

1. INDIAN CONTRACT ACT, 1872

INTRODUCTION TO MERCANTILE LAW

- **LAW** → Set of “Rules & Regulations” made by the state.
 - *Everyone should know law* because **Ignorance of law is no Excuse**. [Latin Maxim: ‘**Ignorantia juris non excusat**’].
 - ‘**ubi jus, ibi remedium**’ operates in any law: *where there is a right there is a remedy*.
- ❖ **SOURCES OF MERCANTILE LAW**
1. English Mercantile Law.
 2. Indian Statute Law (Various Acts passed by the Indian Legislature).
 3. Past Judicial Decisions (Used When the enacted Law is silent on any point).
 4. Customs & Usages.

LAW OF CONTRACT

- ❖ **PARTIES TO THE CONTRACT ARE MAKER OF LAW FOR THEMSELVES**
- Parties to the contract can **frame any rules they want** & law takes cognizance (recognizance) of their decision **if the rules made are NOT legally prohibited**.
 - *Contractual Rights & Duties* → Created by the **Parties to the Contract**.
 - “*Law of Contract*” → **Child of Commercial dealings**.
- ❖ **COMMENCEMENT & APPLICABILITY**
- Date of Enactment → **1st September, 1872**; ▪ **Whole India Except J&K**.
 - **2 Parts: (i) General Principles [Sec 1 - 75]; (ii) Special Contract [Sec 124 - 238]**.
 - **PC Note: Sec 76 - 123 were deleted & included in ‘SOGA’ in 1930**.
 - **It has “XI chapters”**.
- ❖ **Law of contract creates “jus in personam” & NOT “jus in rem”**.
- **Jus in Personam:** Right against a particular person. It is a personal right.
Ex: Mr. X owes Rs. 1 Lac to Mr. Y. In this case only Mr. Y can recover this amount from Mr. X. This is called Jus in Personam.
 - **Jus in Rem:** Right over a particular thing against the whole world. Nobody in the world can disturb him in his right.
Ex: K owns a flat in Chennai. He is entitled to quiet possession & enjoyment of his property. This is called Jus in Rem.
- ❖ **ICA does NOT have a retrospective effect.**

MEANING OF CONTRACT

- ❖ **Contract [Sec 2(h)]** → Agreement + Enforceability (by law).
- ❖ **Agreement [Sec 2(e)]** → **Agreement = Offer + Acceptance**.
 - Every Promise & Set of **Reciprocal promises** forming consideration for each other.
- ❖ **Offer (Proposal)[Sec 2(a)]** → When a person ‘**signifies**’ to another person his ‘**willingness**’ to do or **abstain from doing** anything, ‘**with a view to obtain consent**’ of that other person to such act/abstinence, he is said to make an offer (proposal).
- ❖ **Acceptance [Sec 2(b)]** → When the person to whom an offer is made **signifies his assent** to such offer, offer is said to be accepted.
 - Offer when accepted becomes a promise.
 - **Promise → Offer + Acceptance = Promise**.
- ❖ **Reciprocal Promise [Sec 2(f)]** → Promises which forms consideration for each other.
- ❖ **Enforceability** → Creation of Legal obligations so that aggrieved party can file a suit in the court of Law.

PC NOTE:

- ✓ **Law of Contract is Neither ‘Whole Law of Agreement’ nor ‘Whole Law of Obligations’**.
 - All Agreements are not contract. Only an Agreement enforceable by law is contract.
Ex: Social agreements are not contract because they are not enforceable in court.
 - All obligations are not Contract. Law of Contract deals with only legal obligations.
Ex: Obligation to maintain wife & children is a moral obligation & thus they are out of the scope of Contract Act.
- ✓ **Salmund** → ‘Contract is an agreement creating & defining obligations b/w parties’.
- ✓ ‘Agreement shall not be legally enforceable, but binding in honour only – **False**’.

ESSENTIAL ELEMENTS OF A VALID CONTRACT [SEC 10]

Proper Offer	Proper Acceptance	Intention to create LEGAL Relationship
Free Consent	Certainty of meaning	Lawful Consideration + Lawful Object
Possibility of Performance		Not an Illegal or Void Agreement
Competent Parties		Compliance of Legal formalities.

TYPES OF CONTRACT ACCORDING TO INDIAN LAW

A. On the Basis of FORMATION

- ❖ **Express Contract** → Contract made by **Words (Spoken/written)**.
- ❖ **Implied Contract** → Contract implied by law from the **Act/Conduct of parties or from the circumstances of the case**. [Ex: Acceptance is made by conduct]
- ❖ **Quasi Contract** → **This will be discussed later**.
- ❖ **Tacit Contract** → Tacit contract has to be **inferred from the conduct of parties**.
 - They are **sub-categorized** under **implied contract**.
 - **Ex: Obtaining cash from ATM, Sale by fall of hammer in auction sale.**
- ❖ **E - Contracts** → Contracts which are **entered via Internet**.
 - Offer & Acceptance do not happen in person but over the internet.

B. On the Basis of ENFORCEABILITY (VALIDITY)

Valid contract [Sec 2(h)] → Agreement which is **enforceable by law**.

- Can be enforced in court of law
- **Binding on the parties**

Void contract [Sec 2(j)] → Contract which **ceases to be enforceable becomes void**.

- No Legal effect & cannot be enforced.
- Originally, such contracts are **valid when** they are **entered**. It may **subsequently become void**. Void Contract & void agreement are different.

Voidable Contract [Sec 2(i)] → Agreement enforceable at **option of one party but not at option of other party**.

- Can be **Set aside or repudiated (cancelled)** by “**Aggrieved party**”.
- Till the contract is repudiated or set aside, it remains a valid contract.
- **Aggrieved party has the right to sue the other party**.

Unenforceable Contract → These contracts are actually Valid (**Good in substance**) but **cannot be enforced** due to technical defects.

- **Ex: Absence in written form, barred by limitation etc**].
- **Can be enforced if/when “technical defect is removed”**.
- Such contracts cannot be classified as void or voidable.

Ex: An arbitration agreement is required in writing. If it is not in writing (oral), then the contract of arbitration becomes unenforceable. If such oral agreement is written on paper, then it will become enforceable.

C. On the Basis of PERFORMANCE

- ❖ **Executed Contract** → [Wholly performed Contract] ▪ **Ex: Cash Sale**.
 - Contract in which **both parties** have **performed their respective obligation**.
- ❖ **Executory Contract** → [Partially/wholly unperformed Contract]
 - Contract is to be performed in future. ▪ **Ex: Pre-booking of Mobile**.
- ❖ **Unilateral Contract** → [Contracts with Executed Consideration]
 - One-sided Contract in which only **one party has to perform his obligation**; other party having already performed his obligation.
Ex: Mr. PC booked a ticket with Indigo from Pune to Nagpur on 16th June, date of travel being 16th July. Indigo has to perform its part of contract on 16th July.
- ❖ **Bilateral Contract** → [Contracts with Executory Consideration]
 - Two-sided contract in which both parties have to perform their obligations.
 - Obligations of **both parties** are **outstanding** at the time of formation of contract.
Ex: Mr. PC agrees to sell his bike to Mr. AC & promise to deliver on date of payment. Mr. AC promises to pay the amount to Mr. PC after 1 month.

CLASSIFICATION OF CONTRACTS ACCORDING TO ENGLISH LAW

A. Formal Contracts: Validity depends on the **form (format)** in which they are made.

❖ **Contract of Record** → [Judgement or Recognizance]

- It is **not a contract** in real sense, since there is no agreement b/w two parties.
- Derive their binding force from the authority of the Court
- It is either a **judgment** of a court or a **recognizance**.
- A **Judgment** is an **obligation imposed by a Court** upon one or more persons.
- A **recognizance** is a **written acknowledgement of a debt** due to the State.

❖ **Contract under Seal** → [Deed or Speciality Contract]

- A contract under seal derives its binding force from its form alone.
- It is in writing and is signed, sealed and delivered by the parties.

PC Note: Consideration is not required since they are judgment of court/recognizance.

B. Simple Contracts [Contract which are NOT Formal Contract]

- All contracts other than ‘Contracts of record & contract under seal’.
- Made expressly by words of mouth/writing/implied from the conduct of parties.
- Unlike formal contracts, simple contract must have consideration to be valid.

Illegal Agreement: ▪ Object is unlawful; ▪ Forbidden by law; ▪ Liable to Punishment ▪ Unenforceable & thus void-ab-initio; ▪ Collateral (*Connected*) Agreements → always Void.

PC Note: All Illegal agreements are void agreement BUT All void agreements are not illegal.

OFFER (PROPOSAL) [Sec 2(a)]

❖ When one person **signifies** to another person his '**final willingness**' to do (positive offer) or to abstain from doing (negative offer) anything, with a **view of obtaining consent** of that other person, he is said to make an offer/proposal.

PC Note:

- ✓ Mere expression of willingness Offer. Expression of willingness must be made to obtain the **consent** (acceptance).
- ✓ Offer can be **express** (made by words) or **implied** (by conduct).
- ✓ Offer may be '**conditional**'. In such case, offeree will have to accept all the conditions of the offer, otherwise it will amount to counter offer.

❖ **Offeror** = Person making offer (proposal) ▪ **Offeree** = Person to whom offer is made.

❖ ESSENTIAL ELEMENTS OF A VALID OFFER

- ☞ **Capable of creating legal relation** → Social Invitations are not offer.
- ☞ **Certain, Definite & not vague**
 - If offer is not clear or is vague, its acceptance cannot create contract.
 - However, if it is **capable of being made certain**, it is a valid offer.
- ☞ **Must be distinguished from 'invitation to offer'** →
 - Invitation to offer means the person is inviting the other party to make an offer.
 - **It is an attempt to induce offers and precedes a definite offer.**
 - When invitation to offer is accepted, it becomes offer.
 - **Ex:** Prospectus of company, Menu Card of Hotel.
- ☞ **Must be Communicated** → otherwise it **cannot be accepted**.
 - **Acceptance in ignorance of offer is not acceptance. [Raja Wala case]**
- ☞ **Should not contain a term 'non-compliance' of which would be = 'Acceptance'.**

Ex: A proposes B to purchase his iPhone X for Rs. 50,000 & if no reply is given by B in a week, it shall be assumed that B had accepted the proposal. This is not a contract.

❖ TYPES OF OFFER

- ☞ **General offer:** Offer made to the public at large & can be accepted by anyone.
 - **How to Accept: By Performing the conditions attached to offer.**
 - **Performance of the conditions of an offer = Acceptance of offer.**
- ☞ **Specific offer:** Made to a **definite person**; ▪ can be accepted by that person only.

- ☞ **Cross offer:** [No valid contract because there is no valid acceptance]
 - Exchange of 'identical offers' by two parties in ignorance of each other's offer.
- ☞ **Counter offer:** [Acceptance of the offer subject to certain modifications]
 - **Effect:** Original offer is deemed to be rejected by Counter offer.
 - Counter offer if/when accepted becomes an acceptance.
- ☞ **Standing/open or continuing offer"**
 - An offer allowed to remain open for acceptance over a period of time.
 - **Ex: Tender for supply of goods. ↓**

- ❖ **Meaning:** A Tender is an **offer** as it is in **response to an Invitation to Offer.**
- ❖ **Types: (i) Definite/Specific Tender:** for Supply of definite quantity of goods.
- (ii) Standing Tender:** for supply of goods periodically or in accordance with requirements of the Offeree. A Separate acceptance is made each time an order is placed. Thus, there are as many contracts as are the acts of acceptance.
- ❖ **Withdrawal of Tender:** Before its final acceptance by offeree.
 - **Irrevocable Tender:** If offeror has promised "not to withdraw" it (by taking some consideration) or where there is a statutory prohibition against withdrawal.

COMPLETION OF COMMUNICATION OF OFFER [Sec 4]

- When the offer **comes to knowledge of the offeree.**
 - **Offer is made by post:** When it **reaches** the offeree.
- Ex:** A offers to B to sell his house for Rs. 2 lacs. Letter is posted on 10th May. Letter reaches B on 12th May. Offer is said to have been communicated on 12th May.

LAPSE OF OFFER [Acceptance not possible after lapse of offer]

Revocation of offer	Destruction of subject matter	Rejection of offer by offeree
Change in Law	Failure to accept T&C attached	Counter offer by offeree

Lapse of time: If **no time** is stated (**fixed**) → offer will lapse in **Reasonable time.**

Death/Insanity of offeror: If the fact of the death/insanity comes to the knowledge of the acceptor before he makes his acceptance.

PC Note: Death of the offeree before acceptance terminates the offer.

- ✓ Offer is **accepted in ignorance of death/insanity of offeror** → **Valid Contract**
- ✓ **ENGLISH LAW:** Death of offeror **always terminates** the offer (in any case).

By not accepting offer as per prescribed mode:

- If no manner is prescribed → Not accepted in Usual/Reasonable manner

ACCEPTANCE [Sec 2(a)]

- No contract can arise, if acceptance is made by unascertained (unknown) person.
- **Anson** - 'Acceptance is to a proposal what a lighted match-stick is to a train of gun-powder'.
- ❖ Acceptor (Promisee): Person accepting the offer is known as promisee or acceptor.
- ❖ **ESSENTIAL ELEMENTS OF A VALID ACCEPTANCE**
 - ☞ **Must be Absolute, unqualified & expressed in usual/reasonable manner**
Acceptance of offer with changes in offer is **no acceptance**; it is simply a counter offer.
 - ☞ **Communicated to the offeror or his agent:** Acceptance in mind → Valid Acceptance ☒.
 - ☞ **Acceptance cannot precede offer:** Acceptance without knowing offer → Acceptance ☒
 - ☞ **Acceptance must be in prescribed mode:** No mode is prescribed → Reasonable mode.
PC Note: If acceptance is not in prescribed mode & offeror does not convey acceptor that 'acceptance is not in prescribed mode', it will be assumed that he has accepted the acceptance & a valid contract will arise.
 - ☞ **Mere silence is not acceptance**
 - ☞ **Acceptance by conduct:** When a person fulfills T&C of offer, it is acceptance by conduct.
Ex: When a trader receives an order from customer & he delivers the goods to customer.
- ❖ **COMPLETION OF COMMUNICATION OF ACCEPTANCE [PC NOTE]**
 - **For Offeror:** When the acceptor posts the letter of acceptance.
 - **For Acceptor:** When it comes to the knowledge of/reaches the offeror.
- ❖ **TIME FOR REVOCATION OF OFFER & ACCEPTANCE [Sec 5] [V. Imp]™**
 - **Offer** (offeror) → Before Completion of Communication of Acceptance for **offeror**.
 - **Acceptance** (acceptor) → Before Completion of Communication of Acceptance **for acceptor****PC Note: English Law → Acceptance cannot be revoked.**
- ❖ **COMPLETION OF COMMUNICATION OF REVOCATION [Sec 4]**
 - **For person making revocation** → When he posts letter of revocation
 - **For person to whom revocation is made** → When it comes to knowledge of person to whom revocation is made.
- ❖ **CONTRACTS ENTERED INTO OVER PHONE, TELEX OR E-MAIL**
 - Telephonic contracts: comes into existence as soon as offer is accepted by offeree.
 - **Duty of Acceptor** → to see that his acceptance is received by offeror.
- ❖ **Revocation through Post:** If revocation telegram arrives before or at same time with letter of acceptance, revocation is valid.

KNOW THIS

- ❖ **AGREEMENTS 'TO AGREE IN FUTURE' → Not allowed by Law.**
 - There cannot be a contract in future from such agreements.
 - For entering into valid Contract, terms of agreement must be definite.
- ❖ **VALIDITY OF SPECIAL T&C IN OFFER/ ACCEPTANCE**
 - Special T&Cs (if any) are **binding** on the parties.
Ex: Conditions on reverse of a train ticket etc.
 - Must be **communicated** to other party in some reasonable manner
 - **Acceptance without protest** = Tacit Acceptance of T&Cs.
Ex: Acceptance of Ticket.
 - **Notice of Conditions mandatory:**
Words like **"See Back for conditions, Please Turn over, subject to T&Cs"** are indicative of a reasonable notice to the Acceptor.
It shall be binding even if acceptor did read them or could not understand it.
 - **No Notice of special conditions → Acceptor is not bound.**

CONSIDERATION [Sec 2(d)] {Quid-Pro-Quo}

- ❖ When, **at the desire of the promisor, the promisee or any other person-**
 - has done or abstained from doing (**Past** consideration),
 - does or abstains from doing (**Present** consideration),
 - promises to do or to abstain from doing (**Future** consideration),then such act or abstinence or promise is called 'consideration' for the promise.
- ❖ **Forbearance to sue**, Compromise of Disputed claim, composition with creditor = **Valid consideration** ☒
- ❖ **Essential Elements of Consideration:**
 - May be Positive (to do something) or Negative (not to do something)
 - **Must move at the desire of the promisor:** [3rd party → Valid ☒]
 - **May move from promisee or any other person**
 - Must be "Real, possible, certain & Lawful" [Opposed to Public Policy → ☒]
 - May be "**Inadequate**": Consideration ☒ but inadequate → Valid Contract.
 - Must **not** be something '**which a person is already bound to do**'.
 - ◆ Performance of Existing duty → Valid consideration ☒.

❖ TYPES OF CONSIDERATION

➤ Past Consideration:

- Consideration which has already moved before the formation of contract.
- Promise is made after giving consideration.
- **Act should not be voluntary.**
- **ENGLISH LAW: Past consideration is not valid.**

Ex: Mr. PC renders some services to Mr. AC on his request in May. In June, Mr. AC promises to pay Rs. 10,000 to Mr. PC for his services. Services of Mr. PC is past consideration here.

➤ Present Consideration (Executed consideration) [Ex: Cash sales]

- Consideration moves simultaneously with the contract.
- Both parties perform their respective obligations immediately.
- Nothing remains to be done by either party.

➤ Future Consideration (Executory consideration)

- Consideration is to be moved after formation of contract.
- Both parties perform their promise on future date.

General Rule: No Consideration, No Contract [Sec 25]

Exceptions [Valid Contract ☑] [Bike = CBR & GF 'CG' me rahti hai]

1. **Natural Love & Affection** [Sec 25(1)]
 - Registered Agreement + In writing; ▪ b/w parties in near relation (blood).
2. **Past Voluntary Services & legally compellable duty** [Sec 25(2)]
 - A promise to compensate a person who has already done something **voluntarily** for the promisor.
 - Promisee has done something which he was legally bound to do & promisor promised to pay him for such act.
3. **Promise to pay Time Barred Debt** [Sec 25(3)]
 - In writing + signed by Debtor or his agent ▪ TBD = Debt unpaid for 3 years.
4. **Completed Gift** [Explanation to Sec 25]
 - Once gift has been given, donor cannot demand it back [becoz of no consideration]
 - Promise for donation ☒ Gift; Promisee cannot sue promisor for not giving donation.
5. **Creation of Agency** [Sec 185]; 6. **Bailment** [Sec 148]; 7. **Remission** [Sec 63]
8. **Charity;** 9. **Guarantee** [Sec 127]

DOCTRINE OF PRIVACY OF CONTRACT

- Consideration may proceed from 3rd party but 3rd party cannot sue in a contract.
- Only parties to contract can sue. (**Dunlop tyres vs selfridge co. Ltd**).

Exception to the Rule of "Privity of Contract"

1. **Beneficiary of a Trust:** ▪ Contract → b/w Settler & trustee;
2. **Family settlement & Marriage Expenses:** Female member can sue male members.
3. **Assignment:** Assignee can enforce contract. [Assignment = Only benefits transferred].
4. **Estoppel by "Acknowledgement of Liability":** The person who becomes an "agent of 3rd party" by acknowledgement, can be sued.
Ex: X receives money from Y for paying it to Z. X admits the receipt of that amount to Z. Now, Z can recover amount from X, even though the money is due from Y.
5. **Agency Contracts:** Principal may enforce contracts entered into by his agent.

CAPACITY TO CONTRACT [Competence of parties to make contract]

❖ **Person of unsound Mind** - [Lunatic, Idiot & Drunken/intoxicated]

- Contract is **void** if entered when a person was of **unsound** mind.
- **Lunatic Person:** A Mentally deranged person. Can contract when of sound mind.
- **Idiot:** Person who has lost his mental balance completely. **Cannot Contract.**

❖ **Person disqualified by Law:**

1. **Alien Enemy** → ▪ Foreign Citizen + Country @ War.
 - **During War:** Cannot Contract + cannot be sued (except by special permission)
 - **Before War:** (a) If such contracts are not against public policy → Suspended during war & then revived after completion of war.
(b) If such contracts are against public policy → Cancelled.
2. **Convict** (Can contract after completion of Imprisonment or when on **Parole**)
3. **Insolvent** (However his official receiver can enter into contract on his behalf).
4. **Company under Companies Act/ Statutory Corporation under Special Act**
 - **Company:** Contract for the purpose specified in "Object clause" of its MOA.
 - **Corporations:** Its Contractual capacity is determined by statute creating it.
5. **Foreign sovereigns**, diplomatic staff & representatives of foreign states **cannot be sued** without special permission of CG in our court.

PC Note: Ex-king can be sued in our Courts.

CONTRACT WITH MINOR

- Agreement with a minor is **void-ab-initio**. [**MohiriBibi vs Dharmodas Ghose**]
- **No Restitution** against Minor: (Sec 64 & 65 deals with restitution → NA to a minor)
 - Restitution means restoring (i.e. giving back) of something to its proper owner.
 - Minor **cannot** be directed to **return benefits** under a void agreement.
- **False Representation of age by Minor**: If minor has received any property or money by falsely representing his age, he will have to return the property/money which is traceable in his possession. But he will not be personally liable.
 - Minor will have to restore (give) back the property/money which he has acquired under a void contract.
- **No Ratification** → **Approving** the act done during minority after attaining majority.
 - Act done during minority cannot be ratified by minor on attaining majority because agreement which is void ab-initio cannot be made valid by subsequent ratification.
- Rule of **Estoppel** → **Not Applicable [Even in case of False Representation]**
- No Specific Performance → Since agreement by a minor is absolutely void.
- Minor can be **(i) Beneficiary;** **(ii) Agent [Sec 184].**
- A minor being incompetent to contract cannot be a partner in a partnership firm.
 - However, can be **admitted with consent of all partners for benefits**.
- A minor **cannot be adjudicated an insolvent**, as he is incapable of contracting debts.
- Minor **can be a shareholder** of fully paid up shares through transfer, if he applies for registration of transfer **through his guardian**.
- **Minor is liable in tort (Civil Wrong)** but if such tort **arises out of contract**, minor **will not be liable** as it would be an indirect way of enforcing a void agreement.
- Minor is competent to execute negotiable instrument.
 - Minor is not liable on promissory note executed by him. (KanhyaLal vs Giridhari Lal).
- **Minor's Parents/guardian**: No legal liability, but they can pay out of social obligation.
- **Minor's Property liable for Necessaries [Sec 68]**
 - Minor's property is liable for the necessaries supplied to him.
 - Minor is not personally liable for the necessaries supplied to him.
 - Loan taken to obtain necessaries is recoverable by the lender since it was given to obtain necessaries.
 - What constitutes "necessaries" varies from case to case & person to person.
 - An item will not be considered as necessary if a person already has sufficient supply of things of the same kind.
 - **PC Note**: Marriage of the female is held to be necessary for her.

FREE CONSENT [Consensus ad idem → Meeting of Minds]

- **Consent**: Agreeing upon the same thing in the same sense.
- Consent is free → If it is not caused by **CUF-MM** [Sec 14].
- **SALMOND'S THEORY [V. Imp]**
 - **Error in Consensus** → No consent at all.
 - **Error in Causa** → Consent is there, but it is not free. i.e **no free consent**.

A. COERCION [Sec 15] → [English Law: Duress]

- Threatening someone to enter into contract using Physical Force.
- Committing or threatening to commit any act forbidden by **Indian Penal Code**.
- Unlawful detaining or threatening to detain any property.
- **Threat to commit suicide or to file a suit on false charges**.

PC Note: There must be intension of causing other party to enter into contract. Coercion may proceed from any other person & may be directed against any person.

EFFECT OF COERCION

- Contract is voidable at the option of aggrieved party.
- Aggrieved party can rescind the contract, but it will have to restore the benefits.
- **BURDEN OF PROOF**: On the party intending to avoid the contract.

B. UNDUE INFLUENCE [Sec 16] → [Undue advantage by dominating]

ESSENTIAL ELEMENTS OF UNDUE INFLUENCE

1. One party must be in a **position to dominate the will** of other party.
2. It must **use his superior position** to **obtain unfair advantage** over weaker party.
3. It must have **actually obtained unfair advantage** over the weaker party.
4. **Relation** b/w the parties should be the **near one**.
5. **Object** must be to **take undue advantage**.
6. Burden of proof lies on dominating party.

DOMINATING POSITION:

- If he holds a real or apparent authority over the other. [**Ex: Master & servant**]
- If he stands in fiduciary relation to the other. [**Ex: Trustee& beneficiary**]
- If he makes contract with mentally affected person [**Ex: Medical attendant & patient**]

Consequences: Agreement is voidable at the option of weaker party.

C. FRAUD [Sec 17] False statement or willful concealment of Material Fact

What constitutes Fraud?

- Active concealment of **material** fact.
- A promise made without any intention of performing it
- Deliberate false statement
- Any other act fitted to deceive
- Any other act or omission which is **specifically declared fraudulent** by law.

Whether Silence amount to fraud ?

- Mere silence as to the facts likely to affect willingness of a person to enter into contract is not fraud. But where it is the duty of the person to speak, silence amounts to fraud.
- Where Silence by itself is **equivalent to speech, it will amount to fraud.**

PC Note: There must be intention to deceive & fraudulent act **must actually deceive** the other party.

Consequences: Contract is voidable at the option of the party deceived.

Note: Deceived party can either (i) avoid the contract or (ii) continue the contract. Once the option is Exercised, both the parties are bound by it.

Contract is valid (not voidable) even after fraud

- Deceived Party had means of discovering the truth with ordinary diligence.
- Deceived Party entered into contract in ignorance of fraud.

D. MISREPRESENTATION (Sec 18) [Innocent misstatement of material facts]

Essential Elements of Misrepresentation

- Representation made is **untrue** but person making it **believe it to be true.**
- No intention to deceive.

Category of Misrepresentation

- **Positive unwarranted Assertion:** Statement made without any reasonable basis. False statement without any trustworthy source of information (believed as truth)
- **Breach of duty:** [English Law → Constructive Fraud] ▪ No intention to deceive;
 - Brings disadvantage to person committing it, by misleading another to his Prejudice.
- **Innocent mistake:** regarding Nature & Quality of Subject Matter.

E. MISTAKE [Erroneous/Incorrect belief about something]

- Mistake must relate to some facts & not to “judgement/opinions”.
- Unilateral → Mistake by One Party; Bilateral → Mistake by both parties.

Type of Mistake		Effect on Contract
1. Fact	(a) Unilateral Mistake (i) Identity of Person (ii) Nature of contract	(a) Generally Valid (i) Void (if other person is mistaken) (ii) Void (Ex: Cheque shown as Leaving TC)
	(b) Bilateral Mistake	(b) Void Contract
2. Law	(a) Indian Law	(a) Valid
	(b) Foreign Law	(b) Same effect as mistake of fact

LEGALITY OF OBJECT & COSIDERATION

- If the **object or consideration** is unlawful, agreement is void.
- In following cases, agreement will be void:
 - Forbidden by law [Ex: Theft]
 - Defeats the provision/object of any law [Ex: Bidding at auction when not permitted]
 - Fraudulent Act
 - Injurious to another person or his property [Ex: Agreement to kill someone]
 - Immoral or opposed to public policy [Ex: Renting house to a prostitute]
- **Heads of Public Policy [V. Imp]** [Void Agreements]
 - Trading with Alien Enemy [Also unlawful]
 - Stifling (Suppressing) Prosecution (prevent prosecution from getting prosecuted)
 - Trafficking in Public offices (Sale of public offices, titles, Appointments)
 - Interference with Administration of Justice [Judge ko kharidna]
 - Marriage Brokerage Contracts [Paise leke Biwi dhund dena]
 - Agreements in Restraint of parental rights. [Giving right of children to other person]
 - Agreements restricting personal liberty [Slavery]
 - Agreement to commit a crime
 - **Agreements in restraint of marriage** [restricts from marrying except Minor]
 - ✓ **Complete** restraint: restricts from marrying → Void
 - ✓ **Partial** restraint: restricts from marrying a particular caste etc. → Void
 - ✓ English Law: Only complete restraint is void, Partial restraint is valid.

Champerty & Maintenance

- ✓ **Champerty:** When a person helps another (financially or otherwise) in **litigation** in which he is not interested & **share the proceeds of the action.**
- ✓ **Maintenance:** When a person helps another (financially or otherwise) in **litigation** in which he is not interested & **does not share the proceeds.**
- ✓ In India, it is **valid** provided litigation was instituted with a **bonafide motive.**
- ✓ But if litigation was inspired by **bad motive/gambling character**, it is **void.**

▪ **Agreement for creation of monopoly** [Since it restricts freedom of trade]

▪ **Agreements in restraint of trade** → Void. But there are following exceptions:

1. **Seller of goodwill** can be restricted from carrying on (i) Similar business (ii) Within specified local limits.
2. Partner cannot carry competing business as that of firm when he is a partner.
3. Retiring/Outgoing partner may be restricted from carrying on a similar business within specified local limits.
4. Agreement b/w any partner & buyer of firm’s goodwill.
5. **Trade Combinations:** An agreement between ice manufacturer not to sell ice below a stated price and to divide profits in a certain proportion is not void.
6. **Negative stipulations in service agreements during service:** Valid.
 - ✓ Clause to serve the employer for a stipulated period – Valid.
 - ✓ Clause to restrict employee from a similar engagement after termination:
 - (a) Restriction is to protect employer (use of trade secrets) – Valid.
 - (b) Restriction is to serve any other purpose (avoid competition) – Void.
7. **Sole Selling Agents Agreement:** Agreement b/w manufacturer & sole selling agent for not dealing in goods of any other manufacturer is valid.

▪ **Agreements in restraint of legal proceedings** (enforcing his legal rights): Void.

- ✓ However, Restraint for referring existing/future disputes to arbitration – Valid.

UNCERTAIN AGREEMENTS [Meaning is uncertain → Void]

- If the meaning is capable of being made certain → Valid Agreement.

PC Note: Price is to be fixed by 3rd Party → No uncertainty & thus valid.

- ✓ **Agreement is silent about price** → Valid because in such case, sec 2 of SOGA will apply & reasonable price shall be payable.

AGREEMENT TO DO IMPOSSIBLE ACT → VOID.

CONTINGENT CONTRACT

- Contract to do/not to do something if some collateral event happen/does not happen.
- PC: Performance of original contract only if collateral event happen/does not happen.**

Essential Elements:

- Performance of original contract must be **conditional** (depending on collateral event)
- **Collateral event** must be **uncertain.**
- **Independent:** Collateral event must not form consideration of contract.

Rules as to enforcement of Contingent Contract:

Dependent on (Contingency)	When it can be enforced	When it becomes void
Happening of Collateral Event	After happening of collateral event	(i) Event doesn't happens (ii) Becomes impossible
Non-Happening of Collateral Event	(i) Event doesn't happen (ii) Becomes impossible	When that event happens
Happening of Collateral event within fixed time	After happening of collateral event within fixed time	(i) Event doesn't happens (ii) Becomes impossible within fixed time
Non-Happening of Collateral event within fixed time	(i) Event doesn't happens (ii) Becomes impossible within fixed time	When collateral event happens within fixed time

WAGERING AFGREEMENT

- Payment of money/its worth on happening/non-happening of some uncertain event.
- *Equal chances of Gain/Loss; No Interest of parties in such event; No Control of parties.*

Effects on Main Transaction	Effects on collateral Transactions
<ul style="list-style-type: none"> ▪ Void but legal (except old Bombay & Gujrat) ▪ Even winner cannot legally recover money deposited with 3rd party. 	<ul style="list-style-type: none"> ▪ Not void & thus valid & enforceable. ▪ Broker can recover his brokerage.

- ✓ **Authorized Lottery** → Wagering & thus collateral agreements are valid.
- ✓ **Unauthorized lottery** → Illegal & thus collateral agreements are void.
- ✓ **Crossword puzzle & Athletic competitions** → requires skills & thus **not wagering.**
- ✓ **Share market transactions** (with intention of delivery) → Not wagering.
- ✓ **Contract of Insurance** → Contingent contract & not a wagering agreement.

PERFORMANCE OF CONTRACT

Types of Performance

1. Actual performance

- When promisor has **fulfilled his obligation** within time & in prescribed manner.

2. Attempted performance (Tender/offer of performance)

- When promisor offers to perform his obligation but promisee refuses to accept.

Note: If **valid tender** is rejected by promisee, then promisor is discharged from his obligations. However, Promisor may ask promisee to perform his obligation.

Types	Meaning	Effects
Tender of Goods & Services	Promisor offers to deliver but promisee refuses to accept delivery.	G&S need not be offered again. Promisor is discharged from his liability & may sue promisee for non-performance.
Tender of Money	When promisor offers to pay amount but promisee refuses to accept payment.	Promisor is not discharged from his liability to pay money but no interest will be payable from date of valid tender .

Essential Elements of Valid Tender

- Unconditional;
- Made at proper time;
- Proper place;
- Made to promisee/his agent.
- Reasonable opportunity to promisee to ascertain that things offered are same as agreed
- Able & willing to perform;
- Must be for whole obligation.

Note: Tender before due date → Not a valid tender.

Effect of “refusal by Promisor to perform promise”

- Promisee may (a) cancel the contract or (b) may continue the contract.
- If promisee decides to continue, he cannot end it later on this ground.
- In both cases, promisee can **claim damages** that he suffers becoz of breach.
- Only promisee can demand performance even if promise is made for benefit of 3rd person.**

Who should perform contract ?

Promisor only	<ul style="list-style-type: none"> Contact involving personal skills or personal consideration Such contract comes to an end at death of the promisor.
Agent	<ul style="list-style-type: none"> Contracts NOT involving personal skills or consideration. Only during lifetime of promisor. [After death → LR]
Legal Representative	<ul style="list-style-type: none"> Contracts NOT involving personal skills or consideration. Only if promisor dies before performance of contract
Third person	<ul style="list-style-type: none"> Only if promisee accept [Cannot demand it again from promisor]

Joint Promisors (Devolution of joint liabilities)

Cases	Who must perform the promise
All Joint promisors are alive	All the promisors jointly.
Death of any joint promisors	LR of Dead Promisors + Zinda Promisors
Death of all joint promisors	LR of all deceased promisors jointly.

Liability of joint promisors (JP)

- Promisee may compel any one promisor to perform whole obligation. In such case, he may call for contribution from others.
- Any JP Defaulted → Remaining JP must bear loss in equal shares.
- Promisee may discharge any of JP from his liability, but this doesn't discharge him from his liability towards other JPs.

Joint Promisee (Devolution of Joint Rights)

Cases	Who can demand the performance of promise
All Joint Promisees are alive	All the promisees jointly.
Death of any joint promisee	LR of deceased promisees + Zinda
Death of all joint promisee	LR of all deceased promisees jointly.

TIME & PLACE FOR PERFORMANCE OF PROMISE [OFU]

Case 1: If promisor has undertaken to perform without application by promisee [Self]	
Time is not specified	Within reasonable time
Date is specified but not time	During usual business hrs (bet ⁿ 10 AM to 5 PM)
Place is not specified	Promisor should ask promisee to fix reasonable place
Case 2: Promisor has undertaken to perform with application by promisee.	
<ul style="list-style-type: none"> Time is specified: Promisor must perform his promise at proper place & time. 	
Case 3: Promisee has prescribed manner or time for performance: As Prescribed.	

WHETHER TIME IS THE ESSENCE OF CONTRACT?

❖ **Mercantile/Commercial Contracts:**

- Time fixed for delivery of goods → Essence of a contract.
- Time fixed for payment of money → Not considered to be essence of a contract.

❖ **Non-Mercantile/Non-Commercial Contracts** → Time is not essential.

Note: Time may be made essence of contract by subsequent notice also. In such case, sufficient & reasonable time must be given to other party to perform his obligation.

CONSEQUENCES OF NON-PERFORMANCE WITHIN SPECIFIED TIME

- ❖ **Time is Essential:** Contract is **voidable** at option of promisee.
If performance is accepted after time → Promisee cannot claim compensation for any loss caused by non-performance unless previous notice is given.
- ❖ **Time is NOT Essential:** Contract does **not** become **voidable** at option of promisee. Promisee is entitled to claim compensation for any loss caused by non-performance.

PC Note: Sale of **Movable** Property → Time is **presumed** to be **essence** of contract.
Sale of **Immovable** property → Time is **not** presumed to be **essence** of contract.

TYPES OF RECIPROCAL PROMISES & THEIR PERFORMANCE

Mutual & concurrent	<ul style="list-style-type: none"> ▪ Promises are to be performed simultaneously. ▪ Promisor is not bound to perform his promise unless promisee is willing & able to perform his own promise.
Conditional & dependent	<ul style="list-style-type: none"> ▪ Performance of promise by one party depends on prior performance of promise by other party. ▪ If party who is bound to perform first fails to perform his promise, he cannot ask other party to perform his promise. ▪ Moreover, defaulting party becomes liable to compensate other party for loss suffered because of the non-performance.
Mutual & Independent	<ul style="list-style-type: none"> ▪ Independent performance without waiting for other party. ▪ If either party fails to perform his promise, other party may recover damages from defaulting party but such other party has to perform its promise.

- If one party is prevented from performing his promise → Voidable at option of prevented party. Prevented party is entitled to get compensation for loss suffered.

IMPOSSIBILITY OF PERFORMANCE

- ❖ **Initial Impossibility** [Void Ab Initio]
 - Impossibility **may or may not be known** to parties.
 - But if at time of contract, only promisor knows about impossibility or should have known with ordinary diligence, promisee is entitled to claim compensation.
- ❖ **Supervening (Subsequent) impossibility** [English Law: Frustration] - Void
 - Impossibility should **not be self-induced** or due to circumstances within control.

Applicability of Supervening Impossibility [Contract = Void]

- **Destruction of subject matter:** without any fault of either party.
- **Non-existence or non-occurrence of thing necessary for performance.**
- **Death or incapacity of Promisor:** if performance depends on personal skills.
- **Change of law or change of government policy.**
- **Declaration of war**

Non-Applicability of Supervening Impossibility [Contract = Valid]

- **Difficulty in performance:** because it has become more expensive or less profitable.
- **Commercial hardships:** A contract is not discharged simply because its performance has become commercially unviable or unprofitable
- **Impossibility due to conduct of 3rd person.**
- **Impossibility induced by the party himself**
- **Strikes, lock-outs & civil disturbances**
- **Failure of one of the several objects:** Sometimes a contract is entered for several purposes. In such cases, the contract is not discharged if only one of the object fails.

PC Note: When promises refuses to give reasonable facilities to promisor for performance of his promise, then promisor is excused from performance of contract.

APPROPRIATION OF PAYMENTS [Application of payment to particular debt]

CASES	RULE
Debt to be discharged is indicated (Clayton rule)	Payment must be applied as per debtor. This rule is based on latin maxim " quicquid solvitur, solvitur, solvitur secundum modum solventis ". [whatever is paid, is paid according to intention or manner of party paying]
Debt to be discharged is not indicated	Creditor has the option to apply payment to any lawful debt due from debtor even if it is a time-barred debt . But he cannot apply to a disputed debt .
Neither party makes any appropriation	Payment shall be applied in order of time. Debt dating earlier should be wiped out first. Debts are of same date → Payment must be appropriated proportionately.

DISCHARGE OF CONTRACTS [End of contractual obligations b/w parties]

Modes of Discharge

- ❖ **Performance of contract:** (a) Actual performance or (b) Attempted performance
- ❖ **Impossibility of performance**
- ❖ **Lapse of Time**
- ❖ **Operation of Law:** (a) Death/Insolvency of Promisor; (b) Unauthorised alteration.
- ❖ **By Mutual agreement:**
 - (a) **Novation:** Substitution of existing contract by new contract with 100% Consent.
 - **T&C – Same; Parties – Change:** Discharge of contract b/w original parties.
 - **T&C – Change; Parties – Same:** Discharge of original contract.
 - (b) **Rescission (Cancellation):** with 100% Consent.
 - (c) **Alteration (change):** Original contract is discharged (with 100% Consent)
 - (d) **Remission:** Acceptance of lesser than terms of contract.
 - (e) **Waiver:** Giving up of rights – Discharges the contract.
- ❖ **Breach of Contract** [Failure of any party to perform its obligation]
 - (a) **Actual breach:** Failure of one party to perform its obligation on due date/during performance, other party is discharged from its obligation.
 - (b) **Anticipatory Breach:** [Refuses or disables himself to perform its obligation before due date of performance.
 - Aggrieved party may **(i) treat contract as discharged** & bring an immediate action for damages or **(ii) treat contract as operative** & wait till due date for performance & claim damages on due date.
 - But if aggrieved party treats contract as operative & during such period any event happens which **makes performance impossible**, contract will become **void** & aggrieved party **cannot claim damages**.

REMEDIES FOR BREACH OF CONTRACT

Suit for Rescission	▪ Aggrieved party may rescind contract
Suit for Quantum Meruit (As much as earned)	▪ Claim for proportionate work done by non-faulty party. ▪ Not Applicable in case of (a) Indivisible Contract (b) Breach is due fault of person claiming compensation (c) work is performed gratuitously .
Suit for Specific performance	▪ If damages are not adequate remedy, court may at its discretion direct other party for specific performance [to carry out what he promised] ▪ cannot be claimed as matter of right; @ discretion of court.
Suit for Injunction	▪ Order by court restricting a person from doing something which he promised not to do. ▪ cannot be claimed as matter of right; @ discretion of court.
Suit for damages	▪ Monetary compensation for loss suffered.

KINDS OF DAMAGES

Ordinary	▪ Payable for loss arising naturally & directly from breach.
Special	▪ Payable for loss arising due to special or unusual circumstances [known to other party (defaulting party)].
Remote or indirect	▪ Payable for loss arising due to remote or indirect causes. ▪ Generally remote damages are not recoverable .
Nominal damages	▪ These are damages which are very small in amount . ▪ Awarded to protect right of aggrieved party to claim damages. ▪ Awarded when party has not suffered any loss due to breach.
Exemplary (Vindictive)	▪ Punitive in nature; Awarded only in two cases – 1. Breach of Promise to Marry 2. Wrongful dishonour of cheque.

Liquidated Damages	Sum Payable = Pre-estimated Amount of damage due to breach. Enforceable in English Law.
Penalty	Sum Payable = Heavy amount disproportionate to damages incurred. Not enforceable in English Law.

Indian Law: No distinction b/w penalty & liquidated damages. Courts in India allow only reasonable compensation not exceeding the specified sum [Section 74].

STIPULATION FOR INTEREST		FORFEITURE OF SECURITY DEPOSIT (EARNEST MONEY)
Stipulation	Nature	
Payment of Interest in case of default	Not Penalty if interest is reasonable	<ul style="list-style-type: none"> ▪ A clause in a contract which provides for forfeiture of security deposit in event of failure to perform is in nature of a penalty. ▪ In such cases, the court may award reasonable compensation only.
Payment of Increased Interest from date of contract	Always in nature of a penalty.	
Payment of Increased Interest from date of default only	May or may not be penalty	
Payment of CI on default at same rate as SI	Not in nature of a penalty.	
Payment of CI on default at rate higher than that of SI	It is in nature of a penalty.	
Interest at lower rate than original rate if paid on due date	Not in nature of penalty.	

QUASI CONTRACT [LAW OF RESTITUTION]

- **BASIS:** “*nemo debet locuplatari ex liena justua*” → No man should grow rich at expense of other; # Based on principles of **equity, justice & good conscience**.
- It is an obligation created by Law known as ‘quasi-contractual obligations’; # Not a contract in real sense as **essential elements** of contract are **missing**;
- **SALIENT FEATURES:** (a) Gives “right in personam” & not right in rem; (b) Does not arise from any agreement of parties; (c) Imposed by law to prevent unjust enrichment.

Cases of Quasi-Contract [Sec 68 - 72]

Title	Sec	Explanation
Supply of Necessaries to person incompetent to contract	68	<ul style="list-style-type: none"> ▪ Supplier is entitled to recover money from property of such incompetent person <i>even if there is no valid contract between them</i>. ▪ Only property is liable. If no property, nothing shall be payable; He cannot be held liable personally. ▪ Sec 68 applies even when necessaries are supplied to person to whom incompetent person is legally bound to support (Ex: Family)
Right to recover money paid for another person	69	<ul style="list-style-type: none"> ▪ When a person (Mr. A) makes payment on behalf of other person (Mr. B), then payer (Mr. A) can reimburse it from other person (Mr. B). ▪ Payment should not be voluntary. <li style="color: #e67e22;">Ex: Payment of taxes of property of another person by interested person to protect property from going in hands of 3rd party (Gov).
Non-Gratuitous Act (Not free)	70	<ul style="list-style-type: none"> ▪ Person doing Non-Gratuitous Act can recover money only if following conditions are satisfied: (a) Act done or goods delivered must be lawful; (b) Act was Non-Gratuitous; (c) Person enjoyed benefits.
Finder of Goods (Same as Bailee)	71	<p>Duties:</p> <ul style="list-style-type: none"> (i) To keep goods with proper care (as he would have done for his own goods); (ii) To take reasonable steps to find the true owner. (iii) If true owner is not found, he can sell goods (Perishing nature) (iv) Get reimbursed for lawful expenses paid for above duties.
Payment of Money or Delivery of goods by Mistake or under Coercion	72	<ul style="list-style-type: none"> ▪ A person to whom the money has been paid or anything has been delivered by mistake or under coercion must repay it.

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2. THE SALE OF GOODS ACT, 1930

INTRODUCTION	
Background (Before SOGA, ICA tha)	<ul style="list-style-type: none"> ▪ Word Indian was omitted from title of Act in 1963 (22 sept). ▪ Date of Enforcement → 1st July, 1930. ▪ Coverage → Whole of India Except J&K
Applicability	<ul style="list-style-type: none"> ▪ Deals with Sale of Movable Goods [Mortgage or Pledge ☑] ▪ SOGA deals with 'Movable Goods' [Not with all movable property] [Note: Sale of Immovable Property & Transfer of AC → TOPA]

SOME IMPORTANT DEFINITIONS	
Goods	<ul style="list-style-type: none"> ▪ Every Kind of Movable Property [Except Actionable claim & Money]. ▪ Stock & Shares, growing crops & things attached to land → Goods ☑. ▪ Goodwill, Copyright, TM, Patents, water, gas, electricity → Goods ☑. ▪ FDR → Goods ☑ u/s 176 of ICA, 1872 r/w sec 2(7) of SOGA. ▪ English Law → Stock & Shares = Goods ☑; Ship → Goods ☑.
Actionable Claims(Debt)	<ul style="list-style-type: none"> ▪ Claims which are enforced only by an action or suit in court. ▪ AC cannot be sold/purchased; it can only be assigned as per TOPA.
Money	<ul style="list-style-type: none"> ▪ 'Money' = Legal Tender. [Old coins & foreign currency → Money ✗]

TYPES OF GOODS	
1. Existing Goods	In Existence, owned & possessed at the time of contract of Sale
<i>(a) Specific</i>	Goods identified at the time of contract of sale.
<i>(b) Ascertained</i>	Goods identified after contract of sale as per the agreement.
<i>(c) Unascertained</i>	Goods not specifically identified at the time of contract of sale. They are only defined by description at time of contract of sale.
PC Note: Position as to existing goods depends on time of identification of goods.	
2. Future Goods	<ul style="list-style-type: none"> ▪ Goods not in existence at time of contract of sale. ▪ Manufactured/Acquired after making contract of sale. ▪ Contract of Sale of Future Goods → Not Illegal. ▪ They cannot be sold; there can only be an agreement to sell.
3. Contingent Goods (Type of 2)	<ul style="list-style-type: none"> ▪ Not in Existence at time of contract of sale. ▪ Acquisition → Depends on uncertain contingencies.

Points to Remember:

- (i) Contracting parties are not discharged on non-acquisition/Non-production of FG.
- (ii) FG are neither in existence nor in possession of seller at the time of contract of sale.
- (iii) UASG are in existence & in possession of seller at time of contract of sale.

ESSENTIAL OF "CONTRACT OF SALE"	
Two parties	At least two parties, seller and buyer.
Subject	▪ Must be necessarily movable goods (Existing/future)
Price	<ul style="list-style-type: none"> ▪ Only Money or Money's worth should be paid. [In Kind → ☑] ▪ Partly in cash & partly in Kind → ☑
Ownership	▪ Transfer of property in goods from seller to buyer must take place.
Absolute	▪ A contract of sale may be absolute or conditional [Section 4(2)]

CONTRACT OF SALE

- ❖ Contract where seller '**transfers**' or '**agrees to transfer**' property in goods to buyer.
- ❖ There should be **transfer of ownership for price.**

SALE & AGREEMENT TO SELL [Understand properly]

Sale: Property is transferred from seller to buyer **immediately.**

Agreement to Sell: Property is transferred at future time or subject to some conditions.

SUBJECT MATTER OF CONTRACT OF SALE [SEC 6] = Goods

- Goods (Existing/future) includes GW, Patents, TM, Copyrights, Rare & Old coins.
- Contract for '**Sale of future goods**' → Agreement to sell ☑ & not sale.

EFFECT OF DESTRUCTION OF SPECIFIC GOODS [Sec 7 & 8]

- A. Goods not existing (already destroyed) at time of contract (sec. 7):**
 - Contract of Sale becomes **Void** [Impossibility of Performance + Bilateral mistake]
- B. Goods Perishable after agreement to sell but before sale is completed (Sec. 8):**
 - Contract of sale becomes **void.**

Note: If goods are destroyed due to fault of one party, then other party can claim damages.

Note: Sec 7 & 8 apply only to specific goods.

Note: For unascertained goods → Contract is **not void** even if entire stock is destroyed.

MODES OF FIXATION OF PRICE (Sec 9 & 10)

- By parties; ▪ By manner provided in contract; ▪ As per customs & usages of trade;
- Reasonable price (if none of the above principals is applicable).
- By Third Party: But if 3rd party fails to fix the price → Contract becomes **void.**
But if buyer has used the goods, then he shall pay reasonable price to seller.

PASSING OF PROPERTY (Sec 18-24)

- **Passing of Property = Passing of ownership. [Risk passes with ownership]**
- If property has passed to buyer, risk lies with buyer & not with seller.
- **Deliverable state:** In such condition that buyer would be bound to take delivery.

(A) SPECIFIC/ASCERTAINED GOODS

- ❖ Ownership is transferred **at the time of contract of sale** in following cases:
 - Contract is for Specific Goods + Goods are in deliverable state;
 - Weighing or measurement has been done & **price** has been **determined**.
- ❖ **Non-Deliverable State** → After putting goods in deliverable state + Inform buyer.
- ❖ **Deliverable state but price not determined** → **After determination of price.**
 - In case if price was not determined at the time of formation of contract & it is determined later by weight or measurement.

(B) UNASCERTAINED GOODS [Only after ascertainment & appropriation of Goods]

- ❖ **Ascertainment:** Identification & setting aside from huge mass; Done by seller.
 - ❖ **Appropriation:** Selection of goods with the intention of using them in performance of contract. It is bilateral act of buyer & seller.
- Goods must be unconditionally appropriated to the contract. *Once appropriation with mutual consent has taken place, buyer becomes the owner of goods.*
- When seller delivers the goods to the buyer or a carrier for their transmission to buyer & does not reserve the right of disposal, ownership is transferred.
 - If such goods are not delivered, seller holds them as bailee.

Essentials of Appropriation:

1. Goods should confirm to description & quality stated in contract.
2. Goods must be in a deliverable state.
3. Goods must be unconditionally appropriated to the contract either by delivery to buyer or his agent or carrier.
4. Appropriation made by seller with consent of buyer; or by buyer with consent of seller
5. Assent may be given either **before or after appropriation.**

(C) IN CASE OF SALE ON APPROVAL → Ownership is transferred in following cases:

- ❖ **Acceptance of goods by Buyer:** Acceptance by buyer may be express or implied.
- ❖ **When buyer adopts any transaction** which shows that he has accepted the goods.
- ❖ **Where buyer fails to return goods within fixed or reasonable time.**

(D) TRANSFER OF OWNERSHIP in case of **RESERVATION OF RIGHT OF DISPOSAL**

Meaning of Reservation of Right of disposal: Retention of ownership of goods till some later date or till some conditions are fulfilled. *In such case, even if goods have been delivered to buyer, property will not pass to buyer until condition is fulfilled.*

Cases of presumption of reservation of right of disposal by the seller of goods:

1. **Taking document of title in his own name or his agent's name.**
 2. **By sending BOE for price to buyer with document of title taken in buyer's name**
- In such case seller is presumed to have reserved his right & ownership will not transfer to buyer till he accepts the BOE or pay price.

PASSING OF RISK (SEC 26)

General Rule: Risk passes with ownership. Loss should be borne by the owner of goods. Actual delivery of goods is immaterial for passing of risk. This reveals that

- (i) Goods are at risk of seller if ownership has not been transferred to buyer.
- (ii) Goods are at risk of buyer if ownership has been transferred to buyer.

Exceptions to this rule:

1. **Agreement b/w parties:** Risk & ownership may be separated by agreement b/w parties.
2. **Goods are at risk of party in default:** If delivery of goods is delayed due to fault of either seller or buyer, then goods shall be at risk of party in default.
3. **Trade customs:** Risk & ownership may also be separated by trade customs.

STIPULATION (AGREEMENT) AS TO TIME (Sec 11)

- **Time of Payment of Price:** Not essential to contract of sale unless otherwise agreed.
- **Time of Delivery of Goods:** It is **essential** to contract of sale.

DOCUMENT OF TITLE & DOCUMENT SHOWING TITLE

Document of title	<ul style="list-style-type: none"> ▪ Shows an unconditional undertaking to deliver goods to the holder. ▪ DoT = Any document used as proof of possession/control of goods, which authorises (either by endorsement/delivery) possessor of document to receive/ transfer specified goods. ▪ Person holding DoT is entitled to goods mentioned therein. <p>Note: Mate's receipt <input type="checkbox"/> Document of title.</p>
Document Showing title	<ul style="list-style-type: none"> ▪ A person whose name appears on document showing title is entitled to goods & not holder of Document showing title.

TRANSFER OF TITLE (Sec 27-30)

- **Nemo dat quod non-habit: No one can transfer a better title than he himself has.**
- A person may sell goods which he owns & then only buyer will get a valid title.
- If goods are sold by non-owner, buyer will not get a valid title.

Exceptions to the above rule: [Buyer will get valid title even if sold by non-owner]

Sale by Mercantile agent	Buyer who buys goods (<i>in good faith & without knowing that seller has no authority to sell</i>) gets a valid title even if mercantile agent is not the owner of goods.
Sale by joint owner	<ul style="list-style-type: none"> ▪ Joint owner must be in possession of goods with consent of co-owners ▪ Buyer must buy goods in good faith & also without knowing that seller has no authority to sell, buyer will get a valid title to goods.
Sale by person in possession of goods under voidable contract	<ul style="list-style-type: none"> ▪ Seller must have obtained possession under a voidable contract & not a void contract. ▪ Contract must not have been rescinded (Contract should be in existence at time of contract of sale). ▪ Buyer must act in good faith & he should not have knowledge about seller's defective title.
Sale by seller in possession of goods after their sale	<ul style="list-style-type: none"> ▪ If seller continues to have possession of goods after their sale & he resells goods to a new person who buys them in good faith & without notice of previous sale ▪ Second buyer will get the valid title.
Sale by buyer in possession of goods after their sale but before transfer of ownership	<ul style="list-style-type: none"> ▪ Goods are sold by buyer before getting ownership of goods. ▪ Possession was obtained by such buyer with consent of seller ▪ But Seller has some rights over goods. ▪ If buyer sells such goods, then second buyer will get a valid title to goods if he buys them in good faith & without knowledge about first seller's right over goods.
Unpaid Seller	<ul style="list-style-type: none"> ▪ Purchaser of such goods gets a valid title to the goods.
Finder of Goods	<ul style="list-style-type: none"> ▪ If goods are of perishing nature ▪ If lawful charges (2/3rd of value) of finder are not paid by owner.
Sale by Estoppel	<ul style="list-style-type: none"> ▪ True owner of goods leads buyer to believe that seller has authority to sell, then he is estopped from denying seller's authority to sell. ▪ If buyer buys goods on such belief, later on owner cannot say that seller has no authority to sell & buyer will get a valid title.
Sale under other acts	<ul style="list-style-type: none"> ▪ Sale by official receiver or liquidator of company. ▪ Sale by Pawnee. <p>can convey a good title to the buyer.</p>

DELIVERY OF GOODS & ITS MODES (SEC 31 - 44)

Meaning: Voluntary transfer of possession by one person to another.

Actual Delivery	When goods are Physically delivered to the buyer
Constructive Delivery	There is no change in the custody (possession remains with same person) as in case of delivery by Attornment (Acknowledgement).
Symbolic Delivery	Goods are not actually delivered but delivered by indication or symbol. Made when goods are bulky or incapable of actual delivery.
Demand for delivery	It is duty of buyer to ask for delivery of goods & seller should be ready to give delivery of goods. Seller is not liable if buyer has not demanded.
Time for delivery	If time is specified in contract - within specified time. If no time is specified in contract - within reasonable time;
Expenses of Delivery	Expenses of putting goods in deliverable state must be borne by seller. & Expenses of receiving goods shall be borne by buyer.
Effect of Part Delivery	If delivery is of huge quantity, it is delivered in parts. Sec 34 will apply: (a) If part delivery is made in progress of whole delivery - Treated as a delivery of whole, & ownership of whole quantity is transferred. (b) If part delivery is made with intention of separating it from whole - Not treated as delivery of whole.
Instalments	Buyer is not bound to accept delivery in instalments
Delivery of Wrong Quantity	<p>Short delivery: Delivery of lesser quantity than contracted, buyer can (a) Reject; (b) Accept delivery & claim damages for remaining goods.</p> <p>Excess delivery: Delivery of larger quantity, buyer can (a) Accept ordered Quantity & Reject Excess or (c) Reject whole quantity (c) Accept whole goods & pay for excess goods at contracted price or</p> <p>Mixed delivery: Contracted goods + Goods with different description, buyer may accept contracted goods or reject whole quantity of goods.</p> <p>Note: Where in case of short or excess delivery, buyer reject whole quantity, contract is not treated as cancelled. Seller has the right to tender goods again & buyer is bound to take the delivery.</p>
Delivery to carriers = Treated as delivery to buyer.	
Deterioration of goods during transit shall be borne by buyer.	

ACCEPTANCE OF DELIVERY OF GOODS: Buyer is said to accept delivery of goods when

- (i) He informs seller than he has accepted goods;
- (ii) Adopts any transaction on goods;
- (iii) Retain goods without informing seller that he has rejected goods.

CONDITIONS & WARRANTIES

Condition	<ul style="list-style-type: none"> ▪ A stipulation which is essential to main purpose of contract. ▪ Breach of condition gives right to repudiate contract & claim damages.
Warranty	<ul style="list-style-type: none"> ▪ A stipulation which is collateral to main purpose of contract. ▪ Breach of warranty gives right to claim damages; not to repudiate.

Note: Conditions & warranties may be expressly stated or may be implied by law.

In following cases, condition can be treated as warranty [can only claim damages]

- (a) Voluntary waiver of a condition by buyer
- (b) Where buyer elects to treat the breach of condition as the breach of warranty.
- (c) **Contract is indivisible** & buyer has accepted either whole/part of goods.
- (d) If there exist any impossibility for performance, seller is excused by law.

IMPLIED WARRANTY

Quiet possession [If buyer is disturbed in enjoyment, he can sue seller]
 Non-existence as to encumbrances/charges of 3rd part on goods
 Disclose dangerous nature of goods [warn buyer of probable damages]
 Quality & fitness by usage of trade

IMPLIED CONDITIONS

Condition as to title of goods	If seller's title is defective, buyer must return goods to the true owner & recover price paid to seller.
Sale by Description	Goods sold by description should correspond to the description.
Sale by Sample	Goods sold by sample should correspond to the sample.
Condition as to Quality & Fitness	<p>Ordinarily, there is no implied condition as to quality & fitness. But if buyer has informed seller about his requirement & relied upon his skills & judgement, then there is implied condition that goods should be fit for buyer's requirement.</p> <p>Note: This implied condition is not applicable if goods have been sold under a trademark or patent name.</p>
Wholesomeness	Eatables & other provisions - Goods should be wholesome.
Condition as to merchantability	Merchantability means goods are commercially saleable & they are fit for the purpose of use.

CAVEAT EMPTOR [LET THE BUYER BEWARE]

- Duty of buyer to choose suitable goods for himself; It's not seller obligation.
- Thus if buyer makes a bad choice, he cannot blame seller. This is "**Caveat Emptor**"

Exceptions to the rule of "Caveat Emptor"

(a) Fitness as to quality or use	When buyer informs seller his requirement & relies on seller's skills there is implied condition that goods supplied by seller shall be fit for purpose of buyer.	
(b) Trade usage	(c) Sale by Sample/Description;	(d) Merchantable Quality
(e) Seller makes fraud or conceals a defect in goods	In such cases, doctrine of caveat emptor will not be applicable. Such a contract will be voidable at option of the buyer. But if buyer can discover defect by ordinary examination, then doctrine of caveat emptor will be applicable.	

AUCTION SALE

Meaning	▪ Sale is complete when auctioneer announces its completion by the fall of hammer or in other customary manner (e.g. by saying 1,2,3)
Advertisement	▪ Advertisement to sell goods by auction is an invitation to offer.
Right to Refuse Bid	▪ Auctioneer can refuse to accept even highest bid because 'bid' is only an offer which may or may not be accepted is an unlawful act.
Right to Withdraw Bid	▪ Bidder have the power to withdraw bid before completion of sale. [Since offer can be revoked before its acceptance]
Reserve Price	▪ Sale can be Subject to reserve price below which the auctioneer will not sell the goods.
Sale in Lot	▪ Each lot is deemed as subject matter of separate contract of sale.
Seller's Right to Bid	▪ Seller can reserve a right to bid at auction (notify other buyers).
One Puffer	▪ A seller can appoint only one puffer to raise the bid.
Voidable Sale	▪ If seller makes use of pretended bidding to raise the price.
Damping	▪ Intended to discourage bidders from bidding is unlawful act.
Knock-out Arrangement	▪ A knock-out arrangement between the bidders not to bid against each other is lawful unless it is made to defraud a third party.
Liabilities of Auctioneer	<ol style="list-style-type: none"> 1. If auctioneer had no authority to sell goods. 2. If there is a defect in principal's title. 3. If auctioneer refuses to give possession on payment of price 4. If buyer's possession is disturbed by his principal or himself.

UNPAID SELLER [Whole of price is not paid/cheque bounced]
If buyer has tendered price & seller refused to accept it, seller loses all rights of unpaid seller.

RIGHTS OF UNPAID SELLER:

A. Right against Goods

(i) Rights of lien	<ul style="list-style-type: none"> ▪ Right to retain possession of goods until payment in follⁿ cases: <ul style="list-style-type: none"> (a) Goods have not been sold on credit, (b) Goods have been sold on credit but credit period expired, (c) Buyer becomes insolvent. ▪ Unpaid seller can retain goods only for payment of price. <p>Unpaid seller loses his right of lien in following circumstances</p> <ul style="list-style-type: none"> (a) Where goods have been delivered to buyer or to carrier; (b) Where buyer has lawfully obtained possession of goods; (c) Tender of price by buyer (d) Waiver of right by seller (e) By Estoppel
(iii) Right of stoppage in transit	<p>Right of stoppage in transit can be exercised in following cases:</p> <ul style="list-style-type: none"> (a) Buyer has become insolvent; (b) Goods are in course of transit; <p>Note: If goods are rejected by buyer & carrier continue to have possession of goods, then transit does not come to an end.</p> <p>Termination of right of stoppage in transit:</p> <ul style="list-style-type: none"> ▪ Interception by the buyer. ▪ Carrier's acknowledgement to the buyer. ▪ Carrier's wrongful refusal to deliver the goods to the buyer.
(ii) Right of Resale	<ul style="list-style-type: none"> ▪ Goods are of perishable nature (No notice to buyer is required) ▪ Buyer does not pay the price [Notice to buyer is required] <p>Note: If seller resales goods & does not realise sufficient price of goods, then he can sue the buyer for remaining amount.</p>

B. RIGHT AGAINST BUYER

- ❖ **Suit for price**
 - ❖ **Suit for damages for non-acceptance of goods** – only if seller is ready & willing to deliver goods to buyer, but buyer refuses to accept goods and pay for them,
 - ❖ **Suit for damages for repudiation of contract before due date of delivery**
 - He may continue contract and wait till date of delivery of goods.
 - He may immediately repudiate the contract & sue buyer for recovery of damages.
 - ❖ **Suit for Interest:** Rate of interest to be awarded is at discretion of court.
- Thus, when seller's only remedy is for damages, he cannot file a suit for interest (Sec 61).

REMEDIES OF BUYER AGAINST THE SELLER

- ❖ **Damages for Non-delivery**
- ❖ **Suit for Specific Performance:** [If damages are not adequate remedy]
Court may award if following conditions are satisfied:
 1. Goods are specific or ascertained.
 2. Damages are inadequate remedy
 3. Goods are unique & costly.
- ❖ **Suit for breach of warranty:** Where there is breach of warranty by seller or buyer elects to treat breach of condition as breach of warranty, he may
 - (i) claim a deduction in price
 - (ii) refuse to pay the price if the loss equals the price to be paid,
 - (iii) If loss is greater than the price of the goods, he can claim damages from seller,
 - (iv) May sue the seller for breach of warranty.

But buyer is not entitled to reject the goods on the basis of breach of warranty.
- ❖ **Suit for damages for repudiation of contract by the seller before due date:**
Buyer may (i) Continue the contract & wait till date of delivery, or
(ii) May treat contract as repudiated & sue seller for damages for breach.
- ❖ **Suit for interest:**
 - If buyer has paid price & seller does not deliver goods, buyer is entitled to claim interest or special damages from seller.
 - Rate of Interest = Fixed by court.

EFFECT OF SUB-SALE/PLEDGE BY BUYER (SEC 53)

- Right of lien or stoppage in transit of seller is **not affected** even if buyer has pledged or sold goods unless seller has assented for same.
- However, right of stoppage is defeated if buyer has transferred document of title or pledges goods to sub-buyer in good faith & for consideration.

Earnest Money vs Advance Payment

- ❖ **Earnest money:** Security for due performance of the contract. It **may be forfeited** if contract is not performed.
- ❖ **Advance payment:** Payment of price of goods in advance (adjusted in final settlement). Advance payment cannot be forfeited.

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3. INDIAN PARTNERSHIP ACT, 1932

- Effective from **1st Oct, 1932** (Except **Sec 69** which is effective from **01st Oct, 1933**).
- Where Partnership Act is silent, general principle of Contract Act shall apply (**Sec 3**).

PRE-REQUISITES FOR PARTNERSHIP

- ❖ **Agreement**
 - Relation b/w two or more persons to share profit of business by express agreement.
 - Partnership must result from an agreement (express or implied, oral or in writing).
 - Partnership is **voluntary & contractual**.
- ❖ **Sharing profit of business** [Sharing of losses → not essential].
 - Losses must be borne in **profit-sharing ratio** (Unless agreed otherwise)
 - **Sharing of profit is only a prima facie evidence & not conclusive evidence.**
- ❖ **Mutual Agency** [Conclusive Evidence] – [One for All, All for one]
 - Act of one partner = Act of all partners”.
 - Each Partner = Principal as well as agent for all other partners.
 - **No Mutual Agency = No Partnership. (Cox Vs Hickman Case)**

TYPES OF PARTNER

❖ Active/ostensible	▪ Active participation in Business; ▪ Public Notice <input checked="" type="checkbox"/> .
❖ Sleeping/Dormant	▪ No Active participation in Business; ▪ Public Notice <input checked="" type="checkbox"/>
❖ Nominal Partner	▪ Lends his name; ▪ Capital Contribution <input checked="" type="checkbox"/> ; ▪ Profit Sharing <input checked="" type="checkbox"/> ; ▪ Loss sharing <input checked="" type="checkbox"/> ; ▪ Public Notice <input checked="" type="checkbox"/> ▪ No Active participation in Business.
❖ Sub-Partner	▪ Partner ka Partner. [Firm ka koi lena dena nahi rahta] ▪ Sub-partner neither has obligation nor rights against firm. ▪ If a partner agrees to share his profit with 3 rd person, that 3 rd person is a sub-partner.
❖ Partner by Estoppel or Holding out (Sec 28)	▪ In case when a stranger represents himself as a partner in firm to induce other to give credit to partnership ▪ Only the person to whom the representation has been made can enforce the contract. ▪ Section 28 is also applicable to retired partner without giving public notice of his retirement.
❖ Partner only Profit	▪ Entitled to share the profit only. ▪ Liable to 3 rd party only for the act of profits. ▪ Bound to contribute for losses when other partner's private estate is insufficient.

MINOR AS A PARTNER

- ❖ **Analysis of Minor Position:**
 - Minor **cannot be a partner** since a contract with minor is **void-ab-initio**.
 - Minor can be **admitted to benefit of existing (new) p'ship** with **100% consent**.
 - **One minor & one major cannot form a partnership firm.**
- ❖ **Rights of Minor**
 - Right to share profit; to have access/inspect & copy accounts of the firm.
 - Right to sue the partners **after severing his connection with firm**.
 - **Right to elect** to become a partner or not within 6 months, on attaining maturity.
 - Partner ; then he is entitled to the share to which he was entitled as a minor.
 - Partner ; then he is entitled to sue partners for his share of property & profits.
- ❖ **Liabilities of Minor**

Before attaining maturity [No Personal liability]

- Confined only to extent of his share in profits & property.
- Cannot be declared insolvent, but if the firm is declared insolvent his share in firm vests in Official Receiver/Assignee.

After attaining maturity

- (a) **When he opts to become a partner (of his own willingness or by his failure to give the public notice within specified time)**
 - Personally liable to 3rd parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (b) **When he opts not to become a partner**
 - Shall not be liable for any acts of the firm done after the date of the notice.

TYPES OF PARTNERSHIP

- **Particular partnership** → ▪ Formed for a particular purpose. ▪ If continued after end of purpose, becomes a partnership at will.
- **General partnership** → ▪ For carrying business in general.
- **Partnership at will** → ▪ Dissolution by any partner by giving notice to other partners.
- **Partnership for fixed period** → ▪ Cannot be dissolved before expiry of period except by adopting the modes of dissolution.
 - If continued after expiry of period, becomes a partnership at will.

DUTIES OF A PARTNER

- Act in **good faith** & be **just & faithful** in his dealings with other partners.
- Use his **knowledge & skill** for **benefits of firm**; ▪ Give full Information of important matters
- Should make **no personal profit**; ▪ Should render **true account** to other partners;
- To **indemnify for loss** caused to firm **due to his misconduct**. *This duty cannot be excluded from any agreement.*
- **To share loss in PSR**. But this duty **can be excluded** by an agreement.
- To **attend diligently** (carefully) to the affairs of firm. If any loss is caused to firm by wilful neglect of partner, then he should **compensate the firm**.
- To **account for personal profit earned** by using firm's property **including GW**.
- To **use property** of firm only for **firm's business**; ▪ To act **within his authority**.
- Must **return the profit earned** by carrying on competing business of the firm.
- Should **not transfer his rights or interest** to an outsider without the consent of all partner. He **can transfer his share of profit (sub-partner)**.

PARTNERSHIP PROPERTY → Property of partner used by firm \neq property of firm.

AUTHORITY OF A PARTNER

- **Express Authority**: If given expressly by an agreement.
- **Implied authority**: If understood by the conduct or dealings between partners.
- All the acts of a partner done to carry on the business of firm → Implied authority .
- **Extension of implied authority of partner** → **Notice to third party** .
- *Restriction of Implied authority of partner* → *Valid only if 3rd party knows about restrictions or does not know that he is dealing with restricted person. (Imp).*

Acts within implied authority [No Express Agreement is required to do these acts]

Buy/Sell Goods for firm	Employ Servant	Borrow money	Receive payment
Settle A/c with 3 rd parties	Engage lawyer to defend the action brought against firm		
Present A/c to creditors	Draw Cheques & NI in the name of firm		

Acts beyond implied authority [Express Agreement is required to do these acts]

Submit a dispute to arbitration	Open bank A/c of firm in his name	Withdraw a suit
Compromise/relinquish claim	Admit any liability in a suit against the firm	
Enter into partnership	Acquire/transfer immovable property on behalf of firm	

ACTS BY PARTNER IN EMERGENCY → Binding on firm [ordinary prudence .

NOTICE TO AN ACTING PARTNER = NOTICE TO FIRM - (Imp)

MUTUAL RIGHTS OF A PARTNER

- ❖ **Right to take part in conduct of business**
- ❖ **Right to be consulted/express opinion**
- ❖ **Right to Access books of accounts**
- ❖ **Right to Remuneration** [Only by express agreement or course of dealing b/w partners]
- ❖ **Right to share Profit**
 - In PSR; ▪ If NO PSR → Equally [No connection between PSR & Capital ratio]
- ❖ **Interest on Capital** [Only by express agreement or course of dealing b/w partners]
 - Payable only till dissolution; ▪ Payable out of profits only.
- ❖ **Interest on Advances** → ▪ 6% p.a.; ▪ Till date of payment ▪ payable even if no profit.
- ❖ **Right to be Indemnified** → For payment or expense incurred to protect property of firm from a loss in any emergency for partnership firm.
- ❖ **Right to stop admission of a new partner** [Because 100% consent - ❖ **Right to Retire**
- ❖ **Right NOT to be expelled**
 - No partner can be expelled from the firm by other partner or even by majority *unless there is an agreement or exercised in good faith for the benefit of the firm.*
- ❖ **Right of Outgoing partner to carry on Competing Business [IMP]**
 - Outgoing partner may carry on competing business & advertise such business
 - But he **cannot use firm name** or **represent himself as carrying business of firm**
 - **He cannot solicit the customers of the firm.**
- ❖ **Right of Outgoing partner to share Subsequent Profits (Sec 37) [IMP]**
 - If after settlement of A/c of outgoing partner, there is any unpaid amount, **then he is entitled to share the subsequent profit.**
 - Share in subsequent profit = (i) Proportionate profit or (ii) Interest @ 6%p.a.
- ❖ **Right to Dissolve Firm** [100% consent - Partnership at will → By any partner after giving written **notice** to **all** other partners.

RIGHTS OF SUB-PARTNER (Imp)

- ❖ **Continuance of Partnership**: ▪ To receive share of profits of transferring partner.
 - Cannot interfere in conduct of business, require A/cs & inspect books of firm.
- ❖ **After Dissolution of firm/Retirement of transferring partner**:
 - To receive the share of assets of firm to which the transferring partner was entitled,
 - Entitled to A/c s from date of dissolution to ascertain his share.

INTRODUCTION OF NEW PARTNER (SEC 31) [100% consent ☑]

- Liability of new partner commence from the date of admission.
- If new partner agrees to share old debts of firm → consent of creditors must be taken.
- This section does not apply to partnership of two partners which is automatically dissolved by death of one of partners. Thus new partner cannot be admitted.

RETIREMENT OF PARTNER (Sec 32)

- A partner may retire:
 - (a) with 100% Consent; (b) by virtue of express agreement b/w partners; or
 - (c) **Partnership at will** → by giving notice in writing to all other partners
- Retiring partner remains liable till public notice is given (**Except Sleeping partner**).
- Notice may be given by **Retiring partner or any other partner of the firm**.
- Liable for all act of firm done before his retirement *even after retirement*.

Note: 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) & (4)].

Rights of Outgoing partner

Competing Business	<ul style="list-style-type: none"> May carry on business competing with that of firm and advertise such business but he cannot solicit the customers. Cannot use firm's name/represent himself as carrying on firm's business or solicit customers of firm he has left [Sec 36(1)].
Agreement to not carry competent business	<ul style="list-style-type: none"> May agree with other partners that he will not carry on similar business as of firm within specified period/specified local limits. Same rule applies to agreement involving sale of firm's goodwill.
Right to receive share in firm's property	<ul style="list-style-type: none"> On retirement, he has right to receive share in firm's property. Assets should be valued at their fair value on date of retirement & not at their book value appearing in books of A/c of firm.
Interest on unsettled balance [Sec 37]	<ul style="list-style-type: none"> If continuing partners carry on business with firm's property without any final settlement, he is entitled to claim his share from profits made by firm proportionate to use of his share. Alternatively, he can claim interest @ 6% p.a on amount of his share in firm's property (Section 37). Outgoing partner will not be entitled to any further share of profits if his interest is purchased by surviving/ continuing partners.

EXPULSION OF A PARTNER (SEC 33) [100% consent ☑]

- Expulsion by Majority:** (i) Agreement b/w partners; (ii) Expulsion in Good faith. If a partner is otherwise expelled, the expulsion is null & void.
- Expulsion of partners does not necessarily result in dissolution of the firm.

INSOLVENCY OF A PARTNER (SECTION 34)

- Insolvency results in dissolution of a firm unless otherwise agreed by partners.
- Ceases to be a partner on date of order of adjudication [Firm dissolved/not]
- His estate ceases to be liable for any act of the firm done after date of order.
- Firm is also not liable for any act of such a partner after such date.

DEATH OF A PARTNER (SECTION 35)

- Ordinarily death results in dissolution of partnership unless otherwise agreed.
- Estate of deceased partner is not liable for act of firm after his death.
- No public notice is required in case of death of a partner.

DISSOLUTION

- Dissolution of firm involves dissolution of partnership but dissolution of partnership may or may not involve dissolution of firm.

Modes of Dissolution

A. Voluntary Dissolution

- By agreement** (with consent of all partners)
- By compulsory dissolution** (all partners' Insolvency/business of firm unlawful)
- By Happening of Contingencies** [completion of term/purpose, death/insolvency]
- By Notice** (in case of partnership at will) → If no date is mentioned, then the firm is dissolved from date of communication of notice.

B. Dissolution by Court

- Insanity/unsound mind** (suit can be filed by next friend or any other partner)
- Permanent incapacity** (suit must be filed by other partner)
- Guilty conduct** (which is likely to affect the carrying on of the business)
- Persistent breach of agreement by partner/s.**
- Transfer of whole interest** (does not by itself dissolve firm but other partners may ask the court to dissolve the firm)
- Continuous Loss** (where it is impossible to make profits)
- Just & Equitable clause** [Deadlock in management; Loss of substratum; If partners are not in talking terms b/w them; Gambling by a partner on a stock exchange]

Consequences of Dissolution (sec 45 to 55)

- Business is wound up; assets are realized to pay debts & surplus is distributed to partners.

Rights & Liabilities on dissolution

- Authority of partners is continued till winding up (Sec.47)
- Right to share personal/secret profits earned using firm name after dissolution but before winding up (Sec 50).
- **Right to have premium/goodwill returned on premature dissolution (Sec. 51) except in case of death or his own misconduct.**
- **If partnership is rescinded for fraud/misrepresentation by partner (Sec 52) – aggrieved partner is entitled to lien, rank as creditor and to be indemnified**
- **Right to restrain use of firm’s name/property (Sec 53) – does not affect right of partner/his representative who has bought goodwill of firm to use firm name.**

Settlement of A/C between partners upon dissolution

- **Sale of Goodwill after dissolution (Sec. 55)** (subject to agreement).
- **Payment of losses including deficiencies of capital (Sec. 48)** shall be paid first out of profit; then out of capital and finally by partners individually in PSR
- **Appreciation of firm’s assets, including sums contributed by partners to make up deficiencies of capital (Sec 48)** shall be applied in following manner for payment of – Creditors; Advances of Partner; Capital & residual in PSR.
- **Loss due to insolvency of partner (Garner vs. Murray Rule)** shall be made up by Solvent Partner by bringing in:
 - (a) Cash equal to their respective shares of the loss on realization
 - (b) Bearing loss in ratio of their Last agreed capital on the basis of type of capital A/c
 - (i) **Fixed capital** as given in Balance Sheet without any adjustment.
 - (ii) **Fluctuating capital** after all adjustments to date of dissolution before adjustment for Profit or Loss on Realization

REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN FIRM (Sec 38)

- **Continuing guarantee given to third party is revoked as to future transactions from date of any change in constitution of firm unless an agreement to contrary.**

MISAPPROPRIATION OF PAYMENT [IMP]

(i) Partner receive money & misapply it; (ii) Firm receives money & any partner misapplies.

- **Firm will be liable in both cases**

Note: If partner is not authorized to receive money, then receipt of money by partner will not be treated as receipt by firm & firm will not be liable.

REGISTRATION OF FIRM [Sec 56 to 71]

- It is optional in India (No Penalty for unregistered firms). [Compulsory in England].

Procedure for Registration:

- **Application:** to the Registrar of firm of the area in which any place of business of firm is situated (proposed to be situated), **AT ANY TIME**, in prescribed form with fees.
- **Documents:** (i) Firm’s name, (ii) Principal place of business, (iii) Names of its other places of business, (iv) Joining date of each partner, (v) Name in full & permanent addresses of partners, & (vi) Duration of firm.
- **Signature & Verification:** All the partners or by their authorised agents.
- **Subsequent alterations** in name, place, constitution, etc. should also be **registered**.

Completion of Registration: Application in prescribed form with fees & necessary details concerning the particulars of partnership is delivered to the Registrar.

Note: Recording of an entry in the register of firms is a routine duty of Registrar.

Consequences of Non-Registration: [IMP]

- (a) Un-registered firm or its partner cannot sue third party.
- (b) Aggrieved partner cannot sue other partners or firms.
- (c) No Set off of claims (**if exceeding Rs. 100**) is possible against 3rd party.

Exceptions: Non-registration of a firm does not affect the following rights:

- (i) Right of **3rd parties** to sue the firm or any partner.
- (ii) **Right of Partners against dissolved firm**

to sue for Dissolution	for settlement of A/c	for realization of property
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- (iii) Power of Official Assignees/Receiver **to release property of insolvent partner.**

PC Note: At the time of filing suit, name of all the partners shall appear in register. If a new partner is admitted, suit will not be maintainable. In such case, it is necessary to withdraw the suit first & get the name of new partner in register & then file a fresh suit.

FIRM NAME → Following words are not allowed to be used.

Crown	Royal	Imperial	King/Queen	Emperor/Empress
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