the mine properly fenced. As a result thereof, an injury was caused to a workman. The other partner was held responsible for the same.

**Liability for misappropriation by a partner**

Section 27 provides that

- (a) when a partner, acting within his apparent authority, receives money or other property from a third person and misapplies it or
- (b) where a firm, in the course of its business, received money or property from a third person and the same is misapplied by a partner, while it is in the custody of the firm, is liable to make good the loss.

**Right of Transferee of a Partner's Share [Sec 29]**

The rights of such a transferee who receives partner's share 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.
  - (d) 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.

**Legal Consequence of Partners Coming in and Going Out****Introduction of new partner (Section 31)**

1. no new partners can be introduced into a firm without the consent of all the existing partners.
2. The liabilities of the new partner ordinarily commence from the date when he is admitted as a partner.
3. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm,



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- and creditors may agree to accept the new firm as their debtor and discharge the old partners.
4. The creditor's consent is necessary in every case to make the transaction operative.
  5. Novation is the technical term in a contract for substituted liability, of course, not confined only to case of partnership.
  6. But a mere agreement amongst partners cannot operate as Novation. Thus an agreement between the partners and the incoming partner that he shall be liable for existing debts will not *ipso facto* give creditors of the firm any right against him.

**Retirement of a partner (Section 32)**

A partner may retire:

- a. with the consent of all the other partners;
- b. by virtue of an express agreement between the partners; or
- c. in the case of a partnership at will, by giving notice in writing to all other partners of his intention to retire.

Such a partner, however, continues to be liable to the third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by other partners. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner [Sub-Sections (3) and (4)].



**Right of outgoing partners**

1. An outgoing partner may **carry on business competing** with that of the firm and he may advertise such business, but subject to contract to the contrary, he cannot use the name of the firm [Section 36(1)].
2. Although this provision has imposed some restrictions on an outgoing partner, **it effectively permits him to carry on a business** competing with that of the firm.
3. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within specified local limits.
4. Such an **agreement will not be in restraint of trade** if the restraint is reasonable [Section 36(2)]. A similar rule applies to such an agreement of sale of the firm's goodwill [Section 53(3)].
5. On the retirement of a partner, he has the **right to receive his share of the property** of the firm, including goodwill.
6. An outgoing partner, where the continuing partners carry on business of the firm with the property of the firm without any final settlement of accounts with him, is entitled to claim from the firm such share of the profits made by the firm, since he ceased to a partner, as attributable to the use of his share of the property of the firm. In the alternative, he can claim interest at the rate of 6% per annum on the amount of his share in firm's property (Section 37).
7. However, if by a contract between the partners, an option has been given to the surviving or continuing partners to purchase the interest of the outgoing partner and the option is duly exercised, the outgoing partner or his estate will not be entitled to any further share of the profits. (Section 37).





**Liabilities of an outgoing partner**

1. As we have already stated earlier, a retiring partner continues to be **liable to third party for acts of the firm after his retirement until public notice** of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner [Section 32 (3) and (4)].
2. As regards the liability for acts of the firm done before his retirement, the retiring partner remains liable for the same, unless there is an agreement made by him with the third party concerned and the partners of the reconstituted firm. Such an agreement may be implied by a course of dealings between the third party and the reconstituted firm after he had knowledge of the retirement [Section 32 (2)].



**Expulsion of a partner (Section 33)**

A partner may not be **expelled from a firm by a majority** of partners except in exercise, in good faith, of powers conferred by contract between the partners.

It is, thus, essential that: (i) the power of expulsion must have existed in a contract between the partners; (ii) the power has been exercised by a majority of the partners; and (iii) it has been **exercised in good faith**. If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

The test of good faith as required under Section 33 (1) includes three things :

- (a) that the expulsion must be **in the interest of the partnership**.
- (b) that the **partner to be expelled is served with a notice**.
- (c) that he is given an **opportunity of being heard**.



**Insolvency of a partner (Section 34)**

1. When a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date of the order of adjudication whether or not the firm is thereby dissolved.
2. His estate (which thereupon vests in the official assignee) ceases to be liable for any act of the firm done after the date of the order, and the firm also is not liable for any act of such a partner after such date (whether or not under a contract between the partners the firm is dissolved by such adjudication).
3. You must also note that ordinarily but not invariably, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.





3.16

**Death of a partner (Section 35)**

1. Where under a contract a firm is not dissolved by the death of a partner, the estate of the deceased partner is not liable for acts of the firm after his death.
2. Ordinarily, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners.
3. In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.



**Revocation of continuing guarantee by change in the firm (Section 38)**

Section 38 of the Indian Partnership Act provides that a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. You should note that the above rule is subject to an agreement to the contrary. The agreement, if any, to the contrary required to displace the effect of Section 38, must be clear.



**REGISTRATION AND DISSOLUTION OF FIRM**

**Mode of Affecting Registration [Sec 58]**

When the partners decide to get the firm registered, as per the provisions of Section 58 of the Partnership Act, they have to file the statement in the prescribed form. The statement must be accompanied by the prescribed fee stating:

- (i) the firm's name,
- (ii) the principal place of business,
- (iii) the names of its other places of business,
- (iv) the date of joining of each partner,
- (v) the names in full and the permanent addresses of the partners, and
- (vi) the duration of the firm.

The aforesaid statement is to be signed by all the partners or by their agents specially authorised in this behalf. Each partner so signing it shall also verify it in the manner prescribed.

Subsequent alterations as alterations in the name, place, constitution, etc., of the firm that may occur during its continuance should also be registered.

**When a Registration is Complete?**

- ✓ When the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement.
- ✓ Then he shall issue a certificate of Registration.
- ✓ However, registration is deemed to be complete as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particular of the partnership is delivered to the Registrar.
- ✓ The recording of an entry in the register of firms is a routine duty of Registrar.

### Consequence of Non – Registration

Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration. But there are some disabilities as follows:

- (i) The **firm or any other person on its behalf cannot bring an action against the third party** for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
- (ii) If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set off, if the suit be valued for more than Rs. 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realisation of his share in the firm's property where the firm is dissolved.

#### Important FAQ's:

Qu. A & Co. is registered as a partnership firm in 1970 with A, B and C as partners. In 1971, A dies. In 1972, B and C sue X in the name and on behalf of A & Co., without fresh registration. Now the first question for our consideration is whether the suit is maintainable.

Ans:

### Dissolution of Firm [Sec 39-47]

- ✓ The 'Dissolution' of firm means the **discontinuation of the jural relation** existing between all the partners of the firm.
- ✓ But when **only one of the partners retires** or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and others is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm.
- ✓ The particular partner goes out, but the **remaining partners carry on the business** of the firm.
- ✓ In the case of **dissolution of the firm**, on the other hand, the **whole firm is dissolved**. The partnership terminates as between each and every partner of the firm.

### Reasons for Dissolution of Firm

As a result of any agreement between all the partners (i.e., dissolution by agreement).

**Example:**



By the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution)

**Example:**



By the business of the firm becoming unlawful (i.e., compulsory dissolution).

**Example:**



Subject to agreement between the parties, on the happening of certain contingencies, such as:

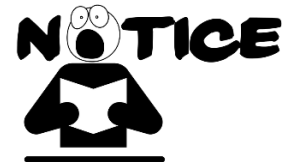
- (i) efflux of time;
- (ii) completion of the venture for which it was entered into;
- (iii) death of a partner;
- (iv) insolvency of a partner.

In case of death, it is to be noted that a contrary agreement may be made by the partners only if their number exceeds two. If there are only two partners the only result of either's death will necessarily be the dissolution of the firm.



By a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice.

**Example:**



By intervention of court in case of:

- (i) a partner becoming of unsound mind;
- (ii) permanent incapacity of a partner to perform his duties as such;
- (iii) misconduct of a partner affecting the business;
- (iv) wilful or persistent breaches of agreement by a partner;
- (v) transfer or sale of the whole interest of a partner;
- (vi) improbability of the business being carried on save at a loss;
- (vii) the Court being satisfied on other equitable grounds that the firm should be dissolved.



### Consequence of Dissolution

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#### Continuing liability until public notice

In spite of dissolution of the firm, partners continue to be liable for any act done by any of them, which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution.

To this rule, there are some exceptions. Even where notice of dissolution has not been given, there will be no liability for subsequent acts of other partners in the case of:

- (a) the estate of a deceased partner
- (b) an insolvent partner, or
- (c) a dormant partner, i.e., a partner, who was not known as a partner to the person dealing with the firm.

**Example:**

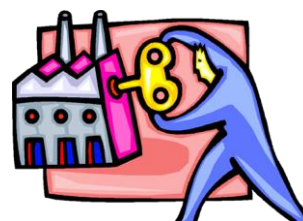


#### Rights to enforce winding up

On a partnership being dissolved, any partner or his representative shall have right, against the others

- (i) to have property of the firm applied in payment of the debts of the firm, and
- (ii) to have the surplus distributed amongst the partners or their representatives according to their respective rights.

**Example:**



#### Extent of continuing authority of the partners after dissolution

The authority of a partner to bind the firm and other mutual rights and obligations continue:

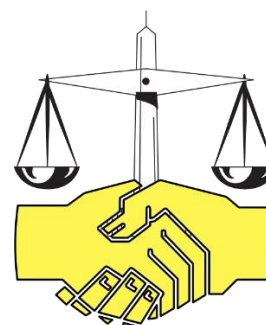
- (i) so far as may be necessary to wind up the firm,
- (ii) to complete the unfinished transactions pending at the date of dissolution and no other.



#### Settlement of partnership accounts:

In settling the accounts of a firm after dissolution, the following rules, laid down by Section 48 of the Indian Partnership Act, subject to an agreement by the partners, must be observed.

1. Losses including deficiencies of capital are to be paid first out of profits then out of capital and lastly by the partners individually in the proportions in which they were entitled to share profits. For example, X and Y were partners sharing profits and losses equally and X died. On taking partnership accounts, it transpired that he contributed Rs. 6,600 to the capital of the firm and Y only Rs. 400. The assets amounted to Rs. 2,000. The deficiency (Rs. 6,600 + Rs. 400 – Rs. 2,000 i.e. Rs. 5,000) would have to be shared equally by Y and X's estate.
2. The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order :
  - (a) in paying the debts of the third parties;



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- (b) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
- (c) in paying to each partner rateably what is due to him on account of capital and;
- (d) in distributing the residue, if any, among partners in the proportions in which they were entitled to share profits.

**Personal profits earned after dissolution (Section 50)**

Where a firm is dissolved by the death of a partner and the surviving partners or the surviving partners along with the representatives of the deceased partner carry on business of the firm, any personal profits by them, before the firm is fully wound up, must be accounted for by them to other partners.  
Thus a lease expiring on the death of a partner, which is renewed by the surviving partners, before final winding up, belongs to the partnership.



**Goodwill on dissolution (Section 55)**



What the purchaser of goodwill acquires is:

- (i) the right to carry on the same business under the old name and
- (ii) to represent himself to the customers of the old firm as the successor in the business of the old firm.

The partners selling the goodwill of a firm can:

- (i) carry on a similar business;
- (ii) also compete with the business sold by them to purchaser and
- (iii) advertise their business in such manner as they deem fit, but, subject to an agreement to the contrary, they cannot use the firm name, represent themselves as carrying on the old business, and solicit the customers of the old firm.

**Mode of Giving Public Notice (Sec 72)**



In every case where the public notice of any matter in respect of partnership firm is required to be given under this Act, it must be given by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates, has its place or principal place of business.  
In the case of registered firms, apart from the aforesaid notification, a notice is also required to be served on the Registrar of Firms under Section 63 where the matters relate to



- (a) the retirement or expulsion of a partner, or
- (b) dissolution of the firm, or
- (c) the election, on attaining majority, to be or not to be a partner, by a person who as a minor, was admitted to the benefits of partnership.

# Chapter 2: The Sale of Goods Act, 1930

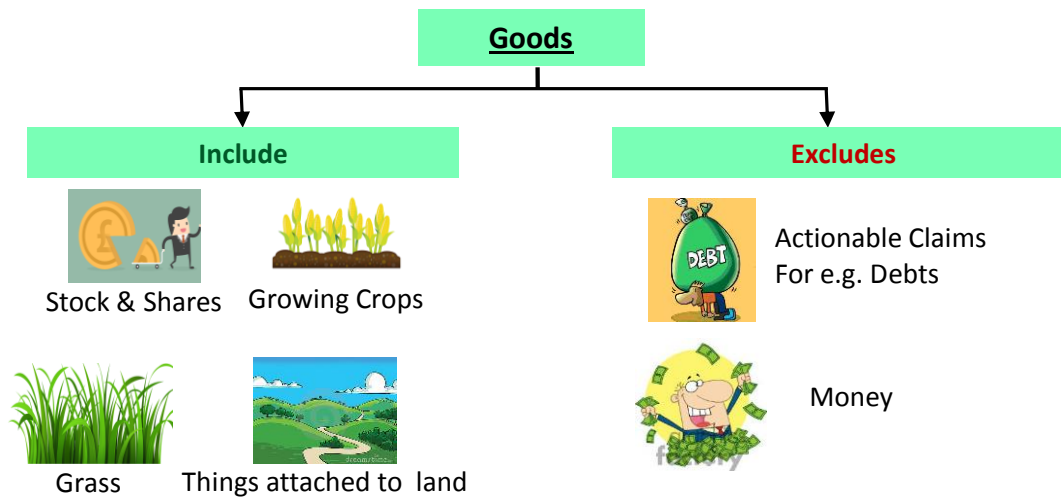
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## FORMATION OF THE CONTRACT OF SALE

### Definition (Sec 2)

<b>Buyer [2(1)]</b>		'Buyer' means a person who buys or agrees to buy goods. [Not only the person who buys but also the one who agrees to buy is a buyer.]
<b>Seller [2(13)]</b>		'seller' means a person who sells or agrees to sell goods. [not only a person who sells but also a person who agrees to sell.]



<b>Goods [2(7)]</b>	<ul style="list-style-type: none"> <li>✓ "Goods" <b>means</b> every kind of movable property other than actionable claims and money; and</li> <li>✓ <b>includes</b> stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.</li> </ul> <p>'Actionable claims' are claims, which can be enforced only by an action or suit, e.g., debt. A debt is not a movable property or goods.</p>
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<b>Existing Goods [6]</b>	Existing goods are such goods as are in existence at the time of the contract of sale, i.e., those owned or possessed by the seller. <b>Example:</b>
	
<b>Future Goods [2(6)]</b>	Future goods means goods to be manufactured or produced or acquired by the seller after making the contract of sale. <b>Example:</b>
	

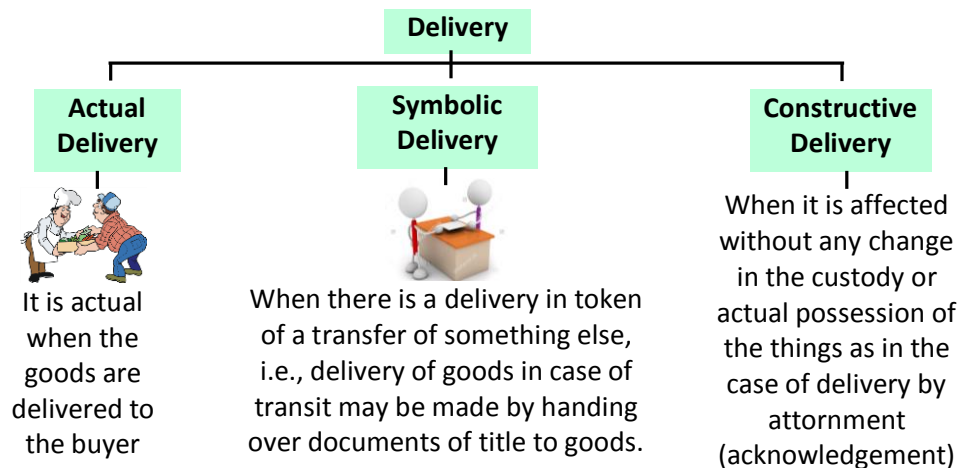


2.2

<p><b>Specific Goods</b></p> 	<p><b>means</b> goods identified and agreed upon at the time the contract of a sale has been made.</p> <ul style="list-style-type: none"> <li>✓ Specific goods may be distinguished from 'generic' or unascertained' goods defined only by description and not identified and agreed upon.</li> <li>✓ Ascertained goods have been held to mean goods identified in accordance with the agreement after the contract of sale has been made.</li> <li>✓ For e.g. Medicine as per the need</li> </ul>
<p><b>Goods in Deliverable State</b></p> 	<p>Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under contract, be bound to take delivery of them.</p> <p><b>Example:</b></p>

### Delivery – Forms & Derivatives



Delivery means voluntary transfer of possession by one person to another [2(2)]. As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorised to hold them on his behalf. Delivery may be of three kinds, which may be enumerated as follows:




### Document of Title of Goods

- ✓ Examples of such documents are bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, warrant, an order of delivery of goods.
- ✓ The list is only illustrative and not exhaustive. Any other document which has the above characteristics also will fall under the same category.
- ✓ Though a bill of lading is a document of title, a mate's receipt is not; it is regarded at law as merely an acknowledgement for the receipt of goods.
- ✓ A document amounts to a document of title only where it shows an unconditional undertaking to deliver the goods to the holder of the document.

**Document of title to goods** includes bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented by it.

Basis	Document of Title	Document Showing Title
Meaning		
Example		

**Mercantile Agents [Sec 2(9)]**


	It means an agent having in the customary course of business as such agent an authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of the goods. Examples of such kind of agents are auctioneers, factors, brokers, etc.
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**Property [Sec 2(11)]**

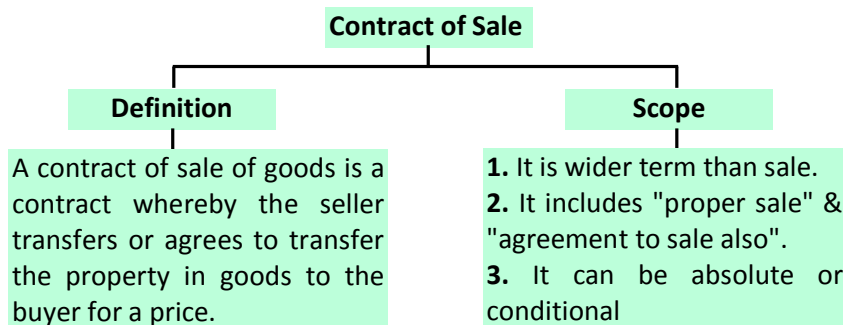
It means the general property (right of owner-ship-in goods) and not merely a special property. Note that the 'general property' in goods is to be distinguished from a 'special property'. It is quite possible that the general property in a thing may be in one person and a special property in the same thing may be in another e.g., when an article is pledged. The general property in a thing may be transferred, subject to the special property continuing to remain with another person i.e., the pledgee who has a right to retain the goods pledged till payment of the stipulated dues.

General Property	Special Property
The absolute ownership usually of personal <b>property</b> with the right of complete dominion over it including the incidental rights of possession, of use and enjoyment, and of disposition or alienation	A <b>property</b> right or qualified interest in <b>property</b> (such as the interest of a bailee, pledgee, lawful possessor, a conditional vendee prior to full payment, or a lienholder) subordinate to the absolute, unconditional or general <b>property</b> or ownership.

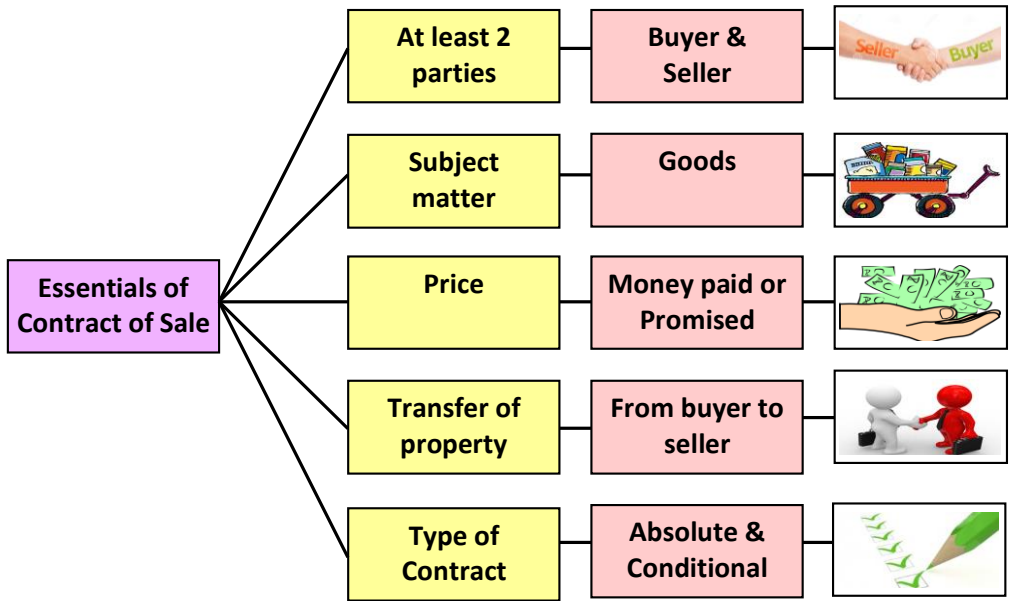
**Insolvent [Sec 2(8)]**

	A person is said to be insolvent when he ceased 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.
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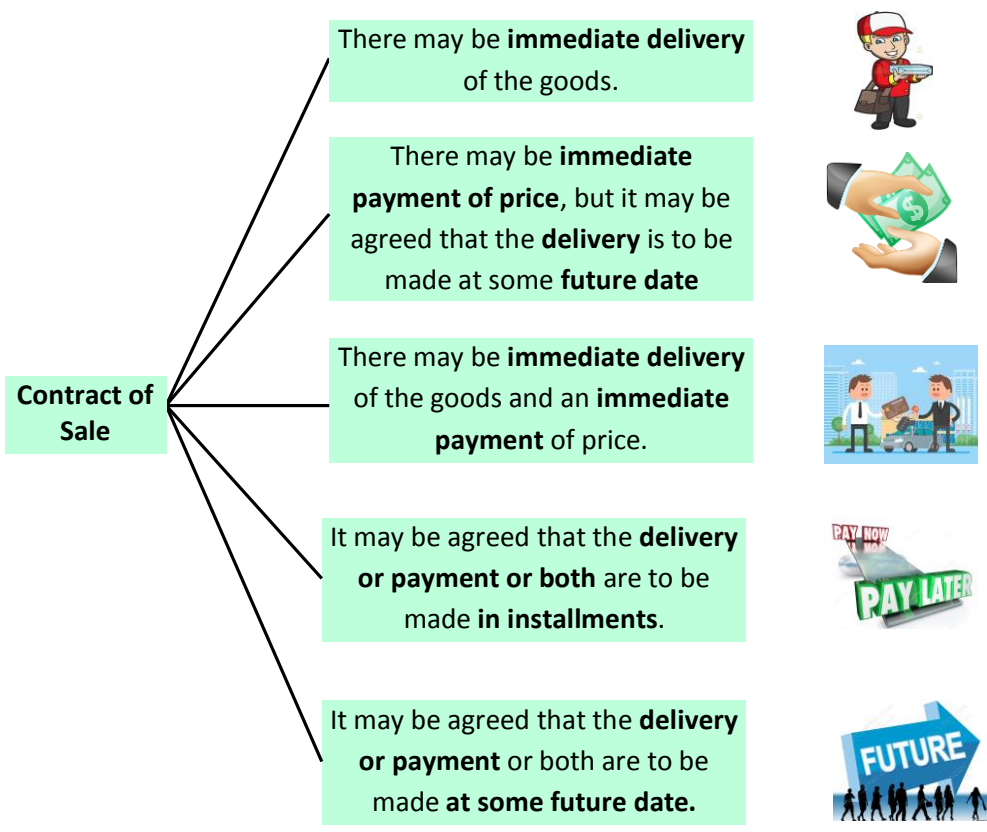
**Contract of Sale**



**Essentials of Contract of sale**



**Formalities of Contract of Sale**



**Sale and Agreement to Sale**

Basis	Sale	Agreement to Sale
Definition	Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale.	Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

<b>Passing of Risk</b>	The property in the goods passes to the buyer and along therewith the risk.	Since property in the goods does not pass to the buyer, the risk also does not pass to him.
<b>Executed / Executory</b>	It is an executed contract. i.e. contract for which consideration has been paid.	It is an executory contract, i.e. contract for which consideration is to be paid at a future date.
<b>Liability in case of Loss</b>	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
<b>Remedy in case of Breach by Buyer</b>	The seller can sue the buyer for the price of the goods because of the passage of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
<b>Remedy in case of breach by Seller</b>	Breach on the part of the seller gives the buyer double remedy; a suit for damages against the seller and a proprietary remedy of recovering the goods from third parties who bought them.	The seller, being still the owner of the goods, may dispose of them as he likes, and the buyer's remedy would be to file a suit for damages only.

### Sale & Hire Purchase

Basis	Sale	Hire Purchase
<b>Definition</b>	Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale.	The contract of transfer of goods from one person to another for payment in instalments, which together if added resembles the sale price of goods, and on payment of last instalment the ownership is transferred.
<b>Transfer of Ownership</b>	Property in the goods is transferred to the buyer immediately at the time of contract.	The goods pass to the hirer upon payment of the last instalment.
<b>Position of Buyer / Hirer</b>	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of a bailee till he pays the last instalment.
<b>Termination of Contract</b>	The buyer cannot terminate the contract and is bound to pay the price of the goods.	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.
<b>Risk of Seller</b>	The seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay an instalment the owner has right to take back the goods.
<b>Passing of Title</b>	The buyer can pass a good title to a bonafide purchaser from him.	The hirer cannot pass any title even to a bona fide purchaser.
<b>Levy of Tax</b>	Tax is levied at the time of the contract.	Tax is not leviable until it eventually ripens into a sale.

### Sale and Bailment



Basis	Sale	Bailment
<b>Definition / Meaning</b>	Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale.	A 'bailment' is the delivery of goods for some specific purpose under a contract on the condition that the same goods are to be returned to the bailor or are to be disposed of according to the directions of the bailor.

<b>Transfer of Property</b>	The property in goods is transferred from the seller to the buyer.	There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage, etc.
<b>Return of Goods</b>	Generally the return of goods in contract of sale is not possible.	The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.
<b>Consideration</b>	The consideration is the price in terms of money.	The consideration may be gratuitous or non-gratuitous.


### Subject Matter of Contract of Sale [Sec 6]

- (1) The subject matter of contract **must always be goods**. The goods may be **existing or future goods**.
- (2) Like an ordinary contract, a Contract of Sale of Goods can also be made with regard to the goods, the acquisition of which by seller depends upon a contingency, which may or may not happen. Thus, a Contract for Sale of certain cloth to be manufactured by a certain mill is a valid contract. Such contracts are called Contingent Contracts.
- (3) When the seller purports by his contract of sale to effect a sale of future goods, the contract will operate only as an agreement to sell the goods and not as sale.

### Destruction of Subject Matter of Contract

	<p><b><u>Goods not existing at the time of contract [Sec 7]</u></b></p> <ul style="list-style-type: none"> <li>✓ If at the time a contract of sale is entered into,</li> <li>✓ the subject-matter of a contract being specific goods,</li> <li>✓ which without the knowledge of the seller have been destroyed or so damaged as not to answer to the description in the contract,</li> <li>✓ and then the contract is void ab initio.</li> <li>✓ The Section is founded on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.</li> </ul>
	<p><b><u>Goods perishing after the contract is made [Sec 8]</u></b></p> <ul style="list-style-type: none"> <li>✓ Where there is an agreement to sell specific goods and the goods,</li> <li>✓ subsequently without any fault of the seller or the buyer perish or suffer such damages</li> <li>✓ as not to answer to the description in the agreement before the risk passes to the buyer,</li> <li>✓ the agreement becomes void (Section 8).</li> </ul> <p>It may be noted that this would apply only if the risk had not passed to the buyer. Generally speaking risk passes with property i.e., when the property in the goods sold has passed to the Buyer, there, the Buyer bears the risk of subsequent destruction of, or damage to the goods.</p>

### Ascertainment of Price [Sec 9 & 10]

	<p>'Price' means the monetary consideration for sale of goods [Section 2 (10)]. By virtue of Section 9, the price may be</p> <ol style="list-style-type: none"> <li>(1) fixed by the contract, or</li> <li>(2) agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or</li> <li>(3) determined by the course of dealings between the parties.</li> </ol>
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When it cannot be fixed in any of the above ways, the buyer is bound to pay to the seller a reasonable price. What is a reasonable price is a question of fact in each case (Section 9).

Section 10 provides for the determination of **price by a third party**.

- ✓ Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
- ✓ In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.
- ✓ However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

### Stipulation as to Time

- ✓ As regard time for the payment of price, unless a different intention appears from the terms of contract, stipulation as regard this, is not deemed to be of the essence of a contract of sale.
- ✓ But delivery of goods must be made without delay. Whether or not such a stipulation is of the essence of a contract depends on the terms agreed upon.
- ✓ Price for goods may be fixed by the contract or may be agreed to be fixed later on in a specific manner. Stipulations as to time of delivery are usually the essence of the contract.

## CONDITION & WARRANTY

### Meaning & Difference

Basis	Condition	Warranty
<b>Meaning</b>	A condition is a stipulation essential to the main purpose of the contract, the breach of which gives right to repudiate the contract and to claim damages.	Warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
<b>Rights of Aggrieved party</b>	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
<b>Breach of Condition</b>	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.





### When Condition is to be considered as Warranty?



Provision	Example
Where the buyer altogether waives the performance of the condition there, a party may for his own benefit, waive a stipulation.	
Where the buyer elects to treat the breach of the condition thus, as one of a warranty. That is to say, he may only claim damages instead of repudiating the contract.	
Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72	
Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.	







**Express and Implied Conditions and Warranties**

- ✓ 'Conditions' and 'Warranties' may be *either express or implied*.
- ✓ They are "**express**" when the *terms of the contract expressly state them*.
- ✓ They are implied when, not being expressly provided for.
- ✓ **Express conditions** are those, which are *agreed upon between the parties* at the time of contract and are expressly provided in the contract.
- ✓ The **implied conditions**, on the other hand, are those, which are *presumed by law to be present* in the contract.
- ✓ It should be noted that an **implied condition may be negated or waived** by an express agreement.
- ✓ Following conditions are implied in a Contract of Sale of Goods unless the circumstances of the contract show a different intention.


	<p style="text-align: center;"><b><u>Condition as to title [Section 14(a)]</u></b></p> <p>In every contract of sale, unless there is an agreement to the contrary, the first implied condition on the part of the seller is that</p> <ul style="list-style-type: none"> <li>(a) in case of a sale, he has a right to sell the goods, and</li> <li>(b) in the case of an agreement to sell, he will have right to sell the goods at the time when the property is to pass.</li> </ul> <p>In simple words, the condition implied is that the <b>seller has the right to sell the goods</b> at the time when the property is to pass.</p> <p>If the seller's <b>title is defective</b>, the buyer must return the goods to the true owner and recover the price from the seller.</p>
	<p style="text-align: center;"><b><u>Sale by description [Section 15]</u></b></p> <ul style="list-style-type: none"> <li>✓ Where there is a Contract of Sale of Goods by description, there is an implied condition that the <b>goods correspond with the description</b>.</li> <li>✓ This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans."</li> <li>✓ The <b>buyer is not bound to accept and pay</b> for the goods which are not in accordance with the description of goods.</li> </ul>
	<p style="text-align: center;"><b><u>Sale by sample [Section 17]</u></b></p> <p>In a contract of sale by sample, there is an implied condition that-</p> <ul style="list-style-type: none"> <li>(a) the bulk shall correspond with the sample in quality;</li> <li>(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and</li> <li>(c) the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. But if the defects are latent, then the buyer can avoid the contract.</li> </ul>
	<p style="text-align: center;"><b><u>Sale by sample as well as by description [Section 15]</u></b></p> <p>Where the goods are sold by sample as well as by description the implied condition is that the bulk of the goods supplied must correspond both with the sample and the description. In case the goods correspond with the sample but do not tally with description or vice versa, the buyer can repudiate the contract.</p>

	<p align="center"><b><u>Condition as to quality or fitness [Section 16]</u></b></p> <ul style="list-style-type: none"> <li>✓ Ordinarily, there is no implied condition as to the quality or fitness of the goods sold for any particular purpose.</li> <li>✓ However, the condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgement of the seller to select the best goods and the seller has ordinarily been dealing in those goods.</li> <li>✓ Even this implied condition will not apply if the goods have been sold under a trademark or a patent name.</li> </ul>
	<p align="center"><b><u>Conditions as to wholesomeness.</u></b></p> <p>In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.</p>

**Implied Warranties**

<p align="center"><b><u>Warranty as to Undisturbed Possession</u></b></p> <p>An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.</p>	
<p align="center"><b><u>Warranty as to non-existence of encumbrances</u></b></p> <p>An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.</p>	
<p align="center"><b><u>Disclosure of dangerous nature of goods</u></b></p> <p>There is another implied warranty on the part of the seller that in case the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is breach of this warranty, the seller will be liable in damages.</p>	
<p align="center"><b><u>Warranty as to quality or fitness by usage of trade [Section 16(4)]</u></b></p> <p>An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.</p>	








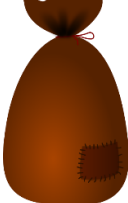
**Caveat Emptor**

	<ul style="list-style-type: none"> <li>✓ In case of sale of goods, the doctrine 'Caveat Emptor' means '<b>let the buyer beware</b>'.</li> <li>✓ When sellers display their goods in the open market, it is for the <b>buyers to make a proper selection</b> or choice of the goods.</li> <li>✓ If the goods turn <b>out to be defective</b> he cannot <b>hold the seller liable</b>.</li> <li>✓ The <b>seller is in no way responsible</b> for the bad selection of the buyer.</li> <li>✓ The seller is not bound to disclose the defects in the goods which he is selling.</li> </ul>
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2.10

- ✓ It is the duty of the **buyer to satisfy himself** before buying the goods that the goods will serve the purpose for which they are being bought.
- ✓ If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgement, the buyer cannot hold the seller responsible.

**Exception:**

Provision	Example
<ul style="list-style-type: none"> <li>✓ Where the buyer makes known to the seller the <b>particular purpose</b> for which the goods are required,</li> <li>✓ so as to show that he <b>relies on the seller's skill</b> or judgement and the goods are of a description which is in the course of seller's business to supply,</li> <li>✓ it is the <b>duty of the seller to supply such goods</b> as are reasonably fit for that purpose [Section 16(1)]</li> </ul>	
In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose. [Section 16(1)].	
Where the goods are sold by description there is an implied condition that the goods shall correspond with the description. [Section 15].	
<ul style="list-style-type: none"> <li>✓ Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality.</li> <li>✓ But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have been revealed by ordinary examination [Section 16(2)]</li> </ul>	
Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].	
Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description [Section 15].	
An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable.	
Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or 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. In such a case the buyer has a right to avoid the contract and claim damages.	

**TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS**

**Transfer of Ownership [Sec 18 – 24]**



**Passing of property implies passing of ownership.** If the property has passed to the buyer, the risk in the goods sold is that of buyer and not of seller, though the goods may still be in the seller's possession.

The primary rules relating to the passing of property in the sale of goods are:

- (1) **No property in the goods is transferred** to the buyer, unless and **until the goods are ascertained**.
- (2) Where there is a contract of sale of specific or ascertained goods, property passes to the buyer at the time when parties intend to pass it. For the purpose of ascertaining intention of the parties regard shall be had to the terms of contract, conduct of parties, and circumstances of the case. Where the intention of the parties cannot be ascertained, rules contained in Sections 20 to 24 shall apply.

### Important FAQ's:

#### 1. When the property for the specific goods passes to the buyer?

**Ans:**

- a. Where there is an unconditional contract for the sale of specific goods in a deliverable state, property in the goods passes to the buyer when the contract is made (Section 20).
- b. Deliverable state means such a state that the buyer would under the contract be bound to take delivery of the goods.
- c. If the goods are not in a deliverable state, property does not pass until such a thing is done to put the goods in a deliverable state. This 'something' may mean packing the goods, testing, polishing, filling in casks etc.
- d. It should be noted that the property shall not pass when the goods are made in deliverable state but shall pass only when the buyer has notice of it (Section 21).
- e. But where they are in deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing for the purpose of ascertaining the price, the property does not pass until such act or thing is done.
- f. When the seller has done his part the property passes even if the buyer has to do something for his own satisfaction. (Section 22).

#### 2. How do you transfer property in unascertained goods?

**Ans:**

Until goods are ascertained, there is merely an agreement to sell. The ascertainment of goods and their unconditional appropriation to the contract are the two preconditions for transfer of property from seller to buyer in case of unascertained goods. A seller is deemed to have unconditionally appropriated, where he delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer (Section 23).

#### 3. What do you mean by appropriation of goods?

**Ans:** Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

- (a) The goods should conform to the description and quality stated in the contract.
- (b) The goods must be in a deliverable state.
- (c) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- (d) 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.
- (e) The assents may be express or implied.
- (f) The assent may be given either before or after appropriation.

#### 4. When the property in goods sent on approval or "on sale or return business"?

**Ans:** When the goods are delivered to the buyer on approval or on sale or return or other similar terms the property passes to the buyer:

- (i) when he signifies his approval or acceptance to the seller,
- (ii) when he does any other act adopting the transaction, and
- (iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time (Section 24).

2.12

**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.

A buyer under a contract on the basis of ‘sale or return’ is deemed to have exercised his option when he does any act exercising domination over the goods showing an unequivocal intention to buy, e.g., if he pledges the goods with a third party. Failure or inability to return the goods to the seller does not necessarily imply selection to buy.

**Reservation of Right to Disposal**

- ✓ Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, **reserve the right to dispose of the goods, until certain conditions have been fulfilled.**
- ✓ In such a case in spite of the fact that the goods have already been delivered to the buyer or to a carrier or other bailee for the purpose of transmitting the same to the buyer, the **property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.**

**Example:**

If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the seller will be *prima facie* deemed to have reserved to the right of disposal. Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill. And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

**It should be noted that Section 25 deals with “conditional appropriation” as distinguished from ‘unconditional appropriation’ dealt with under Section 23(2).**

**Passing of Risk**







<b>Original Risk Rule</b>	The general rule is, “unless otherwise agreed, the goods remain at the seller’s risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer’s risk whether delivery has been made or not” (Section 26).
<b>Exception to Original Rule</b>	<ul style="list-style-type: none"> <li>a. It provides that where delivery of the goods has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. (Sec 26)</li> <li>b. Parties may by special agreement stipulate that ‘risk’ will pass sometime after or before the ‘property’ has passed.</li> <li>c. The duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally.</li> </ul>

**Transfer of Title**

- ✓ In general the **seller sells** only such **goods of which he is the absolute owner.**
- ✓ But sometimes a **person may sell goods of which he is not the owner**, then the question arises as to what is the position of the buyer who has bought the goods by paying price.
- ✓ The general rule regarding the transfer of title is that the **seller cannot transfer to the buyer of goods a better title than** he himself has.
- ✓ If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be the same as that of the seller.
- ✓ This rule is expressed in the Latin maxim “**Nemo dat quod non habet**” which means that no one can give what he has not got.



**Exceptions:** In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value.

<p style="text-align: center;"><b><u>Sale by a Mercantile Agent</u></b></p> <p>A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;</p> <p>(a) If he was in possession of the goods or documents with the consent of the owner;</p> <p>(b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and</p> <p>(c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Section 27).</p>	
<p style="text-align: center;"><b><u>Sale by one of the joint owners</u></b></p> <p>If one of the several joint owners of goods has the sole possession of them with the permission of the others, the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell (Section 28).</p>	
<p style="text-align: center;"><b><u>Sale by a person in possession under a voidable contract</u></b></p> <p>A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).</p>	
<p style="text-align: center;"><b><u>Sale by one who has already sold the goods but continues in possession thereof</u></b></p> <p>If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid [(Section 30(1))].</p>	
<p style="text-align: center;"><b><u>Sale by buyer obtaining possession before the property in the goods has vested in him</u></b></p> <p>Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [(Section 30(2))].</p>	
<p style="text-align: center;"><b><u>Effect of Estoppel</u></b></p> <p>Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.</p>	



2.14

**Sale by an 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 [Section 54(3)].



**Sale under the provisions of other Acts**

- (i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
- (ii) Purchase of goods from a finder of goods will get a valid title under certain circumstances.



**Rules Regarding Delivery of Goods (Sec 33-39)**

**Effect of Part Delivery**

A delivery of part of goods, taking place in the course of the delivery of the whole, has the same effect for the purpose of passing the property in such goods as delivery of the whole. But such part delivery, with the intention of severing it from the whole will not operate as a delivery of the remainder, it will be construed as part delivery only (Section 34).

**Example:**

**Buyer to Apply for Delivery**

The seller of the goods is not obliged to deliver them until the buyer has applied for delivery, unless otherwise agreed (Section 35).

**Example:**

**Place of delivery**

If there is no contract to the contrary, goods must be delivered at the place where they were at the time of sale, and the goods agreed to be sold are required to be delivered at the spot at which they were lying at the time the agreement to sell entered into or if not then in existence, at the place where they would be manufactured or produced [Section 36(1)].

**Example:**

**Time of delivery**

When the time of sending the goods has not been fixed by the parties, the seller must send them within a reasonable time [Section 36(2)].

**Example:**

**Time for tender of delivery**

Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is reasonable hour is a question of fact [Section 36(4)].

**Example:**


**Expenses for delivery**

The expenses of and incidental to putting the goods into a deliverable state must be borne by the seller, in the absence of a contract to the contrary [Section 36(5)].

**Example:**

<p style="text-align: center;"><b><u>Delivery of wrong quantity</u></b></p> <ol style="list-style-type: none"> <li>In case of tender of <b>lesser quantity of goods, the buyer may either accept the same and pay for it</b> at the contract rate or reject it [Section 37(1)].</li> <li>In case of <b>excess delivery the buyer may accept or reject the delivery</b>, if he accepts the whole of the goods, he shall pay for them at the contract rate [Section 37(2)].</li> <li>In case the seller makes a delivery of the <b>goods contracted mixed with goods of a different description, the buyer may accept the relevant goods</b> and reject the rest or reject the whole [Section 37(3)].</li> <li>Mixing of goods with <b>inferior quality does not amount to a mixing</b> of goods of different description.</li> </ol>	<b><u>Example:</u></b>
<p style="text-align: center;"><b><u>Instalment deliveries</u></b></p> <p>Unless otherwise agreed, the buyer is not bound to accept delivery in instalments. The rights and liabilities in cases of delivery by instalments and payments there on may be determined by the parties of contract (Section 38).</p>	<b><u>Example:</u></b>
<p style="text-align: center;"><b><u>Delivery of carrier</u></b></p> <p>Subject to the terms of contract, the delivery of the goods to the carrier for transmission to the buyer, is prima facie deemed to be delivery to the buyer [Section 39(1)].</p>	<b><u>Example:</u></b>
<p style="text-align: center;"><b><u>Deterioration during transit</u></b></p> <p>Where goods are delivered at a distant place, the liability for deterioration necessarily incidental to the course of transit will fall on the buyer, though the seller agrees to deliver at his own risk (Section 40).</p>	<b><u>Example:</u></b>
<p style="text-align: center;"><b><u>Buyer's right to examine the goods</u></b></p> <p>Where goods are delivered to the buyer, who has not previously examined them, he is entitled to a reasonable opportunity of examining them in order to ascertain whether they are in conformity with the contract. Unless otherwise agreed, the seller is bound, on request, to afford the buyer a reasonable opportunity of examining the goods (Section 41).</p>	<b><u>Example:</u></b>

### Acceptance of Delivery of Goods

	<p>Acceptance is deemed to take place when the buyer:</p> <ol style="list-style-type: none"> <li>intimates to the seller that he had accepted the goods; or</li> <li>does any act to the goods, which is inconsistent with the ownership of the seller; or</li> <li>retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them (Section 42).</li> </ol> <ul style="list-style-type: none"> <li>✓ Ordinarily, a seller cannot compel the buyer to return the rejected goods; but the seller is entitled to a notice of the rejection.</li> <li>✓ Where the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not take delivery within a reasonable time, he is liable to the seller for any loss occasioned by the neglect or refusal to take delivery, and also reasonable charge for the care and custody of the goods (Sections 43 and 44).</li> </ul>
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2.16

## UNPAID SELLER

### Definition And Meaning

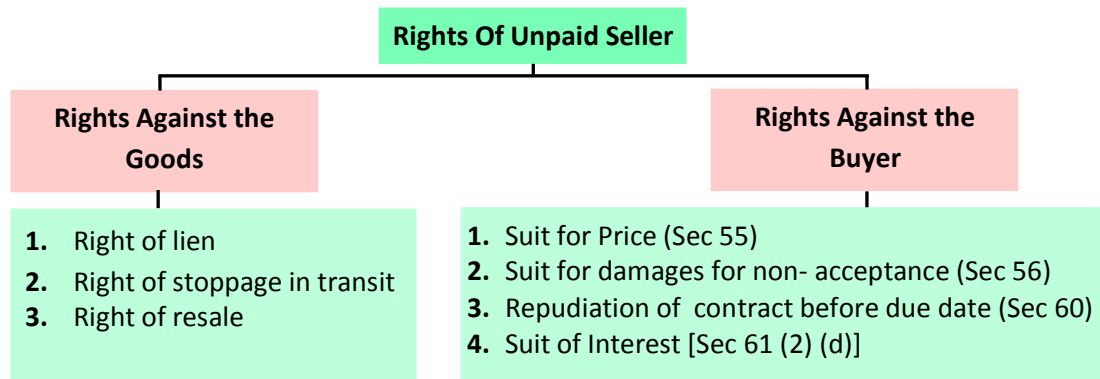


According to Section 45(a) of the Sale of Goods Act, 1930, the seller of goods is deemed to be an 'Unpaid Seller' when-

- (a) the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
- (b) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

Any person who is in a position of a seller, is also a seller, and may exercise the rights conferred upon an 'unpaid seller' in above said circumstances. For instance, an agent of the seller, to whom bill of lading has been endorsed, is in the position of seller and may exercise rights of 'unpaid seller'.

### Rights of Unpaid Seller



### Right Against the Goods



#### Right of Lien:

He has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. The right of lien can be exercised by him in the following cases only:

- (a) where goods have been sold **without any stipulation of credit**;
- (b) where goods have been sold on credit but the **term of credit has expired**;
- or
- (c) where the **buyer becomes insolvent**.

### Right of stoppage in Transit



When the unpaid seller has parted with the goods to a carrier and the **buyer has become insolvent**, he can exercise this **right of asking the carrier to return the goods** back, or not to deliver the goods to the buyer.

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

- (a) The **seller must be unpaid**.
- (b) He must have **parted with the possession** of goods.
- (c) The **goods are in transit**.
- (d) The **buyer has become insolvent**.
- (e) The right is **subject to provisions** of the Act.

**Right of resale**



The unpaid seller can exercise the right to re-sell the goods under the following conditions:

- (i) When the **goods are of a perishable nature**. In such a case the buyer **need not be informed** of the intention of re-sale.
- (ii) When he gives notice to the buyer of his intention to re-sell the goods and the buyer does not within a reasonable time pay or tender the price.

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**Rights of unpaid seller against the buyer**

An unpaid seller can enforce certain rights against the goods as well as against the buyer personally. The rights of the seller against the buyer personally are called **rights in personam** and are in addition to his rights against the goods. The right in personam are as follows:

**Suit for Price (Sec 55):**

- (a) Where property has passed to the buyer and he wrongfully neglects or refuses to pay for the goods, the **seller may sue him for the price of the goods** [Section 55(1)].
- (b) Where property has not passed under the contract of sale and the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].



**Suit for damages for non-acceptance (Section 56):**

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. As regards measure of damages, Section 73 of the Indian Contract Act, 1872, applies.



**Repudiation of contract before due date (Section 60):**

Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach of contract'.



**Suit for interest [Section 61(2)(d)]:**

Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.



**Difference between Right of Lien And Right of Stoppage in Transit**

Basis	Right of Lien	Right of Stoppage in Transit
<b>Possession</b>	The essence of a right of lien is to retain possession.	The right of stoppage in transit is right to regain possession.
<b>Difference in Possession</b>	Seller should be in possession of goods under lien.	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.
<b>Claiming Right</b>	Right of lien can be exercised even when the buyer is not insolvent.	Right of stoppage in transit cannot be claimed in cases other than insolvency.

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Starting & Ending	Right of stoppage in transit begins when the right of lien ends.	Thus the end of the right of lien is the starting point of the right of stoppage in transit.
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### Effect of Sub-Sale or Pledge by buyer [Sec 53]

The unpaid seller's right of lien or stoppage in transit is not affected by any further sale or other disposition of the goods by the buyer.

**For example,** An oil merchant A sold 100 tins of oil to B without appropriating any particular oil to the contract. B sold 60 tins out of it to C and gave delivery order addressed to A. C lodged the delivery order with A requesting him to "await" his orders. Meanwhile B became insolvent and thus A became the unpaid seller. A claiming his right of lien refused to make delivery to C. It was held that A was entitled to do so.

However, the unpaid seller's above right is subjected to the following two exceptions:

- (a) when the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer [Sub-Section (1)].
- (b) when a document of 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 (price).

### Rights of Parties in Case of Breach of Contract

#### Buyer's Right Against Seller In Case of Breach of Contract (Sec 57-59)

#### Suit for non-delivery

1. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the **buyer may sue the seller for damages** for non-delivery [Section 57].
2. Where there is an available market for the goods in question, prima facie the **measure of damages would be contract price minus market price** at the date of the breach.
3. If, however, there is no such market, the measure of damage would be the **estimated loss naturally resulting from the breach**.
4. Thus, if the goods contracted for are not obtainable, then the purchaser may purchase similar goods and may claim from the seller the difference in price.
5. If he does not purchase such similar goods but has during the contract period **settled contracts for the same kind of goods** with other persons, the rates at which those contracts were settled might afford a basis for ascertaining the damages.
6. Where, on breach of contract, the goods are irreplaceable in the market, the proper measure of damages is the profits which the buyer would have made if the contract had been carried out.

#### Suit for specific performance [Section 58]

Where property has passed to the buyer, he also can exercise another right, viz., a right to sue for specific performance and its limits regulated by the Specific Relief Act, 1877. In such cases the court may, in its discretion grant a decree ordering the seller to deliver those specific or ascertained goods which formed the subject-matter of the contract.

#### Suit for damages for Breach of warranty [Section 59]

Where there is a breach of warranty by the seller or where the buyer elects or is compelled to treat any breach of condition on the part of the seller as a breach of warranty, the buyer is entitled to reject the goods but the buyer may:

- (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
- (b) sue the seller for the breach of warranty.

The measure of damage for breach of warranty is the estimated loss or damage arising directly or naturally from the breach, which is prima facie the difference between the value of the goods at the time of the delivery and the value they would have had, if the goods had answered to the warranty.

### Suit for recovery of price

Under Section 61, the buyer has a right to recover the money paid to the seller where the consideration for payment of it has failed. For example, where the buyer is deprived to goods by their true owner, he may recover the price for breach of the condition as to title.

### Seller's right against the buyer in case of breach of contract (Sections 55 and 56)

#### Suit for the price

Where the property in the goods has passed to the buyer or he has wrongfully neglected or refused to pay for the goods according to the terms of the contract, the sellers may sue him for the price of goods. Further, where the price is payable under the contract on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price even if the property in the goods has not passed and the goods have not been appropriated to the contract (Section 55).

#### Damages for non-acceptance

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, then the seller may sue him for damages for non-acceptance (Section 56).

### Auction Sale



An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. An auctioneer is an agent governed by the Law of Agency. When he sells, he is only the agent of the seller. **He may, however, sell his own property as the principal and need not disclose the fact that he is so selling.**

Under Section 64 of the Sale of Goods Act, 1930, in the case of an auction:

- (a) Where goods are put for sale in lot, **each lot is prima facie deemed to be subject matter of a separate contract** of sale;
- (b) The sale is complete when the **auctioneer announces its completion by the fall of hammer** or in any other customary manner and until such announcement is made, any bidder may retract from his bid;
- (c) **Right to bid may be reserved expressly by or on behalf of the seller** and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction;
- (d) Where the sale is not notified to be subject to the right of the seller to bid, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any person representing him. Any sale contravening this rule may be treated as fraudulent by the buyer;
- (e) The **sale may be notified to be subject to a reserve or upset price**; and
- (f) If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.